

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

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

Record free per Gov. Code 27383

Documentary Transfer Tax: \$0. Revenue and Taxation Code Section 11922: Deed to a Public Entity

Exempt from SB2 fee per GC 27388.1 (a) (2); executed or recorded by a government agency

**GRANT DEED OF
PROTECTIVE EASEMENT**

This Grant Deed of Protective Easement ("Easement") is made by and between **KLEIN FOODS, INC., A CALIFORNIA CORPORATION ("GRANTOR")**, and the County of Sonoma, a political subdivision of the State of California ("**COUNTY**"), at Santa Rosa, California, and is dated for convenience as of February 23, 2023.

RECITALS

A. **GRANTOR** is the owner of that certain real property located in the unincorporated area of Sonoma County, California, generally known as 590 Pleasant Avenue Santa Rosa, CA 95403, Assessor's Parcel No. 163-180-013, and more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference ("the Property").

B. The Property is designated Land Intensive Agriculture and Diverse Agriculture in the Sonoma County General Plan ("the General Plan") and LIA (Land Intensive Agriculture) and DA (Diverse Agriculture) in the Sonoma County Zoning Code. The Land Intensive Agriculture and Diverse Agriculture land use category and LIA and DA zoning district establish permitted residential density and development criteria for parcels having the Land Intensive Agriculture and LIA and Diverse Agriculture and DA designations, but allow the creation and clustering of smaller parcels meeting the specified minimum parcel size requirements if the subdivider applies a protective easement to the portion of the subdivided property that is intended to remain in agricultural, resource, or other open space use.

C. **GRANTOR** filed Application MNS14-0007 with **COUNTY** requesting approval of a subdivision of the Property and, as part of the subdivision, to cluster parcels in accordance with the requirements of the Land Intensive Agriculture land use category and LIA zoning district and

Diverse Agriculture land use category and DA zoning district (“**GRANTOR’s** subdivision application”). As part of **GRANTOR’s** subdivision application, **GRANTOR** offered to convey a perpetual protective easement to **COUNTY** over that portion of the Property more particularly described in Exhibit “B,” attached hereto and incorporated herein by this reference (“the Protected Parcel”). It is **GRANTOR’s** express intent that the Protected Parcel, which constitutes the majority of the Property, remain in agricultural, resource, or other open space use.

D. After consideration of **GRANTOR’s** offer, **COUNTY’s** Project Review and Advisory Committee (“PRAC”) recommends to the Board of Supervisors’ that the **COUNTY** accept the offer and **GRANTOR** convey a protective easement over the Protected Parcel to **COUNTY** as a condition of approval of **GRANTOR’s** subdivision application. In accepting **GRANTOR’s** offer, **COUNTY** recognizes that the subdivision of the Property in the proposed configuration would be beneficial in that it would result in the permanent creation of a large parcel capable of sustaining productive agricultural, resource, or other open space uses instead of the creation of smaller parcels which, by virtue of their size, would have marginal viability for sustaining such uses.

E. Both **GRANTOR** and **COUNTY** desire to preserve the viability of the Protected Parcel for agricultural, resource, or other open space use.

F. **COUNTY’s** acceptance of a protective easement in the Protected Parcel is consistent with the General Plan.

G. **COUNTY** has the authority to acquire a protective easement over the Protected Parcel by virtue of its general police power authority and Government Code section 6950 et seq.

OPERATIVE PROVISIONS

1. In consideration of **COUNTY’s** approval of **GRANTOR’s** subdivision application, the recitals set forth above, and the mutual covenants, terms, conditions, and restrictions contained herein, **GRANTOR** hereby grants, delivers, and conveys to **COUNTY** and **COUNTY** accepts a protective easement over the Protected Parcel of the nature and character and to the extent hereafter expressed. The grant of this Easement shall run with the Protected Parcel in perpetuity and shall bind **GRANTOR**, its successors and assigns, forever. This Easement shall be for the benefit of the public generally, as represented by **COUNTY’s** Board of Supervisors.

