

# SAMPLE

RECORDING REQUESTED BY AND RETURN TO:

Clerk of the Board of Directors  
Sonoma County Agricultural  
Preservation and Open Space District  
575 Administration Drive, Room 102A  
Santa Rosa, CA 95403

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Recorded by government agency - Exempt from recording fees per Gov. Code §§ 27383, 27388.1, 27388.2  
Interest acquired by government agency - Exempt from documentary transfer tax per Rev. & Tax. Code § 11922

DEED AND AGREEMENT  
BY AND BETWEEN  
« FRANCIS FARMER »  
AND  
THE SONOMA COUNTY AGRICULTURAL PRESERVATION  
AND OPEN SPACE DISTRICT  
CONVEYING A CONSERVATION EASEMENT  
AND  
ASSIGNING DEVELOPMENT RIGHTS

« FRANCIS FARMER », « an individual as their sole and separate property » (“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 containing approximately « twenty-five (25) » acres located in Sonoma County, designated as Sonoma County Assessor’s Parcel Number(s) « 120-050-120 and 120-050-121 », and more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (“Property”).

B. In 1990, the voters of Sonoma County approved the creation from DISTRICT and the imposition of a transactions and use tax to preserve agriculture and open space through the acquisition of interests from willing sellers consistent with a voter-approved Expenditure Plan and to advance the implementation of the open space elements of the County’s and each of its cities’ respective general plans consistent with Government Code sections 65560 *et seq.* In 2006, the voters of Sonoma County approved an extension of the transaction and use tax and an update to the Expenditure Plan.

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C. DISTRICT is organized pursuant to Public Resources Code sections 5500 *et seq.* and is duly authorized to acquire and hold conservation easement interests pursuant to Civil Code section 815.3 and Public Resources Code section 5540. The DISTRICT possesses the ability and intent to enforce the terms of this Easement.

D. On August 20, 2024 DISTRICT's Board of Directors, pursuant to Government Code section 65402 and Sonoma County Ordinance No. 5180, determined, by its Resolution No.24-123456, that the acquisition of a conservation easement over the Property was consistent with the [ ] Sonoma County General Plan [ ] , specifically the Plan's Agricultural Resources, Land Use, and Open Space and Resource Conservation Elements, because it will reduce economic pressure for conversion of agricultural land to non agricultural use; avoid the conversion of agricultural lands to residential or nonagricultural commercial uses; protect lands currently in agricultural production; avoid conversion of lands currently used for agricultural production to non agricultural use, discourage uses in agricultural areas that are not compatible with long term agricultural production; preserve roadside landscapes that have a high visual quality; preserve the unique rural and natural character of Sonoma County; protect and enhance the County's natural habitats and diverse plant and animal communities; maintain connectivity between natural habitat areas; protect and enhance riparian corridors and functions along streams, balancing the need for agricultural production and other land uses with the preservation of riparian vegetation, protection of water resources, flood control, bank stabilization, and other riparian functions and values; and promote and encourage soil conservation and management practices that maintain the productivity of soil resources. By that same resolution, DISTRICT's Board of Directors determined that its funding of the Project is consistent with the voter-approved Expenditure Plan.

E. This Easement, as further defined below will further the goals, objectives, and policies of the DISTRICT's Vital Lands Initiative, a long-range acquisition plan, [ ] by protecting: lands that support diverse, sustainable, and productive agriculture; natural lands and aquatic habitats that support sustainable aquatic ecosystems and water resources; and natural lands and terrestrial habitats that support plants, wildlife, and biodiversity [ ] .

F. In an agreement of even date titled Agricultural Conservation Covenant and recorded contemporaneously, GRANTOR has obligated itself and its successors to engage in certain agricultural operations on the Property. It is the intent of GRANTOR and DISTRICT that the Agricultural Conservation Covenant and this Agreement will be construed together in order to achieve the purposes of both agreements. In the event of a conflict between the two documents, the terms of this Easement shall prevail.

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

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**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 a diversified farm supporting row crops, bees, orchards, and livestock located in an area dominated by small farms near the town of Sebastopol] Critical resources on the Property (collectively, the “Conservation Values”) are as follows: agricultural, natural resource, and scenic values.

**2.1 Agricultural Resources.** The Property possesses important agricultural resources including, but not limited to good agricultural soils, water – including registered appropriative water rights and two (2) wells, rolling topography and a good climate suitable for supporting a variety of agricultural operations. Approximately thirty percent (30%) of the Property is comprised of prime soils and a further approximately twenty-five percent (25%) is comprised of soils of statewide importance. The Property is in an area dominated by agricultural use, with extensive agricultural infrastructure and within a short drive of commercial centers and agricultural support services.

**2.2 Natural Resources.** The natural resource values on the Property include, but are not limited to, riparian forest along an unnamed creek, grasslands, and mature valley oak trees. The Property possesses potential habitat for a variety of rare and protected species including Sonoma alopecurus (*Alopecurus aequalis* var. *sonomensis*), Santa Cruz clover (*Trifolium buckwestiorum*), western pond turtle (*Actinemys marmorata*), and Sebastopol meadowfoam (*Limnanthes vinculans*). Additionally, 5 acres of the Property has been designated by the U.S. Government as critical habitat for federally listed endangered California Tiger Salamander (*Ambystoma californiense*).] This Easement protects the Property’s natural resource values as described above and as they may change over time due to causes such as ecological succession, habitat shift, movement of streams, wetlands, and springs, or the impacts of climate change.

**2.3 Scenic Resources.** The scenic resources values on the Property include, but are not limited to :[ bucolic rural views of its hills and pastures from public roads, including Occidental Road, a designated scenic corridor.]

**3. Conservation Purpose.** The purpose of this Easement (“Conservation Purpose”) is to preserve and protect forever the Conservation Values, and to prohibit and prevent any uses and activities of the Property that will materially impair or interfere with the Conservation Values. In the event that an activity or use that requires the DISTRICT’s approval causes a substantial conflict between the preservation and protection of multiple Conservation Values, the Parties shall attempt to reconcile such conflict and balance preservation and protection of Conservation Values, taking into consideration any material changes to the physical condition of the Property, climate change and associated impacts, zoning and public policy, and surrounding land uses. If such conflict is both substantial and irreconcilable, the DISTRICT shall consider the approval and

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the relative impacts to the affected Conservation Values, with particular weight given to preservation and protection of agricultural resources, then to natural resources, and finally to scenic resources.

