

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

DEED AND AGREEMENT
BY AND BETWEEN
GRATON COMMUNITY SERVICES DISTRICT
AND
THE SONOMA COUNTY AGRICULTURAL PRESERVATION
AND OPEN SPACE DISTRICT
CONVEYING A CONSERVATION EASEMENT
AND
ASSIGNING DEVELOPMENT RIGHTS

GRATON COMMUNITY SERVICES DISTRICT, a California special district, ("GRANTOR") and the Sonoma County Agricultural Preservation and Open Space District, a public agency formed pursuant to the provisions of Public Resources Code sections 5500 *et seq.* ("DISTRICT") agree as follows:

RECITALS

A. GRANTOR is the owner in fee simple of that certain real property containing approximately 0.59 acres located in Sonoma County, commonly known as Graton Town Square, designated as Sonoma County Assessor's Parcel Number 130-151-004, and more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property").

B. In 1990, the voters of Sonoma County approved the creation of DISTRICT and the imposition of a transactions and use tax to preserve agriculture and open space through the acquisition of interests from willing sellers consistent with a voter-approved Expenditure Plan

and to advance the implementation of the open space elements of the County's and each of its cities' respective general plans consistent with Government Code sections 65560 *et seq.* In 2006, the voters of Sonoma County approved an extension of the transaction and use tax and an update to the Expenditure Plan.

C. 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 possesses the ability and intent to enforce the terms of this Easement.

D. On Date, DISTRICT's Board of Directors, pursuant to Government Code section 65402 and Sonoma County Ordinance No. 5180, determined, by its Resolution No. 25-XXXX, that the acquisition of a conservation easement over the Property was consistent with the Sonoma County General Plan, specifically the Plan's Land Use Element Policy LU-11f because the Conservation Easement encourages the conservation of undeveloped land and open space. By that same resolution, DISTRICT's Board of Directors determined that its funding of the Project is consistent with the voter-approved Expenditure Plan.

E. This Easement, as further defined below, will further the goals, objectives and policies of the DISTRICT's Vital Lands Initiative, a long-range acquisition plan, by supporting Healthy Communities goals, including protection of open space and publicly accessible lands in and near cities and communities to connect people with protected lands.

F. In an agreement of even date title Recreation Conservation Covenant and recorded contemporaneously, GRANTOR has obligated itself and its successors to engage in certain recreational operations on the Property. It is the intent of GRANTOR and DISTRICT that the Recreation Conservation Covenant and this Agreement will be construed together in order to achieve the purposes of both agreements.

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

EASEMENT

PART ONE: GRANT OF EASEMENT

- 1. Grant and Acceptance of Conservation Easement and Assignment of Development Rights.** Pursuant to the common and statutory law of the State of California including the provisions of Civil Code sections 815 through 816, inclusive, GRANTOR hereby grants to DISTRICT and DISTRICT accepts a conservation easement over the Property in perpetuity under the terms and conditions set forth herein ("the Easement"). GRANTOR hereby

irrevocably assigns to DISTRICT all development rights associated with the Property, except as specifically provided by this Easement.

2. **Conservation Values.** The Property is a vacant 0.59-acre open lot in the community of Graton, with minimal vegetation following the retirement of a gas station. Critical resources on the Property (collectively the “Conservation Values”) are as follows:

- 2.1 **Urban Open Space Resources.** The Property offers a unique opportunity to permanently protect and enhance open space in downtown Graton, a community with increasing residential density and a need for accessible public green space. Located within walking distance of local businesses, residential neighborhoods, and community services, the Property will serve as a central hub for social interaction, recreation, and respite from the built environment. Its proximity to the West County Regional Trail and public transit ensures convenient access for residents, visitors, and workers, while fostering opportunities for connection between the community and open space.

- 2.2 **Scenic Resources.** The Property is highly visible from Graton Road, a central thoroughfare in downtown Graton that connects the community to surrounding areas. Once developed as a community park with native plants, trees, and open space, the Property will enhance the scenic character of the Graton Road corridor, providing a natural and inviting landscape for residents and visitors.

- 2.3 **Recreational and Educational Resources.** The Property provides valuable recreational and educational opportunities, including pedestrian access from nearby homes, business, and community spaces. Its central location and gentle topography make it well-suited for walking, gathering, and recreation in an open space setting. The Property is large enough to support a variety of educational programs, community events, and recreational activities hosted by local organizations.

3. **Conservation Purpose.** The purpose of this Easement (“Conservation Purpose”) is to preserve and protect forever the Conservation Values, and to prohibit and prevent any uses and activities of the Property that will materially impair or interfere with the Conservation Values. 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 urban open space resources, scenic resources, and recreational and educational 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. To preserve, protect, and document the Conservation Values of the Property in perpetuity.

