

NEVADA COUNTY AGRICULTURAL PRESERVE CONTRACT

THIS CONTRACT made and entered into this ____ day of _____, 2009, by and between the COUNTY OF NEVADA, a political subdivision of the State of California, hereinafter referred to as "County" and _____, hereinafter collectively referred to as "Owner".

RECITALS

WHEREAS, both Owner and County desire to limit the use of the subject property to agricultural, public recreation or open space and compatible uses in order to preserve a maximum amount of open space land, to conserve the State's economic resources, to maintain the agricultural economy, and to assure a food supply for future residents, to discourage premature and unnecessary conversion of agricultural land to other than agricultural uses, recognizing that such land has public value and constitutes an important physical, social, aesthetic and economic asset to the County; and

WHEREAS, the placement of the subject property in an agricultural preserve and the execution and approval of this Contract is a determination that the highest and best use of the subject property during the term of the Contract or any renewal thereof is for agricultural and compatible uses, all as hereinafter defined; and

WHEREAS, the Owner and County intend the terms, conditions and restrictions of this Contract to be substantially similar to those required for contracts by the California Land Conservation Act of 1965 (as amended), and intend that this Contract shall constitute an "enforceable restriction" as that term is defined and used in California Revenue and Taxation Code Section 402.1, 422, 423 and 423.3.

NOW, THEREFORE, both Owner and County in consideration of the mutual promises, covenants and conditions herein contained and the substantial public benefits to be derived therefrom, do agree as follows:

1. Contract made pursuant to Land Conservation Act and County rules and regulations. This Contract is made and entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 of Part 1 of Division 1 of Title 5 of the California Government Code, commencing with Section 51200), as amended from time to time, and is subject to all the provisions of said Act incorporated herein by reference, including any subsequent amendments thereto. This Contract is also made and entered into pursuant to Resolution 88-36 of the Board of Supervisors of the County of Nevada, and is subject to all of the provisions of said Resolution incorporated herein by reference, including any subsequent amendments thereto.

2. Consideration and Waiver of Payment. Owner shall not receive any payment from County in consideration of the obligations imposed under this Contract, it being recognized and agreed that the consideration for the execution of this Contract is the substantial public benefit to be derived therefrom, and the advantage that may accrue to Owner as a result of the effect upon the assessed value of the property on account of the restrictions on the use of the property contained herein.

3. Restriction on Use of Property. During the term of this Contract, and any and all renewals thereof, the property described in Exhibit "A" shall not be used by Owner, or Owner's

successors in interest, for any purpose other than for a use allowed in the zoning district in which the property is located and permitted under the terms and conditions set forth in the current resolution governing application for such contracts. A copy of said current resolution is attached hereto as Exhibit "B" and by this reference its terms and conditions are incorporated into this Contract.

4. Term of Contract. This Contract shall have an initial term of ten (10) years, commencing as of the first day of the month next succeeding the date of execution. This Contract shall be automatically renewed each succeeding year, which shall be deemed to be the annual renewal date of this Contract, and upon each such renewal, one (1) additional year shall be automatically added to the initial term, hereof, unless notice of non-renewal is given as provided in Paragraph 5 hereof.

5. Notice of Non-Renewal.

(A) If either party desires in any year not to renew this Contract, that party shall serve written notice of non-renewal upon the other party in advance of the annual renewal date of this Contract. Unless such written notice of non-renewal is served by the land owner at least ninety (90) days prior to the renewal date, or by the County at least sixty (60) days prior to the renewal date, this Contract shall be considered renewed as provided in Paragraph 4 above.

(B) In the event County shall serve written notice of non-renewal of this Contract, the Owner, within ten (10) days after receipt thereof, may submit to County a written protest of such non-renewal. County may, at its discretion, at any time prior to the next following renewal date thereafter, withdraw such notice of non-renewal and in such event this Contract shall continue as if no such notice of non-renewal had been submitted.

(C) A written notice of non-renewal submitted by Owner shall relate to the entire property described in Exhibit "A" hereto, except that Owner may make application to the Board of Supervisors of County for permission to submit a notice of non-renewal in relation to only a portion of said estate property, and if such permission is granted, said written notice of non-renewal may relate to such portion of said entire property.

(D) If either party serves written notice of non-renewal in any year within the time limits of (A) above, this Contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of this Contract, as the case may be.

