

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Sonoma County Board of Supervisors
575 Administration Drive, Room 100A
Santa Rosa, CA 95403-2881

Record free per Gov. Code 27383

Documentary Transfer Tax: \$0. Revenue and Taxation Code Section 11922: Deed to a Public Entity
Exempt from SB2 fee per GC 27388.1 (a) (2); executed or recorded by a government agency

**GRANT DEED OF
AGRICULTURAL EASEMENT AND COVENANT
(Farm Family Housing)**

This Grant Deed of Agricultural Easement and Covenant (hereinafter "Easement") is made by and between D. D. PHILLIPS PARTNERS LLC (hereinafter collectively "**GRANTOR**"), and the County of Sonoma, a political subdivision of the State of California (hereinafter "**COUNTY**"), at Santa Rosa, California.

RECITALS

A. **GRANTOR** is the owner of that certain real property located in the unincorporated area of Sonoma County, California, at 5796 Dry Creek Road, Healdsburg, Assessor's Parcel No. 090-230-049, and more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference (hereinafter "the Property").

B. The Property is designated "Land Intensive Agriculture" in the Sonoma County General Plan (hereinafter "the General Plan") and "LIA (Land Intensive Agriculture)" in the Sonoma County Zoning Ordinance (hereinafter "the Zoning Ordinance") and is subject to a California Land Conservation Act contract. The Land Intensive Agriculture General Plan land use category and the LIA (Land Intensive Agriculture) in the Sonoma County Zoning district allow one detached farm family dwelling unit per agricultural parcel, provided that (1) the parcel is subject to a California Land Conservation Act contract, and (2) the owner of the parcel voluntarily offers an agricultural easement to **COUNTY** having a term equal to the useful life of the structure, but in no event less than twenty (20) years, and a covenant acknowledging that in the event the agricultural use on the parcel is terminated, the farm family dwelling unit shall become a non-conforming residential use.

C. **GRANTOR** filed Application ZPE23-0062 (“**GRANTOR’s** Application”) with **COUNTY** to construct or place one (1) detached farm family dwelling unit on the Property (hereinafter “the Farm Family Dwelling Unit”). As part of **GRANTOR’s** Application, **GRANTOR** offered to grant **COUNTY** an agricultural easement and covenant over the Property.

D. After consideration of **GRANTOR’s** offer, **COUNTY’s** Director of Permit and Resource Management determined that approval of **GRANTOR’s** Application would be consistent with the General Plan and the Zoning Ordinance if accompanied by this Easement.

E. **COUNTY’s** Board of Supervisors concurred with the determination of **COUNTY’s** Director of Permit and Resource Management and agreed to accept this Easement.

F. **GRANTOR** acknowledges that this Easement is being granted to **COUNTY** in consideration of **COUNTY’s** approval of **GRANTOR’s** Application.

G. Acceptance of the interest in real property conveyed herein is consistent with the General Plan.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants, terms, conditions, and restrictions contained herein, **GRANTOR** and **COUNTY** covenant and agree as follows:

1. Grant. **GRANTOR** hereby grants, delivers, and conveys to **COUNTY** an agricultural easement and covenant over the Property of the nature and character and to the extent hereafter expressed. This Easement shall be for the benefit of the public generally, as represented by **COUNTY’s** Board of Supervisors.

2. Purpose. The purpose of this Easement is to protect and preserve the resource value, agricultural viability, and productiveness of the Property, and to ensure that the Property continues in agricultural use throughout the term of this Easement (hereinafter “the agricultural purpose of this Easement”).

3. Permitted Uses. **GRANTOR** shall confine the use of the Property exclusively to activities and uses that are consistent with the agricultural purpose of this Easement. In so doing, **GRANTOR** is expressly authorized to undertake any of the following activities and uses on the Property, provided that such activities and uses are undertaken in a manner that is consistent with the agricultural purpose of this Easement, and provided further that all applicable federal, state, and local statutes, ordinances, rules, and regulations are complied with and all necessary governmental approvals and permits are properly obtained:

(a) Maintaining any of the following residential uses:

(1) One detached single family dwelling unit (hereinafter “the Main Residential Dwelling Unit”), in accordance with the provisions of the agricultural zoning district governing the Property.

(2) The Farm Family Dwelling Unit, in accordance with the provisions of the agricultural zoning district governing the Property, provided that the Farm Family Dwelling Unit is:

(A) Incidental to the Main Residential Dwelling Unit in terms of size, location, and architecture; and

(B) Not leased, subleased, rented, subrented, or sold separately from the Main Residential Dwelling Unit; and

(C) Occupied by members of the farm operator’s family.

