



SONOMA COUNTY OPEN SPACE FISCAL OVERSIGHT COMMISSION  
COMMISSIONERS

Mike Sangiacomo  
Todd Mendoza  
Patrick Emery

Brian Ling  
Jorge Inocencio  
Jeff Owen

REGULAR MEETING AGENDA

June 4, 2026 | 5:00 p.m.

MEMBERS OF THE PUBLIC MAY PARTICIPATE VIA ZOOM OR IN PERSON

The June 4, 2026 Fiscal Oversight Commission Meeting will be conducted in person at Ag + Open Space's office located at 747 Mendocino Avenue, Santa Rosa, CA. The public may also participate virtually through Zoom.

Members of the public can watch or listen to the meeting using one of the two following methods:

1. JOIN THE ZOOM MEETING

On your computer, tablet or smartphone by clicking

<https://sonomacounty.zoom.us/j/91884250504?pwd=wLbRUHkw8JwFotjqwdk4c53tdSuAbd.1> password: 753158

If you have a Zoom account, click Join Meeting by number: 918 8425 0504 password: 753158

Call-in and listen to the meeting: Dial (669) 900-9128 Enter meeting ID: 918 8425 0504

2. ATTEND IN PERSON:

Members of the public may attend in person at Ag + Open Space's office at 747 Mendocino Avenue, Santa Rosa, CA in the large conference room.

**Public Comment During the Meeting:** You may email public comment to [AOS-adminaide@sonoma-county.org](mailto:AOS-adminaide@sonoma-county.org). All emailed public comments will be forwarded to all Commissioners. Please include your name and the relevant agenda item number to which your comment refers. Public Comment may be made live during the Zoom meeting or live, in person, in the Ag + Open Space large conference room. Available time for comments is determined by the Commissioner Chair based on agenda scheduling demands and total number of speakers.

**Disability Accommodation:** If you have a disability which requires an accommodation or an alternative format to assist you in observing and submitting comments at this meeting, please contact Sara Ortiz by phone at (707) 565-7360 or by email to [AOS-adminaide@sonoma-county.org](mailto:AOS-adminaide@sonoma-county.org). by 12 p.m. Wednesday, June 3, 2026 to ensure arrangements for accommodation.

1. **Call to Order**
2. **Agenda Items to be Held or Taken Out of Order; Off- Agenda Items**
3. **General Announcements Not Requiring Deliberation or Decision**
4. **Public Comment**  
The Brown Act requires that time be set aside for public comment on items not agendized.
5. **Correspondence/ Communications**
6. **General Manager’s Report**  
Misti Arias | General Manager
7. **Approval of Commission Minutes Attachment 1**
8. **Financial Report Attachment 2**  
Julie Mefferd | Administrative + Fiscal Manager
9. **Ad Hoc Committee Reports**  
Annual Report/Audit Report Review (Owen, Sangiacomo)  
Appraisal (Owen, Mendoza)  
Matching Grant Program Application Evaluation (Emery, Inocencio)  
Public Access Audit (Inocencio, Ling)
10. **Tom Schopflin Fields Phase 2 Community Spaces Matching Grant Project Attachment 3**  
Pamela Swan | Grants Coordinator
11. **Tierra de Rosas Community Spaces Matching Grant Project Attachment 4**  
Pierre Ratte | Acquisition Specialist
13. **Closed Session Conference with Real Property Negotiators (Government Code Section 54956.8)**  
  

Project Name:	Diamond W Ranch
Property Address:	9420 Valley Ford Rd Petaluma, California 94952
APNs:	022-300-009, 022-300-010, 022-310-015, 022-310-016, 022-310-017, 022-320-003, 027-210-005, 027-250-008, 027-250-010
Property Owners:	the Ronald E. Wilson and Kathleen Wilson Trust
Negotiators:	Ron and Kathy Wilson, Owner’s Representatives Misti Arias, General Manager, Ag + Open Space's Representative
Under Negotiation:	Acquisition of Real Property by Ag + Open Space. The Commission will give instruction to its negotiator(s) on the price. (Government Code Section 54956.8)
14. **Reconvene to Open Session and Report out of Closed Session**
15. **Suggested Next Meeting**  
July 2, 2026
16. **Adjournment**

**AGENDAS AND MATERIALS:** Agendas and most supporting materials are available on Ag + Open Space's website at [sonomaopenspace.org](http://sonomaopenspace.org). Due to legal, copyright, privacy or policy considerations, not all materials are posted online. Materials that are not posted will be made available for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, at 747 Mendocino Avenue, Santa Rosa, CA.

**SUPPLEMENTAL MATERIALS:** Materials related to an item on this agenda submitted to the Commission after distribution of the agenda packet will be made available for public inspection at the Ag + Open Space office at 747 Mendocino Avenue, Santa Rosa, CA during normal business hours. You may also email [AOS-adminaide@sonoma-county.org](mailto:AOS-adminaide@sonoma-county.org) for materials.

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SONOMA COUNTY OPEN SPACE FISCAL OVERSIGHT COMMISSION  
**COMMISSIONERS**

**Mike Sangiacomo**  
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**Brian Ling**

**Patrick Emery**  
**Jorge Inocencio**  
**Jeff Owen**

**ATTACHMENT 1**

**UNAPPROVED MINUTES**

**May 7, 2026 | 5:00 pm**

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**COMMISSIONERS PRESENT:** Todd Mendoza, Jeff Owen, Jorge Inocencio

**STAFF PRESENT:** Misti Arias, General Manager; Lisa Pheatt, County Counsel; Pierre Ratte, Acquisition Specialist; Jennifer Kuszmar, Acquisition Manager; Sara Ortiz, Fiscal Oversight Commission Clerk; Dana Burwell, Contract Review Appraiser.

**PUBLIC PRESENT:** Phillip Sales, Duane Dewitt, Terry Christler

**1. Call to Order**

Commissioner Inocencio called the meeting to order at 5:00 p.m.

**2. Agenda Items to be Held or Taken Out of Order; Off- Agenda Items**

**3. General Announcements Not Requiring Deliberation or Decision**

**4. Public Comment**

Duane Dewitt gave public comment regarding the Roseland Community Park.

**5. Correspondence/Communications**

**6. General Manager's Report**

Three items are going before the Board of Directors on May 12: Colgan Creek Phase 4 Community Spaces Matching Grant Project, Americorps Trail Community Spaces Matching Grant Project, and the Stewardship Assistance Grants.

Ag + Open Space will be transferring funds from the IPAOM Account to the OSSTA Account for the additional expenditures of the Community Spaces Matching Grant Program approved by the Board of Directors.

**7. Approval of Commission Minutes**

On a motion from Commissioner Mendoza and a second by Commissioner Owen, the minutes from the April 2, 2026 meeting were approved.

**8. Financial Report**

Julie Mefferd gave the financial report.

**9. Ad Hoc Committee Reports**

No Ad Hoc Committee Reports.

**10. Community Spaces Matching Grant Program Sonoma Schellville Project Overview**

Pierre Ratte gave an update on the Sonoma Schellville Project. Terry Christler (Sonoma Schellville resident) and Phillip Sales (retired County Regional Parks employee) gave public comment.

### 11. AmeriCorps Trail Community Spaces Matching Grant Project

On a motion by Commissioner Owen and second by Commissioner Mendoza the Commission adopted Resolution No. 2026-003.

Resolution Of The Board Of Commissioners Of The Sonoma County Open Space Fiscal Oversight Commission Reconfirming That The District Is Not Paying More, Or Receiving Less, Than Fair Market Value For The Conservation Easement And Recreation Covenant To Be Acquired By The District As A Condition Of Matching Grant Funding For The Americorps Trail Project.

### 12. Projects in Negotiation

Jennifer Kuszmar presented the projects in negotiation. There are currently 11 Community Spaces Matching Grant projects and 9 conservation easement projects in negotiations.

#### **Adjourn to Closed Session (Real Property Negotiations - Government Code Section 54956.8)**

The Commission entered into Closed Session at 5:26 pm.

### 13. Report of Closed Session

The commission reconvened to Open Session at 6:41 pm.

On a motion by Commissioner Mendoza and second by Commissioner Owen the Commission adopted Resolution No. 2026-004.

Resolution Of The Sonoma County Open Space Fiscal Oversight Commission Determining That The Acquisition Price For The Purchase Of Fee Title To The Roberts Oaks Property Does Not Exceed Fair Market Value.

### 14. Suggested Next Meeting

June 4, 2026

### 15. Adjournment

The meeting was adjourned at 6:43 pm.

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**SUPPLEMENTAL MATERIALS:** Materials related to an item on this agenda submitted to the Commission/Committee after distribution of the agenda packet are available for public inspection at the District office at 747 Mendocino Avenue, Santa Rosa, CA during normal business hours.

**DISABLED ACCOMMODATION:** If you have a disability which requires an accommodation, an alternative format, or requires another person to assist you while attending this meeting, please contact Julie Mefferd at 707-565-7368, as soon as possible to ensure arrangements for accommodation.

**ATTACHMENT 2  
FINANCIAL REPORT**

Sonoma County Agricultural Preservation and Open Space District  
Consolidated Balance Sheet - District and OSSTA Funds  
April 30, 2026

<b>Assets</b>	
Cash and Investments	\$107,392,869
Accounts Receivable	44,910
Other Current Assets	495
Intergovernmental Receivables	<u>20,000</u>
<b>Total Assets</b>	<u><u>\$107,458,275</u></u>
<b>Liabilities and Fund Balance</b>	
Current Payables	\$0
Other Current Liabilities	16,210
Due to Other Governments	3
Deferred Revenue	47,897
Long-Term Liabilities	<u>0</u>
<b>Total Liabilities</b>	<u>64,109</u>
<b>Fund Balance</b>	
Nonspendable	0
Restricted - District Activities	<u>107,394,165</u>
Total Fund Balance	<u>107,394,165</u>
<b>Total Liabilities and Fund Balance</b>	<u><u>\$107,458,275</u></u>

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<b>Cash by Fund</b>	
OSSTA - Measure F	\$69,782,702
Open Space District	2,077,991
Stewardship Reserve*	15,689,320
Cooley Reserve	176,821
Operations and Maintenance	<u>19,666,035</u>
<b>Total Cash by Fund</b>	\$107,392,869

\*On July 1, 2015 the County of Sonoma Measure F Sales Tax Refunding Bonds, Series 2015 were issued. The transaction provided a savings of \$13.6 million, in part by following the Commission's recommendation of paying down \$30 million in principal, as well as obtaining a lower interest rate. The Commission recommended using the \$10 million in the Stewardship Reserve Fund as part of the \$30 million payday. Additionally, the Commission directed use of the \$7.5 million annual savings resulting from the shortened term to fund the Stewardship Reserve beginning in the fiscal year 2024-2025. FOC Minute Order #13 dated May 14, 2015 reflects this direction.

Sonoma County Agricultural Preservation and Open Space District  
Consolidated District and OSSTA Budget to Actual  
For the Ten months ended April 3, 2026  
83% of Year Complete

	Budget Final	Actual Year to Date	Encumbrances Year to Date	Remaining Balance	% of Budget Remaining
<b>Revenues</b>					
Tax Revenue *	\$31,846,774	\$21,119,627		\$10,727,147	33.68%
Intergovernmental	22,805,807	365,647		22,440,160	98.40%
Use of Money & Prop	145,000	3,007,613		(2,862,613)	-1974.22%
Miscellaneous Revenues	2,757,000	(39,776)		2,796,776	
Other Financing Sources	1,367,484	116,928		1,250,556	91.45%
<b>Total Revenues</b>	<b>58,922,065</b>	<b>24,570,039</b>		<b>34,352,026</b>	<b>58.30%</b>
<b>Expenditures</b>					
Salaries and Benefits	8,107,716	5,739,207	\$0	2,368,509	29.21%
Services and Supplies	16,726,617	4,333,701	6,185,155	6,207,762	37.11%
Other Charges	21,901,701	911,193	1,091,927	19,898,582	90.85%
Capital Expenditures**	43,293,352	1,821,593	93,352	41,378,407	95.58%
Other Financing Uses	296,437	24,437		272,000	91.76%
<b>Total Expenditures</b>	<b>90,325,823</b>	<b>12,830,131</b>	<b>7,370,433</b>	<b>70,125,259</b>	<b>77.64%</b>
<b>Net Earnings (Cost)</b>	<b>(\$31,403,758)</b>	<b>11,739,909</b>	<b>(\$7,370,433)</b>	<b>(\$35,773,233)</b>	
Beginning fund balance		<u>95,654,257</u>			
<b>Ending Fund Balance</b>		<b>\$107,394,165</b>			

\*Sales tax collected as of April 30, 2025 was \$21,124,549. Current collections are 0.02% below the prior year. There continue to be collection and timing issues with CDTFA.  
(California Department of Tax and Fee Administration)

\*\*Capital expenditure breakdown

Helen Putnam Extension	3,555
McClelland CE	<u>1,818,038</u>
	<u>\$ 1,821,593</u>

**Explanation of Revenue and Expenditure Categories**

**Revenues**

Tax Revenue	Open Space Special Tax Assessment (Measure F) revenue for the FY
Intergovernmental	Revenue from grants
Use of Money & Prop	Revenue from interest, rent, etc.
Miscellaneous Revenues	Donations, refunds, returned checks
Other Financing Sources	Intergovernmental revenue. Primarily PGE funds distributed by the County.

**Expenditures**

Salaries and Benefits	Salaries and benefits for Ag + Open Space staff.
Services and Supplies	All contracted services and supplies for the FY plus encumbered prior FY.
Other Charges	Community Spaces-Matching Grant Program expenditures.
Capital Expenditures	Conservation Easements and Fee Land expenditures.
Other Financing Uses	County Services

## ATTACHMENT 3

### TOM SCHOPFLIN FIELDS PHASE 2 - COMMUNITY SPACES MATCHING GRANT PROGRAM

#### **Background/Project Overview**

The Tom Schopflin Fields Phase 2 project is a Community Spaces Matching Grant Program (“CSMGP”) project, which will provide a \$993,342 grant towards the improvements needed to develop an open space playing field, including the planning and design, essential infrastructure, landscaping, and recreational improvements.

