

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

HELEN PUTNAM REGIONAL PARK EXTENSION  
RECREATION CONSERVATION COVENANT  
(California Civil Code §§815 *et seq.*)

THIS AGREEMENT is entered into by and between 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.* (the “District”) and EARTH ISLAND INSTITUTE, INC., a California non-profit public benefit corporation, its successors and assigns and those claiming under it (“Owner”).

*Recitals*

A. The District was formed for the purpose of preserving open space in the County of Sonoma and is funded by a voter approved sales tax, the expenditure of which is directed and limited by the Sonoma County Agricultural Preservation & Open Space 2006 Expenditure Plan (the “2006 Expenditure Plan” or the “Plan”) adopted as part of the Sonoma County Open Space, Clean Water and Farmland Protection Measure (Sonoma County Ordinance No. 5677R).

B. Among the categories of open space identified for protection in the 2006 Expenditure Plan are “fee interests for outdoor public recreation where the public use would not be inconsistent with the open space designations” listed in the Plan.

C. Owner has acquired and now is the owner in fee simple of that certain real property located in Sonoma County and more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the “Property”). Owner intends to transfer the Property to the County of Sonoma for operation as a public park following completion by Owner of initial public access improvements.

D. In a companion transaction of even date, Owner has conveyed a conservation easement (the “Conservation Easement”) to the District generally limiting the use of the Property to natural resource preservation and low-intensity public outdoor recreation consistent with identified open space values. This Covenant is intended to complement the Conservation Easement by assuring the continued and perpetual recreational use of the Property consistent with the Conservation Easement.

E. In a companion transaction of even date, Owner has granted to the District and its assignees an irrevocable offer of dedication (“Irrevocable Offer of Dedication”) of the fee interest in the Property to secure the Owner’s performance under this Covenant.

F. Owner and District have entered into an unrecorded agreement dated \_\_\_\_\_, 202\_, for the development of public access and recreation infrastructure on the Property (the “Matching Grant Agreement”). A copy of the Matching Grant Agreement is on file with District.

### *Agreement*

FOR VALUABLE CONSIDERATION, Owner hereby undertakes the following obligations for the benefit of the District:

1. *The Covenant.* Owner hereby conveys to the District a recreation conservation covenant (“Covenant”) within the meaning of Restatement Third, Property (Servitudes) §1.6(1) and pursuant to the authority of Civil Code §§815 *et seq.* and the common law of California, to

assure that the Property will be continuously used, maintained and operated by Owner and its successors in interest as a public park and open space preserve in perpetuity, available to the public for low-intensity public outdoor recreation and educational uses in a manner consistent with the Conservation Easement and the provisions herein.

*2. Obligation to Provide Low-Intensity Public Outdoor Recreation and Educational Uses.*

A. Owner hereby agrees to use, operate, and maintain the Property as a public park and open space preserve in perpetuity, available to the public for low-intensity outdoor public recreation and educational uses in a manner consistent with the Conservation Easement and the provisions herein. Such use, operation, and maintenance of the Property as a public park and open space preserve shall commence no later than three (3) years from the Effective Date of this Covenant, and shall include, at a minimum, general availability of the Property for public hiking, picnicking and nature study, from sunrise to sunset, seven days per week, except as otherwise provided in Section 5.6 of the Conservation Easement (Public Access Limitations).

B. Owner shall not engage in activities that impede public access to or public use of the Property for low-intensity outdoor public recreation and educational uses pursuant to this Covenant, except as otherwise provided in Section 5.6 of the Conservation Easement (Public Access Limitations).

C. A management plan has been prepared and approved pursuant to Sections 5.1.8 and 6.8 of the Conservation Easement, Owner's use, operation, and maintenance of the Property as a public park and open space preserve shall be in accordance with such management plan, or any replacement plan or permitted use request approved by District pursuant to Sections 5.4, 5.5, 6 of the Conservation Easement.

*3. Enforcement.*

A. In the event of an uncured breach by the Owner of any of its obligations under this Covenant, the District may: (1) institute a suit for specific performance or other equitable relief; (2) institute a suit to recover damages; (3) accept the Irrevocable Offer of Dedication identified in Recital E; or (4) pursue any combination of the foregoing.

B. Prior to taking any action under Paragraph 3.A, the District shall provide

Owner with a notice to cure ("Notice"). The Notice shall be a written notification generally describing the condition or event claimed by the District to be a breach of Owner's obligations that is either mailed or otherwise delivered by the District to Owner. The Notice shall include a reasonable period in which the breach must be cured to the reasonable satisfaction of the District. The remedies provided by Paragraph 3.A shall be available to the District immediately upon expiration of the cure period.

C. Enforcement of the obligations created by this Covenant shall be at the sole discretion of the District. Any forbearance by the District to exercise its rights under this Covenant shall not be deemed or construed to be a waiver or forfeiture by the District.

D. The actual damages incurred by the District resulting from Owner's breach of the obligations imposed by this Covenant are uncertain and would be impractical or extremely difficult to measure. Accordingly, the parties agree that the District's damages shall be measured by the fair market value of the Property, unencumbered and without regard to the Conservation Easement or this Covenant, multiplied by the length of time in years, including fractions thereof, during which the breach remains uncured after Notice was given by the District, multiplied by the then-current annual interest rate for post judgment interest, provided however that:

(i) No action for liquidated damages under this Paragraph 3(D) shall be filed without the consent of the District's Board of Directors or the governing Board of any successor agency to the District; and

(ii) No liquidated damages shall be assessed during any period for which Owner's governing body has, based upon substantial evidence, declared a fiscal emergency rendering it financially unable to perform its obligations under this Covenant; and

(iii) In no case shall liquidated damages exceed one million, four hundred fifty thousand (\$1,450,000) dollars, as adjusted for inflation from the date of recordation of this Covenant, for any single breach.

