



**Marin Agricultural Land Trust**  
Basic Sample Easement - Updated March 2008

**NOTE: THIS SAMPLE EASEMENT IS ONLY INTENDED AS AN INFORMATIONAL DOCUMENT AND IS NOT FOR EXECUTION. ANY FINAL EASEMENT WILL VARY DEPENDING ON THE TERMS OF THE INDIVIDUAL TRANSACTION. ANY PROSPECTIVE EASEMENT GRANTOR SHOULD SEEK INDEPENDENT LEGAL AND FINANCIAL ADVICE.**

**SAMPLE DEED OF AGRICULTURAL CONSERVATION EASEMENT**

THIS DEED OF AGRICULTURAL CONSERVATION EASEMENT (the "Easement") is made by xxxx ("Grantor"), to MARIN AGRICULTURAL LAND TRUST, a California nonprofit public benefit corporation ("Holder").

**WITNESS THAT:**

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

WHEREAS, 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, and scenic values; and

WHEREAS, the Property possesses significant agricultural, open space, and scenic values of great importance to Grantor, the people of Marin County and the people of the State of California; and

WHEREAS, Grantor and Holder intend: that the Property be maintained in agricultural production by the maintenance of the agricultural values thereof; that the open space 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

WHEREAS, the protection of the Property is consistent with the State of California's public policy favoring the preservation of agricultural lands and their resources. California Government Code Section 51220 states that "agricultural lands have a definitive 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 policy." 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

WHEREAS, the County of Marin supports the protection and preservation of agricultural land uses, agricultural land, and open land through Objectives, Policies, and Implementation Programs as expressed in the Agricultural and Environmental Quality Elements of the Marin Countywide Plan, including, inter alia, the permanent protection of agricultural lands for agricultural uses by acquisition of perpetual agricultural conservation easements ((Policies A-1.2 AG-1.j and AG-1.l). 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" (see also Cal. Civ. Code Section 3482.5); and

WHEREAS, Grantor intends, as owner of the Property, to convey to Holder the right to preserve and protect agricultural values, and to the extent consistent with agricultural values, open space and scenic values of the Property in perpetuity as set forth below in this Easement; and

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

WHEREAS, the Holder is a "qualified organization," as defined by Section 170 (h)(3) of the Code, a "nonprofit organization" as described in California Public Resources Code Section 10221, qualified to receive and hold conservation easements created under section 815 et seq. of the California Civil Code, and accepts the responsibility of enforcing the terms of this Easement and upholding its purpose forever;

NOW, THEREFORE, for good and valuable consideration, and in consideration of 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, Grantor does hereby voluntarily grant to Holder an Agricultural Conservation Easement in gross in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

**1. Purpose.** It is the purpose of this Easement, pursuant to the governmental policies detailed in the Recitals hereto, to enable and cause the Property to remain in agricultural uses (as defined in Exhibit B, section 2 hereof) (a) by preserving and protecting in perpetuity its agricultural values, character, use and utility, (b) by preventing any use or condition of the Property, or activity or practice thereon, that would significantly impair or interfere with its agricultural values, character, use or utility. To the extent that the preservation of other open space and scenic values of the Property is consistent with such uses, it is within the purpose of this Easement to protect those values.

**2. Affirmative Rights and Interests Conveyed.** To accomplish the purpose 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, character, use and utility, including, without limitation, the agricultural productivity, vegetation, soil and water quality, and the open space and scenic values of the Property. (The agricultural values, character, use and utility, and the open space and scenic values of the Property are hereinafter referred to collectively as the "Protected Values").

(b) To enter upon, inspect, observe, and study the Property for the purposes of (i) identifying the current condition of, uses and practices thereon, and the baseline condition thereof; and (ii) monitoring annually, or more frequently if necessary or appropriate, the condition of, uses and practices thereon to determine whether they are consistent with this Easement. Such entry shall be permitted upon prior notice to Grantor and shall be made in a manner that will not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

(c) To prevent any activity on, use of or practice on the Property that is inconsistent with the purpose 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 Grantor's discretion to employ Grantor's choices of farm and ranch uses and management practices so long as those uses and practices are consistent with the purpose of this Easement.