4.2 Property Inspections. To enter upon the Property to carry out DISTRICT's obligations and exercise its rights under this Easement, including monitoring and enforcement. Each entry shall be for only so long a duration as is reasonably necessary to achieve the purposes of the entry, but shall not necessarily be limited to a single physical entry or a single twenty-four hour period. The rights of entry provided by this *Section 4.2* shall extend to DISTRICT's officers, staff, consultants, and volunteers. DISTRICT has the right to enter the Property unaccompanied by GRANTOR if GRANTOR declines or is unable to join DISTRICT or its agents.

4.2.1 Monitoring Visits. To enter upon the Property at least once per calendar year to inspect, document, and study the Property ("Monitoring Visit") to (i) identify the current activities on and uses and condition of the Property; and (ii) monitor the activities and uses on the Property to determine whether they are consistent with this Easement. DISTRICT shall conduct Monitoring Visits at reasonable times and upon one week's prior notice to GRANTOR. DISTRICT may give notice to GRANTOR of a Monitoring Visit via electronic mail ("email") or telephone. Monitoring Visits shall be made in a manner that will not unreasonably interfere with GRANTOR's use and quiet enjoyment of the Property.

4.2.2 Enforcement Visits. In addition, if DISTRICT determines that entry upon the Property is necessary to investigate, prevent, terminate, document, monitor, or mitigate a potential or actual violation of this Easement, DISTRICT has the right to enter upon the Property at any time and without notice to GRANTOR ("Enforcement Visit"). DISTRICT will attempt but is not required to give at least twenty-four (24) hours' notice of Enforcement Visits via electronic mail ("email") or telephone. Enforcement Visits may occur as frequently as is necessary to investigate and resolve potential or actual violations of this Easement.

4.3 Enforcement. To enforce the rights granted in this Easement; to prevent or stop, by any legal means, any activity or use on the Property that is inconsistent with

the terms, conditions or Conservation Purpose of this Easement and to require restoration of such areas or features as may be damaged by such activities or uses.

- 4.4 Approval of Certain Uses.** 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)*.
- 4.5 Signage.** To erect and maintain a sign or other appropriate marker in a location on the Property acceptable to GRANTOR and 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 DISTRICT shall determine the wording and design of the sign or marker with consent of GRANTOR. No such sign or marker shall exceed thirty-two (32) square feet in size nor include artificial illumination. DISTRICT shall be responsible for the cost of erecting and maintaining such sign or marker.
- 4.6 Access.** To use any recorded, prescriptive, equitable, or other easement that grants lawful access to the Property now or in the future and for any purpose consistent with this Easement. To allow monitoring and enforcement by DISTRICT, GRANTOR hereby irrevocably assigns to DISTRICT the non-exclusive right to use any and all access easements and rights-of-way, whether recorded or not, over the Property or the property of others that individually or together provide GRANTOR with legal, physical, or other access to the Property. GRANTOR further agrees to execute any additional documents necessary to evidence this assignment.
- 4.7 Additional Rights.** To exercise such additional rights as may be reasonably necessary to effectuate the Conservation Purpose of this Easement.

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 6.7 (Uses/Activities Not Expressly Addressed)*.

5.1 General Requirements for All Uses.

- 5.1.1 Compliance with Governmental Regulations. All activities and uses on the Property shall be undertaken in a manner consistent with all applicable federal, state, and local statutes, ordinances, rules, and regulations.
- 5.1.2 Compliance with Terms, Conditions and Conservation Purpose of this Easement. All activities and uses on the Property shall be undertaken in a manner consistent with the terms, conditions and Conservation Purpose of this Easement.
- 5.1.3 Protection of Conservation Values. All activities and uses on the Property shall be undertaken in a manner 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 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.
- 5.1.6 Notice and Approval Procedures. Whenever Section 5 (*GRANTOR's Restricted Rights*) 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.
- 5.1.7 Plan. Whenever Section 5 (*GRANTOR's Restricted Rights*) conditions any development, activity, or use on an approved plan, such as a master plan, management plan, site plan, vegetation management plan, or resource-specific plan (a "Plan"), such development, activity, or use shall be carried out consistent with the Plan and pursuant to Section 6 (*Notice and Approval Procedures*). DISTRICT hereby acknowledges having approved that certain "Site Plan" by DCT, dated _____, 2025.
- 5.1.8 Revenue Generation. Any revenue generated by GRANTOR from activities on and uses of the Property shall be used toward: (i) the cost, including administrative cost, of operating, maintaining, restoring, and enhancing the Property; or (ii) towards educational or recreational programs or

events that take place on the Property; or (iii) towards the preservation or improvement of other DISTRICT-protected properties.

