

**ATTACHMENT 3**

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

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Free recording per Government Code Section 6103

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

Gregory Gillis (“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 located in Sonoma County 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. The purpose for the creation of DISTRICT and the imposition of the tax was to provide for the preservation of agriculture and open space through the acquisition of interests in appropriate properties from willing sellers consistent with a voter-approved Expenditure Plan. DISTRICT was created and the tax imposed in order to further the state policy for the preservation of agricultural and open space lands, to meet the mandatory requirements imposed on the County and each of its cities by Government Code sections 65560 *et seq.* and to advance the implementation of the open space elements of their respective general plans. In 2006, the voters of Sonoma County approved an extension of the transaction and use tax and an update of the Expenditure Plan.

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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.

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. [Number], that the acquisition of a conservation easement in the Property was consistent with the Sonoma County General Plan (specifically the Plan's Agricultural Resource and Open Space and Resource Conservation Elements) because it will preserve lands currently in agricultural production and lands with soils and other characteristics that make them potentially suitable for agricultural use; retain large parcel sizes and avoids incompatible non-agricultural uses; preserve roadside landscapes that have a high visual quality; preserve the unique rural and natural character of Sonoma County; protect and enhance the County's natural habitats and diverse plant and animal communities; protect and enhance Riparian Corridors and functions along streams, balancing the need for agricultural production and other land uses within the preservation of riparian vegetation; protect water resources, flood control, bank stabilization, and other riparian functions and values; encourage conservation of soil resources to protect their long term productivity and economic value; protect, restore, and enhance the quality of surface and groundwater resources; protect existing groundwater recharge areas; reduce economic pressure for conversion of agricultural land to non-agricultural use, and maintain the maximum amount of land in parcel sizes that a farmer would be willing to lease or buy for agricultural purposes. 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 following adopted local plans: Restoration Vision for the Laguna Santa Rosa, Plan Bay Area 2040, and the DISTRICT's Vital Lands Initiative.

F. DISTRICT has the authority to acquire conservation easements by virtue of Public Resources Code section 5540 and possesses the ability and intent to enforce the terms of this Easement.

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

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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 large open area dominated by a riparian corridor formed by the confluence of Blucher Creek and Volkerts Creek, with adjacent grasslands and remnants of the Cunningham Marsh, as well as oak woodlands in the uplands. Critical resources on the Property (collectively “the Conservation Values”), include:

**2.1 Natural Resources.** The Property contains a variety of “Natural Resource Values” including, riparian habitat along Volkerts and Blucher creeks, remnants of Cunningham Marsh, grasslands, oak woodlands, and their associated ecological function, water quality, and wildlife habitat function. The Property supports myriad wildlife, and the Cunningham Marsh is capable of supporting a rich and distinctive wetland flora, including special status species and many disjunct populations of plants typical of northern bog-like habitats. The Cunningham Marsh is home to one of two remaining populations of Pitkin lily (*Lilium pardalinum ssp pitkinense*), a federally listed endangered species, as well as the protected Cunningham marsh cinquefoil (*Potentilla uliginosa*), California beaked-rush (*Rhynchospora californica*), and Sonoma alopecurus (*Alopecurus aequalis var. sonomensis*). The Property is also existing or potential habitat for other special-status species, including American badger (*Taxidea taxus*), steelhead trout (*Oncorhynchus mykiss*), California freshwater shrimp (*Syncaris pacifica*), western pond turtle (*Actinemys marmorata*), congested-headed hayfield tarplant (*Hemizonia congesta ssp. Congesta*), and Sebastopol meadowfoam (*Limnanthes vinculans*).

**2.2 Agricultural Resources.** The Agricultural Area (defined in Section 5.1.8(a) of this Property has good agricultural soils and water, gentle topography, and sufficient agricultural infrastructure to support a modest agricultural operation that is compatible with the Property’s Natural Resource Values. The remainder of the Property has suitable soils, topography, and water for more limited agricultural uses that are compatible with protection of the sensitive natural resources in those areas.

**2.3 Recreational and Educational Resources.** The Property’s topography, infrastructure, and location make it suitable for public recreational and educational uses, including opportunities for outdoor agricultural education and nature study.

**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 two or more 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

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Values, with particular weight given to preservation and protection of natural resources, then preservation and protection of agricultural resources, and finally recreational and educational uses.

#### **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.** DISTRICT shall have the right to preserve, protect and document in perpetuity the Conservation Values of the Property.

**4.2 Property Inspections.** DISTRICT shall have the right to enter upon the Property and to inspect, observe, and study the Property for the purposes of (i) identifying the current activities and uses thereon and the condition thereof, (ii) monitoring the activities and uses thereon to determine whether they are consistent with the terms, conditions and Conservation Purpose of this Easement, (iii) enforcing the terms, conditions and Conservation Purpose of this Easement, and (iv) exercising its other rights under this Easement. Such entry shall be permitted at least once a year at reasonable times, upon one week's prior notice to GRANTOR, and shall be made in a manner that will not unreasonably interfere with GRANTOR's use and quiet enjoyment of the Property pursuant to the terms and conditions of this Easement. Each entry shall be for only so long a duration as is reasonably necessary to achieve the purposes of this Section 4.2, but shall not necessarily be limited to a single physical entry during a single twenty-four hour period. Notwithstanding the foregoing, should DISTRICT's General Manager have a reasonable belief that GRANTOR is in breach of this Easement, DISTRICT shall have the right at any time, upon twenty-four hours' prior notice to GRANTOR, to enter upon the Property for the purpose of determining whether such breach has occurred. The rights of entry provided by this Section 4.2 shall extend to the officers, agents, consultants, and volunteers of DISTRICT.

