

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

Free recording per Government Code Section 6103

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

The City of Sebastopol ("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.
- C. The 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 [redacted]) because [Give specific reasons for GP conformity – same as language in resolution]. By that same resolution, the DISTRICT's Board of Directors determined that its funding of the Project is consistent with the voter-approved Expenditure Plan.

D. On [Date], the City Council of the City of Sebastopol, determined, pursuant to Government Code section 65402, that recordation of a Conservation Easement for purposes of conserving natural resources, scenic resources, recreational and educational resources, and urban open space is consistent with the City of Sebastopol General Plan.

E. This Easement, as further defined below, will further the goals, objectives and policies of the following adopted local plans: GRANTOR's Laguna de Santa Rosa Park Management Plan, 1993 and Laguna Wetlands Preserve Restoration and Management Plan, 2016; and the DISTRICT's Vital Lands Initiative, 2021.

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.

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

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

EASEMENT

PART ONE: GRANT OF EASEMENT

1. Grant and Acceptance of Conservation Easement and Assignment of Development Rights. Pursuant to the common and statutory law of the State of California including the provisions of Civil Code sections 815 through 816, inclusive, GRANTOR hereby grants to DISTRICT and DISTRICT accepts a conservation easement over the Property in perpetuity under the terms and conditions set forth herein ("the Easement"). GRANTOR hereby irrevocably assigns to DISTRICT all development rights associated with the Property, except as specifically provided by this Easement.

2. Conservation Values. The Property is part of the City of Sebastopol's Laguna de Santa Rosa Wetlands Preserve, located on the west side of the Laguna de Santa Rosa, north of Highway 12 and east of Morris Street in the City of Sebastopol. The 12-acre property provides

important opportunities for natural resource conservation and restoration, scenic resource protection, and public access and education. Critical resources on the Property (collectively “the Conservation Values”), include natural resources, scenic resources, recreational and educational resources, and urban open space.

2.1 Natural Resources. The Property consists of perennial and seasonal creeks, riparian habitat, oak woodland, and grassland, which function as buffers between streams and upland areas, and which provide good habitat for many species of birds and other wildlife. Zimpher Creek is a blue line stream on the Property. This area has been a focus for recent Laguna de Santa Rosa riparian restoration activities.

2.2 Scenic Resources. The Property offers views of open and natural lands that are highly visible from Highway 12, including the Laguna de Santa Rosa floodplain and associated uplands. The Property is within the Sonoma County General Plan 2020’s Santa Rosa/Sebastopol Community Separator, with the lowlands and floodplain around the Laguna de Santa Rosa identified as a Scenic Landscape Unit, as this area is highly visible from Highway 12, which is a General Plan-designated Scenic Corridor.

2.3 Urban Open Space. The Property provides vital open space to residents and visitors of the City of Sebastopol. Protection of open space along the Laguna de Santa Rosa is also particularly valuable for wildlife species within the urban area.

2.4 Recreation and Education. Pedestrian and multi-use trails offer opportunities for the public to enjoy the natural habitats of the Laguna de Santa Rosa. Designating a public trail, installing raised boardwalk through sensitive areas near the Laguna de Santa Rosa, and creating a safe bridge crossing over Zimpher Creek will enhance the public’s passive outdoor recreation experience and provide educational opportunities for both local area residents and visitors to Sonoma County.

3. Conservation Purpose. It is the purpose of this Easement to preserve and protect forever the Conservation Values of the Property, as described in Section 2. This purpose shall hereinafter be referred to as “the Conservation Purpose of this Easement.” GRANTOR and DISTRICT intend that this Easement will constrain development and confine the use of the Property to uses and activities that are consistent with the Conservation Purpose of this Easement and will prohibit and prevent any uses and activities of the Property that will materially impair or interfere with the Conservation Values of the Property. GRANTOR and DISTRICT intend that all Conservation Values of the Property will be fully preserved and protected in perpetuity. In the event, however, that the preservation and protection of one Conservation Value becomes irreconcilably inconsistent with the preservation and protection of another Conservation Value, the following priorities shall be followed: i) first priority shall be given to preservation and protection of natural resources; ii) next, preservation and protection of scenic resources; iii) next, protection of urban open space resources; and (iv) finally, preservation and protection of 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 Audit. DISTRICT shall have the right to inspect, copy and audit GRANTOR's financial and programmatic records, of any type, nature or description, as DISTRICT deems necessary to ensure GRANTOR's compliance with Section 5.1.7.