(d) To erect and maintain a sign or other appropriate marker in a prominent location on the Property acceptable to 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.

**3. Uses and Practices.** Holder and Grantor intend that this Easement shall confine the uses of the Property to agriculture, residential use associated with the agricultural use of the Property, and the other uses which are described herein. Examples of uses and practices that are consistent with the purpose of this Easement and that are hereby expressly permitted, are set forth in **Exhibit B**, attached hereto and incorporated herein by this reference. Examples of uses and practices that are inconsistent with the purpose of this Easement, and that are hereby expressly prohibited, are set forth in **Exhibit C**, 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 purpose of this Easement.

**4. Baseline Data.** In order to establish the present condition of the Property and the Protected Values, Holder has examined the Property and prepared a report (the "Baseline Documentation Report") containing an inventory of the Property's relevant features and conditions, its improvements and some of its natural resources (the "Baseline Data"). A copy of the Baseline Documentation Report has been provided to Grantor, and another shall be placed and remain on file with Holder. The Baseline Documentation Report has been signed by Grantor and Holder and thus acknowledged to represent accurately the condition of the Property at the date of the conveyance of this Easement. The parties intend that the Baseline Data shall be used by Holder to monitor Grantor's future uses of the Property, the condition thereof, 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. Grantor and Holder recognize that changes in economic conditions, in agricultural technologies, in accepted farm and ranch management practices, and in the situations of Grantor may result in an evolution of agricultural uses of the Property, provided such uses are consistent with this Easement.

**5. Reserved Rights.** Grantor 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 purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved: (i) 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 purpose of this Easement and in accordance with applicable law and Section 11 of **Exhibit C** of this Easement; and (ii) all right, title, and interest in and to all subsurface oil, gas and minerals; provided that the manner of exploration for, and extraction of any oil, gas or minerals shall be only by a subsurface method except as specifically permitted by Section 10 of **Exhibit C** of this Easement), shall be limited and localized, shall not damage, impair or endanger the Protected Values, shall be in accordance with applicable law, and shall be approved by Holder prior to its execution.

**6. Mediation.** If a dispute arises between the parties concerning the consistency of any existing or proposed use, practice or activity with the purpose of this Easement, and Grantor 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 fifteen (15) 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 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 Grantor and Holder; the parties shall bear their own expenses, including attorney's fees, individually.

**7. Holder's Remedies.** If Holder determines that Grantor may be in 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 such a violation. If Holder determines that Grantor is in violation of the terms of this Easement and Holder wishes to require Grantor to cease and/or remedy any such violation, Holder shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and/or, where the violation involves injury to the Property resulting from any use, condition, practice or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantor 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 to begin curing such violation within the thirty (30) day period, or 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 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 Protected Values, 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 the Protected Values, 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. Grantor 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.

**7.1 Costs of Enforcement.** Any costs incurred by Holder in enforcing the terms of this Easement against Grantor, including, without limitation, any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. In any action to enforce the terms of this Easement, the prevailing party's costs of suit, including, without limitation, attorneys' fees, shall be borne by the other party.

**7.2 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 term of this Easement by Grantor shall not be deemed or construed to be a waiver by Holder of such term or of any subsequent breach of the same or any other term 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 Grantor shall impair such right or remedy or be construed as a waiver of other or future violations.

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

**8. Costs and Taxes.** Grantor retains all responsibilities for, and shall bear all costs and liabilities of any kind related to, the ownership, operation, upkeep and maintenance of the Property. Grantor shall pay any and all taxes, assessments, fees and charges levied by competent authority on the Property or on this Easement. 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.

