JOINT OPERATING AGREEMENT

BETWEEN THE LAND CONSERVANCY OF SAN LUIS OBISPO COUNTY AND

THE COUNTY OF SAN LUIS OBISPO

THIS JOINT OPERATING AGREEMENT ("Agreement") is entered into by and between The Land Conservancy of San Luis Obispo County, hereinafter referred to as "Land Conservancy" and the County of San Luis Obispo, hereinafter referred to as "County", and will replace and supersede any and all previous written or verbal agreements made and entered into by and between the Land Conservancy and the County relative to the real property hereinafter described.

WHEREAS, the Octagon Barn located on South Higuera Street in San Luis Obispo ("Octagon Barn") is an important historical, cultural and architectural landmark; and

WHEREAS, John and Howard Hayashi are the owners of an improved parcel of real property containing said Octagon Barn; and

WHEREAS, the Land Conservancy has leased 2.14 acres of the real property containing the Octagon Barn ("Hayashi Lease"); and

WHEREAS, the Hayashi Lease is for a period of 98 years commencing October 23, 2006 and contains an Option to Purchase; and

WHEREAS, the California Department of Transportation is the owner of a parcel of real property containing approximately 56.39 acres adjacent to the Octagon Barn ("Caltrans Property"); and

WHEREAS, on July 1, 2009, the Land Conservancy entered into a 5 year lease for approximately 4.25 acres of the Caltrans Property. That lease was renewed on June 21, 2012, for an additional 20 years and the same acreage, commencing on July 1, 2014, subject to termination by either party with at least 120 days written notice (hereinafter "Caltrans Lease"); and

WHEREAS, the Land Conservancy and the County have worked for many years to collaboratively develop various segments of the Bob Jones Pathway; and

WHEREAS, the Land Conservancy's leased properties, at the Octagon Barn site, including the Hayashi property and Caltrans Property, provides a key location for public staging to serve the Bob Jones Pathway; and

WHEREAS, the Land Conservancy is willing to provide public access over these properties to permit the County to locate such a staging area to serve the Bob Jones Pathway

users, along with additional improvements to the Bob Jones Pathway, a parking lot and restroom facility; and

WHEREAS, as part of the Conditional Use Permit findings and conditions approved by the San Luis Obispo County Planning Commission on May 10, 2012 (see exhibits A and B, attached), for the Octagon Barn Center, a South Higuera Street southbound center left turn lane shall be constructed to serve the project site; and

WHEREAS, County Parks has been awarded grant funding through San Luis Obispo Council of Governments for the purpose of constructing the South Higuera Street left turn lane ("Lane") into the Octagon Barn Center. County Parks will manage the construction of the Lane and County Public Works will maintain the Lane. The County has committed $100,200, and Land Conservancy has committed $5,000 for the Lane improvements; and

WHEREAS, the Land Conservancy has also acquired land along San Luis Obispo Creek for conservation and passive public recreation purposes through fee purchase, access easements, and/or long term leases; and

WHEREAS, the Land Conservancy intends to offer its rights of access, along San Luis Obispo Creek, at a reduced amount to cover actual staff and consultant costs of reviewing same to the County for the construction of an additional segment of the Bob Jones Pathway and other amenities such as parking lots, water fountains, and rest areas;

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and conditions herein set forth, Land Conservancy and County mutually covenant and agree as follows:

CONDITIONS

1. **PREMISES**: Land Conservancy hereby authorizes the County to develop and equip the Bob Jones Pathway, and associated staging area, parking lot, and restroom facility (County Improvements") on the properties leased by the Land Conservancy pursuant to the Hayashi Lease and the Caltrans Lease (hereinafter, the "Premises").

2. **TERM**: The term of this Agreement shall begin when this Agreement is fully executed by all parties and shall be in effect until July 1, 2034. If: (a) the Land Conservancy and Caltrans extend the Caltans Lease this Agreement shall extend to the term of the Caltrans Lease. If the Land Conservancy acquires the Caltrans Property, this Agreement shall extend to the term of October 23, 2104.

3. **CONSIDERATION**: In consideration for the improvements made to the Premises by County, as described in Paragraph 4 below, Land Conservancy agrees to operate and maintain the Premises. The Premises shall be accessible and available for the public use as set forth in this Agreement.

