

When Recorded Mail To:
MARIN AGRICULTURAL LAND TRUST
P.O. Box 809
Pt. Reyes Station, CA 94956
Telephone: (415) 663-1158

**DEED OF AGRICULTURAL CONSERVATION EASEMENT
(WITH PROVISIONS LIMITING OWNERS' USES)**

THIS DEED OF AGRICULTURAL CONSERVATION EASEMENT ("Easement") is made by _____ ("Original Grantor" or "Owner"), to MARIN AGRICULTURAL LAND TRUST, a California nonprofit public benefit corporation ("Holder"). Original Grantor or Owner and Holder are sometimes referred to individually as a "Party" or collectively as the "Parties." The term "Original Grantor" refers to the Original Grantor of this Easement, and the term "Owner" refers both to the Original Grantor and to all subsequent owners no matter how they may come to own part or all of this Property. See also Section 27(g) [General Provisions] below. The Effective Date of this Easement is the date upon which this Easement is recorded in the Official Records of the County of Marin.

RECITALS:

A. Original Grantor is the sole owner in fee simple of that certain real property in Marin County, California, comprising County of Marin Assessor's Parcel Numbers _____, which consists of approximately _____ acres of land and is more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property"); and

B. Holder is a publicly-supported, tax-exempt nonprofit organization qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code ("Code"), whose primary purpose is the preservation, protection, and enhancement of agricultural land in Marin County, California and its associated open space, natural resource and scenic values; and

C. The Property possesses significant agricultural and associated open space, natural resource and scenic values of great importance to Original Grantor,

the people of Marin County, the people of the State of California and the people of the United States; and

D. Owner and Holder intend that the Property be maintained in agricultural production by the maintenance of the agricultural values thereof and that the open space, natural resource and scenic values of the Property be preserved by the continuation of agricultural and ranching uses, which have proven historically compatible with such values, and by adherence to the restrictions and other provisions of this Easement, including, without limitation, creek conservation area and agricultural management plans; and

E. The area in which the Property is located, including the Property, is subject to significant pressure to develop non-agricultural uses, including without limitation, large-lot residential development. The termination of development rights resulting from the creation of this Easement will provide a long-term opportunity to continue agricultural operations on the site, to support the regional agricultural economy, and to conserve and keep available for future production the valuable soils present on the site. A primary purpose of this Easement is to protect the agricultural soils, agricultural viability, and the agricultural productive capacity of the Property. While this Easement may be supplemented and its conservation value enhanced by the establishment of other agricultural conservation easements in the area the Parties recognize that this Easement stands on its own and does not require the creation of any other easement to provide the benefits for which this Property is being restricted; and

F. The protection of the Property is consistent with the State of California's public policy favoring the preservation of agricultural lands and their resources. The state's public policies are set forth in a number of statutes of which the following are only a sample: California Civil Code Section 815 states that: "The legislature finds and declares that the preservation of land in its natural, scenic, agricultural, historical, forested or open-space condition is among the most important environmental assets of California." California Government Code Section 51220 [Williamson Act] states, among other findings as to the significant public benefit of preserving agricultural lands, "that the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future residents of this state and nation," "that agricultural lands have a definite public value as open space" and "that the discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest." California Food and Agriculture Code

Section 821 states that one of the major principles of the State's agricultural policy is "to sustain the long-term productivity of the State's farms by conserving and protecting the soil, water, and air, which are agriculture's basic resources"; and

G. The County of Marin supports the protection and preservation of agricultural land uses, agricultural land, and open land through goals and implementing programs as expressed in the Natural Systems & Agriculture Element of the Marin Countywide Plan adopted November 6, 2007, including, *inter alia*, the preservation of agricultural lands and resources by agricultural conservation easements (Goal AG-1 – Policy AG-1.2 and Implementing Programs AG-1.d and AG-1.1). Further, Marin County has enacted a Right-to-Farm ordinance, Marin County Code Chapter 23.03, the policy of which is to "conserve, protect, enhance and encourage agricultural operations within the county" and upholding the Right-to-Farm ordinance is one of the Implementing Programs of the Goals of the Countywide Plan (AG-1.j). (See also Cal. Civ. Code section 3482.5); and

H. Original Grantor intends, as owners of the Property, to convey to Holder the right to preserve and protect in perpetuity the agricultural values, and to the extent consistent with agricultural values, the open space, natural resource, and scenic values of the Property as set forth below in this Easement; and

I. Holder intends, by acceptance of the grant made hereby, forever to honor the intentions of Original Grantor to preserve and protect in perpetuity the agricultural, open space, natural resource, and scenic values of the Property as set forth below in this Easement; and

J. Holder is authorized to hold this Easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Holder is (i) a tax exempt nonprofit organization qualified under Section 501(c)(3) of the Code, and qualified to do business in California; (ii) a "qualified organization" as defined in Section 170(h)(3) of the Code, and (iii) an organization that has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in their natural, scenic, agricultural, forested, or open space condition or use; and

K. As certified by a resolution of its Board of Directors, Holder accepts the responsibility of enforcing the terms of this Easement, including, without limitation, monitoring the uses and practices on the Property to determine whether they are consistent with this Easement, and enforcing the terms of this Easement and upholding its purposes forever;

NOW, THEREFORE, for good and valuable consideration and in consideration of the foregoing Recitals and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of California including, *inter alia*, Sections 815-816 of the California Civil Code, Original Grantor does hereby voluntarily grant to Holder, and Holder hereby accepts, an agricultural conservation easement in gross in perpetuity over the Property of the nature and character and to the extent herein set forth.

1. Purposes. Pursuant to the desires of the Parties and the governmental policies detailed in the Recitals above, this Easement is intended to enable and cause the Property to remain in Agricultural Uses (as defined in Section 2 (Agriculture) of **Exhibit B** attached hereto and by this reference incorporated herein) (a) by preserving and protecting in perpetuity its agricultural values, character, use and utility (collectively the “Agricultural Values”) (b) by requiring continuing Productive Agricultural Uses as defined in Section 5 (Mandatory Agriculture Provisions) below (c) by preventing any use or condition of the Property, or activity or practice thereon, that would significantly impair or interfere with its Agricultural Values, (d) by adherence to the Agricultural Management Plan (“AMP”) as specified in Section 5 (Mandatory Agriculture Provisions) and the Creek Conservation Area Management Plan (“CCAMP”) as specified in Section 8 (Creek Conservation Areas). To the extent that the preservation of other open space, natural resource and scenic values of the Property is consistent with such Agricultural Values, it is within the purposes of this Easement to protect those values. The Parties agree that the provisions of the AMP and CCAMP are consistent with the Agricultural Values. Those agricultural, open space, natural resource and scenic purposes are referred to collectively herein below as the “Purposes of this Easement.”

2. Affirmative Rights and Interests Conveyed. To accomplish the Purposes of this Easement, the following rights and interests are conveyed to Holder by this Easement:

(a) To identify, to preserve and to protect in perpetuity the Agricultural Values, including, without limitation, the agricultural productivity, vegetation, soil and water quality, and, to the extent consistent with those Agricultural Values, the open space, natural resource, and scenic values of the Property.

(b) To assure implementation of the AMP prepared and approved from time to time in accordance with Section 5 (Mandatory Agriculture Provisions) and

the CCAMP prepared and approved from time to time in accordance with Section 8 (Creek Conservation Areas).

(c) To enter upon, inspect, observe, and study the Property for the purposes of (i) identifying the current condition of the Property, the uses, practices and activities thereon and the baseline condition thereof; and (ii) monitoring annually, or more frequently if Holder deems it necessary or appropriate, the condition of the Property and the uses, practices and activities thereon to determine whether they are consistent with this Easement; and (iii) pursuant to Section 11 (Holder's Remedies) of this Easement, making determinations as to violations of this Easement and corrective actions. Such entry shall be permitted upon prior notice to Owner, and shall be made in a manner that will not unreasonably interfere with Owner's use and quiet enjoyment of the Property.

(d) To prevent any activity on, or use of, or practice on the Property that is inconsistent with the Purposes of this Easement, and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent condition, activity, use or practice. However, it is the intention of this Easement not to limit Owner's discretion to employ Owner's choices of farm and ranch uses and management practices so long as those uses and practices are consistent with the Purposes of this Easement and with the then current AMP and CCAMP.

(e) To erect and maintain a sign or other appropriate marker in a prominent location on the Property acceptable to Original Grantor, visible from a public road, bearing information indicating that the Property is protected by Holder and acknowledging the sources of Holder's funding for the acquisition of this Easement. The wording of the information shall be determined by Holder, but shall clearly indicate that the Property is privately owned and not open to the public. Holder shall be responsible for the costs of erecting and maintaining such sign or marker.

(f) To exercise such additional rights as may be reasonably necessary to effectuate the Purposes of this Easement.

3. Uses and Practices.

Holder and Owner intend that this Easement shall confine the uses of the Property to agriculture, residential use accessory to, incidental to, or in support of the agricultural use of the Property, and the other uses that are described herein. Examples of uses and practices that are consistent with the Purposes of this Easement and that are hereby expressly permitted, are set forth in **Exhibit B**

(Permitted Uses and Practices), attached hereto and incorporated herein by this reference. Examples of uses and practices that are inconsistent with the Purposes of this Easement, and that are hereby expressly prohibited, are set forth in **Exhibit C** (Prohibited Uses and Practices), attached hereto and incorporated herein by this reference. The uses and practices set forth in **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 Purposes of this Easement.

4. Baseline Data. In order to establish the present condition of the Property, Holder has examined the Property and prepared a report (the "Baseline Documentation Report") containing an inventory of the Property's relevant features, Agricultural Values and conditions, its improvements and some of its natural resources (the "Baseline Data"). The Baseline Documentation Report has been signed by Original Grantor and Holder, thus certifying that it represents accurately the condition of the Property at the Effective Date of this Easement. Original Grantor and Holder have copies of the report. A copy of the Baseline Documentation Report shall remain on file with Holder. The Parties intend that the Baseline Data shall be used by Holder to monitor Owner's future uses of the Property, the condition thereof, and activities and practices thereon. The Parties further agree that, in the event a controversy arises with respect to the condition of the Property or a particular resource thereof, the Parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy. The Parties recognize that changes in economic conditions, in agricultural technologies, in accepted farm and ranch management practices, and in the situations of Owner may result in an evolution of agricultural uses of the Property, provided such uses are consistent with this Easement and with the then current AMP and CCAMP. Holder acknowledges that Original Grantor's historical uses of the Property as of the Effective Date of this Easement that are known to Holder and reflected in the Baseline Documentation Report are consistent with the Purposes of this Easement unless and except to the extent that such uses are identified in the Baseline Documentation Report as being inconsistent with the Purposes of this Easement.