**9. Hold Harmless and Insurance.** The Indemnified Parties (as defined below) shall have no responsibility for the operation of the Property, monitoring of hazardous conditions on it, or the protection of the Grantor, the public or any third parties from risks relating to conditions on the Property. Without limiting the generality of the foregoing, the Indemnified Parties shall not be liable to the Grantor or other person or entity in connection with consents given or withheld, or in connection with any entry upon or activity on the Property occurring pursuant to this Easement, or on account of any claim, liability, damage or expense suffered or incurred by or threatened against the Grantor or any other person or entity, except if the sole cause of the claim, liability, damage, or expense is the gross negligence or intentional misconduct of one or more of the Indemnified Parties.

Grantor shall hold harmless, indemnify and defend Holder, its members, directors, officers, employees, agents, contractors and the heirs, personal representatives, successors and assigns of each of them (collectively "Indemnified Parties") from and against any and all claims, demands, costs, expenses, causes of action, suits, proceedings, actions, liabilities, penalties, losses, damages, judgments, or sanctions arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Property, regardless of cause, except if the sole cause is the gross negligence or intentional misconduct of one or more of the Indemnified Parties.

Grantor shall obtain and maintain at all times liability insurance with coverages and limits of liability in amounts customary for agricultural operations in the area of the Property. Such insurance shall include provisions for notification to Holder prior to termination or expiration of the insurance coverage. Such liability insurance shall include Holder as an additional named insured along with Grantor. If Grantor fails to keep required insurance in full

force and effect, Holder may purchase replacement insurance and Grantor shall reimburse Holder for the cost of coverage.

**9.1 Holder Not Owner or Operator**. Notwithstanding any other provision herein to the contrary, this Easement shall not be construed such that it imposes on, creates in or gives Holder:

(a) any obligation, right or ability to exercise physical or managerial control of the day-to-day operations of the Property or of Grantor's activities on the Property;

(b) the obligations or liabilities with respect to the Property of an "owner" or "operator" as those words are defined and used in Environmental Laws (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;

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

(d) the obligations or liabilities of a responsible person under any applicable Environmental Laws;

(e) the right to investigate and/or remediate any Hazardous Materials (defined below) associated with the Property; or

(f) any control over Grantor's ability to investigate, remove, remediate, or otherwise clean up any Hazardous Materials associated with the Property.

**9.2 Grantor's Environmental Warranty**. 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 relating to the operations or condition of the Property. Grantor further represents and warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials. Grantor hereby promises to hold harmless and indemnify all Indemnified Parties against all claims, demands, costs, expenses, causes of action, suits, proceedings, actions, liabilities, penalties, losses, damages, judgments or sanctions arising from or connected with any release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with any violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Holder to Grantor with respect to the Property or any restoration activities carried out by Holder at the Property.

The terms "Environmental Law" or "Environmental Laws" include, without limitation, any Federal, state or local or administrative agency statute, regulation, rule, ordinance, order or requirement relating to pollution, protection of human health, the environment, or Hazardous Materials.

The term “Hazardous Materials” includes, without limitation, (i) material that is flammable, explosive, or radioactive; (ii) petroleum products; 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 or administrative agency statute, regulation, rule, ordinance, order or requirement now in effect or enacted after this date.

**10. Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement.

**11. 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 be developed to a density of xxx and xxx-hundredths (xx) 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) Grantor retains one (1) of the xxx and xxx-one-hundredths (xxx) Development Rights associated with the Property. The Development Right retained by Grantor shall apply and relate to the existing residential improvements on the Property that have been approved pursuant to this Section 11(a). The existing residential improvements on the Property consist of xxx (the “Existing Residential Improvements”). Grantor reserves the right to maintain, use, repair, and replace 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. The Development Right retained by Grantor shall not be used to support or enable the creation of any additional residential uses or units on the Property except as expressly provided in Section 3 of Exhibit B hereto. No structures built pursuant to this or any other provision of this Easement may be sold separately from the entire Property.

(b) The balance of xxx and xxx (xxx) 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.

(c) Neither Grantor 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.

