Appendix I SAMPLE CONSERVATION EASEMENTS

The following documents are actual examples of conservation easements, copied verbatim from the Marin Agricultural Land Trust and the Land Conservancy of San Luis Obispo. They represent two general types of easements where public access is not authorized. These examples are presented to depict typical conservation easement language. Depending on the objectives of a specific easement in Placer County, and the value paid for that easement, the terms and conditions may be more or less restrictive. For example, restrictions on allowed agricultural activities could be included in a conservation easement intended to protect sensitive species habitat.

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Easement No. 1 – Marin Agricultural Land Trust agricultural conservation easement (Not for execution)

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

Deed of Agricultural Conservation Easement and Development Rights

THIS DEED OF AGRICULTURAL CONSERVATION EASEMENT AND DEVELOPMENT RIGHTS (the "Deed") is made by ______ and _____, husband and wife ("Grantors"), to MARIN AGRICULTURAL LAND TRUST, a California nonprofit public benefit corporation ("Grantee").

WITNESS THAT:

WHEREAS, Grantors are the owners in fee simple of certain real property in Marin County, California, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

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

WHEREAS, Grantors intend that the Property be maintained in agricultural production by the maintenance of the agricultural values thereof and that the open space and scenic values of the Property be preserved by the continuation of the agricultural and ranching uses that have proven historically compatible with such values; and

WHEREAS, the County of Marin (the "County") has established an Agricultural Conservation Easement Grant Program to help preserve Marin County's agricultural lands by making grants to Grantee for the acquisition of agricultural conservation easements using funds authorized by the California Wildlife, Coastal and Park Land Conservation Bond Act of 1988; and

WHEREAS, the County has made a grant to Grantee for the acquisition of this Deed of Agricultural Conservation Easement and Development Rights from Grantors; and WHEREAS, Grantors intend, as owners of the Property, to convey to Grantee the right to preserve and protect the agricultural, open-space and scenic values of the property in perpetuity; and

WHEREAS, Grantee is a publicly supported, tax-exempt nonprofit organization qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation and protection of agricultural, open space and scenic lands in Marin County, California; and

WHEREAS, Grantee intends, by acceptance of the grant made hereby, forever to honor the intentions of Grantors to preserve and protect in perpetuity the agricultural, open space and scenic values of the Property;

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, Grantors do hereby voluntarily grant to Grantee an Agricultural Conservation Easement in gross in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (the "Easement"). Grantors also grant to Grantee certain development rights associated with the Property as hereinafter described.

- 1. **Purpose.** It is the purpose of this Easement to enable the Property to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural values, character, use and utility, and to prevent any use of the Property that would significantly impair or interfere with its agricultural values, character, use or utility. To the extent that the preservation of the open space and scenic values of the Property is consistent with such use, 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 Grantee by this Easement:
 - a. To identify, to preserve and to protect in perpetuity the agricultural values, character, use and utility, including the 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 (1) identifying the current uses and practices thereon and the baseline condition thereof, and (2) monitoring the uses and practices regarding the Property to determine whether they are consistent with this Easement. Such entry shall be permitted upon prior notice to Grantors, and shall be made in a manner that will not unreasonably interfere with Grantors' use and quiet enjoyment of the Property.
 - c. To prevent any activity on or use of 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 activity or use. However, it is the intention of this Easement not to limit Grantors' discretion to employ their 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. Subject to Grantors' consent, to erect and maintain a sign or other appropriate marker in a prominent location on the Property, visible from a public road, bearing information indicating that the Property is protected by Grantee. The wording of the information shall be determined by Grantee, but shall clearly indicate that the Property is privately owned and not open to the public. Grantee shall be responsible for the costs of erecting and maintaining such sign or marker.
 - e. The development rights referred to in Paragraph 11 below.