5. Mandatory Agriculture Provisions.

(a) Agricultural Use. Beyond the uses specifically permitted and prohibited, Owner and Holder agree that Owner, directly or through an operator or operators responsible to Owner, shall be, and continue to be, actively engaged in Productive Agricultural Uses of the Property. "Agricultural Uses" are defined in

Exhibit B, Section 2 (Agriculture). “Productive Agricultural Uses” are defined as a level of commercial Agricultural Uses appropriate to the agricultural capacity of the Property for the production, processing and sale of commercial animal products and/or agricultural crops.

(b) Agricultural Management Plan Purpose and Requirements. The purpose of an Agricultural Management Plan (“AMP”) is to describe a specific plan for the conduct of commercial Agricultural Uses and practices on the Property that meets the requirements for Productive Agricultural Uses of the Property, including, but not limited to, a description of the types of crops, number and kind of livestock, and seasons and areas of use, provisions for minimizing erosion and the transport of pollutants or sediment into creeks, and other material aspects of the Agricultural Uses and practices in sufficient detail to permit Holder to make an informed judgment as to the AMP’s reasonableness and consistency with local practices and the terms of this Easement. In preparing the AMP, Owner shall consult with a Certified Rangeland Manager (“CRM”) licensed by the State of California or an appropriate local agency resource management professional (a “Professional”) at Owner’s expense. Any AMP presented to Holder for approval shall be accompanied by a signed certification by such a CRM or Professional that such CRM or Professional has consulted with the Owner regarding the proposed AMP, has reviewed the proposed AMP and has determined that the proposed AMP meets the purpose and the requirements of an AMP as set forth in this Section 5(b).

(c) Initial Agricultural Management Plan. Prior to recordation of this Easement, Owner submitted and Holder approved an initial AMP for the Property. Owner shall implement and adhere to that AMP at all times unless and until updated with Holder’s approval.

(d) Agricultural Management Plan Implementation and Updates.

(i) After an AMP has been presented to Holder for approval and Holder has notified Owner of Holder’s approval of the AMP, Owner shall implement and adhere to the AMP at all times unless and until updated with Holder’s approval.

(ii) Owner shall update an existing approved AMP at least every ten (10) years or sooner in the event of proposed significant changes in the existing AMP or any change in the ownership of the Property. Prior to submitting an updated AMP for Holder’s approval, Owner shall consult with a CRM or Professional and have the CRM or Professional review the updated AMP and provide the certification required by Section 5(b) above.

(iii) Owner shall submit any proposed updated AMP accompanied by the signed certification by the CRM or Professional for consideration by Holder. Holder shall have forty-five (45) days from receipt of the updated AMP and CRM/Professional certification within which to review the proposal. Holder shall approve the updated AMP in writing if Holder, in its sole discretion, determines that it reasonably meets the purpose and requirements of Section 5(b) above.

(iv) Holder may waive the requirements in subsections 5d(ii) and (iii) for consultation with a CRM or Professional and any related certification if Holder determines that such consultation and certification is not necessary in the particular circumstances.

(v) In the event of a disagreement between Owner and Holder as to the conformity of the proposed updated AMP to the requirements of this Easement, Owner and Holder shall negotiate in good faith to resolve the disagreement. Pending resolution of any such disagreement, Owner shall continue to implement and adhere to the previously approved AMP. (vi) After notification of Holder's approval of an updated AMP, Owner shall implement and adhere to the updated AMP at all times unless and until further updated with Holder's approval.

6. Replacement of Owner with an Operator.

(a) Should Owner find that it cannot, or that it does not wish to, continue Productive Agricultural Uses of the Property as contemplated by the then applicable AMP and must cease, or wishes to cease, to engage actively in Productive Agricultural Uses of the Property according to that AMP, Owner may propose changes in the AMP that would enable Owner to carry on Productive Agricultural Uses of the Property. Owner and Holder shall work together in good faith to develop an alternative AMP that would enable the Owner to carry on Productive Agricultural Uses of the Property.

(b) If Owner has made the determination that it cannot, or does not wish to, continue itself carrying on Productive Agricultural Uses of the Property in accordance with the existing AMP and if Owner does not elect promptly to propose changes in the AMP or if Owner and Holder are unable to develop a mutually agreeable alternative AMP within a reasonable time (not to exceed two [2] months), then Owner shall in good faith promptly seek and retain an agriculture production operator ("Operator") to maintain Productive Agricultural Uses of the Property in accordance with this Section 5 and with **Exhibit B** (Permitted Uses and Practices) and the other terms of this Easement. Owner shall promptly use all

available means, including, without limitation, advertising, requests for proposals, and consultation with established Marin and Sonoma County farmers and organizations to obtain a Qualified Operator (defined below) who will actively engage in Productive Agricultural Uses of the Property. A Qualified Operator is a farmer with sufficient knowledge, experience and financial resources to carry on successful Productive Agricultural Uses of the Property in accordance with an approved AMP as required by this Easement. Should Owner be unsuccessful in obtaining a Qualified Operator within a reasonable period (not to exceed six [6] months), the Holder shall have the right to seek such an Operator subject to approval by Owner, which approval shall not be unreasonably withheld. Pending obtaining a Qualified Operator as set forth above, Owner shall continuously and diligently implement and adhere to the existing approved AMP.

(c) If it is necessary to retain a Qualified Operator as provided above, Owner agrees to enter into an agriculture production lease (“Lease”) with the selected Qualified Operator, subject to the terms of this Easement. The Operator/Lessee shall be allowed such use of the Property, including, without limitation, all land previously used for Productive Agricultural Uses, improvements such as roads, fencing and corrals, agricultural equipment, facilities and structures previously used for Productive Agricultural Uses, and water and power resources, as may reasonably be required to conduct the required Productive Agricultural Uses of the Property. The Lease shall have a duration sufficiently long (generally five [5] years or longer) to enable the Operator/Lessee reasonably to make the financial commitments and investments needed for successful Productive Agricultural Uses of the Property and shall provide for a fair and reasonable rental consistent with then prevailing commercial practice in Marin County. If Holder exercises its right to seek a Qualified Operator as set forth above and if Holder identifies such an Operator, and that Operator enters into a Lease with Owner, then Holder shall be entitled to recover all of its expenses, including all out-of-pocket expense and all expense of its staff time spent on seeking such Operator and arranging such Lease, as a first priority claim against all rentals payable under the Lease until Holder has recovered all such expenses. The Lease shall include provisions to this effect satisfactory to Holder. Any Lease must bind the Lessee to the terms of an AMP, which may be the existing AMP or may be a new AMP developed by the Operator/Lessee and approved by Holder in accordance with the provisions of Section 5 (Mandatory Agriculture Provisions). Owner shall make a copy of the proposed execution version of the Lease available to Holder for its review and approval to ensure its consistency with the terms of this Easement. The commencement and implementation of Productive Agricultural

Uses of the Property by the Operator/Lessee shall occur as soon as practicable after approval of the Lease by Holder and execution of the Lease.

(d) Owner may amend the AMP to reflect any changes made necessary by installation of the Operator/Lessee subject to Holder's approval following the process set forth in Section 5(b) (Agricultural Management Plan Purpose and Requirements) above if necessary.

(e) The process for installing an Operator/Lessee set forth above shall be carried out each time any Operator ceases for any reason to be carrying on Productive Agricultural Uses of the Property so that Owner either itself or through an operator is diligently and continuously carrying on Productive Agricultural Uses of the Property in perpetuity.

7. Holder's Rights to Enforce Mandatory Agricultural Use.

(a) Owner recognizes that a material portion of the consideration paid by Holder to Original Grantor was based on the commitment of Original Grantor that Original Grantor and its personal representatives, heirs, successors and assigns would be legally, morally and ethically bound to carry on Productive Agricultural Uses of the Property in perpetuity. Although a price was paid for that commitment, failure to fulfill that commitment would have far-reaching ramifications beyond money, not just for the Property, but for the farming community in which the Property exists and for the program to perpetuate agriculture in Marin County that Holder and the governmental funders of its program are pursuing in the county, state and national public interest. Holder's remedies at law for any material violation of Owner's commitment to carry on Productive Agricultural Uses as required by this Easement are inadequate, and Holder shall be entitled to specific performance of the commitment to carry on Productive Agricultural Uses as required by this Easement without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. This right is in addition to the right to injunctive relief, both prohibitive and mandatory, and such other relief to which Holder may be entitled. Holder's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(b) Original Grantor and all successor Owners, whether by purchase of the Property or any interest in the Property or otherwise, recognize that the provisions for mandatory agricultural use of the Property in this Easement were bargained and paid for and are entirely consistent with the public interest as

described in the Recitals to this Easement. In the event that Original Grantor or any successor Owner shall assert that some or all of the provisions for mandatory agricultural use set forth in this Easement are illegal or unenforceable under applicable law, then the rights and duties of the then Holder and Owner shall be as follows: the assertion of illegality or unenforceability shall be of no effect and the provisions for mandatory agricultural use shall continue in full force and effect unless and until a court of competent jurisdiction enters a final non-appealable judgment determining that that assertion is correct and therefore enters a judgment determining that some or all of the provisions for mandatory agricultural use set forth in this Easement are illegal or unenforceable under applicable law. In any such proceeding, the provisions of this Easement as to “Severability” set forth below in this Easement shall apply. If even after application of such Severability provisions, the requirement for mandatory agricultural use of the Property is materially impaired by the court’s determination, then upon entry of that final judgment, the then Owner shall be obligated to repay to Holder the full amount paid to Original Grantor at the time of grant of this Easement on account of the mandatory agricultural use provisions of this Easement (the “Repayment Principal”) together with interest at the legal rate from the date of this Easement to the date of repayment of the Repayment Principal. Any unpaid Repayment Principal plus interest shall be a lien on the Property superior to all other liens on the Property other than the lien of this Easement. Original Grantor and Holder agree that the full amount paid to Original Grantor at the time of grant of this Easement on account of the mandatory agricultural use provisions of this Easement was \$ ____.