### 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.** To preserve, protect, and document the Conservation Values of the Property in perpetuity.

**4.2 Property Inspections.** To enter upon the Property to carry out DISTRICT's obligations and exercise its rights under this Easement, including monitoring and enforcement. Each entry shall be for only so long a duration as is reasonably necessary to achieve the purposes of the entry, but shall not necessarily be limited to a single physical entry or a single twenty-four hour period. The rights of entry provided by this *Section 4.2* shall extend to DISTRICT's officers, staff, consultants, and volunteers. DISTRICT has the right to enter the Property unaccompanied by GRANTOR if GRANTOR declines to join or is unable to join DISTRICT or its agents.

**4.2.1 Monitoring Visits.** To enter upon the Property at least once per calendar year to inspect, document, and study the Property ("Monitoring Visit") to (a) identify the current activities on and uses and condition of the Property; and (b) monitor the activities and uses on the Property to determine whether they are consistent with this Easement. DISTRICT shall conduct Monitoring Visits at reasonable times and upon one week's prior notice to GRANTOR. DISTRICT may give notice to GRANTOR of a Monitoring Visit via electronic mail ("email") or telephone. Monitoring Visits shall be made in a manner that will not unreasonably interfere with GRANTOR's use and quiet enjoyment of the Property.

**4.2.2 Enforcement Visits.** In addition, if DISTRICT determines that entry upon the Property is necessary to investigate, prevent, terminate, document, monitor, or mitigate a potential or actual violation of this Easement, DISTRICT has the right to enter upon the Property at any time and without notice to GRANTOR ("Enforcement Visit"). DISTRICT will attempt but is not required to give at least twenty-four (24) hours' notice of Enforcement Visits via electronic mail ("email") or telephone. Enforcement Visits may occur as frequently as is necessary to investigate and resolve potential or actual violations of this Easement.

**4.3 Enforcement.** To enforce the rights granted in this Easement; to prevent or stop, by any legal means, any activity or use on the Property that is inconsistent with the terms, conditions or Conservation Purpose of this Easement and to require restoration of such areas or features as may be damaged by such activities or uses.

**4.4 Approval of Certain Uses.** To review and approve proposed uses and activities on the Property as more specifically set forth in *Section 5 (GRANTOR's Restricted Rights)* and *Section 6 (Notice and Approval Procedures)*.

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**4.5 Signage.** To erect and maintain a sign or other appropriate marker in a location on the Property acceptable to GRANTOR and 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 DISTRICT shall determine the wording and design of the sign or marker with consent of GRANTOR. No such sign or marker shall exceed thirty-two (32) square feet in size nor include artificial illumination. DISTRICT shall be responsible for the cost of erecting and maintaining such sign or marker.

**4.6 Access.** To use any recorded, prescriptive, equitable, or other easement that grants lawful access to the Property now or in the future and for any purpose consistent with this Easement. To allow monitoring and enforcement by DISTRICT, GRANTOR hereby irrevocably assigns to DISTRICT the non-exclusive right to use any and all access easements and rights-of-way, whether recorded or not, over the Property or the property of others that individually or together provide GRANTOR with legal, physical, or other access to the Property. GRANTOR further agrees to execute any additional documents necessary to evidence this assignment.

**4.7 Additional Rights.** To exercise such additional rights as may be reasonably necessary to effectuate the Conservation Purpose of this Easement.

### PART THREE: RESTRICTIONS ON DEVELOPMENT, USE, AND ACTIVITIES

**5. GRANTOR's Restricted Rights.** GRANTOR shall confine the use of the Property to activities and uses that are consistent with the Conservation Purpose of this Easement. Any activity or use that is inconsistent with the Conservation Purpose of this Easement is prohibited. GRANTOR and DISTRICT acknowledge that the following list does not constitute an exhaustive recital of consistent and inconsistent activities and uses, but rather (1) establishes specific duties with respect to the preservation of the Property's Conservation Values; (2) establishes allowed activities and uses; (3) establishes restricted or prohibited activities and uses; and (4) provides guidance for determining the consistency of similar activities and uses with this Easement, in accordance with the procedures set forth in *Section 6.7 (Uses/Activities Not Expressly Addressed)*.

#### **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.

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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 (GRANTOR's Restricted Rights)* requires prior notice to or approval by DISTRICT, such notice shall be given or approval shall be obtained in accordance with *Section 6 (Notice and Approval Procedures)* of this Easement.

5.1.7 Plans. Whenever this *Section 5 (GRANTOR's Restricted Rights)* conditions any development, activity, or use on an approved plan, such as a Master Plan, Management Plan, Vegetation Management Plan, or resource-specific plan (a "Plan"), such development, activity, or use shall be carried out consistent with the Plan and pursuant to *Section 6 (Notice and Approval Procedures)*.

5.1.8 Easement Designation Areas. This Easement identifies and designates geographically specific areas of the Property within which different terms are applicable than on the remainder of the Property (the "Easement Designation Areas"). Within the Easement Designation Areas, otherwise prohibited development, uses, and activities may be permitted, or otherwise permitted development, uses, and activities may be prohibited, as described further in Sections 5.3 (Land Uses) - 5.4 (Structures and Improvements) of this Easement. The general locations of the Easement Designation Areas are depicted on the Project Structure Map attached as Exhibit B, which is incorporated by this reference. The Easement Designation Areas are described in greater detail in Exhibit C (Legal Description of Easement Designation Areas), attached and incorporated by this reference. In the event that a conflict is found between the written descriptions of the Easement Designation Areas in this Easement and the Project Structure Map, the written description in Exhibit C shall prevail. If there is a dispute regarding the location of Easement Designation Area boundaries on the ground, either party may obtain a survey of the area at issue at its own cost. The Easement Designation Areas are as follows:

a) *Building Envelope.* The parties have designated one (1) Building Envelope on the Property comprising approximately three (3) acres to concentrate higher-intensity development, uses, and activities pursuant to *Sections 5.3 (Land Uses) – 5.4 (Structures and Improvements)* (the "Building Envelope").

