

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

AMERICORPS TRAIL
RECREATION CONSERVATION COVENANT
(California Civil Code §§815 *et seq.*)

THIS AGREEMENT is entered into by and between 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.* (“the District”) and the City of Sebastopol, an incorporated city, its successors and assigns and those claiming under it (“Owner”).

Recitals

A. The District was formed for the purpose of preserving open space in the County of Sonoma and is funded by a voter approved sales tax, the expenditure of which is directed and limited by the Sonoma County Agricultural Preservation & Open Space 2006 Expenditure Plan (“the 2006 Expenditure Plan” or “the Plan”) adopted as part of the Sonoma County Open Space, Clean Water and Farmland Protection Measure (Sonoma County Ordinance No. 5677R).

B. Among the categories of open space identified for protection in the 2006 Expenditure Plan are “fee interests for outdoor public recreation where the public use would not be inconsistent with the open space designations” listed in the Plan.

C. Owner has acquired and now is the owner in fee simple of that certain real property located in Sonoma County and more particularly described in Exhibit A and Exhibit B, attached hereto and incorporated herein by this reference ("the Property").

D. Owner represents and warrants it has complied with the California Environmental Quality Act with respect to the development and restoration of all existing and planned public access trails on the Property and all related recreational uses of the Property contemplated by this Covenant, which include the filing of a Notice of Exemption for the project on May 22, 2018.

D. In a companion transaction of even date, Owner has conveyed a conservation easement ("the Conservation Easement") to the District generally limiting the use of the Property to natural resource preservation and low-intensity public outdoor recreation consistent with identified open space values. This Covenant is intended to complement the Conservation Easement by assuring the continued and perpetual recreational use of the Property consistent with the Conservation Easement.

E. In a companion transaction of even date, Owner has granted to the District and its assignees an irrevocable offer of dedication ("Irrevocable Offer of Dedication") of the fee interest in the Property to secure the Owner's performance under this Covenant.

Agreement

FOR VALUABLE CONSIDERATION, Owner hereby undertakes the following obligations for the benefit of the District:

1. *The Covenant.* Owner hereby conveys to the District a recreation conservation covenant ("Covenant") within the meaning of Restatement Third, Property (Servitudes) §1.6(1) and pursuant to the authority of Civil Code §§815 *et seq.* and the common law of California, to assure that the Property will be continuously used, maintained and operated by Owner and its

successors in interest as a public park and open space preserve in perpetuity, available to the public for low-intensity public outdoor recreation and educational uses in a manner consistent with the Conservation Easement and the provisions herein.

2. Obligation to Provide Low-Intensity Public Outdoor Recreation and Educational Uses.

A. Owner hereby agrees to use, operate and maintain the Property as a public park and open space preserve in perpetuity, available to the public for low-intensity outdoor public recreation and educational uses in a manner consistent with the Conservation Easement and the provisions herein. Such use, operation, and maintenance of the Property as a public park and open space preserve shall commence no later than sixty (60) days from the date of recordation of this Covenant and shall include, at a minimum, general availability of the Property for public hiking, picnicking and nature study no less than six hours per day, seven days per week, except as otherwise provided in Section 5.6 of the Conservation Easement (Public Access Limitations). Such use, operation, and maintenance of the Property as a public park and open space preserve shall include the provision and maintenance of a public access trail from Morris Avenue to the AmeriCorps Trail in such locations as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference.

B. Owner shall not engage in activities that impede public access to or public use of the Property for low-intensity outdoor public recreation and educational uses pursuant to this Covenant, except as otherwise provided in Section 5.6 of the Conservation Easement (Public Access Limitations).

C. If a management plan is prepared and approved pursuant to Sections 5.1.8 and 6.1 of the Conservation Easement, Owner's use, operation and maintenance of the Property as a public park and open space preserve shall be in accordance with such management plan.

3. Enforcement.

A. In the event of an uncured breach by the Owner of any of its obligations under this Covenant, the District may: (1) institute a suit for specific performance or other equitable relief; (2) institute a suit to recover damages; (3) accept the Irrevocable Offer of Dedication identified in Recital E; or (4) pursue any combination of the foregoing.

B. Prior to taking any action under Paragraph 3.A, the District shall provide Owner with a notice to cure ("Notice"). The Notice shall be a written notification generally describing the condition or event claimed by the District to be a breach of Owner's obligations that is either mailed or otherwise delivered by the District to Owner. The Notice shall include a reasonable period in which the breach must be cured to the reasonable satisfaction of the District. The remedies provided by Paragraph 3.A shall be available to the District immediately upon expiration of the cure period.

