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SONOMA COUNTY  
JANICE ATKINSON

30 PGS



**RECORDING REQUESTED BY AND RETURN TO**

Clerk of the Board of Directors  
Sonoma County Agricultural  
Preservation and Open Space District  
575 Administration Drive, Room 102A  
Santa Rosa, CA 95403

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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

The City of Petaluma ("GRANTOR") and the Sonoma County Agricultural Preservation and Open Space DISTRICT, a public agency formed pursuant to the provisions of Public Resources Code sections 5500 et seq. ("DISTRICT"), agree as follows:

RECITALS

A. GRANTOR is the owner in fee simple of that certain real property located in Sonoma County and more particularly described in Exhibit A, attached hereto and incorporated herein by this reference ("the Property").

B. In 1990 the voters of Sonoma County approved the creation of DISTRICT and the imposition of a transactions and use tax by the Sonoma County Open Space Authority ("the Authority"). The purpose for the creation of DISTRICT and the imposition of the tax by the Authority was to provide for the preservation of agriculture and open space through the acquisition of interests in appropriate properties from willing sellers. The District was created and the tax imposed in order to further the state policy for the preservation of agricultural and open space lands, to meet the mandatory requirements imposed on the County and each of its cities by Government Code sections 65560 et seq., and to advance the implementation of the open space elements of their respective general plans. In order to accomplish those purposes, DISTRICT and the Authority entered into a contract whereby, in consideration of the Authority's financing of DISTRICT's acquisitions, DISTRICT agreed to and did adopt an acquisition program that was in conformance with the Authority's voter approved Expenditure Plan. In 2006, the voters of Sonoma County approved an extension of the transaction and use tax and an update of the Expenditure Plan. The DISTRICT's acquisition program remains in full compliance with that updated voter-approved Expenditure Plan.

C. On April 10, 2012, DISTRICT's Board of Directors, pursuant to Government Code section 65402 and Sonoma County Ordinance No. 5180, determined, by its Resolution No. \_\_\_\_\_, that the acquisition of a conservation easement over the Property was consistent with the Sonoma County General Plan (specifically the Plan's Agricultural Resources and Open Space Elements) because; (1) habitat for multiple wildlife species will be protected; (2) a wildlife corridor for movement and connectivity will be preserved; (3) agricultural activities will be supported; (4) opportunities for passive recreational enjoyment and outdoor education related to agriculture and wildlife habitat restoration and enhancement will be provided; and (5) the Property's primarily undeveloped character is an important open space resource, contributing to the county's rural character. By that same resolution, the DISTRICT's Board of Directors determined that its funding of the Project is consistent with the voter-approved Expenditure Plan.

D. DISTRICT has the authority to acquire conservation easements by virtue of Public Resources Code section 5540 and possesses the ability and intent to enforce the terms of this Easement.

THEREFORE, in consideration of the foregoing recitations and of the mutual covenants, terms, conditions, and restrictions herein set forth and other valuable consideration receipt of which is hereby acknowledged, GRANTOR and DISTRICT agree as follows:

## EASEMENT

### PART ONE: GRANT OF EASEMENT

**1. Grant and Acceptance of Conservation Easement and Assignment of Development Rights.** Pursuant to the common and statutory law of the State of California including the provisions of Civil Code sections 815 to 816, inclusive, GRANTOR hereby grants to DISTRICT and DISTRICT accepts a conservation easement over the Property in perpetuity under the terms and conditions set forth herein ("the Easement"). GRANTOR hereby irrevocably assigns to DISTRICT all development rights associated with the Property, except those rights which are specifically reserved by GRANTOR through this Easement.

**2. Conservation Values.** The Property is located in Petaluma's western hills, and is primarily composed of annual grasslands. Critical resources on the Property (collectively "the Conservation Values"), include natural resources, open space, recreation and education, and agriculture. These include, but are not limited to, the following:

**2.1 Natural Resources.** The Property consists of annual grasslands, with several mature oaks, and an east-west swale with wetland characteristics that all provide upland habitat and foraging for multiple species. The Property is part of a critical wildlife movement area connecting the southwest Petaluma area to the north and northwest of Petaluma, in proximity to Marin Creek. Special-status species known to use the Property at the time of the conservation easement acquisition include American Badger (*Taxidea taxus*), a California Species of Special Concern. The Property is also important for numerous other wildlife species, including resident and migratory avian species that use the Property as a migratory wintering area. These resident and migratory avian species include the following special-status species: Allen's and Rufous Hummingbirds, Sharp-shinned Hawk, White-tailed Kite, Cooper's Hawk, Nuttall's Woodpecker,

Oak Titmouse, Red-breasted Sapsucker, Snowy Egret, Great Egret, Great Blue Heron, Black-crowned Night Heron and Long-billed Curlew.

**2.2 Open Space Resources.** Located at the urban edge, the Property's primarily undeveloped character is an important open space resource, contributing to the county's rural character.

**2.3 Recreation and Education.** The Property provides opportunity for the public's passive recreational enjoyment of its natural features and the opportunity for outdoor education related to agriculture, wildlife habitat restoration and enhancement, and the relationship and interdependence of plant life, animal life and human life. The Ring Trail planned for the Petaluma Area is expected to pass adjacent to the Property.

**2.4 Agriculture.** The Property is located in an historic agricultural area of Sonoma County and Petaluma, representing the remainder of the first farm on Paula Lane, settled in the late 1800s. The Property provides opportunity for multiple agricultural uses, including orchards, row crops, and gardens.

**3. Conservation Purpose.** It is the purpose of this Easement to preserve and protect forever the Conservation Values of the Property, as described in Section 2. This purpose shall hereinafter be referred to as "the Conservation Purpose of this Easement." GRANTOR and DISTRICT intend that this Easement will confine the use of the Property to activities that are consistent with the Conservation Purpose of this Easement and will prohibit and prevent any use of the Property that will materially impair or interfere with the Conservation Values of the Property. GRANTOR and DISTRICT intend that all Conservation Values of the Property will be fully preserved and protected in perpetuity. In the event, however, that the preservation and protection of one Conservation Value becomes irreconcilably inconsistent with the preservation and protection of another Conservation Value, the following priorities shall be followed: preservation and protection of natural resources shall take precedence over preservation and protection of open space resources, which shall take precedence over recreation and educational uses, which shall take precedence over agricultural uses.

## **PART TWO: RESERVED AND RESTRICTED RIGHTS**

**4. Affirmative Rights of DISTRICT.** DISTRICT shall have the following affirmative rights under this Easement:

**4.1 Protecting Conservation Values.** DISTRICT shall have the right to preserve, protect and document in perpetuity the Conservation Values of the Property.

**4.2 Property Inspections.** DISTRICT shall have the right to enter upon the Property and to inspect, observe, and study the Property for the purposes of (i) identifying the current activities and uses thereon and the condition thereof, (ii) monitoring the activities and uses thereon to determine whether they are consistent with the terms, conditions and Conservation Purpose of this Easement, (iii) enforcing the terms, conditions and Conservation Purpose of this Easement, and (iv) exercising its other rights under this Easement. Such entry shall be permitted at least once a year at reasonable times, upon one week's prior notice to GRANTOR, and shall be made in a manner that will not unreasonably interfere with GRANTOR's use and quiet

enjoyment of the Property pursuant to the terms and conditions of this Easement. Each entry shall be for only so long a duration as is reasonably necessary to achieve the purposes of this Section 4.2, but shall not necessarily be limited to a single physical entry during a single twenty-four hour period. Notwithstanding the foregoing, should DISTRICT's General Manager have a reasonable belief that GRANTOR is in breach of this Easement, DISTRICT shall have the right at any time, upon twenty-four hours' prior notice to GRANTOR to enter upon the Property for the purpose of determining whether such breach has occurred. The rights of entry provided by this Section 4.2 shall extend to the officers, agents, consultants, and volunteers of DISTRICT. Notwithstanding any reasonable belief of DISTRICT that a breach of this Easement is occurring, prior to any entry by DISTRICT into residential dwelling units on the Property for purposes of inspection, DISTRICT shall provide at least forty-eight (48) hours prior notice to GRANTOR during normal business hours of GRANTOR of DISTRICT's intent to enter into such dwelling units, absent an emergency requiring immediate action or other exception contained in California Civil Code Section 1954 or any successor statute then in effect relating to notification of tenants inhabiting and/or leasing residential structures ("Section 1954"). This additional time is to allow GRANTOR to comply with Section 1954. DISTRICT shall limit its inspection of inhabited or leased dwelling units on the Property to inspection during normal business hours except as otherwise provided in Section 1954.

