

MATCHING GRANT AGREEMENT

Paula Lane Open Space Preserve

This agreement ("Agreement") dated as of 4/10/12 ("Effective Date") is entered into by and between the Sonoma County Agricultural Preservation and Open Space District (hereinafter "District"), a public agency, and the City of Petaluma (hereinafter "the City"), a California Charter City, and Paula Lane Action Network, a non-profit organization (hereinafter "PLAN"). The City and PLAN are jointly referred to herein as "Grantees".

RECITALS

A. *Program.* The District has a Competitive Matching Grant Program ("Program") by which it provides funding to cities, other public agencies and non-profit organizations on a competitive basis for open space projects that are consistent with the Expenditure Plan approved by the District's voters in November 2006 as part of the Sonoma County Open Space, Clean Water and Farmland Protection Measure, Measure F.

B. *Application.* Grantees submitted an application under the District's 2008 and 2009-10 Program cycles for funding in the amount of \$3,050,000 toward acquisition of 431 Paula Lane ("Property") for the establishment of an open space preserve ("the Paula Lane Open Space Preserve"). In 2008, the District recommended inclusion of such project into the Program, with acquisition funding in the amount of \$1,000,000. This recommendation was accepted by the Sonoma County Citizens Advisory Committee on July 24, 2008, and approved by the District's Board of Directors on September 9, 2008. As part of the 2009-10 cycle, the Citizens Advisory Committee recommended additional funding, if needed, up to \$100,000, and on May 11, 2010, the District's Board of Directors requested the ability to consider if an additional amount up to \$100,000 was needed to acquire the Property. The City negotiated a purchase price of \$1,050,000, and therefore, an additional \$50,000 is needed to complete the acquisition. Accordingly, the Board will consider the additional \$50,000 as part of approval of the project.

C. *Project Description.* The Paula Lane Open Space Preserve, as acquired by the City and managed by PLAN, will provide public access, habitat preservation, agriculture, and educational programs ("Project"). As part of the Project, PLAN will install a short trail; install viewing areas and benches, possibly including a bird blind; undertake habitat restoration; engage in agricultural uses, such as an orchard, row crops, or community garden; plant and maintain demonstration gardens, such as a butterfly, hummingbird or fragrance garden; and provide opportunities for public education. PLAN has actively sought partnerships with local schools and organizations to implement anticipated agricultural and educational programs.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. The foregoing recitals are true and correct.

2. GRANT REQUIREMENTS

a. *District Grant.* The District shall provide \$1,050,000 to be used exclusively for acquisition by the City of 11.22 acres at 431 Paula Lane, just west of the City of Petaluma. The District's grant award shall be expended by no later than December 6, 2014. Any funds not expended by December 6, 2014 shall revert back to the District.

b. *Match.* Grantees shall provide at least a one-to-one match toward the Project from City and PLAN funds, in-kind services and materials, fundraisers, and other sources of eligible match contributions. Matching funds of \$1,890,000 are estimated to be expended in the first 30 years of the project, however a match at least equal to the District's grant shall be expended by March 31, 2031, and Grantees shall report match expenditures until such date, consistent with Paragraph 3c below.

c. *Project Implementation.* Grantees shall implement and operate on an on-going basis all components of the Project by no later than December 6, 2016.

d. *Conservation Easement.* The City shall execute that certain agreement entitled "Deed and Agreement by and between the City of Petaluma and the Sonoma County Agricultural Preservation and Open Space District Conveying a Conservation Easement" ("the Conservation Easement"), by which the City will convey a conservation easement to the District protecting the natural resources, open space resources, recreation and education, and agriculture on the Property.

e. *Public Access.* By no later than December 6, 2016, Grantees shall provide public outdoor recreational and/or educational access to the Property consistent with this Agreement and the Conservation Easement. Such public access shall be maintained for a period of not less than thirty years.

f. *Operations and Maintenance.* Grantees shall use, manage, operate and maintain the Property in a manner consistent with the Conservation Easement. Grantees assume all responsibility for and costs of management, operation and maintenance of the Property. The District shall not be liable for any costs of such management, operation or maintenance.

