

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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Recorded by government agency - Exempt from recording fees per Gov. Code §§ 27383, 27388.1, 27388.2  
Interest acquired by government agency - Exempt from documentary transfer tax per Rev. & Tax. Code § 11922

DEED AND AGREEMENT  
BY AND BETWEEN  
BODEGA AVENUE, LLC AND  
THE SONOMA COUNTY AGRICULTURAL PRESERVATION  
AND OPEN SPACE DISTRICT  
CONVEYING A CONSERVATION EASEMENT  
AND  
ASSIGNING DEVELOPMENT RIGHTS

BODEGA AVENUE, LLC, a California Limited Liability Company (“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”) (the “Parties”), agree as follows:

RECITALS

A. GRANTOR is the sole owner in fee simple of that certain real property located in Sonoma County, California and more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the “Property”). At the Effective Date, the Property is commonly known as the McClelland Dairy and identified by Assessor’s Parcel number(s) 022-190-018, 022-230-011, and 022-190-020.

B. The condition of the Property at the Effective Date is described in detail in a Baseline Documentation Report described in Section 9 (Baseline Documentation for Enforcement) of this Easement (the “Baseline Report”), including the existing structures and improvements on the Property and the general location and condition of the Easement Designation Areas as designated in Section 5.1.8 (Easement Designation Areas). Except for such structures and improvements, the Property is open farmland, with important agricultural soils and the soil quality, growing season, and water supply needed for sustained agricultural production.

C. In 1990, the voters of Sonoma County approved the creation of DISTRICT and the imposition of a transactions and use tax. The purpose for the creation of DISTRICT and the imposition of the tax was to provide for the preservation of agriculture and open space through the acquisition of interests in appropriate properties from willing sellers consistent with a voter-approved Expenditure Plan. 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 2006, the voters of Sonoma County approved an extension of the transaction and use tax and an update of the Expenditure Plan.

D. DISTRICT is organized pursuant to Public Resources Code sections 5500 *et seq.* and is duly authorized to acquire and hold conservation easement interests pursuant to Civil Code section 815.3 and Public Resources Code section 5540. The DISTRICT is a tax exempt and “qualified conservation organization” within the meaning of Section 170(b)(1)(A)(v) as defined by the United States Internal Revenue Code.

E. On [Date], DISTRICT’s Board of Directors, pursuant to Government Code section 65402 and Sonoma County Ordinance No. 5180, determined, by its Resolution No. [Number], that the acquisition of a conservation easement in the Property was consistent with the Sonoma County General Plan (specifically the Plan’s Agricultural Resources, Open Space and Resource Conservation, and Land Use Elements) because it will reduce economic pressure for conversion of agricultural land to non-agricultural use; maintain the maximum amount of land in parcel sizes that a farmer would be willing to lease or buy for agricultural purposes; avoid the conversion of agricultural lands to residential or nonagricultural commercial uses; encourage the development of adequate housing for farm workers and farm family members; protect lands currently in agricultural production; avoid conversion of lands currently used for agricultural production to non agricultural use, discourage uses in agricultural areas that are not compatible with long term agricultural production; preserve roadside landscapes that have a high visual quality; preserve the unique rural and natural character of Sonoma County; protect and enhance the County’s

natural habitats and diverse plant and animal communities; maintain connectivity between natural habitat areas; protect and enhance riparian corridors and functions along streams, balancing the need for agricultural production and other land uses with the preservation of riparian vegetation, protection of water resources, flood control, bank stabilization, and other riparian functions and values; and promote and encourage soil conservation and management practices that maintain the productivity of soil resources . By that same resolution, DISTRICT's Board of Directors determined that its funding of the Project is consistent with the voter-approved Expenditure Plan.

F. This Easement, as further defined below, will further the goals, objectives and policies of the following adopted local plans: Plan Bay Area 2050's agricultural preservation element, and DISTRICT's Vital Lands Initiative, by protecting the following: lands that support diverse, sustainable, and productive agriculture; open lands that surround and differentiate the County's urban areas and contribute to the unique scenic character of the County; natural lands and aquatic habitats that support sustainable aquatic ecosystems and water resources; and natural lands and terrestrial habitats that support plants, wildlife, and biodiversity.

G. 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. DISTRICT, as certified by a resolution of its Board of Directors, accepts the responsibility of enforcing the terms of this Easement and upholding its conservation purposes forever.

H. The Budget Act of 2014 appropriated \$130 million from the California Air Resources Board's California Climate Investment Fund, also known as the Greenhouse Gas Reduction Fund, to develop and implement the Affordable Housing and Sustainable Communities Program ("AHSC"), which is administered by the Strategic Growth Council ("Council"). Beginning in Fiscal Year 2015-16, 20 percent of California Climate Investment Fund's annual proceeds go to AHSC. The Sustainable Agricultural Lands Conservation Program ("Program"), a sub-program of AHSC, was developed to conserve agricultural land under pressure of being converted to nonagricultural uses, particularly those adjacent to areas most at risk of urban or suburban sprawl or those of special environmental significance to support infill development and avoid greenhouse gas emissions.

I. On behalf of the Council, the Department administers the Sustainable Agricultural Lands Conservation Program ("SALC") in conjunction with the California Natural Resources Agency. SALC supports the Program's goal by investing in the acquisition of agricultural conservation easements on properties at risk of conversion to non-agricultural uses, thereby reducing greenhouse gas emissions. These acquisitions contribute to a healthy agricultural economy,

support the implementation of Sustainable Communities Strategies, provide food security, encourage smart growth, and ensure agricultural and open space remains available.

J. The Council awarded a grant to the DISTRICT from the California Climate Investment Fund for the Easement acquisition. The grant funds represent a substantial investment by the people of the State of California in the long-term conservation of valuable agricultural land and the retention of agricultural land in perpetuity. The Property and this Easement have met the eligibility criteria, certain selection criteria, and multiple natural resource conservation objectives as identified in the 2021-22 Sustainable Agricultural Lands Conservation Program Guidelines and Request for Grant Applications. The State of California is a third-party beneficiary of this Easement and is exercising its statutory role in fostering the conservation of agricultural land in California and its role as fiduciary for the public investment represented by the California Climate Investment Fund. The Council, as partial funder of this Easement, is not one of the “Parties” as that term is defined in this Easement.

K. GRANTOR intends by this grant to assure that, under the DISTRICT’s perpetual stewardship of this Easement, the agricultural productive capacity and open space character of the Property will be conserved forever, and that uses of the land that are inconsistent with these conservation purposes will be prevented or corrected.

L. It is the Parties’ intent to forever conserve the agricultural productive capacity and open space character of the Property by the protection of the Conservation Values described in Section 2. The conservation purposes of this Easement are recognized by, and the grant of this Easement will serve, the following clearly delineated governmental conservation policies:

1. California Civil Code at Part 2, Chapter 4, (commencing with section 815), which defines and authorizes perpetual conservation easements. The California Legislature declares in section 815 of the California Civil Code that the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California, and further declares it to be the public policy and in the public interest of the State to encourage the voluntary conveyance of conservation easements to qualified nonprofit organizations;
2. California Constitution Article XIII, section 8, California Revenue and Taxation Code sections 421.5 and 422.5, and California Civil Code section 815.10, under which this Agricultural Conservation Easement is an enforceable restriction, requiring that the Property’s tax valuation be consistent with restriction of its use for purposes of food and fiber production and conservation of natural resources;

3. Section 75210 of California Public Resources Code, which lists the protection of “agricultural lands to support infill development” as a public policy objective supported by the Program to achieve the long-term goals of AB 32 (Chapter 488, Statutes of 2006) and related amendments;
4. Section 65041.1 of the California Government Code, which enumerates the protection of “environmental and agricultural resources by protecting, preserving, and enhancing the state’s most valuable natural resources, including working landscapes such as farm, range, and forest lands” among the State’s planning priorities;
5. Section 10200 *et seq.* of the California Public Resources Code, which creates the California Farmland Conservancy Program within the Department, provides the Department authority for agricultural land conservation, and informs eligibility for funding under SALC;
6. Section 51220 of the California Government Code, which declares a public interest in the preservation of agricultural lands, by providing that “agricultural lands have a definitive public value as open space” and “that the discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest”;
7. California Food and Agriculture Code section 821 states that one of the major principles of the State's agricultural policy is "to sustain the long-term productivity of the State's farms by conserving and protecting the soil, water, and air, which are agriculture's basic resources;"
8. The California General Plan law section 65300 *et seq.* and section 65400 *et seq.* of the California Government Code.

THEREFORE, in consideration of the foregoing recitations and of the mutual covenants, terms, conditions, and restrictions herein set forth and other valuable consideration receipt and adequacy 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 through 816, inclusive, GRANTOR hereby voluntarily grants to DISTRICT and DISTRICT voluntarily accepts a conservation easement over the Property in perpetuity under the terms and conditions set forth herein (the “Easement”). Except as specifically provided by this Easement, GRANTOR hereby irrevocably grants to DISTRICT all development rights that were previously, are now, or hereafter allocated to, implied, reserved, appurtenant to, or inherent in the Property, and the parties agree that such rights are released, terminated, and extinguished, and may not be used on or transferred by either party to any portion of the Property as it now or later may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

**2. Conservation Values.** The Property is comprised of approximately 348.11 acres of open rolling grasslands and riparian tree cover along Bodega Avenue in the Two Rock Valley. Critical resources on the Property (collectively “the Conservation Values”), include the agricultural values, natural resource values, and scenic values.

**2.1. Agricultural Values.** The Property contains significant agricultural resources, including but not limited to significant agricultural soils, including prime soils and soils of statewide importance according to the California Department of Conservation’s Farmland Mapping and Monitoring Program. It has rolling to flat topography, a temperate climate, and sufficient water resources to support a variety of agricultural operations. It is also located within the Sonoma Coast Vine Appellation. The Property is in an agricultural area with several preserved properties nearby, close to markets and agricultural services, and has been used for agriculture for more than 100 years.

**2.2. Natural Resource Values.** The Property possesses a variety of natural resource values including but not limited to the following: grasslands, riparian forest, and springs that provide roosting, nesting, foraging, and wildlife movement opportunities for a variety of species adapted to a rural environment. The creek on the property is in the upper stretches of the Stemple Creek Watershed, which flows into the Estero de San Antonio. Water quality goals (Total Maximum Daily Loads under section 303(d) of the federal Clean Water Act found at 33 USC 1251 *et seq.*) have been established for sediment and nutrients in the watershed, primarily from agricultural operations, and the small riparian buffer existing on the Property at the Effective Date provides a critical water filtration function as well as habitat for a variety of species. The Property overlays a Major Natural Recharge Area and the Wilson Grove Formation Highlands groundwater basin, and the Property’s open space character enables important groundwater recharge functions.

**2.3. Scenic Values.** The open fields and riparian corridor on the Property are widely visible from Bodega Avenue, a gateway to the Sonoma County Coast and a designated scenic byway.

The pastures and farm fields provide quintessential Sonoma County agrarian scenery at the edge of the Petaluma “dairy belt.” The field between the creek and Bodega Avenue and the hill to the south of the Property are highly visible from Bodega Avenue.

**3. Conservation Purpose.** The purpose of this Easement (“Conservation Purpose”) is to preserve and protect forever the Conservation Values, as described in Section 2; to prohibit and prevent any uses and activities of the Property that will materially impair or interfere with the Conservation Values; and to enable the Property to remain in productive agricultural use in perpetuity. In the event that an activity or use that requires the DISTRICT’s approval causes a substantial conflict between the preservation and protection of multiple Conservation Values, the Parties shall attempt to reconcile such conflict and balance preservation and protection of Conservation Values, taking into consideration any material changes to the physical condition of the Property, climate change and associated impacts, zoning and public policy, and surrounding land uses. If such conflict is both substantial and irreconcilable, the DISTRICT shall consider the approval and the relative impacts to the affected Conservation Values, with particular weight given to preservation and protection of agricultural resources, then to natural resources, then to scenic resources.