- 3. **Uses and Practices.** Grantee and Grantors intend that this Easement shall confine the uses of the Property to agriculture, ranching, residential use associated with the agricultural use of the Property, and the other uses which are described herein. Examples of uses and practices which are consistent with the purpose of this Easement, and which are hereby expressly permitted, are set forth in Exhibit B, attached hereto and incorporated herein by this reference. Examples of uses and practices which are inconsistent with the purpose of this Easement, and which 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 Protected Values, Grantee 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 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 Grantee. The Baseline Documentation Report has been signed by Grantors and Grantee, and thus acknowledged accurately to represent 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 Grantee to monitor Grantors' future uses of the Property 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. Grantors and Grantee recognize that changes in economic conditions, in agricultural technologies, in accepted farm and ranch management practices, and in the situations of Grantors may result in an evolution of agricultural uses of the Property, provided such uses are consistent with this Easement.
- 5. **Reserved Rights.** Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their 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 rights are used on the Property in a manner consistent with the purpose of this Easement; and (ii) all right, title, and interest in 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, and shall not damage, impair or endanger the protected values of the Property.
- 6. **Arbitration.** If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, and Grantors agree not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to arbitration 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 arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator; provided, however, if either party fails to select an arbitrator, or if the two arbitrators selected by the parties fail to select the third arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance a proper court, on petition of a party, shall appoint the second or third arbitrator or both, as the case may be. A judgment on the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrator(s) and attorneys' fees, which shall be determined by the arbitrator(s) and any court of competent jurisdiction that may be called upon to enforce or review the award.

- 7. Grantee's Remedies. If Grantee determines that Grantors are in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantors fail to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured, Grantee 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 Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the protected values of the Property, Grantee may pursue its remedies under this paragraph without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantors agree that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee 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. Grantee'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.
 - **7.1 Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including, without limitation, costs of suit and attorneys' fees, and any costs or restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in any action to enforce the terms of this Easement, Grantors' costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee.

- **7.2 Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.
- **7.3** Acts Beyond Grantors' Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
- 8. **Costs and Taxes.** Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. Grantors 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 Section 402.1.
- 9. Hold Harmless. Grantors shall hold harmless, indemnify, and defend Grantee and its directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent of the adjudicated proportionate fault of any of the Indemnified Parties; (2) the obligations specified in Paragraph 8.
- 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 the property is so classified that upon receipt of required government approvals the Property could be developed to a density of (__) 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. Grantors retain one (l) of the (__) development rights associated with the Property. [The development right retained by Grantor shall apply and relate to the

existing residential improvements on the Property which consist of . Grantors reserve the right to maintain, use, repair, and replace the existing improvements on the property with approval of appropriate governmental agencies and in conformity with Paragraph 3 of Exhibit B and all other applicable provisions of this Deed. The development right retained by Grantors 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 Paragraph 3 of Exhibit B hereto.] [If property has no existing residence: The development right retained by Grantors shall apply to and may be utilized on the Property. Grantors may build, use, maintain, repair and replace a residence on the Property with the approval of appropriate governmental agencies and in conformity with all applicable provisions of this Deed, provided that Grantors first obtain the express written approval of Grantee as to the exact size and location of such residence.]

- b. The () development rights associated with the Property which are not retained by Grantors are conveyed to Grantee. Grantee shall have the right to use, sell or otherwise benefit from the development rights owned by it in accordance with applicable laws and regulations of the County, provided that such development rights shall not be used on the Property.
- c. Neither Grantors nor Grantee shall use or receive the benefit from any increase in allowable development rights associated with the Property resulting from future zoning changes.
- d. Grantors understand and acknowledge that any transfer of the development rights acquired herein by Grantee to another property is subject to the provisions of applicable laws including, inter alia, the County's Code which requires, among other things, a master plan of the Property and a conservation easement or restrictions recorded against it which reflect the conditions of approval of the master plan. Grantors covenant and agree to cooperate fully with Grantee in Grantee's attempts to obtain approval for transfer of development rights acquired herewith pursuant to the County's Code and other applicable laws including, without limitation, executing and delivering such consents, master plan applications, conservation easements or restrictions and other documents as may be required by the County for review and approval of such transfers, provided that any such master plan, conditions of approval, and/or conservation easement or restrictions do not materially differ with the terms and conditions of this Deed. Grantee shall be responsible for all fees and costs of preparing and processing documents required by the County for review and approval of such transfers.