b) *Natural Areas.* There are two (2) "Natural Areas" designated on the Property to ensure the protection of mature oak woodland habitat, riparian vegetation, movement of wildlife, stabilization of stream banks, and prevention of sedimentation of watercourses. The parties expressly acknowledge that the locations and boundaries of the Natural Areas may change over time with the movement of streambanks due to flooding, erosion,


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accretion, reliction, avulsion, and other natural events. The Natural Areas are as follows:

(i) *Natural Area 1*. “Natural Area 1” consists of an unnamed creek or drainage in the center of the Property, including its channel and banks, and a buffer on both sides of the creek extending fifty (50) from top of highest bank.

(ii) *Natural Area 2*. “Natural Area 2” consists of an oak woodland in the north of the Property. At the Effective Date, the oak woodland consisted primarily of mature Valley Oak trees covering approximately 2 acres of the Property.

### 5.2 Subdivision and Lot Line Adjustments.

5.2.1 Subdivision Prohibited. This Easement prohibits the legal or de facto division, subdivision, or partition of the Property, except as expressly provided in this *Section 5.2 (Subdivision and Lot Line Adjustments)*, for any purpose, including, but not limited to, any such subdivisions or establishment of separate legal parcels by certificates of compliance or “separate for assessment purposes” designations. The Property currently comprises  one (1) legal parcel. GRANTOR shall maintain all of the parcels comprising the Property, and all interests therein, under common ownership, as though a single legal parcel. Partition by division of the Property between owners or tenants in common shall be considered a subdivision and is prohibited under this Easement. Mortgaging or recording a deed of trust on less than the entire Property is prohibited.

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

5.2.3 Easements. GRANTOR may not grant new temporary or permanent easements, nor modify or amend existing easements, on the Property without the prior written approval from DISTRICT. It is the duty of GRANTOR to prevent use of the Property by third parties that may result in the creation of prescriptive rights.

5.2.4 Exceptions to Prohibition Against Subdivision. This prohibition against division of the Property shall not apply to:

a) *Conveyance to Government or Qualified Non-Profit Entity*. With prior written approval from DISTRICT, GRANTOR may voluntarily convey a portion of the Property to a government or qualified non-profit entity exclusively for conservation or public access purposes and only if the grantee owns or manages contiguous land used and managed for conservation, open space, or recreation.

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b) *Leases*. GRANTOR may lease all or portion(s) of the Property for uses described in this *Section 5 (GRANTOR's Restricted Rights)* and subject to all terms of this Easement.

5.2.5 Lot Line Adjustments. Lot line adjustments may be permitted solely with prior approval from DISTRICT if necessary to settle boundary disputes regarding adjacent properties. GRANTOR shall take no action towards a lot line adjustment unless and until DISTRICT provides prior approval of the proposed Lot Line Adjustment.

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

5.3.1 Residential Use. GRANTOR may reside in permitted residential structures on the Property.

5.3.2 Agricultural Use. GRANTOR may engage in agricultural uses of the Property as defined below in accordance with sound, generally accepted agricultural and soil conservation practices, provided however that no agricultural use shall be undertaken in a manner that significantly impairs the long-term agricultural productive capacity of the Property. Agricultural uses are prohibited within the Natural Areas except as expressly provided below. In connection with permitted agricultural uses, any application of government-approved agrichemicals, including but not limited to, herbicides, fertilizers, and biocides, must be applied only in those amounts and with that frequency of application necessary to accomplish reasonable agricultural purposes and consistent with government regulations and guidelines.

a) *Livestock for the Production of Food and Fiber*. GRANTOR may breed, raise, pasture, and graze livestock of every nature and description for the production of food and fiber. In accordance with a Plan as described in *Section 5.1.7 (Plans)*, dry-season grazing is permitted within Natural Area 1 and year-round grazing is permitted Natural Area 2.

b) *Bees, Fish, Poultry and Fowl*. GRANTOR may breed and raise bees, fish, poultry, and other fowl. Beekeeping is permitted within the Natural Areas pursuant to a Plan as described in *Section 5.1.7 (Plans)*.

c) *Crops*. GRANTOR may plant, raise, harvest, and produce agricultural, aquacultural, horticultural, and forestry crops and products of every nature and description. Cultivation and harvest of native crops is permitted, including within the Natural Areas, pursuant to a Plan as described in *Section 5.1.7 (Plans)*.

5.3.3 Uses Accessory to Agriculture



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a) *Sale of Harvested Crops and Products.* GRANTOR may store and sell, including direct retail sale to the public, crops and products harvested and produced on the Property.

b) *Processing of Crops and Products.* GRANTOR may process agricultural crops and products principally harvested and produced on the Property.

c) *Composting.* GRANTOR may store, process, and sell, including direct retail sale to the public, compost materials generated on the Property in association with the permitted agricultural uses.

5.3.4 Recreational and Educational Use. GRANTOR may use the Property for low-intensity outdoor recreation and education including hiking, nature study, and other such uses similar in nature and intensity. All improvements associated with the low-intensity recreational and educational uses shall be placed or constructed consistent with *Section 5.4.7 (Improvements for Recreational and Educational Uses)* of this Agreement. GRANTOR may engage in hunting and fishing on the Property in conformance with *Sections 5.5.8 (Native Animal Removal)* and *5.5.9 (Non-Native Plants and Animals)*.

5.3.5 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 (Land and Resource Management)*.

a) *Mitigation.* With prior written approval from 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: (i) the proposed mitigation enhances the Conservation Values; (ii) the proposed mitigation is consistent with DISTRICT's enabling legislation; (iii) the proposed mitigation is aligned with DISTRICT's objectives and goals; and (iv) the proposed mitigation does not present a risk to DISTRICT's long-term fiscal stability. Furthermore, (i) any additional protections required by regulatory agencies in association with a mitigation project must be consistent with this Easement; and (ii) the sale of mitigation credits are considered a commercial use and subject to the provisions of *Section 5.3.6 (Commercial Use)*.