## **PART TWO: RIGHTS OF DISTRICT**

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

**4.1. Protecting Conservation Values.** This Easement authorizes DISTRICT to enforce these covenants in the manner described herein. DISTRICT shall have the right to preserve, protect, and document in perpetuity the Conservation Values of the Property.

**4.2. Property Inspections.**

**4.2.1 Monitoring Visits.** 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.

4.2.2 Enforcement Visits. 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.

**4.3. Council's Limited Right of Entry and Inspection.**

4.3.1 Monitoring Visits. With no less than fourteen (14) days prior notice to DISTRICT and GRANTOR, Council or its designee may enter the Property to verify compliance with the terms of the Easement. Such entry shall be coordinated with DISTRICT to take place during DISTRICT's regular monitoring visit(s), if possible, and shall occur no more frequently than annually. GRANTOR agrees to provide such access as is reasonable to verify compliance. Council's Executive Director and their employees shall display state employee identification during the monitoring visit.

4.3.2 Enforcement Visits. In the event that the Council's Executive Director has reasonable cause to suspect that the DISTRICT has failed to enforce any of the terms, conditions, covenants, or purposes of the Easement thereby allowing or threatening material harm to the Conservation Values, the Council's Executive Director and successors and assigns shall be entitled, following notice to DISTRICT, to conduct an enforcement visit pursuant to same terms as granted to the DISTRICT in *Section 4.2.2 (Enforcement Visits)*. This entitlement shall include the right of immediate entry in the event of an emergency or suspected emergency where the Council's Executive Director or successor or assign determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement. Council's Executive Director and their employees shall display state employee identification during the monitoring visit.

4.3.3 Documentation. Council may provide findings and documentation from any such visits or inspections to DISTRICT after such visit or inspection.

**4.4. Enforcement**

4.4.1 DISTRICT's Right of Enforcement. DISTRICT shall have the right to enforce the rights herein granted and to prevent, correct, 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. If the DISTRICT finds what it believes is a violation or potential violation, it may at its discretion take appropriate legal action to ensure compliance with the terms, conditions, covenants, and purposes of this Easement, as provided herein, and shall have the right, but not the obligation, to correct violations and prevent the threat of violations pursuant to Section 10 (Enforcement and Remedies for Breach).

4.4.2 Council's Limited Right of Enforcement. Council, as a partial funder of this Easement, intends to be treated as a third-party beneficiary of the Easement to protect the Council's investment in the Easement. In the event Council's Executive Director, upon reasonable investigation, determines that DISTRICT has abused its discretion as holder of this Easement to forego or defer enforcement pursuant to Section 10.3 (No Waiver) and thereby is allowing material harm to the Conservation Values, the Council Executive Director shall notify DISTRICT of its determination and provide DISTRICT with a reasonable opportunity under the circumstances to commence an enforcement action.

a) If DISTRICT elects not to commence an enforcement action pursuant to its rights under Section 10.3 (No Waiver), then Council shall have the right to enforce the Easement at its sole cost and expense.

b) Failure or refusal to exercise any rights under the terms of this Easement by the DISTRICT in the event of a violation by the GRANTOR of any term herein shall not constitute a waiver or forfeiture of the DISTRICT's right to enforce any term, condition, covenant, or purpose of this Easement.

4.5. 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 (GRANTOR's Restricted Rights), and Section 6 (Notice and Approval Procedures).

4.6. 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 of the information shall be determined by DISTRICT with consent of GRANTOR. No such sign or marker shall exceed thirty-two (32) square feet in size nor be artificially illuminated. DISTRICT shall be responsible for the cost of erecting and maintaining such sign or marker.

### **PART THREE: RESTRICTIONS ON DEVELOPMENT, USE, AND ACTIVITIES**

**5. GRANTOR's Restricted Rights.** GRANTOR shall confine the use of the Property 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. 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 duties with respect to the preservation of the Property's Conservation Values; (ii) establishes allowed activities and uses; (iii) establishes restricted or prohibited activities and uses; and (iv) provides guidance for determining the consistency of similar activities and uses with this Easement, in accordance with the procedures set forth in Section 6 (Notice and Approval Procedures).

**5.1. General Requirements for All Uses.**

5.1.1 Compliance with Governmental Regulations. All activities and uses on the Property shall be subject to and undertaken in accordance with all applicable federal, state, and local statutes, ordinances, rules, and regulations. GRANTOR understands that nothing in this Easement relieves it of any obligation or restriction on the use of the Property imposed by law.

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. GRANTOR shall not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with this Easement. Any use or activity that would diminish or impair the agricultural productive capacity, future viability, and open space character of the Property, or that would cause significant soil degradation or erosion, restrict agricultural husbandry practices (except as provided herein), or that is otherwise inconsistent with the Purpose of this Easement, is prohibited.

5.1.3 Protection of Conservation Values. All activities and uses on the Property shall be undertaken in a manner that protects and preserves 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 Protection of Agricultural Utility. GRANTOR shall not diminish or impair the agricultural productive capacity, future viability, or restrict agricultural husbandry practices on the Property, except as provided herein. "Husbandry practices" means agricultural activities, such as those specified in section 3482.5(e) of the California Civil

Code, conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality. The Parties agree that the restrictions on agricultural and husbandry practices contained in this Easement are consistent with continuing agricultural use, do not substantially prevent agricultural use on the Property, and are inherent to the Property.

5.1.6 Duty to Prevent Waste, Nuisance, and Trespass. Without limiting the generality of the foregoing, GRANTOR shall maintain the Property in a condition consistent with the Conservation Purpose of this Easement, which obligation shall include the undertaking of reasonable and necessary steps to prevent harm to the Conservation Values of the Property due to foreseeable acts or omissions of third parties.

5.1.7 Notice and Approval Procedures. Whenever this Section 5 requires prior notice to or approval by DISTRICT, such notice shall be given or approval shall be obtained in accordance with Section 6 (Notice and Approval Procedures) of this Easement.

5.1.8 Easement Designation Areas. To balance potential conflicts between permitted uses and the conservation values, this Easement identifies and designates geographically specific areas of the Property within which different terms are applicable than on the remainder of the Property (the “Easement Designation Areas”). Within the Easement Designation Areas, otherwise prohibited development, uses, and activities may be permitted and otherwise permitted development, uses, and activities may be prohibited, as described further in Sections 5.4 (Land Uses) through 5.6 (Land and Resource Management) of this Easement. The general locations of the Easement Designation Areas are depicted in **Exhibit B** (Project Structure Map). More particular descriptions of the locations of the Easement Designation Areas are contained in **Exhibit C** (Descriptions of Easement Designation Areas) attached and incorporated by this reference. In the event of any conflict between the written descriptions of the Easement Designation Areas and either **Exhibit B** or the Baseline Report, the written descriptions in **Exhibit C** shall prevail. If there is a dispute regarding the location of Easement Designation Area boundaries on the ground, the party raising the dispute may obtain a survey of the area at issue at its own cost.

a) Building Envelopes. There are three (3) “Building Envelopes” on the Property designated to concentrate development and more intensive uses, as further detailed in Section 5.5 (Structures and Improvements).

i. Building Envelope 1. “Building Envelope 1” consists of Fifty and six tenths (50.06) acres near the center of the Property.

ii. *Building Envelope 2.* “Building Envelope 2” consists of six-tenths of an acre (0.6 acres) along Bodega Avenue at the northeast of the Property.

iii. *Building Envelope 3.* “Building Envelope 3” consists of two and two-tenths (2.2) acres south of Building Envelope 2 and Natural Area 2.

b) *Natural Areas.* There are two (2) “Natural Areas” on the Property, designated to preserve, protect, and enhance natural resources including but not limited to water quality and wildlife habitat.

i. *Natural Area 1.* “Natural Area 1” is comprised of a spring in the southeast corner of the Property and a ten (10) foot buffer surrounding the spring.

ii. *Natural Area 2.* “Natural Area 2” is comprised of Stemple Creek and a buffer extending fifty (50) feet outward from the top of both streambanks except for the berm or any area located south of the berm identified in the Baseline Documentation Report described in *Section 9 (Baseline Documentation for Enforcement)*. If the berm forming the southern boundary of the Natural Area on Stemple Creek is ever removed, the buffer in that area will increase to fifty (50) feet from top of bank in that area.

## **5.2. GRANTOR’s Restricted Rights.**

5.2.1 Subject to the terms of this Easement, as owner of the Property, the GRANTOR reserves all interests in the Property not transferred, conveyed, restricted, prohibited, or extinguished by this Easement. These ownership rights include, but are not limited to, the right to sell, lease, or otherwise transfer the Property to anyone GRANTOR chooses subject to the limitations provided herein, as well as the right to privacy, and the right to exclude any member of the public from trespassing on the Property pursuant to *Section 5.1.6 (Duty to Prevent Waste, Nuisance, and Trespass)*.

5.2.2 Nothing in this Easement relieves GRANTOR of any obligation or restriction on the use of the Property imposed by law.

**5.3. Subdivision and Parcels.** The division, subdivision, de facto subdivision, or partition of the Property, including transfer of development rights, whether by physical, legal, or

any other process, is prohibited. Landowner will not sell, exchange, convert, transfer, assign, mortgage or otherwise encumber, alienate or convey any parcel associated with the Property or portion of any parcel of the Property separately or apart from the Property as a whole.

5.3.1 GRANTOR and DISTRICT acknowledge and understand that the Property is currently comprised and is described in **Exhibit A** as six (6) legal parcels, and that no additional, separate legal parcels currently exist within the Property that may be recognized by a certificate of compliance or conditional certificate of compliance pursuant to California Government Code section 66499.35 based on previous patent or deed conveyances, subdivisions, or surveys. GRANTOR will not apply for or otherwise seek recognition of additional legal parcels within the Property based on certificates of compliance or any other authority. Pursuant to that certain purchase and sale agreement between GRANTOR and DISTRICT date \_\_\_\_\_, GRANTOR has agreed to complete an administrative merger with the County of Sonoma of all of the parcels comprising the Property into a single legal parcel within eight (8) months of the Effective Date of this Easement.

5.3.2 Exceptions. GRANTOR will at all times treat all parcels of the Property as a single integrated economic unit of property, provided, however, that the prohibitions against division of the Property in this Section 5.3 shall be inapplicable to:

a) Conveyance to Government or Non-Profit Entity. With prior approval from DISTRICT, GRANTOR may voluntarily convey a portion of the Property to a government or non-profit entity exclusively for conservation or public access purposes. DISTRICT may only approve such conveyance if it would not materially impair the Conservation Values. Such division shall not increase or decrease the total acreage of this Easement.

b) Leases. GRANTOR may lease portions of the Property for permitted uses, in accordance with Section 5.4.8 (Commercial Use).