12.	. Conveyance of Separate Parcels; Merger. Grantors acknowledge that the Property		
	currently consists of separate assessor's parcels (Numbers and)		
	which under existing law and regulations might be sold or conveyed separately from one		
	another as separate legal parcels. It is agreed that the sale or conveyance of either parcel		
	separate or apart from the other is inconsistent with the purpose of this Easement.		
	Therefore, Grantors covenant and agree:		

a. Grantors will apply for and pursue to completion an application to the County of Marin for consolidation or merger of the ____ parcels of the Property into one, or pursue such other applicable legal restrictions so that neither parcel may be separately sold or conveyed from the other.

- b. Whether or not the ____ parcels are merged, Grantors and their successors in interest will not, without the prior written consent of Grantee, sell, alienate or convey any such parcels separately or apart from the other, and Grantors and their successors in interest will at all times treat all parcels as a single integrated economic unit of property. Upon any request to Grantee for consent to a separate sale, alienation or conveyance of either parcel, such consent may be granted, withheld or conditioned by Grantee 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 Grantee 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 paragraph 13. Grantee shall use all such proceeds in a manner consistent with the purposes of Section 5709(b)(3)(P) of the California Wildlife, Coastal and Park Land Conservation Bond Act of 1988.
- 14. **Compensation.** This Easement constitutes a real property interest immediately vested in Grantee. For the purpose of paragraph 12, the parties stipulate that this Easement has a fair market value determined by multiplying (i) the fair market value of the property unencumbered by the Easement (minus any increase in value attributable to improvements made after the date of this grant) by (ii) 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.
 - For the purposes of this paragraph, Grantor and Grantee agree that the ratio of the value of the Easement to the value of the Property unencumbered by the Easement is . This ratio shall remain constant.
- 15. **Condemnation.** If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.
- 16. **Assignment of Grantee's Interest.** Grantee may assign its interest in this Easement only to a "qualified organization", within the meaning of Section 170(h) of the Internal Revenue Code of 1954, as amended, or any successor provision, and which is authorized to acquire and hold conservation easements under California law, upon obtaining the prior written consent of Grantors and the County. Any assignment without such consents shall be void and of no effect. Such consents shall not be unreasonably withheld by Grantors and the County.
- 17. **Executory Limitation.** If Grantee shall cease to exist, or to be a qualified organization under section 170(h) of the Internal Revenue Code of 1954, as amended, or to be authorized to acquire and hold conservation easements under California law, then

Grantee's rights and obligations under this Easement shall become immediately vested in the County.

18. 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 not withstanding, 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 Grantors 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.
- h. 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.
- i. Future Conveyance. Grantors agree that reference to this Deed 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).
- j. Not Governmental Approval. No provision of this Easement nor the approval by the County of a grant for the acquisition of this Easement shall constitute governmental approval of any improvements, construction or other activities which may be permitted under this Easement.

IN WITNESS WHEREOF, Grantors have executed this Deed of Ease.	ment this day of
, 19	·
Grantors	

By:	
By:	
Accepted: MARIN AGRICULTURAL LAND TRUST By:	

[Notarization of Grantors' signatures]. Exhibit B: Permitted Uses and Practices Exhibit C: Prohibited Uses and Practices

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, and they are not to be precluded, prevented, or limited by this Easement.