**4.3 Enforcement.** DISTRICT shall have the right to enforce the rights herein granted and 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.** DISTRICT shall have the right to review and approve proposed uses and activities on the Property as more specifically set forth in Section 5, and Section 6.

**4.5 DISTRICT Signage.** DISTRICT shall have the right to erect and maintain a sign or other appropriate marker in a location on the Property acceptable to GRANTOR, 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 wording and design of the sign or maker shall be determined by DISTRICT with consent of GRANTOR. No such sign or marker shall exceed thirty-two (32) square feet in size nor be

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artificially illuminated. DISTRICT shall be responsible for the cost of erecting and maintaining such sign or marker.

### **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.

#### **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 this Section 5 requires prior notice to or approval by DISTRICT, such notice shall be given or approval shall be obtained in accordance with Section 6 of this Easement.

5.1.7 Management Plan. Within three (3) years of the recordation of this Easement or prior to the undertaking of resource management activities under

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Sections 5.5.1 through 5.5.12, GRANTOR shall develop and submit to DISTRICT for review and approval pursuant to Section 6 of this Easement, a long-term comprehensive management plan for the Property, referred to as a Management Plan (the “Management Plan”), which shall be consistent with the terms and conditions of this Easement. The Management Plan and future updates and amendments will be subject to review and approval by DISTRICT in accordance with Section 6 of this Easement. The Management Plan shall not be implemented on the Property until it has been approved by DISTRICT.

5.1.8 Project Structure Map and Easement-Designation Areas. This Easement identifies and designates several types of geographically specific areas of the Property within which particular uses may be permitted, or within which particular restrictions on use may apply (the “Easement Designation Areas”). These Easement Designation Areas are sized and located as depicted on the Project Structure Map attached hereto as Exhibit B and incorporated herein by this reference. The Easement Designation Areas are further described as follows:

a) Agricultural Housing Building Envelope. The “Agricultural Housing Building Envelope” consists of an approximately ½ acre area for agricultural worker housing. No other structures are permitted in the Agricultural Housing Building Envelope.

b) Agricultural Area. The “Agricultural Area” consists of a 20-acre area within which this Easement permits certain agricultural uses and structures as well as certain residential uses and structures (including the existing primary residence), which structures and uses are further described in Section 5.3, below.

c) Educational Staging Area. With prior approval from DISTRICT, GRANTOR may identify one ½-acre “Educational Staging Area” for educational structures and uses. The Educational Staging Area shall be sited to minimize impacts to natural resources.

d) Natural Area. The “Natural Area” consists of a buffer extending 200-feet from top of bank on both sides of Volkerts Creek and surrounding the springs documented on the Baseline Site Map, and a buffer extending 400-feet from top of bank on both sides of Blucher Creek, including the portion of Cunningham Marsh that exists on the Property.

**5.2 Subdivision and Parcels.** As of the Effective Date of this Easement, the Property consists of more than one legal parcel. Notwithstanding the potential existence of multiple underlying parcels, GRANTOR shall not divide the Property, whether by subdivision, conveyance, lot line adjustment, or any other means, nor shall GRANTOR gain or seek to gain recognition, by certificate of compliance under the Subdivision Map Act or otherwise, of additional parcels which may have previously been created on the

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Property by prior patent or deed conveyances, subdivisions, or surveys, nor shall GRANTOR place or convey any portion of the Property into ownership separate from the whole of the Property, except as expressly provided in Section 5.2.1 below.

5.2.1 Exceptions. This prohibition against division of the Property shall be inapplicable to:

a) Agricultural Leases. GRANTOR may lease a portion(s) of the Property for the permitted grazing, agricultural, and residential agricultural uses described in Section 5.3.

b) Residential Leases. GRANTOR may lease the Property for the permitted residential uses as described in Section 5.3.1.

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 rights to recognition of such historic parcels, whether through certificate of compliance under the Subdivision Map Act or otherwise.

**5.3 Land Uses.** GRANTOR shall restrict use of the Property to such uses as defined in this Section 5.3. All other uses are prohibited.

5.3.1 Residential Use. Residential use of the Property is permitted within the Agricultural Area and the Agricultural Housing Building Envelope.

5.3.2 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.

a) Mitigation. With prior written approval of 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: (1) the proposed mitigation enhances the Conservation Values; (2) the proposed mitigation is consistent with DISTRICT's enabling legislation; (3) the proposed mitigation is aligned with DISTRICT's objectives and goals; and (4) the proposed mitigation does not present a risk to DISTRICT's long-term fiscal stability. Furthermore, (1) any additional protections required by regulatory agencies in association with a mitigation project must be consistent with this Easement; and (2) the sale of mitigation credits are considered a commercial use and subject to the provisions of Section 5.3.5.