**12. Conveyance of Separate Parcels; Merger.** Grantor acknowledges and represents that the Property currently consists of xxx separate Assessor's parcels (numbers xxx), which under existing law and regulations might be sold or conveyed separately from one another

as separate legal parcels. Grantor agrees that the sale or conveyance of any parcel separate or apart from any other is inconsistent with the purpose of this Easement. Therefore, Grantor covenants and agrees:

(a) Grantor will apply for and pursue to completion an application to the County of Marin for consolidation or merger of the xxx 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 xxx Assessor's parcels are merged, Grantor will not, without the prior written consent of Holder, sell, exchange, convert, transfer, assign, mortgage or otherwise encumber, alienate or convey any such parcel separately or apart from any other, and Grantor will at all times treat all parcels as a single integrated economic unit of property. Grantor 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. Upon any request to Holder for consent to a separate sale, alienation or conveyance of any parcel, such consent may be granted, withheld or conditioned by Holder in the exercise of its sole discretionary judgment regarding the consistency or inconsistency of the proposed transaction with the purpose of this Easement, which judgment exercised in good faith will be final and binding.

**13. Extinguishment.** If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which Holder shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by California law at the time, in accordance with Sections 14 and 15. No inaction or silence by Holder shall be construed as abandonment of the Easement. The fact that the Property is not in agricultural use is not reason for termination of this Easement. 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 the provisions of this Easement.

**14. Compensation.** 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 values of the Property shall exclude any amounts attributable to improvements on the Property. For the purposes of defining the "Easement Percentage," Grantor and Holder agree that the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall be the greater of (a) xx%, or (b) that percentage established by dividing the value of this Easement by the value of the Property, unencumbered by this Easement, as of said effective date, said values to be established by Grantor's qualified appraisal (pursuant to Treasury regulation §1.170A-13) for federal income tax purposes. In the event that Grantor does not seek

a qualified appraisal, the Easement Percentage shall be xx%. Once established, the Easement Percentage shall remain constant.

This Easement constitutes a real property interest immediately vested in Holder. For the purpose of sections 13 and 15, 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, excluding the value of improvements on the Property, as though unencumbered by this Easement, at the time of the proposed termination, as determined by an appraisal prepared by a qualified appraiser acceptable to Grantor and Holder, multiplied by the Easement Percentage; or

(b) The value of the Easement at the time of the proposed termination as determined by a qualified appraiser acceptable to all parties.

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

**15. Condemnation.** Should all or part of the Property be taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Easement, Grantor 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, which total proceeds shall be divided in accordance with the proportionate values of Grantor's and Holder's interests as specified in section 14, unless otherwise provided by applicable law. All expenses incurred by Grantor and Holder in such action shall be first paid out of the recovered proceeds. Should this Easement be condemned or otherwise terminated 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.

**16. Assignment of Holder's Interest.** Holder may assign its interest in this Easement only to a "qualified organization", within the meaning of section 170(h) of the Internal Revenue Code, as amended, or any successor provision, and Section 815.3 of the California Civil Code, which is authorized to acquire and hold conservation easements under California law and has similar purposes to preserve agricultural lands and open space, which agrees to assume the responsibilities imposed by this Easement. 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 Grantor of any assignment, and Holder and any assignee-Holder shall coordinate management of their enforcement activities to provide reasonable assurances to Grantor that their monitoring activities will not significantly increase the burden on Grantor beyond what that burden would have been if only a single monitoring holder had existed.

**17. 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 acquire and 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 approval by the Board of Supervisors of the County of Marin.

**18. Amendment of Easement.** Grantor and Holder recognize that circumstances may arise that justify amendment of certain of the terms, covenants, or restrictions contained in this Easement. To this end, Grantor and Holder have the right to agree to amendments to this Easement without prior notice to any other party, provided that in the sole and exclusive judgment of the Holder, each such amendment furthers or is not inconsistent with the purpose of this Easement. This Easement may be amended only with the written consent of the Grantor and the Holder.

Notwithstanding the foregoing, the Holder and Grantor have no right or power (a) to amend Section 11 hereof or Section 3 of Exhibit B to permit more development than permitted by the express terms of this Easement 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 or the status of the Holder under applicable laws, including, without limitation, those referred to in the recitals of this Easement.