- 1. To reside on the Property.
- 2. To engage in any and all agricultural uses of the Property in accordance with sound, generally accepted agricultural practices. 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 Grantee; provided, however, that such agricultural uses shall not result in significant soil degradation, or significant pollution or degradation of any surface or subsurface waters.
- 3. To maintain and repair existing structures, housing, fences, corrals, roads, ditches, and other improvements on the Property. Additional improvements accessory to the residential use of the Property, and additional structures, housing, facilities and roads reasonably necessary to the agricultural uses of the Property, shall be permitted, provided that Grantors obtain the express written approval of Grantee for the construction of any such additional improvements, structure, housing, facility or road, including the size, function, capacity and location, which consent should not be unreasonably withheld. Grantor shall provide Grantee written notice of Grantor's intention to undertake such construction, together with information on its size, function, capacity and location, not less than forty-five (45) days prior to the commencement thereof. Additional fencing deemed by Grantors to be reasonably necessary to ranching and agricultural activities may be constructed without Grantee's consent. In the event of destruction, deterioration or obsolescence of any improvements, structures, housing, fences, corrals, roads, or ditches, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this paragraph, Grantors may replace the same with improvements or structures of similar size, function, capacity and location.
- 4. 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.
- 5. To use agrichemicals, including, but not limited to, fertilizers and biocides in those amounts and with that frequency of application necessary to accomplish reasonable grazing and agricultural purposes. Such use shall be carefully circumscribed near surface water and during periods of high ground water.

- 6. To control predatory and problem animals by the use of selective control techniques.
- 7. To utilize the Property for recreational or educational purposes, including, without limitation, hiking, horseback riding, hunting and fishing, that require no surface alternation 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. The impairment of the protected values, except as otherwise provided herein.
- 2. The establishment 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 commercial or industrial uses.
- 3. The construction, reconstruction, or replacement of any road or structure except as provided in Paragraph 11(a) of this Easement or Paragraph 3 of Exhibit B.
- 4. 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 paragraph.
- The use of motorized vehicles, except by Grantors or others under Grantors' control for agricultural, ranching or attendant residential use of the Property. Any use of motorized vehicles off of roadways is prohibited except when necessary for agricultural and ranching purposes.
- 6. The commercial harvesting of timber; provided, however, that Grantors shall have the right (i) to cut or collect firewood for the heating of ranch and residential facilities on the Property; (ii) to cut trees as necessary or desirable for agricultural purposes, for the construction of fences, and for the repair and construction of such buildings or other improvements on the Property as are allowed hereunder; and (iii) to develop and implement a long-range plan for the growing and harvesting of plants and trees in a manner that is consistent with the purpose of this Easement, upon the express written consent of Grantee, which shall not be withheld unreasonably.
- 7. 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.
- 8. Ranching, agricultural or other uses, otherwise permitted under this Easement, which result in significant degradation of topsoil quality.

Easement No. 2 – Land Conservancy of San Luis Obispo open space easement (Not for Execution)

(Not for Execution)
DEED OF CONSERVATION EASEMENT THIS GRANT DEED OF CONSERVATION EASEMENT is made this day of, 199, by
EASEMENT is made thisday of, 199, by, husband and wife having an address at ("Grantors"), in favor of the Land Conservancy of San Lui Obispo, a non-profit California corporation qualified to do business in California, having an address at 743 Pacific St., San Luis Obispo, CA 93401 ("Grantee"). WITNESSETH:
WHEREAS, Grantors are the sole owners in fee simple of certain real property in San Luis Obispo County, California, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property"); and
WHEREAS, the property possesses natural, scenic, and open space values (collectively, "conservation values) of great importance to Grantors, the people of San Luis Obispo County, and the people of the Sate of California; and
WHEREAS, San Luis Obispo Creek is an important part of the coastal ecosystem and as such provides important habitat for a wide variety of birds, fishes, and both marine and terrestrial mammals, plants; and
WHEREAS, the property has conservation values that both Owner and Grantee desire to preserve and conserve for the public benefit; and
WHEREAS, the specific conservation values of the Property are documented in an inventory of relevant features of the Property, dated, 199, on file at the offices of Grantee and attached hereto as Exhibit B and incorporated by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and
WHEREAS, Grantors intend that the conservation values of the Property be preserved and maintained by the continuation of land use patterns, including, without limitation, those relating to farming that do not significantly impair or interfere with those values; and
WHEREAS, Grantors further intend, as owners of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and
WHEREAS, Grantee is a publicly supported, tax-exempt non-profit organization, qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code,