6. Assessment. On each assessment year, commencing with the first assessment year following execution of this Contract and continuing until notice of non-renewal shall be given by either of the parties hereto pursuant to the provisions of Paragraph 5 hereof, the Nevada County Assessor shall assess the subject property in accordance with the provisions of Section 421 to 424, inclusive, of the Revenue and Taxation Code, and Sections 51200 to 51295, inclusive, of the Government Code, and any amendments thereto.

If either of the parties hereto shall serve the other party with notice of non-renewal, pursuant to the provisions of Paragraph 5 hereof, commencing with the first assessment year following said notice of non-renewal, and continuing through each assessment year thereafter until the effective termination of this Contract, the Nevada County Assessor shall assess the subject property pursuant to Revenue and Taxation Code Section 426; provided, however, that this paragraph shall be subject to the right of the State of California to provide for other methods for the assessment of the subject property either before or after notice of non-renewal through appropriate legislation and in the event the State of California shall adopt such legislation, then

and in that event, it is agreed and understood that the Nevada County Assessor shall assess the subject property in accordance with such legislation and any amendments thereto.

It is further agreed and understood that this paragraph shall not limit, abridge or restrict the provisions of Paragraph 10 hereof, providing for assessment of the subject property in connection with the cancellation of this Contract, pursuant to the provisions thereof.

7. Automatic Termination by Eminent Domain. Upon the filing of any action in eminent domain for the condemnation of the fee title of any land described herein, or of less than a fee interest which will prevent said land being used for any authorized agricultural use, or compatible use, or upon the acquisition in lieu of condemnation of the fee title of any land described herein or such acquisition of less than a fee interest which will prevent the land being used for authorized use, this Contract is null and void upon such filing or acquisition as to the portion of the land described herein so taken or acquired, and the condemning agency shall proceed as if this Contract never existed.

8. Annexation. This Contract shall be transferred from County to any succeeding City or County acquiring jurisdiction over the subject property in the manner provided for in Section 51243 of the California Government Code. On the completion of annexation proceedings by a City, that City shall succeed to all rights, duties and powers of the County under this Contract for that portion of the subject property annexed to the City, unless the subject property was within one (1) mile of the annexing City on the date of execution of this Contract, and the City had, pursuant to California Government Code Section 51243.5, previously filed its resolution protesting the execution of this Contract. If such resolution had been filed by the City, then upon annexation the City may exercise its option not to succeed to this Contract and this Contract shall become null and void as to that portion of the subject property annexed by the City.

9. Contract Subject to Exercise of Police Power. Nothing in this Contract shall limit or supercede the planning, zoning, health, safety and other police powers of the County, and the right of the County to exercise such powers with regard to the subject property.

10. Cancellation. This Contract may not be cancelled by either Owner or County acting unilaterally or by mutual agreement of the parties, except following notice and hearing thereon conducted in the manner provided by Section 51282 and following of the California Government Code and a finding by the Nevada County Board of Supervisors that such cancellation is consistent with the purposes of the California Land Conservation Act and County rules and regulations effectuating said Act and is in the public interest.

It is understood that the existence of an opportunity for another use of the said real property shall not be sufficient reason for the cancellation of this Contract. A potential alternative use of the land may be considered only if there is no proximate, non-contracted land suitable for the use to which it is proposed this land be put.

Likewise, the uneconomic character of a particular existing agricultural, recreational or open space use, shall not be sufficient reason for cancellation of the Contract, and the uneconomic character of the existing use may be considered only if there is no other reasonable or comparable agricultural, recreational or open space use, to which the land may be put.

As part of any application by land owner for the cancellation of this Contract, Owner shall acknowledge his/her readiness and willingness to pay to the County Treasurer, as a cancellation of the Contract fee, a sum as determined pursuant to Government Code Section

51283. Collection and distribution of the cancellation fee shall likewise be carried out in the same manner as specified by Section 51283.

Upon tentative approval of County for the cancellation of this Contract, a certificate pursuant to Resolution 88-36 shall be recorded with the County Recorder of the County of Nevada. County shall have a lien for all unpaid cancellation fees from the date of such recording.

The following actions shall cause the Board of Supervisors to issue immediate notice of public hearing for consideration of cancellation of the contract:

(A) Any modification of the boundaries of the land described in the contract.

(B) Notification from the Soil Conservation Service, Nevada County Resource Conservation District, or Farm Advisor, that the owner of the land under contract has not performed within the time frame of the conservation plan included in the application for contract.

