

RECORDING REQUESTED BY:

WHEN RECORDED RETURN TO:

\_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THIS SPACE FOR RECORDER'S USE ONLY

### PERPETUAL CONSERVATION EASEMENT GRANT

THIS PERPETUAL CONSERVATION EASEMENT GRANT (hereinafter "**Easement**") is made this \_\_\_\_ day of \_\_\_\_\_, 200@, by \_\_\_\_\_ ("**Grantor**") (*name who the grantor is and include applicable category: e.g, a corporation, a partnership, a limited partnership, husband and wife*), in favor of \_\_\_\_\_, (name of the entity; must be one that is recognized by § 815 of the California Civil Code) (*for example*) a California 501(c)(3) Non-profit Corporation ("**Grantee**" or "**Preserve Manager**").

### RECITALS

- A. Grantor is a \_\_\_\_\_ (*describe Grantor; is it a corporation, a partnership, limited partnership, Federal agency*) and is the sole owner in fee simple of certain real property located in the County of \_\_\_\_\_, State of California. Grantor intends to develop a portion of this property into (*for example*) a residential housing development. The remainder of this property with natural resource values is intended to be preserved in its natural state. This is the area covered by the Easement, and shall be referred to as the "**Preserve**", which is described in Exhibit A and depicted upon the map Exhibit B, both of which are attached hereto and incorporated herein by this reference.
- B. Grantee is a private non-profit 501(c)(3) corporation under the laws of the State of California, and is authorized to hold conservation Easements under California Civil Code §815 et seq.
- C. "**Corps**" is the United States Army Corps of Engineers within the United States Department of the Army, which is authorized by Federal law to administer the Federal Clean Water Act, Section 404, and other laws and regulations; and
- D. (*if required*) "**Service**" is the United States Fish and Wildlife Service within the United States Department of the Interior, which is authorized by Federal law to administer the Federal Endangered Species Act and other laws and regulations; and

- E. This Easement provides conservation measures and mitigation for certain impacts located in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of California, described in that certain U.S. Army Corps of Engineers Permit Number \_\_\_\_\_, dated \_\_\_\_\_, and *(if applicable)* described in that certain Federal Endangered Species Act (Biological Opinion/Habitat Conservation Plan), dated \_\_\_\_\_, for *(project name)*, and is being conveyed in order to enable Grantor to undertake its *(describe development project)*.
- F. The Preserve possesses natural resources with significant ecological and habitat values *(if applicable)* that benefit endangered, threatened, and other rare species (collectively, "**Conservation Values**"). These natural resources are of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people. These values include Waters of the U.S., including wetlands, and the adjacent upland *(if applicable list habitats and plant and animal species; include both listed species, and those that are of special significance)* other native vegetation and wildlife. These natural resources are of great importance to both Grantor and Grantee.
- G. The Preserve includes the water in wetlands and drainage features, including water resulting from direct precipitation onto the Preserve and/or flows through the drainage features from natural storm events which partially or completely fill depressions on the surface of the Preserve.
- H. The Preserve, consisting of approximately @.@@ acres, has been identified as being occupied by, or as being potential habitat for species of native plants and wildlife which Grantor and Grantee desire to preserve and protect, *(if applicable restore and/or enhance)* pursuant to an Open Space Management Plan ("**Plan**") dated \_\_\_\_\_, by \_\_\_\_\_, of which is attached to this Easement as Exhibit C and incorporated herein by this reference. *(Describe any endangered species and habitat present on the site and identify such habitat as part of the Conservation Values.)*
- I. Grantor intends to convey to Grantee the right to preserve and protect *(if applicable restore and/or enhance)* the Conservation Values of the Preserve.
- J. Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Preserve in accordance with the terms of this Easement and the Open Space Management Plan.
- K. The following terms, when used herein, shall have the meanings set forth below:
- "Grantor" means \_\_\_\_\_ or any successor, transferee, or assignee.

**"Preserve Manager"** means Grantee, the \_\_\_\_\_, or any successor, assignee, or transferee appointed in accordance with Section 8.