5.3.3 Agricultural Use. GRANTOR may engage in agricultural uses of the Property as described below in accordance with sound, generally accepted

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agricultural and soil conservation practices, provided however that no agricultural use shall be undertaken in a manner that significantly impairs the long-term agricultural productive capacity of the Property.

a) Uses within the Agricultural Area. The following uses are allowed within the Agricultural Area:

- (1) Livestock for the Production of Food and Fiber. GRANTOR may breed, raise, pasture, and graze livestock of every nature and description for the production of food and fiber.
- (2) Bees, Fish, Poultry and Fowl. GRANTOR may breed and raise bees, fish, poultry, and other fowl.
- (3) Crops. GRANTOR may plant, raise, harvest, and produce agricultural, aquacultural, horticultural, and forestry crops and products of every nature and description.
- (4) Sale of Harvested Crops and Products. GRANTOR may store and sell, including direct retail sale to the public, crops and products harvested and produced on the Property.
- (5) Processing of Crops and Products. GRANTOR may process agricultural crops and products principally harvested and produced on the Property.
- (6) Composting. GRANTOR may store, process, and sell, including direct retail sale to the public, compost materials generated on the Property in association with the permitted agricultural uses.
- (7) Agrichemicals. In connection with all agricultural uses, GRANTOR may apply agrichemicals, including herbicides, fertilizers, and biocides, only in those amounts and with that frequency of application necessary to accomplish reasonable agricultural purposes. Agrichemicals shall not be used in support of agricultural uses outside of the Agricultural Area.

5.3.4 Recreational and Educational Use. GRANTOR may use the Property for low-intensity outdoor recreation and education, including hiking, nature study and other such uses similar in nature and intensity. All outdoor recreational and educational uses and activities on the Property shall be designed and undertaken in a manner compatible with natural resource protection. GRANTOR may engage in personal, non-commercial hunting of deer and non-native animals on the Property as allowed in Sections 5.5.8 and 5.5.9. GRANTOR may charge a

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nominal fee to cover costs directly associated with recreational and educational programs and use of the Property.

5.3.5 Special Events. With prior notice to DISTRICT, GRANTOR may use the Property for special events, such as weddings, recreational events, art shows, and cultural activities. All special events shall be (1) located outside of the Natural Area, (2) limited to 100 attendees, up to 6 times per year, and (3) shall not result in any permanent alteration of the Property.

5.3.6 Commercial Use. GRANTOR may also use the Property for the following commercial uses: (i) agricultural use as defined in Section 5.3.2; (ii) home occupation(s) within permitted residential buildings; (iii) leases or rentals for grazing, agricultural, and residential uses as defined in Sections 5.3.2 and 5.5.3; (iv) recreational and educational uses pursuant to the restrictions in Section 5.3.4; (v) special events permitted under Section 5.3.5; and (vi) with prior written approval from DISTRICT, other minor ancillary commercial uses found to be consistent with Conservation Values of this Easement.

**5.4 Structures and Improvements.** No structure or improvement shall be maintained, repaired, replaced, constructed, or placed on the Property except as provided in this Section 5.4. All structures and improvements allowed by Sections 5.4.1 through 5.4.6, whether existing as of the Effective Date of this Easement or installed thereafter, shall be located within the Agricultural Area, the Agricultural Housing Building Envelope, and the Educational Staging Area. Furthermore, no structure or improvement shall exceed 24 feet in height except as otherwise provided herein.

5.4.1 Maintenance, Repair, or Replacement of Structures and Improvements. GRANTOR may maintain, repair, or replace permitted structures and improvements existing as of the Effective Date of this Easement or as may thereafter be constructed, 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 by DISTRICT shall be 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 through 5.4.10.

5.4.2 Primary Residence. As of the Effective Date of this Easement, the Property features a primary residence, as shown on the Project Structure Map.

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There may be no more than one primary residence located on the Property at any time. In the event that GRANTOR elects to replace the primary residence with a new primary residence, GRANTOR may, with prior written notice to DISTRICT, place or construct within the designated Agricultural Area one new primary residence, provided that no such residence shall exceed 24 feet in height and 3,000 square feet in size, exclusive of the garage. All garages, whether attached or detached, shall be subject to Section 5.4.3(a). Once the new primary residence is constructed, GRANTOR shall remove the former primary residence or redesignate and maintain it as an accessory structure in accordance with Section 5.4.3 or 5.4.4, as applicable, so that no more than one primary residence is located on the Property at any time.