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 marker 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 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 Reserved and 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 Revenue Generation. Any revenue generated from activities and uses shall be used toward the cost of operating, maintaining, restoring, and enhancing the Property or other District-protected properties, and towards educational or recreational programs that take place on the Property.

5.1.8 Management Plan. GRANTOR intends to develop and implement a Management Plan for the Property. The Management Plan and future updates and amendments will be subject to review and approval by DISTRICT in accordance with

Section 6.1 of the Easement. The Management Plan shall not be implemented on the Property until it has been approved by DISTRICT. The Management Plan will include best management practices or other guidance to assure that activities are conducted in a manner that does not impact the Conservation Values of the Property. The Management Plan may be amended, revised or updated from time to time provided that such amendment, revision or update shall be subject to DISTRICT's approval in accordance with Section 6.1 of this Easement. DISTRICT's review and approval of amendments, revisions and updates to the Management Plan shall be based on the amendment, revision or update's consistency with the terms, conditions and Conservation Purpose of this Easement.

5.2 Subdivision and Parcels. At the time of recordation of this Easement, the Property may consist of more than one legal parcel. Notwithstanding the potential existence of multiple underlying parcels, the Property, in its entirety, shall remain under common ownership, and GRANTOR shall not place or convey any portion of the Property into ownership separate from the whole of the Property except as expressly provided in subsection 5.2.1. GRANTOR shall not further divide the Property, or any of its constituent parcels 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 Property by prior patent or deed conveyances, subdivisions, or surveys.

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

a) Conveyance to Government or Non-Profit Entity. Subject to prior written approval by DISTRICT, GRANTOR may voluntarily convey a portion of the Property to a government or non-profit entity exclusively for conservation or public access purposes.

b) Leases. GRANTOR may lease a portion(s) of the Property for the permitted recreational and educational uses described in Section 5.3.

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.

5.2.3 Merger. Within X months of recordation of this Easement, GRANTOR shall record pursuant to the Subdivision Map Act and local ordinance a merger of all existing parcels or claimed parcels of the Property into a single legal parcel(s). If the parcels cannot be merged because of their lack of contiguity or for any other reason, GRANTOR shall pursue and secure such other applicable legal restrictions as is necessary to ensure that no portion of the Property may be sold or conveyed separate from the Property as a whole.

5.3 Land Uses. GRANTOR may use the Property only as described in this Section 5.3. All other use is prohibited. No exterior sound amplification or night lighting is permitted.

5.3.1 Natural Resource Protection, Preservation, Restoration, and Enhancement. GRANTOR may protect, preserve, restore, and enhance the natural resources of the Property in accordance with sound, generally-accepted conservation practices and the provisions of Section 5.5.

5.3.1.1 Mitigation. Subject to 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 5.3.4.

5.3.2 Recreational and Educational Use. GRANTOR may make the Property available to the public for low-intensity public outdoor recreation and education except as set forth in Section 5.6. All public outdoor recreational and educational uses and activities on the Property shall be designed and undertaken in a manner compatible with natural resource protection. Such uses may include, but are not limited to, hiking; picnicking; nature study; public or school educational activities; habitat restoration training/workshops; and other such uses similar in nature and intensity.

5.3.3 Special Events. With prior written notice to DISTRICT, GRANTOR may use the Property for public special events, including educational and recreational events, art shows, farmers markets, music and music programs, dances, and cultural activities. All public special events shall be limited to 150 attendees, and they may occur up to 4 times per year, and shall not result in any permanent alteration of the Property or have any detrimental impact on the natural resources of the Property.

In addition, with prior written approval by DISTRICT, GRANTOR may use the Property for private special events, including weddings and private parties. All private special events shall be limited to 150 attendees, and they may occur up to 4 times per year, and shall not result in any permanent alteration of the Property or have any detrimental impact on the natural resources of the Property. The Property shall remain open to the public during private special events.