5.3.6 Commercial Use. GRANTOR may use the Property for the following commercial uses: (i) agricultural and ancillary agricultural uses as defined in *Sections 5.3.2 (Agricultural Use) - 5.3.3 (Uses Accessory to Agriculture)*; (ii) home occupation(s) within permitted residential buildings; (iii) leases or rentals for agricultural, ancillary agricultural, and residential uses as defined in *Sections 5.3.2 (Agricultural Use) - 5.5.4 (Uses Accessory to Agriculture)*; and (iv) with prior written approval from DISTRICT, other minor ancillary commercial use found to be consistent with Conservation Values of this Easement.

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**5.4 Structures and Improvements.** No structure or improvement shall be maintained, repaired, replaced, constructed, or placed on the Property except as provided in this *Section 5.4*. All structures and improvements allowed by *Sections 5.4.1 (Maintenance, Repair, or Replacement of Structures and Improvements)* through *5.4.6 (Structures and Improvements Accessory to Natural Resource Protection Use)*, whether existing at the time of this Easement or placed subsequent to this Easement, shall be located within the Building Envelope. Furthermore, no structure or improvement shall exceed twenty-four (24) feet in height except as otherwise provided herein.

**5.4.1 Maintenance, Repair, or Replacement of Structures and Improvements.** GRANTOR may maintain, repair, or replace 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 (Primary Residence)* through *5.4.12 (Signs)*.

**5.4.2 Primary Residence.** At any one time, there may be no more than one (1) primary residence located on the Property. Subject to the preceding sentence and with prior written notice to DISTRICT, GRANTOR may place or construct one (1) new primary residence provided that no such residence exceeds twenty-four (24) feet in height and two thousand (2,000) square feet in size, exclusive of garage. All garages, whether attached or detached, shall be subject to *Section 5.4.3 (Structures and Improvements Accessory to Residential Use)*. At such time a new primary residence is constructed, GRANTOR shall remove the existing primary residence or redesignate and maintain it as an accessory structure or agricultural worker housing in accordance with *Sections 5.4.4 (Residential Agricultural Structures)*, as applicable, so that after construction of a new primary residence, no more than one (1) primary residence is located on the Property.

**5.4.3 Structures and Improvements Accessory to Residential Use.** With prior written notice to DISTRICT, GRANTOR may place or construct accessory structures and improvements reasonably related to permitted residential use of the Property including guest house, accessory dwelling unit, garage, shed, swimming pool, artworks, chicken coop, and garden. All structures and improvements accessory to residential use must be placed or constructed within the same Building Envelope as the associated residence. The total cumulative square footage of the structures accessory to residential use shall not

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exceed two thousand (2,000) square feet on the Property. No single structure shall exceed one thousand 1,000 square feet in size.

5.4.4 Residential Agricultural Structures. With prior written notice to DISTRICT, GRANTOR may place or construct, agricultural residences (farm worker housing, farm family housing, or similar residences for agricultural workers), provided that no such residence shall be greater than two thousand (2,000) square feet in size, exclusive of garage. All garages, whether attached or detached, shall be subject to *Section 5.4.3 (Structures and Improvements Accessory to Residential Use)*.

5.4.5 Non-residential Agricultural Structures. With prior written notice to DISTRICT, GRANTOR may place or construct accessory structures and improvements reasonably necessary for the permitted agricultural use of the Property, such as barns, corrals, and greenhouses. No non-residential agricultural structure may be taller than forty (40) feet.

5.4.6 Structures and Improvements Accessory to Natural Resource Protection Use. With prior written notice to DISTRICT, GRANTOR may place or construct within a designated Building Envelope accessory structures and improvements reasonably necessary for natural resource protection on the Property, including, but not limited to, sheds and greenhouses.

5.4.7 Improvements for Recreational and Educational Uses. With prior written approval from DISTRICT, GRANTOR may construct or place minor improvements associated with permitted low-intensity outdoor recreational and educational uses, such as a single-track unpaved trail and viewing areas.

5.4.8 Roads. With prior written approval from DISTRICT, GRANTOR may construct new roads and crossings, collectively referred to as "Roads", and reconstruct or expand existing Roads provided that such Roads (i) are directly required for uses and activities allowed herein; and (ii) are the minimum necessary for such uses and activities. Roads shall be constructed and maintained so as to minimize erosion and sedimentation and ensure proper drainage, utilizing Best Management Practices for Roads as recommended by California Department of Fish and Wildlife or other similar or successor entity. Any roads constructed subsequent to this Easement may not be paved with asphalt, concrete, or other impervious surface unless such paving is required by any federal, state or local law, code, ordinance, or regulation. Roads that are abandoned, permanently closed and/or decommissioned shall be revegetated with native species, stabilized, and ensured of proper drainage and may be converted to agricultural use.

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5.4.9 Fences and Gates. With prior written approval from DISTRICT, GRANTOR may construct and erect new fencing and gates only as necessary for permitted uses of the Property or as necessary in connection with GRANTOR'S duties to prevent foreseeable trespass pursuant to *Section 5.1 (General Requirements for All Uses)*. Notwithstanding the foregoing, no approval is required for placement of temporary fencing. All fencing and gates must (i) preserve the scenic values of the Property; (ii) be the minimum necessary in design and extent; (iii) not impede wildlife movement except within the Building Envelope and in cases where necessary to protect the allowed agricultural and natural resource management, restoration and enhancement uses described in this Easement; and (iv) comply with DISTRICT's then current guidelines for fences on conservation lands. Notwithstanding the provisions of *Section 5.4.1 (Maintenance, Repair, or Replacement of Structures and Improvements)*, whether existing at the date hereof or constructed subsequently in accordance with the provisions of this Easement, GRANTOR may maintain and/or replace such fencing and gates only pursuant to the provisions of this *Section 5.4.9*. In the event any fence or gate, or portion thereof, becomes obsolete or unnecessary for the uses described in this *Section 5.4.9*, GRANTOR shall remove such fencing or gate from the Property.