**4.3 Enforcement.** DISTRICT shall have the right to enforce the rights herein granted and to prevent or stop, by any legal means, any activity or use on the Property that is inconsistent with the terms, conditions or Conservation Purpose of this Easement and to require restoration of such areas or features as may be damaged by such activities or uses.

**4.4 Approval of Certain Uses.** DISTRICT shall have the right to review and approve proposed uses and activities on the Property as more specifically set forth in Section 5 and Section 6.

**4.5 DISTRICT Signage.** DISTRICT shall have the right to erect and maintain a sign or other appropriate marker in a location on the Property acceptable to GRANTOR, visible from a public road, bearing information indicating that the Property is protected by DISTRICT and acknowledging the sources of DISTRICT funding for the acquisition of this Easement. The wording and design of the sign and marker shall be determined by DISTRICT with consent of GRANTOR. No such sign or marker shall exceed thirty-two (32) square feet in size. DISTRICT shall be responsible for the cost of erecting and maintaining such sign or marker.

**5. GRANTOR's Reserved and Restricted Rights.** Use of the Property shall be confined to activities and uses that are consistent with the Conservation Purpose of this Easement. Any activity or use that is inconsistent with the Conservation Purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly reserved, restricted or prohibited as set forth below. GRANTOR and DISTRICT acknowledge that the following list does not constitute an exhaustive recital of consistent and inconsistent activities and uses, but rather (i) establishes specific allowed activities and uses, (ii) establishes specific prohibited activities and uses, and (iii) provides guidance for determining the consistency of similar activities and uses with this Easement, in accordance with the procedures set forth in Section 6.

**5.1 General Requirements for All Uses.**

5.1.1 Compliance with Governmental Regulations. All activities and uses on the Property shall be undertaken in a manner consistent with all applicable federal, state, and local statutes, ordinances, rules, and regulations.

5.1.2 Compliance with Terms, Conditions and Conservation Purpose of this Easement. All activities and uses on the Property shall be undertaken in a manner consistent with the terms, conditions and Conservation Purpose of this Easement.

5.1.3 Protection of Conservation Values. All activities and uses on the Property shall be undertaken in a manner reasonably designed to protect and preserve the Conservation Values.

5.1.4 Protection of Soil and Water. No activity or use on the Property shall be undertaken in a manner that results in significant soil degradation or pollution, or significant degradation or pollution of any surface or subsurface waters.

5.1.5 Criteria for Use.

(a) Use of the Property shall ensure preservation and protection of the natural resources of the Property in perpetuity; and

(b) Public outdoor recreational and educational uses and activities on the Property shall be designed and undertaken in a manner compatible with natural resource protection; and

(c) No use or improvement shall materially impair GRANTOR's ability to provide for public outdoor recreational and educational use of the Property as provided herein; and

(d) Structures and improvements shall not result in impervious surfaces on, cumulatively, more than 3% of the Property; and

(e) No structure or improvement on the Property shall exceed 24 feet in height.

(f) Use of the Property shall preserve opportunities for agricultural use in areas designated Agricultural Area in the Baseline Documentation Report Site Map (Baseline Site Map) as identified in Section 9.

5.1.6 Notice and Approval Procedures. Whenever in this Section 5, prior notice to and approval by DISTRICT is required, such notice shall be given and approval shall be obtained in accordance with Section 6 of this Easement.

5.1.7 Management Plan. GRANTOR may develop and implement a Management Plan for the Property. The Management Plan and future updates and amendments will be subject to review and approval by DISTRICT in accordance with

Section 6 of the Easement. The Management Plan shall not be implemented on the Property until the District's approval is obtained. DISTRICT's review and approval of the Management Plan shall be based on the Management Plan's consistency with the terms, conditions and Conservation Purpose of this Easement.

Once the Management Plan is approved by DISTRICT, uses and improvements described in that approved Management Plan, and all development necessary to implement those described uses and improvements, shall be deemed to be consistent with the Conservation Purpose of this Easement and shall be permitted on the Property without further notice to or approval by DISTRICT required. All such uses and improvements shall be undertaken in accordance with the terms and conditions of this Easement and in compliance with all applicable laws and regulations.

**5.2 Land Uses.** Use of the Property is restricted solely to natural resource protection, habitat restoration and enhancement, recreational and educational, agricultural and residential uses as defined in this Section 5.2. Commercial or industrial use of or activity on the Property is prohibited except for those commercial uses expressly reserved in Sections 5.2.4, 5.2.5 and 5.2.6.

5.2.1 Natural Resource Protection. GRANTOR may take all actions necessary or appropriate to preserve and protect the natural resources of the Property in accordance with sound, generally-accepted conservation practices. GRANTOR and DISTRICT acknowledge that the Property and its natural features are protected by this Easement and shall not be available to mitigate for the environmental impacts of projects located off site.

5.2.2 Habitat Restoration and Enhancement. GRANTOR may undertake conservation and habitat restoration and enhancement activities in accordance with Section 5.5.5.

5.2.3 Recreational and Educational Use. GRANTOR shall make the Property available to the public for passive public outdoor recreational and educational purposes except as set forth in Section 5.6. Such uses may include, but are not limited to, walking, picnicking, gardening, native habitat installation, public educational and passive recreational activities including but not limited to nature study, placement and use of environmental research support instruments, environmental or outdoor education, habitat restoration training, and other such uses similar in nature and intensity.

5.2.4 Agricultural Use. GRANTOR reserves the right to engage in agricultural uses, as defined below, within the designated Agricultural Area and Building Envelope designated on the Baseline Site Map in accordance with sound, generally-accepted agricultural and soil conservation practices, provided however that no agricultural use shall be undertaken in a manner that significantly impairs the long-term agricultural productive capacity of the Property. Agricultural uses shall be limited to the following:

a) Livestock for the Production of Food and Fiber. GRANTOR reserves the right to breed, raise, pasture, and graze livestock of every nature and description for the production of food and fiber.

b) Bees, Poultry and Fowl. GRANTOR reserves the right to breed and raise bees, poultry, and other fowl.

c) Crops. GRANTOR reserves the right to plant, raise, harvest, and produce agricultural and horticultural crops and products of every nature and description.

d) Sale of Harvested Crops and Products. GRANTOR reserves the right to store and sell, including direct retail sale to the public of crops and products principally harvested and produced on the Property.

e) Processing of Crops and Products. GRANTOR reserves the right to process agricultural crops and products principally harvested and produced on the Property.

5.2.5 Residential Use. GRANTOR reserves the right to reside on the Property and lease or rent, for residential or other permitted uses, the residential buildings within the Building Envelope as designated on the Baseline Site Map.

5.2.6 Commercial Use. GRANTOR reserves the right to use the Property for commercial uses and activities identified below. Any revenue generated from commercial activities and uses shall be used toward the cost of operating, maintaining, restoring, and enhancing the Property, and towards educational, recreational or agricultural programs that take place on the Property.

i) Agricultural uses as defined in Section 5.2.4.

ii) Leases or rentals for residential use as defined in Section 5.2.5.

iii) Special Events and Fundraising Activities. Subject to prior written notice to DISTRICT, GRANTOR may use the Property for public special events, including but not limited to educational and recreational events, art shows, music and music programs, dance and cultural activities and other similar special events. GRANTOR may also use the Property for fundraising activities that educate the public and promote the preservation and restoration of open space and natural resources in Sonoma County. Special events and fundraising activities shall occur, in total, no more than six times per year and shall not result in any temporary or permanent alteration of the Property nor have any detrimental impact on the natural resources of the Property. No noise amplification or night lighting is permitted.

iv) Concessions. Food and beverage sales and other similar concessions may be operated on the Property in connection with permitted special events and fundraising activities on the day or days of the event.

v) Other Ancillary Uses. Subject to prior written DISTRICT approval, GRANTOR may use the Property for other minor ancillary commercial uses found to be consistent with the Conservation Values of this Easement.