5.3.3 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. Land Uses.** GRANTOR shall restrict use of the Property to such uses as defined in this Section 5.4, or similar uses approved by DISTRICT pursuant to Section 6.4 (Uses/Activities Not Expressly Addressed: DISTRICT's Approval). GRANTOR and DISTRICT acknowledge that the following list does not constitute an exhaustive recital of consistent and inconsistent uses, and

activities, but rather (i) establishes uses, and activities allowed on the Property subject to the terms of this Easement; (ii) establishes restricted or prohibited uses, and activities; and (iii) provides guidance for determining the consistency of similar uses, and activities with this Easement, in accordance with the procedures set forth in Section 6.4 (Uses/Activities Not Expressly Addressed: DISTRICT's Approval). GRANTOR must obtain DISTRICT's approval pursuant to Section 6.4 (Uses/Activities Not Expressly Addressed: DISTRICT's Approval) prior to undertaking any use or activity not expressly addressed by this Easement. Likewise, GRANTOR shall not begin or undertake any use or activity that requires notice or approval until it has satisfied the requirements of Section 6 (Notice and Approval Procedures). This Easement shall not create any development rights and the parties understand and agree that the DISTRICT is not an entitling agency.

5.4.1 Residential Use. GRANTOR may reside in permitted structures within the designated Building Envelopes on the Property.

5.4.2 Agricultural Use. GRANTOR may engage in agricultural uses of the Property as described below 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. No agricultural uses shall be conducted in the Natural Areas except as provided below. In connection with permitted agricultural uses, any application of government-approved agrichemicals, including but not limited to, herbicides, fertilizers, and biocides, must be applied only in those amounts and with that frequency of application necessary to accomplish reasonable agricultural purposes and consistent with government regulations and guidelines. Agrichemicals shall not be used in the Natural Areas except as part of natural resource and vegetation management activities undertaken in accordance with Sections 5.4.6 (Natural Resource Protection, Preservation, Restoration, and Enhancement), 5.6.5 (Management, Restoration, and Enhancement), and Section 6.4 (Uses/Activities Not Expressly Addressed: DISTRICT's Approval).

a) Livestock for the Production of Food and Fiber. Outside of the Natural Areas GRANTOR may breed, raise, pasture, and graze livestock of every nature and description for the production of food and fiber. Within the Natural Areas, livestock may graze for natural resources management, restoration, and enhancement pursuant to Sections 5.4.6 (Natural Resource Protection, Preservation, Restoration, and Enhancement), 5.6.5 (Management, Restoration, and Enhancement), and 5.6.4 (Vegetation and Fuel Management).

b) Bees, Fish, Poultry, and Fowl. Outside of the Natural Areas GRANTOR may breed and raise bees, fish, poultry, and other fowl. Within the Natural Areas, GRANTOR may breed and raise bees in a manner consistent with natural resources management, restoration, and enhancement pursuant to Sections 5.4.6 (Natural Resource Protection, Preservation, Restoration, and Enhancement) and 5.6.5 (Management, Restoration, and Enhancement), provided that GRANTOR provides prior notice to DISTRICT pursuant to Section 6 (Notice and Approval Procedures).

c) Crops. Outside of the Natural Areas GRANTOR may plant, raise, harvest, and produce agricultural, aquacultural, horticultural, and forestry crops and products of every nature and description. Within the Natural Areas, no-till cultivation, harvest, or gathering of native species is permitted in a manner consistent with natural resources management, restoration, and enhancement pursuant to Sections 5.4.6 (Natural Resource Protection, Preservation, Restoration, and Enhancement) and 5.6.5 (Management, Restoration, and Enhancement), provided that GRANTOR provides prior notice to DISTRICT pursuant to Section 6 (Notice and Approval Procedures).

5.4.3 Activities Ancillary to Agricultural Use. GRANTOR may engage in activities ancillary to the agricultural use only in accordance with this Section. No uses or activities ancillary to agricultural uses shall be conducted in the Natural Areas except as expressly provided below.

a) Sale of Harvested Crops and Products. GRANTOR may store and sell, including direct retail sale to the public, crops and products harvested and produced on the Property. Such sales shall be conducted only within the Building Envelopes or during Farm Days in accordance with Section 5.4.5 (Farm Days).

b) Processing of Crops and Products. GRANTOR may process agricultural crops and products principally harvested and produced on the Property within the Building Envelopes.

c) Composting. GRANTOR may store, generate, process, use, and sell, including direct retail sale to the public, compost materials generated on the Property in association with the permitted agricultural uses. GRANTOR may import organic material to support the compost operation provided that the majority of the composting material is derived from the Property.

d) Farm Stays. GRANTOR may provide farm stays for agricultural education and ancillary low-intensity recreation on the Property in association with the permitted agricultural uses so long as the farm stays do not diminish the agricultural character and long-term agricultural productive capacity of the Property. Overnight accommodations for farm stays are permitted only within the designated Building Envelopes.

5.4.4 Recreational and Educational Use. GRANTOR may use the Property for low-intensity outdoor recreation and education including hiking, nature study, bird counts, biological surveys, and other such uses similar in nature and intensity. All improvements associated with the low-intensity recreational and educational uses shall be placed or constructed consistent with Section 5.6 (Land and Resource Management) of this Agreement. GRANTOR may engage in hunting and fishing on the Property in conformity with Sections 5.6.8 (Native Plant Removal) and 5.6.9 (Non-Native Plants and Animals).

5.4.5 Farm Days. With prior notice to DISTRICT, GRANTOR may use areas of the Property outside of the Natural Areas for community engagement events designed to educate the public about agriculture ("Farm Days"), subject to the limitations in this Section. The Farm Days must be ancillary to and in support of the agricultural use of the Property. The Farm Days are only permitted in the dry season for no more than three (3) consecutive calendar months. Proper notice to the DISTRICT will include a brief written description of what the event(s) will entail, when it/they will be held, descriptions of any temporary structures and improvements, and management activities for erosion control, soil health protection, weed abatement, and minimization of scenic impacts. Farm Days may be for-profit and can include tours, tastings, direct-sales, concessions, games, and activities of a similar nature, but must have a substantial educational component such as informational talks or materials about the agricultural operation, agricultural science, the environmental co-benefits of agriculture, animal husbandry, or similar agriculture-related topics. GRANTOR's presentations or materials must mention the DISTRICT's role in conserving the Property. At the end of each Farm Day season, GRANTOR must return the affected portions of the Property to their prior condition or prepare them for agricultural use.

5.4.6 Natural Resource Protection, Preservation, Restoration, and Enhancement. GRANTOR may protect, preserve, restore, and enhance the natural resources of the Property in accordance with sound, generally accepted conservation practices and the provisions of Section 5.6 (Land and Resource Management).



a) Mitigation. With prior written approval from DISTRICT, the Property may be used for mitigation of on- or off-site projects if DISTRICT determines, in its sole discretion, that the following criteria are met: (i) the proposed mitigation enhances the Conservation Values; (ii) the proposed mitigation is consistent with DISTRICT's enabling legislation; (iii) the proposed mitigation is aligned with DISTRICT's objectives and goals; and (iv) the proposed mitigation does not present a risk to DISTRICT's long-term fiscal stability. Furthermore, (i) any additional protections required by regulatory agencies in association with a mitigation project must be consistent with this Easement; and (ii) the sale of mitigation credits are considered a commercial use and subject to the provisions of Section 5.4.8 (Commercial Use).

5.4.7 Water. GRANTOR shall retain and reserve all ground water, and all appropriative, prescriptive, riparian, contractual or other water rights appurtenant to the Property as of Effective Date. GRANTOR shall not permanently transfer, encumber, lease, sell, or otherwise separate such quantity of water or water rights from title to the Property itself. Permanent separation of water or water rights is prohibited. Only that quantity of water or water rights that is not necessary for present or future agricultural production on the Property may be temporarily distributed on an annual basis. Any temporary distribution shall not impair the current or future agricultural use or open space character of the Property.

5.4.8 Commercial Use. GRANTOR may use the Property for the following commercial uses: (i) agricultural use as defined in Section 5.4.2 (Agricultural Use); (ii) uses ancillary to agricultural uses as described in Section 5.4.3 (Activities Ancillary to Agricultural Use); (iii) home occupation(s) within permitted residential buildings; (iv) leases or rentals for residential, grazing, agricultural, and ancillary agricultural uses as described in Sections 5.4.1 (Residential Use), 5.4.2 (Agricultural Use), and Section 5.4.3 (Activities Ancillary to Agricultural Use); (v) Farm Days as described in Section 5.4.5 (Farm Days); (vi) recreational uses as described in Section 5.4.5 (Recreational and Educational Uses); and (vii) with prior written approval from DISTRICT, other minor ancillary commercial uses found to be consistent with Conservation Values of this Easement.

**5.5. Structures and Improvements**. No structure or improvement shall be maintained, repaired, replaced, constructed, or placed on the Property except as provided in this Section 5.5. All structures and improvements allowed by Sections 5.5.1 (Maintenance, Repair, or Replacement of Structures and Improvements) through 5.5.7 (Improvements for Recreational and Educational Uses and Farm Days), whether existing at the time of this Easement or placed subsequent to this Easement, shall be located within a designated Building Envelope as described in Section 5.1.8 (Easement Designation Areas), except as provided below. No structure or improvement shall

exceed twenty-four (24) feet in height except as otherwise provided herein. No structures or improvements are permitted within the designated Natural Areas except as expressly stated below.

5.5.1 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 this Easement, 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 5.5.2 through 5.5.12 (all of Section 5.5 except for this Subsection 5.5.1).

5.5.2 Primary Residence. At any one time, there may be no more than one (1) primary residence located on the Property. As of the Effective Date, there is one (1) primary residence existing on the Property consisting of a two-thousand eight hundred (2,800) square foot home located within Building Envelope 3. GRANTOR may construct or place a new primary residence within the Building Envelope only if GRANTOR first removes or successfully redesignates and maintains the existing primary residence as an accessory structure pursuant to Section 5.5.3 (Structures and Improvements Accessory to Residential Use) or as an agricultural worker housing pursuant to Section 5.5.4 (Residential Agricultural Structures). No other residential structures may be constructed or placed on the Property except for accessory structures described in Section 5.5.3 (Structures and Improvements Accessory to Residential Use) and agricultural worker residences described in Section 5.5.4 (Residential Agricultural Structures).

5.5.3 Structures and Improvements Accessory to Residential Use. With prior written notice to DISTRICT, GRANTOR may place or construct accessory structures and improvements reasonably related to permitted residential use of the Property including, but not limited to, garage, shed, swimming pool, chicken coops, and gardens. The existing pool house accessory to the primary residence is also permitted. All such structures and

improvements must be placed or constructed within the same Building Envelope as the associated primary or agricultural worker residence.

a) *Accessory to Primary Residence.* The total cumulative square footage of the structures and improvements accessory to the primary residential use shall not exceed the amount existing at the Effective Date, as documented in the Baseline Report described in Section 9 (Baseline Documentation for Enforcement).

b) *Accessory to Agricultural Residences.* The total cumulative square footage of the structures and improvements accessory to the agricultural residential structures shall not exceed eight hundred (800) square feet per unit of agricultural residential housing.

5.5.4 Residential Agricultural Structures. With prior written notice to DISTRICT, GRANTOR may place or construct agricultural residences (farm worker housing, farm family housing or similar residences for agricultural workers), provided that no such residence shall exceed twenty-four (24) feet in height and/or be greater than two-thousand (2,000) square feet in size, exclusive of garage, except for the one (1) historical farmhouse which is greater than two thousand (2,000) square feet and which may be maintained, repaired, and replaced in accordance with Section 5.5.1 (Maintenance, Repair, or Replacement of Structures and Improvements). All garages associated with agricultural residences, whether attached or detached, shall be subject to Section 5.5.3 (Structures and Improvements Accessory to Residential Use).