5.4.3 Agricultural Structures and Improvements. All agricultural structures and improvements must be placed within the designated Agricultural Area and Agricultural Housing Building Envelope.

a) Non-Residential Agricultural Structures and Improvements. With prior written approval from DISTRICT, GRANTOR may place or construct within the Agricultural Area and Agricultural Housing Building Envelope accessory structures and improvements reasonably necessary for the permitted agricultural use of the Property, including barns, corrals, troughs, and greenhouses. No non-residential agricultural structure may be taller than 40 feet.

b) Residential Agricultural Structures and Improvements. With prior written approval from DISTRICT, GRANTOR may place or construct as many "Agricultural Residences" (defined as farm worker housing, farm family housing, or similar residences for agricultural workers) within the Agricultural Area as reasonably necessary for the agricultural operation, provided that no such residence shall exceed 24 feet in height nor be greater than 2,100 square feet in size, exclusive of garage. With prior written approval from DISTRICT, GRANTOR may place or construct, not more than one (1) agricultural residence within the Agricultural Housing Building Envelope, provided that no such residence shall exceed 24 feet in height nor be greater than 1,200 square feet in size, exclusive of garage. All garages, whether attached or detached, shall be subjected to Section 5.4.4.

5.4.4 Accessory to Residential Use.

a) Within the Agricultural Area, and subject to prior written notice to DISTRICT, GRANTOR may place or construct up to 3,000 cumulative square feet of accessory structures and improvements reasonably related to permitted residential use of the Property including, a guest house, accessory dwelling unit, garage, shed, personal play structures,

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and swimming pool, provided that such structures are no larger than 1,200 square feet each.

b) Within the Agricultural Housing Building Envelope, and with prior written notice to DISTRICT, Grantor may place or construct up to 2,000 cumulative square feet of Agricultural Housing Building Envelope structures and improvements associated with the agricultural residences, such as a garage, carport, shed, chicken coops, home gardens, and personal play structures. No such single structure or improvement is permitted to be larger than 1,000 square feet.

5.4.5 Accessory to Natural Resource Protection Use. With prior written notice to DISTRICT, GRANTOR may place or construct within the Agricultural Area accessory structures and improvements reasonably necessary for natural resource protection or restoration of the Property, including, sheds and greenhouses. With prior written approval from DISTRICT, GRANTOR may place or construct temporary accessory structures and improvements outside of the designated Agricultural Area as necessary during, and in connection with, natural resource protection, restoration, and enhancement activities.

5.4.6 Accessory to Recreational and Educational Uses. With prior written approval from DISTRICT, GRANTOR may construct or place minor improvements associated with permitted low-intensity outdoor recreational and educational uses, such as fish counters, wildlife cameras, blinds, one (1) single-track unpaved trail, and viewing areas. Within the Educational Staging Area, GRANTOR may place or construct one (1) accessory structure reasonably necessary for educational uses, such as an outdoor classroom with a covered patio, provided that such structure is no larger than 1,200 square feet. All improvements associated with low-intensity recreational and educational uses shall be designed, placed, and constructed to avoid impacts to sensitive natural resources.

5.4.7 Roads. With prior written approval from DISTRICT, GRANTOR may construct new roads and reconstruct or expand existing roads provided that such roads (i) are directly required for uses and activities allowed herein and (ii) are the minimum necessary for such uses and activities. Notwithstanding the foregoing, GRANTOR may construct a road to allow ingress-egress to adjacent properties for habitat enhancement, restoration, or monitoring of the natural resource values of adjacent properties and once constructed for such purposes, such road may be used for general ingress and egress to neighboring properties. Roads shall be constructed and maintained so as to minimize erosion and sedimentation and ensure proper drainage, utilizing Best Management Practices for roads as recommended by the California Department of Fish and Wildlife or other similar or successor entity. Roads constructed subsequent to the Effective Date of this Easement may not be paved with asphalt, concrete or other impervious surface unless such paving is required by any federal, state or local law, code, ordinance, or regulation. Roads

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that are abandoned, permanently closed and/or decommissioned shall be revegetated with native species, stabilized and ensured of proper drainage.

5.4.8 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. Notwithstanding the foregoing, no approval is required for placement of temporary fencing. All fencing and gates must (i) preserve the scenic values of the Property; (ii) be the minimum necessary in design and extent; (iii) not impede wildlife movement except within the Agricultural Area and Agricultural Housing Building Envelope or as necessary to support permitted agricultural uses, natural resource management, and restoration, and enhancement activities; and (iv) comply with DISTRICT's then- current guidelines for fences on conservation lands. Notwithstanding the provisions of Section 5.4.1, whether existing at the date hereof 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 5.4.8. In the event any fence or gate, or portion thereof, becomes obsolete or unnecessary for the uses described in this Section 5.4.8, GRANTOR shall remove such fencing or gate from the Property.

5.4.7 Utilities and Energy Resources. With prior written approval from DISTRICT, GRANTOR may expand existing or develop or construct new utilities within the Agricultural Housing Building Envelope, including electric power, septic or sewer, communication lines, 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. 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.

5.4.8 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. 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 5.4.11. Vegetation management related to the maintenance and operation of such systems shall be subject to the provisions of Section 5.5.4(b) of this Easement.

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5.4.9 Signs. GRANTOR may construct or place signs as set forth in this Section 5.4.9. No sign shall be artificially illuminated.