8. Creek Conservation Areas.

(a) **Definition and Purpose.** Creek Conservation Areas or CCAs consist of buffer zones along certain natural watercourses on the Property and include the watercourse, banks, and areas on both sides extending from the top of both banks laterally outward not less than fifty (50) feet in width and includes supporting riparian vegetation associated with the creek. An additional setback distance may be required based on the results of the site assessment. All such natural watercourses currently on the Property are identified on **Exhibit D** (Map of the Creek Conservation Area) attached hereto and by this reference incorporated herein. Owner and Holder shall amend **Exhibit D** from time to time as necessary to accurately reflect changes in any such natural watercourses. The purpose of the CCA is to protect the water quality, soil and bank stability, and the vegetative cover adjacent to the watercourses.

(b) Creek Conservation Area Management Plan Purpose and Requirements. The purpose of the Creek Conservation Area Management Plan or CCAMP is to limit uses and practices on the Property that may degrade water quality, soil and bank stability, or vegetative cover within the CCA. The CCAMP establishes the CCA boundaries and describes and contains a schedule for implementation of agricultural practices within the CCA, including, but not limited to, the following: season of use, number and kind of livestock, and location of watering sources. Further, the CCAMP includes provisions for minimizing the transport of pollutants or sediment to creeks from fields receiving manure or compost, retention ponds, dairy buildings, loafing barns, feed lots, other animal confinement facilities, and/or animal congregation areas. Implementation of any activities specified in the initial CCAMP or any amended or updated CCAMP must be consistent with all applicable laws, with permitted Agricultural Uses, and with the Purposes of this Easement and shall incorporate practices and measures that prevent uses or activities prohibited by this Easement in the CCA (see **Exhibit C** [Prohibited Uses and Practices] Section 12 [Creek Conservation Areas]).

(c) Initial CCAMP. Prior to recordation of this Easement, Owner submitted and Holder approved an initial CCAMP for the Property. The initial CCAMP was accompanied by a signed certification by a CRM or a Professional (as defined above) that such CRM or Professional had consulted with Owner regarding the CCAMP, had reviewed the CCAMP and had determined that the CCAMP met the purpose and requirements of a CCAMP as set forth in Section 8(b).

(d) CCAMP Implementation and Updates.

(i) Owner shall implement and adhere to the initial CCAMP at all times unless and until updated with Holder's approval and provided always that such implementation is consistent with the Purposes of this Easement.

(ii) Owner shall update an existing approved CCAMP at least every ten (10) years or sooner in the event of significant changes within the CCA or in the use, management, or ownership of the Property. Prior to submitting an updated CCAMP for Holder's approval, Owner shall consult with a CRM or Professional and have the CRM or Professional review the updated CCAMP and provide the certification described in Section 8(c) above.

(iii) Owner shall submit any proposed updated CCAMP accompanied by the signed certification by the CRM or Professional for consideration by Holder. Holder shall have forty-five (45) days from receipt of the

updated CCAMP and CRM/Professional certification within which to review the proposal. Holder shall approve the updated CCAMP in writing if Holder, in its sole discretion, determines that it reasonably meets the purpose and requirements of Section 8(b) above.

(iv) Holder may waive the requirements in subsections 8d(ii) and (iii) for consultation with a CRM or Professional and any related certification if Holder determines that such consultation and certification is not necessary in the particular circumstances.

(v) In the event of a disagreement between Owner (or the applicable certifying CRM or Professional) and Holder as to the conformity of the proposed updated CCAMP to the purpose and requirements of Section 8 (b) above, Owner and Holder shall negotiate in good faith to resolve the disagreement. Pending resolution of any such disagreement, Owner shall continue to implement and adhere to the previously approved CCAMP.

(vi) After notification of Holder's approval of an updated CCAMP, Owner shall implement and adhere to the updated CCAMP at all times unless and until further updated with Holder's approval.

(vii) Holder's participation in any development and/or update of a CCAMP or Holder's express or implied approval of any feature of the initial or any updated CCAMP shall not preclude Holder's subsequent objection to any use or management of the Property, whether or not permitted by the initial or any updated CCAMP, that is inconsistent with the Purposes of this Easement.

9. Reserved Rights. Owner reserves all rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the Purposes of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved: (a) all right, title, and interest in and to all tributary and non-tributary water, water rights, and related interests in, on, under, or appurtenant to the Property, provided that such water, water rights and related interests are used on or for the benefit of the Property in a manner consistent with the Purposes of this Easement and in accordance with applicable law and Section 12 (Creek Conservation Areas) of **Exhibit C** (Prohibited Uses and Practices) of this Easement; and (b) all right, title, and interest in and to all subsurface oil, gas, gravel and minerals; provided that the manner of exploration for, and extraction of any oil, gas, gravel or minerals shall be consistent with the requirements of Section 11 (Surface Alteration or Excavation) and 12 (Creek Conservations Areas) of **Exhibit C**, and shall be only by a subsurface method, shall be limited and localized, shall not be inconsistent

with the Purposes of this Easement, shall be in accordance with applicable law, and shall be approved by Holder prior to its execution. No such exploration or extraction shall be permitted unless Owner demonstrates to the reasonable satisfaction of Holder that Owner will be able (including having all reasonably necessary financial and physical resources) to restore all areas to be disturbed by the exploration and extraction to their original state. After any exploration and/or extraction of subsurface oil, gas, gravel or minerals, Owner shall restore all disturbed areas to their original state pursuant to a plan approved in writing by Holder.

10. Mediation. If a dispute arises between the Parties concerning the consistency of any proposed use, practice or activity with the Purposes of this Easement, and Owner agrees not to proceed with the use, practice or activity pending resolution of the dispute, either Party may refer the dispute to mediation by request made in writing upon the other. Within thirty (30) days of the receipt of such a request, the Parties shall select a single trained and impartial mediator. If the Parties are unable to agree on the selection of a single mediator, then the Parties shall, within forty-five (45) days of receipt of the initial request, jointly apply to the American Arbitration Association for the appointment of a trained and impartial mediator with relevant experience in real estate and conservation easements. Mediation shall then proceed in accordance with the following guidelines:

(a) **Purpose.** The purpose of the mediation is to: (i) promote discussion between the Parties; (ii) assist the Parties to develop and exchange pertinent information concerning issues in the dispute; and (iii) assist the Parties to develop proposals that will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the covenants, terms, conditions, or restrictions of this Easement.

(b) **Participation.** The mediator may meet with the Parties and their counsel jointly or ex parte. The Parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the Parties with settlement authority will attend mediation sessions as requested by the mediator.

(c) **Confidentiality.** All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the Parties or their respective counsel. The mediator shall not be subject to subpoena by any Party. No statements made or documents prepared for mediation

sessions shall be disclosed in any subsequent proceeding or construed as an admission of a Party.

(d) Time Period. Neither Party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of the selection or appointment of a mediator or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in mutually agreeable resolution of the dispute.

(e) Costs. The cost of the mediator shall be borne equally by Owner and Holder; the Parties shall bear their own expenses, including attorney's fees, individually.

11. Holder's Remedies. If Holder determines that Owner may be in material violation of the terms of this Easement or that a violation is threatened, Holder shall have the right to inspect the Property to determine whether there is or may be such a violation. If Holder determines that Owner is in violation of the terms of this Easement or that a violation is threatened, and Holder wishes to require Owner to cease and/or remedy any such violation or threatened violation, Holder shall give written notice to Owner of such violation or threatened violation and demand corrective action sufficient to cure or avoid the violation and/or, where the violation involves injury to the Property resulting from any condition, use, practice or activity inconsistent with any of the Purposes of this Easement, to restore the portion of the Property so injured. If Owner fails to cure the violation within thirty (30) days after receipt of notice thereof from Holder, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails promptly to begin curing such violation within the thirty (30) day period, or if Owner fails to continue diligently to cure such violation until finally cured, Holder may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation or threatened violation by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any of the Agricultural Values or open space, natural resource, or scenic values protected by this Easement, including damages for any loss thereof, and to require the restoration of the Property to the condition that existed prior to any such injury. If Holder, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to any of the Agricultural Values or open space, natural resource, or scenic values protected by this Easement, Holder may pursue its remedies under this Section without waiting for the period provided for cure to expire. Holder's rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Easement.

Owner agrees that Holder's remedies at law for any violation of the terms of this Easement are inadequate and that Holder shall be entitled to the injunctive relief described in this Section, both prohibitive and mandatory, in addition to such other relief to which Holder may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Holder's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including, without limitation, those set forth in Section 815.7 of the California Civil Code. The failure of Holder to discover a violation or to take immediate legal action with respect to any violation shall not bar Holder from taking such action at a later time.

11.1 Costs of Enforcement. Any costs incurred by Holder in enforcing any covenant, term, condition or restriction of this Easement against Owner, including, without limitation, costs of suit and reasonable attorneys' and experts' fees, consultation fees and any costs of restoration necessitated by Owner's violation of any covenant, term, condition or restriction of this Easement shall be borne by Owner. If Owner prevails in all material respects in any action to enforce any covenant, term, condition or restriction of this Easement, Owner's costs of suit, including, without limitation, reasonable attorneys' fees, shall be borne by Holder.

11.2 Holder's Discretion. Holder, in the reasonable exercise of its discretion, may forbear to exercise rights under this Easement. Any forbearance by Holder to exercise its rights under this Easement in the event of any breach of any covenant, term, condition or restriction of this Easement by Owner shall not be deemed or construed to be a waiver by Holder of any such covenant, term, condition or restriction or of any subsequent breach of the same or any other covenant, term, condition or restriction of this Easement or of any of Holder's rights under this Easement. No delay or omission by Holder in the exercise of any right or remedy upon any breach by Owner shall impair such right or remedy or be construed as a waiver of other or future violations.