**"Preserve"** shall mean the approximately @.@@ acre area appearing on Exhibit B containing a natural wetland features and buffer zones which shall be maintained as a Preserve in accordance with the provisions of Section 3.

**"Plan"** means the \_\_\_\_\_ *Open Space Management Plan*, by \_\_\_\_\_, dated \_\_\_\_\_, a copy of which is attached hereto as **Exhibit C**.

**"Waters of the U.S."** means that Area defined in 40 CFR 122.2 as a feature under the regulation of the Federal Clean Water Act.

**"Wetland"** means that Area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

*(if applicable)* **"Riparian"** means those Areas that are those plant communities adjacent to and affected by surface or ground water of perennial or ephemeral water bodies such as rivers, streams, lakes, ponds, playas, or drainage ways. These areas have distinctly different vegetation than adjacent areas or have species similar to surrounding areas that exhibit a more vigorous or robust growth form.

**"Uplands"** means those habitats that are not riparian or wetlands, including *(if applicable)* valley oak woodland, grassland/meadow, blue oak woodland, and blue oak savannah.

## **COVENANTS, TERMS, CONDITIONS, AND RESTRICTIONS**

In consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California and California Civil Code §815 et seq., Grantor hereby voluntarily grants and conveys to Grantee a Perpetual Conservation Easement over the Preserve of the nature and character and to the extent hereinafter set forth.

### **1. PURPOSE**

It is the purpose of this Easement to ensure that the Preserve will be retained forever in an open space condition and to prevent any use of the Preserve that will impair or interfere with the Conservation Values of the Preserve. Grantor intends that this Easement (i) will assure that the Preserve will be used for such activities as are consistent with the purpose of this Easement and (ii) shall be implemented consistently with the Plan.

## 2. **RIGHTS OF GRANTEE**

- A. To accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement:
- B. To preserve and protect *(if applicable restore and/or enhance)* the Conservation Values of the Preserve in a manner consistent with the Open Space Management Plan;
- C. To enter upon and traverse all portion of the Preserve at all times in order to have access to the Preserve and to monitor Grantor's compliance with and otherwise enforce the terms of this Easement and to fulfill duties detailed in the Open Space Management Plan, provided that such entry shall not unreasonably impair or interfere with Grantor's use and quiet enjoyment of the Preserve or unreasonably disturb natural resources in the Preserve;
- D. Subject to the exceptions contained in Paragraph \_\_\_ herein, to prevent any activity on or use of the Preserve that is inconsistent with the purpose of this Easement and to require the restoration of such Area or features of the Preserve that may be damaged by any inconsistent activity or use; and
- E. To conserve and protect all mineral, air, water and groundwater rights required to protect and to sustain the biological resources of the Preserve *(describe more specific types of water rights, use of wells, et al.)*.

## 3. **PRESERVATION, MAINTENANCE, AND MANAGEMENT OF PRESERVE**

- A. Nature of the Preserve, Generally. The Preserve serves for the protection of wildlife corridors, water quality and drainage detention, and contains *(generally describe wetlands)*, upland habitat, and buffer zones for such Areas. Grantor intends that the Preserve be utilized and maintained in such a manner as to preserve and protect the natural features and resources of the area. The Preserve is delineated on Exhibit B. The Preserve shall be an area encumbered by an Easement in favor of the Preserve Manager for the purposes of access to and protection, conserving and preserving in perpetuity the Preserve.
- B. Conservation Easement. Grantor, with recordation of this Easement is granting to the \_\_\_\_\_ ("Grantee" or "Preserve Manager") the ability to ensure enforcement of the rules and regulations regarding the Preserve.
- C. Open Space Management Plan. The Preserve shall be fenced to control access and actively managed, as outlined in the Plan.
- D. Preserve Manager. The Preserve Manager shall perform such preservation and the maintenance of the Preserve as set forth in the Plan.