5.5.5 Non-residential Agricultural Structures and Improvements. Non-residential agricultural structures and improvements are permitted only in accordance with this Section 5.5.5. Non-residential agricultural structures shall not exceed forty (40) feet in height.

a) *Within the Building Envelopes.* Within designated Building Envelopes and following prior notice to DISTRICT, GRANTOR may place or construct structures and improvements reasonably necessary for the permitted agricultural use of and permitted ancillary agricultural uses on the Property, including but not limited to barns, corrals, sheds, compost pads, and greenhouses.

b) Outside the Building Envelopes. With prior approval from DISTRICT, GRANTOR may install, construct, or place non-residential agricultural structures and improvements reasonably necessary for the agricultural use of the Property, including but not limited to well houses, compost pad, and water troughs, outside of the Building Envelopes. DISTRICT shall approve non-residential

agricultural structures or improvements outside the Building Envelopes only if GRANTOR demonstrates to DISTRICT's reasonable satisfaction that: (i) it would be impractical or infeasible to build said structure or improvement within one of the designated Building Envelopes; (ii) the structure or improvement is reasonably scaled and sized for the purported agricultural use; and (iii) the location is outside of the Natural Areas and is carefully chosen to minimize impacts to the Conservation Values, taking into account then-existing natural and agricultural resources of the site, visibility from public roads, and proximity to existing roads and utilities.

c) Temporary Structures and Improvements. GRANTOR may place or install minor temporary non-residential agricultural structures and improvements such as seasonal hoop houses, cold frames, mobile irrigation or livestock watering systems, and mobile chicken coops anywhere on the Property outside of the Natural Areas without prior notice to or approval from DISTRICT.

5.5.6 Structures and Improvements Accessory to Natural Resource Protection Use. With prior written notice to DISTRICT, GRANTOR may place or construct within a designated Building Envelope accessory structures and improvements reasonably necessary for natural resource protection on the Property, including, but not limited to, sheds and greenhouses. With prior written approval from DISTRICT, GRANTOR may place or construct temporary accessory structures and improvements outside of a designated Building Envelope, including within the Natural Areas, as necessary during, and in connection with, natural resource restoration and enhancement activities.

5.5.7 Improvements for Recreational and Educational Uses and Farm Days. With prior approval from DISTRICT, GRANTOR may construct or place minor improvements associated with permitted low-intensity outdoor recreational and educational uses, such as a single-track unpaved trail and viewing areas anywhere on the Property. Outside of the Natural Areas and in association with Farm Days permitted pursuant to Section 5.4.5 (Farm Days) GRANTOR may construct, place, or erect temporary improvements, such as bouncy houses, haunted houses, marquees, or concession stands. With prior approval from DISTRICT, GRANTOR may convert unused manure ponds existing at the Effective Date to other uses, such as wildlife and fishing ponds, provided that such conversion is undertaken and maintained in a manner that avoids impacts to soil and water quality.

5.5.8 Roads. With prior approval from DISTRICT, GRANTOR may construct new roads and associated crossings ("Roads") and reconstruct or expand existing Roads provided that such Roads (i) are directly required for uses and activities allowed herein,

(ii) are the minimum necessary for such uses and activities, and (iii) are not expressly prohibited (see Sections 5.6.1 (Surface Alteration) and 5.6.3 (Mineral Exploration)). GRANTOR may maintain and repair existing Roads located within the Natural Areas as documented in the Baseline Documentation Report described in Section 9 (Baseline Documentation for Enforcement) without prior notice to or approval from DISTRICT in accordance with Section 5.5.1 (Maintenance, Repair, or Replacement of Structures and Improvements). GRANTOR may construct new Roads within the Natural Areas only with prior approval from DISTRICT pursuant to Section 6 (Notice and Approval Procedures). Roads shall be constructed and maintained so as to minimize erosion and sedimentation and ensure proper drainage, utilizing Best Management Practices for Roads as recommended by California Department of Fish and Wildlife or other similar or successor entity. Any roads constructed subsequent to this Easement may not be paved with asphalt, concrete or other impervious surface unless such paving is required by any federal, state or local law, code, ordinance, or regulation (crossings may be paved). At the Effective Date, the Property contains a paved driveway and livestock paths that are paved or otherwise covered with impervious paving material for livestock safety purposes, as described in the Baseline Report. GRANTOR may maintain the paving on those livestock paths and the paved driveway. Roads that are abandoned, permanently closed, and/or decommissioned shall be revegetated with native species or, if outside of the Natural Areas, may alternatively be converted to agricultural use, stabilized, and ensured of proper drainage.

5.5.9 Fences and Gates. GRANTOR may repair and replace existing fences, including within the Natural Areas, without permission of the DISTRICT. With prior written approval from DISTRICT, GRANTOR may construct and erect new fencing and gates on the Property, including outside the Building Envelopes and within the Natural Areas, only as necessary for permitted uses of the Property or as necessary in connection with GRANTOR's duties to prevent foreseeable trespass pursuant to Section 5.1.6 (Duty to Prevent Waste, Nuisance, and Trespass). Notwithstanding the foregoing, no approval is required for placement of temporary fencing on the Property, including within the Natural Areas. All fencing and gates must (i) preserve the scenic values of the Property; (ii) be the minimum necessary in design and extent; (iii) not impede wildlife movement except within the Building Envelopes and in cases where necessary to protect the allowed agricultural and natural resource management, restoration, and enhancement uses described in this Easement; and (iv) comply with DISTRICT's then-current guidelines for fences on conservation lands. Notwithstanding the provisions of Section 5.5.1 (Maintenance, Repair, or Replacement of Structures and Improvements), whether existing at the date hereof or constructed subsequently in accordance with the provisions of this Easement, GRANTOR may maintain and/or replace such fencing and gates only pursuant

to the provisions of this Section 5.5.9. In the event any fence or gate, or portion thereof, becomes obsolete or unnecessary for the uses described in this Section 5.5.9, GRANTOR shall remove such fencing or gate from the Property.

5.5.10 Utilities and Energy Resources. GRANTOR may expand, place, construct, or erect utilities and energy resources on the Property only in conformance with this Section. If any damage is caused to the Conservation Values during development or maintenance of utilities, GRANTOR shall promptly restore the area to its prior condition.

a) *Inside the Building Envelopes*. With prior written notice to DISTRICT, GRANTOR may expand existing or develop or construct new utilities, including but not limited to electric power and transmission lines, septic or sewer, communication lines, and water storage and delivery systems, within the designated Building Envelopes, provided that such utilities are directly required for permitted uses on the Property and are reasonably scaled to serve only those uses.

b) *Outside the Building Envelopes*. With prior written approval from DISTRICT GRANTOR may develop, construct, install, or expand utilities outside of the designated Building Envelopes only as provided in this Section. Utilities within the Natural Areas are described in Section 5.5.10 (Utilities and Energy Resources). Any utilities developed, constructed, installed, or expanded outside the designated Building Envelopes shall be sited, designed, constructed, and maintained in a manner that minimizes impacts to the Conservation Values.

i. Electric Generation. Outside the designated Building Envelopes, GRANTOR may develop, construct, install, or expand electric generation systems only if such systems are located on and directly required to supply power to a permitted agricultural or natural resource structure or improvement, are reasonably scaled to serve only that structure or improvement, and do not cause such structure or improvement to exceed size and height limitations.

ii. Sewer, Septic, and Water. Outside the designated Building Envelopes, GRANTOR may develop, construct, install, or expand septic or sewer infrastructure and water storage and delivery systems only if such utilities are directly required for permitted uses on the Property and are reasonably scaled to serve only those permitted uses.

iii. Utility Lines. Outside the designated Building Envelopes, GRANTOR may develop, construct, install, or expand utility lines such as for electric transmission, sewer, water, or communications, provided that such utility lines are directly required for permitted uses on the Property and are appropriately scaled to serve only those uses.

c) Within the Natural Areas. Within designated Natural Areas, GRANTOR may expand existing or develop, construct, or install new utilities, including utility lines, only if DISTRICT determines that (i) GRANTOR has demonstrated that such utilities could not reasonably serve their purpose if constructed outside the Natural Areas, and (ii) such utilities have been sited and designed minimize impacts to the Conservation Values.

d) Net Metering and Public Communications Infrastructure. Electric power and communication utilities may serve off-site uses only if associated improvements are located on a permitted structure within the Building Envelopes and do not cause such structure to exceed size and height limitations. GRANTOR and DISTRICT recognize that the production and demand for electric power may fluctuate based on seasons and weather, and there may be occasions when facilities permitted pursuant to this Section produce more power than onsite facilities may demand, notwithstanding that they are appropriately scaled for anticipated on-site uses. As such, power generated from systems within the Building Envelopes in excess of any instantaneous demand on the Property may be sold to appropriate public utilities. Notwithstanding the foregoing, commercial power generation, collection, or transmission facilities, including wind or solar farms, are prohibited.

e) Reasonable Restriction. The parties agree that the terms in this Section constitute a reasonable restriction pursuant to Civil Code section 714 (the Solar Rights Act).

5.5.11 Public Safety Systems. With prior written approval from DISTRICT, GRANTOR may install communication and geophysical data collection, monitoring, and transmission systems and associated infrastructure directly supportive of public safety operations, including, but not limited to, wildfire detection sensors and cameras, weather stations, stream gauges, seismic sensors, and emergency communication systems ("Public Safety Systems"), on the Property, including within the Natural Areas, provided such infrastructure is the minimum necessary for the public safety purpose and is designed, sited, constructed, and maintained so as to minimize impacts to the Conservation Values of the Property. Public Safety Systems do not include

telecommunications facilities designed for use by the general public, such as commercial cell phone towers or antennae, which are subject to the provisions of Section 5.5.10 (Utilities and Energy Resources).

5.5.12 Signs. GRANTOR may construct or place signs as set forth in this Section 5.5.12. No sign shall be artificially illuminated.

a) Without prior written notice to or approval of DISTRICT, GRANTOR may construct or place two (2) signs not to exceed 32 square feet in size to identify the Property from public roadways.

b) Without prior notice to or approval of DISTRICT, GRANTOR may construct or place signs no more than six (6) square feet in size to (i) mark the boundary of the Property; (ii) provide directional, interpretive, and educational information; (iii) demonstrate affiliation with an agricultural partner (such as a cooperative), (iv) advertise the direct sale of agricultural products grown or raised on the Property; or (v) promote agricultural education activities such as the county fair or Farm Days, 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) Without prior written notice to or approval of DISTRICT, GRANTOR may construct or place signs advocating candidates or issues that will be presented to voters in a public election are allowed, provided that such signs do not exceed then existing state and local regulations for political signs, and that such signs are removed within ten (10) days after the date of election.

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

## **5.6. Land and Resource Management.**

5.6.1 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, aggregate, rock, peat, or sod, except as provided in this Section. The prohibition against the alteration of the contour of the Property applies to the installation of Roads or pipelines for transportation of the aforementioned resources,



unless for a permitted use or activity. Any excavation, removal, or importation of soil, sand, gravel, aggregate, rock, peat, or sod shall be done in a manner that minimizes impacts to the Conservation Values.

a) *For Permitted Uses.* With prior written notice to DISTRICT, GRANTOR may excavate, remove, or import soil, sand, gravel, aggregate, rock, peat, or sod, from the quarry identified in the Baseline Documentation Report identified in Section 9 (Baseline Documentation for Enforcement), as reasonably necessary in connection with the uses, structures, and/or improvements allowed under Section 5 (GRANTOR's Restricted Rights) of this Easement. With prior written approval from DISTRICT, GRANTOR may excavate, remove, or import soil, sand, gravel, aggregate, rock, peat, or sod, from or to the designated Natural Areas only in direct association with permitted natural resource and vegetation management and restoration uses and activities carried out in accordance with Sections 5.4.6 (Natural Resource Protection, Preservation, Restoration, and Enhancement), 5.6.5 (Management, Restoration, and Enhancement), and 5.6.4 (Vegetation and Fuel Management). Any rock, gravel, or other material removed from the quarry shall be used only on the Property.

b) *Volume and Use Limitations.* In connection with allowed uses, structures, and/or improvements, movement of over fifty (50) cubic yards of material in any calendar year from any location other than that identified as quarry in the Baseline Report is subject to prior DISTRICT approval.

c) *Replacement Quarry.* With prior written approval from DISTRICT, GRANTOR may identify and develop a replacement quarry or borrow pit if (i) the existing quarry is depleted; (ii) the new quarry or borrow pit is sited, designed, constructed, and maintained to minimize impacts to the Conservation Values; and (iii) the original quarry is retired and revegetated with native seed or pasture grass, or is otherwise converted to agricultural use.

d) *Agricultural Exemption.* Without prior notice to or approval from DISTRICT, GRANTOR may remove cobble and hardpan from farm areas to prepare the land for agricultural purposes and import or quarry rock, soil, sand, and gravel for the maintenance of existing agricultural infrastructure such as beneath and around troughs or on livestock paths or for use as animal bedding.