11.3 Acts Beyond Owner's Control. Nothing contained in this Easement shall be construed to entitle Holder to bring any action against Owner for any injury to or change in the Property resulting from causes beyond Owner's control, including, without limitation, acts of God, such as flood, storm, and earth movement, or from any prudent action taken by Owner under emergency conditions to prevent, abate, or mitigate significant injury to any person or the Property resulting from such causes.

11.4 Acts of Third Parties.

(a) Acts with Owner's Authority. Owner shall be responsible for any injury to or change in the Property resulting from acts or omissions of persons acting on behalf of Owner, at Owner's direction or with Owner's permission or license, and Holder shall be entitled to proceed under Section 11 (Holder's Remedies) against Owner for events or circumstances of non-compliance with any covenant, term, condition or restriction of this Easement resulting from such acts or omissions.

(b) Acts without Owner's Authority.

(i) Owner shall not be responsible for injury to or change in the Property resulting from acts or omissions of third parties not covered by Section 11.4 (a) above.

(ii) Both Owner and Holder shall have the rights provided by Section 815.7 of the California Civil Code as well as all other rights and remedies existing at law or in equity to proceed against any third party damaging the Property or this Easement. Owner shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Property or that are otherwise inconsistent with the Purposes of this Easement.

(iii) Restoration Damages. As to any claims for money damages against such third parties, Owner shall have the primary right to proceed against third party wrongdoers for damages based on costs to restore the Property to its condition before the wrongful acts or omissions caused damage to the Property, and any damages recovered based on such costs to restore the Property shall be used, net of all legal fees and other litigation costs attributable to the claim for damages based on restoration costs, entirely for restoration of the Property to the maximum extent possible. If Owner elects not to proceed with any such claim against any such third party or if Owner pursues a claim but elects not to seek money damages based on restoration costs, Holder shall be entitled to pursue such claim and to seek such damages against such third parties, and if Holder so requests, Owner shall assign to Holder its rights to seek such money damages based on restoration costs. Any recovery of damages from such third parties based on restoration costs, after deducting all legal fees and other litigation costs attributable to the claim for damages based on restoration costs, shall be applied to restoration by Owner of the damage to the Property. Holder shall not be entitled to

carry out any such restoration, but if Holder has recovered money damages attributable to restoration costs, Holder shall pay over to Owner the damages received net of litigation expenses and Owner shall use such funds for restoration. Holder may require Owner to provide, at least annually, complete accountings for use of such funds.

(iv) Other Damages. If a third party's wrongful act or omission damages the Property in ways that cannot be remedied by restoration of the Property to its condition prior to the wrongful acts or omissions, each of the Parties may pursue its own claim for damage to its adversely affected property rights and shall be entitled to whatever damages are awarded on account of that damage. In the event of an award in such a proceeding for damages to the fee interest and to the property interest represented by this Easement which award does not specify how the award is to be allocated between Owner and Holder, the total proceeds, after deduction of each Party's litigation expenses, shall be divided in accordance with the proportionate values of Owner's and Holder's interests on the same bases as specified in Section 18 below (Compensation; Allocation between Owner and Holder).

12. Costs and Taxes; Liens; Enforceable Restriction.

(a) Owner shall pay before delinquency any and all taxes, assessments (general and special), fees and charges of whatever description levied or assessed by competent authority on the Property or on this Easement (collectively, "Taxes") and shall furnish Holder with satisfactory evidence of payment upon request. Holder retains the right, but not the obligation, to pay all such Taxes if not paid in a timely manner by Owner, and Owner shall promptly reimburse Holder for such payment upon Holder's request.

(b) Owner shall keep the Property free from any liens (other than a security interest that is expressly subordinated to this Easement on terms satisfactory to Holder), including those arising out of any obligations incurred by Owner for any labor or materials furnished or alleged to have been furnished to or for Owner at or for use on the Property.

(c) It is intended that this Easement constitute an enforceable restriction within the meaning of Article XIII, Section 8 of the California Constitution and that this Easement qualify as an enforceable restriction under the provisions of California Revenue and Taxation Code Sections 402.1(a)(8) and 423.

13. Owner Responsibility, Hold Harmless and Insurance; Environmental Responsibilities.

(a) Owner's Responsibility and Hold Harmless. Owner acknowledges that Holder has neither possessory rights in the Property nor any responsibility or right to operate, control, maintain, improve or keep up the Property. Owner has and shall retain all responsibilities and shall bear all costs and liabilities of any nature or kind related to the ownership, operation, upkeep, improvement, and maintenance of the Property. Owner hereby releases and agrees to hold harmless, indemnify and defend Holder and its members, funders, directors, officers, employees, legal representatives, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities (whether legal or equitable in nature), penalties, fines, fees, charges, costs, losses, damages, expenses, causes of action, suits, proceedings, actions, claims, demands, orders, judgments, sanctions asserted by or on behalf of any person or governmental authority, or administrative actions, including, without limitation, court costs and reasonable attorneys' and experts' fees and attorneys' fees on appeal, arising from or in any way connected with (1) injury to or the death of any person or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless, in the case of Holder, due solely to the gross negligence or willful misconduct of Holder or its employees; or (2) violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement by any person, other than Holder in any way affecting, involving, or relating to the Property; or (3) the obligations of Owner specified in Section 12 (Costs and Taxes; Liens; Enforceable Restriction). At the election of and upon written notice from Holder, Owner shall defend any such action or proceeding by counsel reasonably acceptable to Holder.

(b) Liability Insurance. Owner shall obtain and maintain at all times comprehensive general liability insurance against claims for personal injury, death, and property damage. Such insurance shall have coverage and limits of liability in amounts customary for agricultural operations in the area of the Property of a type and scale comparable to those operations on the Property and shall name Holder as an additional insured along with Owner. Such insurance shall include provisions for at least thirty (30) days advance notification to Holder prior to termination or expiration of the insurance coverage. Owner shall deliver to Holder certificates of such insurance coverage within ten (10) business days of Holder's written request

therefore. If Owner fails to keep required insurance in full force and effect, Holder may purchase replacement insurance with coverage and limits of liability deemed reasonable by Holder in its discretion, and Owner shall reimburse Holder for the cost of such coverage.

(c) Environmental Responsibilities.

(i) Owner Responsible for the Property. Owner is solely responsible, and Holder has no responsibility, for the operation of the Property, monitoring of hazardous or other conditions on it, or the protection of the Owner, the public or any third parties from risks related to conditions on the Property. Nothing in this Easement shall be construed as giving any right or ability to Holder to exercise physical or managerial control of the day-to-day operations of the Property or of Owner's activities on the Property. Neither Holder nor its agents, employees or contractors shall be liable to the Owner or any other person or entity in connection with consents given or withheld, or in connection with any entry upon, monitoring or other activity on the Property, pursuant to this Easement.

(ii) Owner's Environmental Warranty and Indemnity. Original Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws (defined below). Original Grantor represents and warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with, or any liability under any Environmental Law (defined below) relating to the operations or conditions of the Property. Original Grantor further represents and warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials (defined below) or wastes on the Property. Owner hereby promises to hold harmless, defend and indemnify the Indemnified Parties from and against all litigation, liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' and experts' fees and attorneys' fees on appeal, arising from or connected with any release or threatened release of Hazardous Materials or wastes on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Owner or by any other prior owner of the Property. Owner's indemnification obligation shall not be affected by any authorizations provided by Holder or any other Indemnified Party to Owner with respect to the Property or any restoration activities carried out with the permission or authorization of Holder or any other Indemnified Party.

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, the Owner agrees to take any steps that are required of the Owner with respect thereto under federal, state, or local law necessary to ensure its containment and remediation, including any cleanup.

This Easement is not intended to create environmental liability in Holder. Notwithstanding any other provision herein to the contrary, the Parties do not intend this Easement be construed such that it imposes on, creates in or gives the Holder:

(A) the obligations or liability of an “owner” or “operator” as those words are defined and used in any Environmental Laws, as defined below, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Section 9601 *et seq.*, and hereinafter “CERCLA”), or the Carpenter Presley Tanner Hazardous Substance Account Act, California Health and Safety Code Sections 25300-25395, or any other Federal, state, or local law or regulation making owners or operators of property responsible for remediation of contamination;

(B) the obligations or liability of a person described in 42 USC Section 9607(a)(3) or (4);

(C) the obligations of a responsible person under any applicable Environmental Laws,;

(D) the right to investigate and remediate any Hazardous Materials associated with the Property; or

(E) any control over Owner’s ability to investigate, remove, remediate, or otherwise clean up any Hazardous Materials associated with the Property.

The term “Hazardous Materials” includes, without limitation, (i) material that is flammable, explosive, or radioactive; (ii) any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution

or substance which may pose a present or potential hazard to human health or the environment; and (iii) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Hazardous Materials Transportation Act (49 USC Section 5101, et seq.), the Hazardous Waste Control Law (California Health and Safety Code Section 25100 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state, or local laws, ordinances, rules, or regulations now in effect or enacted after this date.

The term “Environmental Laws” includes, without limitation, any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect or any administrative agency statute, regulation, rule, ordinance, order or requirement now in effect or enacted after this date relating to pollution, protection of human health, the environment, or Hazardous Materials.

14. Access; Rights to Owner’s Rights of Way. No right of access by the general public to any portion of the Property is conveyed by this Easement. This Easement grants to Holder and its agents, employees and contractors certain rights to enter upon the Property for various purposes. Owner hereby confirms and grants to, Holder and its agents, employees and contractors the right in perpetuity to use Owner's easements and rights of way to pass from any and all public roads to the Property for any and all of the purposes for which this Easement permits those persons or entities to have access to and enter upon the Property. Owner shall not relinquish or otherwise adversely affect such easements and rights of way.