**19. Subsequent Easements.** Grantor shall not grant any subsequent easement on the Property that might adversely affect the purpose of the Easement or the Protected Values. If Grantor wishes to grant a subsequent easement on the Property that Grantor believes would not adversely affect the purpose of the Easement or the Protected Values, Grantor 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 easement 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 purpose of the Easement and the Protected Values or (b) approve the proposal on conditions intended to ensure its consistency with the purpose of the Easement and the Protected Values or (c) disapprove the proposal as being actually or potentially inconsistent with the purpose of the Easement or the Protected Values. Grantor and Holder hereby expressly agree that any grant of a subsequent easement without Holder's express written approval shall be void and of no effect.

**5. 20. Applicable Law.** All uses, practices, specific improvements, construction or other activities permitted under this Easement shall be consistent with the purpose of this Easement. Although it is expected that Grantor will comply with applicable law and obtain any permits or approvals required thereby in connection with Grantor's management of Grantor's Property, it is not the obligation of Holder to enforce compliance with such applicable laws. However, Holder may withhold approval of any proposal if Grantor fails to demonstrate to Holder's satisfaction that Grantor has complied or will comply with all applicable legal requirements.

**21. Grantor's Title Warranty.** Grantor represents and warrants that Grantor has good fee simple title to the Property, free from any and all liens or encumbrances, except those set forth in **Exhibit D** to which this Easement is made subject, and hereby promises to defend the same against all claims that may be made against it. Grantor represents and warrants that the Property is not subject to any other easement whatsoever, except those listed in **Exhibit D**.

## 22. General Provisions.

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of the California Conservation Easement Act of 1979, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(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 Grantor's title in any respect.

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

(g) Successors. 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 "Grantor" and "Holder," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and Grantor's personal representatives, heirs, 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, then Holder's rights and obligations under this Easement shall become immediately vested in **[designated backup Holder for this eventuality]. If [designated backup Holder] is no longer in existence at the time the rights and obligations under this Easement would otherwise vest in it, or if [designated backup Holder] is not qualified or authorized to hold conservation easements as provided for an assignment pursuant to Section 16, or if it shall refuse such rights and obligations, then the rights and obligations under this Easement shall vest in such organization 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 16.

(i) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer, and rights to indemnity and other rights under this Easement as to acts, omissions 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 16, the rights and obligations of that assignor-Holder under this Easement shall terminate, except for those retained rights and obligations and except that liability for acts or omissions occurring prior to such transfer shall survive transfer, and rights to indemnity and other rights under this Easement as to acts, omissions or events occurring prior to such transfer shall survive such transfer.

(j) Future Conveyance. Grantor agrees that reference to this Easement will be made in any subsequent deed or other legal instrument by means of which they convey any interest in the Property (including but not limited to a leasehold interest). The failure of Grantor to perform any act required by this Section shall not impair the validity of this Easement or limit its enforceability in any way.

(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 under this Easement.

IN WITNESS WHEREOF, Grantor has executed this Deed of Agricultural Conservation Easement this xxx day of xx, 200x. As attested by the signature of its Executive Director affixed hereto, in exchange for consideration, the 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 the Holder, its successors and assigns, forever.

GRANTOR:  
[Name on title report]

By: \_\_\_\_\_  
xxx

By: \_\_\_\_\_  
xxx

ACCEPTED BY HOLDER:

MARIN AGRICULTURAL LAND TRUST

By: \_\_\_\_\_  
Executive Director

[Notarization of Grantor's and Holder's signatures].

## **LIST OF EXHIBITS**

Exhibit A	Description of Property
Exhibit B	Permitted Uses and Practices
Exhibit C	Prohibited Uses and Practices
Exhibit D	Disclosure of Liens and Easements

**Exhibit A**

All that certain real property situate in the County of Marin, State of California, described as follows:

[Insert Property Legal Description]

## **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 11 of this Easement and section 3 of this Exhibit B.
  
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, significant pollution or degradation of any surface or subsurface waters, and that all uses and activities are consistent with applicable laws.
  