GRANTOR shall document date, event size, type and location of each such event. Such documentation shall be made available to DISTRICT upon request.

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

a) Recreation and Education. With prior written notice to DISTRICT, GRANTOR may charge a reasonable fees to cover costs directly associated with recreational and educational programs and use of the Property. DISTRICT reserves the right to request, and GRANTOR shall provide, documentation of such costs. Special events permitted under Section 5.3.3 may be conducted for fundraising purposes.

b) Leases and Rentals. Leases or rentals for recreational and educational uses as defined in Sections 5.3.2.

c) Ancillary. Subject to prior written approval by DISTRICT, other minor recreational and educational commercial uses found to be consistent with Conservation Values of this Easement.

5.4 Structures and Improvements. Except as authorized in a Management Plan approved pursuant to Section 5.1.8 of this Easement, GRANTOR may repair, replace, construct, place and maintain structures and improvements on the Property only as provided below. At no time shall the structures and improvements existing at the date of execution of this Easement or constructed subsequently pursuant to Sections 5.4.1, 5.4.2.b, 5.4.3, and 5.4.4 cover, cumulatively, more than 5% of the Property. Furthermore, no structure or improvement shall exceed 15 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 structures and improvements existing at the date hereof or constructed subsequently pursuant to the provisions of this Easement, as follows:

a) If the maintenance, repair, or replacement does not increase the height of the structure or improvement, increase the land surface area it occupies or change its location or function, no notice to or approval 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 5.4.6.

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

a) Benches, drinking fountains, refuse and recycling containers, arbor structures over trail entry points, permeable trails and pathways, one bridge across Zimpher Creek, boardwalks through sensitive areas, and other similar minor improvements without any notice to or approval from DISTRICT.

b) Restrooms, lighting, public art, play structures, and other similar improvements only with prior written approval of DISTRICT. A specific art piece commissioned by the City of Sebastopol through its public art program known as “Sebastopol Spire” may be placed along the southern section of the trail without notice to or approval by the DISTRICT.

5.4.3 Structures and Improvements Accessory to Natural Resource Protection Use. With prior written approval of DISTRICT, GRANTOR may place or construct accessory structures and improvements reasonably necessary for natural resource protection on the Property, including sheds and greenhouses.

5.4.4 Fences and Gates. Subject to prior written approval by 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. 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 in cases where necessary to protect the allowed natural resources preservation, restoration, and enhancement activities described in this Easement; and (iv) comply with the 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 fencing and gates only pursuant to the provisions of this Section 5.4.4. In the event any fence or gate, or portion thereof, becomes obsolete or unnecessary for the uses described in this Section 5.4.4, GRANTOR shall remove such fencing or gate from the Property.

5.4.5 Utilities and Energy Resources. Subject to prior written approval by DISTRICT, GRANTOR may install or allow installation of underground conduits for water, gas, electricity, stormwater, and other underground utilities and any necessary surface facilities appurtenant thereto (“Utilities”), provided all such Utilities are associated with and necessary for permitted uses and activities on the Property or such Utilities are necessary for offsite development consistent with GRANTOR’s General Plan, as it may be updated and amended from time to time, or such Utilities are necessary for water supply or sanitation purposes, so long as such Utilities are reasonably scaled to serve those purposes and are designed and implemented in accordance with sound, generally-accepted conservation practices.

5.4.6 Signs. GRANTOR may construct or place signs as set forth in this Section 5.4.6. No sign shall be artificially illuminated.

a) Without prior written notice to or approval by DISTRICT, GRANTOR may construct or place two signs not to exceed 45 square feet in size to identify the Property from public roadways.

a) Without prior written notice to or approval by DISTRICT, GRANTOR may construct or place four (4) signs not to exceed 32 square feet in size as

trailhead or interpretive signs and/or to acknowledge participation of funding agencies for permitted uses on the Property.

b) Without prior written notice to or approval by DISTRICT, GRANTOR may construct or place signs no more than six (6) square feet in size to (i) mark the boundary of the Property; (ii) provide directional, interpretive and educational information; and (iii) set forth park and/or local area rules or regulations applicable to use of the park, provided that the size and number of such signs shall be limited to that which is reasonably necessary to accomplish the permitted uses herein, and further provided that such signs are sited and constructed in a manner that does not create a significant visual impact.

c) Subject to prior written approval of 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 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, with an exception for construction of one bridge across Zimpher Creek.