3. PROCEDURAL REQUIREMENTS

a. *Work Plan.* Within six months of disbursement of Grant funds, Grantees shall submit, for District approval, a work plan to implement the first five years of the Project. The District's approval shall be based upon the work plan's consistency with the Conservation Easement, this Agreement, and the purpose of the Project as approved. The work plan shall include: 1) a general description of the Project, including conceptual and, if available, constructions plans; 2) a timeline or schedule for the first five years of Project implementation; and 3) a detailed budget, including matching funds identified to accomplish the Project and reflecting the required match. The work plan may be amended from time to time with District's written approval.

b. *Disbursement of Grant Funds.*

- i. Pre-Conditions. The District shall not be obligated to disburse any funds unless and until the following conditions have been met:
- An appraisal of the Property has been accepted by the District's Fiscal Oversight Commission.
 - The District's Board of Directors has approved funding for the Project.
 - The Conservation Easement has been executed and placed into an escrow account acceptable to District, and Grantees are in compliance with the terms of the Easement.

ii. Payment.

1. Purchase Price. The District shall deposit a warrant in an amount not to exceed \$1,050,000 to Old Republic Title Company (Escrow # 0812007365-JJ) toward the City's purchase of the Property. The District shall execute all necessary documents and take all actions necessary to ensure conveyance of the warrant to the City.

c. *Reporting.*

- i. Property Acquisition. Within 45 days of acquisition of the Property, Grantees shall supply the District with a final settlement statement or deed indicating the Property has been acquired and that the grant has been expended.
- ii. Quarterly. Grantees shall complete and submit no less frequently than quarterly for five years, a Performance Report (PR) demonstrating Grantees' progress under the approved work plan. The PR shall be in

a form acceptable to the District's General Manger and shall include (i) a summary of the current status of the Project; (ii) a description of any challenges encountered within the reporting period; (iii) current percent of Project completed; and (iv) amount, source(s) and percent of the match expended.

- iii. Annual. After five years and until March 31, 2031, Grantees shall submit a Performance Report annually demonstrating implementation of the Project. The PR shall include i) a summary of the current status of the Project; (ii) current percent of Project completed; and (iii) amount, source(s) and percent of the match expended.

4. IMPLEMENTATION REQUIREMENTS

a. *Procurement.* In implementation of the Project, Grantees shall follow the procurement procedures required by laws applicable to a special district created by Public Resources Code Section 5500 et seq. and shall assure that costs (those to be credited toward the Grantees' match) do not exceed fair market value.

b. *Insurance.* Grantees shall provide the District with proof of adequate self-insurance or a general liability insurance endorsement naming the District as an additional insured party; proof of workers' compensation; and proof of auto insurance.

c. *Prevailing Wage.* In implementation of the Project, Grantees shall comply with all applicable wage and hour laws, including without limitation Labor Code Sections 1775, 1776, 1777.5 1813 and 1815 and California Code of Regulations, Title 8, Section 16000, et seq.

d. *ADA Requirements.* Grantees shall ensure compliance with the Americans with Disabilities Act in the provision of public access to the Property.

e. *Non-Discrimination.* Grantees shall comply with all applicable federal, state and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation, or other prohibited basis including, without limitation, the District's Non-Discrimination Policy. All nondiscrimination rules and regulations required by law to be included in this Agreement are incorporated herein by this reference.

f. *Signs.* Grantees shall erect a permanent sign or signs on the Property acknowledging the District's financial participation in the Project. Such signs shall: 1) be made of materials that are weather resistant; 2) be located where they are easily read by the public; 3) include, at a minimum, the District's logo (provided by District) and if possible the following

language, "This Project was funded in part through the Sonoma County Agricultural Preservation and Open Space District's Matching Grant Program"; and 4) be consistent with the signage language in the Conservation Easement. The number, design, wording, and placement of signs shall be submitted to the District's General Manager for review and approval.

5. PROJECT REVISIONS AND EXTENSIONS

a. *Changes to Project.* To maintain the integrity of the competitive Program, no substantive changes or alteration to the Project shall be made without written consent of the District. If changes or alterations are approved, the work plan required under Paragraph 3a may require an amendment.

b. *Project Implementation Extension.* The District, at its sole discretion, may grant a single extension of time, of no more than two years, for implementation of the Project. The District's granting of an extension is dependent upon Grantees' ability to demonstrate that reasonable progress on the Project is and has been made, that the Project has been compliant with all provisions of the Conservation Easement and this Agreement, and that Grantees have demonstrated that the extension will result in successful implementation of the Project within the extended timeframe.

