

EL RIO REYES CONSERVATION TRUST
Standard Agricultural/Riparian Conservation Easement
Adopted August 2009

**DEED OF AGRICULTURAL/RIPARIAN CONSERVATION EASEMENT
AND VOLUNTARY AGREEMENT CREATING ENFORCEABLE RESTRICTIONS
IN PERPETUITYⁱ¹**

This Deed of Agricultural/Riparian Conservation Easement and Voluntary Agreement Creating Enforceable Restrictions in Perpetuity (the “**Conservation Easement**”) is granted on this _____ day of _____, _____, by _____ (“**Landowner**”), to the EL RIO REYES CONSERVATION TRUST, a California nonprofit corporation (“**El Rio Reyes Trust**”), hereinafter collectively referred to as the “**Parties.**”

Recitals

A. Landowner is the sole owner in fee simple of certain real property consisting of approximately _____ acres, located in _____ County, California, as further described in “*Exhibit A*” attached hereto and incorporated herein by reference (the “**Property**” or “**Easement Area**”) and depicted in “*Exhibit B*” attached hereto and incorporated herein by reference (the “**Property Map**”). Landowner desires to grant a conservation easement over the Easement Area.

B. El Rio Reyes Trust is a “qualified conservation organization” as defined by Section 170(h)(3) the Internal Revenue Code and is eligible to hold this Conservation Easement pursuant to Section 815.3 of the California Civil Code. As certified by resolution of its governing body, El Rio Reyes Trust accepts the responsibility of monitoring and enforcing the terms of this Conservation Easement and upholding its conservation purposes.

C. The Property consists of [*general description of property to follow*].

D. Landowner desires to convey for valuable consideration [*make a charitable gift of*] the Conservation Easement to El Rio Reyes Trust to assure that the agricultural environment, agricultural productivity, open space created by working landscapes, [*grazing, riparian environment, native savanna environment*], the plant, [*fish*], wildlife habitat and watersheds will be conserved and sustained forever through managed agricultural stewardship and as

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otherwise provided herein (referred to herein as the “**Conservation Values**”), and that uses of the land that are inconsistent with these Conservation Values will be prevented or corrected.

E. The grant of this Conservation Easement will further the policy purposes of the following clearly delineated governmental conservation policies:

Section 815 of the California Civil Code, in which the California Legislature has declared: (1) that “the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California”; and (2) that it is “in the public interest of this state to encourage the voluntary conveyance of conservation easements to qualified nonprofit organizations”;

Section 51220 of the California Government Code, in which the California Legislature has declared that “in a rapidly urbanizing society agricultural lands have a definite public value as open space, and the preservation in agricultural production of such lands . . . constitutes an important physical, social, esthetic and economic asset to existing or pending urban or metropolitan developments; and

[Review Note: The following recital must be confirmed in each transaction.]The _____ County General Plan, as amended in _____, which includes as one of its goals to protect all viable farmlands designated as prime, of statewide importance, unique, or of local importance from conversion to and encroachment of non-agricultural uses.

F. All holders of liens or other encumbrances upon the Easement Area have agreed to subordinate their interests in the Easement Area to this Conservation Easement and to refrain forever from any action that would be inconsistent with its conservation purposes, except the encumbrances listed in “*Exhibit C*”. ***[The probability that any third party holder of mineral rights in the Property will extract or remove minerals from the Property by surface mining has been determined by a qualified professional geologist to be so remote as to be negligible, as set forth in a report dated _____, by _____, State of California Registered Geologist No. _____. A true and complete copy of the report has been provided to El Rio Reyes Trust [Review Note: Third-party mineral rights will not necessarily be shown as an encumbrance, but may appear as an exception to title.]***

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G. The current agricultural, [*riparian, native savanna*], physical, and overall biological conditions of the Easement Area, as well as its current uses and state of improvement, are described in a “**Baseline Conditions Report**” prepared by El Rio Reyes Trust with the cooperation of Landowner, consisting of maps, photographs, and other documents, and acknowledged by both to be complete and accurate as of the date of this Conservation Easement. Both Landowner and El Rio Reyes Trust have copies of this report. It will be used by El Rio Reyes Trust to assist in its monitoring and enforcement of Landowner’s compliance with the Easement. This report, however, is not intended to preclude the use of other evidence to establish the baseline condition of the Easement Area if there is a controversy over some aspect of that condition.