5.4.10 Utilities and Energy Resources. With prior written approval from DISTRICT, GRANTOR may expand existing or develop or construct new utilities, including electric power, septic or sewer, communication infrastructure, and water storage and delivery systems, within the Building Envelope designated in *Section 5.1.8 (Easement Designation Areas)*, provided that such utilities are directly required for permitted uses on the Property and are reasonably scaled to serve only those uses. With prior written approval from DISTRICT, GRANTOR may expand existing or develop or construct new utility lines and poles and water storage and conveyances outside the designated Building Envelope provided such facilities are designed, constructed, and maintained in a manner that minimizes impacts to the Conservation Values. Electric power and communication utilities may serve off-site use only if associated improvements are located on a permitted structure and do not cause such structure to exceed size and height limitations.

5.4.11 Public Safety Systems. With prior written approval from DISTRICT, GRANTOR may install communication and geophysical data collection, monitoring, and transmission systems and associated infrastructure directly supportive of public safety operations, including, but not limited to, wildfire detection sensors and cameras, weather stations, stream gauges, seismic sensors, and emergency communication systems ("Public Safety Systems"), provided such infrastructure is the minimum necessary for the public safety purpose and is designed, sited, constructed, and maintained so as to minimize impacts to the Conservation Values of the Property. Public Safety Systems do not include telecommunications facilities designed for use by the general public, such as

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commercial cell phone towers or antennae, which are subject to the provisions of *Section 5.4.10 (Utilities and Energy Resources)*.

5.4.12 Signs. GRANTOR may construct or place signs as set forth in this *Section 5.4.12*. No sign shall be artificially illuminated.

a) Without prior written notice to or approval from DISTRICT, GRANTOR may construct or place two (2) signs not to exceed thirty-two (32) square feet in size to identify the Property from public roadways and/or to acknowledge participation of funding agencies for permitted uses on the Property.

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

c) Without prior written notice to or approval from DISTRICT, GRANTOR may construct or place signs advocating candidates or issues that will be presented to voters in a public election are allowed, provided that such signs do not exceed then existing state and local regulations for political signs, and that such signs are removed within ten (10) days after the date of election.

d) With prior written approval from DISTRICT, GRANTOR may construct or place additional signs necessary or appropriate for allowed uses, provided that any such additional signs are sited and constructed in a manner that does not create a significant visual impact.

**5.5 Land and Resource Management.** All land and resource management activities must be designed and implemented in accordance with sound, generally accepted conservation practices.

5.5.1 Surface Alteration. Alteration of the contour of the Property in any manner whatsoever is prohibited, including, but not limited to, 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 (GRANTOR's Restricted Rights)* of this Easement. In connection with allowed uses, structures, and/or improvements, movement of over fifty (50) cubic yards of material in any calendar year is With prior DISTRICT approval.

5.5.2 Water Resources. Draining, filling, dredging, diking, damming, or other alteration, development or manipulation of watercourses, subsurface water, springs,

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ponds, and wetlands is prohibited except as reasonably necessary in connection with (i) the maintenance, replacement, development, and expansion of water storage and delivery systems allowed under *Section 5.4.10 (Utilities and Energy Resources)*; (ii) reconstruction, expansion, and new construction of trails or roads allowed under *Sections 5.4.7 (Improvements for Recreational and Educational Uses)* and *5.4.8 (Roads)*, respectively; and (iii) the restoration and enhancement of natural resources allowed under *Section 5.5.5 (Management, Restoration, and Enhancement)*.

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

5.5.4 Vegetation and Fuel Management. GRANTOR may undertake vegetation and fuel management activities to reduce wildfire risk as provided in this *Section 5.5.4*. All vegetation and fuel management activities shall be designed and implemented to minimize harm to native wildlife, plant communities, and non-target plants. If vegetation and fuel management activities are to take place during nesting season, GRANTOR shall ensure that nesting surveys are conducted in coordination with a qualified biologist and shall modify activities based on survey results to prevent harm to identified nests.

a) Within one hundred (100) feet of structures, except for Public Safety Systems installed pursuant to *Section 5.4.11 (Public Safety Systems)*, 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.

b) Farther than one hundred (100) feet from structures, or in relation to Public Safety Systems installed pursuant to *Section 5.4.11 (Public Safety Systems)*, 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 5.5.4* 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: (i) the purpose of proposed work, (ii) the location of the treatment area(s), (iii) a timeline for completion, (iv) the "before" condition of the treatment area(s), (v) management objectives, (vi) treatment methods including any new infrastructure, (vii) post-treatment maintenance, and (viii) best management practices, such as soil protection, appropriate tree spacing, special-status species protection, invasive species management, and snag retention. Any Vegetation Management Plan must be consistent with any then-current DISTRICT wildfire management policy and the terms of this Easement. Any Vegetation Management Plan may include the following treatment methods:

## SAMPLE

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

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

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

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

(v) 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 Management, Restoration, and Enhancement. With prior written approval from DISTRICT, GRANTOR may undertake natural resource preservation, restoration, and enhancement activities, including, but not limited to, bank and soil stabilization, 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 (Vegetation and Fuel Management)*; and (iv) for natural resource management as set forth in *Section 5.5.1 (Surface Alteration)* of this Easement. Native trees removed pursuant to this *Section 5.5.6* may be used for personal firewood.

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

5.5.8 Native Animal Removal. Killing, hunting, trapping, injuring, or removing native animals is prohibited except (i) under imminent threat to livestock or human life

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or safety; (ii) when reasonably necessary to control problem animals affecting agricultural crops; (iii) personal non-commercial hunting; and (iv) as reasonably necessary for natural resource preservation, restoration, and enhancement activities in accordance with *Section 5.3.5 (Natural Resource Protection, Preservation, Restoration, and Enhancement)*, 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 including personal non-commercial hunting, 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 except for permitted agricultural uses or within designated Building Envelope.