5.2 Subdivision and Lot Line Adjustments.

5.2.1 Subdivision Prohibited. This Easement prohibits the legal or de facto division, subdivision, or partition of the Property, except as expressly provided in this Section 5.2 (Subdivision and Lot Line Adjustments), for any purpose, including, but not limited to, any such subdivisions or establishment of separate legal parcels by certificates of compliance or “separate for assessment purposes” designations. The Property currently comprises one (1) legal parcel. GRANTOR shall maintain all of the parcels comprising the Property, and all interests therein, under common ownership, as though a single legal parcel. Partition by division of the Property between owners or tenants in common shall be considered a subdivision and is prohibited under this Easement. Mortgaging or recording a deed of trust on less than the entire Property is prohibited.

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

5.2.3 Exceptions to Prohibition Against Subdivision. This prohibition against division of the Property shall not apply to:

a) *Conveyance to Government or Qualified Non-Profit Entity.* Subject to prior written approval by DISTRICT, GRANTOR may voluntarily convey a portion of the Property to a government or qualified non-profit entity exclusively for conservation or public access purposes [and only if the grantee owns or manages contiguous land used and managed for conservation, open space, or recreation].

b) *Leases.* GRANTOR may lease all or any portion(s) of the Property for permitted uses described in Section 5 (GRANTOR’s Restricted Rights) and subject to all terms of this Easement.

5.2.4 Lot Line Adjustments. Lot line adjustments may be permitted solely with prior approval from DISTRICT if necessary to settle boundary disputes involving adjacent properties. GRANTOR shall take no action towards a lot line adjustment unless and until DISTRICT provides prior approval of the proposed Lot Line Adjustment.

5.3 Land Uses. GRANTOR may use the Property only as described in this Section 5.3.

5.3.1 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 5.5 (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 5.3.7 (Commercial).

5.3.2 Recreational and Educational Use. GRANTOR may make the Property available to the public for recreation and education in conformity with the terms of this Easement, without notice to or approval from DISTRICT. All public outdoor recreational and educational uses and activities on the Property shall be designed and undertaken in a manner compatible with the Conservation Values. Such uses may occur only in approved locations and may include, but are not limited to, picnicking; nature study; exercise, court and field sports; gardening; public or school educational activities including nature study and environmental or outdoor education; educational programs such as bookmobile, art, and other community programs; gardening workshops; habitat restoration training/workshops; afterschool and summer camp programs, and other such uses similar in nature and intensity.

5.3.3 Special Events. For the purposes of this Easement, "Special Events" are organized gatherings, other than those Recreational and Educational Uses permitted in Section 5.3.2, that involve formal coordination, such as staffing, equipment, sound amplification, temporary structures, or promotional efforts. Special Events are permitted, provided however, Special Events that require an entry fee and/or limit the public's ability to access the majority of the Property are permitted only with prior written approval from DISTRICT and are limited in frequency to twelve (12) times per year. GRANTOR may request DISTRICT approval for individual events or for a series of planned events. All Special Events must be consistent with

the terms of this Easement, must not result in any permanent alteration of the Property, and must not have any detrimental impact on its Conservation Values.

5.3.4 Commercial. GRANTOR may use the Property for the following commercial uses and activities:

a) *Recreation and Education (fees)*. With prior written notice to DISTRICT, GRANTOR may charge a fee to cover actual and reasonable costs directly associated with permitted recreational and educational programs and use of the Property. DISTRICT reserves the right to request, and GRANTOR shall provide, documentation of such costs. GRANTOR may host concessions related to permitted recreational and educational uses such as bicycle rentals, farmers markets (weekly or season), mobile food vendors, temporary vendor kiosks, and other small-scale concessions. Special Events permitted by Section 5.3.3 (Special Events) may be conducted for fundraising purposes.

b) *Leases and Rentals*. Leases or rentals for recreational and educational uses as defined in this Section 5.3, including leases or rentals for vendor stalls, concession pads, and designated plaza spaces.

c) *Ancillary*. With prior written approval from DISTRICT, GRANTOR may engage in other ancillary commercial uses found to be consistent with the Conservation Values of this Easement. Permitted activities include charging vendor stall fees, renting plaza and stage areas, and related concessions.

5.3.5 Cultural Resource Protection and Use. GRANTOR may engage in activities to preserve and protect the cultural resources of the Property in accordance with sound, generally accepted conservation practices. GRANTOR may also, to the extent consistent with the terms of this Easement, allow use of the Property for tribal stewardship and cultural activities, including but not limited to tending, gathering, harvesting, and foraging of resources of cultural significance in coordination with the culturally affiliated tribe(s) to this area.