E. Monitoring Biologist The Grantee shall retain a competent biologist (the “**Monitoring Biologist**”), professionally trained in matters related to the conservation and preservation of natural resource values, to undertake an annual field review and prepare an annual report, as set forth in Section 3.F, with respect to the Status of the Preserve. Any appointment of a Monitoring Biologist shall be made only after review of the professional background and qualifications of the proposed Monitoring Biologist by, and with the express written consent of, the Preserve Manager.

F. Structures and Improvements. The are existing and proposed improvements that have been or will be made and structures that are currently present or will be constructed in the Preserve. The placement of and allowed maintenance activities relating to these structures shall be carried out according to the Plan.

G. Monitoring and Reporting Activities

The Grantee and/or a Monitoring Biologist shall once yearly inspect the Preserve as outlined in the Plan. The Grantee shall twice yearly inspect the Preserve as outlined in the Plan.

H. Annual Report. By December 31<sup>st</sup> each year, the Preserve Manager or Monitoring Biologist shall deliver to the Corps (*and the Service if required*), a report regarding the status of the Preserve. This report shall contain:

1. A map showing the project location;
2. Photographs documenting the status of the Preserve;
3. A narrative summarizing the general condition of the Preserve;
4. Any recommendations regarding remedial actions or management activities.

I. Maintenance and Repair. Maintenance and repair of existing and proposed structures and improvements shall be made according to the Plan.

#### 4. **PROHIBITED ACTIVITIES**

The following activities are prohibited as outlined in federal Section 404 permit No. \_\_\_\_\_ (herein called “**Permit**”) (Exhibit D) or as outlined in the Plan. No person shall engage in any of the following restricted activities in the Preserve unless that activity is in the future approved by the Corps (if applicable, the Service):

A. Planting, landscaping, plowing, or cultivation of the Preserve or any portion of such area, shall be done or permitted except for the purpose of enhancing the

Preserve through the planting of local native plant species. The irrigation of these plantings will be done in a manner that does not adversely affect the hydrology of any wetlands within the Preserve;

- B. Planting, introduction, or dispersal of non-native or exotic plant species or animal species;
- C. No materials or debris shall be stored or placed (whether temporarily or permanently) within the Preserve or any portion of such area;
- D. No discharge of any dredged or fill material shall be done or permitted within the Preserve or any portion of such area except as consistent with the terms and conditions of the Permit;
- E. No discharge, dumping, disposal, storage or placement of any soil, ashes, trash, refuse, rubbish, grass clippings, cuttings, bio-solids, or other waste materials shall be done or permitted within the Preserve or any portion of such area;
- F. Excavating, dredging, or removing loam, gravel, soil, rock, sand, or other material;
- G. Leveling or grading or otherwise altering the general topography of the Preserve or any portion of such area;
- H. No pesticides, herbicides, rodenticides, or other chemicals shall be used within the Preserve;
- I. Destruction or removal of any natural tree, shrub or other vegetation that exists upon the Preserve shall be done or permitted except **as provided in the Plan**;
- J. Grazing, except as outlined in the Plan;
- K. No motorized vehicles shall be ridden, brought, used or permitted on any portion of the Preserve, except as provided for in the Plan or with prior written approval by the Corps (*if applicable, and the Service*);
- L. Roads, utility lines, trails, benches, equipment storage, buildings, billboards, signs, or other structures or activities.
- M. Granting use of the land to any third party for off-road vehicle use;
- N. Legally subdividing the Preserve, recording of a subdivision plan, partition, or any other division of the Preserve into two or more parcels;
- O. Paving or otherwise covering of the conservation Property with concrete, asphalt, or any other impervious paving material;

- P. Transferring any appurtenant water right required to maintain and restore the biological resources of the Preserve;
- Q. Granting surface entry for the exploration or extraction of minerals without approval by the Service and the Corps;
- R. Any and all other uses which may adversely affect the purposes of this Easement.

5. **GRANTOR'S DUTIES**

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Preserve. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 2 of this Easement.