6. RECORDS KEEPING

a. *Records.* All financial, procurement, licenses, insurance, and programmatic records related to the Project shall be maintained by Grantees for no less than five years after Project implementation.

b. *Records Access.* District staff shall have access to financial, procurement, licenses, insurance, and programmatic records related to the District's grant for no less than five years after Project implementation.

c. *Annual Audit.* Grantees shall submit annual audited financial statements to the District by August 31 of each year until Project implementation.

d. *Accounting Requirements.* Applicants must maintain an accounting system that is in accordance with generally-accepted accounting procedures and standards, and as such:

- i. Accurately reflects responsible fiscal transactions, with the necessary controls and safeguards.
- ii. Provides a solid audit trail, including original source documents such as purchase orders, receipts, progress payments, invoices, timecards, and evidence of payment.
- iii. Provides accounting data so the total cost of the project and each individual component can be readily determined.

e. *Fiscal and Project Monitoring.* The Project will be subject to compliance monitoring by the District. The monitoring may include examination of books, papers, accounts, documents or other records of Grantees as they relate to the Project.

7. GENERAL PROVISIONS

a. *Statutory Compliance.* All activities and uses in connection with the Project shall be subject to and undertaken in accordance with all applicable federal, state, and local statutes, ordinances, rules, and regulations.

b. *Access to Project Site.* Subject to the provisions of the Conservation Easement, the District shall have the right to enter and inspect the Property for the purposes of ensuring compliance with this Agreement and progress toward Project implementation.

c. *Failure to Perform.* Failure by Grantees to comply with the terms of this Agreement may result in any or all of the following actions at the District's sole discretion:

- i. If District reasonably determines that the Project will not be implemented or that the purposes of the Project will not be met within the timeframes provided herein, the District may commence and pursue all available legal remedies to recoup any and all grant funds reimbursed to Grantees.
- ii. District may seek specific performance of this Agreement in a court of competent jurisdiction. Grantees hereby agree that the public benefits sought by this Agreement exceed the dollar amount of the grant and are impracticable or extremely difficult to measure. Grantees further agree that, in the event of a breach of this Agreement by Grantees, or either of them, reimbursement of the grant funds, alone, would be inadequate compensation and that, in addition to damages, the District

shall be entitled to injunctive relief, including specific performance, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Specific performance, however, shall not be compelled if changes in circumstances have rendered such performance impossible or financially infeasible.

d. *Indemnification.* Grantees, jointly and severally, agree to accept all responsibility for loss or damage to any person or entity, including but not limited to District, its officers, agents, and employees and to defend, indemnify, hold harmless, reimburse and release District, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, liabilities and expense, including but not limited to attorneys' fees and the cost of litigation, whether arising from personal injury, Property damage or economic loss of any type, that may be asserted by any person or entity, including Grantees, or either of them, arising out of or in connection with this Agreement and/or the Project, whether or not there is concurrent negligence on the part of District, but, to the extent required by law, excluding liability due to the sole or active negligence or due to the willful misconduct of District. If there is a possible obligation to indemnify, Grantees duty to defend exists regardless of whether it is ultimately determined that there is not a duty to indemnify. District shall have the right to select its own legal counsel at the expense of Grantees, subject to the City's approval, which approval shall not be unreasonably withheld. Nothing in this Paragraph 7d shall either enlarge or limit the indemnification provided in Section 8 "Indemnification" of that certain Deed and Agreement by and between the City of Petaluma and the Sonoma County Agricultural Preservation and Open Space District Conveying a Conservation Easement and Assigning Development Rights.

e. *Method and Place of Giving Notice, Making Submissions and Payments.* Except as otherwise expressly provided herein, any notice, invoice, report, demand, request, approval, disapproval, or other communication that either party desires or is required to give under this Agreement shall be in writing and either served personally or sent by first class mail, private courier or delivery service, or fax addressed as follows:

TO DISTRICT: General Manager
 Sonoma County Agricultural Preservation
 and Open Space District
 747 Mendocino Avenue
 Santa Rosa, CA 95401
 Telephone: (707) 565-7360
 Fax: (707) 565-7359

TO CITY: City of Petaluma
City Manager
11 English Street
Petaluma, CA 94952
Telephone: (707) 778-4345
Fax: (707) 778-4419

TO PLAN: Paula Lane Action Network
P.O. Box 2903
Petaluma, CA 94953
Telephone: (707) 773-3215
Fax: (707) 763-6799 (Attn: PLAN)

f. *Assignment and Delegation.* Grantees shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the District, and no such transfer shall be of any force or effect whatsoever unless and until such consent is received.

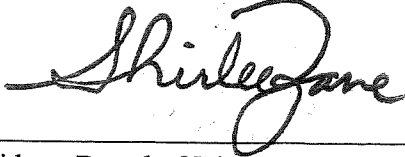
g. *Amendment.* No changes in this Agreement shall be valid unless made in writing and signed by the parties to the agreement. No oral understanding or agreement not incorporated in this agreement shall be binding on any of the parties.

h. *Notice of Unrecorded Matching Grant Agreement.* Within 10 days of the Effective Date of this Agreement, District and Grantees shall execute and record a Notice of Unrecorded Grant Matching Grant Agreement.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

APPROVED:

**SONOMA COUNTY AGRICULTURAL
PRESERVATION AND OPEN SPACE
DISTRICT**


By: 
President, Board of Directors

Date: 4/10/12

Attest: 
Clerk of the Board of Directors

APPROVED:

GRANTEE: CITY OF PETALUMA


By: 
City Manager

Date: 3/27/12

Attest: 
City Clerk

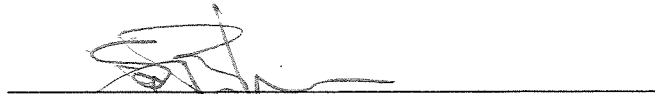
Date: 3/27/2012

APPROVED AS TO FORM:

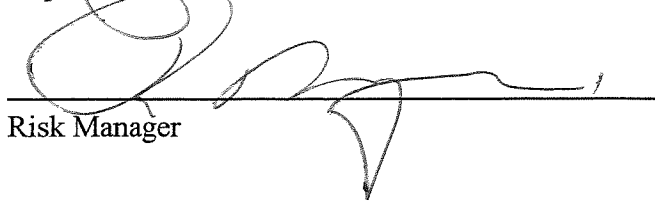

City Attorney



Finance Director



Department Director



Risk Manager

GRANTEE: PAULA LANE ACTION NETWORK



Susan Kirks, Board Chair

Date: 03-21-2012

SAMPLE PERFORMANCE REPORT

Grantee name:

Project name:

Performance report #:

Submittal date:

Reporting period: _____ to _____

Report narrative: Summarize current status of project and compare it to the status required by the work plan (tasks, timeline, budget). Describe successes and challenges encountered within the reporting period. Provide the following specific information: 1) percent completion of project, and 2) amount, source(s) and percent of match expended. Include any requested changes to the timeline.

Signature from authorized project representative including date and title

Exhibit 5

Paula Lane
Open Space Preserve
Conservation Easement
Baseline Document

Baseline Site Map



- Photograph Location & Direction
(indicates panorama)
- Easement Boundary
- Agricultural Area
- Building Envelope

Data Source:
Sonoma County Agricultural Preservation
& Open Space District

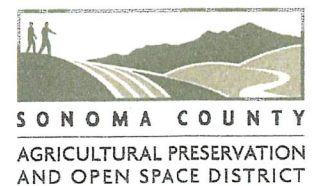
Data collection, Rob Evans,
February 28, 2012