5.5.2 Water Resources. Draining, filling, dredging, diking, damming, or other alteration, development or manipulation of watercourses, subsurface water, springs, ponds and wetlands is prohibited except as reasonably necessary in connection with (i) the maintenance, replacement, development and expansion of water storage and delivery systems, storm water delivery, or other utilities infrastructure allowed under Section 5.4.5, ii) reconstruction, expansion, and new construction of trails allowed under Section 5.4.2; and (iii) the preservation, restoration, and enhancement of natural resources allowed under Section 5.5.5.

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

5.5.4 Vegetation and Fuel Management. GRANTOR may undertake vegetation and fuel management activities to reduce wildfire risk as provided in this section. All vegetation and fuel management activities shall be designed and implemented to minimize harm to native wildlife and plants. If vegetation and fuel management activities are to take place during nesting season, GRANTOR shall ensure that nesting surveys are

conducted in coordination with a qualified biologist and shall modify activities based on survey results to prevent harm to identified nests.

5.5.4.1 Within 100 feet of structures and without need for notice to or approval from DISTRICT, GRANTOR may undertake brush removal, mowing, grazing, tree trimming, targeted tree removal, and other vegetation management methods of similar nature and intensity.

5.5.4.2 Farther than 100 feet from structures, 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 comprehensive plan covering multiple projects. Any Vegetation Management Plan must incorporate the best available science and must identify the following: a) the purpose of proposed work, b) the location of the treatment area(s), c) a timeline for completion, d) the “before” condition of the treatment area(s), e) management objectives, f) treatment methods, g) post-treatment maintenance, and h) best management practices, such as soil protection, infrastructure needs, 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:

5.5.4.2.1 Limited brush removal and mowing, or other methods of similar nature and intensity;

5.5.4.2.2 Limited grazing undertaken in accordance with sound, generally accepted conservation practices;

5.5.4.2.3 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

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

5.5.4.3 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.

5.5.5 Natural Resource Preservation, Restoration, and Enhancement. With prior written approval of DISTRICT, GRANTOR may undertake natural resource preservation, restoration, and enhancement activities, including but not limited to, bank and soil stabilization, and practices to enhance water quality, native plant and wildlife habitat and connectivity, and to promote biodiversity.

5.5.6 Native Tree Removal. Harvesting, cutting, trimming, transplanting, or destruction of any native trees is prohibited, except as reasonably necessary (i) to control insects and disease; (ii) to prevent personal injury and property damage; (iii) for the purpose of fire management, in accordance with Section 5.5.4; (iv) for natural resource preservation, restoration, and enhancement, as set forth in Section 5.5.5; and (v) with prior written approval by DISTRICT, within the footprint of permitted trails and pathways. Native trees removed pursuant to this Section 5.5.6 may be used by GRANTOR for firewood.

5.5.7 Native Vegetation Removal. Removal or destruction of any native non-tree vegetation is prohibited, except as reasonably necessary (i) within footprint of permitted structures and improvements; (ii) to control insects and disease; (iii) to prevent personal injury and property damage; (iv) for the purpose of fire management, in accordance with Section 5.5.4; and (v) for natural resource preservation, restoration, and enhancement, as set forth in Section 5.5.5.

5.5.8 Native Animal Removal. Killing, hunting, trapping, injuring or removing native animals is prohibited except (i) under imminent threat to human life or safety; and (ii) as reasonably necessary in accordance with Section 5.5.5, 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 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.

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 construction, maintenance, emergency access, and property management activities, and to provide opportunities for members of the public with disabilities who require motorized equipment to access the Property and its features.

5.5.11 Dumping. Dumping, releasing, burning, or other disposal of wastes, refuse, debris, non-operative motorized vehicles, or hazardous substances is prohibited. GRANTOR shall remove garbage or materials dumped on the Property by third parties.

5.5.12 Outdoor Storage. Outdoor storage shall be prohibited except as provided in this section.

(a) Materials Required For Permitted Uses. GRANTOR may store materials and supplies required for permitted uses outdoors, provided such storage shall be located so as to minimize visual impacts.