5.4 Structures and Improvements. GRANTOR may repair, replace, construct, place, and maintain structures and improvements on the Property only as provided in this Section 5.4. No structure or improvement shall be constructed or placed except as described in a Plan developed and approved in accordance with Sections 5.1.7 (Plan) and Section 6.8 (Plan), unless such structure or improvement is expressly permitted under this Easement without any notice to or approval from DISTRICT, or unless such structure or improvement is otherwise approved in

writing by DISTRICT. At no time shall structures and improvements existing on the Effective Date, or constructed thereafter pursuant to Section 5.4.1 (Maintenance, Repair, or Replacement of Structures and Improvements) through 5.4.9 (Signs) cumulatively cover more than the amount of developed surfaces proposed for in the Site Plan referenced in Section 5.1.7 (Plan), unless otherwise approved by DISTRICT in an updated Plan. This limitation does not include areas planted with gardens, raised or other planting beds, landscaping, grass ball fields, or other vegetation permitted under this Easement. Furthermore, no structure or improvement shall exceed fifteen (15) feet in height except as otherwise provided herein, and provided that festoon anchors and the roof peaks of stages or pergolas may extend up to twenty (20) feet in height.

5.4.1 Maintenance, Repair, or Replacement of Structures and Improvements. GRANTOR may maintain, repair, or replace structures and improvements existing at the Effective Date 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 from DISTRICT is required.
- b) Any maintenance, repair, or replacement that increases the height of the structure or improvement, increases the land surface area it occupies, or changes its location or function shall be treated as new construction and shall be subject to the provisions of Sections 5.4.2 (Structures and Improvements for Recreational and Educational Uses) through 5.4.9 (Signs).

5.4.2 Structures and Improvements for Recreational and Educational Uses. GRANTOR may construct or place structures and improvements associated with permitted outdoor recreational and educational uses, as follows:

- a) Benches, drinking fountains, refuse and recycling containers, raised planting beds, bike racks, lending library, landscaping, and other similar minor improvements, without any notice to or approval from DISTRICT.
- b) Paved or permeable trails and pathways, restrooms, lighting, public art, play structures, ball fields/courts, concession stands, gazebo,

pergola, covered stage, maintenance building, shed, and other similar improvements with prior written approval from DISTRICT.

- 5.4.3 Structures and Improvements Accessory to Natural Resource Protection. With prior written approval from DISTRICT, GRANTOR may place or construct accessory structures and improvements reasonably necessary for natural resource protection on the Property, including sheds and greenhouses.
- 5.4.4 Public Parking and Access Roads. With prior written approval from DISTRICT, GRANTOR may construct, reconstruct, and expand a public parking area and associated road/driveway provided they are (i) directly required for uses and activities allowed herein; (ii) the minimum necessary for such uses and activities; and (iii) are sited so as to minimize impacts to the Conservation Values. Any parking area and associated road/driveway shall be constructed and maintained so as to minimize erosion and sedimentation and ensure proper drainage, utilizing best management practices for roads to the extent applicable and recommended by a state or local agency.
- 5.4.5 Fences and Gates. With prior written approval from DISTRICT, GRANTOR may construct and erect new fencing and gates 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 5.1.5 (Duty to Prevent Waste, Nuisance, and Trespass). All fencing and gates must (i) preserve the scenic values of the Property; and (ii) be the minimum necessary in design and extent. Whether existing on the Effective Date 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 5.4.5. In the event any fence or gate, or portion thereof, becomes obsolete or unnecessary for the uses described in this Section 5.4.5, GRANTOR shall remove such fencing or gate from the Property.
- 5.4.6 Utilities and Energy Resources. With prior written approval from DISTRICT, GRANTOR may expand existing or develop or construct new utilities, including electric power, septic or sewer, communication infrastructure, and water storage and delivery systems, provided that such utilities are directly required for permitted uses on the Property and are reasonably scaled to serve only those uses. With prior written approval from DISTRICT, GRANTOR may expand existing or develop or construct new utility lines and poles and water storage and conveyances, provided

such facilities are designed, constructed, and maintained in a manner that minimizes impacts to the Conservation Values. Utility poles may be taller than fifteen (15) feet. With prior written approval from DISTRICT, GRANTOR may install or allow installation of underground conduits for water, gas, sanitation, electricity and other utilities associated with and necessary for permitted uses and activities on the Property or for offsite development consistent with the Sonoma County General Plan, as updated and amended from time to time, or for water supply or sanitation purposes, so long as such installation has no significant adverse impact on the Conservation Purpose of the Easement. The installation of any underground utilities shall be constructed and maintained in the least intrusive manner feasible and any damage done during said installation or maintenance shall be promptly repaired and the Property restored. Electric power and communication utilities may serve off-site use if associated improvements are located on a permitted structure and do not cause such structure to exceed size and height limitations.