whose primary purpose is the preservation, protection, or enhancement of land in its natural,

scenic, historical, agricultural, forested, and/or open space condition;

and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantors stated herein and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California and in particular Sections 815 and 816 of the Civil Code - Conservation Easements, Grantors hereby voluntarily grant and convey to the Grantee a Conservation Easement in gross in perpetuity over the Property described in Attachment A and referred to hereinafter as the Easement Area.

- 1. **Purpose**. It is the purpose of this Easement to assure that the Property, subject to the existing uses described herein, will be retained forever in its natural, scenic, and open space condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. Grantors intend that this Easement will confine the use of the Property to such activities, including, without limitation, those involving farming, ranching, or education that are consistent with the purpose of this Easement.
- 2. **Rights of Grantee**. To accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement:
 - (a) To preserve and protect the conservation values of the Property.
 - (b) To enter upon the Property at reasonable times in order to monitor Grantors' compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantors, and Grantee shall not unreasonably interfere with Grantors' use and quiet enjoyment of the Property; and
 - (c) To enhance the habitat values along San Luis Obispo Creek by conducting grading, planting, irrigation, and other activities as may be necessary to restore and enhance the edge of the stream through the planting of native trees, shrubs, and other kinds of vegetation, all at Grantee's expense; and
 - (d) To enter the Easement area for the purpose of study and to make scientific observations; and
 - (e) To allow, at such times as the Grantee shall deem reasonable and appropriate, the visiting of the Property by the public and by public educational institutions (under such circumstances and according to such rules as the Grantee shall from time to time establish and modify.)
 - (f) To prevent any activity on or use of 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 activity or use, pursuant to paragraph 6.
 - (g) To place signs on the Property which identify the land as being protected by this Conservation Easement. The number and location of the signs are subject to Grantors' approval.

- 3. **Prohibited Uses**. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited; (These are typical restrictions. Each easement needs to be written on an individual basis to meet the needs of the landowners.)
 - (a) Subdivision for purposes of residential or industrial development,
 - (b) Industrial or residential uses,
 - (c) Parking lots, storage areas or waste dumps of any kind,
 - (e) Coverage of land by asphalt, concrete, or other material that does not constitute a natural cover for the land, except as necessary for access to and maintenance of agricultural activity on the adjoining land.
 - (f) New buildings, structures, or other improvements, other than those described in the purpose of this easement related to agricultural activity.
 - (g) Alteration of the land surface through grading or soil dumping or trenching, except as may be necessary for activities related to the purpose of this easement such as irrigation improvements or water development projects related to agricultural uses.
 - (h) Surface mineral development or mining.
 - (i) New advertising signs or billboards.
 - (j) Cutting or removal of trees, shrubs, or other vegetation, except as necessary for fire protection, thinning, elimination of diseased growth, and similar protective measures, or those activities related to farming.
 - (k) Introduction of nonnative plants and animal species within riparian area that may compete with and result in the decline or elimination of natural species. Any new plantings shall be confined to native plants characteristic of the riparian region.
 - (l) Any use that would cause, increase or substantially add to the risk of erosion.
 - (m) No dumping of any kind; trash, concrete, toxic materials, etc.
- 4. Reserved Rights. Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their 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: (These rights also have to be written carefully to meet the needs of individual owners.)
 - (a) Normal and accepted agricultural practices as related, for example, to apple farming.
 - (b) Use the property protected by this easement as credit against any future requirements by San Luis Obispo County that may be requested as part of a land use permit for the protection of open space or natural resources.
 - (c) The right to restore damage to the easement area that may be caused by fire, flood, storm, earth movements, or acts beyond the Grantor's control.
 - (d) The right to maintain all existing private roads, bridges, trails, and structures lawfully erected and maintained upon the property.
 - (e) All water rights within the Easement Area. This includes the right to construct water extraction facilities and related distribution facilities. Water rights reserved