6. **RESERVED RIGHTS**

Grantor reserves to itself and to its personal representatives, heirs, successors, assigns, agents, and present and potential future lessees, all rights accruing from its ownership of the Preserve including, but not limited to: (i) the right to engage in or invite others to engage in activity on or use of the Preserve for the purpose of construction of the Project in accordance the terms and conditions of U.S. Army Corps of Engineers Permit No. \_\_\_\_\_, including, without limitation, *(describe activities allowed in the Open Space Management Plan such as construction of water quality ponds, trails, utilities, etc.)*; (ii) the right to engage or invite others to engage in activity on or use of the Preserve for the purpose of complying with the requirements of any governmental permits or authorizations including, but not limited to, those granted pursuant to the Federal Endangered Species Act, the California Endangered Species Act, Section 404 of the Clean Water Act or Section 1603 of the California Fish and Game Code; (iii) the right to engage in or invite others to engage in all uses of the Preserve that are not expressly prohibited herein and are not inconsistent with the conservation purposes of the Easement *(if any special provisions need such as right to conduct maintenance activities such as the right to conduct maintenance activities in stormwater facilities located in the Preserve – or if there are exiting Easements over the Preserve describe rights retained here)*.

*(Add this paragraph if applicable)* This Easement includes Waters consisting of (i) any riparian water rights appurtenant to the Protected Property, (ii) any appropriative water rights held by Grantor to the extent those rights are appurtenant to the Protected Property, (iii) any waters, the rights to which are secured under contract between the Grantor and any irrigation or water district, to the extent such waters are customarily applied to the Protected Property, and (iv) any water from wells that are in existence or may be constructed in the future on the Protected Property or on those lands described as excepted from the Protected Property in the legal description and that were historically used, by

the Grantor to maintain the Protected Property in a flooded condition (Collectively, "**Easement Waters**"). The Easement Waters are limited to the amount of Grantor's water reasonably required to maintain the Conservation Values of the Protected Property.

## **7. REMEDIES**

A. Enforcement Rights. If Grantee or Grantor determines that there is a violation of the terms of this Easement or that a violation is threatened, such party shall give written notice to the other parties of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Preserve resulting from any use or activity inconsistent with the purpose of this Easement, to restore in accordance with the Plan, the portion of the Preserve so injured. If a party fails to cure a violation within thirty (30) days after receipt of written notice thereof from the other party, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the aggrieved party 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, ex parte as necessary, by temporary or permanent injunction, to recovery any damages to which it may be entitled for violation of terms of this Easement or injury to the Conservation Values protected by this Easement, including damages for the loss of aesthetic ecological educational, historical, recreation or scientific values and to require the restoration of the Preserve pursuant to the Plan to the condition that existed prior to any such injury. If a party, in its good faith and reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Preserve, such party may pursue its remedies under this paragraph without prior notice to the other party or without waiting for the period provided for the cure to expire. Each party's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and each party agrees that the other party's remedies at law for any violation of the terms of this Easement are inadequate and that such party shall be entitled to the injunctive relieve described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which such party may be entitled, including specific performance of the terms of this Easement, without the necessity of proving actual damages or the inadequacy of otherwise available legal remedies. Each party's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of California Civil Code section 815 *et. seq.* are incorporated herein by this reference and this Easement is made subject to all of the rights and remedies set forth therein. If at any time in the future Grantor or Grantee or any subsequent transferee or assignee uses or threatens to use the Preserve for purposes not in conformance with the provisions of this Easement, or releases or abandons this Easement in whole or in part, notwithstanding California Civil Code section 815 *et. seq.*, the California Attorney General, or any entity organized

for conservation purposes shall have standing as interested parties, and as third party beneficiaries in any proceeding affecting this Easement.