5.6.2 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 manure ponds or water storage and delivery systems allowed under Section 5.5.10 (Utilities and Energy Resources); (ii) reconstruction, expansion, and new construction of roads or trails (including crossings) allowed under Sections 5.5.7 (Improvements for Recreational and Educational Uses and Farm Days) and 5.5.8 (Roads), respectively; and (iii) the restoration and enhancement of natural resources allowed under Sections 5.4.6 (Natural Resource Protection, Preservation, Restoration, and Enhancement) and 5.6.5 (Management, Restoration, and Enhancement).

5.6.3 Mineral Exploration. Exploration for, or development and extraction of, geothermal resources, minerals, and hydrocarbons by any surface or sub-surface mining or any other method is prohibited. This prohibition includes the installation of roads or pipelines for transportation of the aforementioned resources.

5.6.4 Vegetation and Fuel Management. GRANTOR may undertake vegetation and fuel management activities to reduce wildfire risk as provided in this Section. All vegetation and fuel management activities shall be designed and implemented to minimize harm to native wildlife, plant communities, and non-target plants. If vegetation and fuel management activities are to take place during nesting season, GRANTOR shall ensure that nesting surveys are conducted in coordination with a qualified biologist and shall modify activities based on survey results to prevent harm to identified nests.

a) Within 100 feet of structures, except for Public Safety Systems installed pursuant to Section 5.5.11 (Public Safety Systems) and without need for notice to or approval from DISTRICT, GRANTOR may undertake brush removal, mowing, grazing, tree trimming, targeted tree removal, and other vegetation management methods of similar nature and intensity.

b) Further than 100 feet from structures, or in relation to Public Safety Systems installed pursuant to Section 5.5.11 (Public Safety Systems), GRANTOR may undertake vegetation management pursuant to a Vegetation Management Plan (defined below) approved in advance by DISTRICT pursuant to Section 6 (Notice and Approval Procedures). A “Vegetation Management Plan” is a document designed to guide GRANTOR’s conduct of vegetation management pursuant to this Section and may describe either an individual vegetation management project or a more comprehensive plan covering multiple projects. Any Vegetation Management Plan must incorporate the best available science and must identify the following: (i) the purpose of proposed work, (ii) the location of the treatment area(s), (iii) a timeline for completion, (iv) the “before” condition of

the treatment area(s), (v) management objectives, (vi) treatment methods including any new infrastructure, (vii) post-treatment maintenance, and (viii) best management practices, such as soil protection, appropriate tree spacing, special-status species protection, invasive species management, and snag retention. Any Vegetation Management Plan must be consistent with any then-current DISTRICT wildfire management policy, the Management Plan, and the terms of this Easement. Any Vegetation Management Plan may include the following treatment methods:

- i. Limited brush removal and mowing, or other methods of similar nature and intensity;
- ii. Limited grazing undertaken in accordance with sound, generally accepted conservation practices;
- iii. Limited tree trimming and limited tree removal within a fuel break area or calming zone (as designated in the approved Vegetation Management Plan), and, if recommended by a fire protection agency having jurisdiction, vegetation removal within a fire break (as designated in the approved Vegetation Management Plan); and
- iv. Prescriptive or cultural burning consistent with the standards and requirements of the local fire protection agency having jurisdiction.

c) Following any such vegetation management, GRANTOR shall promptly provide to DISTRICT a record of the “after” condition of the treatment areas, such as photographs and descriptions of the results of treatment.

5.6.5 Management, Restoration, and Enhancement. With prior approval from DISTRICT, GRANTOR may undertake conservation and restoration activities, including, but not limited to bank and soil stabilization, practices to enhance water quality, native plants and wildlife habitat and connectivity, and to promote biodiversity. Such conservation and restoration activities may be permitted in Natural Areas and drainages to Stemple Creek even if it would impact the agricultural values in the immediately surrounding area.

5.6.6 Native Tree Removal. Harvesting, cutting, trimming, transplanting, 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 5.6.4 (Vegetation and Fuel Management); and (iv) for natural resource management as set forth in Section 5.6.5

(*Management, Restoration, and Enhancement*) of this Easement. Native trees removed pursuant to this Section 5.6.6 may be used for personal firewood.

5.6.7 Native Vegetation Removal. Removal or destruction of any native non-tree vegetation is prohibited, except as reasonably necessary (i) for permitted agricultural uses; (ii) within footprint of permitted structures and improvements; (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 5.6.4 (Vegetation and Fuel Management); and (vi) for natural resource management, as set forth in Section 5.6.5 (Management, Restoration, and Enhancement) of this Easement.

5.6.8 Native Animal Removal. Killing, hunting, trapping, injuring, or removing native animals is prohibited except (i) under imminent threat to livestock or human life or safety; (ii) when reasonably necessary to control problem animals affecting agricultural operations; (iii) as reasonably necessary for restoration in accordance with Section 5.6.5 (Management, Restoration, and Enhancement); (iv) personal non-commercial hunting; and (v) fishing within converted manure ponds pursuant to Sections 5.5.4 (Recreational and Educational Uses) and 5.5.7 (Improvements for Recreational and Educational Uses and Farm Days); using selective control techniques consistent with the policies of the Sonoma County Agricultural Commissioner and other governmental entities having jurisdiction.

5.6.9 Non-Native Plants and Animals.

a) Removal. GRANTOR may remove or control non-native plant and animal species, including commercial hunting and fishing permitted in Section 5.4.8 (Commercial Use), provided that techniques used minimize harm to native wildlife and plants and are in accordance with sound, generally-accepted conservation practices.

b) Introduction. GRANTOR shall not establish or plant non-native plant and animal species except for permitted agricultural uses or within designated Building Envelopes.

5.6.10 Off-road Motorized Vehicle Use. Use of motorized vehicles off roadways is prohibited, except for the minimum necessary in connection with permitted agriculture, construction, maintenance, emergency access, and property management activities.

5.6.11 Dumping & Waste Removal. Dumping, releasing, burning, or other disposal or accumulation 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 of or temporarily stored on site, consistent with sound generally accepted agricultural practices. GRANTOR shall promptly remove garbage or materials dumped on the Property by third parties.

5.6.12 Outdoor Storage. Outdoor storage shall be prohibited except as provided in this Section.

a) Storage of Materials Related to Allowed Uses. GRANTOR may store vehicles, building materials, machinery or agricultural supplies and products reasonably necessary for permitted uses outdoors so long as such storage is (i) consistent with sound generally accepted agricultural practices; and (ii) located so as to avoid and minimize visual impacts.

b) Storage of Construction Materials. GRANTOR may store construction and other work materials needed during construction of permitted structures and improvements outdoors 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 one hundred-eighty (180) days.

**5.7. Public Access to the Property**. Nothing contained in this Easement shall be construed as granting, permitting or affording the public access to any portion of the Property or as limiting or precluding GRANTOR's right to exclude the public from the Property. Nothing in this Easement shall be construed to preclude GRANTOR's right to grant access to third parties across the Property, provided that such access is allowed in a reasonable manner and is consistent with the Conservation Purpose of this Easement and so long as such access is undertaken subject to the terms and conditions of this Easement.

## **5.8. Easements**

5.8.1 Existing Easements. GRANTOR may continue the use of existing easements of record granted prior to this Easement.

5.8.2 New Easements. The granting of new temporary or permanent easements, and the modification or amendment of existing easements is prohibited without the prior approval from DISTRICT. Under no circumstances shall DISTRICT

approve the granting of subsequent easements, interests in land, or use restrictions that might diminish or impair the agricultural productive capacity or open space character of the Property. Any such subsequent easements, interests in land, and use restrictions shall make reference to and be subordinate to this Easement. DISTRICT shall notify the Council immediately upon receipt of request by the GRANTOR to grant a subsequent easement, interest in land, or use restriction on the Property, and provide copies of documents associated with such a request to the Council. DISTRICT shall notify the Council once it has approved the grant of any subsequent easement, interest in land, or use restriction on the Property, and provided copies of the recorded documents in that year's annual report unless otherwise requested.

5.8.3 Prescriptive Easements. 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 FOUR: PROCEDURES AND REMEDIES**

**6. Notice and Approval Procedures.** Some activities and uses permitted by this Easement require that prior notice be given by GRANTOR to DISTRICT, while other activities and uses permitted by this Easement require the prior 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 procedures set forth below to provide notice to DISTRICT or to obtain DISTRICT's approval. All notices and requests for approval shall be provided in writing and shall include all information necessary to permit DISTRICT to make an informed judgment as to the consistency of GRANTOR's request with the terms, conditions, and Conservation Purpose of this Easement. DISTRICT may request such additional or supplemental information as it deems necessary to evaluate any notice or request for approval. Forms for notices and requests for approval shall be available at DISTRICT's offices. Copies of all documents related to such notice or approvals shall be provided to the Council.

**6.1. Uses/Activities Requiring Notice to DISTRICT.** For any activity or use that requires prior notice to DISTRICT, GRANTOR shall deliver such notice in writing to DISTRICT at least forty-five (45) days prior to seeking any building or grading permit, zoning change, or environmental regulatory review, or if no such administrative action is required, at least forty-five 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. To expedite the review and permitting process, DISTRICT may, in its sole discretion, waive the requirement to submit notices related to building or grading from the County of Sonoma prior to

application for such permits, thereby allowing DISTRICT to review such notices concurrently with county permitting authorities.

**6.2. Uses/Activities Requiring Prior Approval from DISTRICT.** For any activity or use that requires prior approval from DISTRICT, GRANTOR shall deliver a written request for such approval ("GRANTOR's request") at least forty-five (45) days prior to seeking any building or grading permit, zoning change, or environmental regulatory review, or if no such administrative action is required, at least forty-five days prior to the intended commencement of such activity or use. To expedite the review and permitting process, DISTRICT may, in its sole discretion, waive the requirement to submit requests for approval related to building or grading from the County of Sonoma prior to application for such permits, thereby allowing DISTRICT to review such notices concurrently with county permitting authorities. 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. In order to consider GRANTOR's request complete, DISTRICT may require that GRANTOR submit additional information and/or a plan for such proposed activity or use. 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. The DISTRICT shall grant permission to GRANTOR only where DISTRICT, acting in the DISTRICT's sole reasonable discretion and in good faith, determines that the proposed use is not prohibited by this Easement. 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.