15. Development Rights. The Parties acknowledge that under currently applicable zoning regulations of the County of Marin the Property is so classified that upon receipt of required government approvals the Property could potentially be developed to a density of up to _____ add # _____ single family residential dwelling units (the “Development Rights”), and, further, that under certain circumstances the Development Rights may be transferred to and utilized on other property or properties. The Parties agree to deal with the Development Rights as follows:

(a) Owner retains one of the add # Development Rights associated with the Property. The Development Right retained by Owner shall apply and relate solely to the existing residential improvements on the Property as identified in the Baseline Documentation Report and any residential improvements and facilities that may be permitted by **Exhibit B**, Section 3 (Improvements and Facilities). Owner reserves the right to maintain, use, repair, and replace in substantially the same place the existing improvements on the Property with approval of appropriate governmental agencies and in conformity with Section 3 of **Exhibit B** and all other applicable provisions of this Easement.

(b) The Development Right retained by Owner shall not be used to support or enable the creation of any additional residential uses or units on the Property except as provided in Section 3 of **Exhibit B** (Improvements and Facilities). No structures built pursuant to this or any other provision of this Easement may be sold separately from the entire Property.

(c) The balance of the (add #) Development Rights associated with the Property, and any other development or similar rights that may be or become associated with the Property in the future, are hereby released, terminated, and extinguished. These development or similar rights may not be used on or transferred to any portion of the Property as it now or later may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

(d) Neither Owner nor Holder shall use or receive, and each hereby relinquishes, the benefit from any increase in allowable development or similar rights associated with the Property resulting from future zoning changes or otherwise. This Easement shall not create any development or similar rights.

16. Conveyance of Separate Parcels; Merger. Original Grantor acknowledges and represents that the Property currently consists of multiple Assessor's parcels (numbers _____), which under existing law and regulations might be sold or conveyed separately from one another as separate legal parcels. Owner agrees that the sale or conveyance of either parcel separate or apart from the other is inconsistent with the Purposes of this Easement. Therefore, Owner covenants and agrees:

(a) Owner will submit an application to the County of Marin for consolidation or merger of the Assessor's parcels of the Property into one legal

parcel, or pursue such other applicable legal restrictions so that no parcel may be separately sold or conveyed from the other.

(b) Whether or not the add # (#) Assessor's parcels are merged, Owner will not sell, exchange, convert, transfer, assign, mortgage or otherwise encumber, alienate or convey any such parcel separately or apart from the others, and Owner will at all times treat all parcels as a single integrated economic unit of property. Owner shall not apply for or otherwise seek recognition of additional legal parcels within the Property based on certificates of compliance or any other authority. The division, subdivision, defacto subdivision or partition of the Property, whether by physical, legal or any other process, is prohibited, and any sale or conveyance of any divided, subdivided or partitioned portion of the Property is prohibited.

17. Extinguishment.

(a) It is the intention of the Parties that the Purposes of this Easement shall be carried out forever as provided in Section 815.2(b) of the Civil Code. Liberal construction is expressly required for purposes of effectuating this Easement in perpetuity, notwithstanding conditions or hardship of any kind that could be asserted as a basis for termination of this Easement at law or in equity. Accordingly, Owner hereby affirmatively waives any and all rights that Owner may have now or in the future to request a non-judicial termination of this Easement.

(b) If circumstances arise in the future that render all of the Purposes of this Easement impossible to accomplish, this Easement may be terminated or extinguished, in whole or in part, on the initiative of Owner or Holder, but only by judicial proceedings in a court of competent jurisdiction. In the event of any such termination or extinguishment, Holder shall be entitled to full compensation, the amount of which shall be determined, unless otherwise provided by California law at the time, in accordance with Section 18 (Compensation; Allocation between Owner and Holder). Any such compensation shall be payable with interest at the legal rate until paid in full as a first-priority claim and lien on the proceeds otherwise payable to Owner from any sales, exchanges, or involuntary conversions of all or any portion of the Property subsequent to such judicially-ordered termination or extinguishment.

(c) No inaction or silence by Holder shall be construed as abandonment of the Easement. The fact that the Property is not in agricultural use, or that agricultural use is no longer possible, is not reason for termination or

extinguishment of this Easement so long as any of the Purposes of this Easement remains possible to accomplish. Other than pursuant to eminent domain or in lieu of eminent domain, no other voluntary or involuntary sale, exchange, conversion, transfer, assignment, lease, mortgage or other encumbrance, alienation or conveyance of any kind of all or part of the Property, or of any interest in it, shall limit or terminate or extinguish the provisions of this Easement.

18. Compensation; Allocation between Owner and Holder. As of the Effective Date of this Easement, an "Easement Percentage" is hereby defined and established as the ratio of the value of the Easement at the time of this grant to the value of the Property unencumbered by the Easement at the time of this grant. The value of the Property shall exclude any amounts attributable to improvements on the Property. For the purposes of defining the "Easement Percentage," Owner and Holder agree that the ratio of the value of the Easement to the value of the Property unencumbered by the Easement is add % This Easement Percentage shall remain constant.

This Easement constitutes a real property interest immediately vested in Holder. For the purpose of Sections 17 (Extinguishment) and 19 (Condemnation), the Parties stipulate and agree that the Easement shall have a fair market value determined as the greater of:

- (a) the fair market value of the Property affected by any termination or extinguishment, excluding the value of improvements on such Property, as though unencumbered by this Easement, at the time of any applicable termination or extinguishment, as determined by an appraisal prepared by a qualified appraiser acceptable to the Parties, multiplied by the Easement Percentage; or
- (b) the value of the Easement affected by any termination or extinguishment at the time of the applicable termination or extinguishment as determined by a qualified appraiser acceptable to the Parties.

Owner shall pay the cost of the appraisal. Nothing herein shall prevent Holder from having an appraisal prepared at its own expense.

19. Condemnation.

(a) Should all or part of the Property be taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate some or all of the covenants, terms, conditions or restrictions imposed by this Easement, Owner and Holder shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking as

well as all other payments to which the Parties may be entitled by law. All expenses incurred by Owner and Holder in such action shall be first paid out of the recovered proceeds. The total proceeds of such proceeding, net of such expenses of Owner and Holder, shall be divided in accordance with the proportionate values of Owner's and Holder's interests as specified in Section 18 (Compensation; Allocation between Owner and Holder), unless otherwise provided by applicable law.

(b) If Owner receives notice, formal or informal, that any public, corporate, or other authority intends to exercise its power of eminent domain as to the Property or any portion thereof or any interest therein, Owner shall promptly, and in any event in not less than fifteen (15) days after receipt of such notice, give written notice to Holder of such receipt together with a copy of any and all communications (including, without limitation, electronic transmissions) related to such prospective eminent domain proceedings. Owner shall thereafter promptly provide to Holder copies of all further communications related to such proceedings and cooperate with Holder in responding to such proceedings.

(c) **Condemnation Process.** Purchase in lieu of condemnation, or settlement of an eminent domain proceeding, shall occur pursuant to applicable laws and procedures, including but not limited to California Government Code sections 7267.1 and 7267.2, and shall require approval of Holder. Holder shall have an opportunity to accompany the appraiser for the condemning agency when the appraiser goes on the Property with Owner. The Property may not be taken by eminent domain or in lieu of eminent domain if the planned use is more than seven (7) years in the future or otherwise complies with California Code of Civil Procedure section 1240.220. Holder shall be paid by the condemnor the value of the Easement at the time of condemnation.

(d) **Balance of Property Remains Subject to Easement.** Should this Easement be condemned or otherwise terminated or extinguished on any portion of the Property, the balance of the Property shall remain subject to this Easement. In this event, all relevant related documents shall be updated and re-recorded by the Holder to reflect the modified Easement area and encumbrances that were junior or subordinate to this Easement prior to such termination, extinguishment or condemnation and shall remain junior or subordinate to the Easement as amended.

20. Assignment of Holder's Interest. Holder may assign its interest in this Easement only to (a) a "qualified organization," within the meaning of Section 170(h) of the Internal Revenue Code, as amended, which (b) is authorized to acquire and hold conservation easements under California law and (c) has similar

purposes to preserve agricultural lands and open space, which (d) agrees to assume the responsibilities imposed by this Easement. An organization or entity that meets all of the conditions (a) through (d) of the preceding sentence is hereinafter referred to as a “Qualified Substitute Entity.” All assignments shall be duly recorded. In connection with any assignment, Holder may retain the right, power and/or duty to enforce the Easement along with its assignee (referred to as an “assignee-Holder”) or in place of the assignee-Holder if the assignee-Holder is unable or unwilling to carry out its enforcement obligations under the Easement. Holder and any assignee-Holder shall notify Owner of any assignment, and Holder and any assignee-Holder shall coordinate management of their enforcement activities to provide reasonable assurances to Owner that their monitoring activities will not significantly increase the burden on Owner beyond what that burden would have been if only a single monitoring holder had existed.

21. Executory Limitation. If Holder shall cease to exist for any reason, or to be a qualified organization under Section 170(h) of the Internal Revenue Code, as amended, or to be authorized to hold conservation easements under California law, then Holder’s right, title, and interest in this Easement shall automatically vest in the County of Marin upon acceptance of the Easement and its rights and obligations. If the County of Marin refuses such rights and obligations, then the Easement and its rights and obligations shall vest in a Qualified Substitute Entity as a court of competent jurisdiction shall direct pursuant to the laws of the State of California.

22. Amendment of Easement. Owner and Holder recognize that circumstances could arise that would justify amendment of certain of the covenants, terms, conditions or restrictions contained in this Easement. To this end, Owner and Holder have the right to agree to amendments to this Easement without prior notice to, or approval of, any other party, provided that in the sole and exclusive judgment of the Holder, each such amendment furthers or is not inconsistent with the Purposes of this Easement.

Notwithstanding the foregoing, the Holder and Owner have no right or power (a) to amend Section 15 (Development Rights) or Section 3 of **Exhibit B** (Improvements and Facilities) to permit more development than permitted by the express terms of this Easement unless the amendment would further and be consistent with the Purposes of the Easement and result in no impermissible private benefit or private inurement or (b) to limit the perpetual duration of the Easement or (c) to terminate or extinguish this Easement or (d) to adversely affect the qualification of this Easement as a “conservation easement” as defined in Section 815.1 of the California Civil Code or the qualification of the Holder under

Sections 501(c)(3) and 170(h) of the Code or Section 815.3(a) of the California Civil Code.