- a) Without prior written notice to or approval from DISTRICT, GRANTOR may construct or place two (2) signs not to exceed 32 square feet in size to identify the Property from public roadways and/or to acknowledge participation of funding agencies for permitted uses on the Property.
- b) 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; and (ii) provide directional, interpretive and educational information, 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.
- c) Without prior written notice to or approval from DISTRICT, GRANTOR may construct or place signs advocating candidates or issues that will be presented to voters in a public election are allowed, provided that such signs do not exceed then existing state and local regulations for political signs, and that such signs are removed within ten (10) days after the date of election.
- 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 does not create a significant visual impact.

**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 Natural Resource Preservation, Restoration, and Enhancement Activities. 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, limited crops, limited grazing, and practices to enhance water quality, native plant and wildlife habitat and connectivity, and to promote biodiversity. All such activities must be undertaken, pursuant to a Management Plan approved in accordance with Section 6.1, except as otherwise provided in Section 5.5.1(a).

- a) Limited Crops & Grazing in Support of Natural Resources. Within the Agricultural Area without a Management Plan, and outside of the Natural Area subject to a Management Plan approved pursuant to Section 6.1, GRANTOR may implement limited grazing, limited tilling, and plant

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limited agricultural crops and products to support, enhance, and/or restore the Property's Natural Resources Values.

5.5.2 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 of this Easement. In connection with allowed uses, structures, and/or improvements, movement of over 50 cubic yards of material in any calendar year is subject to prior DISTRICT approval.

5.5.3 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 5.4.7; (ii) reconstruction, expansion, and new construction of roads or trails (including bridges and crossings) allowed under Sections 5.4.7 and 5.4.6 respectively; and (iii) the preservation, restoration and enhancement of natural resources allowed under Section 5.5.1.

5.5.4 Mineral Exploration. Exploration for, or development and extraction of, geothermal resources, minerals, and hydrocarbons by any surface or sub-surface mining or any other method is prohibited.

5.5.5 Vegetation and Fuel Management. GRANTOR may undertake vegetation and fuel management activities to reduce wildfire risk as provided in this section. 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.

a) Within 100 feet of structures, except for Public Safety Systems installed pursuant to Section 5.4.12, and without need for notice to or approval from DISTRICT, GRANTOR may undertake brush removal, mowing and limited, grazing, tree trimming, targeted tree removal, and other vegetation management methods of similar nature and intensity.

b) Farther than 100 feet from structures, or in relation to Public Safety Systems installed pursuant to Section 5.4.12, GRANTOR may undertake vegetation management pursuant to a Vegetation Management Plan (defined below) approved in advance by DISTRICT. A "Vegetation Management Plan" is a document designed to guide GRANTOR's conduct of vegetation management pursuant to this section and may describe either an individual vegetation management project or a more

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comprehensive plan covering multiple projects. Any Vegetation Management Plan must incorporate the best available science and must identify the following: (i) the purpose of proposed work, (ii) the location of the treatment area(s), (iii) a timeline for completion, (iv) the “before” condition of the treatment area(s), (v) management objectives, (vi) treatment methods including any new infrastructure, (vii) post-treatment maintenance, and (viii) best management practices, such as soil protection, appropriate tree spacing, special-status species protection, invasive species management, and snag retention. Any Vegetation Management Plan must be consistent with any then-current DISTRICT wildfire management policy, the Management Plan, and the terms of this Easement. Any Vegetation Management Plan may include the following treatment methods:

(i) Limited brush removal and mowing, or other methods of similar nature and intensity;

(ii) Limited grazing undertaken in accordance with sound, generally accepted conservation practices;

(iii) Limited tree trimming and limited tree removal within a fuel break area or calming zone (as designated in the approved Vegetation Management Plan), and, if recommended by a fire protection agency having jurisdiction, vegetation removal within a fire break (as designated in the approved Vegetation Management Plan); and

(iv) Prescriptive or cultural burning consistent with the standards and requirements of the local fire protection agency having jurisdiction.

d) 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.

5.5.6 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 5.5.5 and (iv) for natural resource management as set forth in Section 5.5.1 of this Easement. Native trees removed pursuant to this Section 5.5.86 may be used for personal firewood.

5.5.7 Native Vegetation Removal. Removal or destruction of any native non-tree vegetation is prohibited, except as reasonably necessary (i) for permitted agricultural uses; (ii) within footprint of permitted structures and improvements; (iii) to control insects and disease; (iv) to prevent personal injury and property damage; (v) for the

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purpose of fire management, in accordance with Section 5.5.74; and (vi) for natural resource management, as set forth in Section 5.5.15 of this Easement.

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; (ii) personal, non-commercial hunting pursuant to Section 5.3.4; and (iii) as reasonably necessary in accordance with Section 5.5.1, 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.

a) Removal. GRANTOR may remove or control non-native plant and animal species provided that techniques used minimize harm to non-target native wildlife and plants and are in accordance with sound, generally -accepted conservation practices.

b) Introduction. GRANTOR shall not establish or plant non-native plant and animal species except for permitted agricultural uses in the Agricultural Area or in other locations as allowed pursuant to the Management Plan.

5.5.10 Off-road Motorized Vehicle Use. Use of motorized vehicles off roadways is prohibited, except for the minimum necessary in connection with permitted agriculture, construction, maintenance, emergency access, natural resource management, scientific research, and property management activities.