- 5.4.7 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”), 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. No Plan is required for Public Safety Systems. 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 5.4.6 (Utilities and Energy Resources).
- 5.4.8 Signs. GRANTOR may construct or place signs as set forth in this Section 5.4.12. No sign, except for a park monument sign, shall be artificially illuminated.
- a) Without prior written notice to or approval from DISTRICT, GRANTOR may construct or place one (1) sign not to exceed forty-five (45) square feet in size to identify the Property from public roadways.
 - b) Without prior written notice to or approval from DISTRICT, GRANTOR may construct or place one (1) sign not to exceed thirty-

two (32) square feet in size as trailhead or interpretive signs and/or to acknowledge participation of funding agencies for permitted uses on the Property.

- c) Without prior written notice to or approval from 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; and (iii) set forth park and/or local area rules or regulations applicable to use of the park, 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.
- 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 minimizes impacts to the Conservation Values.

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

5.5.1 Surface Alteration. Alteration of the contour of the Property in any manner whatsoever is prohibited, including excavation, removal or importation of soil, sand, gravel, rock, peat, or sod, except as reasonably necessary in connection with the uses, structures, and/or improvements allowed under Section 5 (GRANTOR's Restricted Rights) of this Easement. In connection with allowed uses, structures, and/or improvements, movement of over fifty (50) cubic yards of material in any calendar year is subject to prior DISTRICT approval.

5.5.2 Water Resources. Draining, filling, dredging, diking, damming, or other alteration, development, or manipulation of watercourses, subsurface water, springs, ponds, and wetlands is prohibited except as reasonably necessary in connection with (i) the maintenance, replacement, development, and expansion of water storage and delivery systems allowed under Section 5.4.6 (Utilities and Energy Resources), (ii) reconstruction, expansion, and new construction of roads or trails allowed under Sections 5.4.3 (Structures and Improvements Accessory to Natural Resource Protection) and 5.4.2 (Structures and Improvements for

Recreational and Educational Uses), respectively; and (iii) the preservation, restoration, and enhancement of natural resources allowed under Section 5.5.5 (Natural Resource Preservation, Restoration, and Enhancement).

- 5.5.3 Mineral Exploration. Exploration for, or development and extraction of, minerals and hydrocarbons by any surface or sub-surface mining or any other method is prohibited.
- 5.5.4 Vegetation and Fuel Management. GRANTOR may undertake vegetation and fuel management activities to reduce wildfire risk as provided in this Section 5.5.4 and pursuant to Section 5.5.6 (Native Tree Removal) and Section 5.5.7 (Native Vegetation Removal). 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.
- 5.5.5 Natural Resource Preservation, Restoration, and Enhancement. With prior written approval from DISTRICT, GRANTOR may undertake natural resource preservation, restoration, and enhancement activities, including but not limited to, bank and soil stabilization, and practices to enhance water quality, native plant and wildlife habitat and connectivity, and to promote biodiversity.
- 5.5.6 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 5.5.4 (Vegetation and Fuel Management); (iv) within the footprint of permitted structures and improvements; (v) for cultural uses as set forth in Section 5.3.5 (Cultural Resource Protection and Use); and (vi) for natural resource management as set forth in Section 5.5.5 (Natural Resource Preservation, Restoration, and Enhancement) of this Easement. 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.

- 5.5.7 Native Vegetation Removal. Removal or destruction of any native non-tree vegetation is prohibited, except as reasonably necessary (i) within footprint of permitted structures and improvements; (ii) to control insects and disease; (iii) to prevent personal injury and property damage; (iv) for the purpose of fire management, in accordance with Section 5.5.4 (Vegetation and Fuel Management); (v) for cultural uses as set forth in Section 5.3.5 (Cultural Resource Protection and Use); (vi) for natural resource preservation, restoration and enhancement, as set forth in Section 5.5.5 (Natural Resource Preservation, Restoration, and Enhancement); and (vii) for permitted landscaping and gardening.
- 5.5.8 Native Animal Removal. Killing, hunting, trapping, injuring, or removing native animals is prohibited except (i) under imminent threat to human life or safety; and (ii) as reasonably necessary natural resource preservation, restoration, and enhancement activities in accordance with Section 5.5.5 (Natural Resource Preservation, Restoration, and Enhancement) using selective control techniques consistent with the policies of the Sonoma County Agricultural Commissioner and other governmental entities having jurisdiction.
- 5.5.9 Non-Native Plants and Animals. GRANTOR may remove or control non-native plant and animal species, provided that techniques used minimize harm to native wildlife and plants and are in accordance with sound, generally acceptable conservation practices.
- 5.5.10 Off-road Motorized Vehicle Use. Use of motorized vehicles off roadways, driveways, and parking areas is prohibited, except for the minimum necessary in connection with permitted construction, maintenance, emergency access, and property management activities, and to provide opportunities for members of the public with disabilities who require motorized equipment to access the Property and its features.
- 5.5.11 Dumping. Dumping, releasing, burning, or other disposal of wastes, refuse, debris, non-operative motorized vehicles, or hazardous substances is prohibited. GRANTOR shall remove garbage or materials dumped on the Property by third parties.
- 5.5.12 Outdoor Storage. Outdoor storage shall be prohibited except as provided in this Section.
- a) *Materials Required for Permitted Uses.* GRANTOR may store materials and supplies required for permitted uses outdoors ,

provided such storage shall be located so as to minimize visual impacts.