Tom Schopflin Fields is a County Regional Park located along Old Redwood Highway just north of Santa Rosa. Ag + Open Space purchased the property in 1996 for \$400,000 and conveyed it to Regional Parks in 2000, along with funds for park developments to implement the Unity Ballfield Master Plan, dated May 18, 1999. As a condition of this conveyance on October 12, 2000, Sonoma County Regional Parks conveyed a conservation easement over Tom Schopflin Fields. At that time, Ag + Open Space did not require recreation conservation covenants concurrent with conservation easement acquisition.

The CSMGP project grantee is Atlético Santa Rosa, (Atlético), a California nonprofit public benefit corporation, which submitted the Tom Schopflin Fields Phase 2 application for the 2024 CSMGP funding cycle. The application was accepted by Ag + Open Space’s Board of Directors on December 10, 2024 recommending a \$993,342 improvement grant. Additionally, \$506,658 in matching funds will be provided by the grantee toward this improvement project. The grant application is in partnership with Sonoma County Regional Parks, (SCRP), which manages this county-owned property. As noted above, the property is subject to an existing Conservation Easement held by Sonoma County Ag + Open Space. As a condition of the Phase 2 grant, SCRCP is conveying a recreation covenant to Ag + Open Space.

Atlético, which has a 25-year lease with the County (Regional Parks) for the project site, will conduct all improvements and operations in alignment with governing planning documents, including the Tom Schopflin Fields Master Plan, which was approved by the Sonoma County Board of Supervisors on September 17, 2017. The Tom Schopflin Fields Phase 2 Project will develop, operate and manage a planned, new public all-weather soccer field addressing the county’s significant shortage of accessible sports facilities, providing a vital outdoor open space for physical activity and community building. Special attention will also be paid to target services for underrepresented minority youth.

CSMGP funding (\$993,342) will go towards the final design, permitting, and installation of one new all-weather soccer field for Atlético Santa Rosa at Tom Schopflin Fields that includes drainage, the base of field, and turf field (“Project”). Matching funds (\$506,658) will be utilized towards project implementation, design, and operations.

Sonoma County Regional Parks’ and Atlético’s primary objectives for Tom Schopflin Fields Phase 2 are to create an open space soccer field to address the demand for practice and playing fields,

especially amongst underserved Sonoma County youth. The Tom Schopflin Fields Regional Park Master Plan outlines a sports complex featuring three multi-use soccer and baseball fields, a concession stand, restrooms, and a parking lot. Currently, the park hosts a multi-use baseball/soccer field, two all-weather soccer fields, a concession building, bathrooms, a parking lot, and a 4.5-acre undeveloped area.

The Tom Schopflin Fields Phase 2 CSMGP project will implement the last phase of field development of the property's Master Plan.

### **Project Structure**

The existing Conservation Easement over the Property allows the parcel to be used for active public recreation and protects open space and scenic values while allowing for recreational uses on the Property. As a condition of the grant, Ag + Open Space will require a Recreation Conservation Covenant that will require the Property to remain open to the public for recreational and educational purposes in perpetuity.

### **Matching Grant Agreement**

Funding for this \$993,342 improvement grant will be administered through a Matching Grant Agreement between Ag + Open Space and Atlético Santa Rosa, in partnership with Regional Parks. The grant funds will provide planning and design, site preparation, and field installation. As the match, Atlético Santa Rosa will contribute funds totaling \$506,659, which represents a 50% match to the granted funds. The matching funds will be used for project implementation, design, and operations. The match is secured and comes from the District 4 Infrastructure Funds and other fundraising.

### **Vital Lands Initiative**

This Project meets multiple objectives described in the Vital Lands Initiative:

- Protect open space and publicly accessible lands in and near cities and communities and connect people with protected lands.
- Pursue partnerships that expand, create, or connect new parks and open space preserves and trails.
- Protect open lands that surround and differentiate the County's urban areas and contribute to the unique scenic character of the County.

### **Sonoma County General Plan 2020**

This Project furthers several goals and policies in Sonoma County's General Plan 2020, specifically in the Land Use, Open Space and Resource Conservation, and Water Resources Elements as noted in, but not limited to, the following below:

- Preserve the visual identities of communities by maintaining open space areas between cities and communities. (Goal OSRC-1)
- Protect existing groundwater recharge areas (Objective WR-2.3)
- Promote a sustainable future where residents can enjoy a high quality of life for the long term, including a clean and beautiful environment and a balance of employment, housing, infrastructure, and services. (Goal LU-11)

### **Ag + Open Space's Expenditure Plan**

This project is consistent with Ag + Open Space's Expenditure Plan because it will offer opportunities for public recreation and access. Further, this project is consistent with the Expenditure Plan as it provides urban open space through the Matching Grant Program.

### **Fair Market Value Determination**

The Conservation Easement and Recreation Covenant are interests in real property being acquired by the District. Therefore, the Fiscal Oversight Commission is being requested to determine that District is not paying more, or receiving less, than fair market value for these interests. The Grantee is conveying a Conservation Easement and Recreation Covenant to the District as a condition to receiving Community Spaces - Matching Grant Program funds for the recreational development of the Project. No funds are being paid by Ag + Open Space for the acquisition of either the Conservation Easement or the Recreation Covenant. Because Ag + Open Space's Matching Grant Agreement does not include any payment for the Conservation Easement or the Recreation Covenant, Ag + Open Space is not paying more or receiving less than the fair market value for these interests.

### **Recommendation**

Ag + Open Space is acquiring a Recreation Covenant over the underlying property owned by the County as a condition of our CSMGP grant. The acquisition of a real property interest by the District is subject to review by the Fiscal Oversight Commission ("FOC") pursuant to its charter under Sonoma County Board of Supervisors Resolution No. 10-0832. The proposed FOC resolution, attached, documents the requested action in this regard. The FOC is asked to determine that Ag + Open Space is not paying more than fair market value for Recreation Covenant that will be acquired as a condition of the grant. Since Ag + Open Space's Matching Grant does not include any payment for the Recreation Covenant, Ag + Open Space is not paying more than the fair market value for the acquisition of this real property interest.

Ag + Open Space staff recommend that the Commission adopt the attached resolution determining that the acquisition of the Recreation Covenant as a condition of the proposed Matching Grant for recreational development, does not result in the District paying more than the fair market value for the acquisition of the Recreation Covenant.

### **Attachments**

1. Resolution
2. Recreation Covenant
3. Conservation Easement
4. Location map
5. Site Plan
6. Project Structure Map

DATED:

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE SONOMA COUNTY OPEN SPACE FISCAL OVERSIGHT COMMISSION DETERMINING THAT THE DISTRICT IS NOT PAYING MORE, OR RECEIVING LESS, THAN FAIR MARKET VALUE FOR THE RECREATION COVENANT TO BE ACQUIRED BY THE DISTRICT AS A CONDITION OF MATCHING GRANT FUNDING TO BE PROVIDED TO ATLETICO SANTA ROSA FOR THE TOM SCHOPFLIN FIELDS PROJECT**

**WHEREAS**, by virtue of the contract dated December 7, 2010, between the County of Sonoma and the Sonoma County Agricultural Preservation and Open Space District ("the District") and Sonoma County Board of Supervisors Resolution No. 10-0832 dated December 7, 2010, this Board of Commissioners is required to review each proposed District acquisition or conveyance in order to determine whether the District would be paying more or receiving less than fair market value for the open space interests being acquired or conveyed; and

**WHEREAS**, Atlético Santa Rosa, a local nonprofit which maintains a leasehold interest in the project site at Tom Schopflin Fields ("Property"), tendered an application to the District's 2024 Community Spaces Matching Grant Program for funding towards the development of additional sports fields at the Property ("Matching Grant Project"). The District's Board of Directors accepted this application for an amount up to \$993,342 on December 10, 2024 ("Matching Grant"); and

**WHEREAS**, as a condition of the Matching Grant, Sonoma County (as the landowner) will convey a Recreation Covenant to the District, ensuring that the Property remains generally available for public recreation in perpetuity. Under the Matching Grant Program Guidelines, a conservation easement is also required as a condition of matching grant funding. However, the County already conveyed a conservation easement to the District on October 12, 2000, which protects the natural resources, scenic resources and the recreational and educational value of the Park. As such, the District will only require a recreation covenant for this Matching Grant Project; and

**WHEREAS**, this Commission has been presented with the opportunity to review the Recreation Covenant recommended as a condition of the Matching Grant to Atlético Santa Rosa.

**NOW THEREFORE BE IT RESOLVED**, that this Board of Commissioners hereby finds, determines, declares and orders as follows:

1. *Truth of Recitals.* The foregoing recitals are true and correct.

2. *Fair Market Value.* As the District is not paying for the Recreation Covenant that will be acquired as a condition of its funding for the Matching Grant Project, the District is not paying more or receiving less than the fair market value for the acquisition of this open space interest.

**COMMISSIONERS:**

**AYES:** \_\_\_\_\_ **NOES:** \_\_\_\_\_ **ABSTAIN:** \_\_\_\_\_ **ABSENT:** \_\_\_\_\_

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

**TOM SCHOPFLIN FIELDS**  
RECREATION CONSERVATION COVENANT  
(California Civil Code §§815 *et seq.*)

THIS AGREEMENT is entered into by and between the Sonoma County Agricultural Preservation and Open Space District, a public agency formed pursuant to the provisions of Public Resources Code sections 5500 *et seq.* (“District”) and, the County of Sonoma, a political subdivision of the State of California its successors and assigns and those claiming under it (“Owner”).

*Recitals*

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

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

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

D. On OCTOBER 12, 2000, Owner conveyed a conservation easement (“ Conservation Easement”) to the District generally limiting the use of the Property to natural resource preservation and public outdoor recreation consistent with identified open space values. This Covenant is intended to complement the Conservation Easement by assuring the continued and perpetual recreational use of the Property consistent with the Conservation Easement.

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

### *Agreement*

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

1. *The Covenant.* Owner hereby conveys to the District a recreation conservation covenant (“Covenant”) within the meaning of Restatement Third, Property (Servitudes) §1.6(1) and pursuant to the authority of Civil Code §§815 *et seq.* and the common law of California, to assure that the Property will be continuously used, maintained and operated by Owner and its successors in interest as a public park in perpetuity, available to the public for public outdoor recreation and educational uses in a manner consistent with the Conservation Easement and the provisions herein.

2. *Obligation to Provide Public Outdoor Recreation and Educational Uses.*

A. Owner hereby agrees to use, operate and maintain the Property as a public park in perpetuity, available to the public for outdoor public recreation and educational uses in a manner consistent with the Conservation Easement and the provisions herein. Such

use, operation, and maintenance of the Property as a public park shall commence on the date of recordation of this Covenant and shall include, at a minimum, general availability of the Property for compatible public outdoor recreational use, including soccer, baseball, public hiking, picnicking and nature study no less than six hours per day, seven days per week, except as otherwise provided in Section 8. of the Conservation Easement (Public Access).

B. Owner shall not engage in activities that impede public access to or public use of the Property for outdoor public recreation and educational uses pursuant to this Covenant, except as otherwise provided in Section 8 of the Conservation Easement (Public Access to the Property). The parties expressly agree and understand that the construction and operation of the one new all-weather soccer field for Atlético Santa Rosa at Tom Schopflin Fields pursuant to the lease between Owner and Atletico, dated March 25, 2025 shall not be construed as impeding public access or public use of the Property pursuant to this agreement.

C. If the Unity Ballfield Master Plan dated May 18, 1999, and updated by the Board of Directors on September 12, 2017, is revised or updated, or if any other master or management plan is prepared and approved pursuant to Exhibit "B" (Permitted Uses and Practices) Section 2 and Section 5 (Approval Procedure and Criteria) of the Conservation Easement, Owner's use, operation and maintenance of the Property as a public park shall be in accordance with such management plan.

### *3. Enforcement.*

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

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

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

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

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

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

(iii) In no case shall liquidated damages exceed \$140,001. Which represents 15% of the 2026 Community Spaces Matching Grant Program grant value, as adjusted for inflation from the date of recordation of this Covenant, for any single breach.

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

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

F. Nothing contained in this Paragraph 3 shall be construed to entitle the District

to bring any action against Owner for any failure to perform resulting from causes beyond Owner's control, including, without limitation, wildfire, flood, storm, and earth movement, or from any prudent action taken by Owner under emergency conditions to prevent, abate, or mitigate a failure to perform resulting from such causes, so long as such action, to the extent that Owner has control, is designed and carried out in such a way as to further the purpose of this Covenant.

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

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

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

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

8. *Covenant to Bind Successors.* This Covenant shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Property and shall bind Owner and its successors in interest, including but not limited to purchasers at tax sales, assigns, and all persons claiming under them forever. The parties intend that this Covenant shall benefit and burden, as the case may be, their respective successors, assigns, heirs, executors, administrators, agents, officers, employees, and all other

persons claiming by or through them pursuant to the common and statutory law of the State of California. Further, the parties agree and intend that this Covenant creates an easement encompassed within the meaning of the phrase "easements constituting servitudes upon or burdens to the property," and irrevocable offers of dedication encompassed within the meaning of the phrase "unaccepted, recorded, irrevocable offers of dedication," as those phrases are used in California Revenue & Taxation Code section 3712(d) and (e), or any successor statute then in effect, such that a purchaser at a tax sale will take title to the Property subject to this Covenant.

