

RECORDING REQUESTED BY AND RETURN TO:

Clerk of the Board of Directors

Gov. Code § 27383 – Exempt from recording fees, recorded by government agency

Gov. Code § 27388.1 – Exempt from SB2 fees, recorded by government agency

Gov. Code § 27388.2 – Exempt from RCM fees, recorded by government agency

KEISER PARK EXPANSION PROJECT 2
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 Town of Windsor, a municipal 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.

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C. Owner has acquired and now is the owner in fee simple of that certain real property located in the Town of Windsor, Sonoma County, California, 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 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 pursuant to Public Resources Code Section 5565.5 of the fee interest in the Property to secure the Owner’s performance under this Covenant (the “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 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 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 sixty (60) days from the date of Owner's completion of construction and installation of the initial improvements to the Property, in accordance with the Final Keiser Park Master Plan Update adopted by Owner (the "Commencement Date"), and shall include, at a minimum, general availability of the Property for low-intensity outdoor public recreation and educational uses 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). Owner may exclude the public from the Property prior to the Commencement Date.

B. Upon and after the Commencement Date, 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. If a master plan is prepared or revised, and approved, pursuant to Sections 5.1.7 and 6.1 of the Conservation Easement, Owner's use, operation and maintenance of the Property as a public park shall be in accordance with such approved master plan or revision thereto.

3. Enforcement.

A. In the event of an uncured breach by Owner of any of its material

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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 described in Recital E, subject to the requirements of Section 3.B hereof; 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. After District provides the Notice to Owner, upon initiation by District, District and Owner shall meet and confer to establish a reasonable and mutually agreeable timeline for cure of the breach. If, following such meet and confer efforts or good faith efforts to attempt to meet and confer, the parties are unable to reach agreement on the timeline for the cure, the remedies provided by Paragraph 3.A shall be available to the District upon the occurrence of the latter of (i) the expiration of the cure period stated in the Notice; and (ii) 90 days following District's initiation of the meet and confer efforts.

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 at time of the District's Notice pursuant to Paragraph 3.B, 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 has been given by the District pursuant to Paragraph 3.B,

multiplied by the then-current annual interest rate for post judgment interest. In no case, however, shall liquidated damages exceed forty percent (40%) of the fair market value of the Property, unencumbered and without regard to the Conservation Easement or this Covenant, for any single breach. Owner's liability for damages is discharged if Owner cures the breach within the cure period established in accordance with Section 3.B.

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 shall disclose to such third parties the District's power of acceptance set forth herein. 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. In the event the District exercises its power of acceptance under the Irrevocable Offer of Dedication, each grantee of such lease or other real property interest shall attorn to and recognize the District as its landlord for the unexpired balance (and any extensions, if exercised) of the term of Owner's grant, provided District elects to permit the grant to survive its acceptance. Owner's power to create such third party estates is limited by and subordinate to the Irrevocable Offer of Dedication and, as such, the District may terminate any or all estates so created upon its acceptance of the 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 Covenant 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 provision 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.

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IN WITNESS WHEREOF, OWNER has executed this Recreation Conservation Covenant this _____ day of _____, 2024.

OWNER:
TOWN OF WINDSOR

By: _____
Jon Davis, Town Manager

ATTEST:

DISTRICT:
SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT

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

ATTEST:

Christina Rivera, Clerk of the Board of Directors

NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED FOR ALL SIGNATORIES.

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Exhibit A
Property Legal Description