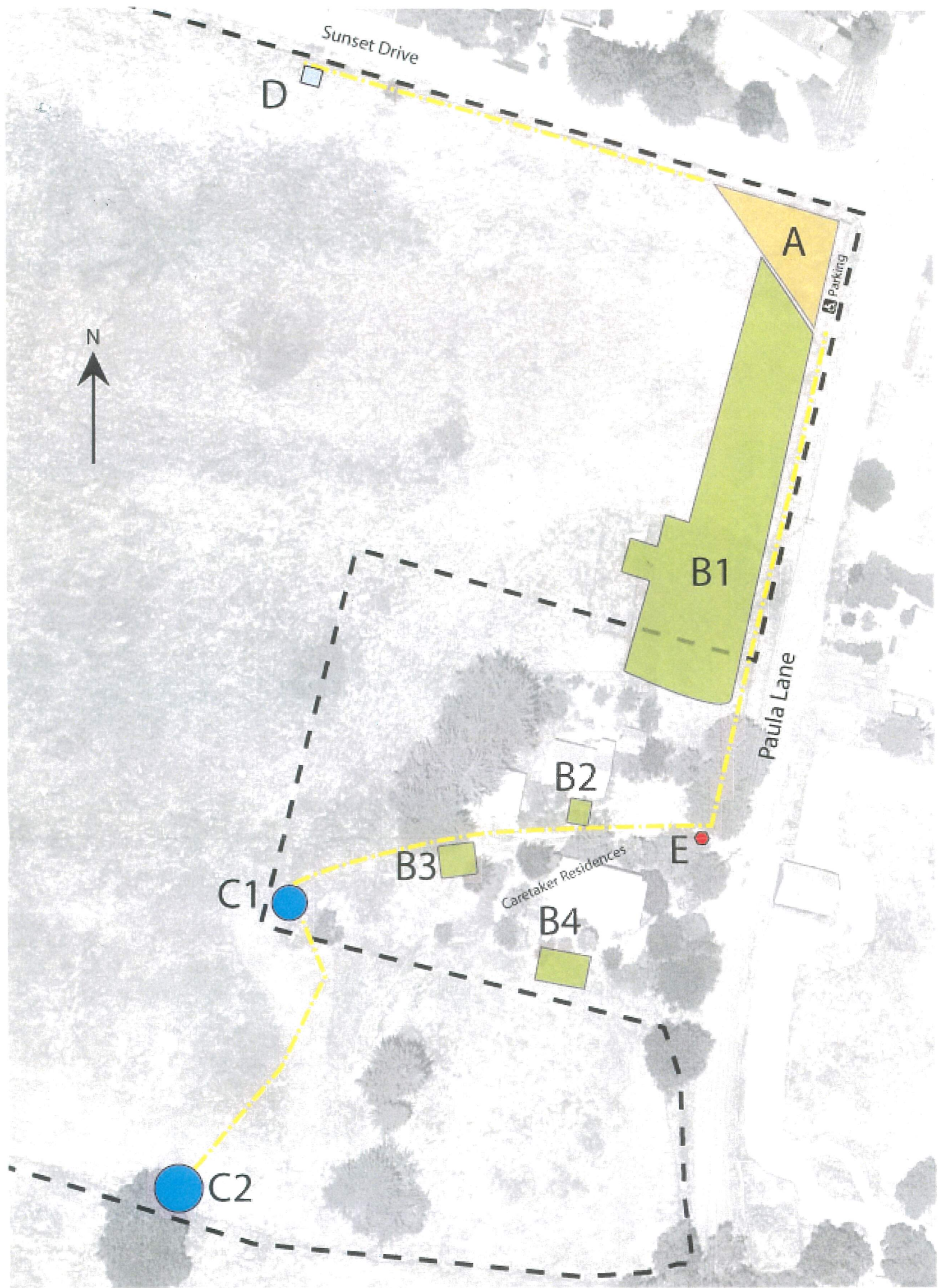
Resource Strategies, Inc./DigitalGlobe, 2009

Map Date: March, 2012

Note: This map is for illustrative purposes only and
is not intended to be a definitive property description.

The Building Envelope and Agricultural Area shown on
this map are generated from digital vector data on file
with the District; the digital vector data itself
designates these areas.





A Sunset Viewing Area Interpretive kiosk Bench Bicycle Rack	C1 Wildlife Viewing Bench
B1 Organic Agriculture Community and School Gardening	C2 Wildlife Viewing Trail End
B2 Butterfly/Hummingbird Garden	D Bird Blind
B3 Fragrance Garden	E Interpretive Kiosk
B4 Organic Garden	F Trail

MAP B