CONSTRUCTION

4. **COUNTY IMPROVEMENTS**: County shall, at County's sole cost and expense and subject to final approval by the Land Conservancy, grade the Octagon Barn Center site and develop a parking lot containing 112 parking spaces including roadways, accessible parking for disabled persons, and 6 public restroom stalls. Improvements shall be consistent with the Conditional Use Permit findings and conditions approved by the San Luis Obispo County Planning Commission on May 10, 2012 (see exhibits A and B, attached). All improvements constructed by County shall be compliant with the Americans with Disabilities Act of 1990, 42 U.S.C. sect. 12101 et seq., as currently enacted and in accordance with applicable laws. The County will be responsible for constructing the Bob Jones Pathway and staging area, plus necessary safety features (fencing, signage, warning features). Prior to the commencement of the construction of any improvements on the Premises by County, County shall provide Land Conservancy with copies of the design plans for such improvements and Land Conservancy shall have the right of approval of the plans, which approval shall not be unreasonably withheld. The Land Conservancy shall work with the land owner(s) to obtain any and all necessary approvals required by local, state and federal law or under the lease agreement(s) (e.g. Hayashi Lease and Caltrans Lease) to perform the improvements under this Agreement, and provide evidence of said approvals to the County upon request. Upon substantial completion of construction of any improvements on the Premises and prior to final completion and acceptance of the construction work, Land Conservancy shall have the right of approval of the improvements as constructed, which approval shall not be unreasonably withheld. In addition, the construction of any improvements on the Premises shall be subject to any additional approvals that may be required by the Hayashi Lease or the Caltrans Lease.

5. **SIGNS**: County shall have the right to install signs, on the Premises, as they relate to the staging area, restroom facilities and parking lot, subject to prior approval by the Land Conservancy, which approval shall not be unreasonably withheld. County shall maintain these signs.

MAINTENANCE AND OPERATIONS

6. **USE OF PREMISES**: The County may use the Premises for the Bob Jones Pathway, a public staging area to serve the Bob Jones Pathway, parking lot and restroom facility. The Premises may be used by the Land Conservancy for any other purposes allowable under the terms of the Land Conservancy's Conditional Use Permit for the subject property, provided such purposes do not interfere with the purpose and function of the Bob Jones Pathway and staging area.

7. **UTILITIES**: Land Conservancy shall supply and maintain all utilities to the Premises at Land Conservancy's sole cost and expense. For the construction of any improvements on the Premises by the County which require utility connections, the County shall

coordinate with Land Conservancy with respect to the utility connections and the County shall, at its sole cost and expense, install all necessary conduits or other facilities needed to connect the utilities to the County Improvements.

8. **JANITORIAL SERVICE**: Land Conservancy shall arrange and pay for janitorial service for the improvements and buildings on the Premises, sufficient to maintain the Premises in a clean and well maintained condition. Such services, as described in Paragraph 9 below, include, without limitation, proper disposal of all trash located in the interior of the restrooms and exterior of the Octagon Barn site.

9. **REPAIRS AND MAINTENANCE**: Commencing upon completion of each facility improvement and continuing during the term of this Agreement, the Land Conservancy shall maintain the Premises, and facility improvements, including but not limited to, the parking lot and restroom facilities, in a functional, safe, sanitary, and aesthetically pleasing condition at Land Conservancy's sole cost and expense. During the term of this Agreement it shall be the Land Conservancy's responsibility to ensure that the Premises are maintained at such a level and standard of condition and repair as that of other comparable County Park facilities. The maintenance activities for the restrooms include but are not limited to the following: pumping and servicing the vaults as needed; cleaning the interiors as needed; removing graffiti as needed; repairing/replacing fixtures as needed; repainting the interior and exterior of the buildings as needed; and repairing/replacing the roofs as needed. The maintenance activities for the parking lot include but are not limited to the following as needed: filing potholes; touch up grading; weed control; pest control; drainage facility repairs; and landscape maintenance (weed control, irrigation, trimming, plant replacement, debris removal). County shall maintain the improved surface of the Bob Jones Pathway, defined as the path and the hardscape at the start of said Pathway, plus needed safety features (fencing, signage and warning features). Land Conservancy shall have the right, in its sole but reasonable discretion, to restrict access or close the facilities from time to time if reasonably necessary to protect its invitees, the public, or the Premises. County shall enforce all laws subject to its jurisdiction relating to the Premises.

10. **DESTRUCTION OF PREMISES**: In the event of a partial destruction of the Premises during the term hereof, from any cause, Land Conservancy shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this Agreement. If such repairs cannot be made within said sixty (60) days, County, at County's option, may make the same within a reasonable time, this Agreement continuing in effect as aforesaid. In the event that Land Conservancy shall not elect to make such repairs which cannot be made within sixty (60) days, this Agreement may be terminated at the option of either party. A total destruction of the Premises shall terminate this Agreement.

11. **PARKING**: County shall construct a parking lot containing 112 parking spaces as referenced in Paragraph 4 above. Parking will be available on a first-come, first-served basis

and may be used by patrons of the Bob Jones Pathway and the Octagon Barn. The Land Conservancy shall retain the right to limit general public use of the parking lot to as few as 60 spaces, when required for special events and subject to prior County and public noticing, when limited use could cause an impact to the public.