5.2.7 Emergency Activities. In the event of a natural disaster or similar emergency condition, GRANTOR may undertake temporary activities as may become necessary or appropriate to protect public health or safety of persons in the local area, so long as such activities, to the greatest extent feasible, are undertaken in a manner that does not hinder the Conservation Purpose of this Easement.

**5.3 Subdivision and Parcels.** GRANTOR and DISTRICT acknowledge and agree that the Property shall be merged and shall always remain one legal parcel under one common ownership. GRANTOR shall not divide the Property, whether by subdivision, conveyance, lot line adjustment, or any other means, nor shall GRANTOR gain or seek to gain recognition, by certificate of compliance under the Subdivision Map Act or otherwise, of additional parcels which may have previously been created on the Property by prior patent or deed conveyances, subdivisions, or surveys, nor shall GRANTOR place or convey any portion of the Property into ownership separate from the whole of the Property.

5.3.1 Exceptions. This prohibition against division of the Property shall be inapplicable to:

a) Conveyance to Government or Non-Profit Entity. Subject to prior written approval by DISTRICT, GRANTOR may voluntarily convey a portion of the Property to a government or non-profit entity exclusively for conservation or public access purposes.

b) Leases. GRANTOR reserves the right to lease a portion(s) of the Property for the permitted residential, recreational and educational, and agricultural uses described in Section 5.2.

5.3.2 Historic Parcels. GRANTOR acknowledges that one or more additional historic parcels may exist on the Property, previously created by patent or deed conveyances, subdivisions, lot line adjustments, surveys, recorded or unrecorded maps or other documents. GRANTOR waives all rights to recognition of such historic parcels, whether through certificate of compliance under the Subdivision Map Act or otherwise.

**5.4 Structures and Improvements.** GRANTOR may repair, replace, construct, place and maintain structures and improvements on the Property only as provided below. At no time shall structures and improvements on the Property result in impervious surfaces on, cumulatively, more than 3% of the Property. Furthermore, no structure or improvement shall exceed 24 feet in height.

5.4.1 Maintenance, Repair or Replacement of Structures and Improvements. GRANTOR may maintain, repair or replace structures and improvements existing at the date hereof or constructed subsequently pursuant to the provisions of Section 5.4, as follows:

(a) If the maintenance, repair or replacement does not increase the height of the structure or improvement, increase the land surface area it occupies or change its location or function, no notice to or approval by DISTRICT shall be required.



(b) Any maintenance, repair or replacement that increases the height of the structure or improvement, increases the land surface area it occupies, or changes its location or function shall be treated as new construction and shall be subject to the provisions of Sections 5.4.2 through 5.4.9.

5.4.2 Primary Residences. There currently exist on the Property two primary residences. Residential use may continue or the use of the structures may be converted to educational, recreational or agricultural uses. No such structure shall be greater than 2,000 square feet in size, exclusive of garage. All garages, whether attached or detached, shall be subject to Section 5.4.3. In no case shall there be more than two primary residences, whether used for residential or other purposes, located on the Property.

5.4.3 Structures Accessory to Residential Use. Subject to prior written notice to DISTRICT, GRANTOR may place or construct additional accessory structures and improvements reasonably related to permitted residential use of the Property including, without limitation, guest house, garage, and shed. All such structures must be placed or constructed within the Building Envelope. The total cumulative square footage of the structures accessory to residential use shall not exceed 3,000 square feet. No single structure accessory to the residential use shall exceed 1,000 square feet.

5.4.4 Non-residential Agricultural Structures. Subject to prior written notice to DISTRICT, GRANTOR may place or construct within the Agricultural Area or Building Envelope non-residential accessory structures and improvements reasonably necessary for the permitted agricultural use of the Property, including, without limitation, barns, sheds, greenhouses, native plant propagation shade houses and small storage facilities.

5.4.5 Structures and Improvements for Recreational and Educational Uses. GRANTOR may construct or place improvements associated with permitted outdoor recreational and educational uses, including, but not limited to:

(a) Within the Agricultural Area or Building Envelope, GRANTOR may construct or place trails, pathways, benches, gazebo, bird blinds, interpretive kiosks, drinking fountains, refuse and recycling containers, bicycle racks, public art, and other similar minor improvements without any notice to or approval from DISTRICT.

(b) Within the Building Envelope, GRANTOR may construct or place educational or interpretive facilities, restrooms, lighting, and other similar significant improvements only with prior written notice to DISTRICT.

(c) Outside of the Agricultural Area and Building Envelope, GRANTOR may construct or place benches, bird blinds, interpretive kiosks and other similar minor improvements located only with prior written approval of DISTRICT. Such improvements shall be located primarily on the perimeter of the Property.

5.4.6 Public Parking and Access Roads. Subject to prior written approval of DISTRICT, GRANTOR may construct, improve and maintain a public parking area

within the Building Envelope and access roads as minimally necessary for the permitted uses of the Property.

5.4.7 Fences and Gates. GRANTOR may construct, place and erect fencing and gates only as necessary for permitted uses of the Property. Fencing must be the minimum necessary for such use and may include hedge rows and other living fences comprised of native plants. All fencing and gates must i) preserve the scenic values of the Property; and ii) not impede wildlife movement except in cases where necessary to protect the allowed recreational, educational and agricultural uses described in this Easement, and except where such impediment is necessary for management, restoration or enhancement of natural resources, such as to protect new native plantings. In the event of destruction or deterioration of any fences and gates, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this Easement, GRANTOR may maintain and/or replace such fencing and gates only in accordance with the provisions of this Section 5.4.7. In the event any fence or gate, or portion thereof, becomes obsolete or unnecessary for the uses described in this Section 5.4.7, GRANTOR shall remove such fencing or gate from the Property, provided, however, that fencing existing as of the date of this Easement may remain.

5.4.8 Utilities and Energy Resources. GRANTOR may place or construct utilities on the Property only as follows:

(a) Subject to prior written approval of DISTRICT, GRANTOR may expand existing or develop or construct new utilities, including but not limited to electric power, septic or sewer, communication lines, and water collection, storage and delivery systems provided that such utilities are directly required for permitted uses on the Property and are reasonably scaled to serve only those uses.

(b) Notwithstanding the limitations of subparagraph (a), subject to prior written notice to DISTRICT, GRANTOR may install above-ground water collection, storage or delivery system within the Agricultural Area or Building Envelope provided that such system is directly required for permitted uses on the Property and is reasonably scaled to serve only those uses.

(c) In addition, subject to prior written approval of DISTRICT, GRANTOR may place or construct improvements for the development and utilization of renewable energy resources, including but not limited to solar, wind and geothermal, provided that such area impacted by such improvements cover no more than 2% of the Property, provided that such use does not hinder GRANTOR's ability to comply with Section 5.1.5. Such improvements remain subject to the impervious surface limitations of Section 5.4. Notwithstanding the foregoing, GRANTOR may, without notice to or approval of DISTRICT, place or construct solar panels on the roofs of existing structures or any future additional structures placed on the Property pursuant to Sections 5.4.2 through 5.4.7, provided that such solar panels do not cause the structure or improvement to exceed the height limitations set forth in those sections.

5.4.9 Signs. GRANTOR reserves the right to construct signs as set forth in this Section 5.4.9 in connection with the allowed uses herein. No sign shall be artificially illuminated.

a) Without prior written notice or approval of DISTRICT, GRANTOR reserves the right to construct or place two signs not to exceed 32 square feet in size in connection with allowed uses.

b) Without prior written notice or approval of DISTRICT, GRANTOR reserves the right to construct or place signs less than 6 square feet in size to (i) mark the boundary of the Property; (ii) provide directional, interpretive and educational information; and (iii) set forth rules or regulations applicable to use of the Property, provided that the size and number of such signs shall be limited to that which is reasonably necessary to accomplish the permitted uses herein, and further provided that such signs are sited and constructed in a manner that does not create a significant visual impact.

c) Subject to prior written approval of DISTRICT, GRANTOR may construct or place additional signs necessary or appropriate for allowed uses, provided that such additional signs are sited and constructed in a manner that does not create a significant visual impact.

**5.5 Land and Resource Management.** All land and resource management activities shall be designed and implemented in accordance with sound, generally-accepted conservation practices.