(3) Any agricultural employee or farmworker housing permitted with or without a use permit by the provisions of the agricultural zoning district governing the Property.

(b) Engaging in any agricultural activity or use permitted with or without a use permit by the provisions of the agricultural zoning district governing the Property, in accordance with those provisions and sound, generally accepted agricultural and soil conservation practices.

(c) Constructing new buildings, structures, and other improvements, including, but not limited to, residential and agricultural buildings, fences, access roads, water sources, and sewage disposal leaching systems, in connection with activities and uses permitted under this Easement.

(d) Maintaining and repairing existing buildings, structures, and other improvements, including, but not limited to, residential and agricultural buildings, fences, access roads, water sources, and sewage disposal leaching systems, in connection with activities and uses permitted under this Easement. In the event of destruction, deterioration, or obsolescence of any improvement, whether existing on the effective date of this Easement or constructed subsequently pursuant to the provisions hereof, **GRANTOR** may reconstruct or replace same with ones of similar size, function, capacity, and location, subject to the provisions of the agricultural zoning district governing the Property and any other applicable provisions of the Sonoma County Code.

(e) Continuing easements related to the Property recorded prior to the effective date of this Easement, modifying such easements, and granting new easements relating to the Property.

(f) Undertaking conservation projects that promote soil stabilization and reduce erosion.

(g) Utilizing government approved agricultural chemicals such as fertilizers and pesticides in those amounts and with that frequency of application necessary to accomplish reasonable agricultural results within government regulations and guidelines, provided that such use shall be carefully administered near surface water and during periods of high groundwater.

(h) Controlling predatory and problem animals by selective control techniques consistent with policies promulgated by **COUNTY's** Agricultural Commissioner.

(i) Managing the Property and its resources in accordance with agriculturally accepted farm and ranch management practices.

4. Prohibited Uses. **GRANTOR** shall not undertake any activity or use on the Property that is inconsistent with the agricultural purpose of this Easement. Further, **GRANTOR** is expressly prohibited from undertaking any of the following activities and uses on the Property:

(a) Establishing any residential, commercial, or industrial activity or use that would detract from the agricultural use on the Property.

(b) Constructing, reconstructing, replacing, repairing, or maintaining any building, structure, or other improvement, except as otherwise provided in this Easement.

(c) Altering the surface or contour of the land in any manner whatsoever, including, but not limited to, excavating or removing soil, sand, gravel, rock, or sod, except in connection with activities and uses permitted under this Easement.

(d) Degrading or eroding the soil or polluting any surface or sub-surface waters, provided that this prohibition shall not be construed as preventing the use of agricultural chemicals such as fertilizers and pesticides in connection with activities and uses permitted under this Easement so long as such use is undertaken in accordance with the provisions of this Easement.

(e) Dumping or accumulating trash, ashes, garbage, waste, junk, non-operative vehicles, or other unsightly or offensive materials, provided that this prohibition shall not be construed as preventing the placement or storage of agricultural products and by-products on the land so long as such placement or storage is consistent with law, public health, and sound agricultural practices.

(f) Exploring for or developing and extracting minerals and hydrocarbons by any mining method, surface or otherwise.

5. **Term.** The term of this Easement shall commence upon the recordation of this Easement and shall continue for so long as the Farm Family Dwelling Unit is in existence, regardless of its use, or for twenty (20) years, whichever is longer. Upon the expiration of the term of this Easement, if requested by **GRANTOR, COUNTY** shall record an instrument acknowledging such expiration.

6. **Consistent General Plan and Zoning Designations.** **COUNTY** may maintain the Property in an agricultural general plan land use category and agricultural zoning district that are consistent with the agricultural purpose of this Easement.

7. **Effect of Termination of Agricultural Use.** **GRANTOR** acknowledges that in the event that the agricultural use on the Property is terminated, the Farm Family Dwelling Unit shall become a legal nonconforming residential use subject to the nonconforming use provisions of the Zoning Ordinance.

8. **Limitation on Division.** **GRANTOR** shall not divide the Property by subdivision, lot line adjustment, or other means, including, but not limited to, gaining recognition of previously unrecognized parcels created by patent or deed conveyances, subdivisions, or surveys, in a manner that would result in the Farm Family Dwelling Unit being located on a separate parcel from the Main Residential Dwelling Unit. This prohibition against division of the Property shall be inapplicable to (i) divisions necessary for public acquisition, (ii) divisions necessary for the voluntary conveyance of all or a portion of the Property to a government or non-profit entity exclusively for conservation or public access purposes, and (iii) leases for agricultural purposes.