The Owner's liability for damages is discharged if the Owner cures the breach within the time specified in the District's Notice.

E. The remedies set forth in this Paragraph 3 are in addition to and not intended to displace any other remedy available to either party as provided by this Covenant, the Conservation Easement, the common law or any other applicable local, state or federal law.

F. Nothing contained in this Paragraph 3 shall be construed to entitle the District to bring any action against Owner for any failure to perform resulting from causes beyond Owner's control, including, without limitation, wildfire, flood, storm, and earth movement, or from any prudent action taken by Owner under emergency conditions to prevent, abate, or mitigate a failure to perform resulting from such causes, so long as such action, to the extent that Owner has control, is designed and carried out in such a way as to further the purpose of this Covenant.

4. *Subordinate Instruments.* All instruments granting any lease or other real property interest in the Property to third parties are subject to the limitations on transfers set forth in the Conservation Easement. Any such lease or other real property interest so created by Owner and all of the rights granted thereunder shall be and shall at all times remain subject, subordinate, and inferior to the District's rights under this Covenant and the Conservation Easement. Owner's power to create such third-party estates is limited by and subordinate to the Irrevocable Offer of Dedication herein referenced and, as such, District may terminate any or all estates so created upon its acceptance of said Irrevocable Offer of Dedication.

5. *Third Party Beneficiaries.* The District and Owner do not intend and this Covenant shall not be construed to create any rights in third parties.

6. *Integration.* This writing is the final and complete expression of the agreement between the parties with respect to these matters and any and all prior or contemporaneous agreements written or oral with respect to these matters have been merged into this written instrument, other than the Conservation Easement which remains in full force and effect. This clause shall not be construed to modify or invalidate any other written agreements as between the parties hereto.

7. *Inspection.* The District may, within its sole discretion and from time to time, inspect the Property to determine if Owner is in compliance with this Covenant.

8. *Covenant to Bind Successors.* This Covenant shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Property and shall bind Owner and its successors in interest, including but not limited to purchasers at tax sales, assigns, and all persons claiming under them forever. The parties intend that this Covenant 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 Covenant creates an easement encompassed within the meaning of the phrase "easements constituting servitudes upon or burdens to the property," and irrevocable offers of dedication encompassed within the meaning of the phrase "unaccepted, recorded, irrevocable offers of dedication," as those phrases are used in California Revenue & Taxation Code section 3712(d) and (e), or any successor statute then in effect, such that a purchaser at a tax sale will take title to the Property subject to this Covenant.

9. *Effective Date.* This Covenant shall be effective as of the date of its recordation in the Official Records of Sonoma County in the Offices of the Sonoma County Recorder (the "Effective Date").

IN WITNESS WHEREOF, OWNER has executed this Recreation Conservation Covenant this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

OWNER:

By: \_\_\_\_\_ **DO NOT SIGN** \_\_\_\_\_

Sumona Majumdar, Chief Executive Officer, Earth Island Institute, Inc.

DISTRICT:

SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT

By: \_\_\_\_\_ **DO NOT SIGN** \_\_\_\_\_

NAME, President of the Board of Directors

ATTEST:

By: \_\_\_\_\_ **DO NOT SIGN** \_\_\_\_\_

Noelle Francis, Deputy Clerk of the Board of Directors

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

**Exhibit A**  
**Property Legal Description**

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF PETALUMA, COUNTY OF SONOMA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL B, AS SAID PARCEL B IS SHOWN AND SO DESIGNATED ON THAT CERTAIN MAP ENTITLED "PARCEL MAP NO. 423 SCOTT RANCH", RECORDED JULY 29, 2024, IN BOOK 850 OF MAPS, AT PAGES 44-47, IN THE OFFICE OF THE COUNTY RECORDER OF SONOMA COUNTY;

EXCEPTING THEREFROM THE "PARK EXTENSION CRLF CONSERVATION EASEMENT",  
MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF SAID PARCEL B;

COMMENCING AT THE SOUTHWESTERN CORNER OF SAID PARCEL B;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE WESTERN LINE OF SAID PARCEL, NORTH 00°56'40" EAST 637.00 FEET TO THE **POINT OF BEGINNING** FOR THIS DESCRIPTION;

THENCE, FROM SAID POINT OF BEGINNING, CONTINUING ALONG SAID WESTERN LINE, NORTH 00°56'40" EAST 85.00 FEET;

THENCE,	LEAVING SAID WESTERN	LINE,	EAST 24.00	FEET;
THENCE,	NORTH 53°00'00" EAST	50.00	FEET;	
THENCE,	NORTH 84°00'00" EAST	48.00	FEET;	
THENCE,	SOUTH 72°00'00" EAST	62.00	FEET;	
THENCE,	NORTH 46°00'00" EAST	68.00	FEET;	
THENCE,	SOUTH 84°00'00" EAST	82.00	FEET;	
THENCE,	EAST 52.00 FEET;			
THENCE,	NORTH 49°00'00" EAST	85.00	FEET;	
THENCE,	NORTH 41°00'00" EAST	79.00	FEET;	



THENCE, NORTH 63°00'0 EAST 138.00 FEET;  
0"

THENCE, SOUTH 65°00'0 EAST 34.00 FEET;  
0"

THENCE, NORTH 59°00'0 EAST 47.00 FEET;  
0"