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

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

5.7 Easements. GRANTOR may not grant new temporary or permanent easements, nor modify or amend existing easements, on the Property without prior written approval from DISTRICT. It is the duty of GRANTOR to prevent 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 addressed by this Easement require that prior written notice be given by GRANTOR to DISTRICT, while other activities and uses addressed by this Easement require the prior written approval of DISTRICT. Such an approval reflects the DISTRICT's determination that the activity or use complies with the terms and restrictions established in this Easement. Unless and until such notice is given or approval is obtained in accordance with this *Section 6*, any such activity or use is prohibited on the Property. GRANTOR shall use the procedures set forth below, including the information required by Section 6.3 (Information Required), to provide notice to DISTRICT or to obtain DISTRICT's approval unless a use or activity is expressly addressed in and governed by an approved Plan.

6.1 Uses/Activities Requiring Notice to DISTRICT. For any activity or use that requires prior notice to DISTRICT, GRANTOR shall deliver such notice to DISTRICT in writing at least forty-five (45) days prior to the commencement of such activity or use. That forty-five (45)-day time period provides DISTRICT an opportunity to evaluate whether the proposed activity or use is consistent with the terms,

conditions, and Conservation Purpose of this Easement before the activity or use is begun.

- 6.2 Uses/Activities Requiring Prior Approval from DISTRICT.** For any activity or use that requires prior approval from DISTRICT, GRANTOR shall file a request for such approval ("GRANTOR's request") in writing at least forty-five (45) days prior to the intended commencement of such activity or use. DISTRICT shall have forty-five (45) days from the receipt of a complete request for approval to review the request and to approve, conditionally approve, disapprove, or notify GRANTOR of any objection thereto. 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. Only upon DISTRICT's express written approval may the proposed activity or use be commenced, and then only in accordance with the terms and conditions of DISTRICT's approval.
- 6.3 Information Required.** All notices and requests for approval 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 GRANTOR provide such additional or supplemental information, including expert opinions at GRANTOR's expense, 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.
- 6.4 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.

- 6.5 DISTRICT’S Determination.** DISTRICT may determine that a proposed use is consistent with this Easement in its sole discretion. It may consider compliance with this Easement, the manner in which the proposed use is to be carried out, and the potential for the proposed use and the manner in which it is to be carried out to preserve, enhance, or affect one or more Conservation Values. DISTRICT may impose conditions on the use in order to ensure that the use is consistent with the Purpose of this Easement. No determination by DISTRICT shall establish precedent for or commitment to the outcome of future decisions. DISTRICT shall consider every notice and request for approval on its own and without following or establishing precedent.
- 6.6 Approvals Must Be in Writing.** All approvals must be made in writing to have any effect. GRANTOR understands that any oral approval or oral representation regarding such an approval made by DISTRICT, its officers, employees, or agents does not meet the requirements of this Section 6.6, does not bind or commit DISTRICT, and may not be relied on by GRANTOR. To that end GRANTOR agrees that it will not assert or allege that DISTRICT, its officers, employees, or agents provided—or that GRANTOR understood that DISTRICT, its officers, employees, or agents provided—any oral approval or that DISTRICT is in any way estopped or has made an election or has waived any provision of this Easement based on any allegation of an oral approval or understanding of an oral approval.
- 6.7 Uses/Activities Not Expressly Addressed.** 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 this Section 6.7. 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 (Remedies for Breach).
- 6.8 Plan.** Any Plan as defined by Section 5.1.7 (Plan), along with updates and amendments to any such Plan, requires review and approval by DISTRICT in accordance with this Section 6.8 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, pursuant to Section 6.8.4 (Updates to Plans).
- 6.8.1 Review of Plans.** Grantor shall not commence any activity or use for which this Easement requires a Plan, unless and until DISTRICT approves a Plan pursuant to Section 6 (Notice and Approval Procedures) that describes and governs the activity or use. 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.