H. The Parties intend that the conservation purposes of this Easement shall be achieved through continued managed agricultural practices and stewardship activities [*including grazing, preservation of riparian and native savanna habitat*] to sustain and protect the Conservation Values of the Property. The Parties recognize, however, that additional agricultural uses of the Easement Area may become reasonably necessary to support the economic viability of commercial agricultural use of the Easement Area and accordingly provide herein for such additional uses.

I. El Rio Reyes Trust recognizes that the Conservation Values associated with the physical environment of the Easement Area exist because of the past stewardship of the landowner(s) and depend on the future good stewardship decisions of the Landowner and its successors. Landowner is entrusted with those future management decisions. El Rio Reyes Trust is entrusted with determining that the Conservation Values have been protected.

J. ⁱⁱ

Deed and Agreement

In consideration of the recitals set forth above, and in consideration of their mutual promises and covenants, Landowner hereby grants and conveys to the El Rio Reyes Trust, its successors and assigns, and El Rio Reyes Trust hereby accepts, a perpetual “conservation easement” as defined by Section 815.1 of the Conservation Easement Act of 1979 (California Civil Code, Section 815 et seq.), of the nature and character described in this Conservation Easement.

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1. **Purposes.** The purposes of this Conservation Easement are to identify, sustain and forever protect the Conservation Values from impairment (“**Conservation Purposes**”). The parties agree that the Conservation Purposes shall be achieved through continued managed agricultural practices and stewardship and other allowed agricultural uses [*preservation and conservation of riparian and native savanna*] on the Easement Area as herein provided. The Parties agree that Landowner’s retention of certain rights specified in this Conservation Easement, including specified agricultural, residential, recreational and commercial uses, is consistent with the Conservation Purposes, provided that those rights are exercised in accordance with this Conservation Easement. The Parties further agree that some intensification of and changes in the current agricultural uses, as hereinafter permitted, will serve to promote the continuing commercial viability of the agricultural uses of the Easement Area and thus assist in achieving the Conservation Purposes. *[If WCB is funding the easement, WCB may require changes to the purposes clause to conform to the specific funding program.]*

Under this Conservation Easement, “**impairment**” of Conservation Values means a material adverse change in Conservation Values. The consideration of actual and potential impacts of a particular activity or use on Conservation Values shall take into account the impacts of the activity or use in question as well as the cumulative impacts of other uses and activities on the Easement Area, except Acts of God, actions taken by Landowner under emergency conditions, and non-permitted acts of unrelated third parties, each as specifically described in Section 2, below. In every evaluation of whether impairment of Conservation Values has occurred or is threatened, both the magnitude and the duration of the actual or potential change(s) shall be considered.

2. **Prohibited Acts.** Landowner promises that it will not perform, or knowingly allow others to perform, any act or use on or affecting the Easement Area in conflict with the covenants set out in this Conservation Easement, including but not limited to any act or use that results in impairment of Conservation Values. Landowner authorizes El Rio Reyes Trust to enforce these covenants. Nothing in this Conservation Easement shall require Landowner to take any action to restore the condition of the Easement Area caused by (a) any Act of God or other event over which Landowner has no control; (b) any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area or to any person resulting from such causes; or (c) the non-permitted acts of unrelated third parties so long as Landowner has taken reasonable steps to control such acts. Landowner understands and agrees that nothing in this Conservation Easement relieves it of any obligation or restriction in relation to the development or use of the Easement Area imposed by law, including but not limited to local land use restrictions.

3. **Construction of Buildings, Facilities and Other Structures.** The construction or reconstruction of any building, structure, or other facility of any type is prohibited except in accordance with Subsections 3 (a) through (e) below. No construction, removal, repair,

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enlargement or replacement of any building, structure or other facility shall be allowed to impair Conservation Values. All work must be properly permitted and not involve the removal or inundation of native habitat, native trees or rare or endangered species.