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

5.5.11 Dumping. Dumping, releasing, burning, or other disposal of wastes, refuse, debris, non-operative motorized vehicles, or hazardous substances is prohibited except that agricultural products and by-products generated on the Property may be disposed on site, consistent with sound generally accepted agricultural practices. GRANTOR shall remove garbage or materials dumped on the Property by third parties.

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

a) *Storage of Materials Related to Allowed Uses.* GRANTOR may store vehicles, building materials, machinery or agricultural supplies and products reasonably necessary for permitted uses outdoors so long as such storage is consistent with sound generally accepted agricultural practices and provided such storage shall be located so as to minimize visual impacts.

b) *Storage of Construction Materials.* GRANTOR may store construction and other work materials outdoors needed during construction of 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 one hundred eighty (180) days.



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

**5.7 Easements.** GRANTOR may not grant new temporary or permanent easements, nor modify or amend existing easements, on the Property without prior written approval from DISTRICT. It is the duty of GRANTOR to prevent 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 addressed by this Easement require that prior written notice be given by GRANTOR to DISTRICT, while other activities and uses addressed by this Easement require the prior written approval from DISTRICT. Such an approval reflects the DISTRICT's determination that the activity or use complies with the terms and restrictions established in this Easement. Unless and until such notice is given or approval is obtained in accordance with this *Section 6*, any such activity or use is prohibited on the Property. GRANTOR shall use the procedures set forth below, including the information required by *Section 6.3 (Information Required)*, to provide notice to DISTRICT or to obtain DISTRICT's approval unless a use or activity is expressly addressed in and governed by an approved Plan.

**6.1 Uses/Activities Requiring Notice to DISTRICT.** For any activity or use that requires prior notice to DISTRICT, GRANTOR shall deliver such notice to DISTRICT in writing at least forty-five (45) days prior to the commencement of such activity or use. That forty-five (45)-day time period provides DISTRICT an opportunity to evaluate whether the proposed activity or use is consistent with the terms, conditions, and Conservation Purpose of this Easement before the activity or use is begun.

**6.2 Uses/Activities Requiring Prior Approval from DISTRICT.** For any activity or use that requires prior approval from DISTRICT, GRANTOR shall file a request for such approval ("GRANTOR's request") in writing at least forty-five (45) days prior to the intended commencement of such activity or use. DISTRICT shall have forty-five (45) days from the receipt of a complete request for approval to review the request and to approve, conditionally approve, disapprove, or notify GRANTOR of any objection thereto. 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

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

**6.3 Information Required.** All notices and requests for approval shall include all information necessary to permit DISTRICT to make an informed judgment as to the consistency of GRANTOR's request with the terms, conditions, and Conservation Purpose of this Easement. DISTRICT may request GRANTOR provide such additional or supplemental information, including expert opinions at GRANTOR's expense, 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.

**6.4 DISTRICT's Failure to Respond.** Should DISTRICT fail to respond to GRANTOR's request for approval within forty-five (45) days of the receipt of GRANTOR's request, GRANTOR may, after giving DISTRICT ten (10) days written notice by registered or certified mail, commence an action in a court of competent jurisdiction to compel DISTRICT to respond to GRANTOR's request. In the event that such legal action becomes necessary to compel DISTRICT to respond and GRANTOR prevails in that action, DISTRICT shall reimburse GRANTOR for all reasonable attorney fees incurred in that action.

**6.5 DISTRICT'S Determination.** DISTRICT may determine that a proposed use is consistent with this Easement in its sole discretion. It may consider compliance with this Easement, the manner in which the proposed use is to be carried out, and the potential for the proposed use and the manner in which it is to be carried out to preserve, enhance, or affect one or more Conservation Values. DISTRICT may impose conditions on the use in order to ensure that the use is consistent with the Purpose of this Easement. No determination by DISTRICT shall establish precedent for or commitment to the outcome of future decisions. DISTRICT shall consider every notice and request for approval on its own and without following or establishing precedent.

**6.6 Approvals Must Be in Writing.** All approvals must be made in writing to have any effect. GRANTOR understands that any oral approval or oral representation regarding such an approval made by DISTRICT, its officers, employees, or agents does not meet the requirements of this *Section 6.6*, does not bind or commit DISTRICT, and may not be relied on by GRANTOR. To that end GRANTOR agrees that it will not assert or allege that DISTRICT, its officers, employees, or agents provided—or that GRANTOR understood that DISTRICT, its officers, employees, or agents provided—any oral approval or that DISTRICT is in any way estopped or has made an election or has waived any provision of this Easement based on any allegation of an oral approval or understanding of an oral approval.

**6.7 Uses/Activities Not Expressly Addressed.** 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's Restricted Rights)*, GRANTOR shall seek DISTRICT's prior written approval of such activity or use in accordance with the procedure set forth in this *Section 6 (Notice and Approval Procedures)*. Any activity or use not expressly permitted in *Section 5 (GRANTOR's Restricted Rights)*, may constitute a breach of this Easement and may be subject to the provisions of *Section 10 (Remedies for Breach)*.

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**6.8 Review of Plans.** Any Master Plan, Vegetation Management Plan, or other plan required by this Easement, along with updates and amendments (collectively for purposes of this *Section 6.8*, “Plan”), requires review and approval by DISTRICT in accordance with this *Section 6.8* and shall be consistent with the terms and conditions of this Easement. The Plan shall have no effect and shall not govern activity on the Property until it has been approved by DISTRICT. DISTRICT may require periodic updates to any Plan as a condition of approval.

6.8.1 Review of Plans. Grantor shall not commence any activity or use for which this Easement requires a Management Plan, unless and until DISTRICT approves a Management Plan pursuant to Section 6 that describes and governs the activity or use. The review procedures of Section 6 (Notice and Approval Procedures) shall apply except that DISTRICT shall have sixty (60) days to review a proposed Plan.

6.8.2. Deadline for Management/Master Plan. Within 3 years of the recordation of this Easement, GRANTOR shall develop and submit a Plan to DISTRICT that complies with the requirements of this Section 6.8 Management Plans.