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

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

5.7. Easements. GRANTOR may 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 by the 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 of 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 the GRANTOR's request with the terms, conditions and Conservation Purpose of this Easement. The 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 Approval, Amendments, Revisions and Updates of Management Plan.

GRANTOR and DISTRICT acknowledge that GRANTOR intends 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 Section 5.1.8 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.

The Management Plan and any amendments, revisions or updates (collectively "Revisions") must identify, at a minimum, (a) all major components of park use (including recreational, educational, and resource management use), (b) the nature of each proposed use and its intended location, (c) all proposed structures, and (d) all actions to be taken to protect natural resources.

DISTRICT's approval shall be based solely upon its reasonable determination as to whether the Management Plan or Revisions are consistent with the terms, conditions and Conservation Purpose of this Easement, and does not constitute issuance of entitlements. DISTRICT acknowledges that, in light of the public processes required for development of the Property for recreation and educational use and natural resource preservation, time is of the essence and DISTRICT's approval may not be unreasonably withheld or delayed. 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 Management Plan or Revisions to DISTRICT for its 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. 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 Management Plan or Revisions so as to bring it into compliance with the terms, conditions and Conservation Purpose of this Easement.

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 the Management Plan is approved by DISTRICT, all uses and activities shall be conducted in a manner consistent with the Management Plan. Upon DISTRICT's approval and GRANTOR's adoption of a Management Plan, 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 and improvements shall be undertaken in accordance with the terms and conditions of this

Easement and in compliance with all applicable laws and regulations. Any update or amendment to the Management Plan shall be 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 and Activities Requiring Notice or Approval to DISTRICT. In the absence of a Management Plan or Revisions approved by DISTRICT, or for uses and activities not described in a Management Plan or Revisions 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. DISTRICT acknowledges that, in light of the public processes required for development of the Property for recreation and educational use and natural resource preservation, time is of the essence and DISTRICT's approval shall not be unreasonably withheld or delayed.

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 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 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 to review the request and to approve, conditionally approve, disapprove or notify GRANTOR of any objection thereto. In order to consider GRANTOR's request complete, DISTRICT may require that GRANTOR submit additional information and/or a plan for such proposed activity or use. Disapproval or objection, if any, shall be based on DISTRICT's determination that the proposed activity or use is inconsistent with the terms, conditions or Conservation Purpose of this Easement or that GRANTOR's request is incomplete or contains material inaccuracies. If, in DISTRICT's judgment, the proposed activity or use would not be consistent with the terms, conditions or Conservation Purpose of this Easement or the request is incomplete or contains material inaccuracies, DISTRICT's notice to GRANTOR shall inform GRANTOR of the reasons for DISTRICT's disapproval or objection. Only upon DISTRICT's express written approval, 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. In the alternative, GRANTOR may commence a proceeding in arbitration under Section 13.

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 of such activity or use in accordance with the procedure set forth in 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 whatsoever for the operation of the Property, the monitoring of hazardous conditions thereon, or the protection of GRANTOR, the public, or any third parties from risks relating to conditions on the Property. Except as otherwise provided in Section 8.1, 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.

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; or

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.

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.

8.2 DISTRICT's Indemnity. DISTRICT shall hold harmless, indemnify, and defend GRANTOR, its heirs, devisees, successors and assigns, from and against all damages, liabilities, claims and expenses, including reasonable attorneys' fees, arising from or in any way connected with 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 and attributable to DISTRICT, except to the extent that such damage, liability, claim or expense is the result of the negligence, gross negligence, or intentional misconduct of GRANTOR (it being the intent of this provision to limit DISTRICT's indemnity to the proportionate part of GRANTOR's damage, liability, claim or expense for which DISTRICT is responsible). In the event of any claim, demand, or legal complaint against GRANTOR, the right to the indemnification provided by this Section 8.2 shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorneys' fees, incurred prior to GRANTOR's written notice of such claim, demand, or legal complaint to DISTRICT, 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 DISTRICT, which approval shall not be unreasonably withheld. DISTRICT hereby also agrees to hold harmless, indemnify and defend GRANTOR from and against all damages, liabilities, claims and expenses, including attorneys' fees, asserted against GRANTOR by any officer, agent, employee, or volunteer of DISTRICT, for personal injury and/or property damage arising out of any inspection or visit to the Property by any such officer, agent, employee or volunteer on behalf of DISTRICT, except to the extent that such injury is attributable to the negligence, gross negligence or intentional misconduct of GRANTOR.

