

RECORDING REQUESTED BY:

WHEN RECORDED RETURN TO:

APN(s): 060-020-001

SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE

SUBORDINATION AGREEMENT (CONSERVATION EASEMENT)

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN SOME OTHER OR LATER ENCUMBRANCE(S) ON THE SAME PROPERTY.

This Subordination Agreement (Conservation Easement) ("**Subordination Agreement**") is entered into this ____ day of _____, 202__, by and among the **CITY OF SANTA ROSA**, a California municipal corporation, owner of the real property hereinafter described ("**City**" or **Owner**"); the **SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT**, a public agency formed pursuant to the provisions of Public Resources Code §§ 5500 et seq., which holds the conservation easement hereinafter described ("**District**"); and Center for Natural Lands Management, owner and holder of the mitigation bank easement hereinafter described ("**Mitigation Bank Easement Holder**").

RECITALS:

A. Owner is the fee owner of certain real property located in the County of Sonoma, State of California, including approximately ninety-nine (99) acres of real property currently identified as a portion of APN 060-020-001 and legally described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "**Property**").

B. Pursuant to the terms of that certain document titled "Deed and Agreement by and between the City of Santa Rosa and the Sonoma County Agricultural Preservation and Open Space District Conveying a Conservation Easement" recorded on December 17, 2001 as Instrument Number 2001173432 in the Official Records of Sonoma County, California ("**Conservation Easement**"), the District holds and owns a conservation easement encumbering the Property and various other parcels. The principal purpose of the Conservation Easement is to ensure the

preservation of the open space, scenic and biotic values of the Property, and to prevent any uses of the Property that will significantly impair or interfere with those values.

C. The Property is subject to certain requirements contained in the Mitigation Bank Enabling Instrument for the Kelly Farm Mitigation Bank dated _____ (“**Bank Enabling Instrument**”) by and among the City, U.S. Army Corps of Engineers (“**USACE**”), U.S. Environmental Protection Agency (“**USEPA**”), U.S. Fish and Wildlife Service (“**USFWS**”), North Coast Regional Water Quality Control Board (“**Regional Water Board**”), and California Department of Fish and Wildlife (“**CDFW**”) (collectively, USACE, USEPA, USFWS, and Regional Water Board are referred to as “**IRT Agencies**”). As a condition of the Bank Enabling Instrument, a conservation easement must be recorded against the Property.

D. To establish a mitigation bank on the Property, and in accordance with the requirements of the Bank Enabling Instrument, Mitigation Bank Easement Holder intends to acquire a conservation easement interest from Owner pursuant to that certain conservation easement deed (“**Mitigation Bank Easement**”) to be recorded substantially concurrently with this Subordination Agreement. The purposes of the Mitigation Bank Easement are to ensure that the Property will be retained forever in its natural, restored, or enhanced condition and to prevent any use of the Property that will impair or interfere with the “**Conservation Values**” (as defined in the Mitigation Bank Easement) of the Property.

E. The Conservation Easement and Mitigation Bank Easement both restrict the use of the Property, and the District previously determined that the conveyance of a new easement in furtherance of, and to establish, the mitigation bank is consistent with the requirements of the Conservation Easement.

F. Although it is unlikely a conflict will arise between the requirements of the Conservation Easement and the Mitigation Bank Easement, the Mitigation Bank Easement requires (and the City and District are willing to enter into) this Subordination Agreement to assure that the requirements of the Mitigation Bank Easement control to the extent of any conflict between the Mitigation Bank Easement and the Conservation Easement.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, Owner, District, and Mitigation Bank Easement Holder agree as follows:

AGREEMENT:

1. The above recitals are true and correct and are hereby incorporated by reference.
2. District hereby confirms receipt, review and approval of all of the terms and conditions of the Mitigation Bank Easement and consents to the execution by Owner, and acceptance by Mitigation Bank Easement Holder, of the Mitigation Bank Easement and the recording of the Mitigation Bank Easement substantially concurrently with this Subordination Agreement.

3. The District hereby subordinates its Conservation Easement to the Mitigation Bank Easement solely to the extent of any conflict as between these easements, and agrees that the Conservation Easement shall be subject to said Mitigation Bank Easement and to the rights, restrictions and easements arising thereunder to the extent of any conflict, as if for all purposes the Mitigation Bank Easement had been executed, delivered, and recorded prior to the execution and delivery of the Conservation Easement.