12. **NOTICES**: Any notices, demands, or communication, under, or in connection with this Agreement, may be served upon County by personal service, or by mailing the same by certified mail in the United States Post Office, postage prepaid, and directed to General Services Agency Parks Division, 1087 Santa Rosa Street, San Luis Obispo, CA 93408, ATTN: Park Director and may likewise be served on Land Conservancy directed to: The Land Conservancy of San Luis Obispo County, P.O. Box 12206, San Luis Obispo, CA 93406

Either Land Conservancy or County may change such address by notifying the other party in writing as to such new address as Landlord or County may desire used and which address shall continue as the address until further written notice.

13. **ASSIGNMENT**: This Agreement is of a personal nature and Land Conservancy shall not assign, sublet, pledge or otherwise transfer this Agreement, either voluntarily or by operation of law, in whole or in part, except to another public agency or similar non-profit organization, and with prior written agreement by both parties.

14. **AMENDMENTS AND MODIFICATIONS**: This Agreement contains all agreements of the parties with respect to any matter mentioned herein. No prior or contemporaneous agreement or understanding pertaining to any such matter shall be effective. This Agreement may be modified in writing only signed by the parties in interest at the time of the modification.

15. **ENVIRONMENTAL MATTERS/COVENANTS REGARDING HAZARDOUS MATERIALS**: Land Conservancy and the County shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations ("Hazardous Materials Laws") relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under such laws, ordinance or regulations (collectively, "Hazardous Materials").

Land Conservancy and the County shall further indemnify, defend, protect, and hold each other free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses (including attorneys' fees) or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by:

(A) the presence in, on, under or about the premises or discharge in or from the premises

of any Hazardous Materials or Land Conservancy's or the County's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, under, about or from the premises, or

(B) Land Conservancy or County failure to comply with any Hazardous Materials Law. Mutual obligations by both parties hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith, and shall survive the expiration or earlier termination of the term of this Agreement. For purposes of the release and indemnity provisions hereof, any acts or omissions of Land Conservancy or by employees, agents, assignees, contractors or subcontractors of Land Conservancy or others acting for or on behalf of Land Conservancy (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Land Conservancy, and any acts or omissions of County or by employees, agents, assignees, contractors or subcontractors of County or others acting for or on behalf of County (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to County.

16. <u>HOLD HARMLESS AGREEMENT</u>: Both the Land Conservancy and the County shall, except in the event of the other party's sole negligence or willful misconduct, defend, indemnify and hold harmless the other party, its officers and employees from any and all claims and demands, costs, expenses, judgments, attorney fees or liabilities that may be asserted by any person or entity that arise out of or in connection with the acts or omissions relating to the performance of any obligation or duty provided for or relating (directly or indirectly) to this Agreement or the Premises hereunder. The obligation to indemnify shall be effective and shall extend to all such claims and losses, in their entirety, even when such claims or losses arise from the comparative negligence of the other party, its officers and employees. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the other party, its officers and employees.

The preceding paragraph applies to any theory of recovery relating to said act or omission by either the Land Conservancy or the County, or their agents, employees or other independent contractors directly responsible to either party, including, but not limited to, the following:

A. Negligence or recklessness.

B. Gross negligence, or other wrongful acts, including failures to act.

C. Premises liability.

D. Violation of statute, ordinance, or regulation.

E. Violation of civil rights.

F. Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board or any other California public entity responsible for collecting sales or payroll taxes, when the Land Conservancy is not an independent contractor.

It is the intent of the parties to provide the fullest, mutual indemnification, defense, and hold harmless rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this Agreement and the remaining language shall be given full force and effect.

17. **INSURANCE:** Both the Land Conservancy and the County shall obtain and maintain for the entire term of the Agreement and shall not perform any work on the Premises under this Agreement until after they have obtained insurance, or proof of legally valid self-insurance, complying with the provisions of this paragraph, delivered a certified copy of each insurance policy to the other party and obtained the other party approval of all such policies. Said policies shall be issued by companies authorized to do business in the State of California, or otherwise approved by the County Risk Manager and the Land Conservancy's Executive Director. Both The Land Conservancy and the County shall maintain said insurance in force at all times. The following coverage with the following features shall be provided:

A. **General Liability Insurance:** Land Conservancy and the County shall maintain in full force and effect for the period covered by this Agreement, general liability insurance. This insurance shall include, but shall not be limited to, comprehensive general and automobile liability insurance providing protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from any act or occurrence arising out of either party's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The policy shall provide not less than single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage in the total amount of One Million Dollars ($1,000,000). The following endorsements must be attached to the policy:

(1) If the insurance policy covers on an "accident" basis, it must be changed to "occurrence".

(2) The policy must cover personal injury as well as bodily injury.

(3) Blanket contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.