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. A copy of the Baseline Documentation Report has been reviewed and approved by GRANTOR. The parties agree that the Baseline Documentation Report provides an accurate representation of the Property at the time of the recordation of this Easement. DISTRICT recognizes GRANTOR intends to develop and implement a Management Plan.

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. The 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 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) after notice of violation has been given, 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) after notice of the violation has been given, 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 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 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 damage 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 shall limit or preclude GRANTOR's or DISTRICT's rights to pursue any third party for damages to the Property's Conservation Values.

12. Arbitration. If a dispute arises between the parties concerning the consistency of any activity or use, or any proposed activity or use, with the terms, conditions or Conservation Purpose of this Easement, or any other matter arising under or in connection with this Easement or its interpretation, either party, with the written consent of the other, may refer the dispute to arbitration by a request made in writing upon the other. Provided that GRANTOR agrees not to proceed with any activity or use that is the subject of the dispute pending resolution of the dispute, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator who shall be a retired United States District Court or California Superior Court judge; provided, however, if either party fails to select an arbitrator within fourteen (14) days of delivery of the request for arbitration, or if the two arbitrators fail to select a third arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance, a proper court, on petition of any party, shall appoint the second or third arbitrator or both, as the case may be, in accordance with California Code of Civil Procedure sections 1280 *et seq.*, or any successor statutes then in effect. The arbitration shall be conducted in accordance with said statute, including the provisions of Section 1283.05 of the Code of Civil Procedure which are incorporated into, made a part of, and

made applicable to any arbitration pursuant to this Section. The Conservation Purpose of this Easement, the terms and conditions of this Easement, and the applicable laws of the State of California shall be the bases for determination and resolution, and a judgment of the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration, including the fees and expenses of the arbitrators, but excluding attorneys' fees, which sum shall be determined by the arbitrators and any court of competent jurisdiction that may be called upon to enforce or review the award.

13. Extinguishment and Condemnation.

13.1. Extinguishment. Subject to the requirements and limitations of California Public Resources Code section 5540, or any successor statute then in effect, if circumstances arise in the future that render the Conservation Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, 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.

13.2 Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation; whether by public, corporate, or other authority, so as to terminate this Easement in whole or in part, either GRANTOR or DISTRICT (or both, on such conditions as they may agree) may commence appropriate actions to recover the full value of the Property (or portion thereof) subject to the condemnation or in-lieu purchase and all direct or incidental damages resulting therefrom. Any expense incurred by GRANTOR or DISTRICT in any such action shall first be reimbursed out of the recovered proceeds; the remainder of such proceeds shall be divided between GRANTOR and DISTRICT in proportion to their interests in the Property, as established by Section 13.3.

13.3 Property Interest and Fair Market Value. This Easement constitutes a real property interest immediately vested in DISTRICT. For the purpose of this Section 13, 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 in proportion to their interests in the condemned Property, as agreed upon by them in writing or, in the absence of such an agreement, as ordered by the court in the action recovering the proceeds. 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

14. Approvals. Whenever in this Easement the consent or approval of one party is required as to an act of the other party, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

15. 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. In the event of a conflict between the Project Structure Map and the Baseline Site Map, the Project Structure Map will control.

16. 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 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.

17. 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.

18. Warranty of Ownership. GRANTOR warrants that it is the owner in fee simple of the Property, and that on the date it executed this Easement the Property is not subject to any liens or deeds of trust.

19. Notices.

19.1 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: City of Sebastopol
 City Manager

7120 Bodega Avenue
Sebastopol, CA 95472

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.

19.2 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 the GRANTOR or DISTRICT or an officer or employee thereof shall be sufficient to constitute proof of mailing.
- 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. Subject to 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.

19.3 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.

20. 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.

21. 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.

22. 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.