3. Improvements and Facilities.
  - (a) Maintenance and Repair of Existing Improvements and Facilities. To maintain, repair and, subject to the approval of Holder, relocate existing structures, housing, fences, corrals, roads and other improvements and facilities on the Property existing at the date of this Easement.
  
  - (b) Construction of Additional Improvements and Facilities. Additional improvements and facilities accessory to the residential use of the Property, and additional structures, housing, roads, signs, and other improvements and facilities reasonably necessary to the agricultural uses of the Property, shall be permitted, provided that Grantor obtain the written approval of Holder for the construction of any such additional structures, housing, road, sign, or other improvements and facilities, including the size, function, capacity and location, which consent shall not be unreasonably withheld, and that such construction is made in accordance with applicable laws. Grantor shall provide Holder written notice of Grantor's intention to undertake any such construction, together with information on its size, function, capacity and location, not less than forty-five (45) days prior to the commencement thereof. Holder shall not give approval unless Holder determines that the proposed improvement or facility and its location will not substantially diminish or impair the agricultural productivity and open space character of the Property. All such structures individually and combined shall not significantly impair the agricultural productivity of the Property. Additional fencing and corrals deemed by

Grantor to be reasonably necessary to ranching and agricultural activities may be constructed without Holder's consent.

(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, Grantor may replace the same with structures, housing, fences, corrals, roads, signs, or other improvements and facilities of similar size, function, capacity and location.

4. Water Resources and Impoundments. To develop and maintain such water resources on the Property as are necessary or convenient for ranching, agricultural, irrigation, and residential uses in a manner consistent with the purpose of this Easement, provided that the creation, alteration or enlargement of any water impoundment shall not damage, impair or interfere with the Protected Values and that all such water resources shall be developed in accordance with applicable laws.

5. Agrochemicals. 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 purposes. Such use shall be carefully circumscribed near surface water, during periods of high ground water or heavy rain.

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.

## 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. Impairment of Protected Values. The impairment of the Protected Values, except as otherwise provided herein.

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 neither ranching, agriculture, nor the production or processing of food and fiber products as contemplated by the provisions of Exhibit B, shall 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 which are compatible with the Protected Values of the Property and which are ancillary and subordinate to the agricultural uses 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.

3. Construction. The construction, reconstruction, or replacement of structures, housing, roads and other improvements and facilities except as provided in section 11 of this Easement and **Exhibit B**.

4. Subdivision. The division, subdivision, or de facto subdivision of the Property, provided, however, that a lease of a portion of the Property for agricultural use shall not be prohibited by this section.

5. Motorized Vehicles. The use of motorized vehicles, except by Grantor or others under Grantor's control for agricultural, ranching or attendant residential use of the Property or other uses consistent with the purpose 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 purpose of this Easement.

6. Tree Cutting. The harvesting or removal of trees; provided, however, that Grantor 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 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. Grantor may also develop and, with the prior written approval of Holder, implement a long-range plan for the growing and/or harvesting of trees in a manner that is consistent with the purpose of this Easement.

7. 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 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, and in accordance with applicable law.

8. Soil Degradation. Ranching, agricultural or other uses otherwise permitted under this Easement, which result in significant degradation of soil quality.

9. Water Quality Degradation. Ranching, agricultural or other uses otherwise permitted under this Easement, which result in significant degradation of water quality. Stockpiling animal wastes, compost, or loose soil in a manner whereby runoff adversely affects water quality.

10. Surface Alteration or Excavation. Any alteration of the general topography or natural drainage of the Property including, without limitation, the 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 Protected Values of the Property, is in accordance with applicable law, and is approved, as to location and amount of materials and any necessary or appropriate remediation, in writing by Holder.

11. Water Rights. The Grantor 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 production only and for other permitted uses on the Property. Water may be distributed (a) under short-term commitment or arrangement (not being binding on the Grantor for longer than a single year period), (b) to a contiguous property or to other property owned or leased by Grantor and (c) only for agricultural production purposes. No distribution of water shall be permitted that would impair the long-term agricultural productive capacity or open space character of the Property.