**6.3. 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.

**6.4. Uses/Activities Not Expressly Addressed: DISTRICT's Approval.** In the event GRANTOR desires to commence an activity or use on the Property that is neither expressly permitted nor expressly prohibited in Section 5 (GRANTOR's Restricted Rights), GRANTOR shall seek DISTRICT's prior written approval of such activity or use in accordance with the procedure

set forth in Section 6.2 (Uses/Activities Requiring Prior Approval from DISTRICT). The exercise of any activity or use not expressly permitted in Section 5 (GRANTOR's Restricted Rights) may constitute a breach of this Easement and may be subject to the provisions of Section 10 (Enforcement and Remedies for Breach).

**6.5. Review of Plans.** Any Vegetation Management Plan or other plan required by this Easement, along with updates and amendments (collectively for purposes of this Section, "Plan"), requires review and approval by DISTRICT in accordance with this Section 6.5 and shall be consistent with the terms and conditions of this Easement. The Plan shall have no effect and shall not govern activity on the Property until it has been approved by DISTRICT. DISTRICT may require periodic updates to any Plan as a condition of approval.

6.5.1 GRANTOR shall not commence any activity or use for which this Easement requires a Plan, unless and until DISTRICT approves a Plan that describes and governs the activity or use and any associated structures and improvements. The review procedures of Section 6 (Notice and Approval Procedures) shall apply except that DISTRICT shall have sixty (60) days to review a proposed Plan, not forty-five (45) days.

6.5.2 Any Plan shall be sufficiently specific to enable DISTRICT to make a reasonable determination regarding whether the Plan is consistent with the terms and Conservation Purpose of this Easement. Any Plan shall identify best management practices to assure that management activities, uses, and associated structures and improvements are conducted in a manner that is beneficial to the Conservation Values of the Property and consistent with this Easement.

6.5.3 Once a Plan is approved by DISTRICT, all uses and associated structures and improvements covered by the Plan shall be implemented in a manner consistent with it. DISTRICT's approval of a Plan shall establish that all uses and associated structures and improvements described therein are consistent with the terms, conditions, and Conservation Purpose of this Easement and thus permitted on the Property without further notice to or approval by DISTRICT as long as the Plan remains in effect, unless stated otherwise in the Plan. All such activities, uses, structures, and improvements shall at all times remain subject to the substantive limitations of Section 5 (GRANTOR's Restricted Rights). Any revisions to a Plan are subject to DISTRICT approval.

6.5.4 DISTRICT may require GRANTOR to revise or update the Plan, at GRANTOR's expense, to address changed conditions on the Property. In the event of such a request by DISTRICT, GRANTOR shall submit proposed revisions to the Plan to DISTRICT within one hundred twenty (120) days of DISTRICT's request. Such revisions will be subject



to the review and approval procedures set forth in Section 6 (Notice and Approval Procedures).

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

**7.1. Maintenance of the Property.** Neither DISTRICT nor Council shall have any responsibility for the management or control of the day-to-day operations 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 shall be solely responsible for any costs related to the maintenance of general liability insurance covering acts on the Property. 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 (Indemnification and Responsibilities), 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: (i) 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"); (ii) The obligations or liabilities of a person described in 42 United States Code section 9607(a)(3) or any successor statute then in effect; (iii) The right to investigate and remediate any hazardous materials, as defined below, on or associated with the Property; or (iv) 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 warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws, as defined below. GRANTOR warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with or any liability under any Environmental Law relating to the operations or conditions of the

Property. 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.

7.2.4 If at any time after the Effective Date there occurs a release, discharge or other incident in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, GRANTOR agrees to take any steps that are required of GRANTOR with respect thereto under federal, state, or local law necessary to ensure its containment and remediation, including any cleanup.

## **8. Indemnification and Responsibilities.**

### **8.1. GRANTOR's Indemnity.**

8.1.1 Of DISTRICT. 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; and (ii) the obligations specified in Section 7 (Costs and Liabilities Related to the Property); and (iii) any approvals given under Section 6 (Notice and Approval Procedures). 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.

8.1.2 Nonliability of Council. Neither the Council, nor its agents and assigns, shall have responsibility for the operation of the Property, monitoring of hazardous conditions on it, or the protection of GRANTORS, the public, or any third parties from risks relating to conditions on the Property. Without limiting the foregoing, neither the Council nor its agents and assigns shall be liable to GRANTOR or other person or entity in connection with consents given or withheld, or in connection with any entry upon the Property occurring pursuant to this Easement, or on account of any Claim, liability, damage, or expense suffered or incurred by or threatened against GRANTOR or any other person or entity, except as the Claim, liability, damage, or expense is the result of the negligence or willful misconduct of the Council and/or its agents and assigns.

8.1.3 Operations and Maintenance of the Property. GRANTOR retains and 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, and federal authorities on the Property. GRANTOR further agrees to maintain general liability insurance covering acts on the Property. Except as specifically set forth in Section 8.2 (District Responsibilities) below, DISTRICT shall have no responsibility whatsoever 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 8.2 (District Responsibilities), 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.

**8.2. DISTRICT Responsibilities**. DISTRICT shall manage its responsibilities as holder of this Easement in order to uphold the Purpose of this Easement. DISTRICT's responsibilities

include, but are not limited to, annual monitoring, such additional monitoring as circumstances may require, record keeping, and enforcement of this Easement, for the purpose of preserving the Property's Conservation Values in perpetuity. DISTRICT shall report to the Council after the annual monitoring visit, describing method of monitoring, condition of the Property, stating whether any violations were found during the period, describing any corrective actions taken, the resolution of any violation, any requested or approved actions, and any transfer of interest in the Property (the "Monitoring Report"). DISTRICT shall make a reasonable effort to provide the Council with the Monitoring Report within ninety (90) days of the annual monitoring visit, but in no case shall the Monitoring Report be provided later than June 30 of the year following the year in which the monitoring visit occurred. Failure to do so shall not impair the validity of this Easement or limit its enforceability in any way.

**9. Baseline Documentation for Enforcement.** In order to establish the present condition of the Property as of the Effective Date, DISTRICT has prepared a Baseline Report with the cooperation of GRANTOR, which is incorporated herein by this reference. The Baseline Report contains an inventory of the agricultural and other characteristics of the Property and a description of its current use and state of improvement. The Baseline Report is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement. The Baseline Report may be used to establish whether a change in the use or condition of the Property has occurred, but its existence shall not preclude the use of other evidence to establish the condition of the Property as of the Effective Date. GRANTOR and DISTRICT acknowledge and agree that the Baseline Report is complete and accurate as of the Effective Date. Both the GRANTOR and the DISTRICT shall retain copies of the signed Baseline Report. The original Baseline Report will be maintained on file with DISTRICT.

**10. Enforcement and 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, recover damages for such violation, and/or require the restoration of the Property to the condition that existed prior to such violation.

10.1.1 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 20 (Notices).

10.1.2 If DISTRICT reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values protected by this Easement, DISTRICT (i) may pursue any and all remedies available under law without waiting for the cure period to expire; (ii) shall have the right, without 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; and (iii) shall have the right to record a notice of violation in the Office of the Sonoma County Recorder.

10.1.3 DISTRICT's rights under this Section 10.1 shall apply equally in the event of either actual or threatened violations of the terms of this Easement.

10.1.4 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. DISTRICT may further recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement (including but not limited to damages for the loss of scenic, recreational, or environmental values), and to require the restoration (or damages for the cost of restoration) of the Property to the condition that existed prior to any such injury. To the extent that any financial benefit gained from the violation of this Easement exceeds the amount of damages awarded or the value of other remedies provided, GRANTOR expressly agrees that disgorgement of any such additional benefits or profits is an appropriate remedy that shall apply to such a violation, regardless of whether such benefit exceeds the cost incurred by GRANTEE or quantifiable harm to the Property as a result of the violation.

10.1.5 All reasonable costs incurred by DISTRICT in enforcing this Easement against GRANTOR, shall be borne by GRANTOR; provided, however, that if GRANTOR ultimately prevails in a judicial enforcement action or arbitration proceeding brought by DISTRICT, then DISTRICT shall bear its own costs and pay for GRANTOR's reasonable costs and expenses of suit. Costs are defined for purposes of this Section, and all other references to costs in this Easement, as including all reasonable costs necessitated by GRANTOR's violation of the terms of this Easement or request for approval or amendment. Costs include, without limitation, costs of restoration necessitated by violation of this Easement; costs and expenses of suit; reasonable professional fees of attorneys, consultants, witnesses, surveyors, and accountants; and expenses and compensation for DISTRICT staff time required to respond to a violation or request.

**10.2. Uses of Damages.** Without limiting GRANTOR's liability, DISTRICT, after being reimbursed for all actual enforcement costs, shall then apply damages recovered to the cost of undertaking any enforcement and corrective action on the Property. DISTRICT shall utilize any remaining damages for land conservation, stewardship, or restoration work in Sonoma County. Should the restoration of lost Conservation Values be impossible or impractical for whatever reason, Council shall be entitled to its proportionate share (calculated as a percentage of the total enforcement costs paid by Council and DISTRICT) of any damages directly associated with the loss of Conservation Values recovered and not applied to enforcement costs or corrective action to enhance or restore the Property.

**10.3. No Waiver.** Notwithstanding any rights of Council described in *Sections 4.3 (Council's Limited Right of Entry and Inspection)* and *4.4 (Approval of Certain Uses)*, 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. GRANTOR hereby waives any defense of laches, waiver, estoppel, or prescription.

**10.4. Remedies Nonexclusive.** The remedies set forth in this *Section 10* 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.** Except as otherwise provided in *Section 5.1.6 (Duty to Prevent Waste, Nuisance, and Trespass)* and this *Section 11*, 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 wildfire, flood, storm, earth movement, or a tortious or criminal act of a third party which GRANTOR could not have reasonably 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. Notwithstanding the foregoing, GRANTOR shall be liable to DISTRICT for modifications or damage to the Property that impair or damage the Conservation Values of the Property when those modifications or damages result from the acts or omissions of third parties whose use of or presence on the Property is authorized, expressly or implicitly, or requested by GRANTOR. In the event that the Conservation Values of the Property are damaged or impaired as a result of the acts or omissions of third

parties, GRANTOR shall diligently pursue all available legal remedies against such parties to ensure restoration of the Property and the Conservation Values. Nothing contained herein limits or precludes GRANTOR's or DISTRICT's rights to pursue any third party for damages to the Property's Conservation Values.

## **12. Extinguishment and Condemnation.**

**12.1. Extinguishment.** Subject to the requirements and limitations of California Public Resources Code section 5540, or any successor statute then in effect, if circumstances arise in the future that render the Conservation Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. DISTRICT shall give notice to the Council of any prospective termination or extinguishment of this Easement not less than sixty (60) business days before initiating such proceedings. The Council may intervene in any such judicial proceedings to protect or retain this Easement.

12.1.1 Laches. No inaction or silence by DISTRICT shall be construed as abandonment of the Easement. The fact that the Property is not in agricultural use, or that agricultural use is no longer possible, is not reason for termination or extinguishment of this Easement so long as the Purpose of this Easement remains possible to accomplish. Other than pursuant to eminent domain or an involuntary acquisition for a necessary public use by public agency, corporation, or other entity or individual with the power of eminent domain ("Acquiring Entity"), no other voluntary or involuntary sale, exchange, conversion, transfer, assignment, lease, mortgage, or other encumbrance, alienation, or conveyance of any kind of all or part of the Property, or of any interest in it, shall limit, terminate or extinguish the provisions of this Easement.

12.1.2 Compensation for Loss of Interest. The amount of the compensation to which DISTRICT and Council shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property after such termination or extinguishment, shall be determined, unless otherwise provided by California law at the time, in accordance with Section 13.