23. Enforceable Restriction. This Easement and each and every term contained herein is intended for the benefit of the public and constitutes an enforceable restriction pursuant to the provisions of Article XIII, section 8 of the California Constitution, California Public Resources Code section 5540, and California Revenue and Taxation Code section 421 *et seq.*, or any successor constitutional provisions or statutes then in effect.

24. 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.

25. 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.

26. Fees and Charges. DISTRICT shall have the right to establish and impose on GRANTOR reasonable fees and charges, including attorney's fees, on GRANTOR 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.

27. 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.

28. 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.

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

30. 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.

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

32. 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.*

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

GRANTOR:

By: _____
Lawrence McLaughlin, City Manager, City of Sebastopol

DISTRICT:

SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE
DISTRICT

By: _____
James Gore, President of the Board of Directors

ATTEST:

Noelle Francis, Deputy Clerk of the Board of Directors

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

Exhibit A: Legal Description
Exhibit B: Map of Conservation Easement Area
Exhibit C: Project Structure Map

Exhibit A: Legal Description

Lying within the State of California, County of Sonoma, being a portion of the lands of the City of Sebastopol as described in deeds recorded in Book 1948 of Official Records, Page 509 and Book 1883 of Official Records, Page 343, Sonoma County Records and as shown on the Record Map filed in Book 114 of Maps at Page 45, Sonoma County Records, being more particularly described as follows:

Commencing at a 3 inch brass disk in a monument well along the centerline of Morris Street as shown on the Record Map filed in Book 114 of Maps at Page 45, Sonoma County Records, from which a 3 inch brass disk in a monument well along the centerline of Morris Street at Sebastopol Avenue bears South 10°09'11" East 597.80 feet; thence northerly along the centerline of Morris Street, North 10°09'11" West 167.79 feet; thence North 79°50'49" East 30.00 feet to the easterly right of way of Morris Street, said point being the southwesterly corner of the Lands of Paulson as described by deed recorded under Document Number 1983-039886, Official Records of Sonoma County; thence along the southerly line of said Lands of Paulson, North 79°50'49" East 313.66 feet to the POINT OF BEGINNING; thence North 10°09'11" West 139.00 feet to the northeast corner of said lands of Paulson and the south line of Sebastopol Industrial Park, LLC as described by deed recorded under Document Number 2018-071512 Official Records of Sonoma County; thence along the south line of said lands, North 79°50'49" East 157.00 feet to the southeast corner thereof; thence along the east line of said lands of Sebastopol Industrial Park, LLC, North 10°09'11" West 278.00 feet to the northeasterly corner thereof; thence along the north line of said lands of Sebastopol Industrial Park, LLC, South 79°50'49" West 420.66 feet; thence continuing along said north line, on a curve to the left, having a radius of 50.00 feet, through a central angle of 90°00'00", for a length of 78.54 feet to the said easterly right of way of Morris Street, being a point 30.00 northeast of said centerline; thence along the said easterly right of way (30.00 feet from centerline) North 10°09'15" West 201.98 feet; thence continuing along the easterly right of way of Morris Street, a distance 30 feet from the centerline, North 10°09'11" West 373.49 feet; thence leaving the easterly right of way North 79°28'29" East 69.13 feet; thence South 56°03'10" East 43.73 feet thence along a curve to the left, having a radius of 194.75 feet, through a central angle of 75°36'16", for a length of 256.98 feet; thence North 48°30'32" East 54.01 feet; thence North 45°20'23" East 58.01 feet; thence along a curve to the left, having a radius of 118.94 feet, through a central angle of 39°38'52", for a length of 82.30 feet; thence North 2°09'13" East 36.51 feet; thence North 80°00'00" East 82.71 feet to the east line of the City of Sebastopol and being the west line of the lands conveyed to the State of California as described by deed recorded under Document Number 1995-011328 Official Records of Sonoma County; thence along said line on a non-tangent curve to the left, the radius point of which bears South 81°43'06" East 1050.00 feet; through a central angle of 24°22'06", for a length of 446.57 feet; thence continuing along said line, South 16°15'11" East 38.89 feet; thence continuing along said line, South 16°15'11" East 1287.87 feet to the northerly right of way of State Route 12, commonly known as Sebastopol Avenue; thence along the said right of way of Sebastopol Avenue, South 72°26'49" West 66.56 feet to the southeast corner of the land dedicated to the State of California under Document Number 2014-017168 Official Records of Sonoma County; thence along the easterly line of said State of California grant, North 17°33'52" West 45.56 feet; thence along the northerly line of said

