

ATTACHMENT 8

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

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

MARK WEST AREA COMMUNITY PARK
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 the MARK WEST AREA COMMUNITY FUND, A CALIFORNIA NON-PROFIT 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).

ATTACHMENT 8

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 unincorporated Sonoma County and more particularly described in Exhibit A, attached hereto and incorporated herein by this reference ("the Property").

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 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 of the fee interest in the Property pursuant to Public Resources Code Section 5565.5 to secure Owner’s performance under this Covenant (“Irrevocable Offer of Dedication”).

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 in perpetuity, available to the public for public outdoor recreation and educational uses in a manner consistent with the Conservation Easement and the provisions herein.

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

ATTACHMENT 8

A. Owner hereby agrees to use, operate, and maintain the Property as a public park in perpetuity, available to the public for 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 shall commence no later than three (3) years from the date of recordation of this Covenant and shall include, at a minimum, general availability of the Property for public access and recreation no less than six hours per day, seven days per week, except as otherwise provided in Section 5.6 of the Conservation Easement (Public Access Limitations). Notwithstanding the foregoing, Owner may temporarily close the Property for maintenance no more than five (5) days per year.

B. Owner shall not engage in activities that impede public access to or public use of the Property for public recreation and educational uses pursuant to this Covenant, except as otherwise provided in Section 5.3.3 and Section 5.6 of the Conservation Easement (Special Events and Public Access Limitations).

If a plan is prepared and approved pursuant to Sections 5.1.7 and 6 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 plan.

3. *Enforcement.*

A. In the event of an uncured breach by 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

ATTACHMENT 8

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 \$292,375.00, 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 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

ATTACHMENT 8

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

ATTACHMENT 8

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.

[Remainder of Page Intentionally Blank – Signature Page Follows]

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ATTACHMENT 8

IN WITNESS WHEREOF, OWNER has executed this Recreation Conservation Covenant this _____ day of _____, 20__.

OWNER: MARK WEST AREA COMMUNITY FUND

By: _____
Brad Sherwood, President

ATTEST:

DISTRICT:
SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT

By: _____
David Rabbitt, President of the Board of Directors

ATTEST:
_____ 
Noelle Francis, Deputy Clerk of the Board of Directors

NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED FOR ALL SIGNATORIES.

ATTACHMENT 8

Exhibit A Property Legal Description

For APN/Parcel ID(s): 058-071-015-000

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

BEING A PORTION OF THE LANDS OF ABBIE J. LAUGHLIN AS RECORDED IN 368 OF DEEDS PAGE 332, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND $\frac{3}{4}$ INCH IRON PIPE MARKED CSSC FROM WHICH ENGINEER'S STATION 532+89.98 "M" LINE AS SHOWN ON THE PLANS ENTITLED "FEDERAL AID SECONDARY PROJECT NO. S-786 (6) EAST FULTON ROAD AND MARK WEST SPRINGS ROAD," A COPY OF WHICH IS ON FILE IN THE OFFICE OF THE SONOMA COUNTY SURVEYOR, BEARS SOUTH 55° 52' 30" WEST, 53.00 FEET; THENCE FROM SAID POINT OF COMMENCEMENT NORTH 34° 07' 30" WEST, 4.30 FEET TO A $\frac{3}{4}$ " IRON PIPE MARKING THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE NORTH 46° 06' 00" EAST, 370.89 FEET TO A $\frac{3}{4}$ INCH IRON PIPE; THENCE NORTH 43° 54' 00" WEST, 183.07 FEET TO THE COMMON BOUNDARY WITH THE LANDS OF BETTINI AS DESCRIBED IN 1813 OF OFFICIAL RECORDS, PAGE 898, AND MARKED BY A $\frac{3}{4}$ INCH IRON PIPE; THENCE SOUTH 21° 38' 00" WEST, 127.07 FEET TO A FOUND $\frac{1}{2}$ INCH IRON PIPE ON THE WESTERLY LINE OF LAUGHLIN; THENCE CONTINUING ALONG THE WESTERLY LINE OF LAUGHLIN SOUTH 21° 38' 00" WEST, 77.00 FEET TO A FOUND $\frac{1}{2}$ INCH IRON PIPE AND THE COMMON BOUNDARY BETWEEN THE LANDS OF LAUGHLIN AND THE LANDS OF RICO AND MARY VENTURI AS DESCRIBED IN 749 OF OFFICIAL RECORDS, PAGE 364; THENCE CONTINUING ALONG THE AFORESAID COMMON BOUNDARY SOUTH 46° 06' 00" WEST, 168.16 FEET TO A $\frac{3}{4}$ INCH IRON PIPE IN THE EASTERLY LINE OF THE RIGHT OF WAY OF OLD REDWOOD HIGHWAY NORTH, AS SHOWN ON THE AFORESAID PLANS WHICH ARE ON FILE IN THE OFFICE OF THE SONOMA COUNTY SURVEYOR; THENCE SOUTH 34° 07' 30" EAST, AND ALONG THE AFORESAID RIGHT OF WAY LINE, 100.00 FEET TO THE POINT OF BEGINNING.

BASIS OF BEARINGS: EASTERLY RIGHT OF WAY LINE OF OLD REDWOOD HIGHWAY NORTH AS SHOWN ON THE PLANS ENTITLED "FEDERAL AID SECONDARY PROJECT NO. S-786 (6)11 A COPY OF WHICH IS ON FILE IN THE OFFICE OF THE SONOMA COUNTY SURVEYOR.