6.8.3 Minimum Contents of Plans. Any Plan shall identify best management practices to assure that management activities and uses are conducted in a manner that is beneficial to the Conservation Values of the Property. The Plan must identify, at a minimum, (i) all major uses of the Property (including [specify, e.g., recreational], and resource management use) relevant to the resource or activity governed by the plan; (ii) the nature of each proposed use or activity and its intended location; (iii) all actions to be taken to protect natural resources; and [list minimum requirements, including timelines, objectives, locations, and any expertise required to prepare it.]

6.8.4 Approved Plans. Once the Plan is approved by DISTRICT, all uses and activities covered by the Plan shall be conducted in a manner consistent with it. Upon DISTRICT’s approval, all uses and improvements described therein shall be deemed to be consistent with the terms, conditions, and Conservation Purpose of this Easement and shall be permitted on the Property without further notice to or approval by DISTRICT as long as the Plan remains in effect. All such uses and activities shall at all times remain subject to the substantive limitations of *Section 5 (GRANTOR’s Restricted Rights)*. Any revisions to the Plan are subject to District approval.

6.8.5 Updates to Plans. DISTRICT may require GRANTOR to revise or update the Plan, at GRANTOR’s expense, to address changed conditions on the Property. In the event of such a request by DISTRICT, GRANTOR shall submit proposed revisions to the Plan to DISTRICT within one hundred twenty (120) days of DISTRICT’s request. Such revisions will be subject to the review and approval procedures set forth in *Section 6 (Notice and Approval Procedures)*.

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

**7.1 Operations and Maintenance of the Property.** GRANTOR retains and 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

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foregoing, GRANTOR agrees to pay any and all real property taxes, fees, exactions, and assessments levied or imposed by local, state, and federal authorities on the Property. GRANTOR further agrees to maintain general liability insurance covering acts on the Property. 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. 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;
- 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.

If at any time after the Effective Date of this Easement there occurs a release, discharge, or other incident in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, GRANTOR agrees to take all steps that are required of GRANTOR under federal, state, or local law necessary to ensure its containment and remediation, including any cleanup.

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

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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. GRANTOR’s Indemnity.** GRANTOR shall hold harmless, indemnify, and defend DISTRICT, its agents, employees, volunteers, invitees, successors, and assigns, from and against all damages, liabilities, claims, and expenses, including reasonable attorneys’ fees, arising from or in any way connected with (1) 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 gross negligence or intentional misconduct of DISTRICT; (2) the obligations specified in *Section 7 (Costs and Liabilities Related to the Property)*; and (3) any approvals given under *Section 6 (Notice and Approval Procedures)*.

**9. Baseline Documentation for Enforcement.** The specific characteristics, use, and state of improvement of the Property are further documented in an inventory of relevant features of the Property dated 2/28/2024 that is on file at the offices of DISTRICT and incorporated by this reference (the “Baseline Report”), which consists of reports, maps, photographs, and other documentation. The Parties agree and acknowledge that the Baseline Report provides an accurate representation of the Property at the time this Easement is recorded and that it is intended to provide an objective, though nonexclusive, baseline for monitoring compliance with the terms of this Easement. 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 execution of this Easement.

## **10. Remedies for Breach.**

**10.1 DISTRICT’s Remedies.** In the event of a violation or threatened violation by GRANTOR of any term, condition, or restriction contained in this Easement, DISTRICT may, following notice to GRANTOR, institute a suit to enjoin, recover damages for such violation, and/or require the restoration of the Property to the condition that existed prior to such violation. DISTRICT’s rights under this *Section 10 (Remedies for Breach)* shall apply equally in the event of either actual or threatened violations of the terms of this Easement.

**10.1.1 Notice.** 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

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to the condition that existed prior to the violation. The notice shall be provided in accordance with *Section 13 (Notices)*.

**10.1.2 Immediate Action.** 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, without 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.

**10.1.3 Specific Performance.** 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, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. DISTRICT may further recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement (including but not limited to damages for the loss of scenic, recreational, or environmental values), and to require the restoration (or damages for the cost of restoration) of the Property to the condition that existed prior to any such injury. To the extent that any financial benefit gained from the violation of this Easement exceeds the amount of damages awarded or the value of other remedies provided, GRANTOR expressly agrees that disgorgement of any such additional benefits or profits is an appropriate remedy that shall apply to such a violation, regardless of whether such benefit exceeds the cost incurred by GRANTEE or quantifiable harm to the Property as a result of the violation.

**10.1.4 Cost Recovery.** All reasonable costs incurred by DISTRICT in enforcing this Easement against GRANTOR, shall be borne by GRANTOR; provided, however, that if GRANTOR ultimately prevails in a judicial enforcement action or arbitration proceeding brought by DISTRICT, then DISTRICT shall bear its own costs and pay for GRANTOR's reasonable costs and expenses of suit. Costs are defined for purposes of this *Section 10.1.4*, and all other references to costs in this Easement, as including all reasonable costs necessitated by GRANTOR's violation of the terms of this Easement or request for approval or amendment. Costs include, without limitation, costs of restoration necessitated by violation of this Easement; costs and expenses of suit; reasonable professional fees of attorneys, consultants, witnesses, surveyors, and accountants; and expenses and compensation for DISTRICT staff time required to respond to a violation or request.

**10.2 No Waiver.** 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

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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. GRANTOR hereby waives any defense of laches, waiver, estoppel, or prescription.

**10.3 Remedies Nonexclusive.** The remedies set forth in this *Section 10 (Remedies for Breach)*, are in addition to, and are not intended to displace, any other remedy available to either party as provided by this Easement, Civil Code sections 815 *et seq.* or any other applicable local, state or federal law.