Any amendment to this Easement shall be recorded in Marin County.

23. Subsequent Easements. Owner shall not grant any subsequent easement, interest in land or use restriction on the Property that might adversely affect the Purposes of this Easement. If Owner wishes to grant a subsequent easement, interest in land or use restriction on the Property that Owner believes would not adversely affect the Purposes of this Easement, Owner shall so notify Holder at least sixty (60) business days in advance of any such proposed grant, shall provide to Holder a copy of any proposed grant document together with such additional information relating to the proposed grant as Holder may reasonably request and shall request Holder's approval of such grant. Holder will review the proposal and may, in its sole discretion, (a) approve the proposal as being consistent with the Purposes of this Easement or (b) approve the proposal on conditions intended to ensure its consistency with the Purposes of this Easement or (c) disapprove the proposal as being actually or potentially inconsistent with the Purposes of this Easement. Owner and Holder hereby expressly agree that any grant of a subsequent easement, interest in land or use restriction without Holder's express written approval shall be void and of no effect. Subsequent easements, interests in land and use restrictions shall make reference to this Easement and be subordinate to this Easement.

24. Compliance with Applicable Law.

All uses, practices, specific improvements, construction or other activities permitted under this Easement shall be consistent with the Purposes of this Easement, in accordance with applicable law and any permits or approvals required thereby. Although it is expected that Owner will comply with applicable law and obtain any permits or approvals required thereby in connection with Owner's management of Owner's Property, it is not the obligation of Holder to enforce compliance with such applicable laws. However, Holder may withhold approval of any proposal by Owner if Owner fails to demonstrate to Holder's satisfaction that Owner has complied or will comply with all applicable legal requirements. Further, if any practice, use, improvement or other activity under this Easement is expressly subject to compliance with all applicable laws by the terms of this Easement, Owner's failure to comply with such laws shall be a violation of the Easement.

25. Original Grantor's Title Warranty. Original Grantor represents and warrants that Original Grantor has good fee simple title to the Property, including the entire mineral estate, free from any and all liens or encumbrances, except those set forth in **Exhibit E** (Disclosure of Liens and Encumbrances) attached hereto and incorporated herein by this reference and hereby promises to defend Owner's title against all claims that may be made against it. Original Grantor represents and warrants that the Property is not subject to any other easement whatsoever, except those listed in **Exhibit E**.

26. Notices. Any notice, request, consent or approval required or permitted by this Easement shall be in writing and may be given by personal delivery or by registered or certified mail, first class postage prepaid, return receipt requested, or by facsimile transmission. Any such notice, request, consent or approval shall be deemed communicated upon personal delivery or, in the case of mailing, on the second business day after deposit into the mail, or in the case of facsimile transmission, upon transmission.

In the event that the Property is owned by a trust, business entity, or any common or jointly held ownership, the Owner shall provide Holder with written notice of a designated representative, who shall be responsible for the receipt of notices on behalf of the Owner hereunder. The consent or approval of, or notice to, the designated representative shall be deemed the consent or approval of, or notice to, the entity or all owners, as the case may be.

Notices, requests, consents or approvals given by mail or facsimile transmission shall be given as follows (provided that each Party may change its address or facsimile number by notice given in accordance with this section):

To MALT:

Marin Agricultural Land Trust
P. O. Box 809
Point Reyes Station, CA 94956
Fax: 415.663.1099

To Owner:

(add name)
(add address)

27. General Provisions.

(a) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of California and applicable laws of the United States. References to specific authorities in this Easement shall be to the statute, rule, regulation, ordinance, or other legal provision that is in effect at the time this Easement becomes effective.

(b) **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the Holder to effect the Purposes of this Easement, the policy and purpose of the California Conservation Easement Act of 1979, as amended and the various state and local policies referred to in the Recitals set forth above. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. California code provisions and other statutes or laws referred to in this Easement may change over time. The Parties intend that those references shall be construed, to the extent possible, to carry out the original intent of the Parties and the Purposes of this Easement.

(c) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) **Entire Agreement.** This instrument sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

(e) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Owner's title in any respect or in a forfeiture of this Easement or reversion to Owner of any rights conveyed hereby.

(f) **Joint Obligation.** The obligations imposed by this Easement upon Owner shall be joint and several.

(g) **Successors.** Pursuant to California Civil Code Section 815 et seq., this Easement shall run with the land in perpetuity. The covenants, terms,

conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of the Parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Original Grantor," "Owner" and "Holder," wherever used herein, and any pronouns or the defined terms "Party" and "Parties" used in place thereof, shall include, respectively, the above-named Original Grantor and its successors and assigns, and the above-named Holder and its successors and assigns.

(h) No Merger. No merger of title, estate or interest in this Easement shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Holder, it being the express intent of the Parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Holder. Should Holder acquire the entire fee interest in the Property and should that acquisition be determined by a court of competent jurisdiction, in spite of the above stated intent of the Parties, to result in a merger, then Holder's rights and obligations under this Easement shall become immediately vested in the County of Marin. If the County of Marin is no longer in existence at the time the rights and obligations under this Easement would otherwise vest in it, or if the County of Marin is not qualified or authorized to acquire and hold conservation easements as provided for an assignment pursuant to Section 20 (Assignment of Holder's Interest), or if it shall refuse such rights and obligations, then the rights and obligations under this Easement shall vest in a Qualified Substitute Entity as a court of competent jurisdiction shall direct pursuant to the laws of the State of California and consistent with the requirements for an assignment pursuant to Section 20 (Assignment of Holder's Interest).

(i) Termination of Rights and Obligations. A Party's rights and obligations under this Easement terminate upon transfer of the Party's entire interest in the Easement or Property, except that

(A) liability for acts, omissions, conditions or events occurring prior to such transfer shall survive such transfer, and

(B) rights to indemnity and other rights under this Easement as to acts, omissions, conditions or events occurring prior to such transfer shall survive such transfer.

In the event that a Holder retains rights and/or obligations as to enforcement as contemplated by Section 20 (Assignment of Holder's Interest), the rights and

obligations of that assignor-Holder under this Easement, other than those retained rights and obligations, shall terminate,

(C) except that liability for acts, omissions, conditions or events occurring prior to such transfer shall survive transfer, and

(D) except that rights to indemnity and other rights under this Easement as to acts, omissions, conditions or events occurring prior to such transfer shall survive such transfer.

As to acts, omissions, conditions or events related to such assignor-Holder's exercise of its enforcement rights or obligations after such transfer, the assignor-Holder shall have the same liabilities and rights to indemnity and other rights under this Easement as a Holder would have in those circumstances. Upon transfer of the assignor-Holder's entire rights and obligations, it shall be treated the same as a Holder having transferred its entire rights and obligations.

(j) Future Conveyance. Owner agrees that reference to this Easement shall be made in any subsequent deed or other instrument by means of which Owner conveys any interest in the Property (including, but not limited to, a leasehold interest). Owner shall give Holder written notice of any proposed transfer of any interest in the Property as specified in Section 23 (Subsequent Easements) as to any grant of easement, interest in property or use or other restriction covered by Section 23 (Subsequent Easements) and at least thirty (30) days notice prior to the date of any other conveyance. The failure of Owner to perform any act required by this section shall not impair the validity of this Easement or limit its enforceability in any way. Upon the effectiveness of any transfer of the fee interest in the Property, the transferee Owner shall promptly notify Holder of such Owner's, and, if required by Section 26 (Notices), Owner's designated representative's, name, address and facsimile address for purposes of notices under this Easement.

(k) Not Governmental Approval. No provision of this Easement shall constitute governmental approval of any specific improvements, construction or other activities that may be permitted or required under this Easement. Owner is solely responsible for obtaining any applicable governmental permits for construction or any other activities permitted or required hereunder.

IN WITNESS WHEREOF, Original Grantor has executed this Deed of Agricultural Conservation Easement this [__] day of [__], 20___. As attested by the signature of its [__] affixed hereto, Holder hereby accepts without reservation

the rights and responsibilities conveyed by this Deed of Agricultural Conservation Easement. To Have and To Hold, this Deed of Agricultural Conservation Easement unto Holder, its successors and assigns, forever.

ORIGINAL GRANTOR:

By: _____

By: _____

ACCEPTED BY HOLDER:

MARIN AGRICULTURAL LAND TRUST

By: _____
Robert Berner

LIST OF EXHIBITS

Exhibit A	Description of Property
Exhibit B	Permitted Uses and Practices
Exhibit C	Prohibited Uses and Practices
Exhibit D	Map of the Creek Conservation Areas
Exhibit E	Disclosure of Liens and Encumbrances

Exhibit A
Description of Property

The land referred to herein is situated in the State of California, County of Marin, Unincorporated Area, and described as follows:

Exhibit B

Permitted Uses and Practices

The following uses and practices, though not necessarily an exhaustive recital of consistent uses and practices, are expressly permitted under this Easement, as set forth herein.

1. Residential Use. To reside on the Property, provided that residential structures shall be subject to the provisions set forth in Section 15 (Development Rights) of this Easement and Section 3 (Improvements and Facilities) of this **Exhibit B** and Section 4 (Residences Greater than 3,000 Square Feet) of **Exhibit C**.
2. Agriculture. To engage in “agricultural uses” of the Property in accordance with sound, generally accepted agricultural practices that do not threaten or degrade significant natural resources. For the purposes of this Easement “Agricultural Uses” shall be defined as: breeding, raising, pasturing, and grazing livestock of every nature and description for the production of food and fiber; breeding and raising bees, fish, poultry, and other fowl; planting, raising, harvesting, and producing agricultural, aquacultural, horticultural, and forestry crops and products of every nature and description; and the processing, storage, and sale, including direct retail sale to the public, of crops and products harvested and produced principally on the Property, provided that the processing, storage, and sale of any such crops or products that are not food or fiber shall require the consent of Holder; and further provided, however, that such agricultural uses shall not result in significant soil degradation or significant pollution or degradation of any surface or subsurface waters, and that all uses and activities are consistent with the Purposes of this Easement and with applicable laws. Agricultural Uses must be consistent with a current AMP approved by Holder in accordance with Section 5 (Mandatory Agriculture Provisions) and a current CCAMP approved by Holder in accordance with Section 8 (Creek Conservation Areas) of this Easement.
3. Improvements and Facilities.
 - (a) Maintenance and Repair of Existing Improvements and Facilities. To maintain and repair and subject to the approval of Holder, to enlarge or relocate structures, housing (but not beyond the limitation set forth in Section 4 (Residences Greater than 3,000 Square Feet) of **Exhibit C**), fences, signs, corrals, roads and other improvements and facilities on the Property that are existing at the

time of the Effective Date of this Easement as documented in the Baseline Documentation Report or that are subsequently constructed under and in compliance with the terms of this Easement. Fencing and corrals deemed by Owner to be reasonably necessary to ranching and agricultural activities may be relocated without Holder's consent.