12.1.3 Use of Proceeds. All proceeds paid to DISTRICT shall be used by DISTRICT for the purpose of the preservation of agriculture and open space within Sonoma County. The Council, in using any proceeds received, shall use the funds in accordance with the intent of the Program.

**12.2. 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 (an "Acquiring Entity"), 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.

12.2.1 Communications Regarding Condemnation. If GRANTOR receives notice, formal or informal, that any Acquiring Entity intends to exercise its power of eminent domain as to the Property or any portion thereof or any interest therein, GRANTOR shall promptly, and in any event not less than fifteen (15) business days after receipt of such notice, give written notice to the DISTRICT together with a copy of any and all communications related to such prospective eminent domain proceedings, and the DISTRICT shall notify the Council of such receipt. GRANTOR shall thereafter promptly provide to DISTRICT copies of all further communications related to such proceedings and DISTRICT shall provide copies to the Council, and GRANTOR shall cooperate with DISTRICT and the Council in responding to such proceedings.

12.2.2 Applicable Law. This Easement was acquired in whole or in part with government funds. The acquisition of the Easement through the power of eminent domain must comply with the eminent domain laws of the State of California, including section 1240.220, 1240.510 and section 1240.610 of the Code of Civil Procedure, federal law, and this Easement. Purchase in lieu of condemnation, or settlement of an eminent domain proceeding, shall occur pursuant to applicable laws and procedures, including to California Government Code sections 7267.1 and 7267.2, and shall require approval of the DISTRICT and the Council. The DISTRICT and the Council shall have an opportunity to accompany the appraiser for the Acquiring Entity when the appraiser goes on the Property with GRANTOR.

12.2.3 Recovery of Expenses. Any expense incurred by GRANTOR or DISTRICT in any exercise of the power of eminent domain shall first be reimbursed out of the recovered proceeds; the remainder of such proceeds shall be divided between GRANTOR, DISTRICT, and Council in proportion to their interests in the Property, as established by Section 13 (Property Interest and Fair Market Values).

12.2.4 Remainder Encumbered. Should this Easement be condemned or otherwise terminated on any portion of the Property, the balance of the Property shall remain subject to this Easement and reimbursement shall be pro-rated. In this event, all relevant related documents shall be updated and re-recorded by the DISTRICT to reflect the modified easement area. Encumbrances junior to this Easement shall remain subordinate to the Easement as amended.



**13. Property Interest and Fair Market Values.** This Easement constitutes a real property interest immediately vested in DISTRICT.

**13.1. Easement Value.** The parties stipulate and agree that the Easement shall have a fair market value determined as the greater of: (i) The fair market value of the Property, as though unencumbered by this Easement, at the time of the proposed termination, multiplied by the Easement Percentage (defined below); or (ii) The fair market value of the Easement at the time of the proposed termination. The fair market valuation shall be determined by an appraisal performed by a qualified appraiser jointly selected by GRANTOR, DISTRICT, and the Council. Appraisals shall conform to the Uniform Standards of Professional Appraisal Practices and DISTRICT's then-current appraisal guidelines. If GRANTOR has initiated termination of the Easement through a judicial proceeding, GRANTOR shall pay the cost of the appraisal, and the appraisal is subject to approval by DISTRICT and the Council. Nothing herein shall prevent GRANTOR, DISTRICT, or the Council from having an appraisal prepared at its own expense.

**13.1.1 Easement Percentage.** As of the Effective Date and based on the appraisal relied upon to fund the acquisition of this Easement, "Easement Percentage" is hereby defined and established as the ratio of the value of the Easement at the time of this acquisition to the value of the Property, unencumbered by the Easement, at the time of this acquisition. This Easement Percentage shall remain constant. The Easement Percentage on this Property is: 46.85%.

**13.1.2 Payment of Easement Value.** The value of the Easement terminated or extinguished shall be determined in accordance with this Section 13 and DISTRICT shall receive from GRANTOR the entire value of the Easement to the extent terminated or extinguished. Until such compensation is paid to DISTRICT in full, the amount of that compensation shall be a first priority lien on the Property with the same seniority as this Easement.

**13.1.3 Proportionate Shares of Easement Value.** Any compensation or proceeds paid to DISTRICT for the taking by eminent domain or by purchase in lieu of eminent domain of all or any portion of this Easement, whether by agreement, by court order or otherwise, shall be allocated between DISTRICT and the Council proportionately to the contribution each made to the purchase of this Easement as specified below: The proportionate shares for this Easement are: 69.35% DISTRICT and 30.65% Council.

**13.1.4 Effect of Non-Payment.** This Easement shall not be deemed terminated or extinguished until such payment is received by the State of California, Sustainable Agricultural Lands Conservation Program.

**14. Title Insurance Proceeds.** If DISTRICT obtains payment on a claim under a title insurance policy insuring this Easement, payment shall be distributed between DISTRICT and Council as set forth in Section 13 (*Property Interest and Fair Market Values*).

#### **PART FIVE: MISCELLANEOUS**

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

**16. 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. In the event of a conflict between the Project Structure Map and the Baseline Site Map, the Baseline Site Map will control.

**17. Easement to Bind Successors.** Pursuant to California Civil Code at Part 2, Chapter 4, (commencing with section 815), which defines and authorizes perpetual conservation easements; 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 purchasers at tax sales, assigns, administrators, 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. No merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to DISTRICT, or its successors or assigns. It is the express intent of the Parties that this Easement not be extinguished by, merged into, modified, or otherwise deemed affected by any other interest or estate in the Property now or hereafter held by the DISTRICT or its successors or assigns.

**18. 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 a leasehold interest) is conveyed, and the document of conveyance or lease shall expressly incorporate by reference this Easement. GRANTOR will provide a copy of this Easement to any party acquiring an interest in the Property from GRANTOR. GRANTOR further agrees to give written notice to DISTRICT and Council of the conveyance of any interest in the Property at least thirty (30) 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 13 (*Property Interest and Fair Market Values*) of this Easement and the failure of GRANTOR to perform any act required by this Section 18 shall not impair the validity of this Easement or limit its enforceability in any way.

**19. 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 leases, liens or deeds of trust other than the leases, liens or deeds of trust identified in Exhibit D, attached hereto and incorporated herein by this reference, whose beneficiaries have therein consented to this Easement, agreed to subordinate their respective interests in the Property to this Easement, and covenanted that any sale made under the provisions of the respective liens or deeds of trust shall be subject to this Easement.] GRANTOR represents and warrants that the Property is not subject to any restrictions or easements other than what is identified in in Exhibit D (Prior Encumbrances), attached hereto and incorporated herein by this reference.

**20. Notices.**

**20.1. 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: Bodega Avenue, LLC  
Attn. George McClelland  
6475 Bodega Ave.  
Petaluma, CA 94952

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

To Council : Strategic Growth Council  
C/O California Department of Conservation, Division of Land  
Resource Protection  
Attn: Sustainable Agricultural Land Conservation Program  
715 P Street, MS 1904  
Sacramento, CA 95814

Or to such other address as such party from time to time may designate by written notice pursuant to this Section 20.

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

20.2.1 When mailed first class postage prepaid to the last address designated by the recipient pursuant to Section 20.1 (Method of Delivery), 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 GRANTOR or DISTRICT or an officer or employee thereof shall be sufficient to constitute proof of mailing.

20.2.2 When sent by fax to the last 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 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.

20.2.3 In all other instances, notice shall be deemed given at the time of actual delivery.

**20.3. 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.

**21. 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 and with DISTRICT's easement amendment policies; shall ensure protection of the Conservation Values of the Property; shall not affect the Easement's perpetual duration nor the status or rights of the DISTRICT under the terms of this Easement; shall be consistent with Public Resources Code section 5540 and Civil Code 815 *et seq.*, and any successor statutes then in effect; and has been approved by Council.

**21.2.** DISTRICT must provide timely written notice to the Council's Executive Director of any proposed amendment(s). Council shall have 45 days to object to such amendment and to provide DISTRICT and GRANTOR with a written explanation as to why the Amendment should not be approved. If Council fails to object within 45 days, the Amendment will be considered approved by Council.

**21.3.** Any such amendment shall be in writing, executed by GRANTOR and DISTRICT, and recorded in the Office of the Sonoma County Recorder. A copy of the recorded amendment shall be provided to the Council within thirty (30) days of recordation.

**21.4.** Subject to Section 21.1, any purported amendment that is recorded without the prior approval of GRANTOR, Council, and DISTRICT is null and void.

**22. No Forfeiture.** GRANTOR represents and warrants that nothing contained in this Easement shall result in a forfeiture or reversion of GRANTOR's title in any respect. If a forfeiture or reversion does occur, GRANTOR shall return, with interest, all consideration paid by DISTRICT for the acquisition of this Easement. If a forfeiture or reversion does occur, GRANTOR shall return, with interest calculated in accordance with the rate established pursuant to the next sentence, all consideration paid by DISTRICT for the acquisition of this Easement. The interest rate applicable to the amount owed to DISTRICT pursuant to this paragraph shall be the greater of (i) 5% or (ii) the percentage change in the Consumer Price Index for All Urban Consumers (base year 1982-1984 = 100) for San Francisco Oakland and San Jose published by the United States Department of Labor, Bureau of Labor Statistics from the date the Easement is recorded to the date of DISTRICT's demand for reimbursement pursuant to this paragraph.

**23. Assignment of Rights and Obligations.**

**23.2. GRANTOR.** GRANTOR's rights and obligations under this Easement will be assigned to GRANTOR's successor-in-interest upon transfer of GRANTOR's interest in the Property to such successor, except that GRANTOR's liability for acts or omissions occurring prior to the transfer shall survive the transfer.

**23.3. DISTRICT.** This Easement may only be assigned or transferred to an entity authorized to hold such Easement as specified under section 815.3 of the California Civil Code and that has similar purposes to preserve agricultural lands and open space.

23.2.1 Prior to commencing the statutory process required for assignment, transfer, or exchange of this Easement under the California Public Resources Code, DISTRICT must obtain written permission from the Council, which permission shall not be unreasonably withheld.

23.2.2 If DISTRICT or its successors ever ceases to exist or no longer qualifies under applicable state law to hold conservation easements, the Council shall consult the County of Sonoma to identify and select an appropriate process for selecting a successor public entity to whom this Easement shall be transferred.

**23.3. 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.

**23.4. 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.

**24. 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 or her duly authorized representatives.

**25. Fees and Charges.** DISTRICT shall have the right to establish and impose on GRANTOR reasonable fees and charges, including attorney's fees, on GRANTOR for inspections, approvals, and other services performed by or for DISTRICT pursuant to this Easement. Such fees and charges shall not exceed the reasonable costs of providing such services.

**26. 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 21 (Amendment).

**27. 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.

**28. Notary.** All signatures of the Parties and all documents executed pursuant to this Easement and any amendments shall be acknowledged before a Notary Public, and a certificate of acknowledgement shall be attached. This Easement and any amendment and related documents shall be recorded in in the Office of the Recorder of Sonoma County, California.

**29. Counterparts.** This Easement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.

**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 recordation 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. Acceptance of Interest.** The By execution of this Agreement by its duly authorized representative (President of the Board), DISTRICT hereby accepts without reservation the rights and responsibilities conveyed to it by this Easement and consents to the recording of this Easement.

**33. Effective Date.** This Easement shall be effective as of the date of its recordation in the official records of Sonoma County (the "Effective Date").