- include but are not limited to riparian, groundwater, and appropriated water rights within the easement area.
- (f) The right to approve any proposed restoration activities within the Easement, modification of restoration plans, and all activities necessary to carry out the restoration projects as granted under Paragraph 2.
- **4.2 Conditional Rights**: The following uses and activities may be undertaken with approval of the Grantee as provided in Paragraph 5. (a) Construction of bridges and other creek crossings.
- 5. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantors to notify Grantee prior to undertaking certain permitted activities, as provided in paragraphs 4.2, is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required, Grantors shall notify Grantee in writing not less than thirty (30) days prior to the date Grantors intend to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistence with the purpose of this Easement.
- **5.1 Grantee's Approval.** Where Grantee's approval is required, as set forth in paragraph 5, Grantee shall grant or withhold its approval in writing within twenty (20) days of receipt of Grantors' written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.
- 6. **Grantee's Remedies.** If Grantee determines that Grantors are in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantors fail to cure the violation within a thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30)-day period, fail to begin curing such violation within the thirty (30)-day period, or fail to continue diligently to cure such violation until finally cured, Grantee 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 recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury.

Without limiting Grantors' liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantors or

without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantors agree that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relied to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessary of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee'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.

- **6.1 Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in any action to enforce the terms of this Easement, Grantors' costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee.
- **6.2 Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.
- **6.3 Waiver of Certain Defenses.** Grantors hereby waive any defense of laches, estoppel, or prescription.
- **6.4 Acts Beyond Grantors' Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
- **Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement without specific written authority from Grantor describing places, trails, and other conditions.
- **8. Costs and Liabilities.** Grantors retain all responsibility and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantors shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors.
- **8.1 Taxes.** Grantors shall pay all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority

(collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

- **8.2 Hold Harmless.** Grantors 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 "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in paragraphs 8 and 8.1; and (3) the existence or administration of this Easement.
- **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 proceeds to which Grantee shall be entitled, after the satisfaction or prior claims, 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 other wise provided by California law at the time, in accordance with paragraph 9.1. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.
- 9.1 Proceeds. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of paragraph 9, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code of 1954, as amended. For the purposes of this paragraph, the ration of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.
- **9.2 Condemnation.** If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.
- **10. Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under state statute(or any successor provision then applicable). As a condition of such

transfer, Grantee shall require that the conservation purposes of this grant is intended to advance continue to be carried out.

- 11. Subsequent Transfers. Grantors agree to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.
- 12. Estoppel Certificates. Upon request by Grantors, Grantee shall within twenty (20)days execute and deliver to grantors any document, including an estoppel certificate, which certifies Grantors' compliance with any obligation of Grantors contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantors.

13.	Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows: To Granton			
		To Grantee:		
	address as either party from time to time shall designate by written notice	or to such other to the other.		

14. Recordation. Grantee shall record this instrument in timely fashion in the official records of San Luis Obispo County, California, and may re-record it at any time as may be required to preserve its rights in this Easement.

15. 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 Conservation Act of 1979. 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 superseded 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 Grantors' title in any respect.
- (f) Joint Obligation. The obligations imposed by this Easement upon Grantors 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 perpetually with the Property.
- (h) 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.
- (i) 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.
- (j) 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.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Granto written above.	and Grantee have set their hands on the day and year fi		
Grantors	_		
Grantee			

SCHEDULE OF EXHIBITS A. Legal Description of Property Subject to Easement B. Baseline Documentation