9. **Costs and Liabilities.** **GRANTOR** agrees to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property, and to defend, indemnify, hold harmless, and release **COUNTY**, its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, including **GRANTOR**, relating thereto. **GRANTOR** and **COUNTY** intend and agree that **COUNTY** 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, and **GRANTOR** agrees to defend,

indemnify, hold harmless, and release **COUNTY**, its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, including **GRANTOR**, relating thereto. Without limiting the foregoing, **COUNTY** shall not be liable to **GRANTOR** or any other person or entity in connection with any entry upon the Property pursuant to this Easement, or on account of any claim, liability, damage, or expense suffered or incurred by or threatened against **GRANTOR** or any other person or entity, except as such claim, liability, damage, or expense is the result of **COUNTY's** sole active negligence or sole willful misconduct.

10. Enforcement and Inspection. **GRANTOR** intends and hereby specifically provides that **COUNTY** shall have the right to enforce this Easement, and that **COUNTY** shall have the right to enter upon the Property at any time for the purpose of inspection to ensure protection of its rights hereunder after giving twenty-four hours prior notice to **GRANTOR**.

11. Remedies for Breach. With respect to **COUNTY's** remedies for **GRANTOR's** breach of this Easement, **GRANTOR** and **COUNTY** agree as follows:

(a) In the event of a violation or threatened violation by **GRANTOR** of any provision of this Easement, **COUNTY** shall give notice to **GRANTOR** of the violation and demand that **GRANTOR** take corrective action to cure the violation. If **GRANTOR** fails to cure the violation within thirty (30) days after notice of the violation is given, or, under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, **GRANTOR** fails to begin curing the violation within the thirty (30) day period or fails to continue diligently to cure the violation until finally cured, **COUNTY** may institute a suit to enjoin and/or recover damages for the violation and/or to require the restoration of the Property to the condition that existed prior to the violation. If **COUNTY** reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to the Property, **COUNTY** may pursue its remedies under this paragraph without waiting for the cure period to expire. **COUNTY's** rights under this paragraph shall apply equally in the event of either actual or threatened violations of the provisions of this Easement, and **GRANTOR** agrees that **COUNTY's** remedies at law for any violation of the provisions of this Easement are inadequate and that **COUNTY** shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief, including damages, to which **COUNTY** may be entitled, including specific performance of the provisions of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

(b) Enforcement of the provisions of this Easement shall be at the discretion of **COUNTY**, and any forbearance by **COUNTY** to exercise its rights under this Easement in the event of a violation or threatened violation by **GRANTOR** of any provision of this Easement shall not be deemed or construed to be a waiver by **COUNTY** of such provision or of any subsequent violation or threatened violation of the same or any other provision of this Easement. Any

failure by **COUNTY** to act shall not be deemed a waiver or forfeiture of **COUNTY's** right to enforce the provisions of this Easement in the future.

(c) Inasmuch as the actual damages that would result from damage to the Property caused by a violation or threatened violation by **GRANTOR** of any provision of this Easement are uncertain and would be impractical or extremely difficult to measure, **GRANTOR** and **COUNTY** agree that the damages shall be measured as follows:

(1) For an improvement prohibited by this Easement, an amount equal to the product of (A) the market value of the improvement, (B) the length of time that the improvement exists on the Property (calculated as the fraction obtained by taking the number of calendar days the improvement exists on the Property divided by 365), and (C) the then current interest rate for post judgment interest; and

(2) For a change in use prohibited by this Easement, whether or not it involves an improvement, an amount equal to any economic gain realized by **GRANTOR** because of the change in use; and

(3) For a change in use prohibited by this Easement, whether or not it involves an improvement and where there is no measurable economic gain realized by **GRANTOR**, the product of (A) the cost of restoration, as set forth in a written estimate by a qualified person selected by **COUNTY**, (B) the length of time that the prohibited use continues on the Property (calculated as the fraction obtained by taking the number of calendar days the prohibited use continues on the Property divided by 365), and (C) the then current interest rate for post judgment interest.

(d) If **COUNTY**, in the notice to **GRANTOR**, demands that **GRANTOR** remove an improvement, discontinue a use, or both and claims damages from such improvement and/or use, then **GRANTOR** may mitigate damages by fully complying with **COUNTY's** notice within the cure period. In the event of such full and timely compliance, **COUNTY** shall not be entitled to damages for the violation specified in the notice. In the event of litigation arising out of the notice, brought either by **GRANTOR** or **COUNTY**, in which **GRANTOR** prevails, then **GRANTOR** shall be entitled to economic damages; provided that neither **COUNTY** nor **GRANTOR** shall be entitled to damages where **COUNTY** has not claimed damages in its notice.