[SIGNATURES AND ACKNOWLEDGEMENTS]

IN WITNESS WHEREOF, OWNER has executed this Recreation Conservation Covenant this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

OWNER: BERT WHITAKER

By: \_\_\_\_\_  
Director, Sonoma County Regional Parks

ATTEST:

\_\_\_\_\_

DISTRICT:  
SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT

By: \_\_\_\_\_  
[NAME / President of the Board of Directors

ATTEST:

---

, Deputy Clerk of the Board of Directors

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

**Exhibit A**  
**Property Legal Description**

**THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SONOMA, CITY OF UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:**

PARCEL ONE:

BEING A PARCEL OF LAND IN RANCHO SAN MIGUEL OF A PORTION OF LOT 5 OF THE "DISTRIBUTION OF THE McMINN ESTATE DATED OCTOBER 24, 1877<sup>11</sup>, AS RECORDED IN BOOK "C" OF PROBATE ORDERS AT PAGE 22, SONOMA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 5; THENCE FROM SAID POINT OF COMMENCEMENT AND ALONG THE WEST LINE OF SAID LOT 5, NORTH 1° 08' 50<sup>11</sup> EAST, 1,286.16 FEET TO AN IRON PIPE MARKING THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE FROM SAID POINT OF BEGINNING AND LEAVING SAID LOT LINE NORTH 87° 40<sup>1</sup> EAST,

480.79 FEET TO AN IRON PIPE SET IN THE SOUTHWESTERLY EDGE OF THE STATE HIGHWAY FROM HEALDSBURG TO SANTA ROSA; THENCE ALONG THE WESTERLY EDGE OF SAID HIGHWAY SOUTH 44° 10<sup>1</sup> EAST, 251.07 FEET; THENCE ON A CURVE TO THE LEFT WITH A RADIUS OF 5,035.00 FEET A DISTANCE OF

129.03 FEET TO AN IRON PIPE; THENCE LEAVING SAID HIGHWAY SOUTH 63°

26<sup>1</sup> 20<sup>11</sup> WEST, 848.60 FEET TO AN IRON PIPE SET IN THE WEST LINE OF THE ABOVE MENTIONED LOT 5; THENCE ALONG SAID LOT LINE NORTH 1° 08<sup>1</sup> 50<sup>11</sup> EAST, 631.50 FEET TO AN IRON PIPE AND THE POINT OF BEGINNING OF THE ABOVE DESCRIBED PARCEL OF LAND,

PARCEL TWO:

BEING A PARCEL OF LAND IN RANCHO SAN MIGUEL OF A PORTION OF LOT 5 OF THE "DISTRIBUTION OF THE McMINN ESTATE DATED OCTOBER 24, 1877<sup>11</sup>, AS RECORDED IN BOOK 11C<sup>11</sup> OF PROBATE ORDERS AT PAGE 22, SONOMA COUNTY RECORDS.

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 5; THENCE FROM SAID POINT OF COMMENCEMENT AND ALONG THE WEST LINE OF SAID LOT 5 NORTH 1° 08<sup>1</sup> 50<sup>11</sup> EAST, 357.16 FEET TO AN IRON PIPE MARKING THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE FROM SAID POINT OF BEGINNING AND LEAVING SAID LOT LINE NORTH 68° 13<sup>1</sup> EAST, 1,121.83 FEET TO AN IRON PIPE SET IN THE SOUTHWESTERLY EDGE OF THE STATE HIGHWAY FROM HEALDSBURG TO SANTA ROSA; THENCE ALONG THE SOUTHWESTERLY EDGE OF SAID HIGHWAY NORTH 46° 55<sup>1</sup> WEST, 267.47 FEET; THENCE ON A CURVE TO THE RIGHT WITH A RADIUS OF 5,035.00 FEET A DISTANCE 112.63 FEET TO AN IRON PIPE; THENCE LEAVING SAID HIGHWAY SOUTH 63° 26<sup>1</sup> 20<sup>11</sup> WEST 848,60 FEET TO AN IRON PIPE SET IN THE WEST LINE OF THE ABOVE MENTIONED LOT 5; THENCE ALONG SAID LOT LINE SOUTH 1°

08<sup>1</sup> 50<sup>11</sup> WEST 297.50 FEET TO AN IRON PIPE AND THE POINT OF BEGINNING OF THE ABOVE DESCRIBED PARCEL OF LANO,

PARCEL THREE:

BEING A PART OF LAND IN RANCHO SAN MIGUEL OF A PORTION OF LOT 5 OF THE "DISTRIBUTION OF THE M<sup>o</sup>MINN ESTATE DATED OCTOBER 24, 1877<sup>11</sup>, AS RECORDED IN BOOK "C" OF PROBATE ORDERS AT PAGE 22, SONOMA COUNTY RECORDS.

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 5; THENCE FROM SAID POINT OF COMMENCEMENT AND ALONG THE WEST LINE OF SAID LOT 5 NORTH 1° 08<sup>1</sup> 50<sup>11</sup> EAST, 187.16 FEET TO AN IRON PIPE MARKING THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE FROM SAID POINT OF BEGINNING .AND CONTINUING ALONG THE WEST LINE OF SAID LOT 5 NORTH 1° 08<sup>1</sup> 50<sup>11</sup> EAST, 170,00 FEET TO AN IRON PIPE; THENCE LEAVING SAID LOT LINE NORTH 68° 13' EAST, 1,121,83 FEET TO AN IRON PIPE SET IN THE SOUTHWESTERLY EDGE OF THE STATE HIGHWAY FROM HEALDSBURG TO SANTA ROSA; THENCE ALONG THE SOUTHWESTERLY EDGE OF SAID HIGHWAY SOUTH 46° 55' EAST, 380.10 FEET TO AN IRON PIPE; THENCE LEAVING SAID HIGHWAY SOUTH 76° 07<sup>1</sup> 40<sup>11</sup> WEST, 1,362,48 FEET TO AN IRON PIPE IN THE WEST LINE OF THE ABOVE MENTIONED LOT 5 AND THE POINT OF BEGINNING OF THE ABOVE DESCRIBED PARCEL OF LAND.

BASIS OF BEARING: STATE HIGHWAY MAPS, SHEET 23, DATED AUGUST 22, 1912.

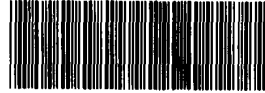
A, P. NO. 058-050-051

ACCOMMODATION RECORDING  
NO LIABILITY ASSUMED

NATC 62225670

RECORDING REQUESTED BY AND  
RETURN TO:

Sonoma County Agricultural  
Preservation and Open Space District  
575 Administration Drive, Room 102A  
Santa Rosa, CA 95403



2000105681

OFFICIAL RECORDS OF  
SONOMA COUNTY

NORTH AMERICAN TITLE CO. BERNICE A. PETERSON  
10/12/2000 13:26 DEED  
RECORDING FEE: 0.00

20



Free recording per Gov't Code Sec.27383

R&T 119911 Easement

DEED AND AGREEMENT  
BY AND BETWEEN  
THE COUNTY OF SONOMA  
AND  
THE SONOMA COUNTY AGRICULTURAL PRESERVATION  
AND OPEN SPACE DISTRICT  
CONVEYING A CONSERVATION EASEMENT

The County of Sonoma, a political subdivision of the State of California (hereinafter 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. (hereinafter DISTRICT), agree as follows:

RECITALS

1. DISTRICT is the owner in fee simple of certain property (hereinafter "the Property") located in Sonoma County and more particularly described in Exhibit "A," attached hereto and made a part of this Agreement by reference.

2. In 1990 the voters of Sonoma County approved the creation of DISTRICT and the imposition of a transactions and use tax by the Sonoma County Open Space Authority ("the Authority"). The primary purpose for the creation of DISTRICT and the imposition of the tax by the Authority was to preserve agriculture and open space by acquiring interests in appropriate properties from willing sellers in order to meet the mandatory requirements imposed on the County and each of its cities by Government Code sections 65560 et seq. and by the open space elements of their respective general plans. A secondary purpose was the acquisition of the fee interest in lands suitable for both public outdoor recreation and the preservation of open space values. In order to accomplish these purposes, DISTRICT entered into a contract with the Sonoma County Open Space Authority whereby in consideration of that entity financing DISTRICT'S acquisitions, DISTRICT agreed to and did adopt an Acquisition Program that was in conformance with the Authority's Expenditure Plan.

3. On April 4, 1996 DISTRICT purchased the fee interest in the Property in order to allow the public outdoor recreational use of the Property subject to a conservation easement that would protect identified open space interests with which the recreational use would be consistent. On April 4, 1996 DISTRICT'S General Manager and GRANTOR entered into negotiations for the sale by DISTRICT to the GRANTOR of the fee interest in the Property with the DISTRICT retaining a conservation easement. Those negotiations culminated in an agreement which is memorialized by this writing.

4. On October 5, 1995 the Authority, in its Resolution Numbered 95-133, determined that the sale of the Property to GRANTOR with the DISTRICT retaining a conservation easement with the Authority's Expenditure Plan. On September 14, 1995, the Authority, in its Resolution Numbered 95-126, determined the acquisition was consistent with the 1989 Sonoma County General Plan.

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

THEREFORE, in consideration of the mutual covenants and agreements of the parties, and other valuable consideration receipt of which is acknowledged, the parties enter into this Agreement.

#### AGREEMENT

1. ***Purpose.*** It is the purpose of this Agreement to preserve the open space, natural and scenic values of the Property, and each of them, and to prevent any uses of the Property that will significantly impair or interfere with those values while also allowing a compatible public outdoor recreational use. This purpose, as further defined by the provisions of this Agreement, is generally referred to collectively herein as "the conservation purpose of this Agreement." GRANTOR intends that this Agreement will confine the uses of the Property to the following, which are consistent with the conservation purpose of this Agreement all as allowed and limited by Exhibits "B" and "C" hereto: public outdoor recreation and the management and conservation of natural resources.

2. ***Grant and Acceptance of Conservation Easement.*** Pursuant to the common and statutory law of the State of California including the provisions of Civil Code sections 815 to 816, inclusive, GRANTOR hereby grants to DISTRICT and DISTRICT accepts, for the purposes set forth in Recital No. 2, a conservation easement in the Property in perpetuity.

3. *Affirmative Rights of DISTRICT*. Subject to the conditions and rights expressly reserved in this Agreement, including but not limited to the provisions of paragraph 6(B), the affirmative rights conveyed to DISTRICT are the following:

A. To identify, to preserve, and to protect in perpetuity the open space, natural, scenic and agricultural values of the Property.

B. To enter upon the Property and to inspect, observe, and study the Property for the purposes of (i) identifying the current uses and practices thereon and the baseline condition thereof (in cooperation with GRANTOR), and (ii) monitoring the uses and practices regarding the Property to determine whether they are consistent with this Agreement. Such entry shall be permitted at least once a year at reasonable times, upon 24 hours' prior notice to GRANTOR, and shall be made in a manner that will not unreasonably interfere with the proper uses and practices regarding the Property. Each entry shall be for only so long a duration as is reasonably necessary to achieve the purposes of this paragraph 3, but not necessarily limited to a single physical entry during a single twenty-four hour period. Notwithstanding the foregoing, should DISTRICT'S General Manager have a reasonable belief that GRANTOR is in breach of this Agreement, DISTRICT shall have the right, upon the giving of 24 hours' notice, at any time, to enter the Property for the purposes of determining if such breach has occurred. The rights of entry provided by this paragraph 3.B. shall extend to the employees, agents, and consultants of DISTRICT.

C. GRANTOR shall place the Property in a zoning classification that is consistent with the terms of this Agreement.

4. *GRANTOR'S Use of the Property*. This Agreement shall confine the uses of the Property to the uses which are described herein. Examples of uses and practices regarding the Property which are consistent with the conservation purpose of this Agreement, and which are hereby expressly reserved by Grantor, are set forth in Exhibit "B," attached hereto and incorporated herein by this reference. Examples of uses and practices regarding the Property which are inconsistent with the conservation purpose of this Agreement, and which are hereby expressly forbidden, are set forth in Exhibit "C," attached hereto and incorporated herein by this reference. The uses and practices set forth in both Exhibits "B" and "C" are not necessarily exhaustive recitals of consistent and inconsistent activities, respectively. They are set forth both to establish specific permitted and prohibited activities and to provide guidance in determining the consistency of other activities with the conservation purpose of this Agreement.

A more complete description of the applicable zoning regulations will be included in the Baseline Documentation required by paragraph 10 of this Agreement.

5. **Approval Procedure and Criteria.** GRANTOR agrees to notify DISTRICT in writing before exercising any right not expressly described in Exhibit "B" as a permitted use, the exercise of which may constitute a breach of this Agreement. Further, any act, enterprise, or activity proposed to be done or undertaken by GRANTOR which requires the prior approval of DISTRICT pursuant to the express provisions of Exhibits "B" or "C" hereof shall be commenced only after satisfaction of the notice and approval conditions of this Paragraph 5.

A. *GRANTOR'S Written Notice.* Prior to the commencement of any activity, use, or enterprise requiring DISTRICT'S approval, GRANTOR shall send DISTRICT written notice of GRANTOR'S intention to commence or undertake such activity, use or enterprise. Said notice shall inform DISTRICT of all relevant aspects of such proposed activity, use, or enterprise including, but not limited to, the nature, siting, size, capacity, and number of similar and dissimilar structures, improvements, facilities, uses or enterprises.

B. *DISTRICT'S Response.* DISTRICT shall have forty-five (45) days from the mailing of such notice, as indicated by the registered or certified return receipt, to review the proposed activity, use, or enterprise, and to notify GRANTOR of any objection thereto. Such objection, if any, shall be based upon DISTRICT'S opinion that the proposed activity is inconsistent with the conservation purpose of this Agreement or that the notice is incomplete or inaccurate. If, in DISTRICT'S judgment, the proposed activity, use or enterprise would not be consistent with the conservation purpose of this Agreement, said notice shall inform GRANTOR of the reasons for the DISTRICT'S objection. Except as provided in subparagraph C. of this Paragraph 5, only upon DISTRICT'S express written approval, given by DISTRICT'S General Manager, may the proposed activity, use, or enterprise be commenced and/or conducted, and only in the manner explicitly represented by GRANTOR and approved by DISTRICT.