lands of the State of California, South 65°14'40" West 114.30 feet to the east line of the lands of Wulf Trust as described by deed recorded under Document Number 2013-084754 Official Records of Sonoma County; thence along the east line of said lands of Wulf, North 10°08'55" West 259.91 feet to the northeast corner of said lands of Wulf; thence South 79°54'36" West 5.00 feet to the southeast corner of Davis Trust as described by deed recorded under Document Number 1995- 058966 Official Records of Sonoma County, thence along the east line of said lands of Davis Trust, North 10°09'11" West 278.01 feet to the northeast corner thereof; thence along the north line of the lands of Davis Trust, South 79°50'49" West 157.00 feet to the northwest corner thereof; thence North 10°09'27" West 156.68 feet to a point herein after called Point "A", thence continuing North 10°09'11" West 41.10 feet to the POINT OF BEGINNING.

Containing 460,664 Square Feet (10.57 Acres) more or less

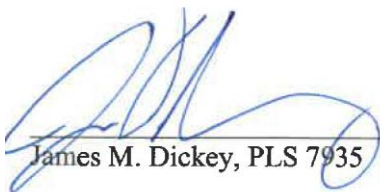
Together with a strip of land 25.00 feet in width and lying 12.5 feet on each side of the following described line:

BEGINNING at the above-described Point "A"; thence on a non-tangent curve to the left, concave southeasterly, the radius of which bears, South 18°00'34" East with a radius of 100.00 feet through a central angle of 24°16'56" for a length of 42.38 feet; thence North 47°42'30" East 122.11 feet; thence on a curve to the right with a radius of 100.00 feet, through a central angle of 32°08'19" for a length of 56.09 feet; thence North 79°50'49" East 117.54 feet to the easterly line of Morris Street, being a point 30 feet easterly of the centerline of Morris Street, from which the southwest corner of the lands of Paulson bears North 10°09'16" West 135.76 feet.

Containing 8,453 Square Feet (0.2 Acres) more or less

Being all of APN 004-011-080, and a portion of APN 004-011-043, 004-011-051 and 004-011-052.

Prepared by Cinquini & Passarino, Inc.


James M. Dickey, PLS 7935



12/27/2021
Date

CITY OF SEBASTOPOL

SITE MAP -- N.T.S.

CURVE TABLE

CURVE #	RADIUS	DELTA	LENGTH
C1	50.00'	90°00'00"	78.54'
C2	118.94'	39°38'52"	82.30'
C3	100.00'	24°16'56"	42.38'
C4	100.00'	32°08'19"	56.09'

LEGEND

---	SUBJECT PROPERTY BOUNDARY
---	ADJACENT PROPERTY BOUNDARY
---	ROADWAY CENTERLINE
---	AREA OF OPEN SPACE
---	INCLUDES PARCELS: 004-011-043 004-011-051 004-011-052 004-011-080

LINE TABLE

LINE #	DIRECTION	LENGTH
L1	N79°28'29"E	69.13'
L2	S56°03'10"E	43.73'
L3	N48°30'32"E	54.01'
L4	N45°20'23"E	58.01'
L5	N02°09'13"E	36.51'
L6	N80°00'00"E	82.71'
L7	S16°05'11"E	38.89'
L8	S79°54'36"W	5.00'
L9	N10°09'11"W	41.10'
L10	N47°42'30"E	122.11'
L11	N79°50'49"E	117.54'

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AMERICORPS OPEN SPACE

EXHIBIT B

DRAWN BY: SAJ	CHECKED BY: JMD
SCALE: 1"=200'	DATE: 12/9/2021
JOB #: 9547-21	PAGE: 3 OF 3

EXHIBIT 'B'

THIS DIAGRAM IS FOR GRAPHIC PURPOSES ONLY. ANY ERRORS OR OMISSIONS SHALL NOT AFFECT THE LEGAL DESCRIPTION.

POINT OF COMMENCEMENT

Exhibit C: Project Structure Map