- 6.8.2 Minimum Contents of Plans. 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. The Plan must identify at a minimum the existing Property condition, and the schedule, location, and extent of the proposed use or activity as well as the best management practices to be followed, and steps taken to avoid or minimize impacts to the Conservation Values. For Plans that include site development, the Plan must identify structures, parking lots, roads, paths and trails, gardens, and other improvements planned for the Property.
- 6.8.3 Approved Plans. Once a Plan is approved by DISTRICT, all uses and activities covered by the Plan shall be conducted in a manner consistent with it. Upon DISTRICT's approval, all uses and improvements described therein shall be deemed to be consistent with the terms, conditions, and Conservation Purpose of this Easement and shall be permitted on the Property without further notice to or approval by DISTRICT as long as the Plan remains in effect. All such uses and activities shall at all times remain subject to the substantive limitations of Section 5 (GRANTOR's Restricted Rights). Any revisions to the Plan are subject to District approval.
- 6.8.4 Updates to Plans. 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)*. DISTRICT shall only approve an updated Plan if it includes a similar amount of developed surfaces as approved in the Site Plan referenced in Section 5.1.7 (Plan).

7. Costs and Liabilities Related to the Property.

- 7.1 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. 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 (GRANTOR's Indemnity), GRANTOR hereby agrees to indemnify and hold DISTRICT harmless from and against any damage, liability, claim, or expense, including attorneys' fees, relating to such matters.

7.2 Hazardous Materials.

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

- a) The obligations or liabilities of an "owner" or "operator" as those words are defined and used in environmental laws, as defined below, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 United States Code, sections 9601 *et seq.*) ("CERCLA");
- b) The obligations or liabilities of a person described in 42 United States Code section 9607(a)(3) or any successor statute then in effect;
- c) The right to investigate and remediate any hazardous materials, as defined below, on or associated with the Property;
- d) Any control over GRANTOR's ability to investigate and remediate any hazardous materials, as defined below, on or associated with the Property.

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

If at any time after the Effective Date of this Easement 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 all steps that are required of

GRANTOR under federal, state, or local law necessary to ensure its containment and remediation, including any cleanup.

7.2.3 Definitions. For the purposes of this Easement:

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

- 8. **GRANTOR’s Indemnity.** GRANTOR shall hold harmless, indemnify, and defend DISTRICT, its agents, employees, volunteers, invitees, 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 gross negligence or intentional misconduct of DISTRICT; (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*).
- 9. **Baseline Documentation for Enforcement.** The specific characteristics, use, and state of improvement of the Property are further documented in an inventory of relevant features of the Property dated G23 Date that is on file at the offices of DISTRICT and incorporated by this reference (the “Baseline Report”), which consists of reports, maps, photographs, and other documentation. The Parties agree and acknowledge that the Baseline Report provides an accurate representation of the Property at the time this Easement is recorded and that it is intended to provide an objective, though nonexclusive, baseline for monitoring compliance with the terms of this Easement. A copy of the Baseline Documentation Report has been reviewed and approved by GRANTOR. The parties agree

that the Baseline Documentation Report provides an accurate representation of the Property at the time of the execution of this Easement.

10. Remedies for Breach.

10.1 DISTRICT's Remedies. In the event of a violation or threatened violation by GRANTOR of any term, condition, or restriction contained in this Easement, DISTRICT may, following notice to GRANTOR, institute a suit to enjoin, 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 13 (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 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 No Waiver. 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.

10.3 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 5.1.5 (Duty to Prevent Waste, Nuisance, and Trespass)* and *Section 10 (Remedies for Breach)*, 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. The amount of the compensation to which DISTRICT shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property after such termination or extinguishment of the Easement, shall be determined, unless otherwise provided by California law at the time, in accordance with Section 12.3 (Property Interest and Fair Market Value). All proceeds paid to DISTRICT shall be used by DISTRICT for the purpose of the preservation of agriculture and open space within Sonoma County. This Easement shall not be deemed terminated, extinguished, or otherwise affected until DISTRICT has received full payment for its interest.

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, so as to terminate this Easement in whole or in part, either GRANTOR or DISTRICT (or both, on such conditions as they may agree) may commence appropriate actions to recover the full value of the Property (or portion thereof) subject to the condemnation or in-lieu purchase and all direct or incidental damages resulting therefrom. Any expense incurred by GRANTOR or DISTRICT in any such action shall first be reimbursed out of the recovered proceeds; the remainder of such proceeds shall be divided between GRANTOR and DISTRICT in proportion to their interests in the Property, as established by Section 12.3 (Property Interest and Fair Market Value). GRANTOR

shall not agree to an in-lieu purchase without prior written approval from DISTRICT.