C. *DISTRICT'S Failure to Respond.* Should DISTRICT fail to post its response to GRANTOR'S notice within forty-five (45) days of the mailing of said notice, GRANTOR shall send a second notice by registered or certified mail. Should DISTRICT fail to respond to said second notice within ten (10) days of the mailing thereof, GRANTOR may commence an action in a court of competent jurisdiction to compel DISTRICT to respond to GRANTOR'S notice. Regardless of the outcome of such action, GRANTOR'S costs of suit, including attorneys' fees, shall be borne by DISTRICT, provided that the court finds that DISTRICT'S General Manager actually received both the first and second notices.

6. **Costs and Liabilities Related to the Property.**

A. GRANTOR agrees to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property and does hereby indemnify and

hold DISTRICT harmless therefrom. Without limiting the foregoing, GRANTOR agrees to pay any and all real property taxes and assessments levied by competent authority on the Property. GRANTOR shall be solely responsible for any costs related to the maintenance of general liability insurance covering acts on the Property. DISTRICT shall have no responsibility whatever for the operation of the Property, the monitoring of hazardous conditions thereon, or the protection of GRANTOR, the public, or any third parties from risks relating to conditions on the Property. 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. Without limiting the foregoing, other than is provided in paragraph 5.C., DISTRICT shall not be liable to GRANTOR or any other person or entity in connection with consents given or withheld hereunder, or in connection with any entry upon the Property occurring pursuant to this Agreement, or on account of any claim, liability, damage, or expense suffered or incurred by or threatened against GRANTOR or any other person or entity, except as such claim, liability, damage, or expense is the result of DISTRICT'S negligence, gross negligence, or intentional misconduct.

B. Notwithstanding any other provision of this Agreement to the contrary, the parties do not intend and this Agreement shall not be construed such that (1) it creates in DISTRICT the obligations or liabilities of an "owner" or "operator" as those words are defined and used in environmental laws, as defined below, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 United States Code, sections 9601 et seq. and hereinafter "CERCLA") or (2) it creates in DISTRICT the obligations or liabilities of a person described in 42 United States Code section 9607(a)(3) or (3) DISTRICT has the right to investigate and remediate any hazardous materials, as defined below, associated with the Property or (4) DISTRICT has any control over GRANTOR'S ability to investigate and remediate any hazardous materials associated with the Property. GRANTOR represents, warrants and covenants to DISTRICT that GRANTOR'S use of the Property shall comply with all environmental laws as that phrase is defined below.

For the purposes of this Agreement:

I. The term "hazardous materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Hazardous Materials Transportation Act, as amended (49 United States Code sections 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 United States Code sections 6901 et seq.), sections 25117 and 25316 of the California Health & Safety Code, and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state, or local environmental laws, ordinances, rules, or regulations concerning the environment, industrial hygiene or public health or safety now in effect or enacted after this date.

ii. The term "environmental laws" includes, without limitation, any federal, state, local or administrative agency statute, regulation, rule, ordinance, order or requirement relating to environmental conditions or hazardous materials.

## *7. Indemnities.*

A. *GRANTOR'S Indemnity.* GRANTOR shall hold harmless, indemnify, and defend DISTRICT from and against damages, liabilities, claims and expenses, including reasonable attorneys' fees, arising from or in any way connected with (i) injury to or the death of any person, or physical damage to property resulting from any act, omission, condition or other matter related to or occurring on or about the Property, except as such damage, liability, claim or expense is the result of the negligence, gross negligence, or intentional misconduct of DISTRICT (it being the intent of this provision to limit GRANTOR'S indemnity to the proportionate part of DISTRICT'S damage, liability, claim or expense for which GRANTOR is responsible); and (ii) the obligations specified in Paragraph 6. In the event of any claim, demand, or legal complaint against DISTRICT, the right to the indemnification provided by this subparagraph 7.A. shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorneys' fees, incurred prior to DISTRICT'S written notice of such claim, demand, or legal complaint to GRANTOR, unless GRANTOR has acquired knowledge of the matter by other means, nor to any costs, expenses, or settlement payment, including attorneys' fees, incurred subsequent to that notice unless such cost, expense, or settlement payment shall be approved in writing by GRANTOR, which approval shall not be unreasonably withheld.

B. *DISTRICT'S Indemnity.* DISTRICT shall hold harmless, indemnify, and defend GRANTOR from and against all damages, liabilities, claims and expenses, including reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property and attributable to DISTRICT, except to the extent that such damage, liability, claim or expense is the result of the negligence, gross negligence, or intentional misconduct of GRANTOR (it being the intent of this provision to limit DISTRICT'S indemnity to the proportionate part of GRANTOR'S damage, liability, claim or expense for which DISTRICT is responsible). In the event of any claim, demand, or legal complaint against GRANTOR, the right to the indemnification provided by this subparagraph B. shall not apply to any cost, expense, penalty, settlement payment, or judgment, including attorneys' fees, incurred prior to GRANTOR'S written notice of such claim, demand, or legal complaint to DISTRICT, nor to any costs, expenses, or settlement payment, including attorneys' fees, incurred subsequent to that notice unless such cost, expense, or settlement payment shall be approved in writing by DISTRICT, which approval shall be in DISTRICT'S sole discretion. DISTRICT hereby also agrees to hold harmless, indemnify and defend GRANTOR from and against all damages, liabilities, claims and expenses,

including attorneys' fees, asserted against GRANTOR by any officer, agent, employee, or volunteer of DISTRICT, for personal injury and/or property damage arising out of any inspection or visit to the Property by any such officer, agent, employee or volunteer of DISTRICT, except to the extent that such injury is attributable to the negligence, intentional act or willful misconduct of GRANTOR.

8. **Public Access to the Property.** Other than as set forth in Exhibit "B," nothing contained in this Agreement shall be construed as granting, permitting, or affording the public access to any portion of the Property. Nothing in this Agreement 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 Agreement.

9. **Interpretation and Construction.** To the extent that this Agreement may be uncertain or ambiguous such that it requires interpretation or construction, then it shall be interpreted and construed in such a way that meets the conservation purpose of this Agreement and the public policy goals referenced in recital no. 2. It is the intention of the parties that any interpretation or construction shall promote the conservation purpose of this Agreement. If any provision of this Agreement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Agreement and 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.

10. **Baseline Documentation for Enforcement.** DISTRICT acknowledges by acquisition of the easement and other rights granted by this Agreement that the planned public outdoor recreational use of the Property, as set forth in Exhibit "B," is consistent with the conservation purpose of this Agreement. DISTRICT will prepare Baseline Documentation on completion of the first phase of the construction of improvements referenced and allowed by Exhibit "B" which will reflect the planned public outdoor recreational use of the Property. The Baseline Documentation will be maintained on file with DISTRICT and is intended to serve as an objective information baseline for monitoring compliance with the terms of this Agreement.

11. **Remedies for Breach.**

A. **DISTRICT'S Remedies.** In the event of a violation or threatened violation of any term, condition, covenant, or restriction contained in this Agreement, DISTRICT may, following notice to GRANTOR, which notice shall contain a reasonable and specific cure period, institute a suit to enjoin and/or recover damages for such violation and/or to require the restoration of the Property to the condition that existed prior to such violation. In the alternative, DISTRICT may, with the consent of GRANTOR, commence a proceeding in arbitration under paragraph 13 of this Agreement. The notice shall be a general written notification of the condition claimed

by the DISTRICT to be a violation that is either mailed or delivered by DISTRICT to GRANTOR. If DISTRICT reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to any natural conditions of the Property protected by this Agreement, DISTRICT may pursue its remedies under this paragraph without waiting for the period provided for cure to expire. DISTRICT'S rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Agreement, and GRANTOR agrees that DISTRICT'S remedies at law for any violation of the terms of this Agreement are inadequate and that DISTRICT 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 DISTRICT may be entitled, including specific performance of the terms of this Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

B. *DISTRICT'S Discretion.* Enforcement of the terms of this Agreement shall be at the discretion of DISTRICT, and any forbearance by DISTRICT to exercise its rights under this Agreement in the event of any breach of any term of this Agreement by GRANTOR shall not be deemed or construed to be a waiver by DISTRICT of such term or of any subsequent breach of the same or any other term of this Agreement. Any failure by DISTRICT to act shall not be deemed a waiver or forfeiture of DISTRICT'S right to enforce any term, condition, covenant, or purpose of this Agreement in the future.

C. *Liquidated Damages.* Inasmuch as the actual damages which would result from the loss of the values associated with the conservation purpose of this Agreement and caused by its breach by GRANTOR are uncertain and would be impractical or extremely difficult to measure, the parties agree that the damages allowed by Civil Code section 815.7(c) shall be measured as follows:

(I) for an improvement prohibited by this Agreement, 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 Property, and (C) the then current interest rate for post judgment interest; and

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

(iii) for a change in use prohibited by this Agreement, 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 DISTRICT, (B) the length of time that the prohibited use continues and (C) the then current interest rate for post judgment interest.

D. *GRANTOR'S Compliance.* If DISTRICT, in the notice to GRANTOR, demands that GRANTOR remove an improvement, discontinue a use or both and claims the damages allowed by Civil Code section 815.7(c), then GRANTOR may mitigate damages by fully complying with DISTRICT'S notice within the cure period provided therein. In the event of such full and timely compliance, DISTRICT shall not be entitled to damages for the breach specified in the notice. In the event of litigation arising out of the notice, brought either by GRANTOR or by DISTRICT, in which GRANTOR prevails, then GRANTOR shall be entitled to economic damages; provided that neither DISTRICT nor GRANTOR shall be entitled to damages where DISTRICT has not claimed damages in its notice.

E. *Remedies Nonexclusive.* The remedies set forth in this paragraph 11 are not intended to displace any other remedy available to either party as provided by this Agreement, Civil Code sections 815 et seq. or any other applicable law.

12. *Acts Beyond GRANTOR'S Control.* Nothing contained in this Agreement 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, without limitation, 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 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 Agreement.

13. *Arbitration.* If a dispute arises between the parties concerning the consistency of any proposed use or activity with the conservation purpose of this Agreement, or any other dispute arising under this Agreement, either party, with the written consent of the other, may refer the dispute to arbitration by a request made in writing upon the other. Provided that GRANTOR agrees not to proceed with the use or activity pending resolution of the dispute, and upon the agreement of the parties to proceed to arbitration, within thirty (30) days of the receipt of such a request, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator who shall be a retired Federal District Court or California Superior Court judge; provided, however, if either party fails to select an arbitrator, or if the two arbitrators fail to select a third arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance, a proper court, on petition of a party, shall appoint the second or third arbitrator or both, as the case may be, in accordance with sections 1280, *et seq.* of the California Code of Civil Procedure or any successor statute then in effect. The arbitration shall be determined in accordance with said statute, with the conservation purpose of this Agreement, and all relevant provisions of this Agreement, and the applicable laws of the State of California, as the bases for determination and resolution,

and a judgment of the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrators but excluding attorneys' fees, which shall be determined by the arbitrators and any court of competent jurisdiction that may be called upon to enforce or review the award.

14. **Condemnation.** In the event that the Property or some portion thereof is condemned for public use by an entity other than DISTRICT, the market value for purposes of just compensation shall be determined as though this Agreement did not exist and COUNTY and DISTRICT shall share the compensation on the following basis: COUNTY 0% and DISTRICT 100%, subject, however, to a credit in favor of COUNTY of the then fair market value of any improvements constructed on the Property, at other than DISTRICT's cost, which improvements were constructed and used in conformance with this Agreement.

15. **Agreement to Bind Successors.** The conservation easement herein granted shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Property and shall bind GRANTOR, GRANTOR'S heirs, personal representatives, lessees, executors, successors, including but not limited to purchasers at tax sales, and assigns forever. The parties intend that this Agreement shall benefit and burden, as the case may be, their respective successors, assigns, heirs, executors, administrators, agents, employees, and all other persons claiming by or through them pursuant to the common and statutory law of the State of California, including, *inter alia*, Civil Code sections 815-816.

16. **Subsequent Deeds and Leases.** GRANTOR agrees that a clear reference to this Agreement will be made in any subsequent deed, or other legal instrument, by means of which any interest in the Property (including, but not limited to, a leasehold interest) is conveyed, that GRANTOR will attach a copy of this Agreement to any such instrument, and that GRANTOR will notify DISTRICT in writing ten (10) 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 Paragraph 15 of this Agreement.

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

**To GRANTOR:** County of Sonoma  
Board of Supervisors  
575 Administration Drive Room 102A  
Santa Rosa, CA 95403

**To DISTRICT:** General Manager  
Sonoma County Agricultural Preservation  
and Open Space District  
747 Mendocino Avenue  
Santa Rosa, CA 95401

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 to have been given upon the day following the day shown on the postmark of the envelope in which such notice is mailed or, in the event there is no such date shown on the postmark, then the day following the date of mailing shown on DISTRICT'S written declaration of mailing, which writing shall have been executed by a DISTRICT officer or employee.

18. ***Successors and Assigns.*** The terms GRANTOR and DISTRICT wherever used herein, and any pronouns used in place thereof, shall mean and include the above-named GRANTOR and his heirs, personal representatives, lessees, executors, successors, and assigns, including any person claiming under them, and the above-named DISTRICT and its successors and assigns, respectively.

19. ***Integration.*** This Agreement 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. ***Estoppel Certificates.*** DISTRICT shall, at any time during the existence of the Agreement, upon not less than thirty (30) days' prior written notice from GRANTOR, execute and deliver to GRANTOR a statement in writing certifying that the Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification) 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.

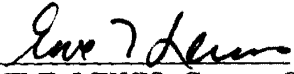
IN WITNESS WHEREOF, COUNTY and DISTRICT have executed this Agreement this 3rd day of October, 2000.