5.5.1 Surface Alteration. Alteration of the contour of the Property in any manner whatsoever is prohibited, including, but not limited to, excavation, removal or importation of soil, sand, gravel, rock, peat or sod, except as reasonably necessary in connection with the uses allowed under Section 5 of this Easement. In connection with allowed uses, movement of over 50 cubic yards of material in any calendar year is subject to prior DISTRICT approval.

5.5.2 Water Resources. Draining, filling, dredging, diking, damming or other alteration, development or manipulation of watercourses, subsurface water, springs, ponds and wetlands is prohibited except as reasonably necessary in connection with (i) the maintenance, replacement, development and expansion of water storage and delivery systems allowed under Section 5.4.8, and (ii) the restoration and enhancement of natural resources allowed under Section 5.5.5. Subject to the limitations of this Section 5.5.2, GRANTOR reserves all rights and entitlements to use of surface and subsurface water as may exist under state or federal law.

5.5.3 Mineral Exploration. Exploration for, or development and extraction of, minerals and hydrocarbons by any surface or sub-surface mining or any other method is prohibited.

5.5.4 Fire Management. GRANTOR reserves the right to undertake vegetation management activities for the purpose of fire control provided the techniques used

minimize harm to native wildlife and plants and are in accordance with all applicable laws. Fire management methods are limited to:

(a) limited brush removal, limited mowing and limited grazing of the Property, or other methods of similar nature and intensity, without need for notice to or approval from DISTRICT, and

(b) prescriptive burning undertaken in a manner consistent with the standards and requirements of the local fire protection agency having jurisdiction, subject to prior written notice to DISTRICT.

The requirement for notice under this Section 5.5.4 may be satisfied by the submission of an annual fire management plan.

5.5.5 Preservation, Restoration and Enhancement. GRANTOR reserves the right to undertake conservation and restoration activities, including, but not limited to, bank and soil stabilization, practices to reduce erosion, enhancement of water quality, plant and wildlife habitat, and activities which promote biodiversity.

5.5.6 Native Tree Removal. Harvesting, cutting, removal or destruction of any native trees is prohibited, except as reasonably necessary (i) to control insects and disease, (ii) to prevent personal injury and property damage, (iii) for the purpose of fire management, in accordance with Section 5.5.4; and (iv) for natural resource management, including native seed collection and plant propagation for use on the Property as set forth in Section 5.5.5 of this Easement.

5.5.7 Native Vegetation Removal. Removal or destruction of any native vegetation is prohibited, except as reasonably necessary (i) within footprint of permitted recreational and educational structures and improvements, (ii) to control insects and disease, (iii) to prevent personal injury and property damage, (iv) for the purpose of fire management, in accordance with Section 5.5.4; and (v) for natural resource management, including native seed collection and plant propagation for use on the Property as set forth in Section 5.5.5 of this Easement.

5.5.8 Native Animal Removal. Killing, hunting, trapping, injuring or removing native animals is prohibited except (i) under imminent threat to human life or safety; and (ii) as reasonably necessary to promote or sustain biodiversity in accordance with restoration and enhancement activities in connection with Section 5.5.5, using selective control techniques consistent with the policies of the Sonoma County Agricultural Commissioner and other governmental entities having jurisdiction.

5.5.9 Non-Native Plant and Animal Removal. GRANTOR reserves the right to remove or control invasive, non-native plant and animal species (i) to further the Conservation Purpose of this Easement; (ii) to foster the growth of native species and promote biodiversity; (iii) to control insects and disease; (iv) to prevent personal injury and property damage; (v) for the purpose of fire management, in accordance with Section 5.5.4; and (vi) for natural resource management as set forth in Section 5.5.5. Techniques

used shall minimize harm to native wildlife and plants and shall be in accordance with all applicable laws.

5.5.10 Off-road Motorized Vehicle Use. Use of motorized vehicles off roadways is prohibited, except when necessary for permitted agricultural, construction, maintenance, emergency access and property management activities.

5.5.11 Dumping. Dumping, releasing, burning or other disposal of wastes, refuse, debris, non-operative motorized vehicles or hazardous substances is prohibited, except that agricultural products and by-products generated on the Property may be disposed on site, consistent with sound generally accepted agricultural practices.

5.5.12 Outdoor Storage.

(a) Materials Required For Permitted Uses. GRANTOR may store materials and supplies required for permitted uses within the Agricultural Area or Building Envelope, provided such storage shall be located so as to minimize visual impacts.

(b) Storage of Construction Materials. GRANTOR may store construction and other work materials needed during construction of permitted structures and improvements on the Property while work is in progress and for a period not to exceed thirty (30) days after completion or abandonment of construction. Construction shall be deemed abandoned if work ceases for a period of 180 days.

**5.6 Public Access Limitations.** GRANTOR and DISTRICT understand and agree that the Property will be developed for and will continue to be a public preserve in perpetuity. GRANTOR, however, reserves the right to exclude the public from the Property on a temporary basis to the extent necessary for public health or safety or for preservation of the Conservation Values of the Property. Nothing in this Easement shall be construed to preclude GRANTOR's right to grant access to third parties to the Property consistent with the terms, conditions and Conservation Purpose of this Easement.

**5.7 Easements.** GRANTOR may continue the use of existing easements of record granted prior to this Easement. The granting of new temporary or permanent easements, and the modification or amendment of existing easements is prohibited without the prior written approval of the DISTRICT. It is the duty of GRANTOR to prevent the use of the Property by third parties that may result in the creation of prescriptive rights.

### **PART THREE: PROCEDURES AND REMEDIES**

**6. Notice and Approval Procedures.** Some activities and uses permitted by this Easement require that prior written notice be given by GRANTOR to DISTRICT, while other activities and uses permitted by this Easement require the prior written approval of DISTRICT. Unless and until such notice is given or approval is obtained in accordance with this Section 6, any such activity or use shall be deemed to be prohibited on the Property. GRANTOR shall use the following procedures to provide notice to DISTRICT or to obtain DISTRICT's approval. All

notices and requests for approval shall include all information necessary to permit DISTRICT to make an informed judgment as to the consistency of the GRANTOR's request with the terms, conditions and Conservation Purpose of this Easement. Forms for notices and requests for approval shall be available at DISTRICT's offices.

**6.1 Approval, Amendments, Revisions and Updates of Management Plan.**

GRANTOR may prepare a Management Plan for the Property to define and guide future use and development of the Property and to streamline DISTRICT approvals under this Easement. For purposes of this Easement, it is agreed that the Management Plan and any amendments, revisions or updates (collectively "Revisions") will be deemed sufficient for its purpose provided the plan identifies (a) all major components of property use (including resource management, recreational, educational, agricultural, and residential), (b) the nature of each proposed use and its intended location, (c) all proposed structures, and (d) all actions to be taken to protect natural resources. Pursuant to Section 5.1.7 of this Easement, such Management Plan and Revisions require DISTRICT's approval prior to their implementation. DISTRICT's approval shall be based upon its reasonable determination as to whether the Management Plan or Revisions are consistent with the terms, conditions and Conservation Purpose of this Easement. DISTRICT acknowledges that, in light of the public processes required for development of the Property for recreation and educational use and natural resource preservation, time is of the essence and DISTRICT's approval shall not be unreasonably withheld or delayed. GRANTOR shall use the following procedure to obtain DISTRICT's approval for the Management Plan and Revisions:

6.1.1 GRANTOR may, at its discretion, at any time, submit a draft Management Plan or Revisions ("Draft Plan") to DISTRICT for its review and tentative approval. DISTRICT shall have forty-five (45) days from the receipt of the Draft Plan, plus fourteen (14) days from any subsequent or follow up submittal, to review the Draft Plan and either tentatively approve the Draft Plan or notify GRANTOR of any objection thereto. Disapproval or objection, if any, shall be based on DISTRICT's determination that the proposed activity or use is inconsistent with the terms, conditions or Conservation Purpose of this Easement or that GRANTOR's request is incomplete or contains material inaccuracies. DISTRICT's response, whether tentative approval or objection, shall be in writing and delivered to GRANTOR in accordance with Section 19. If DISTRICT has any objections to the Draft Plan, it shall state such objections in sufficient detail to enable GRANTOR to modify the Draft Plan so as to bring it into compliance with the terms, conditions and Conservation Purpose of this Easement.