(b) Construction of New Improvements and Facilities and Additions to Existing Improvements and Facilities.

Subject to Section 15 (Development Rights) of the Easement, additional improvements and facilities accessory to the residential use of the Property, and new structures, additions, housing, signs, roads and improvements and facilities reasonably necessary to the Agricultural Uses of the Property (collectively known here as "Improvements and Facilities") shall be permitted, provided that Owner obtains the written approval of Holder for the construction, erection, installation, or placement of such Improvements and Facilities, including the size, function, capacity and location thereof, which consent should not be unreasonably withheld, and that such construction, erection, installation, or placement is made in accordance with applicable laws, with Section 4 (Residences Greater than 3,000 Square Feet) of **Exhibit C** and with all other relevant provisions of this Easement. All such Improvements and Facilities individually and combined shall not significantly impair the agricultural productivity, natural resource, topsoil, open space or scenic character of the Property. Owner shall provide Holder written notice of Owner's intention to undertake any such construction, erection, installation, or placement of said Improvements and Facilities, together with information on its size, function, capacity and location, not less than forty-five (45) days prior to Owner's application for any permits required for said construction, erection, installation, or placement of the Improvements and Facilities. In the event permits are not required for said construction, erection, installation, or placement of the Improvements and Facilities, Owner shall provide Holder written notice of Owner's intention to construct, erect, install, or place any such Improvements and Facilities, together with information on the size, function, capacity and location of the Improvements and Facilities, not less than forty-five (45) days prior to the commencement of said construction, erection, installation, or placement. Holder shall not give approval unless the Owner demonstrates to Holder's satisfaction that the size, function, capacity and location of the proposed Improvement or Facility are each consistent with this Section 3(b), and will not substantially diminish or impair the agricultural productivity, natural resource, topsoil, open space or scenic values of the Property. Except within the CCA specified in Section 8 (Creek Conservation Areas) of this Easement, fencing and/or corrals reasonably necessary to the

ranching and Agricultural Uses of the Property may be constructed without Holder's consent. No Improvements of Facilities may be constructed within 50 feet of the tops of the banks of creeks labeled in **Exhibit D** (Map of the Creek Conservation Areas), except pursuant to a CCAMP approved by Holder.

(c) Replacement of Improvements and Facilities. In the event of destruction, deterioration or obsolescence of any structures, housing, fences, corrals, roads, signs, or other Improvements and Facilities, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this Section 3, Owner may replace the same with structures, housing, fences, corrals, roads, signs, or other Improvements and Facilities of similar size, function, capacity and location. Notwithstanding the foregoing, if any such structures, housing, corrals, or other Improvements or Facilities, with the exception of fences and roads, were located within 50 feet of the tops of the banks of creeks labeled in **Exhibit D**, they may be replaced within 50 feet of the tops of banks only pursuant to a CCAMP approved by Holder.

4. Water Resources and Impoundments. To develop and maintain such water resources on the Property, including, without limitation, water impoundments, as are necessary or convenient for ranching, agricultural, irrigation, and residential uses in a manner consistent with the Purposes of this Easement, provided that any such water resources and impoundments shall be developed and maintained in accordance with a plan providing all relevant details approved by Holder and that all such water resources and impoundments shall be developed and maintained in accordance with the Purposes of this Easement and in accordance with applicable laws.

5. Agrochemicals.

(a) To use agrochemicals, including, but not limited to, fertilizers and biocides, in those amounts and with that frequency of application necessary to accomplish reasonable Agricultural Uses of the Property in compliance with all applicable laws. Such use shall be carefully circumscribed near surface water, during periods of high ground water or heavy rain.

(b) Fertilizers, including manure applications, are prohibited within the CCA except as provided in an approved CCAMP.

(c) The storage of agrochemicals that are for use on the Property in accordance with applicable law is permitted.

6. Predator Control. To control predatory and problem animals by the use of selective control techniques.

7. Recreational Uses. To utilize the Property for recreational or educational purposes, (including, without limitation, hiking, horseback riding, hunting and fishing) that require or cause no significant surface alteration or other development of the land.

8. Non-commercial Solar Energy Systems. Subject to compliance with the requirements of **Exhibit B**, Section 3(b) (Construction of New Improvements and Facilities and Additions to Existing Improvements and Facilities) above, Owner may construct and operate Solar Energy Systems (defined below) for use on the Property in support of the Purposes of this Easement. Incidental Surplus Electricity (defined below) may be sold and/or credited to Owner's utility service (e.g. net metering) or others pursuant to agreements approved by Holder.

For purposes of this Easement, "Solar Energy System" shall mean either (a) a solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electricity generation or for water heating or (b) to a structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, for space heating or cooling or for water heating.

For purposes of this Easement, "Incidental Surplus Electricity" shall mean amounts of electricity (expressed in kilowatt hours or other appropriate measure) generated on the Property by solar or other energy systems (such as those referenced in Section 10 [Non-commercial Renewable Energy Production] below) in excess of the total amount of electricity used on the Property on an annualized basis equal to 100% of the total amount of electricity used on the Property. Such measurements shall be calculated from time to time at intervals and using methodologies approved by Holder. Such sale of Incidental Surplus Electricity shall not be deemed to be commercial exploitation of Solar Energy Systems, which is addressed below. Exploitation of Solar Energy Systems on the Property beyond that permitted by this Section 8 shall be deemed to be commercial and shall be covered by the provisions of Section 9 (Commercial Solar Energy Systems) below.

9. Commercial Solar Energy Systems. In consideration of the price paid by Holder to Original Grantor for this Easement and in exchange for the other consideration set forth above in this Easement, Original Grantor hereby sells, assigns and transfers to Holder all of Owner's right, title and interest in and to the commercial exploitation of Solar Energy Systems on the Property. Holder is and shall be the sole owner of all rights to commercial exploitation of Solar Energy Systems on the Property. Subject to applicable law, any such commercial exploitation will be carried out by or under the authority of Holder in a manner that (a) would not significantly impair or interfere with the Agricultural Values or the other Purposes of this Easement and (b) would not unreasonably interfere with Owner's use and quiet enjoyment of the Property. Owner shall be entitled to reasonable rents for any use of the Property for the construction, installation, operation and maintenance of any Solar Energy System pursuant to Holder's rights. Any disagreement between Owner and Holder as to the amount of such rents shall be resolved by mediation as contemplated by Section 10(Mediation) of this Easement or, if such mediation fails to satisfy Owner and Holder, by binding arbitration in accordance with the rules of the American Arbitration Association.

10. Non-commercial Renewable Energy Production. Subject to compliance with the requirements of **Exhibit B**, Section 3(b) (Construction of New Improvements and Facilities and Additions to Existing Improvements and Facilities) above and with the provisions of any applicable AMP or CCAMP, Owner may construct and operate geothermal, hydropower, biogas and/or wind electric energy generation facilities for use on the Property in support of the Purposes of this Easement. Incidental Surplus Electricity may be sold and/or credited to Owner's utility service (e.g. net metering) or others pursuant to agreements approved by Holder. Such sale of Incidental Surplus Electricity shall not be deemed to be Commercial Renewable Energy Production.

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 Easement and are expressly prohibited upon or within the Property:

1. Consistency with the Purposes of this Easement. Uses, practices and activities that are inconsistent with the Purposes of this Easement are prohibited.
2. Commercial or Industrial Use. The establishment and conduct of commercial or industrial uses or the construction, placing, or erection of any signs or billboards; provided, however, that ranching, agriculture, the production or processing of food and fiber products as contemplated by the provisions of **Exhibit B** (Permitted Uses and Practices) and the production of non-commercial solar or other renewable energy to the extent permitted by **Exhibit B** shall not be considered prohibited commercial or industrial uses. Further provided, however, that Holder shall have the right in its sole discretion to approve the establishment and conduct of non-agricultural commercial and industrial uses or activities that Holder determines in its sole discretion (a) are compatible with the Purposes of this Easement and (b) will not substantially diminish or impair the agricultural productivity of the Property. Notwithstanding the prohibition above on the placing or erecting of signs, Holder, in its sole discretion, may approve signs related to any such commercial or industrial uses approved by Holder provided that the signs, individually or collectively, are consistent with the Purposes of this Easement.
3. Construction. The construction, reconstruction, or replacement of structures, housing, fences, corrals, roads and other improvements and facilities except as provided in Section 15 (Development Rights) of this Easement and Sections 1 (Residential Use), 3 (Improvements and Facilities), 4 (Water Resources and Impoundments), 8 (Non-commercial Solar Energy Systems), 9 (Commercial Solar Energy Systems) and 10 (Non-commercial Renewable Energy Production) of **Exhibit B** and Section 2 (Commercial or Industrial Use) and Section 15 (Commercial Renewable Energy Production) of this **Exhibit C**.
4. Residences Greater than 3,000 Square Feet. No individual residential structures either existing or constructed pursuant to Section 3(b) (Construction of New Improvements and Facilities and Additions to Existing Improvements and Facilities) of **Exhibit B** shall exceed three thousand (3,000) square feet, excluding

garages, decks and landscaping. Garages shall not exceed seven hundred (700) square feet.

5. Subdivision. The division, subdivision, de facto subdivision, or partition of the Property, provided, however, that a lease of a portion of the Property for Agricultural Uses shall not be prohibited by this Section.