**11. Acts Beyond GRANTOR's Control.** Except as otherwise provided in *Section 5.1.5 (Duty to Prevent Waste, Nuisance, and Trespass)*, and this *Section 11*, nothing contained in this Easement shall be construed to entitle DISTRICT to bring any action against GRANTOR for any injury to or change in the Property resulting from causes beyond GRANTOR's control, including wildfire, flood, storm, earth movement, or a tortious or criminal act of a third party which GRANTOR could not have reasonably prevented, or from any prudent action taken by GRANTOR under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes so long as such action, to the extent that GRANTOR has control, is designed and carried out in such a way as to further the Conservation Purpose of this Easement. Notwithstanding the foregoing, GRANTOR shall be liable to DISTRICT for modifications or damage to the Property that impair or damage the Conservation Values of the Property when those modifications or damages result from the acts or omissions of third parties whose use of or presence on the Property is authorized, expressly or implicitly, 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 and the Conservation Values. Nothing contained herein limits or precludes GRANTOR's or DISTRICT's rights to pursue any third party for damages to the Property's Conservation Values.

## **12. Extinguishment and Condemnation.**

**12.1 Extinguishment.** 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. 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 of the Easement, shall be determined, unless otherwise provided by California law at the time, in accordance with *Section 12.3 (Property Interest and Fair Market Value)*. All proceeds paid to DISTRICT shall be used by DISTRICT for the purpose of the preservation of agriculture and open space within Sonoma County. This Easement shall not be deemed terminated, extinguished, or otherwise affected until DISTRICT has received full payment for its interest.

**12.2 Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement in whole or in part, either

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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 12.3 (Property Interest and Fair Market Value)*. Click or tap here to enter text. GRANTOR shall not agree to an in-lieu purchase without prior written approval from DISTRICT.

**12.3 Property Interest and Fair Market Value.** This Easement constitutes a real property interest immediately vested in DISTRICT. For the purpose of this *Section 12.3*, the Parties stipulate that, in the event of condemnation of the Property or any portion thereof, the fair market value of the Property for purposes of just compensation shall be determined as though this Easement did not exist. GRANTOR and DISTRICT shall share the compensation on the following basis: GRANTOR 40% and DISTRICT 60% (which percentages are derived from the ratio of the price paid for the Easement to the appraised value of the Property before being encumbered by the Easement), or as otherwise agreed upon by them in writing at the time of condemnation. In the apportionment of the proceeds from any eminent domain proceeding, an adjustment shall be made in GRANTOR's favor for any increase in value attributable to improvements made on the Property after the date of this Easement, provided that such improvements were not made or funded by DISTRICT and further provided that such improvements do not constitute a breach of this Easement.

### PART FIVE: MISCELLANEOUS

#### 13. Notices.

**13.1 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 overnight delivery addressed as follows:

To GRANTOR: Francis Farmer  
1234 Valley Water Drive  
Sebastopol, CA 12345

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 13 (Notices)*.



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

13.2.1 Proof of Mailing. When mailed first class postage prepaid to the last address designated by the recipient pursuant to *Section 13.1 (Method of Delivery)*, notice is effective one (1) business day following the date shown on the postmark of the envelope in which such notice is mailed or, in the even the postmark is not shown or available, then one (1) business day following the date of mailing. A written declaration of mailing executed under penalty of perjury by GRANTOR or DISTRICT or an officer or employee thereof shall be sufficient to constitute proof of mailing.

13.2.2 Other Forms of Delivery. In all other instances, notice shall be deemed given at the time of actual delivery.

**13.3 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.

**14. 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. The decision to amend this Easement is at DISTRICT's sole and absolute discretion. Unless otherwise agreed to by DISTRICT, GRANTOR shall bear all costs related to DISTRICT's review of and response to GRANTOR's request for an amendment, including the cost to update the Baseline Report and any Management Plans to reflect the amendment. Any such amendment shall be in writing, executed by GRANTOR and DISTRICT, and recorded in the Office of the Sonoma County Recorder.

### **15. General Provisions.**

**15.1 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.

**15.2 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.

**15.3 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.

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**15.4 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.

**15.5 Easement to Bind Successors.** The Easement 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.

**15.6 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 15.5 (Easement to Bind Successors)*, and the failure of GRANTOR to perform any act required by this *Section 15.6* shall not impair the validity of this Easement or limit its enforceability in any way.

**15.7 Fees and Charges.** DISTRICT shall have the right to establish and collect from GRANTOR reasonable fees and charges, including attorneys' fees and staff costs, 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.

**15.8 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 13 (Notices)*.

**15.9 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.

## SAMPLE

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

**15.11 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.

**15.12 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 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.

**15.13 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 and protects the Conservation Purpose of this Easement.

**15.14 Joint Obligation.** The obligations imposed by this Easement on Owner shall be joint and several.

**15.15 No Merger.** It is the express intent of the parties that this Easement is not extinguished if this Easement and the fee title of the Property are held by the same entity.

**15.16 Representation of Authority of Signatories.** Each individual executing this Easement represents and warrants to the other party that the execution and delivery of this Easement and all related documents have been duly authorized by the party for which the individual is signing and that the individual has the legal capacity to execute and deliver this Easement and thereby to bind the party for which the individual is signing.

**15.17 Sufficient Counsel.** GRANTOR warrants that they have reviewed this Easement and its effects on the Property with appropriate independent legal counsel and financial advisor(s) of their own choosing. This Easement has been fully negotiated between the parties so that any rule that documents may be construed against the drafter does not apply.

**SAMPLE**

**15.18 Effective Date.** This Easement shall be effective as of the date of its recordation in the Official Records of Sonoma County in the Offices of the Sonoma County Recorder (the "Effective Date").

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

GRANTOR:

By: \_\_\_\_\_ **DO NOT SIGN** \_\_\_\_\_

Francis Farmer Buyer NAME, CORPORATE OR PARTNERSHIP REPRESENTATION OF  
AUTHORITY TO SIGN

DISTRICT:

SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE

DISTRICT

By: \_\_\_\_\_ **DO NOT SIGN** \_\_\_\_\_

Name , President of the Board of Directors

ATTEST:

\_\_\_\_\_ **DO NOT SIGN** \_\_\_\_\_

Name , Deputy Clerk of the Board of Directors

NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED FOR ALL SIGNATORIES.

Exhibit A: Legal Description

Exhibit B: Project Structure Map

Exhibit C: Description of Easement Designation Areas