6.1.2 In connection with any environmental review of the Management Plan or Revisions under the California Environmental Quality Act ("CEQA") or any successor statute then in effect, GRANTOR shall provide DISTRICT with notification of and opportunity to comment on any draft environmental document made public under the statute, prior to adoption or certification of that environmental document.

6.1.3 Prior to adoption of a final Management Plan or Revisions ("Final Management Plan"), GRANTOR shall submit the Final Management Plan to DISTRICT for its review and approval. If a Draft Plan was tentatively approved by DISTRICT and the Final Management Plan is in substantial conformity with the approved Draft Plan, with no material revisions, DISTRICT shall grant approval to the Final Management Plan. If no Draft Plan was tentatively approved by DISTRICT or if material revision(s)

have been made, DISTRICT's approval of the Final Management Plan shall be based solely upon the Final Management Plan's consistency with the terms, conditions and Conservation Purpose of this Easement. In all cases, DISTRICT shall have forty-five (45) days from the receipt of the Final Management Plan, plus fourteen (14) days from any subsequent or follow-up submittal, to review and either approve the Final Management Plan or notify GRANTOR of any objection thereto. Disapproval or objection, if any, shall be based on DISTRICT's determination that the proposed activity or use is inconsistent with the terms, conditions or Conservation Purpose of this Easement or that GRANTOR's request is incomplete or contains material inaccuracies. DISTRICT's response, whether approval or objection, shall be in writing and delivered to GRANTOR in accordance with Section 19. If DISTRICT has any objections to the Final Management Plan, it shall state such objections in sufficient detail to enable GRANTOR to modify the Final Management Plan so as to bring it, if possible, into compliance with the terms, conditions and Conservation Purpose of this Easement.

6.1.4 Upon DISTRICT's approval and GRANTOR's adoption of a Final Management Plan, all uses and improvements described therein and all development reasonably necessary to implement those described uses and improvements, shall be deemed to be consistent with the terms, conditions and Conservation Purpose of this Easement and shall be permitted on the Property with no further notice to or approval by DISTRICT required. All such uses, development, improvements and activities shall at all times remain subject to the substantive limitations of Section 5. Any update or amendment to the Final Management Plan shall be subject to District approval.

**6.2 Uses/Activities Requiring Notice or Approval to DISTRICT.** In the absence of a Final Management Plan approved by DISTRICT, or for uses and activities not described in a Final Management Plan approved by DISTRICT, the following procedures shall be followed for giving notice or obtaining DISTRICT approval where such notice or approval is required by this Easement. Unless and until such notice is given or approval is obtained in accordance with this Section 6.2, any such activity or use shall be deemed to be prohibited on the Property. In any instance in which DISTRICT approval is required, DISTRICT's approval shall be based solely upon its reasonable determination as to whether the activity or use is consistent with the terms, conditions and Conservation Purpose of this Easement. DISTRICT acknowledges that time is of the essence and DISTRICT's approval shall not be unreasonably withheld or delayed.

**6.2.1 Uses/Activities Requiring Notice to DISTRICT.** For any activity or use that requires prior written notice to DISTRICT, GRANTOR shall deliver such notice to DISTRICT at least forty-five (45) days prior to the commencement of such activity or use. That forty-five (45) day time period provides DISTRICT an opportunity to evaluate whether the proposed activity or use is consistent with the terms, conditions and Conservation Purpose of this Easement before the activity or use is begun.

**6.2.2 Uses/Activities Requiring Prior Approval from DISTRICT.** For any activity or use that requires prior written approval from DISTRICT, GRANTOR shall file a request for such approval ("GRANTOR's request") at least forty-five (45) days prior to the intended commencement of such activity or use. DISTRICT shall have forty-five (45) days from the receipt of a complete request for approval to review the request and to approve, conditionally approve, disapprove or notify GRANTOR of any objection

thereto. Disapproval or objection, if any, shall be based on DISTRICT's determination that the proposed activity or use is inconsistent with the terms, conditions or Conservation Purpose of this Easement or that GRANTOR's request is incomplete or contains material inaccuracies. If, in DISTRICT's judgment, the proposed activity or use would not be consistent with the terms, conditions or Conservation Purpose of this Easement or the request is incomplete or contains material inaccuracies, DISTRICT's notice to GRANTOR shall inform GRANTOR of the reasons for DISTRICT's disapproval or objection. Only upon DISTRICT's express written approval, given by DISTRICT's General Manager, may the proposed activity or use be commenced, and then only in accordance with the terms and conditions of DISTRICT's approval.

**6.2.3 DISTRICT's Failure to Respond.** Should DISTRICT fail to respond to GRANTOR's request for approval within forty-five (45) days of the receipt of GRANTOR's request, GRANTOR may, after giving DISTRICT ten (10) days written notice by registered or certified mail, commence an action in a court of competent jurisdiction to compel DISTRICT to respond to GRANTOR's request. In the event that such legal action becomes necessary to compel DISTRICT to respond and GRANTOR prevails in that action, DISTRICT shall reimburse GRANTOR for all reasonable attorney fees incurred in that action. In the alternative, GRANTOR may commence a proceeding in arbitration under Section 12.

**6.2.4 Uses Not Expressly Addressed: DISTRICT's Approval.** In the event GRANTOR desires to commence an activity or use on the Property that is neither expressly reserved nor expressly prohibited in Section 5, GRANTOR shall seek DISTRICT's prior written approval of such activity or use in accordance with the procedure set forth in this Section 6.2. The exercise of any activity or use not expressly reserved in Section 5 may constitute a breach of this Easement and may be subject to the provisions of Section 10.

## **7. Costs and Liabilities Related to the Property.**

**7.1 Operations and Maintenance of the Property.** GRANTOR agrees to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property and does hereby indemnify and hold DISTRICT harmless therefrom. Without limiting the foregoing, GRANTOR agrees to pay any and all real property taxes, fees, exactions, and assessments levied or imposed by local, state or federal authorities on the Property. GRANTOR further agrees to maintain general liability insurance or adequate self-insurance covering acts on the Property. Except as specifically set forth in Section 8.2 below, DISTRICT shall have no responsibility whatever for the operation of the Property, the monitoring of hazardous conditions thereon, or the protection of GRANTOR, the public, or any third parties from risks relating to conditions on the Property. Except as otherwise provided in Section 8.1, GRANTOR hereby agrees to indemnify and hold DISTRICT harmless from and against any damage, liability, claim, or expense, including attorneys' fees, relating to such matters.



## 7.2 Hazardous Materials.

7.2.1 No DISTRICT Obligation or Liability. Notwithstanding any other provision of this Easement to the contrary, the parties do not intend and this Easement shall not be construed such that it creates in DISTRICT:

a) The obligations or liabilities of an "owner" or "operator" as those words are defined and used in environmental laws, as defined below, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 United States Code, sections 9601 et seq.) ("CERCLA");

b) The obligations or liabilities of a person described in 42 United States Code section 9607(a)(3) or any successor statute then in effect;

c) The right to investigate and remediate any hazardous materials, as defined below, on or associated with the Property; or

d) Any control over GRANTOR's ability to investigate and remediate any hazardous materials, as defined below, on or associated with the Property.

7.2.2 Warranty of Compliance. GRANTOR represents, warrants, and covenants to DISTRICT that GRANTOR's use of the Property shall comply with all environmental laws, as defined below.

7.2.3 Definitions. For the purposes of this Easement:

a) The term "hazardous materials" includes, but is not limited to, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Hazardous Materials Transportation Act, as amended (49 United States Code sections 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 United States Code sections 6901 et seq.), sections 25117 and 25316 of the California Health & Safety Code, and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state, or local environmental laws, ordinances, rules, or regulations concerning the environment, industrial hygiene or public health or safety now in effect or enacted after the date of this Easement.

b) The term "environmental laws" includes, but is not limited to, any federal, state, local or administrative agency statute, regulation, rule, ordinance, order or requirement relating to environmental conditions or hazardous materials.