COUNTY OF SONOMA:

By: Mike Reilly  
MIKE REILLY, CHAIRMAN  
BOARD OF SUPERVISORS

[ATTEST]

Eric J. Allen

  
EEVE T. LEWIS, County Clerk and  
ex-officio Clerk of the Board of  
Directors

DISTRICT:

SONOMA COUNTY AGRICULTURAL  
PRESERVATION AND OPEN SPACE  
DISTRICT

By:   
MIKE REILLY  
President of the Board of Directors

ATTEST:

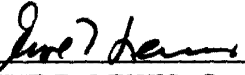
  
EEVE T. LEWIS, County Clerk and  
ex-officio Clerk of the Board of  
Directors

EXHIBIT "A"

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SONOMA, CITY OF UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEING A PARCEL OF LAND IN RANCHO SAN MIGUEL OF A PORTION OF LOT 5 OF THE "DISTRIBUTION OF THE McMINN ESTATE DATED OCTOBER 24, 1877", AS RECORDED IN BOOK "C" OF PROBATE ORDERS AT PAGE 22, SONOMA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 5; THENCE FROM SAID POINT OF COMMENCEMENT AND ALONG THE WEST LINE OF SAID LOT 5, NORTH 1° 08' 50" EAST, 1,286.16 FEET TO AN IRON PIPE MARKING THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE FROM SAID POINT OF BEGINNING AND LEAVING SAID LOT LINE NORTH 87° 40' EAST, 480.79 FEET TO AN IRON PIPE SET IN THE SOUTHWESTERLY EDGE OF THE STATE HIGHWAY FROM HEALDSBURG TO SANTA ROSA; THENCE ALONG THE WESTERLY EDGE OF SAID HIGHWAY SOUTH 44° 10' EAST, 251.07 FEET; THENCE ON A CURVE TO THE LEFT WITH A RADIUS OF 5,035.00 FEET A DISTANCE OF 129.03 FEET TO AN IRON PIPE; THENCE LEAVING SAID HIGHWAY SOUTH 63° 26' 20" WEST, 848.60 FEET TO AN IRON PIPE SET IN THE WEST LINE OF THE ABOVE MENTIONED LOT 5; THENCE ALONG SAID LOT LINE NORTH 1° 08' 50" EAST, 631.50 FEET TO AN IRON PIPE AND THE POINT OF BEGINNING OF THE ABOVE DESCRIBED PARCEL OF LAND.

PARCEL TWO:

BEING A PARCEL OF LAND IN RANCHO SAN MIGUEL OF A PORTION OF LOT 5 OF THE "DISTRIBUTION OF THE McMINN ESTATE DATED OCTOBER 24, 1877", AS RECORDED IN BOOK "C" OF PROBATE ORDERS AT PAGE 22, SONOMA COUNTY RECORDS.

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 5; THENCE FROM SAID POINT OF COMMENCEMENT AND ALONG THE WEST LINE OF SAID LOT 5 NORTH 1° 08' 50" EAST, 357.16 FEET TO AN IRON PIPE MARKING THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE FROM SAID POINT OF BEGINNING AND LEAVING SAID LOT LINE NORTH 68° 13' EAST, 1,121.83 FEET TO AN IRON PIPE SET IN THE SOUTHWESTERLY EDGE OF THE STATE HIGHWAY FROM HEALDSBURG TO SANTA ROSA; THENCE ALONG THE SOUTHWESTERLY EDGE OF SAID HIGHWAY NORTH 46° 55' WEST, 267.47 FEET; THENCE ON A CURVE TO THE RIGHT WITH A RADIUS OF 5,035.00 FEET A DISTANCE 112.63 FEET TO AN IRON PIPE; THENCE LEAVING SAID HIGHWAY SOUTH 63° 26' 20" WEST 848.60 FEET TO AN IRON PIPE SET IN THE WEST LINE OF THE ABOVE MENTIONED LOT 5; THENCE ALONG SAID LOT LINE SOUTH 1° 08' 50" WEST 297.50 FEET TO AN IRON PIPE AND THE POINT OF BEGINNING OF THE ABOVE DESCRIBED PARCEL OF LAND.

PARCEL THREE:

BEING A PART OF LAND IN RANCHO SAN MIGUEL OF A PORTION OF LOT 5 OF THE "DISTRIBUTION OF THE McMINN ESTATE DATED OCTOBER 24, 1877", AS RECORDED IN BOOK "C" OF PROBATE ORDERS AT PAGE 22, SONOMA COUNTY RECORDS.

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 5; THENCE FROM SAID POINT OF COMMENCEMENT AND ALONG THE WEST LINE OF SAID LOT 5 NORTH 1° 08' 50" EAST, 187.16 FEET TO AN IRON PIPE MARKING THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE FROM SAID POINT OF BEGINNING AND CONTINUING ALONG THE WEST LINE OF SAID LOT 5 NORTH 1° 08' 50" EAST, 170.00 FEET TO AN IRON PIPE; THENCE LEAVING SAID LOT LINE NORTH 68° 13' EAST, 1,121.83 FEET TO AN IRON PIPE SET IN THE SOUTHWESTERLY EDGE OF THE STATE HIGHWAY FROM HEALDSBURG TO SANTA ROSA; THENCE ALONG THE SOUTHWESTERLY EDGE OF SAID HIGHWAY SOUTH 46° 55' EAST, 380.10 FEET TO AN IRON PIPE; THENCE LEAVING SAID HIGHWAY SOUTH 76° 07' 40" WEST, 1,362.48 FEET TO AN IRON PIPE IN THE WEST LINE OF THE ABOVE MENTIONED LOT 5 AND THE POINT OF BEGINNING OF THE ABOVE DESCRIBED PARCEL OF LAND.

BASIS OF BEARING: STATE HIGHWAY MAPS, SHEET 23, DATED AUGUST 22, 1912.

A.P. NO. 058-050-051

## EXHIBIT "B"

### PERMITTED USES AND PRACTICES

The following uses and practices, though not necessarily an exhaustive recital of consistent uses and practices, are permitted under this Agreement, and they are not to be precluded, prevented, or limited by this Agreement. It is further provided that they are undertaken in accordance with the terms and provisions of this Agreement and that all applicable governmental approvals and permits are properly obtained:

1. To use or lease the Property in a manner that is consistent with the conservation purpose of this Agreement.

2. To engage in public outdoor recreational uses on the Property. Public outdoor recreational uses are limited to the improvements depicted on the Unity Ballfield Master Plan dated May 18, 1999 as approved by the Sonoma County Board of Supervisors and as shown on Exhibit "D" of this Agreement. The Master Plan consists of: 2 baseball fields, 2 soccer fields, a softball field, a practice soccer field, concession/restrooms, bleachers, parking lot, wetland restoration areas, and wells for irrigation purposes. Any changes to the layout or size of the improvements that are not, in the opinion of District's General Manager, in general conformance with the Master Plan or any change in the type of recreational use shall require GRANTOR to deliver a written request to DISTRICT for approval in accordance with the provisions set forth in Paragraph 5 of this Agreement. DISTRICT's approval shall be based on its finding that the proposed construction or placement or recreational use is consistent with the conservation purpose of this Agreement. For the purpose of constructing the improvements depicted on the Master Plan, GRANTOR may cause to be brought on the Property not more than 70,000 cubic feet of fill material. The fill material may be stockpiled on the Property for a period of not more than three years and distributed in accordance with the "Fill Placement/Stockpiling Plan" prepared by Carlile Macy and dated August 31, 2000, a copy of which shall be kept on file at GRANTOR's Department of Regional Parks. The stockpiled fill material shall be spread on the site to accommodate the construction of the improvements depicted in Exhibit "D." Additionally, the work shall be done in accordance with all necessary permits issued by United States Army Corps of Engineers and the California North Coast Regional Water Quality Control Board and all other regulatory bodies having jurisdiction.

3. To maintain, repair, replace and improve existing structures, fences, roads, ditches, sloughs, pumps, levees, dams and other improvements on the Property. In the event of destruction, deterioration, or obsolescence of any structures, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this Agreement, GRANTOR shall deliver to DISTRICT written request for approval to replace such structures. In the event of destruction, deterioration, or obsolescence of any fences, corrals, roads, ditches, sloughs, levees, dams, pumps or other improvements, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this Agreement, GRANTOR may replace same with ones of similar size, function, capacity and location, without prior notice to or approval by DISTRICT, provided, however, that such replacement is consistent with the conservation purpose of this Agreement.

4. To place signs which are visible from the right-of-way of the Property, the size of which shall individually not exceed thirty-two (32) square feet, and shall not exceed a total of two (2). Other signs that are necessary for the recreational use of the Property and are not visible from the public right-of-way are not subject to the size restriction, but shall be within the conservation purpose of the easement.

5. To maintain and modify existing water resources on the Property; to develop new springs and wells; to lay or construct pipes and conduits for the transportation of water; with the approval of DISTRICT, to develop additional water storage facilities such as freshwater and wastewater tanks and reservoirs, provided however, that such facilities are located so as to minimize visual impacts. Such uses shall be necessary or convenient for the recreational, irrigation or agricultural use of the Property and shall be developed in a manner consistent with the conservation purpose of this Agreement.

6. To continue use in accordance with easements of record as of the date of this Agreement. Modifications to easements of record as of the date of this Agreement require the approval of DISTRICT. New easements may only be granted where they will remove and significantly lessen the impact of easements of record as of the date of this Agreement on the conservation purpose of this Agreement, or where necessary to construct sewer, water or other utilities associated with the recreation facilities depicted on the Unity Ballfield Master Plan dated May 18, 1999 as approved by the Sonoma County Board of Supervisors, dated May 18, 1999.

7. To install exterior lighting which is necessary for security purposes in the parking areas and around the concession building. Lighting for other purposes shall require GRANTOR to deliver written request to DISTRICT for approval in accordance with the provisions set forth in Paragraph 5 of this Agreement. District's approval shall be based upon its finding that the proposed lighting is consistent with the conservation purpose of this Agreement.

8. To use government approved agrichemicals, including but not limited to, fertilizers and biocides, in those amounts and with that frequency of application necessary to accomplish reasonable agricultural purposes within government regulations and guidelines.

9. To undertake conservation practices that promote soil stabilization and reduce erosion in accordance with sound, generally accepted practices. Approval of DISTRICT is required when conservation practices involve significant surface alteration.

10. To control predatory and problem animals by the use of selective control techniques consistent with policies promulgated by the Sonoma County Agricultural Commissioner.

11. To remove invasive, non-native and native plant species which threaten or impede the growth of native plant species, or as necessary for the recreational facilities as provided for in Paragraph 2 of this Exhibit "B".

## **EXHIBIT "C"**

### **PROHIBITED USES AND PRACTICES**

The following uses and practices, though not necessarily an exhaustive recital of inconsistent uses and practices, are inconsistent with the purposes of this Agreement and shall be prohibited upon or within the Property:

1. To impair the conservation purpose, except as otherwise expressly provided in this Agreement.
2. To establish any residential, commercial (except as otherwise provided for in Paragraph 2 of Exhibit "B") or industrial activity or use.
3. To install exterior lighting, except as otherwise provided for in this Agreement.
4. To construct, place, or erect any sign or billboard on the Property, except as provided for in Paragraph 4 of Exhibit "B".
5. To construct, reconstruct, or replace any improvement, except as provided for in Exhibit "B".
6. To divide, subdivide, or de facto subdivide the Property, provided, however, that the voluntary conveyance to a government or non-profit entity exclusively for conservation or public access purposes shall not be prohibited by this Paragraph.
7. To relocate any roadway or levee except as necessary to provide for recreational facilities as provided for in Paragraph 2 of Exhibit "B"; provided, however, that DISTRICT shall consent to the construction of any roadway or levee that is planned to minimize the impact on the open space and natural features of the Property.
8. To store work materials that may be visible from public roadways such as pipes, culverts, fencing, heavy equipment and the like, except while work is in progress and not for any period exceeding one hundred and eighty (180) days, except as provided in paragraph 2 of Exhibit "B."
9. To dump or accumulate trash, ashes, garbage, waste, inoperative vehicles or other unsightly or offensive material on the Property.

10. To install new above-ground utility systems including, without limitation, water, sewer, power, fuel, and communication lines and related activities and equipment, except for systems serving permitted recreational uses on the Property and then only in accordance with Exhibit "D."

11. To explore for, develop or extract, minerals or hydrocarbons by any mining method, surface or otherwise.

12. To hunt, trap or otherwise willfully kill wildlife for food or sport.

## CERTIFICATE OF ACCEPTANCE

(Government Code Section 27281)

This is to certify that the interest in real property conveyed by the Conservation Easement Agreement dated October 3, 2000, the County of Sonoma to the Sonoma County Agricultural Preservation and Open Space District, a governmental agency formed pursuant to the provisions of Public Resources Code Section 5506.5, is hereby accepted by the President of the Board of Directors on behalf of the District pursuant to the authority conferred by Resolution No. 00-1224 of the Board of Directors, dated October 3, 2000 and the District consents to the recordation thereof by its duly authorized officer.