4. District agrees that the Property shall be subject to the Mitigation Bank Easement and accompanying documents and that the rights, restrictions and easements arising under the Mitigation Bank Easement shall be controlling to the extent of any conflict that may exist between the Mitigation Bank Easement and the Conservation Easement.

5. This Subordination Agreement shall not be construed as a waiver by the District of rights that it possesses to remedy breaches of the Conservation Easement or enforce the terms of the Conservation Easement that do not conflict with the Mitigation Bank Easement.

6. District agrees not to exercise any rights under the Conservation Easement that would be incompatible with the uses and purposes set forth in the Mitigation Bank Easement.

7. This Subordination Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns.

8. This Subordination Agreement shall be recorded in the records of Sonoma County, California, substantially concurrently with the recording of the Mitigation Bank Easement. This Subordination Agreement may be executed and delivered in any number of counterparts or copies (each, a “**counterpart**”) by the parties. When each party has signed and delivered at least one counterpart to the other party hereto, each counterpart shall be deemed an original and, taken together, shall constitute one and the same Subordination Agreement. The parties authorize each other to detach and combine, or cause to be detached and combined, original signature pages and to consolidate them into a single identical original for recordation of this Subordination Agreement in the Official Records of Sonoma County, State of California.

9. This Subordination Agreement shall be the whole and only agreement with regard to the subject matter hereof and shall supersede and cancel any prior agreements.

10. This Subordination Agreement may not be amended, waived, or modified except by an instrument in writing executed by the parties to this Subordination Agreement and after written notice to each of the IRT Agencies.

11. This Subordination Agreement shall be construed and enforced in accordance with the laws of the State of California.

12. All notices, requests, demands, elections, consents, approvals, and other communications under this Subordination Agreement (each such communication, a “**notice**”) must be in writing and delivered by hand, by United States mail (certified mail, return receipt requested) or by commercial express courier service to Owner, District, and Mitigation Bank Easement

Holder at the following addresses (or at any other address which Owner, District, or Mitigation Bank Easement Holder may designate by notice from time to time):

If to Owner:

City of Santa Rosa
City Manager
100 Santa Rosa Avenue, Santa Rosa, CA 95404

With copy to:

City of Santa Rosa Water
Director of Water
69 Stony Circle, Santa Rosa, CA 95401

If to District:

Sonoma County Agricultural Preservation and Open Space District
General Manager
747 Mendocino Avenue, Santa Rosa, CA 95401

With copy to:

If to Mitigation Bank Easement Holder:

Center for Natural Lands
Land Acquisitions Program Manager
27258 Via Industria Suite B, Temecula, CA 92590

13. This Agreement shall be effective upon the later of: (1) the conveyance and recording of the Mitigation Bank Easement; or (2) the execution and recording of this Subordination Agreement, both of which must occur as a condition of the effectiveness of this Subordination Agreement.

[Signatures to follow on next pages.]

IN WITNESS WHEREOF, this Subordination Agreement has been executed by District as of the date first above written.

DISTRICT:

**SONOMA COUNTY AGRICULTURAL
PRESERVATION AND OPEN SPACE
DISTRICT, a public agency**

By: _____
Name: _____
Its: _____

[Signatures continue on next page.]

IN WITNESS WHEREOF, this Subordination Agreement has been executed by Owner as of the date first above written.

OWNER:

THE CITY OF SANTA ROSA,
a California municipal corporation

By: _____
Name: _____
Its: _____

[Signatures continue on next page.]

IN WITNESS WHEREOF, this Subordination Agreement has been executed by Mitigation Bank Easement Holder as of the date first above written.

MITIGATION BANK EASEMENT HOLDER:

CENTER FOR NATURAL LANDS
MANAGEMENT, a California nonprofit public
benefit corporation

By: _____
Name: _____
Its: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 20__, before me, _____, a Notary Public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 20__, before me, _____, a Notary Public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

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STATE OF CALIFORNIA)
) ss.
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WITNESS my hand and official seal.

Signature _____

(Seal)

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STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A
Legal Description of the Property

[See attached]