2. This Easement shall constitute a servitude upon the Protected Parcel, which results from the restrictions imposed by this instrument upon **GRANTOR’s** use of the Protected Parcel. To that end and for the purpose of accomplishing the intent of the parties, **GRANTOR** covenants on behalf of itself, its successors and assigns, that the Protected Parcel shall be used only for those purposes which will maintain agricultural, resource, or other open space uses on the Protected Parcel (“the protective purpose of this Easement”). Further, **GRANTOR** agrees on

behalf of itself, its successors and assigns, to refrain from doing any of the following acts upon the Protected Parcel:

(a) Placing, erecting, or causing the placement or erection of any building, structure, or vehicle intended for human occupancy, except as follows:

(1) Placing or erecting no more than one (1) single-family residential dwelling unit on the Protected Parcel; and

(2) Placing or erecting agricultural employee housing, farm family housing, seasonal and year-round farmworker housing, and other similar residential structures on the Protected Parcel, in accordance with the requirements of the Sonoma County General Plan Land Intensive Agriculture land use category and the Sonoma County Zoning Code LIA zoning district and Sonoma County General Plan Diverse Agriculture land use category and Sonoma County Zoning Code DA zoning district or such other agricultural or resource land use category and zoning district as may be applied by **COUNTY** to the Protected Parcel at some point in the future.

(b) Placing, erecting, or causing the placement or erection of any building or structure, as defined by the Sonoma County Zoning Code, that exceeds 35 feet in height.

(c) Doing or causing to be done any act which will materially change the general topography or the present natural form of the Protected Parcel, except in furtherance of the protective purpose of this Easement.

3. Notwithstanding the limitations of paragraph 2, **GRANTOR** expressly reserves the following rights and privileges with respect to the Protected Parcel, provided that any entitlements required to exercise such rights and privileges are properly obtained and nothing herein shall be construed as an approval of such entitlement application:

(a) The right to use and develop the Protected Parcel for agricultural, resource, or other open space purposes, including, but not limited to, the various agricultural, resource, and open space uses allowed with or without a use permit in accordance with the requirements of the Sonoma County Land Intensive Agriculture land use category and LIA zoning district and Diverse Agriculture land use category and DA zoning district, and any other agricultural, resource, or open space uses allowed with or without a use permit in accordance with the requirements of such other agricultural or resource land use category and zoning district as may be applied by **COUNTY** to the Protected Parcel at some point in the future.

(b) All uses, ingress and egress to, in, and upon the Protected Parcel not inconsistent with the restrictions specifically enumerated in paragraph 2 above, including the right to prohibit entry thereon by unauthorized persons.

(c) The right to develop and maintain water sources, including, but not limited to, springs and groundwater wells, and to install, construct, inspect, maintain, repair,

and replace pipes, conduit, pumps, pump houses, storage tanks, water and electricity meters, electrical service facilities and transmission lines, valves, dams, and other facilities and structures for the extraction, storage, impoundment, treatment, conveyance, transmission, and distribution of water.

(d) The right to manage the land and its resources in a manner consistent with accepted principles of conservation practice.

(e) All other rights accruing from or arising out of the ownership of the Protected Parcel that are not expressly prohibited herein.

4. Except as otherwise provided in this Easement and subject to COUNTY's right of inspection, **GRANTOR** shall retain the exclusive right of access to and control over use of the Protected Parcel. Nothing contained in this Easement shall be construed as affording the public access to any portion of the Protected Parcel or precluding **GRANTOR's** right to grant access to third parties across the Protected Parcel, provided that such access is allowed in a reasonable manner and is subordinate to and consistent with the protective purpose of this Easement.

5. **GRANTOR** consents to **COUNTY** maintaining the Protected Parcel in agricultural or resource land use categories and zoning districts that are consistent with the protective purpose of this Easement.

6. **GRANTOR** shall not divide the Protected Parcel into additional separate parcels by conveyance, subdivision, lot line adjustment, partition, or other means. This prohibition against division of the Protected Parcel shall be inapplicable to (a) divisions necessary for public acquisition, (b) divisions necessary for the voluntary conveyance of all or a portion of the Protected Parcel to a government or non-profit entity exclusively for conservation or public access purposes, and (c) leases for agricultural purposes. As used in this paragraph, "agricultural purposes" means the cultivation of food or fiber, or the grazing or pasturing of livestock.

7. **GRANTOR** intends and hereby specifically provides that **COUNTY** shall have the right to enforce this Easement, and that **COUNTY** shall have the right to enter upon the Protected Parcel at any time for the purpose of inspection to ensure protection of its rights hereunder after giving twenty-four hours prior notice to **GRANTOR**. **GRANTOR** specifically intends by its offer, and **COUNTY** specifically intends by its acceptance thereof, that **COUNTY** shall not have any right of control over or duties or responsibilities with respect to the Protected Parcel which would subject **COUNTY** to any liability for injury occurring upon the Protected Parcel inasmuch as **COUNTY** shall not have the right to go on the Protected Parcel for the purpose of correcting any dangerous conditions as defined by applicable statute, except that **COUNTY** shall be responsible for any injury resulting from its entry onto the Protected Parcel to the extent that such injury is the result of **COUNTY's** negligence, gross negligence, intentional act, or willful misconduct.