The Board of Directors of the  
Sonoma County Agricultural  
Preservation and Open Space  
District

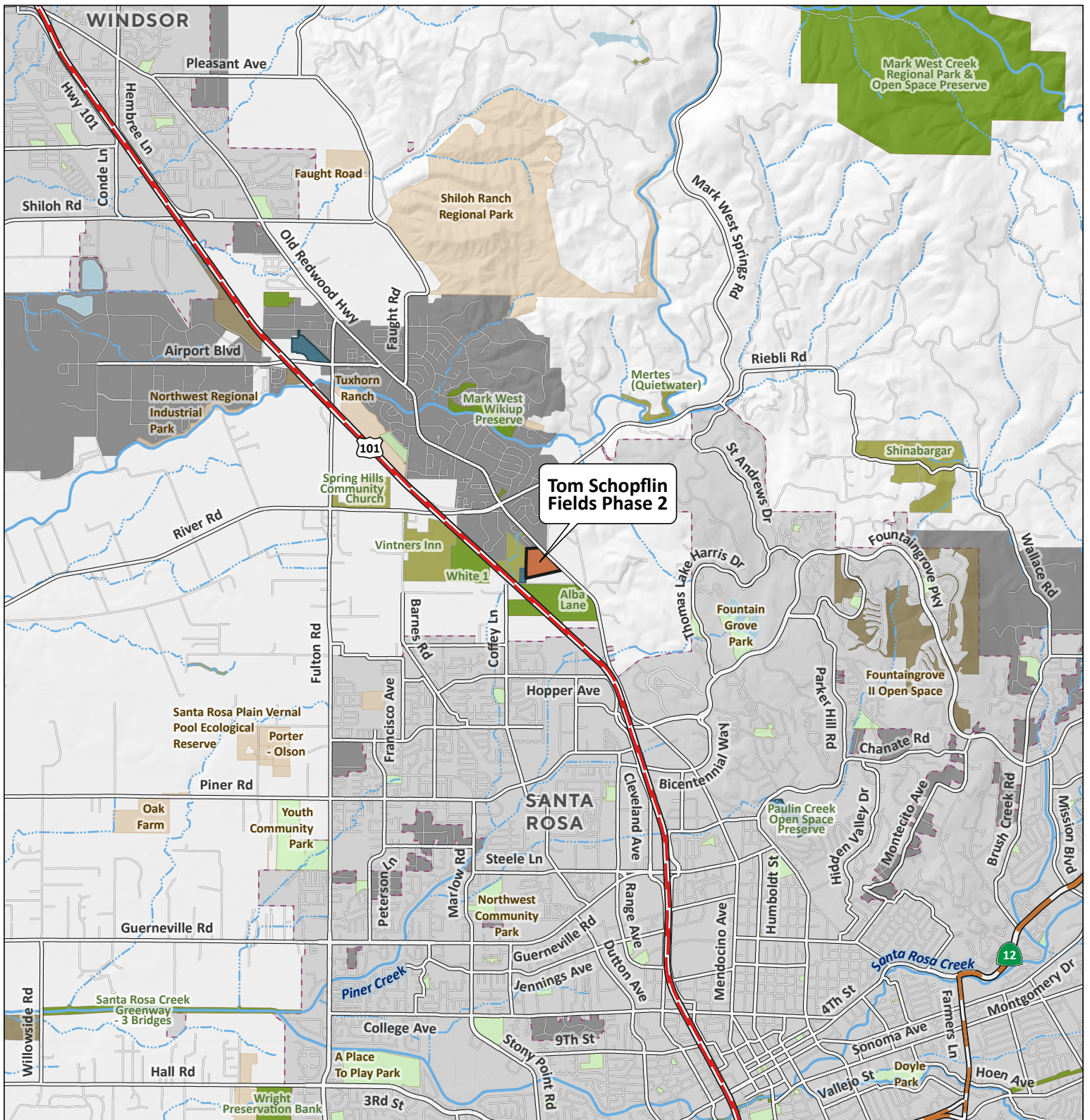
Dated: October 4, 2000

By: Mike Reilly  
Mike Reilly, President

ATTEST:

Eve T. Lewis

Eeve T. Lewis, County Clerk and  
ex-officio clerk of the Board of Supervisors  
of the County of Sonoma, State of California

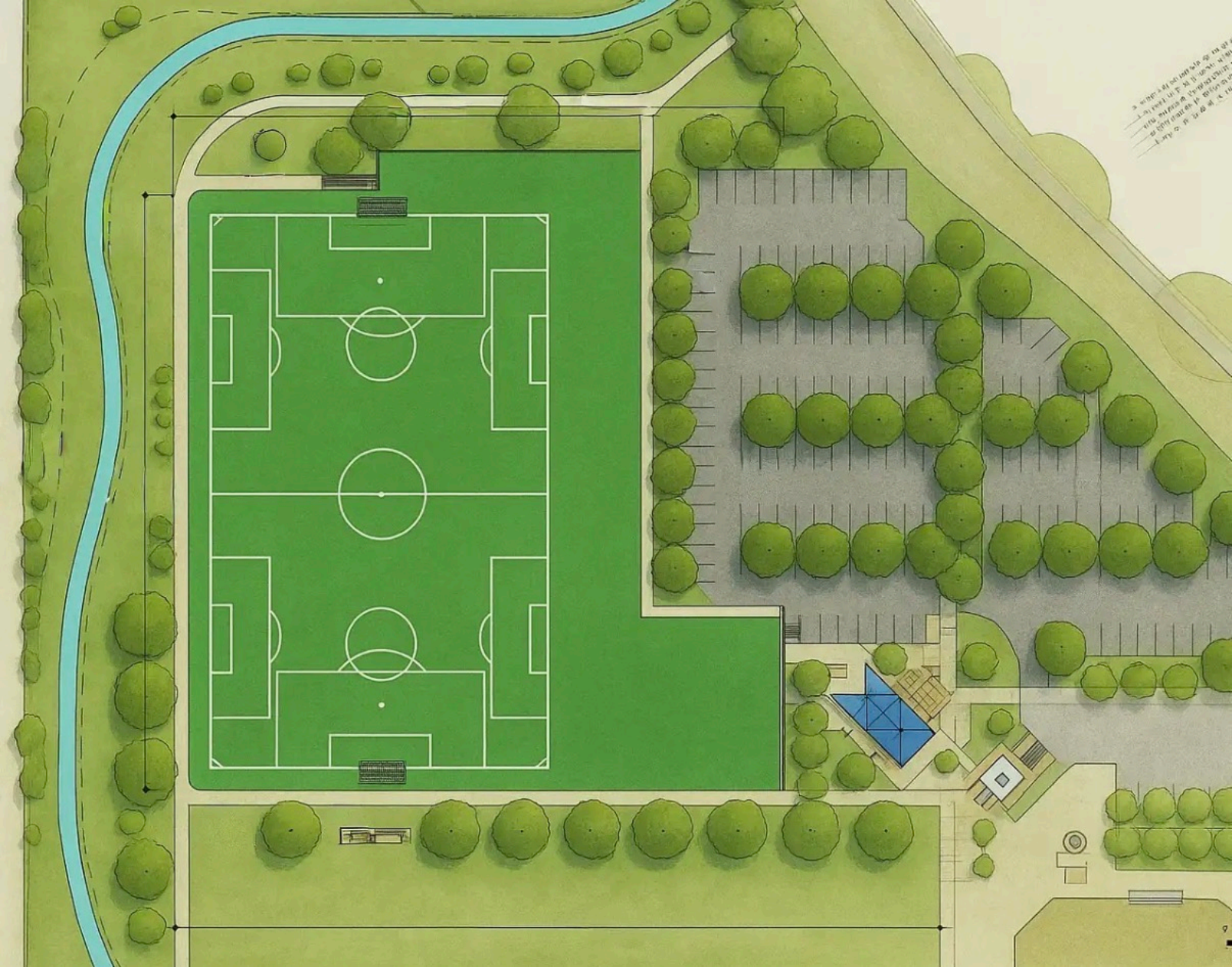


- |                    |                                |                                 |                     |
|--------------------|--------------------------------|---------------------------------|---------------------|
| Easement Boundary  | Ag + Open Space Protected Land | Other Public or Protected Lands | Perennial Stream    |
| Urban Service Area | Conservation Easement          | Public Protected                | Intermittent Stream |
| Incorporated City  | Fee Title                      | Private Protected               |                     |
|                    | Open Space Easement            | Urban Park                      |                     |



## Tom Schopflin Fields Phase 2 MGP - (Development) Location Map

Credits: Sonoma County Ag + Open Space (easement boundary, Sonoma County Public & Protected Areas Database); Sonoma County GIS (roads, incorporated cities, urban service areas); Sonoma Water (streams); Sonoma County Vegetation Mapping and LIDAR Program (2013 bare earth hillshade imagery). This map displays GIS data for illustrative purposes only and is not intended to depict definitive boundaries or feature locations.



Legend:  
- - - - - Stream  
- - - - - Path  
- - - - - Building  
- - - - - Parking  
- - - - - Trees



Easement Boundary
  Intermittent Stream

\* Entire easement is designated as urban open space



## Tom Schopflin Fields Phase 2 Conservation Easement Draft Project Structure Map



**Background/Project Overview**

The Sonoma County Agricultural Preservation and Open Space District (“District”) is proposing to execute a \$2,000,000 Matching Grant Agreement with Sonoma County Community Development Commission, a public body corporate and politic, (“Grantee”) for the development of a 0.86-acre park and public gathering space, known as the Tierra de Rosas Public Plaza, in the Roseland neighborhood of Santa Rosa (the “Project”) utilizing funds from the District’s Community Spaces Matching Grant Program (“CSMGP”). The Project will be protected in perpetuity and made available for public recreational access via a conservation easement and recreation conservation covenant enforceable by the District.

The Grantee submitted an application under the District’s 2022, Round 2 Program for funding toward the Project specifically for open space improvements to create a public park and gathering space in the Roseland neighborhood. The Grantee sought funding in the amount of Two Million Dollars (\$2,000,000). District staff recommended inclusion of the Project in the District’s CSMGP. The District staff’s recommendation was reviewed by the District’s Advisory Committee on June 22, 2023 and was accepted by the District’s Board of Directors on August 22, 2023. A commitment to fund the Project will not be made until funding is reviewed by the Fiscal Oversight Commission and all applicable conservation documents securing the interests of the District are approved by the District’s Board of Directors.

The Grantee acquired the property on which the Project will be constructed through a subdivision of parcels that created a mixed-use new housing development along with other community and commercial spaces in what had been a vacant shopping center complex and parking lot. Through the development agreement and subdivision of parcels, the Grantee secured title to a newly created 0.86-acre legal parcel, APN 125-111-57. This parcel represents the 0.86-acre of land underlying the Project.

The District’s grant will contribute up to \$2,000,000 in reimbursement funds towards eligible construction costs of the Project, including a picnic area and grass play space. The Grantee, according to its workplan is contributing \$1,922,000 in matching funds toward qualifying improvements. The Grantee’s work plan budget has been submitted and approved by the District. The total cost of the Project is \$3,922,390. The vast majority of the funds have been spent, and construction of the Project is virtually complete including the sod grass, installation of play structures and lighting. The imminent opening of the Project to the public will conclude a long-awaited and much anticipated improvement to the esthetic and recreational opportunities in the Roseland neighborhood.

**Project Structure**

The District will receive, as a requirement of the CSMGP, a conservation easement and recreation conservation covenant, ensuring the property’s use and access by the public in perpetuity. The District’s conservation easement will protect the urban open space resources, recreational and educational resources, and scenic resources.

The recreation covenant will ensure that the Tierra de Rosas Public Plaza remains open to the public in perpetuity.

**Matching Grant Agreement**

As required under the CSMGP guidelines, the Matching Grant Agreement obliges the Grantee to provide funds as described in its application and workplan, in such amounts that qualify and meet the requirements of the program. The Grantee’s application cites a Project budget as shown.

**Funding Request:**

Grant Funding Request:	\$	2,000,000
Matching Funds:	\$	1,922,390
Total Matching Grant Project Cost:	\$	3,922,390
<b>TOTAL PROJECT COST:</b>	<b>\$</b>	<b>4,472,390</b>

The Grantee’s workplan has been submitted and approved by the District. The Grantee will provide \$1. The Grantee’s expenditures have occurred in the timeframe required by the program. The grant and match expenditures include development of the park lighting, grass play space and picnic area. As mentioned, the Project is virtually complete, awaiting signage and a grand opening.

According to the District’s and Grantee’s Matching Grant Agreement and guidelines of the program, all funds must be distributed and the Project completed no later than August 22, 2028. The Grantee is in compliance with the Matching Grant Program.

**Conformance with Adopted Plans**

**District’s Expenditure Plan**

The grant is consistent with District’s Expenditure Plan, specifically regarding other open space projects, including urban open space and recreation projects within and near incorporated areas and other urbanized areas of the county.

**Vital Lands Initiative**

Conserving this Property meets objectives described in the Vital Lands Initiative as follows:

- Healthy Communities: Protect open space and publicly accessible lands in and near cities and communities and connect people with protected lands.
- Community Identity: Protect open lands that surround and differentiate the county’s urban areas and contribute to the unique scenic character of the County

### City of Santa Rosa General Plan

On June 25, 2019, the City of Santa Rosa's City Council determined pursuant to Government Code section 65401, that Grantor's acquisition and development of the Project for the purposes of a public park is consistent with the City of Santa Rosa's General Plan.

### **Fair Market Value Determination**

The Conservation Easement and Recreation Covenant are interests in real property being acquired by the District. Therefore, the Fiscal Oversight Commission is being requested to determine that District is not paying more, or receiving less, than fair market value for these interests. The Grantee is conveying a Conservation Easement and Recreation Covenant to the District as a condition to receiving Community Spaces Matching Grant Program funds for the development of the Project. No funds are being paid by Ag + Open Space for the acquisition of either the Conservation Easement or the Recreation Covenant. Because Ag + Open Space's Matching Grant Agreement does not include any payment for the Conservation Easement or the Recreation Covenant, Ag + Open Space is not paying more or receiving less than the fair market value for these interests.

### **Recommendation**

District staff recommend that the Commission adopt a resolution determining that by accepting the Conservation Easement and Recreation Covenant as a condition of providing funding for the development of recreational improvements in furtherance of the Project, the District is not paying more or receiving less than the fair market value for the real property interests it will receive.