(e) The remedies set forth in this paragraph are not intended to displace any other remedy available to either party as provided by this Easement or applicable law.

12. Acts Beyond GRANTOR's Control. Nothing contained in this Easement shall be construed to entitle **COUNTY** to bring any action against **GRANTOR** for any injury to or change in the Property resulting from causes beyond **GRANTOR's** control, including, but not limited to,

fire, flood, storm, and earth movement, 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 agricultural purpose of this Easement. Nothing contained in this Easement is intended to deprive **GRANTOR** of all reasonable economically viable use of the Property, and this Easement shall not be construed to deprive **GRANTOR** of all such use.

13. Warranty of Ownership. **GRANTOR** warrants that he is the owner in fee simple of the Property, and that at the time of the conveyance of this Easement the Property is not subject to any deeds of trust other than the deeds of trust identified in Exhibit "B," attached hereto and incorporated herein by this reference, whose trust deed beneficiaries have in Exhibit "B" consented to this Easement, agreed to subordinate their respective interests in the Property to this Easement, and covenanted that any sale made under the provisions of the respective deeds of trust shall be subject to this Easement.

14. Access and Control. Except as otherwise provided in this Easement, **GRANTOR** retains the exclusive right of access to and control over the Property. Nothing contained in this Easement shall be construed as affording the public a right of access to any portion of the Property or precluding **GRANTOR's** right to grant access to third parties across the Property, provided that such access is allowed in a reasonable manner and is not inconsistent with the agricultural purpose of this Easement.

15. Additional Uses. **GRANTOR** and **COUNTY** intend and agree that this Easement shall confine the use of the Property to the uses enumerated herein and such other uses as **COUNTY** may determine do not conflict with the agricultural purpose of this Easement.

16. Amendment. If circumstances arise under which an amendment or modification of this Easement would be appropriate, **GRANTOR** and **COUNTY** may mutually agree to amend or modify this Easement, provided that any such amendment or modification is in writing and signed by both **GRANTOR** and **COUNTY**, and is consistent with the agricultural purpose of this Easement. No amendment or modification of this Easement shall take effect unless and until it is recorded in the office of the Sonoma County Recorder.

17. Interpretation and Construction. It is the intention of the parties that this Easement shall be liberally construed to effectuate the agricultural purpose of this Easement. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the agricultural purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid or unenforceable. If any provision of this Easement is found to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other provision of this Easement.

18. 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.

19. Easement to Bind Successors. Throughout the term of this Easement, this Easement shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running with the Property, and shall be binding upon and inure to the benefit of **GRANTOR**, his personal representatives, heirs, successors, and assigns, and all persons claiming by or through them pursuant to California law.

20. Subsequent Transfers. **GRANTOR** agrees to incorporate the terms of this Easement in any deed or other legal instrument by means of which any interest in the Property, including, but not limited to, a leasehold interest, is transferred. The failure of **GRANTOR** to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

21. Termination of Rights and Obligations. A party's rights and obligations under this Easement shall terminate upon transfer of the party's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

22. Notices. Any notice, demand, request, or other communication that either party desires or is required to give to the other under this Easement shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To GRANTOR: D. D. PHILLIPS PARTNERS LLC
Attn: Brian Schmidt
5796 Dry Creek Road
Healdsburg, California 95448

To COUNTY: Sonoma County Permit and Resource Management Department
Attn: Joshua Miranda
File No. ZPE23-0062
2550 Ventura Avenue
Santa Rosa, CA 95403

or to such other address as either party from time to time shall designate by written notice to the other. Notice, if mailed, shall be deemed given upon deposit in the United States mail. In

all other instances, notice shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the persons to whom notices, demands, requests, or other communications are to be given by giving notice pursuant to this paragraph.

23. Number and Gender. Unless the provision or context otherwise requires, the singular number shall include the plural and the plural the singular, and the masculine gender shall include the feminine and neuter.

24. GRANTOR and COUNTY. Wherever used herein, the terms “GRANTOR” and “COUNTY” and any pronoun in place thereof, shall mean and be construed to include the above-named GRANTOR, his personal representatives, heirs, successors, and assigns, and all persons claiming by or through them pursuant to California law, and the above-named COUNTY, its successors and assigns, respectively.

25. COUNTY’s Director of Permit and Resource Management and COUNTY’s Agricultural Commissioner. Wherever used herein, the terms “COUNTY’s Director of Permit and Resource Management” and “COUNTY’s Agricultural Commissioner,” and any pronouns in place thereof, shall mean and be construed to include the Director of the Permit and Resource Management Department for COUNTY and the Agricultural Commissioner for COUNTY, respectively, and their duly authorized representatives.