5.5.11 Dumping. Dumping, releasing, burning, or other disposal of wastes, refuse, debris, non-operative motorized vehicles, or hazardous substances is prohibited, except that agricultural products and by-products generated on the Property may be disposed in the Agricultural Area consistent with sound generally -accepted agricultural practices. 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 vehicles, building materials, machinery, agricultural supplies, and products reasonably necessary for permitted uses outdoors within the Agricultural Area and Agricultural Housing Building Envelope, so long as such storage is consistent with sound generally accepted agricultural practices and provided such storage shall be located so as to minimize visual impacts.

b) Storage of Construction Materials. GRANTOR may store construction and other work materials outdoors needed during construction of

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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.** Nothing contained in this Easement shall be construed as granting, permitting or affording the public access to any portion of the Property or as limiting or precluding GRANTOR's right to exclude the public from the Property. Nothing in this Easement shall be construed to preclude GRANTOR's right to grant access to third parties across the Property, provided that such access is allowed in a reasonable manner and is consistent with the Conservation Purpose of this Easement and so long as such access is undertaken subject to the terms and conditions of this Easement.

**5.7 Easements.** GRANTOR may continue the use of existing easements of record granted prior to this Easement. The granting of new temporary or permanent easements, and the modification or amendment of existing easements is prohibited without the prior written approval from DISTRICT. It is the duty of GRANTOR to prevent the 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 permitted by this Easement require that prior written notice be given by GRANTOR to DISTRICT, while other activities and uses permitted by this Easement require the prior written approval from DISTRICT. Unless and until such notice is given or approval is obtained in accordance with this Section 6, any such activity or use shall be deemed to be prohibited on the Property. GRANTOR shall use the procedures set forth below to provide notice to DISTRICT or to obtain DISTRICT's approval. 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 such additional or supplemental information 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.

**6.1 Purpose, Approval, Amendments, Revisions, and Updates of Management Plan.** GRANTOR and DISTRICT acknowledge that, as of the Effective Date, it is GRANTOR's intent to prepare a Management Plan for the Property to define and guide future use and development of the Property and to streamline DISTRICT approvals under this Easement. Pursuant to Sections 5.5.1, 5.5.1(a), and 5.5.9(b) of this Easement, GRANTOR shall secure DISTRICT's approval of such Management Plan and any amendments, revisions or updates (collectively "Revisions") prior to their implementation. GRANTOR shall secure DISTRICT's approval from any amendments, revisions, or updates (collectively "Revisions") to the Management Plan prior to their implementation. DISTRICT's approval shall be based solely upon its reasonable determination as to whether the Management Plan or Revisions are consistent with the

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terms, conditions, and Conservation Purpose of this Easement, and does not constitute issuance of entitlements.

The purpose of the Management Plan is to ensure that any agricultural activities undertaken outside of the Agricultural Area will protect, restore, or enhance native plant and animal species, unique or fragile habitats, soil productivity, and grassland health of the property, as well as the ecological function, water quality, and wildlife habitat function of the Natural Area. The Management Plan will ensure that any agricultural uses undertaken on the Property will not impair the Natural Resources of the Property or interfere with the protection, enhancement, restoration, or ecological function of the Natural Area. The Management Plan and future updates and amendments must be developed by a qualified professional (such as a biologist or Certified Rangeland Manager) with experience in ecological restoration, management, and enhancement and/or restoration of marshes, riparian, and Laguna ecosystems.

The Management Plan must include best management practices to assure that management activities and uses are conducted in a manner that is beneficial to the Conservational Values of the Property and must, at minimum, describe: (i) its objectives and outcomes; (ii) all proposed agricultural uses outside the Agricultural Area; (iii) the nature of each proposed use and its intended location; (iv) all proposed infrastructure (such as roads, culverts, bridges, fencing, pipelines, troughs, and staging areas); (v) all actions to be taken to protect natural resources; (vi) timelines for implementation, (vii) soil preparation activities (such as vegetation removal, tilling, or compost application), and (viii) and erosion control and soil stabilization or conservation activities.

GRANTOR shall use the following procedure to obtain DISTRICT's approval for the Management Plan and Revisions.

6.1.1 GRANTOR may, at its discretion, at any time, submit a proposed Management Plan or Revisions to DISTRICT for its review. In addition, if at any time DISTRICT or GRANTOR determine that the Management Plan is not adequately fulfilling its purpose, GRANTOR shall submit to DISTRICT a proposed update, amendment, or replacement Management Plan for DISTRICT's review and approval. DISTRICT shall have sixty (60) days from the receipt of the Management Plan or Revisions, plus twenty-one (21) days from any subsequent or follow up submittal, to review the Management Plan or Revisions and either approve the Management Plan or Revisions or notify GRANTOR of any objection thereto, provided however that DISTRICT shall have such additional time as may be needed if legally required to approve the plan. DISTRICT's response, whether approval or objection, shall be in writing and delivered to GRANTOR in accordance with Section 19. If DISTRICT has any objections to the Management Plan or Revisions, it shall state such objections in sufficient detail to enable GRANTOR to modify the proposed Management Plan or Revisions so as to bring it into compliance with the terms, conditions and Conservation Purpose of this Easement.