- B. Cost of Enforcement. Reasonable costs incurred by any party enforcing the terms of this Easement, including without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by a violation of the terms of this Easement shall be borne by the breaching party. If a party prevails in any action to enforce the terms of this Easement, such party's costs of suit including, without limitation, attorneys' fees, shall be borne by the other party.
- C. Parties Discretion. Enforcement of the terms of this Easement shall be at the discretion of the respective parties, and any forbearance by Grantor or Grantee to exercise their rights under this Easement shall not be deemed or construed as a waiver by Grantor or Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of their rights under this Easement. No delay or omission by Grantor or Grantee in the exercise of right or remedy upon any breach by Grantor or Grantee shall impair such right or remedy or be construed as a waiver.
- D. Acts Beyond Parties' Control. Nothing contained in this Easement shall be construed to entitle any party to bring any action against Grantor or Grantee for any injury to or change in the Preserve resulting from causes beyond their control, including, without limitation, fire, drought, flood, storm, and earth movement.

## 8. **ACCESS**

Grantee, its successors, assigns, agents, invitees and licensees shall have the right to access the Preserve at all times.

## 9. **COSTS AND LIABILITIES**

Except as set forth in this Easement, or as otherwise agreed in writing between the parties hereto, Grantor retains all responsibilities related to the ownership of the Preserve. Preserve Manager (Grantee) assumes all responsibilities related to the operation, upkeep, and maintenance of the Preserve outlined in the Plan.

- A. Taxes: Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Preserve by competent authority, including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.
- B. Hold Harmless: Grantor or its successors shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "**Grantee Indemnified Parties**") from and

against all liabilities, penalties, costs, losses, damages, expense, causes of action, claims, demands, or judgments, including without limitation, reasonable attorney's fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damages to any property, resulting from any act, omission, condition or other matter occurring on the Preserve, unless caused by the acts or omissions of any of the Grantee Indemnified Parties; and (2) the existence or administration of this Easement, unless caused by the acts or omissions of any of the Grantee Indemnified Parties.

Grantee or its successor shall hold harmless, indemnify, and defend Grantor and its members, directors, officers, employees, agents and contractors and their heirs, personal representatives, successors, and assigns of each of the Grantor Indemnified Parties from and against all liabilities, penalties, costs, losses, damages, expense, cause of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with the administration of this Easement, unless caused by the acts or omission of any of the Grantor Indemnified Parties.

#### **10. ASSIGNMENT**

This Easement is transferable, but Grantee shall give Grantor and the Corps (*if applicable, and the Service*) at least 30 days' prior written notice of the transfer. Grantee may assign its rights and obligations under this Easement only to an organization that is 1) approved by the Grantor and the Corps (*if applicable, and the Service*); and, 2) a public agency or a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated there under; and 3) authorized to acquire and hold conservation Easements under California Civil Code §815 et seq. (or any successor provision then applicable). As a condition of such assignment or transfer, the Assignee or Transferee shall agree in writing that the conservation purposes that this Easement is intended to advance shall continue to be fulfilled and that the Plan will be followed. In the event of the termination of Grantee's existence, the rights and obligations of Grantee hereunder shall, by that fact itself, and without any further action on the part of any entity, be deemed assigned to an entity approved by the Corps.

#### **11. SUBSEQUENT TRANSFERS**

Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Preserve, including without limitation, a leasehold interest. Grantor further agrees to give written notice to the Grantee and the Corps (*if applicable, and the Service*) at least fifteen (15) days prior to the date of any Preserve transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

**12. CONDEMNATION**

The habitat conservation purposes are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure section 1240.680 notwithstanding California Code of Civil Procedure section 1240.609 and 1240.700.

**13. ESTOPPEL CERTIFICATES**

Upon request by Grantor, Grantee shall within 15 days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement, as may be requested by Grantor.

**14. NOTICES**

Any notice, demand, request, consent, approval, or communication that the parties desire or is required to give to the others shall be in writing and either serviced personally or sent by first class mail, postage prepaid, address as follows:

To Grantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

To Grantee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

To the United States Army Corps of Engineers:

United States Army Corps of Engineers  
Sacramento Regulatory Branch  
1325 J Street, 14th Floor  
Sacramento, California 95814-2922  
Attn: Chief, Sacramento Valley Office

To the United States Fish and Wildlife Service:

U.S. Fish and Wildlife Service  
2800 Cottage Way, W-2605  
Sacramento, California 95825  
Attn: Chief, Endangered Species Division

or to such other address or the attention of such other officer as from time to time shall be designated by written notice to the other.