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

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

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

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

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

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

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

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

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

9. Nothing contained in this Easement shall be construed to entitle **COUNTY** to bring any action against **GRANTOR** for any injury to or change in the Protected Parcel resulting from causes beyond **GRANTOR's** control, including, but not limited to, fire, flood, storm, and earth movement, or from any prudent action taken by **GRANTOR** under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Parcel 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 protective purpose of this Easement. Nothing contained in this Easement is intended to deprive **GRANTOR** of all reasonable economically viable use of the Protected Parcel, and this Easement shall not be construed to deprive **GRANTOR** of all such use.

10. **GRANTOR** warrants they are the owners in fee simple of the Protected Parcel, and that at the time of the conveyance of this Easement the Protected Parcel is not subject to any deeds of trust or conflicting easement, restrictions or covenants.

11. **GRANTOR** intends that this Easement shall confine the use of the Protected Parcel to the uses hereinabove enumerated and such other agricultural, resource, and open space uses as **COUNTY** may agree do not conflict with the protective purpose of this Easement.

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

To GRANTOR: Klein Foods, Inc., a California Corporation

and, if different than the above, also to the most current address shown on the County Tax Assessment Roll for the Protected Parcel.

To COUNTY: Sonoma County Permit and
Resource Management Department
Attn: Joshua Miranda
2550 Ventura Avenue
Santa Rosa, CA 95403

or to such other address as either party from time to time shall designate by written notice to the other. Notice, if mailed, shall be deemed given upon deposit in the United States mail. In all other instances, notice shall be deemed given at the time of actual delivery. Changes may be made in the names and addressees of the persons to whom notices, demands, requests, or other communications are to be given by giving notice pursuant to this paragraph.

13. If circumstances arise under which an amendment or modification of this Easement would be appropriate, **GRANTOR** and **COUNTY** shall be free to jointly amend or modify this Easement, provided that any such amendment or modification is in writing and signed by both **GRANTOR** and **COUNTY**, is consistent with the protective purpose of this Easement, and does not affect this Easement's perpetual duration. No amendment or modification of this Easement shall take effect unless and until it is recorded in the office of the Sonoma County Recorder.

14. If any provision of this Easement is found to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other provision of this Easement.

15. 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.

16. A party's rights and obligations under this Easement shall terminate upon transfer of the party's interest in the Protected Parcel, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

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

18. Wherever used herein, the terms "**GRANTOR**" and "**COUNTY**," and any pronouns used in place thereof, shall mean and include the above-named **GRANTOR** and its heirs, personal representatives, lessees, executors, successors, and assigns, including any persons claiming under them, and the above-named **COUNTY** and its successors and assigns, respectively.

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

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

21. After **GRANTOR** has executed this Easement, **GRANTOR** warrants that it will not record any lien, encumbrance, or otherwise convey any right, title, or interest in and to the Protected Parcel until such time as this Easement has been accepted by **COUNTY** and recorded in the office of the Sonoma County Recorder.

22. The grant of this Easement shall be effective as of the date of its acceptance by **COUNTY** pursuant to **COUNTY's** general police power and land use regulatory authority, and Government Code section 6950 et seq.

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

GRANTOR:

Klein Foods, Inc., a California Corporation

By: _____

Title: Tobin Ginter, Chief Operating Officer &
Chief Financial Officer

COUNTY OF SONOMA

By: _____

Chris Coursey
Chair Board of Supervisors

ATTEST:

By: _____
Noelle Francis
Clerk of the Board

PLEASE NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED.

APPROVED AS TO SUBSTANCE:

By: _____
Tennis Wick, Director
Permit and Resource Management Department

APPROVED AS TO FORM:

By: _____
Jennifer Klein
Chief Deputy County Counsel

Attachment:
Exhibit "A"

Exhibit "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATE IN THE UNINCORPORATED PORTION OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Lot 1, as shown on that certain Parcel Map titled, "Parcel Map No. MNS14-0007" filed on _____, 2023, in Book _____ of Maps, at Page(s) _____ at the Office of the County Recorder of Sonoma County, California.