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6.1.2 In connection with any environmental review of the Management Plan or Revisions under the California Environmental Quality Act (“CEQA”) or any successor statute then in effect, GRANTOR shall provide DISTRICT with notification of and opportunity to comment on any draft environmental document made public under the statute, prior to adoption or certification of that environmental document.

6.1.3 Once a proposed Management Plan or Revision is approved by DISTRICT in writing, all uses and activities shall be conducted in a manner consistent with the Management Plan. Upon DISTRICT’s approval, all uses and improvements described therein and all development reasonably necessary to implement those described uses and improvements, shall be deemed to be consistent with the terms, conditions and Conservation Purpose of this Easement and shall be permitted on the Property with no further notice to or approval by DISTRICT required. All such uses, development, improvements and activities shall at all times remain subject to the substantive limitations of Section 5. Any Revisions to the Management Plan are subject to District approval.

6.1.4 DISTRICT may require GRANTOR to revise or update the Management Plan to address changed conditions on the Property. In the event of such a request by DISTRICT, GRANTOR shall submit proposed revisions to the Management Plan to DISTRICT within 120 days of DISTRICT’s request. Such revisions will be subject to the review and approval procedures set forth in Section 6.1.1.

**6.2 Uses/Activities Requiring Notice or Approval to DISTRICT.** In the absence of a Management Plan approved by DISTRICT, or for uses and activities not described in a Management Plan approved by DISTRICT, the following procedures shall be followed for giving notice or obtaining DISTRICT approval where such notice or approval is required by this Easement. Unless and until such notice is given or approval is obtained in accordance with this Section 6.2, any such activity or use shall be deemed to be prohibited on the Property. In any instance in which DISTRICT approval is required, DISTRICT’s approval shall be based solely upon its reasonable determination as to whether the activity or use is consistent with the terms, conditions and Conservation Purpose of this Easement.

**6.2.1 Uses/Activities Requiring Notice to DISTRICT.** For any activity or use that requires prior written 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.

**6.2.2 Uses/Activities Requiring Prior Approval from DISTRICT.** For any activity or use that requires prior written approval from DISTRICT, GRANTOR shall file a written request for such approval (“GRANTOR’s request”) 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.

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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, given by DISTRICT's General Manager, may the proposed activity or use be commenced, and then only in accordance with the terms and conditions of DISTRICT's approval.

**6.2.3 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.

**6.2.4 Uses/Activities Not Expressly Addressed: DISTRICT's Approval.** 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 shall seek DISTRICT's prior written approval from such activity or use in accordance with the procedure set forth in this Section 6.2. The exercise of any activity or use not expressly permitted in Section 5 may constitute a breach of this Easement and may be subject to the provisions of Section 10.

## **7. Costs and Liabilities Related to the Property.**

**7.1 Operations and Maintenance of the Property.** GRANTOR 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 or federal authorities on the Property. GRANTOR further agrees to maintain general liability insurance or adequate self-insurance covering acts on the Property. Except as specifically set forth in Section 8.2 below, DISTRICT shall have no responsibility whatever 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 8.1, 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.

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### 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.

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. Indemnification.

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**8.1 GRANTOR's Indemnity.** GRANTOR shall hold harmless, indemnify, and defend DISTRICT, its agents, employees, volunteers, 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 negligence, gross negligence, or intentional misconduct of DISTRICT; and (ii) the obligations specified in Section 7; and (iii) any approvals given under Section 6. In the event of any claim, demand, or legal complaint against DISTRICT, the right to the indemnification provided by this Section 8.1 shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorneys' fees, incurred prior to DISTRICT's written notice of such claim, demand, or legal complaint to GRANTOR, unless GRANTOR has acquired knowledge of the matter by other means, nor to any costs, expenses, or settlement payment, including attorneys' fees, incurred subsequent to that notice unless such cost, expense, or settlement payment shall be approved in writing by GRANTOR, which approval shall not be unreasonably withheld.

**9. Baseline Documentation for Enforcement.** In order to establish the present condition of the Property, DISTRICT has prepared a Baseline Documentation Report which will be maintained on file with DISTRICT and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement. The Baseline Documentation Report includes a Baseline Site Map, which depicts the Easement Designation Areas. 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 as of the Effective Date 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 and/or recover damages for such violation and/or to require the restoration of the Property to the condition that existed prior to such violation. 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 19. If DISTRICT reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values protected by this Easement, DISTRICT (a) may pursue any and all remedies available under law without waiting for the cure period to expire, (b) shall have the right, upon the giving of 24 hours' 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 (c) shall have the right to record a notice of violation in the Office of the Sonoma County Recorder. 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. GRANTOR agrees

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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, in addition to such other relief, including damages, to which DISTRICT may be entitled, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

**10.2 DISTRICT's Discretion.** 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.

**10.3 Liquidated Damages.** Inasmuch as the actual damages that would result from the loss or deprivation of the Conservation Values of the Property caused by a violation by GRANTOR of the terms of this Easement are uncertain and would be impractical or extremely difficult to measure, GRANTOR and DISTRICT agree that the damages allowed by Civil Code section 815.7(c) shall be measured as follows:

a) For an improvement prohibited by this Easement, an amount equal to the product of (i) the market value of the improvement, (ii) the length of time that the improvement exists on the Property (in terms of years or portion thereof), and (iii) the then- current annual interest rate for post judgment interest; and

b) For an activity or 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 activity or change in use; and

c) For an activity or 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 (i) the cost of restoration, as set forth in a written estimate by a qualified person selected by DISTRICT, (ii) the length of time that the prohibited activity or use continues (in terms of years or portion thereof), and (iii) the then- current annual interest rate for post judgment interest.