B. **Workers' Compensation Insurance:** In accordance with the provisions of sections 3700 of the California Labor Code, et seq., if either party has any employees, said party is required to be insured against liability for workers' compensation or to undertake self-insurance. Both parties agree to comply with such provisions before commencing the performance of this Agreement.

C. **Property Insurance:** The Land Conservancy shall maintain in full force and effect for the period covered by this Agreement, property insurance. This insurance coverage shall include all structural improvements on the premises.

D. **Additional Insured to be Covered:** The professional liability and comprehensive liability policies maintained by each party shall name the other party, its officers, employees, and agents as additional insured. The policy maintained by each party shall provide that it will operate as primary insurance and that no other insurance maintained by the other party or additional insured will be called upon to contribute to a loss hereunder.

E. **Certification of Coverage:** Prior to commencing work under this Agreement, both parties shall furnish the other party with the following for each insurance policy required to be maintained by this Agreement:

(1) A copy of the Certificate of Insurance shall be provided. The certificate of insurance must include a certification that the policy will not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the other party.

(2) A copy of the Workers' Compensation policy need not be provided, but a copy of proof of coverage does need to be provided.

(3) Upon further written request, each party shall provide a copy of the entire insurance policy and not just the "face sheet" or proof of coverage.

(4) Approval of Insurance by the Land Conservancy or the County shall not relieve or decrease the extent to which the Land Conservancy or the County may be held responsible for payment of damages resulting from either party's services or operations pursuant to this Agreement. Further, Land Conservancy's or the County's act of acceptance of an insurance policy does not waive or relieve either party's obligations to provide the insurance coverage required by the specific written provisions of this Agreement.

F. **Effect of Failure or Refusal:** If either party fails or refuses to procure or maintain the insurance required by this Agreement, or fails or refuses to furnish the other party with the certifications required by subparagraph (D) above, each party shall have the right, at its option, to forthwith terminate the Agreement for cause.

18. **INSPECTION:** Land Conservancy and the County shall have the right, with reasonable notice and at reasonable times, to inspect the Premises.

19. **EVENTS:** County Parks may issue permits for activities consistent with the use of the Bob Jones Pathway and in cooperation with the Land Conservancy. Scheduling of events shall be coordinated with the Land Conservancy's Octagon Barn Center Calendar and shall be subject to prior approval, which shall not be unreasonably withheld, by Land Conservancy. The

Land Conservancy shall coordinate events with the County,

20. SUBORDINATION: This Agreement shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. The parties agree that the holders of any such Security Devices (in this Agreement together referred to as "Lender") shall have no liability or obligation to perform any of the obligations under this Agreement. Any Lender may elect to have this Agreement superior to the lien of its Security Device by giving written notice thereof to the parties, whereupon this Agreement shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

21. TIME: Time is of the essence in the performance of the parties' respective obligations under this Agreement.

22. SUCCESSORS: This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, successors and assigns.

23. COOPERATION; WAIVER AND SEVERABILITY: Each party to this Agreement agrees to cooperate with the other party to carry out the intent and purposes of this Agreement, including without limitation the execution and delivery to the appropriate party of all further agreements and other documents as may reasonably be required in order to carry out the intent and purposes of this Agreement. No waiver of any provision hereof or in any related documents or instruments shall be effective unless made expressly and in writing and executed by the party sought to be charged or in the name of the party sought to be charged. The failure of any party to insist, in any one or more instances, on performance of any of the terms and conditions of this Agreement, shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term, covenant or condition, but the obligations of the parties with respect thereto shall continue in full force and effect. In the event any of the provisions or a portion of any provision of this Agreement are held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the enforceable portion of any such provision and/or the remaining provisions shall not be affected thereby.

24. COUNTERPARTS; SIGNATURES: This Agreement may be executed in counterparts, including facsimile and PDF signatures, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

25. RELATION OF PARTIES: This Agreement does not constitute a partnership, joint venture or agency between the parties, nor shall either party be bound or become liable because of any representation, action or admission of the other.

26. **<u>AUTHORITY</u>:** The execution, delivery and performance of this Agreement by the undersigned have been duly and validly authorized by all necessary actions and proceedings, and no further action or authorization is necessary on the part of any party in order to consummate the transactions contemplated herein.

////////////////////////////////NOTHING FURTHER PAST THIS POINT//

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

THE LAND CONSERVANCY OF SAN LUIS OBISPO COUNTY

By: _____
Herb Kandel, President, Board of Trustees

Date: 4/8/14

COUNTY OF SAN LUIS OBISPO:

By: _____
Chairperson of the Board of Supervisors

Approved by the Board of Supervisors this _____ day of _____, 2014.

ATTEST:

_____
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT:
RRITA L. NEAL
County Counsel

By: _____
Deputy County Counsel

Date: 9/18/14