(a) Incidental Farm/Ranch Facilities.

(i) “Incidental Farm/Ranch Facilities” consist of non-building facilities used in normal and customary agricultural and farming activities, including water conveyance ditches and turnouts, water distribution and irrigation facilities, ponds, fences, and utility facilities (including gas, electrical and telecommunication facilities), [*livestock corrals and chutes*], primarily to support uses of or activities on the Easement Area authorized by this Conservation Easement.

(ii) Incidental Farm/Ranch Facilities may be constructed, repaired and replaced without permission from El Rio Reyes Trust; *provided*, that repair, replacement or construction is reasonably related to the permitted uses and activities in the Easement Area.

(b) Non-Residential Buildings, Structures and Other Facilities for Authorized Uses or Activities.

(i) For any non-residential building, structure or facility existing on the Effective Date, Landowner may enlarge each (by not more than a cumulative fifty percent (50%)), repair and replace, with a like building, structure or facility at its existing location, without permission from El Rio Reyes Trust.

(ii) For any new non-residential building, structure or facility, or for any enlargement greater than a cumulative fifty percent (50%), Landowner must first obtain the written consent of El Rio Reyes Trust, which consent shall be granted if Landowner demonstrates that the proposed construction or enlargement is in support of the permitted uses of the Easement Area.

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(iii) Enlargement shall be determined based upon the size of the building, structure or facility on the Effective Date.

(c) Residential Dwellings.³

(i) The _____ existing single-family residential dwellings and appurtenant structures may be repaired, enlarged (each by not more than a cumulative fifty percent (50%)) and replaced at their current locations without further permission from El Rio Reyes Trust. Enlargement shall be determined based upon the size of the building, structure or facility on the Effective Date.

(ii) _____ new single-family residential dwelling(s) and appurtenant structures may be constructed in the residential building envelope (more than 300 [~~xxx~~] feet from river channels) designated on Exhibit B without further permission from El Rio Reyes Trust.

(d) Farm/Ranch Labor Housing.

(i) For any dwelling structure existing on the Effective Date and used to house persons hired for work on the Property, Landowner may remove, repair, enlarge (by not more than a cumulative fifty percent (50%)), and replace at its existing location with a like housing unit without permission from El Rio Reyes Trust. Enlargement shall be determined based upon the size of the structure on the Effective Date.

(ii) New dwelling structures, to be used solely to house persons hired for work on the Property may be built only with advance written permission from El Rio Reyes Trust, which permission shall be conditioned upon Landowner's showing that the proposed structure is needed for existing or imminent agricultural operations on the Property and shall be designed, located and constructed so as not to impair Conservation Values.

(iii) El Rio Reyes Trust must first approve changing the use of a dwelling structure originally built to house persons hired for work on the Property.

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(e) Signs.

(i) No billboards shall be erected on the Easement Area. Signs are allowed for the purposes of denoting the names and addresses of residents on the Easement Area, denoting allowable business uses, describing other permitted activities on the Easement Area, identifying the Conservation Easement and its participants, and posting the property to control unauthorized entry or use; *provided*, no sign resulting in the impairment of Conservation Values shall be allowed.

(ii) El Rio Reyes Trust may install and maintain, at El Rio Reyes Trust's sole cost and expense, signage on the Easement Area in order to indicate the participation of El Rio Reyes Trust and of any of El Rio Reyes Trust's public or private funding sources in the acquisition and maintenance of the Conservation Easement; *provided*, that the size, location, number, text and design of the signage shall be subject to the approval of Landowner, which approval shall not be unreasonably withheld, conditioned or delayed.⁴

4. **Subdivision.** The subdivision of the Easement Area, whether by physical, legal or any other process, is prohibited.

5. **Development Rights.** Landowner hereby grants to El Rio Reyes Trust all development rights, except as specifically reserved to Landowner herein, that are now or hereafter allocated to, implied, reserved or inherent in the Easement Area, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded and described, or to any other property adjacent or otherwise. The Easement Area may not be used for the purpose of calculating permissible development or lot yield of any other property.