C. Enforcement of the obligations created by this Covenant shall be at the sole discretion of the District. Any forbearance by the District to exercise its rights under this Covenant shall not be deemed or construed to be a waiver or forfeiture by the District.

D. The actual damages incurred by the District resulting from Owner's breach of the obligations imposed by this Covenant are uncertain and would be impractical or extremely difficult to measure. Accordingly, the parties agree that the District's damages shall be measured by the fair market value of the Property, unencumbered and without regard to the Conservation Easement or this Covenant, multiplied by the length of time in years, including fractions thereof, during which the breach remains uncured after Notice was given by the District, multiplied by the then-current annual interest rate for post judgment interest, provided however that:

(i) No action for liquidated damages under this Paragraph 3(D) shall be filed without the consent of the District's Board of Directors or the governing Board of any successor agency to the District; and

(ii) No liquidated damages shall be assessed during any period for which Owner's governing body has, based upon substantial evidence, declared a fiscal emergency rendering it financially unable to perform its obligations under this Covenant; and

(iii) In no case shall liquidated damages exceed One Hundred Thirty Thousand Dollars (\$130,000), as adjusted for inflation from the date of recordation of this Covenant, for any single breach.

The Owner's liability for damages is discharged if the Owner cures the breach within the time specified in the District's Notice.

E. The remedies set forth in this Paragraph 3 are in addition to and not intended to displace any other remedy available to either party as provided by this Covenant, the Conservation Easement, the common law or any other applicable local, state or federal law.

F. Nothing contained in this Paragraph 3 shall be construed to entitle the District to bring any action against Owner for any failure to perform resulting from causes beyond Owner's control, including, without limitation, wildfire, flood, storm, and earth movement, or from any prudent action taken by Owner under emergency conditions to prevent, abate, or mitigate a failure to perform resulting from such causes, so long as such action, to the extent that Owner has control, is designed and carried out in such a way as to further the purpose of this Covenant.

4. *Subordinate Instruments.* All instruments granting any lease or other real property

interest in the Property to third parties are subject to the limitations on transfers set forth in the Conservation Easement. Any such lease or other real property interest so created by Owner and all of the rights granted thereunder shall be and shall at all times remain subject, subordinate, and inferior to the District's rights under this Covenant and the Conservation Easement. Owner's power to create such third-party estates is limited by and subordinate to the Irrevocable Offer of Dedication herein referenced and, as such, District may terminate any or all estates so created upon its acceptance of said Irrevocable Offer of Dedication.

5. *Third Party Beneficiaries.* The District and Owner do not intend and this Covenant shall not be construed to create any rights in third parties.

6. *Integration.* This writing is the final and complete expression of the agreement between the parties with respect to these matters and any and all prior or contemporaneous agreements written or oral with respect to these matters have been merged into this written instrument, other than the Conservation Easement which remains in full force and effect. This clause shall not be construed to modify or invalidate any other written agreements as between the parties hereto.

7. *Inspection.* The District may, within its sole discretion and from time to time, inspect the Property to determine if Owner is in compliance with this Covenant.

8. *Covenant to Bind Successors.* This Covenant shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Property and shall bind Owner and its successors in interest, including but not limited to purchasers at tax sales, assigns, and all persons claiming under them forever. The parties intend that this Covenant 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 Covenant creates an easement encompassed within the meaning

of the phrase “easements constituting servitudes upon or burdens to the property,” and irrevocable offers of dedication encompassed within the meaning of the phrase “unaccepted, recorded, irrevocable offers of dedication,” as those phrases are used in California Revenue & Taxation Code section 3712(d) and (e), or any successor statute then in effect, such that a purchaser at a tax sale will take title to the Property subject to this Covenant.

[SIGNATURES AND ACKNOWLEDGEMENTS]

IN WITNESS WHEREOF, OWNER has executed this Recreation Conservation Covenant this _____ day of _____, 2022.

OWNER: THE CITY OF SEBASTOPOL

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

ATTEST:

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: Property 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 feet 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.

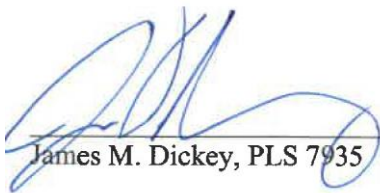
Containing 460,664 Square Feet (10.57 Acres) more or less

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

Prepared by Cinquini & Passarino, Inc.


James M. Dickey, PLS 7935



12/27/2021
Date

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

Exhibit B: Plat Map