## 8. Indemnification.

8.1 **GRANTOR's Indemnity.** GRANTOR shall hold harmless, indemnify, and defend DISTRICT, its agents, employees, volunteers, successors and assigns, from and against all damages, liabilities, claims and expenses, including reasonable attorneys' fees, arising from or

in any way connected with (i) injury to or the death of any person, or physical damage to any property resulting from any act, omission, condition or other matter related to or occurring on or about the Property, except to the extent that such damage, liability, claim or expense is the result of the negligence, gross negligence, or intentional misconduct of DISTRICT (it being the intent of this provision to limit GRANTOR's indemnity to the proportionate part of DISTRICT's damage, liability, claim or expense for which GRANTOR is responsible); and (ii) the obligations specified in Section 7; and (iii) any approvals given under Section 6. In the event of any claim, demand, or legal complaint against DISTRICT, the right to the indemnification provided by this Section 8.1 shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorneys' fees, incurred prior to DISTRICT's written notice of such claim, demand, or legal complaint to GRANTOR, unless GRANTOR has acquired knowledge of the matter by other means, nor to any costs, expenses, or settlement payment, including attorneys' fees, incurred subsequent to that notice unless such cost, expense, or settlement payment shall be approved in writing by GRANTOR, which approval shall not be unreasonably withheld.

**8.2 DISTRICT's Indemnity.** DISTRICT shall hold harmless, indemnify, and defend GRANTOR, its heirs, devisees, successors and assigns, from and against all damages, liabilities, claims and expenses, including reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property and attributable to DISTRICT, except to the extent that such damage, liability, claim or expense is the result of the negligence, gross negligence, or intentional misconduct of GRANTOR (it being the intent of this provision to limit DISTRICT's indemnity to the proportionate part of GRANTOR's damage, liability, claim or expense for which DISTRICT is responsible). In the event of any claim, demand, or legal complaint against GRANTOR, the right to the indemnification provided by this Section 8.2 shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorneys' fees, incurred prior to GRANTOR's written notice of such claim, demand, or legal complaint to DISTRICT, nor to any costs, expenses, or settlement payment, including attorneys' fees, incurred subsequent to that notice unless such cost, expense, or settlement payment shall be approved in writing by DISTRICT, which approval shall not be unreasonably withheld. DISTRICT hereby also agrees to hold harmless, indemnify and defend GRANTOR from and against all damages, liabilities, claims and expenses, including attorneys' fees, asserted against GRANTOR by any officer, agent, employee, or volunteer of DISTRICT, for personal injury and/or property damage arising out of any inspection or visit to the Property by any such officer, agent, employee or volunteer on behalf of DISTRICT, except to the extent that such injury is attributable to the negligence, intentional act or willful misconduct of GRANTOR.

**9. Baseline Documentation for Enforcement.** In order to establish the present condition of the Property, DISTRICT has prepared a Baseline Documentation Report which will be maintained on file with DISTRICT and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement. A copy of the Baseline Documentation Report has been reviewed and approved by GRANTOR. The parties agree that the Baseline Documentation Report provides an accurate representation of the Property at the time of the execution of this Easement. The Baseline Report will be supplemented through periodic monitoring reports as the DISTRICT performs its regular monitoring of the Property.

## 10. Remedies for Breach.

**10.1 DISTRICT's Remedies.** In the event of a violation or threatened violation by GRANTOR of any term, condition or restriction contained in this Easement, DISTRICT may, following notice to GRANTOR, institute a suit to enjoin and/or recover damages for such violation and/or to require the restoration of the Property to the condition that existed prior to such violation. The DISTRICT's notice to GRANTOR shall contain a general description of the condition claimed by DISTRICT to be a violation and shall contain a reasonable and specific cure period by which the violation is to cease and the Property is to be restored to the condition that existed prior to the violation. The notice shall be provided in accordance with Section 19. If DISTRICT reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values protected by this Easement, DISTRICT (a) may pursue any and all remedies available under law without waiting for the cure period to expire, and (b) shall have the right, upon the giving of 24 hours' notice, to enter the Property for the purpose of assessing damage or threat to the Conservation Values protected by this Easement and determining the nature of curative or mitigation actions that should be taken.

Notwithstanding the foregoing, should DISTRICT's General Manager have a reasonable belief that GRANTOR is in breach of this Easement, DISTRICT shall have the right at any time, upon twenty-four hours' prior notice to GRANTOR to enter upon the Property for the purpose of determining whether such breach has occurred. The rights of entry provided by this Section 4.2 shall extend to the officers, agents, consultants, and volunteers of DISTRICT. Notwithstanding any reasonable belief of DISTRICT that a breach of this Easement is occurring, prior to any entry by DISTRICT into residential dwelling units on the Property for purposes of inspection, DISTRICT shall provide at least forty-eight (48) hours prior notice to GRANTOR during normal business hours of GRANTOR of DISTRICT's intent to enter into such dwelling units, absent an emergency requiring immediate action or other exception contained in California Civil Code Section 1954 or any successor statute then in effect relating to notification of tenants inhabiting and/or leasing residential structures ("Section 1954"). This additional time is to allow GRANTOR to comply with Section 1954. DISTRICT shall limit its inspection of inhabited or leased dwelling units on the Property to inspection during normal business hours except as otherwise provided in Section 1954. DISTRICT's rights under this Section 10 shall apply equally in the event of either actual or threatened violations of the terms of this Easement. GRANTOR agrees that DISTRICT's remedies at law for any violation of the terms of this Easement are inadequate and that DISTRICT shall be entitled to injunctive relief, both prohibitive and mandatory and including specific performance, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Nothing in this Section 10 shall preclude DISTRICT from seeking such other relief, including damages, to which DISTRICT may be entitled.

**10.2 DISTRICT's Discretion.** Enforcement of the terms of this Easement shall be at the sole discretion of DISTRICT, and any forbearance by DISTRICT to exercise its rights under this Easement in the event of any violation or threatened violation of any term of this Easement shall not be deemed or construed to be a waiver by DISTRICT of such term or of any subsequent violation or threatened violation of the same or any other term of this Easement. Any failure by DISTRICT to act shall not be deemed a waiver or forfeiture of DISTRICT's right to enforce any terms or conditions of this Easement in the future.

**10.3 Liquidated Damages.** Inasmuch as the actual damages that would result from the loss or deprivation of the Conservation Values of the Property caused by a violation by GRANTOR of the terms of this Easement are uncertain and would be impractical or extremely difficult to measure, GRANTOR and DISTRICT agree that the damages allowed by Civil Code section 815.7(c) shall be measured as follows:

a) For an improvement prohibited by this Easement, an amount equal to the product of (i) the market value of the improvement, (ii) the length of time that the improvement exists on the Property (in terms of years or portion thereof) after notice of violation has been given, and (iii) the then current annual interest rate for post judgment interest; and

b) For an activity or change in use prohibited by this Easement, whether or not it involves an improvement, an amount equal to any economic gain realized by GRANTOR because of the activity or change in use; and

c) For an activity or change in use prohibited by this Easement, whether or not it involves an improvement and where there is no measurable economic gain realized by GRANTOR, the product of (i) the cost of restoration, as set forth in a written estimate by a qualified person selected by DISTRICT, (ii) the length of time that the prohibited activity or use continues (in terms of years or portion thereof) after notice of the violation has been given, and (iii) the then current annual interest rate for post judgment interest.

**10.4 GRANTOR's Compliance.** If DISTRICT, in the notice to GRANTOR, demands that GRANTOR remove an improvement, discontinue a use or both and claims the damages allowed by Civil Code section 815.7(c), then GRANTOR may mitigate damages by fully complying with DISTRICT's notice within the cure period provided therein. If GRANTOR so complies, then in the event of litigation arising out of the notice, brought either by GRANTOR or by DISTRICT, if GRANTOR prevails, then GRANTOR shall be entitled to economic damages, if any, resulting from its compliance with DISTRICT's notice. Neither DISTRICT nor GRANTOR shall be entitled to damages where DISTRICT has not claimed damages in its notice.

**10.5 Remedies Nonexclusive.** The remedies set forth in this Section 10.5 are in addition to, and are not intended to displace, any other remedy available to either party as provided by this Easement, Civil Code sections 815 et seq. or any other applicable local, state or federal law.