### **Exhibits**

- Exhibit 1: Resolution
- Exhibit 2: Draft Conservation Easement
- Exhibit 3: Draft Recreation Covenant
- Exhibit 4: Draft OTD

RESOLUTION NO.: 2026-\_\_\_\_\_

DATED: \_\_\_\_\_

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE FISCAL OVERSIGHT COMMISSION DETERMINING THAT THE DISTRICT IS NOT PAYING MORE, OR RECEIVING LESS, THAN FAIR MARKET VALUE FOR THE CONSERVATION EASEMENT AND RECREATION COVENANT TO BE ACQUIRED BY THE DISTRICT AS A CONDITION OF MATCHING GRANT FUNDING TO BE PROVIDED TO THE SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION FOR THE TIERRA DE ROSAS PUBLIC PLAZA PROJECT.**

**WHEREAS**, by virtue of the contract dated December 7, 2010 between the County of Sonoma and the Sonoma County Agricultural Preservation and Open Space District (“the District”) and Sonoma County Board of Supervisors Resolution No. 10-0832 dated December 7, 2010, this Board of Commissioners is required to review each proposed District acquisition or conveyance in order to determine whether the District would be paying more or receiving less than fair market value for the open space interests being acquired or conveyed; and

**WHEREAS**, Sonoma County Community Development Commission tendered an application to the District’s 2022, Round 2 Community Spaces Matching Grant Program for funding towards the development of a public park at Tierra de Rosas Public Plaza (“Matching Grant Project”). The District’s Board of Directors accepted this application for an amount up to \$2,000,000 on August 22, 2023 (“Matching Grant”); and

**WHEREAS**, the General Manager is proposing to execute a \$2,000,000 Matching Grant Agreement with the Sonoma County Community Development Commission for development of a 0.86-acre park and public gathering space in the Roseland neighborhood of Santa Rosa (the “Project”); and

**WHEREAS**, as a condition of the proposed Community Spaces Matching Grant Program Project, a conservation easement and a recreation conservation covenant will be conveyed to the District on 0.86-acre future park property, and the District is not purchasing the Conservation Easement or the Recreation Covenant; and

**WHEREAS**, the District is reimbursing the Sonoma County Community Development Commission for a portion of the improvement funds according to terms of the acceptance of the Project into the District’s Community Spaces – Matching Grant Program as authorized by the District’s Board of Directors on August 22, 2023, and

**WHEREAS**, this Commission has been presented with the opportunity to review the Conservation Easement and Recreation Covenant recommended as a condition of the Matching Grant to Sonoma County Community Development Commission.

**NOW THEREFORE BE IT RESOLVED**, that this Board of Commissioners hereby finds, determines, declares and orders as follows:

1. *Truth of Recitals.* The foregoing recitals are true and correct.

2. *Fair Market Value.* As the District is not paying for the Recreation Covenant that will be acquired as a condition of its funding for the matching Grant Project, the District is not paying more or receiving less than the fair market value for the acquisition of this open space interest.

**COMMISSIONERS:**

**AYES:** \_\_\_\_\_ **NOES:** \_\_\_\_\_ **ABSTAIN:** \_\_\_\_\_ **ABSENT:** \_\_\_\_\_

**SO ORDERED.**

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  
SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION  
AND  
THE SONOMA COUNTY AGRICULTURAL PRESERVATION  
AND OPEN SPACE DISTRICT  
CONVEYING A CONSERVATION EASEMENT  
AND  
ASSIGNING DEVELOPMENT RIGHTS

Sonoma County Community Development Commission, a public body, corporate and politic, a political subdivision of the State of California (“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 0.86 acres located in Sonoma County designated as Sonoma County Assessor’s Parcel Number 125-111-057-, commonly known as Tierra de Rosa Public Plaza, and more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the “Property”).

B. In 1990, the voters of Sonoma County approved the creation of DISTRICT and the imposition of a transactions and use tax 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.

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 (Date), DISTRICT's Board of Directors, pursuant to Government Code section 65402 and Sonoma County Ordinance No. 5180, determined, by its Resolution No. (G6 Resolution Number), that the acquisition of a conservation easement over the Property was consistent with the Sonoma County General Plan, specifically the Plan's Land Use Element Policy LU-11f because the Conservation Easement encourages the conservation of undeveloped land and open space. By that same resolution, DISTRICT's Board of Directors determined that its funding of the Project is consistent with the voter-approved Expenditure Plan. On, June 25, 2019 the City Council of Santa Rosa, determined, pursuant to Government Code section 65401, that GRANTOR's acquisition and development of the property for the purposes of a public park is consistent with the City of Santa Rosa's General 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 supporting Healthy Communities goals, including protection of open space and publicly accessible lands in and near cities and communities to connect people to open spaces and Community Identity goals, including protecting lands that provide visual relief from urbanized areas.

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

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

## EASEMENT

### PART ONE: GRANT OF EASEMENT

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

**2. Conservation Values.** The Property was an approximately 0.86-acre paved lot in the City of Santa Rosa which is being redeveloped to a public park which will provide an open space resource, scenic relief, recreational and educational opportunities for the Roseland neighborhood, Santa Rosa and Sonoma County residents. The planned improvements to the Property, including recreation areas and facilities, and replacement to existing pavement, which are anticipated to include but not limited to grassy surfaces, play area, picnic area and trees planned for this park will result in the following Conservation Values. Critical resources on the Property (collectively the “Conservation Values”) are as follows:

**2.1 Urban Open Space Resources.** The urban open space resources on the Property include, but are not limited to, creating a unique opportunity to permanently protect and enhance open space serving the Roseland community. The Property will provide dedicated open space landscaped to enhance socializing, eating, and community events in an area that is densely populated and has few public gathering spaces. The Tierra de Rosas Public Plaza will also serve as a central element of open space in a planned mixed-use.

**2.2 Recreational and Educational Resources.** The recreational and educational resources of the Property include, but are not limited to, its use as a gathering space with pedestrian access from nearby housing developments, the Joe Rodota trail and the surrounding Roseland community. The Property will be developed to support outdoor education programs, community events, and other recreational activities.

**2.3 Scenic Resources.** The scenic resources of the Property include, but are not limited to, its visibility from Sebastopol Road, a central thoroughfare through the commercial and residential areas of the Roseland neighborhood. When developed as a community park and gathering plaza with trees, lawn, and play and eating areas, the Property’s open space will enhance and encourage Roseland residents and visitors to gather in a scenic setting.

**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 is consistent with one or more of the Conservation Values but substantially conflicts with the preservation and protection of one or more of the other Conservation Values, the Parties shall attempt to reconcile such conflict and balance preservation and protection of Conservation Values, taking into consideration any material changes to the physical condition of the Property, climate change and associated impacts, zoning and public policy, and surrounding land uses. If such conflict is both substantial and irreconcilable, the DISTRICT shall consider the approval and the relative impacts to the affected Conservation Values, with particular weight given to preservation and protection of urban open space resources, recreational and educational resources, and 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 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 (i) identify the current activities on and uses and condition of the Property; and (ii) 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 Audit.** DISTRICT shall have the right to inspect, copy, and audit GRANTOR's financials and programmatic records, of any type, nature, or description, as DISTRICT deems necessary to ensure GRANTOR compliance with *Section 5.1.7 (Revenue Generation)*.

**4.4 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.

**4.5 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)*.

**4.6 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.

**4.7 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.

**4.8 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.

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 *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 Revenue Generation. Any revenue generated by GRANTOR from activities and uses upon the Property shall be used toward: (i) the cost, including administrative cost of operating, maintaining, restoring, and enhancing the Property; or (ii) towards educational or recreational programs or events that take place on the Property; or (iii) towards the preservation or improvement of other DISTRICT-protected properties.

5.1.8 Plans. Whenever *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, Work 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)*. DISTRICT hereby acknowledges having approved those certain Plans submitted by Sonoma County Community Development Commission on May 6, 2026 date.

## **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 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*. Subject to prior written approval by 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.

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

5.2.4 Lot Line Adjustments. Lot line adjustments may be permitted solely with prior approval from DISTRICT if necessary to settle boundary disputes involving 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 may use the Property only as described in this *Section 5.3*.

5.3.1 Natural and Recreational Resource Protection, Preservation, Restoration, and Enhancement. GRANTOR may protect, preserve, restore, and enhance the natural and recreational 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 5.3.4 (Commercial)*.

5.3.2 Recreational and Educational Use. GRANTOR may make the Property available to the public for outdoor recreation and education in conformity with the terms of this Easement, without notice to or approval from DISTRICT. All public outdoor recreational and educational uses and activities on the Property shall be designed and undertaken in a manner compatible with the Conservation Values. Such uses may include, but are not limited to, picnicking; nature study; court and field sports; gardening; public or school educational activities including nature study and environmental or outdoor education; educational programs such as bookmobile, art, and other City and community programs; gardening workshops; habitat restoration training/workshops; afterschool and summer camp programs, exercise and public performances and other such uses similar in nature and intensity.

5.3.3 Special Events. For the purposes of this Easement, "Special Events" are organized gatherings, other than those recreational and educational uses permitted in *Section 5.3.2 (Recreational and Education Use)*, that involve formal coordination, such as staffing, equipment, sound amplification, temporary structures, or promotional efforts. Special Events are permitted, provided however, Special Events that require an entry fee and/or exclude the public's ability to access the Property are permitted only with prior written approval from DISTRICT and are limited in frequency to twelve (12) times per year. GRANTOR may request DISTRICT approval for individual events or for a series of planned events. All Special Events must be consistent with the terms of this Easement, must not result in any permanent alteration of the Property, and must not have any detrimental impact on its Conservation Values.

5.3.4 Cultural Resource Protection and Use. GRANTOR may engage in activities to preserve and protect the cultural resources of the Property in accordance with sound, generally accepted conservation practices. GRANTOR may also, to the extent consistent with the terms of this Easement, allow use of the Property for tribal stewardship and cultural activities, including but not limited to tending, gathering, harvesting, foraging, or celebrating resources of cultural significance in coordination with the culturally affiliated tribe(s) in the area.

5.3.5 Commercial. GRANTOR may use the Property for the following commercial uses and activities:

a) *Recreation and Education Fees.* With prior written notice to DISTRICT, GRANTOR may charge a fee to cover actual and reasonable costs directly associated with permitted recreational and educational programs and use of the Property. DISTRICT reserves the right to request, and GRANTOR shall provide, documentation of such costs. GRANTOR may host concessions related to permitted recreational and educational uses such as bicycle rentals farmers markets (weekly or seasonal), mobile food vendors, temporary vendor kiosks, and other small-scale concessions. Special Events permitted by *Section 5.3.3 (Special Events)* may be conducted for fundraising purposes.

b) *Leases and Rentals.* Leases or rentals for recreational and educational uses as defined in this *Section 5.3*, including leases or rentals for vendor stalls, concession pads, and designated plaza spaces.

c) *Ancillary.* With prior written approval from DISTRICT, GRANTOR may engage in other minor recreational and educational commercial uses found to be consistent with Conservation Values of this Easement. Permitted activities include charging vendor stall fees, renting plaza and stage areas, and related concessions.

**5.4 Structures and Improvements.** GRANTOR may repair, replace, construct, place, and maintain structures and improvements on the Property only as provided in this *Section 5.4*. No structure or improvement shall be constructed or placed except as described in a Plan developed in accordance with *Section 5.1.8 (Plans)* and *Section 6.8 (Plan)*, unless such structure or improvement is expressly permitted under this Easement without any notice to or approval from DISTRICT, or unless such structure or improvement is otherwise approved in writing by DISTRICT. At no time shall structures and improvements existing on the Effective Date, or constructed thereafter pursuant to *Section 5.4.1 (Maintenance, Repair, or Replacement of Structures and Improvements)* through *Section 5.4.8 (Signs)* cumulatively cover more than the amount of developed surfaces proposed for in the Plans referenced in *Section 5.1.8 (Plan)*, unless otherwise approved by

DISTRICT in an updated Plan. This limitation does not include areas planted with gardens, raised or other planting beds, landscaping, grass, or other vegetation permitted under this Easement. Furthermore, no structure or improvement shall exceed twenty-five (25) 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 Effective Date 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 from DISTRICT is 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 (Structures and Improvements for Recreational and Educational Uses)* through *5.4.8 (Signs)*.

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

a) Benches, drinking fountains, refuse and recycling containers, raised bed plantings, bike racks, lending library, landscaping elements, picnic area improvements, and other similar minor improvements, without any notice to or approval from DISTRICT.

b) Paved or permeable trails and pathways (including crossings), restrooms, lighting, public art, play structures, concession stands, gazebo, pergola, tent, covered storage, maintenance shed and other similar improvements with prior written approval from DISTRICT.

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

5.4.4 Public Parking and Access Roads and Sidewalks. With prior written approval from DISTRICT, GRANTOR may construct reconstruct, and expand access including parking, roads, or sidewalks provided they are (i) directly required for uses and

activities allowed herein; (ii) the minimum necessary for such uses and activities; and (iii) are sited to minimize impacts to Conservation Values and (iv) do not exceed the amount of developed surfaces proposed for in the Plans referenced in *Section 5.1.8 (Plan)*, unless otherwise approved by DISTRICT in an updated Plan.

5.4.5 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 5.1.5 (Duty to Prevent Waste, Nuisance, and Trespass)*. All fencing and gates must (i) preserve the scenic values of the Property; (ii) be the minimum necessary in design and extent. Whether existing on the Effective 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 5.4.5*. In the event any fence or gate, or portion thereof, becomes obsolete or unnecessary for the uses described in this *Section 5.4.5*, GRANTOR shall remove such fencing or gate from the Property.

5.4.6 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, 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 provided such facilities are designed, constructed, and maintained in a manner that minimizes impacts to the Conservation Values. With prior written approval from DISTRICT, GRANTOR may install or allow installation of underground conduits for water, gas, sanitation, electricity and other utilities associated with and necessary for permitted uses and activities on the Property or for offsite development consistent with the City of Santa Rosa's General Plan, as updated and amended from time to time, or for water supply or sanitation purposes, so long as such installation has no significant adverse impact on the Conservation Purpose of the Easement. The installation of any underground utilities shall be constructed and maintained in the least intrusive manner feasible and any damage done during said installation or maintenance shall be promptly repaired and the Property restored. The existing underground storm water retention system is specifically approved as a permitted utility, and its operations and maintenance requirements under the Declaration of Covenants regarding the Maintenance of Stormwater BMP (Best Management Practices) facilities are pre-approved by District, provided no permanent above ground changes are implemented. Any permanent above ground change to the system affecting scenic conservation values of the Property must be pre-approved by District. Electric power and communication utilities may serve off-site use if associated

improvements are located on a permitted structure and do not cause such structure to exceed size and height limitations.

5.4.7 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. No Plan is required for Public Safety Systems. Public Safety Systems do not include telecommunications facilities designed for use by the general public, such as commercial cell phone towers or antennae, which are subject to the provisions of *Section 5.4.6 (Utilities and Energy Resources)*.