- 12.3 Property Interest and Fair Market Value.** This Easement constitutes a real property interest immediately vested in DISTRICT. For the purpose of this Section 12.3, the Parties stipulate that, in the event of condemnation of the Property or any portion thereof, the fair market value of the Property for purposes of just compensation shall be determined as though this Easement did not exist. GRANTOR and DISTRICT shall share the compensation on the following basis: GRANTOR 4% and DISTRICT 96% (which percentages are derived from the ratio of DISTRICT's contribution to the fee value of the Property at the Effective Date), or as otherwise agreed upon by them in writing at the time of condemnation. In the apportionment of the proceeds from any eminent domain proceeding, an adjustment shall be made in GRANTOR's favor for any increase in value attributable to improvements made on the Property after the date of this Easement, provided that such improvements were not made or funded by DISTRICT and further provided that such improvements do not constitute a breach of this Easement.

PART FIVE: MISCELLANEOUS

13. Notices.

- 13.1 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 overnight delivery addressed as follows:

To GRANTOR: General Manager
 Graton Community Services District
 P.O. Box 594
 Graton, CA 95444

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

Or to such other address as such party from time to time may designate by written notice pursuant to this Section 13.1.

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

13.2.1 When mailed first class postage prepaid to the last address designated by the recipient pursuant to Section 13.1 (Method of Delivery) notice is effective one (1) business day following the date shown on the postmark of the envelope in which such notice is mailed or, in the even the postmark is not shown or available, then one (1) 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.

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

13.3 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.

14. Amendment. If circumstances arise under which an amendment or modification of this Easement would be appropriate, GRANTOR and DISTRICT shall be free to jointly amend this Easement, provided that any amendment shall be consistent with the Conservation Purpose of this Easement, shall ensure protection of the Conservation Values of the Property, shall not affect the Easement's perpetual duration, and shall be consistent with Public Resources Code section 5540 and any successor statute then in effect. The decision to amend this Easement is at DISTRICT's sole and absolute discretion. Unless otherwise agreed to by DISTRICT, GRANTOR shall bear all costs related to DISTRICT's review of and response to GRANTOR's request for an amendment, including the cost to update the Baseline Report and any Management Plans to reflect the amendment. Any such amendment shall be in writing, executed by GRANTOR and DISTRICT, and recorded in the Office of the Sonoma County Recorder.

15. General Provisions.

15.1 Assignment of Rights and Obligations. 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.

15.2 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.

- 15.3 Compliance with Governmental Regulations.** All activities and uses on the Property shall be undertaken in a manner consistent with all applicable federal, state, and local statutes, ordinances, rules, and regulations.
- 15.4 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.
- 15.5 Easement to Bind Successors.** The Easement 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, 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.
- 15.6 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 that 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 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 15.5 (Easement to Bind Successors)* of this Easement, and the failure of GRANTOR to perform any act required by this *Section 15.6* shall not impair the validity of this Easement or limit its enforceability in any way.
- 15.7 Fees and Charges.** DISTRICT shall have the right to establish and collect from GRANTOR reasonable fees and charges, including attorneys' fees and staff costs, 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.

- 15.8 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 13 (Notices).
- 15.9 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.
- 15.10 Counterparts.** This Easement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.
- 15.11 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.
- 15.12 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 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.

- 15.13 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 and protects the Conservation Purpose of this Easement.
- 15.14 Joint Obligation.** The obligations imposed by this Easement on Owner shall be joint and several.
- 15.15 No Merger.** It is the express intent of the parties that this Easement is not extinguished if this Easement and the fee title of the Property are held by the same entity.
- 15.16 Representation of Authority of Signatories.** Each individual executing this Easement represents and warrants to the other party that the execution and delivery of this Easement and all related documents have been duly authorized by the party for which the individual is signing and that the individual has the legal capacity to execute and deliver this Easement and thereby to bind the party for which the individual is signing.
- 15.17 Sufficient Counsel.** GRANTOR warrants that they have reviewed this Easement and its effects on the Property with appropriate independent legal counsel and financial advisor(s) of their own choosing. This Easement has been fully negotiated between the parties so that any rule that documents may be construed against the drafter does not apply.
- 15.18 Effective Date.** This Easement 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").

[Remainder of Page Intentionally Blank – Signature Page Follows]

IN WITNESS WHEREOF, GRANTOR and DISTRICT have executed this Easement this _____ day
of _____, 20__.

GRANTOR: GRATON COMMUNITY SERVICES DISTRICT, A CALIFORNIA SPECIAL DISTRICT

By: _____ **DO NOT SIGN** _____

Chad Davisson, General Manager

DISTRICT:

SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE

DISTRICT

By: _____ **DO NOT SIGN** _____

Lynda Hopkins, 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: Legal Description

Exhibit B: Project Structure Map

Certificate of Acceptance

Recreation Conservation Covenant

Certificate of Acceptance

Exhibit A

Property Legal Description

For APN/Parcel ID(s): 130-151-004-000

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

Lots 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, in Block 7 Green Valley Ranch, Sonoma County, California, as per map thereof on file in the office of the County Recorder of the County of Sonoma, State of California.