26. Integration. This Easement is the final and complete expression of the agreement between the parties and any and all prior or contemporaneous agreements written or oral are merged into this written instrument.

27. Execution. GRANTOR shall execute this Easement, cause the same to be acknowledged, and deliver said executed and acknowledged instrument to COUNTY in such form as to permit its acceptance by COUNTY and recordation in the office of the Sonoma County Recorder.

28. No Liens, Encumbrances, or Conveyances. After GRANTOR has executed this Easement, GRANTOR warrants that he will not record any lien, encumbrance, or otherwise convey any right, title, or interest in and to the Property until such time as this Easement has been accepted by COUNTY and recorded in the office of the Sonoma County Recorder.

29. Captions. The captions in this Easement have been included solely for convenience of reference. They are not a part of this Easement and shall have no effect upon its construction or interpretation.

IN WITNESS WHEREOF, GRANTOR and COUNTY have executed this Easement as set forth below.

GRANTOR:

D.D. Phillips Partners, LLC, a California Limited Liability Company

Dated: _____

By: _____
Brian Schmidt, Manager

Dated: _____

By: _____
Diane Carriger, Manager

Dated: _____

By: _____
Kay Robinson, Manager

COUNTY:

County of Sonoma

Dated: _____

By: _____
Chris Coursey
Chair, Board of Supervisors

ATTEST:

By: _____
Noelle Francis
Clerk of the Board of Supervisors

NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED FOR ALL SIGNATORIES.

APPROVED AS TO SUBSTANCE:

Dated: _____

By: _____

Tennis Wick

Director of Permit and Resource Management

APPROVED AS TO FORM:

Dated: _____

By: _____

Jennifer C. Klein

Deputy County Counsel

EXHIBIT "A"

LEGAL DESCRIPTION

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

PARCEL ONE:

BEING THE NORTHERN PORTION OF THE ORIGINAL J.G. BEST PLACE ON THE TZABACO RANCHO AND BOUNDED AS FOLLOWS, TO-WIT:

BEGINNING AT THE NORTHEAST CORNER OF THE J.G. BEST PLACE AND RUNNING THENCE SOUTH 39°45' WEST ALONG THE SOUTH LINE OF THE LANDS FORMERLY OF ELLA C. LITTON (FORMERLY ELLA C. RACKLIFF) NOW OF HALLENGREN TO THE EAST BANK OF DRY CREEK: THENCE FOLLOWING THE MEANDERINGS OF THE SAID EAST BANK OF DRY CREEK TO THE NORTH LINE OF THE LANDS FORMERLY OF JOEL HIATT, NOW OF LE BARON; THENCE EASTERLY PARALLEL WITH THE FIRST OR NORTHERLY BOUNDARY HEREINBEFORE GIVEN ALONG THE NORTH BOUNDARY OF THE LAND OF LE BARON TO THE COUNTY ROAD LEADING UP THE DRY CREEK VALLEY; THENCE FOLLOWING SAID ROAD NORTHERLY TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION OF SAID LAND CONVEYED TO THE COUNTY OF SONOMA ON MARCH 12, 1964 IN BOOK 2029 OF OFFICIAL RECORDS, PAGE 295, INSTRUMENT NO. H-81050, SONOMA COUNTY RECORDS.

ALSO EXCEPTING THEREFROM ALL THAT PORTION OF SAID LAND, LYING NORTHWESTERLY OF THE AGREED UPON BOUNDARY LINE DESCRIBED AND CONVEYED ON MARCH 28, 1975 IN BOOK 2944 OF OFFICIAL RECORDS, PAGE 573, INSTRUMENT NO. P-49999, SONOMA COUNTY RECORDS.

ALSO EXCEPTING THEREFROM ALL THAT PORTION OF SAID LAND LYING SOUTHWESTERLY OF THE AGREED UPON BOUNDARY LINE DESCRIBED AND CONVEYED ON JANUARY 6, 1989, INSTRUMENT NO. 89001373, SONOMA COUNTY RECORDS.



CERTIFICATE OF ACCEPTANCE

(Government Code 27281)

This is to certify that the interest in real property conveyed by the Grant Deed of Agricultural Easement and Covenant for Farm Family Dwelling from D. D. PHILLIPS PARTNERS, LLC to the County of Sonoma, a political subdivision of the State of California, is hereby accepted by the Board of Supervisors on November 28, 2023, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

Chris Coursey

Chair, Board of Supervisors