5.4.8 Signs. GRANTOR may construct or place signs as set forth in this *Section 5.4.8*.

a) Without prior written notice to or approval from DISTRICT, GRANTOR may construct or place 2 signs not to exceed forty-five (45) square feet in size to identify the Property from public roadways.

b) Without prior written notice to or approval from DISTRICT, GRANTOR may construct or place signs not to exceed thirty-two (32) square feet in size to acknowledge participation of funding agencies for permitted uses on the Property. 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; (ii) provide directional, interpretive and educational information; and (iii) set forth park and/or local area rules or regulations applicable to use of the park, provided that the size and number of such signs shall be limited to that which is reasonably necessary to accomplish the permitted uses herein, and further provided that such signs are sited and constructed in a manner that does not create a significant visual impact.

c) 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 minimizes impacts to the Conservation Values.

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

5.5.1 Surface Alteration. Alteration of the contour of the Property in any manner whatsoever is prohibited, including excavation, removal or importation of soil, sand, gravel, rock, peat, or sod, except as reasonably necessary in connection with the uses, structures, and/or improvements allowed under *Section 5 (GRANTOR's Restricted Rights)* of this Easement or as allowed in any DISTRICT approved Plan. In connection with allowed uses, structures, and/or improvements, movement of over fifty (50) cubic yards of material in any calendar year is subject to prior DISTRICT approval.

5.5.2 Water Resources. Draining, filling, dredging, diking, damming, or other alteration, development, or manipulation of watercourses, subsurface water, springs, ponds, and wetlands is prohibited except as reasonably necessary in connection with (i) the maintenance, replacement, development, and expansion of water storage and delivery systems allowed under *Section 5.4.6 (Utilities and Energy Resources)*, (ii) reconstruction, expansion, and new construction of roads or trails allowed under *Sections 5.4.3 (Structures and Improvements Accessory to Natural Resource Protection)* and *5.4.2 (Structures and Improvements for Recreational and Educational Uses)*, respectively; and (iii) the preservation, restoration, and enhancement of natural resources allowed under *Section 5.5.5 (Natural Resource Preservation, Restoration, and Enhancement)*.

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

5.5.4 Vegetation and Fuel Management. GRANTOR may undertake vegetation and fuel management activities to reduce wildfire risk as provided in this *Section 5.5.4* and pursuant to *Section 5.5.6 (Native Tree Removal)* and *Section 5.5.7 (Native Vegetation Removal)*. 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.

5.5.5 Natural Resource Preservation, 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. All such activities must be undertaken pursuant to a Management Plan/Master Plan as described in *Section 5.1.8 (Plans)*.

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 5.5.5 (Natural Resource Preservation, Restoration, and Enhancement)* of this Easement. Native trees removed pursuant to this *Section 5.5.6* may be used for personal firewood. 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.

5.5.7 Native Vegetation Removal. Removal or destruction of any native non-tree vegetation is prohibited, except as reasonably necessary (i) within footprint of permitted structures and improvements; (ii) to control insects and disease; (iii) to prevent personal injury and property damage; (iv) for the purpose of fire management, in accordance with *Section 5.5.4 (Vegetation and Fuel Management)*; (v) for cultural uses in accordance with *Section 5.3.5 (Cultural Resource Protection and Use)* (vi) for natural resource preservation, restoration and enhancement, as set forth in *Section 5.5.5 (Natural Resource Preservation, Restoration, and Enhancement)* and (vii) for permitted landscaping and gardening.

5.5.8 Native Animal Removal. Killing, hunting, trapping, injuring, or removing native animals is prohibited except (i) under imminent threat to human life or safety; (ii) for cultural uses in accordance with *Section 5.3.5 (Cultural Resource Protection and Use)*; and (iii) as reasonably necessary natural resource preservation, restoration, and enhancement activities in accordance with *Section 5.5.5 (Natural Resource 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. GRANTOR may remove or control non-native plant and animal species, provided that techniques used minimize harm to native wildlife and plants and are in accordance with sound, generally accepted conservation practices.

5.5.10 Off-road Motorized Vehicle Use. Use of motorized vehicles off roadways driveways, and parking areas is prohibited, except for the minimum necessary in connection with permitted construction, maintenance, emergency access, and property management activities and to provide opportunities for members of the public with disabilities who require motorized equipment to access the Property and its features.

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

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

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

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

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

**5.7 Easements.** GRANTOR may 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 of 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 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, 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 6.7*. 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)*.

**6.8 Plan.** Any Plan, as defined by *Section 5.1.8 (Plan)*, along with updates and amendments (collectively for purposes of this section, "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, pursuant to *Section 6.8.4 (Updates to Plans)*.

**6.8.1 Review of Plans.** Grantor shall not commence any activity or use for which this Easement requires a Plan, unless and until DISTRICT approves a Plan pursuant to *Section 6 (Notice and Approval Procedures)* 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 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, the existing Property condition, schedule, location, extent of the proposed use or activity, best management practices to be followed, and steps taken to avoid or minimize impacts to the Conservation Values. For Plans that include site development, the Plan must identify structures, parking lots, roads, paths, trails, gardens, and other improvements planned for the Property.

6.8.3 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.

6.8.4 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)*. DISTRICT shall only approve an updated Plan if it includes a similar amount of developed surfaces as approved in Plans referenced in *Section 5.1.8 (Plan)*.

## **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 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. Except as otherwise provided in *Section 8 (GRANTOR's Indemnity)*, 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 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 (i) injury to or the death of any person, or physical damage to any property resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, except to the extent that such damage, liability, claim or expense is the result of the gross negligence or intentional misconduct of DISTRICT; (ii) the obligations specified in *Section 7 (Costs and Liabilities Related to the Property)*; and (iii) 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 (G23 Date) 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.

10.1.1 DISTRICT's notice to GRANTOR shall contain a general description of the condition claimed by DISTRICT to be a violation and shall contain a reasonable and specific cure period by which the violation is to cease and the Property is to be restored to the condition that existed prior to the violation. The notice shall be provided in accordance with *Section 13 (Notices)*.

10.1.2 If DISTRICT reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values protected by this Easement, DISTRICT (i) may pursue any and all remedies available under law without waiting for the cure period to expire; (ii) 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 (iii) shall have the right to record a notice of violation in the Office of the Sonoma County Recorder.

10.1.3 DISTRICT's rights under this *Section 10* shall apply equally in the event of either actual or threatened violations of the terms of this Easement.

10.1.4 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.

10.1.5 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, 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 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* 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 *Section 10 (Remedies for Breach)*, 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 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 *12.3 (Property Interest and Fair Market Value)*. 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 50% and DISTRICT 50%, 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:               Sonoma County Community Development Commission  
                                  141 Stony Circle, Suite 210  
                                  Santa Rosa, CA 95401

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 13.1*.

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

13.2.1 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 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.

**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)* of this Easement, 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.

**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.

**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: SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION

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

Michelle Whitman, Executive Director

DISTRICT:

SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE

DISTRICT

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

Rebecca Hermosillo, President of the Board of Directors

ATTEST:

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

Noelle Francis, Deputy Clerk of the Board of Directors

NOTE: ACKNOWLEDGMENTS MUST BE ATTACHED FOR ALL SIGNATORIES.

Exhibit A: Legal Description

Exhibit B: Project Structure Map

Certificate of Acceptance

**EXHIBIT A**  
**Legal Description**

**The land referred to is situated in the County of Sonoma, City of Santa Rosa, State of California, and is described as follows:**

**Remaining Lands, as shown on the Map of Roseland Village Phase 2, filed September 16, 2025, in Book 861 of Maps, Pages 25-30, inclusive, Sonoma County Official Records.**

**Sonoma County Assessor Parcel Number: APN 125-111-057**

DRAFT



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

TIERRA DE ROSAS PUBLIC PLAZA  
RECREATION CONSERVATION COVENANT  
(California Civil Code §§815 *et seq.*)

THIS AGREEMENT is entered into by and between the SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT, a public agency formed pursuant to the provisions of Public Resources Code sections 5500 *et seq.* (the "District") and Sonoma County Community Development Commission, a Commission of the County of Sonoma, a public body, corporate and politic of the State of California, its successors and assigns and those claiming under it ("Owner").

*Recitals*

A. The District was formed for the purpose of preserving open space in the County of Sonoma and is funded by a voter approved sales tax, the expenditure of which is directed and limited by the Sonoma County Agricultural Preservation & Open Space 2006 Expenditure Plan ("the 2006 Expenditure Plan" or "Plan") adopted as part of the Sonoma County Open Space,

Clean Water and Farmland Protection Measure (Sonoma County Ordinance No. 5677R).

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

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

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

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

*Agreement*

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

1. *The Covenant.* Owner hereby conveys to the District a recreation conservation covenant (“Covenant”) within the meaning of Restatement Third, Property (Servitudes) §1.6(1) and pursuant to the authority of Civil Code §§815 *et seq.* and the common law of California, to assure that the Property will be continuously used, maintained and operated by Owner and its successors in interest as a public park and open space preserve in perpetuity, available to the public for low-intensity public outdoor recreation and educational uses in a manner consistent with the Conservation Easement and the provisions herein.

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

A. Owner hereby agrees to use, operate and maintain the Property as a public park and open space preserve in perpetuity, available to the public for low-intensity outdoor public recreation and educational uses in a manner consistent with the Conservation Easement and the provisions herein. Such use, operation, and maintenance of the Property as a public park and open space preserve shall commence no later than ninety (90) days from the date of recordation of this Covenant and shall include, at a minimum, general availability of the Property for , public access and public recreation, no less than six hours per day, seven days per week, except as otherwise provided in Section 5.6 of the Conservation Easement (Public Access Limitations).

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

C. If a Plan is prepared and approved pursuant to Sections 5.1.8 and 6.8 of the Conservation Easement, Owner's use, operation and maintenance of the Property as a public park and open space preserve shall be in accordance with such Plan.

### 3. *Enforcement.*

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

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

C. Enforcement of the obligations created by this Covenant shall be at the sole

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

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

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

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

(iii) In no case shall liquidated damages exceed \$45,000, as adjusted for inflation from the date of recordation of this Covenant, for any single breach.

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

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

F. Nothing contained in this Paragraph 3 shall be construed to entitle the District to bring any action against Owner for any failure to perform resulting from causes beyond Owner's control, including, without limitation, wildfire, flood, storm, and earth movement, or from any prudent action taken by Owner under emergency conditions to prevent, abate, or

mitigate a failure to perform resulting from such causes, so long as such action, to the extent that Owner has control, is designed and carried out in such a way as to further the purpose of this Covenant.

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

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

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

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

8. *Covenant to Bind Successors.* This Covenant shall be a burden upon and shall continue as a restrictive covenant and equitable servitude running in perpetuity with the Property and shall bind Owner and its successors in interest, including but not limited to purchasers at tax sales, assigns, and all persons claiming under them forever. The parties intend that this Covenant shall benefit and burden, as the case may be, their respective successors, assigns, heirs, executors, administrators, agents, officers, employees, and all other persons claiming by or through them pursuant to the common and statutory law of the State of California. Further, the parties agree and intend that this Covenant creates an easement encompassed within the meaning of the phrase "easements constituting servitudes upon or

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

[SIGNATURES AND ACKNOWLEDGEMENTS]

IN WITNESS WHEREOF, OWNER has executed this Recreation Conservation Covenant this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

OWNER:  
SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION

By: \_\_\_\_\_  
Name: Michelle Whitman  
Title: Executive Director  
Sonoma County Community Development Commission

ATTEST:  
  
\_\_\_\_\_

DISTRICT:  
SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT

By: \_\_\_\_\_  
Rebecca Hermosillo, President of the Board of Directors

ATTEST:

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Noelle Francis, Deputy Clerk of the Board of Directors

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

Exhibit A: Legal Description

DRAFT

**Exhibit A**  
**Legal Description**

**The land referred to is situated in the County of Sonoma, City of Santa Rosa, State of California, and is described as follows:**

**Remaining Lands, as shown on the Map of Roseland Village Phase 2, filed September 16, 2025, in Book 861 of Maps, Pages 25-30, inclusive, Sonoma County Official Records.**

**Sonoma County Assessor Parcel Number: APN 125-111-057**

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

**IRREVOCABLE OFFER OF DEDICATION**

(Public Resources Code §5565.5)

FOR VALUABLE CONSIDERATION, the SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION (“Owner”) hereby grants and makes to the SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT, a governmental agency formed pursuant to the provisions of Public Resources Code Section 5506.5, (“District”) an irrevocable offer of dedication of the fee interest in the real property (the “Property”) that is located in the City of Santa Rosa and is more particularly described in Exhibit “A” attached hereto and incorporated herein as though fully set forth. This offer may be accepted by the District at any time that its Board of Directors determines, in its sole discretion, that there exists an uncured material breach of that certain Tierra de Rosas Public Plaza Recreation Conservation Covenant, which Covenant has been recorded by Owner

in favor of District on the same date as this Irrevocable Offer of Dedication is recorded with the Office of the Sonoma County Recorder.

This Irrevocable Offer of Dedication shall run with the land and shall be binding upon the Owner and all assigns, grantees, successors, transferees and/or heirs of the Owner.

[THIS AREA IS LEFT BLANK INTENTIONALLY.]

IN WITNESS WHEREOF, OWNER has executed this Irrevocable Offer of Dedication this day of \_\_\_\_\_, 2026.

OWNER:  
SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION

By: \_\_\_\_\_  
Name: Michelle Whitman  
Title: Executive Director

ATTEST:

\_\_\_\_\_  
Noelle Francis, Deputy Clerk of the Board

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

Exhibit A: Legal Description

**EXHIBIT A**  
**Property Legal Description**

**The land referred to is situated in the County of Sonoma, City of Santa Rosa, State of California, and is described as follows:**

**Remaining Lands, as shown on the Map of Roseland Village Phase 2, filed September 16, 2025, in Book 861 of Maps, Pages 25-30, inclusive, Sonoma County Official Records.**

**Sonoma County Assessor Parcel Number: APN 125-111-057**