6. Motorized Vehicles. The use of motorized vehicles, except by Owner or others under Owner's control for agricultural, ranching or attendant residential use of the Property or other uses consistent with the Purposes of this Easement. Any use of motorized vehicles off of roadways is prohibited except when necessary for agricultural, ranching or residential purposes consistent with the Purposes of this Easement.

7. Tree Cutting. The harvesting or removal of trees or woody vegetation; provided, however, that Owner shall have the right to (a) cut or collect firewood for the heating of ranch and residential facilities on the Property; and (b) cut or remove trees and woody vegetation as reasonably necessary to control insects and diseases, prevent personal injury and property damage, and to allow construction or repair of residential or agricultural facilities. The harvesting or removal of living or dead trees or woody vegetation within an area of twenty-five (25) feet in width laterally outward from the tops of the banks of the creeks marked in **Exhibit D** (Map of Creek Conservation Areas) without the prior written approval of Holder, it being understood that such approval shall be granted only for the purposes of preventing personal injury, maintaining facilities or existing creek crossings, if any, or for enhancing the natural resource values of the Property as provided for in an approved CCAMP.

8. Dumping. The dumping or other disposal of wastes, refuse or debris on the Property, except for organic material generated by permitted Agricultural Uses on the Property; provided that any such dumping or disposal of organic material shall be in accordance with applicable law and generally accepted agricultural management practices, and that no runoff from such dumping or other disposal of organic material shall adversely affect water quality. No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, waste, or hazardous waste shall be placed, stored, dumped, buried, or permitted to remain on the Property except as reasonably required for the use of the Property for agricultural purposes, consistent with the Purposes of this Easement and in accordance with applicable law.

9. Soil Degradation. Ranching, agricultural or other uses otherwise permitted under this Easement that result in significant degradation of soil quality. If Owner disagrees with any determination by Holder of such significant degradation, Owner shall so notify Holder, and Holder shall confirm its determination by a Professional or other third party with relevant expertise in natural resource management.

10. Water Quality Degradation. Ranching, agricultural or other uses otherwise permitted under this Easement that result in significant degradation of water quality. Stockpiling animal wastes, compost, or loose soil in a manner whereby runoff adversely affects water quality. If Owner disagrees with any determination by Holder of such significant degradation, Owner shall so notify Holder, and Holder shall confirm its determination by a Professional or other third party with relevant expertise in natural resource management.

11. Surface Alteration or Excavation. Any alteration of the general topography or natural drainage of the Property including, without limitation, the excavation or removal of soil or the extraction of minerals by any surface mining method, except as may be required for uses on the Property incidental to the Agricultural Uses permitted herein, and provided that such removal or extraction is limited and localized, is not irremediably destructive of significant conservation interests, does not damage, impair or endanger the Agricultural Values or the open space, natural resource or scenic values of the Property, is approved, as to location and amount of materials and any necessary or appropriate remediation, by Holder and is in accordance with applicable law. After any exploration and/or extraction of subsurface oil, gas, gravel or minerals, Owner shall restore all disturbed areas to their original state pursuant to a plan approved in writing by Holder. No portion of the Property that is unpaved at the time of the grant of this Easement shall be paved or otherwise covered with concrete, asphalt, or any other paving material, nor shall any road for access or other purposes be constructed without advance written permission of Holder pursuant to Section 3(b) (Construction of New Improvements and Facilities and Additions to Existing Improvements and Facilities) of **Exhibit B**.

12. Creek Conservation Areas

(a) Ranching, agricultural or other uses otherwise permitted under this Easement that result in significant degradation of water quality, soil and bank stability, and vegetative cover in the CCA as identified in **Exhibit D**.

(b) Mechanical soil disturbance, including tilling and disking, or removal of vegetation to levels lower than necessary to filter pollutants and control erosion as specified in the CCAMP, either by grazing, mowing or other activity in the CCA, without prior written approval of Holder. Any such approval shall require that activities be consistent with the CCAMP.

(c) When the soil is saturated or soft within the CCA, soil disturbing activities (within the CCA), including, without limitation, grazing of animals, except for the purpose of protecting or enhancing the natural resources of the Property as provided in an approved CCAMP.

(d) Notwithstanding subsections (a) through (c) of this Section, no mechanical soil disturbance or other soil or vegetation disturbing activities shall take place within any watercourse in the CCA identified in **Exhibit D** except pursuant to a CCAMP approved in writing by Holder in furtherance of the natural resource values of the Property.

13. Water Rights. Owner shall not transfer, encumber, lease, sell, or otherwise separate any water rights from title to the Property itself. No permanent separation of water rights shall be permitted. All water shall be retained in Marin County for agricultural and other permitted uses on the Property. Water may be distributed subject to all of the following requirements: (a) under short-term commitment or arrangement (not being binding on the Owner for longer than a single year period), (b) to a contiguous property or to other property owned or leased by Owner and (c) only for agricultural production purposes and other agriculture-related purposes. No distribution of water shall be permitted that would impair the long-term agricultural productivity of the Property or be inconsistent with the Purposes of this Easement.

14. Miscellaneous. No golf courses, landing strips or helicopter pads, resort structures, commercial equestrian facilities, or non-residential swimming pools shall be constructed on the Property.

15. Commercial Renewable Energy Production.

(a) Commercial Renewable Energy Production. “Commercial Renewable Energy Production” refers to the generation and commercial sale of energy

produced on the Property by means of geothermal, hydropower, biogas or wind electric generation facilities.

(b) Commercial Renewable Energy Production Initially Prohibited. Original Grantor and Holder acknowledge and agree that the physical attributes (including such matters, among others, as the size of even the most advanced facilities and equipment currently in use), environmental issues (such as scenic impact, noise and/or effect on natural resources) and risks (such as those possibly associated with electromagnetic radiation) of the facilities, equipment and other infrastructure for Commercial Renewable Energy Production as of the Effective Date of this Easement would make implementation of any such Commercial Renewable Energy Production plan incompatible with the Purposes of this Easement and that therefore Commercial Renewable Energy Production as currently implemented is prohibited by the terms of this Easement. However, if the technology for Commercial Renewable Energy Production changes substantially in the future so that Commercial Renewable Energy Production becomes fully compatible with the Agricultural Values and other Purposes of this Easement and with any affected AMP or CCAMP, Owner may then apply for Holder's approval of a Commercial Renewable Energy Production plan or plans in accordance with subsection (c).

(c) Commercial Renewable Energy Production Plans. As set forth in subsection (b) above, if Owner believes that the technology for Commercial Renewable Energy Production has changed substantially from the status of that technology as of the Effective Date of this Easement so that Commercial Renewable Energy Production has become potentially compatible with the Agricultural Values and other Purposes of this Easement and with any affected AMP or CCAMP, Owner may then apply for Holder's approval of a Commercial Renewable Energy Production plan or plans in accordance with subsection (d) below. After receiving Holder's approval, Owner may then construct and operate, or have constructed and operated, geothermal, hydropower, biogas or wind electric generation facilities for commercial transmission, distribution and sale of such energy in accordance with the terms and conditions of such approval, provided always that any such Commercial Renewable Energy Production operations, facilities and equipment, including, without limitation, transmission lines, permitted hereunder must be and remain consistent with the Agricultural Values and other Purposes of this Easement and with any affected AMP or CCAMP.

(d) Plan Submissions. If Owner proposes pursuant to subsection (c) above to engage in any Commercial Renewable Energy Production, Owner shall

prepare for Holder's review and approval a Commercial Renewable Energy Production plan application in accordance with Holder's application requirements at that time, which submission shall provide details, at a minimum, as to the site, footprint of all facilities and related infrastructure, size, height, environmental attributes, such as potential effects on the agricultural, open space, natural resource, and scenic attributes of the Property, generation capacity, construction plans, location of all infrastructure and distribution or transmission lines, and all other relevant information requested by Holder to ensure that the proposed development is and will remain compatible with the Agricultural Values and other Purposes of this Easement and with any affected AMP or CCAMP.

(e) Subordination to this Easement. Any and all energy production plans, construction plans and agreements and transmission, distribution and sales agreements, written or oral, shall be made expressly subordinate, on terms satisfactory to Holder, to this Easement and to the rights of Holder in this Easement and shall be submitted to Holder for review and approval in advance of their execution.

(f) Periodic Re-approval Required. Any approval given by Holder will be subject to periodic review and re-approval to ensure that the Owner's operations continue to be compatible with the Agricultural Values and other Purposes of the Easement and with any affected AMP or CCAMP.

(e) Cost of Review of Plan Submissions and of Future Monitoring. Owner shall bear all of Holder's direct and indirect costs associated with the initial review and all subsequent reviews of any Commercial Renewable Energy Production plan or plans. Such costs would include all out-of-pocket costs incurred by Holder for such review, such as the costs of technical and professional, including legal, experts on the subject, and all staff costs related to the review process. Holder may charge Owner a portion or all of the costs incurred by Holder in developing the application process, including, without limitation, the costs related to such development incurred for technical and professional advice. Holder may require an initial review fee to accompany any application for approval or re-approval and periodic payments to apply to costs being incurred. Holder may require the applicant to pay all third party technical and professional expert fees and expenses directly to the experts as the experts' billings are received. Owner shall bear all of Holder's staff and out-of-pocket monitoring and stewardship costs associated with Owner's operation, including, without limitation, any costs for experts deemed necessary or appropriate by Holder.

(f) Indemnity and Insurance. As part of its application and in connection with any approved operations, Owner shall indemnify, hold harmless and defend Holder and its members, funders, directors, officers, employees, legal representatives, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' and experts' fees and consultants' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to the design, construction or operation of the Commercial Renewable Energy Production, regardless of cause, or (2) violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement relating to the Commercial Renewable Energy Production. Owner shall obtain and maintain in full force and effect liability and other insurance as required by Holder, and no application for Commercial Renewable Energy Production will be approved without the approval of the coverage, limits of liability and other terms of such liability insurance by Holder in its sole discretion.

Exhibit D

Map of the Creek Conservation Area

Exhibit E

Disclosure of Liens and Encumbrances