**11. Acts Beyond GRANTOR's Control.** Nothing contained in this Easement shall be construed to entitle DISTRICT to bring any action against GRANTOR for any injury to or change in the Property resulting from causes beyond GRANTOR's control, including, but not limited to, fire, flood, storm, and earth movement, or a tortious or criminal act of a third party which GRANTOR could not reasonably have prevented, or from any prudent action taken by GRANTOR under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes so long as such action, to the extent that GRANTOR has control, is designed and carried out in such a way as to further the Conservation Purpose of this Easement.

**12. Arbitration.** If a dispute arises between the parties concerning the consistency of any activity or use, or any proposed activity or use, with the terms, conditions or Conservation Purpose of this Easement, or any other matter arising under or in connection with this Easement or its interpretation, either party, with the written consent of the other, may refer the dispute to arbitration by a request made in writing upon the other. Provided that GRANTOR agrees not to proceed with any activity or use that is the subject of the dispute pending resolution of the dispute, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator who shall be a retired United States District Court or California Superior Court judge; provided, however, if either party fails to select an arbitrator within fourteen (14) days of delivery of the request for arbitration, or if the two arbitrators fail to select a third arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance, a proper court, on petition of any party, shall appoint the second or third arbitrator or both, as the case may be, in accordance with California Code of Civil Procedure sections 1280 et seq., or any successor statutes then in effect. The arbitration shall be conducted in accordance with said statute, including, without limitation, the provisions of Section 1283.05 of the Code of Civil Procedure which are incorporated into, made a part of, and made applicable to any arbitration pursuant to this Section. The Conservation Purpose of this Easement, the terms and conditions of this Easement, and the applicable laws of the State of California shall be the bases for determination and resolution, and a judgment of the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration, including, but not limited to, the fees and expenses of the arbitrators, but excluding attorneys' fees, which sum shall be determined by the arbitrators and any court of competent jurisdiction that may be called upon to enforce or review the award.

**13. Condemnation.**

**13.1 Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation; whether by public, corporate, or other authority, so as to terminate this Easement in whole or in part, either GRANTOR or DISTRICT (or both, on such conditions as they may agree) may commence appropriate actions to recover the full value of the Property (or portion thereof) subject to the condemnation or in-lieu purchase and all direct or incidental damages resulting therefrom. Any expense incurred by GRANTOR or DISTRICT in any such action shall first be reimbursed out of the recovered proceeds; the remainder of such proceeds shall be divided between GRANTOR and DISTRICT in proportion to their interests in the Property, as established by Section 13.2.

**13.2 Property Interest and Fair Market Value.** This Easement constitutes a real property interest immediately vested in DISTRICT. For the purpose of this Section 13, the parties stipulate that, in the event of condemnation of the Property or any portion thereof, the fair market value of the Property for purposes of just compensation shall be determined as though this Easement did not exist. GRANTOR and DISTRICT shall share the compensation in proportion to their interests in the condemned Property as agreed upon by them in writing or, in the absence of such an agreement, as ordered by the court in the action recovering the proceeds. In the apportionment of the proceeds from any eminent domain proceeding, an adjustment shall be made in GRANTOR's favor for any increase in value attributable to improvements made on

the Property after the date of this Easement, provided that such improvements were not made or funded by DISTRICT and further provided that such improvements do not constitute a breach of this Easement.

**PART FOUR: MISCELLANEOUS**

**14. Approvals.** Whenever in this Easement the consent or approval of one party is required for an act of the other party, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

**15. Interpretation and Construction.** To the extent that this Easement may be uncertain or ambiguous such that it requires interpretation or construction, then it shall be interpreted and construed in such a way that best promotes the Conservation Purpose of this Easement.

**16. Easement to Bind Successors.** The Easement herein granted shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Property and shall bind GRANTOR, GRANTOR's heirs, personal representatives, lessees, executors, successors, including but not limited to purchasers at tax sales, assigns, and all persons claiming under them forever. The parties intend that this Easement shall benefit and burden, as the case may be, their respective successors, assigns, heirs, executors, administrators, agents, officers, employees, and all other persons claiming by or through them pursuant to the common and statutory law of the State of California. Further, the parties agree and intend that this Easement creates an easement encompassed within the meaning of the phrase "easements constituting servitudes upon or burdens to the property," as that phrase is used in California Revenue & Taxation Code section 3712(d), or any successor statute then in effect, such that a purchaser at a tax sale will take title to the Property subject to this Easement.

**17. Subsequent Deeds and Leases.** GRANTOR agrees that a clear reference to this Easement will be made in any subsequent deed, or other legal instrument, by means of which any interest in the Property (including, but not limited to, a leasehold interest) is conveyed and that GRANTOR will attach a copy of this Easement to any such instrument. GRANTOR further agrees to give written notice to DISTRICT of the conveyance of any interest in the Property at least ten (10) days prior to any such conveyance. These obligations of GRANTOR shall not be construed as a waiver or relinquishment by DISTRICT of rights created in favor of DISTRICT by Section 16 of this Easement, and the failure of GRANTOR to perform any act required by this Section 17 shall not impair the validity of this Easement or limit its enforceability in any way.

**18. Warranty of Ownership.** GRANTOR warrants that it is the owner in fee simple of the Property, and that on the date it executed this Easement the Property is not subject to any liens or deeds of trust.

**19. Notices.**

**19.1 Method of Delivery.** Except as otherwise expressly provided herein, all notices, (including requests, demands, approvals or communications) under this Easement shall be in writing and either served personally or sent by first class mail, postage prepaid, private courier or delivery service or telecopy addressed as follows:

To GRANTOR: City of Petaluma  
Attn: City Manager  
11 English Street  
Petaluma, CA 94952

To DISTRICT: General Manager  
Sonoma County Agricultural Preservation and Open Space District  
747 Mendocino Avenue, Suite 100  
Santa Rosa, CA 95401

Or to such other address as such party from time to time may designate by written notice pursuant to this Section 19.

**19.2 Effective Date of Notice.** Notice shall be deemed given for all purposes as follows:

- a) When personally delivered to the recipient, notice is effective on delivery.
- b) When mailed first class postage prepaid to the last address designated by the recipient pursuant to Section 19.1, notice is effective one business day following the date shown on the postmark of the envelope in which such notice is mailed or, in the event the postmark is not shown or available, then one business day following the date of mailing. A written declaration of mailing executed under penalty of perjury by the GRANTOR or DISTRICT or an officer or employee thereof shall be sufficient to constitute proof of mailing.
- c) When mailed by certified mail with return receipt requested, notice is effective on receipt as confirmed by the return receipt.
- d) When delivered by overnight delivery with charges prepaid or charged to the sender's account, notice is effective on delivery as confirmed by the delivery service.
- e) When sent by telex or fax to the last telex or fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (i) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (ii) the receiving party delivers a written confirmation of receipt. Subject to the foregoing requirements, any notice given by telex or fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a non-business day.

**19.3 Refused or Undeliverable Notices.** Any correctly addressed notice that is refused or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

**20. Amendment.** If circumstances arise under which an amendment or modification of this Easement would be appropriate, GRANTOR and DISTRICT shall be free to jointly amend this

Easement, provided that any amendment shall be consistent with the Conservation Purpose of this Easement, shall ensure protection of the Conservation Values of the Property, shall not affect the Easement's perpetual duration and shall be consistent with Public Resources Code section 5540 and any successor statute then in effect. Any such amendment shall be in writing, executed by GRANTOR and DISTRICT, and recorded in the Office of the Sonoma County Recorder.

**21. No Forfeiture.** Nothing contained in this Easement shall result in a forfeiture or reversion of GRANTOR's title in any respect.

**22. Termination of Rights and Obligations.** A party's rights and obligations under this Easement shall terminate upon transfer of the party's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

**23. Enforceable Restriction.** This Easement and each and every term contained herein is intended for the benefit of the public and constitutes an enforceable restriction pursuant to the provisions of Article XIII, section 8 of the California Constitution, California Public Resources Code section 5540, and California Revenue and Taxation Code section 421 et seq., or any successor constitutional provisions or statutes then in effect.

**24. Applicable Law and Forum.** This Easement shall be construed and interpreted according to the substantive law of California, excluding the law of conflicts. Any action to enforce the provisions of this Easement or for the breach thereof shall be brought and tried in the County of Sonoma.