**15. FUNDING**

Grantor has provided an escrow fund to Grantee for the purposes of fulfilling all of Grantor's obligations, long-term operations, and maintenance of the Easement under the Open Space Management Plan. Funding shall be transferred to the appropriate transferee or assignee if the Easement is assigned or transferred.

**16. RECORDATION**

Grantee shall promptly record this instrument in the official records of \_\_\_\_\_ County (*the County where the property is located*), California and may re-record it at any time as may be required to preserve its rights in this Easement.

**17. ADDITIONAL EASEMENTS**

Grantor shall not grant any additional Easements, rights-of-way, or other interests in the Preserve, other than a fee or leasehold interest, undivided interest or security interest (mortgage or deed of trust), or grant or otherwise transfer to any other person or entity or to other lands or otherwise abandon or relinquish any Waters associated with the Preserve without the prior written authorization of Grantee given through the Corps (*if applicable the Service*). Such authorization will be given unless the Corps (*if applicable the Service*), among other things, determines that the proposed interest will adversely impact the functions and values of waters of the U.S. within the Preserve (*if applicable will interfere with the use of the Preserve as habitat suitable for federally listed species or other federally protected species*). This paragraph shall not prohibit the transfer of a fee title or leasehold interest in the Preserve that is subject to the terms of this Easement. This paragraph shall also not prohibit the granting of future compatible utility Easements, as authorized by the Corps (*if applicable the Service*).

**18. AMENDMENT**

This Easement may be amended by Grantor and Grantee only by mutual written agreement and with written approval of the Corps (*if applicable, the Service*). Any such amendment shall be consistent with the purposes of this Easement and shall not affect its perpetual duration.

**19. GENERAL PROVISIONS**

A. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California, the Federal Clean Water Act, Federal Endangered Species Act, and other applicable Federal laws.

- B. Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be construed in favor of the grant to effect the Conservation Purpose of this Easement and the policy and purpose of California Civil Code §815 et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provisions valid shall be favored over any interpretation that render it invalid.
- C. Severability. If any provision of this Easement, or the application thereof to any person or circumstances, 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 Preserve, and supersedes all prior discussions, negotiations, understandings, or agreements related to this Preserve.
- E. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- F. 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 shall continue as servitude running in perpetuity with the Preserve.
- G. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- H. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- I. Third-Party Beneficiary: Grantor and Grantee acknowledge that the Corps (*if applicable and the Service*) is (*are*) a third party beneficiary of this Easement with the right of access to the Easement property and the right to enforce all of the provisions of this Easement.

**20. NO MERGER**

In the event the Preserve and the Easement are ever owned by the same entity, there shall be no express or implied merger by operation of law or otherwise. If any party should claim such a merger, the parties agree that any and all terms and conditions of this Easement shall be deemed covenants and restrictions upon

the Preserve, which, shall run with the land according to California and/or other applicable law and otherwise exist in perpetuity.

IN WITNESS WHEREOF, Grantor grants, and Grantee accepts, this Easement the day and year first above written.

**GRANTOR:**

**GRANTEE:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
a California Non-Profit Corporation

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

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

\_\_\_\_\_

\_\_\_\_\_

**STATE OF CALIFORNIA**

County of \_\_\_\_\_

On \_\_\_\_\_, before me,

\_\_\_\_\_'  
Date Name and Title of Officer (e.g., "Jane Doe, Notary  
Public")

Personally \_\_\_\_\_ appeared

\_\_\_\_\_

Name(s) of Signer(s)

- \_\_\_ personally known to me
- \_\_\_ 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.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public

**EXHIBIT A – LEGAL DESCRIPTION OF “PRESERVE”**

**EXHIBIT B – MAP OF “PRESERVE”**

**EXHIBIT C – \_\_\_\_\_ OPEN SPACE MANAGEMENT PLAN FOR  
"PRESERVE"**

EXHIBIT D – SECTION 404 PERMIT # \_\_\_\_\_