(C) Failure of the applicant to show an annual gross profit of \$3,000.00 derived from agricultural production on the property.

(D) Failure of the applicant to comply with the plan included in the application for contract or the site plan or use permit in effect for the land use.

11. Automatic Termination. If it should be finally determined by Judicial proceeding that this Contract does not constitute an enforceable restriction within the meaning of California Revenue and Taxation Code, except for an unenforceable ability arising out of the non-renewal of this Contract, for any tax year during the term of this Contract or any renewals thereof, then and in that event this Contract shall be null and void, and without further effect, and the property subject to this Contract shall be from that time free from any restriction whatsoever under this Contract.

12. Enforcement of Contract. Any conveyance, contract, authorization (whether oral or written) or use by Owner or his/her successors in interest which would permit use of the above-described land contrary to the terms of this Contract, or the provisions of Exhibit "B" hereof, may cause this Contract to be declared void by the County's Board of Supervisors; such declaration or the terms and provisions of this Contract may be enforced by County by an action filed in the Superior Court of the County for the purpose of compelling compliances or restraining breach thereof. It is understood and agreed that the enforcement proceedings provided in this Contract are not exclusive and both the Owner and County may pursue their legal and equitable remedies.

13. Exculpatory Clause. The Owner shall hold the County harmless from any demand, claim, cause of action or action for damages involving the Owner's interest or rights in and to the real property described herein. Person or persons signing this Contract represent that they are Owners of the real property entitled to and possessing the authority to enter into this Contract and to bind the real property in accordance with this Contract.

14. Costs of Litigation. In case the County shall, without any fault on its part, be made a party to any litigation commenced by or against Owner, the Owner shall and will pay all costs together with reasonable attorney's fees incurred by or imposed upon County by or in connection with such litigation; further, Owner shall and will pay all costs and reasonable attorney's fees which may be incurred or paid by County in enforcing the covenants and agreements of this Contract.

15. Severability. It is understood and agreed by the parties hereto that if any of these provisions shall contravene or be invalid under any law, such contravention or invalidity shall not invalidate the whole Contract, but it shall be construed as if not containing the particular

provision or provisions held to be invalid, and the rights and obligations of the parties hereto shall be construed and enforced accordingly.

16. Successors in Interest. This Contract shall constitute a covenant running with the land herein described, and shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto. This Contract may be enforced by either party or by any owner of land within the same agricultural preserve which is subject to a similar Contract. *The land under this Contract cannot be subdivided into smaller parcels, but the land covered by the Contract may be sold in total. Subsequent revisions to Guidelines applicable...see Humboldt vs McKee 2008*

17. Assessment Information. Owner agrees to provide County, upon request, with all information concerning Owner's agricultural, recreational or open space and compatible activities upon the subject property, including income derived, capital expenditures and expenses incurred in the course of Owner's agricultural, recreational, open space and compatible pursuits in relation to the subject property. Said information will be necessary to implement the assessment process, pursuant to the California Land Conservation Act of 1965 (as amended), and said information shall be, at the request of the County, verified by a certified public accountant, without expense to County.

IN WITNESS WHEREOF, Owner and County have hereunto executed this Contract the day and year first above written.

(NOTE: OWNERS SIGNATURES MUST BE NOTARIZED)

OWNER(S)

COUNTY OF NEVADA, a political subdivision of the State of California

By: _____
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

COUNTY CLERK of the County of Nevada,
State of California and Ex-Officio Clerk to its
Board of Supervisors

SUBROGATION

We, the undersigned, trust deed or other encumbrance holders, do hereby agree to, and agree to be bound by, the terms of this Contract.

(NOTE: ALL SIGNATURES MUST BE NOTARIZED)

<u>NAME</u>	<u>NATURE OF INTEREST OF ENCUMBRANCE</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

STATE OF CALIFORNIA)
) ss.
COUNTY OF NEVADA)

On _____, before me, _____, a Notary Public in and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
My Commission Expires _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF NEVADA)

On _____, before me, _____, a Notary Public in and for said _____ County and _____ State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
My Commission Expires _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF NEVADA)

On _____, before me, _____, a Notary Public in and for said _____ County and _____ State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
My Commission Expires _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF NEVADA)

On _____, before me, _____, a Notary Public in and for
said County and State, personally appeared _____
_____, personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
My Commission Expires _____