**25. Pronoun Number and Gender.** Whenever used herein, unless the provision or context otherwise requires, the singular number shall include the plural and the plural the singular, and the masculine gender shall include the feminine and neuter.

**26. GRANTOR and DISTRICT.** Wherever used herein, the terms GRANTOR and DISTRICT, and any pronouns used in place thereof, shall mean and include the above-named GRANTOR and its heirs, successors, and assigns, including any persons claiming under them, and the above-named DISTRICT and its successors and assigns, respectively.

**27. DISTRICT's General Manager.** Wherever used herein, the term DISTRICT's General Manager, and any pronoun used in place thereof, shall mean and include the General Manager of DISTRICT and his duly authorized representatives.

**28. Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment prepared, executed and recorded in accordance with Section 20.

**29. Severability.** In the event any provision of this Easement is determined by the appropriate court to be void and unenforceable, all remaining terms and conditions shall remain valid and binding. If the application of any provision of this Easement is found to be invalid or unenforceable as to any particular person or circumstance, the application of such provisions to



persons or circumstances, other than those as to which it is found to be invalid, shall not be affected thereby.

**30. Estoppel Certificates.** DISTRICT shall, at any time during the existence of this Easement, upon not less than thirty (30) days' prior written notice from GRANTOR, execute and deliver to GRANTOR a statement in writing certifying that this Easement is unmodified and in full force and effect (or, if modified, stating the date of execution and date of recording of the respective amendment) and acknowledging that there is not, to DISTRICT's knowledge, any default by GRANTOR hereunder, or, if DISTRICT alleges a default by GRANTOR, specifying such default. DISTRICT's obligation to deliver the statement of certification is conditioned on GRANTOR's reimbursing DISTRICT for all costs and expenses reasonably and necessarily incurred in its preparation as determined by DISTRICT's General Manager.

**31. No Liens, Encumbrances, or Conveyances.** GRANTOR warrants that after it has executed this Easement, it will not record any lien, encumbrance, or otherwise convey any right, title, or interest in and to the Property until such time as this Easement has been accepted and recorded by DISTRICT.


**32. Effective Date.** This Easement shall be effective as of the date of its acceptance by DISTRICT pursuant to California Public Resources Code sections 5500 et seq.

IN WITNESS WHEREOF, GRANTOR and DISTRICT have executed this Easement this 10th day of April, 2012.

GRANTOR:

CITY OF PETALUMA

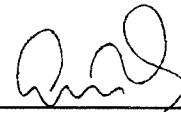
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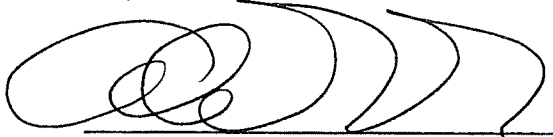
  
City Manager, John C. Brown


ATTEST:

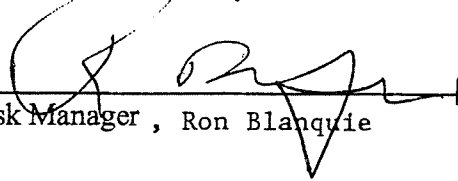
  
City Clerk, Claire Cooper

APPROVED AS TO FORM:

  
City Attorney, Eric Danly

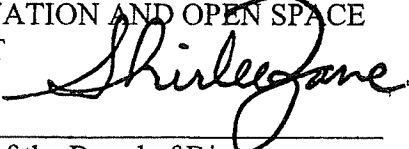
  
Finance Director, Bill Mushallo

  
\_\_\_\_\_  
Department Director, Scott Brodhun

  
\_\_\_\_\_  
Risk Manager, Ron Blanquie

DISTRICT:

SONOMA COUNTY AGRICULTURAL  
PRESERVATION AND OPEN SPACE  
DISTRICT

  
By: \_\_\_\_\_  
President of the Board of Directors, Shirley Zane

ATTEST:

  
\_\_\_\_\_  
Clerk of the Board of Directors, Veronica A. Ferguson

**NOTE: ATTACH ACKNOWLEDGMENTS**

ACKNOWLEDGMENT

State of California )  
County of Sonoma ) SS  
)

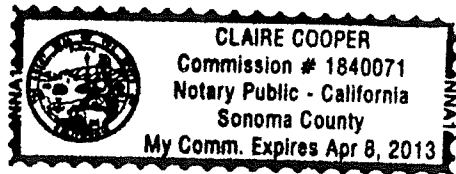
On April 10, 2012 before me, Claire Cooper, a notary public in and for the State of California, personally appeared **John C. Brown**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

*Claire Cooper*  
\_\_\_\_\_  
Signature, Claire Cooper

(SEAL)



# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Sonoma

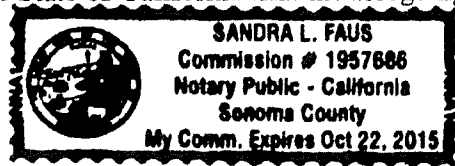
On May 8, 2012 before me, Sandra L. Faus  
(Here insert name and title of the officer)

personally appeared Shirlee Zane

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Sandra L. Faus  
Signature of Notary Public Sandra L. Faus

(Notary Seal)

## ADDITIONAL OPTIONAL INFORMATION

### INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

DESCRIPTION OF THE ATTACHED DOCUMENT  
Deed and Agreement  
(Title or description of attached document)

City of Petaluma & SCAPOSD  
(Title or description of attached document continued)

Number of Pages 26 Document Date 4/10/12

Reso 12-0161  
(Additional information)

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/~~she/they~~, is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

\_\_\_\_\_  
(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other Board Chair

ORDER NO. : 0812007365-JJ

**EXHIBIT A**

The land referred to is situated in the unincorporated area of the County of Sonoma, State of California, and is described as follows:

Beginning at the Southeasterly corner of the Paula Tract, said point of beginning being in the middle of the Paula Lane so-called; thence along the middle of said lane, the Easterly boundary of said Tract, North 13 ¾ degrees East, 8.93 chains to the middle of a lane thence leaving the first, and along the middle of the last mentioned lane, North 75° 08' West, 12.58 chains; thence leaving said land, South 15° 20' West, 8.75 chains to the Southerly boundary of the aforesaid Paula Tract; and thence along said boundary, South 74° 13' East, 12.82 chains to the place of beginning.

Saving and EXCEPTING THEREFROM: that certain Forty Foot Strip or land described in the Deed from John Pauli and Mary Pauli, his wife, to Ellen Louise Fergusson, dated October 19, 1895, and recorded October 26, 1895 in Liber 162 of Deeds, Page 352, Sonoma County Records.

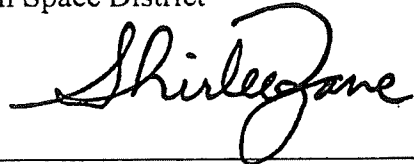
ALSO EXCEPTING THEREFROM all that portion lying Southerly of the Northerly line of the Map of Fulton Tract filed March 11, 1893 in Book 10 of Maps, Page 1, in the Sonoma County Recorders Office.

APN: 019-080-009 and 019-080-010

**CERTIFICATE OF ACCEPTANCE  
(Government Code Section 27281)  
OF REAL PROPERTY BY THE  
BOARD OF DIRECTORS OF THE  
SONOMA COUNTY AGRICULTURAL PRESERVATION  
AND OPEN SPACE DISTRICT**

This is to certify that the interests in real property conveyed by the Conservation Easement Agreement dated 4/10, 2012 from the City of Petaluma to the Sonoma County Agricultural Preservation and Open Space District, a governmental agency formed pursuant to the provisions of Public Resources Code Section 5506.5, is hereby accepted by the President of the Board of Directors on behalf of the District pursuant to the authority conferred by Resolution No. 12-0161 of the Board of Directors, dated 4/10/12 and the District consents to the recording thereof by its duly authorized officer.

Sonoma County Agricultural Preservation  
and Open Space District

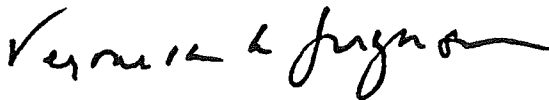


Dated: 4/10/12

By: \_\_\_\_\_

Shirlee Zane, Chair  
Board of Directors

ATTEST:



\_\_\_\_\_  
Clerk of the Board of Directors  
Vermil L. Jurguson