**10.4 GRANTOR's Compliance.** If DISTRICT, in the notice to GRANTOR, demands that GRANTOR remove an improvement, discontinue a use or both and claims the damages allowed by Civil Code section 815.7(c), then GRANTOR may mitigate damages by fully complying with DISTRICT's notice within the cure period provided therein. If GRANTOR so complies, then in the event of litigation arising out of the notice, brought either by GRANTOR or by DISTRICT, if GRANTOR prevails, then GRANTOR

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shall be entitled to economic damages, if any, resulting from its compliance with DISTRICT's notice. Neither DISTRICT nor GRANTOR shall be entitled to damages where DISTRICT has not claimed damages in its notice.

**10.5 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 and this Section 11, 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 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. 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.** With 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, and 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, shall be determined, unless otherwise provided by California law at the time, in accordance with Section 13.2. All proceeds paid to DISTRICT shall be used by DISTRICT for the purpose of the preservation of agriculture and open space within Sonoma County.

**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

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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 13.3.

**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 14, 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 44% and DISTRICT 56% (which percentages are derived from the ratio of the price paid for the Easement to the appraised value of the Property before being encumbered by the Easement), 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. Approvals.** Whenever in this Easement the consent or approval from one party is required as to an act of the other party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, unless another standard is expressly provided herein.

**14. 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 the Conservation Purpose of this Easement.

**15. Easement to Bind Successors.** The Easement herein granted 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

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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.

**16. 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 16 of this Easement, and the failure of GRANTOR to perform any act required by this Section 17 shall not impair the validity of this Easement or limit its enforceability in any way.

#### **17. Notices.**

**17.1 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 delivery service or telecopy addressed as follows:

To GRANTOR: [GRANTOR’S ADDRESS]

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 19.

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

a) When mailed first class postage prepaid to the last address designated by the recipient pursuant to Section 19.1, notice is effective one business day following the date shown on the postmark of the envelope in which such notice is mailed or, in the event the postmark is not shown or available, then one 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.

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b) When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (i) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (ii) the receiving party delivers a written confirmation of receipt. With the foregoing requirements, any notice given by fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a non-business day.

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

**17.3 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.

**18. 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. Any such amendment shall be in writing, executed by GRANTOR and DISTRICT, and recorded in the Office of the Sonoma County Recorder.

**19. 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, all consideration paid by DISTRICT for the acquisition of this Easement. 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 (a) 5% or (b) 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.

**20. 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.

**21. Enforceable Restriction.** This Easement and each and every term contained herein is intended for the benefit of the public and constitutes an enforceable restriction

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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.

**22. 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.

**23. DISTRICT's General Manager.** Wherever used herein, the term DISTRICT's General Manager, and any pronoun used in place thereof, shall mean and include the General Manager of DISTRICT and his or her duly authorized representatives.

**24. Fees and Charges.** DISTRICT shall have the right to establish and impose on GRANTOR reasonable fees and charges, including attorneys' fees, 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.

**25. 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 20.

**26. 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.

**27. Counterparts.** This Easement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.

**28. 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's General Manager.

**29. No Liens, Encumbrances, or Conveyances.** GRANTOR warrants that after it has executed this Easement, it will not record any lien, encumbrance, or otherwise convey any

### ATTACHMENT 3

right, title, or interest in and to the Property until such time as this Easement has been accepted and recorded by DISTRICT.

**30. Effective Date.** This Easement shall be effective as of the date of its acceptance by DISTRICT pursuant to California Public Resources Code sections 5500 *et seq.* (the “Effective Date”).

**ATTACHMENT 3**

IN WITNESS WHEREOF, GRANTOR and DISTRICT have executed this Easement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR:

By: \_\_\_\_\_

[Name, Corporate or partnership representation of authority to sign]

DISTRICT:

SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE

DISTRICT

By: \_\_\_\_\_

NAME, President of the Board of Directors

ATTEST:

\_\_\_\_\_

NAME, Deputy Clerk of the Board of Directors

**NOTE:** [NOTE: INCLUDE SPOUSAL DISCLAIMER IN THE EVENT GRANTOR IS MARRIED AND INTEREST IN THE PROPERTY IS SEPARATE PROPERTY]

**NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED FOR ALL SIGNATORIES.**

- Exhibit A: Legal Description
- Exhibit B: Project Structure Map
- Exhibit C: Description of Easement Designation Areas
- Exhibit D: Subordinate Liens, if applicable