IN WITNESS WHEREOF, GRANTOR and DISTRICT have executed this Easement this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

GRANTOR:

By: \_\_\_\_ DO NOT SIGN \_\_\_\_\_  
George McClelland,  
Title \_\_\_\_\_, Bodega Ave, LLC

By: \_\_\_\_ DO NOT SIGN \_\_\_\_\_  
Dora McClelland,  
Title \_\_\_\_\_, Bodega Ave, LLC

DISTRICT:

SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE  
DISTRICT

By: \_\_ DO NOT SIGN \_\_\_\_\_  
NAME, President of the Board of Directors

ATTEST:

\_\_\_\_\_  
Noelle Francis, Deputy Clerk of the Board of Directors

**NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED FOR ALL SIGNATORIES.**

**Exhibit A:** Legal Description

**Exhibit B:** Project Structure Map

**Exhibit C:** Description of Easement Designation Areas

**Exhibit D:** Exceptions to Title/Prior Encumbrances

**Exhibit E:** Vicinity Map

Certificate of Acceptance



## Exhibit A

### Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA IN COUNTY OF SONOMA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

#### **Tract One:**

##### Parcel One:

A tract of land in the Rancho Laguna de San Antonio, in Township 5 North, Range 8 West, M.D.M., and particularly described as follows: Commencing at a point in the center of the Petaluma-Two Rock County Road, at the Northeasterly corner of that certain tract of land conveyed by H.R. Doss to T.B. Purvine by deed dated April 30, 1921 and recorded in [Book 398 of Deeds, page 476](#), Sonoma County Records; thence, along the center of said County Road, South 72° 54' West, 650.6 feet; thence South 78° 04' West, 334.1 feet; thence South 78° 55' West, 833.3 feet to the POINT OF BEGINNING of the tract of land to be herein described; thence from said point of beginning, South 11° 05' East, 951.0 feet to an iron pipe monument; thence South 44° 37' East, 2514.4 feet to an iron pipe monument driven on the Northwesterly line of Lot 4 as shown and designated upon the map entitled "Plat of Subdivision of Lands of the Heirs of Mary J. Purvine Dec.," said map being on file in [Book 12 of Maps, page 17](#), Sonoma County Records; thence South 42° 44' West, 938.1 feet to the most Westerly corner of said Lot 4; thence North 47° 03' East, 207.1 feet; thence South 39° 55' West, 458.8 feet; thence North 47° 29' West, 487.4 feet to an iron pipe monument; thence North 47° 09' West, 675.2 feet to an iron pipe monument; thence North 21° 00' 30" West, 2907.2 feet to a point in the center of said County Road; thence along the center of said County Road, South 87° 41' East, 343.6 feet and North 78° 55' East, 700.0 feet to the point of beginning.

Excepting therefrom the land deeded by Robert & Lillian E. McClelland to the County of Sonoma and recorded 5-20-1965 in [Book 2129 of Official Records, Page 916](#), S.C.R.

##### Parcel Two:

A tract of land in the Rancho Laguna de San Antonio, in Township 5 North, Range 8 West, M.D.M., and particularly described as follows: Commencing at a point in the center of the Petaluma-Two Rock County Road, at the Northeasterly corner of that certain 70.77 acre tract of land conveyed by H.R. Doss to T.B. Purvine by deed dated April 30, 1921, and recorded in [Book 398 of Deeds, page 476](#), Sonoma County Records; thence along the center of said County Road, South 72° 54' West, 650.6 feet; thence South 78° 04' West, 334.1 feet to the POINT OF BEGINNING of the tract of land to be herein described; thence South 28° 50' East, 395.7 feet to an iron pipe monument; thence South 47° 05' East 3611.0 to an iron pipe monument; thence North 83° 00' East, 754.3 feet to an iron pipe monument driven on the Northwesterly line of Lot 5, as shown and designated upon the map of Plat of Subdivision of lands of the heirs of Mary J. Purvine, Dec., said map being on file in [Book 12 of Maps, page 17](#), Sonoma County Records; thence North 25° 12' East, 793.7 feet to an iron pipe monument driven at the most Northerly corner of said Lot 5; thence South 51° 52' East, 1037.7 feet to an iron pipe monument driven at the most Easterly corner of said Lot 5; thence South 40° 26' West along the Southeasterly line of said Lot 5 a distance of 790.4 feet; thence North 65° 37' West, 805.3 feet to an iron pipe monument; thence South 64° 13' West, 1031.1 feet to an iron pipe monument; thence South 40° 26' West, 30.0 feet to an iron pipe monument driven on the Southwesterly line of said Lot 5; thence North 47° 09' West, 1365.7 feet to the common Northwesterly corner of Lots 4 and 5 of said Subdivision; thence South 42° 44' West, along the Northwesterly line of said Lot 4, a distance of 602.0 feet; thence North 44° 37' West, 2514.4 feet to an iron pipe monument; thence North 11° 05' West, 951.0 feet to a point in the center of said Petaluma-Two Rock County Road; thence North 78° 55' East, along the center of said County Road, 833.3, feet to the point of beginning.

Excepting therefrom that land deeded by Robert & Lillian E. McClelland to the County of Sonoma and recorded 5-20-1965 in [Book 2129 of Official Records, Page 916](#), S.C.R.

##### Parcel Three:

Northeasterly corner of the 70.77 acre tract of land conveyed by H.R. Doss to T.B. Purvine by Deed dated April 30, 1921 and recorded in [Book 398 of Deeds, page 476](#), Sonoma County Records, thence from said POINT OF BEGINNING South 42° 45' East along the Northeasterly line of said 70.77 acre tract, 3340.8

feet to an iron pipemonument driven at the Southeasterly corner thereof; thence South 31° 54' West, 10.6 feet to an iron pipe monument driven at the most Northerly corner of that certain 10.30 acres tract of land conveyed by Laura Middagh to T.B. Purvine by Deed dated January 28, 1907 and recorded in [Book 235 of Deeds, page 141](#), Sonoma County Records, Thence South 51° 49' East, 570.7 feet to an iron pipe monument driven at the most Easterly corner of said 10.30 acre tract, being a point on the northwesterly line of Lot 5, as shown and designated upon the plat of subdivision of lands of the heirs of Mary J. Purvine deceased, filed in [Book 12 of Maps, page 17](#), Sonoma County Records; thence South 25° 12' West, 176.10 feet to an iron pipe monument; thence South 83° 00' West, 754.3 feet to an iron pipe monument; thence North 47° 05' West, 3611.0 feet to an iron pipe monument; thence North 28° 50' West, 395.7 feet to a point in the center of said Petaluma-Two Rock County Road; thence along the center of said County Road North 78° 04' East, 334.1 feet; and North 72° 54' East, 650.6 feet to the point of beginning.

Being the same land described as Parcel IA in the Decree of Settling First and Final Account and Distributing Estate of Sarah A. Purvine, deceased, entered by the Superior Court of the State of California, in and for the County of Sonoma, on November 28, 1930, and a certified copy of which Decree was recorded on November 28, 1930 in [Book 279, page 307, Official Records](#) of Sonoma County. Excepting therefrom that land deeded by Robert & Lillian E. McClelland to the County of Sonoma and recorded 5-20-1 965 in [Book 2129 of Official Records, Page 916](#), S.C.R.

Parcel Four:

Commencing at the middle of the Petaluma and Bloomfield Road, at the intersection of said road with the line between the lands of AB. Doss and H.R. Doss; thence easterly along the middle of said road, 8.04 chains; thence leaving said road, South 48° East, 725 feet to the POINT OF BEGINNING; said point being the most Easterly corner of the 10 acre tract conveyed by Shock to Twitchell, recorded June 2, 1955 under Recorders [Serial No.E-51273](#); thence continuing South 48° East, 1070.20 feet to the most Easterly corner of the 25 acre tract conveyed by Doss to S.P. McNear Co. by Deed recorded February 15, 1928 under Recorders [Serial No. 78274](#); thence along said Southeasterly line South 38° 30' West, 650.10 feet to the most Southerly corner of said McNear tract; thence along the Southwesterly line of said McNear Tract North 42° 45' West to the most southerly corner of said 10 acre tract; thence along the dividing line between the 10 acre tract and the premises herein described North 42° East to the point of beginning.

EXCEPTING a parcel of land over the following described strip. Commencing at the most Easterly corner of the 25 acre tract conveyed to said S. P. McNear Co. thence along the Southerly line of said Tract, South 380 30' West, 153.36 feet; thence North 480 1' West 22 feet; thence North 380 30' East 153.36 feet to the Northeasterly line of said 25 acre tract; thence along said line South 48° East 22 feet to the point of commencement.

[APN: 022-190-018-000](#)

Parcel Five:

A tract of land in the Rancho Laguna de San Antonio, in Township 5 North, Range 8 West, M.D.M, being a portion of that certain 10.30 acre tract of land conveyed by Laura Middagh to T.B. Purvine by deed dated January 28, 1907 and recorded in [Book 235 of Deeds, page 141](#), Sonoma County Records, and of Lot 5 as shown and designated upon the map entitle "Plat of Subdivision of lands of the heirs of Mary J. Purvine, Dec.," said map being filed in [Book 12 of Maps, page 17](#), Sonoma County Records, and particularly described as follows:

BEGINNING at a point on the Southeasterly line of said Lot 5, distant thereon North 40° 26' East, 30.0 feet from the most Southerly corner thereof; thence North 47° 04' West, along a line parallel with and 30 feet Northeasterly from the Southwesterly line of said Lot 5, a distance of 1196.8 feet to an iron pipe monument; thence North 64° 13' East, 1031.1 feet to an iron pipe monument; thence South 65° 37' East, 805.3 feet to a point on the Southeasterly line of said Lot 5; thence South 40° 26' West, 1215.6 feet to the point of beginning.

Being the same land described as Parcel 1 B in the Decree of Settling First and Final Account and Distributing Estate of Sarah A. Purvine deceased, entered by the Superior Court of the State of California, in and for the County of Sonoma, on November 28, 1930 and a certified copy of which decree was recorded on November 28, 1930 in [Book 279, page 307, Official Records](#) of Sonoma County.

**Tract Two:**

Parcel One:

Beginning at a point in the middle of the county highway leading from Petaluma to Bloomfield, said point being the common corner of the lands formerly belonging to Albert B. Dose Estate, and those certain lands contracted by the contracted by the said Albert B. Doss to be sold to Cyrus D. Knowlton and Alba Flora Knowlton, his wife, by an Agreement of Sale dated February 1, 1921 and recorded February 14, 1921 in Book V of Bonds and Agreements, page 174; thence South 47° 59' East 1786.78 feet to a galvanized iron pipe; thence North 38° 28' East 276.93 feet to a stake; thence North 48° 38' West 1623.29 feet to the middle of the county highway leading from Petaluma to Bloomfield; thence along the center line of the aforesaid Petaluma and Bloomfield Road, South 71° 49' West, 300 feet to the point of beginning. Saving and Excepting all that portion conveyed to the County of Sonoma by deed dated June 4, 1965 and recorded June 23, 1965 in [Book 2137 of Official Records, page 520](#), under Recorder's Serial No. J- 49739, Sonoma County Records.

Parcel Two:

Right of Way appurtenant to Parcel One shown above along the Southeasterly side of the above described parcel, which is 22' in width, from a point which is 24' Southwesterly of the most Westerly corner of Parcel 2, as contained in that certain Deed of Trust executed by John Zeen, et ux, dated January 7, 1970 and recorded January 22, 1970 in [Book 2440 of Official Records, page 975](#), under Recorder's Serial No. L-49642, Sonoma County Records; thence along the Northwesterly boundary of said Parcel 2 and the Northeasterly prolongation thereof to the Middle Two Rock Road.

**Exhibit B**  
**Project Structure Map**

**Exhibit C**  
**Descriptions of Easement Designation Areas**

**Exhibit D**  
**Title Exceptions**

[to be added from proforma title policy]

## Exhibit E

### Vicinity Map