6. **Resource Stewardship.** In order to protect the Conservation Values, Landowner shall conduct all agricultural and farming operations in accordance with good management practices that address soil and water conservation, erosion control, pest management, nutrient management, vegetation management and habitat protection. Landowner and El Rio Reyes Trust recognize that changes in economic conditions, in weather cycles, in agricultural technologies, and in conservation practices may dictate an evolution and adaptation in the management of the

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agricultural and cropland resources of the Easement Area, consistent with the Conservation Purposes.

(a) Land leveling, topographic alteration. El Rio Reyes Trust must first approve any major land leveling, defined as cuts or fills in excess of three (3) feet, or other major topographic alterations in excess of three (3) feet.

[Optional Alternative Provision: Landowner may convert managed agricultural land to riparian or native savanna. Grazing would be permitted on these converted lands. These lands would not be allowed to revert to managed, intensive agriculture (vines, tree crops, row crops).]

7. **Mining of Subsurface and Surface Minerals.** The provisions of this Section 7 shall be interpreted in a manner consistent with Section 170(h) of the Internal Revenue Code, the Treasury regulations adopted pursuant thereto, and any other successor provisions addressing the same subject.⁵

(a) Mining of Subsurface Minerals. The extraction or removal of any subsurface oil, gas, or other minerals by any surface mining method is prohibited.

(b) Mining of Aggregate. The extraction or removal of any aggregate (rock, gravel, sand, clay) by any surface or subsurface method is prohibited.

8. **Timber Cutting.** Trees on the Easement Area may only be cut to control insects and disease, to prevent bodily injury and property damage, and for on-site firewood and other domestic uses, including construction and repair of permitted buildings, structures and facilities on the Easement Area. This paragraph shall not apply to the removal of vineyards, orchards and/or tree farming on the property for agricultural purposes.

9. **Paving and Road Construction.** Existing paved roads may be maintained, repaved, and rebuilt on the original alignment at Landowner's discretion without further permission from El Rio Reyes Trust. Driveways to residential buildings permitted by this Easement may be paved at Landowner's discretion without further permission from El Rio Reyes Trust. The construction and/or paving of a road duly required as a condition of regulatory

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approval of development allowed under Section 3 of this Conservation Easement may occur without further permission from El Rio Reyes Trust. Unpaved existing roads may be relocated as unpaved roads as reasonably required by agricultural operations; *provided*, that every abandoned road shall be returned to agriculture or a natural condition. No other construction or paving of any road within the Easement Area is allowed without further permission from El Rio Reyes Trust, which permission must be supported by Landowner's demonstration to the reasonable satisfaction of El Rio Reyes Trust that the proposed construction or paving will not impair Conservation Values. For purposes of this paragraph, "pave", "paved", or "paving" shall include covering of the soil surface with concrete, asphalt, or other impermeable material; *provided*, that in order to make roads passable the Landowner may apply to existing or future roads on the Property a reasonable amount of gravel.

10. Agricultural Intensification.

(a) Except as provided in Subsection 10(c), land farmed within twenty years preceding the Effective Date and identified on "*Exhibit B*" as farmland may be converted to other agricultural uses (including intensification) without permission of El Rio Reyes Trust.

(b) Additional areas shall not be converted to intensified farming or other agricultural uses, except where, in the sole determination of El Rio Reyes Trust, such intensification will not impair Conservation Values.

(c) The total amount of non-farmed land, exclusive of riparian or native savanna lands, converted to other agricultural uses shall not exceed ten percent (10%) of the Easement Area and no portion shall occur within two hundred (200) feet of any blue line stream (as shown on the U.S. Geological Survey 7.5 minute quadrangle map that includes the Property), any vernal pools or any other sensitive habitat.

11. Agricultural commercial.

(a) Packing shed. The establishment or maintenance of a commercial packing shed is prohibited.

(b) Feedlot. The establishment or maintenance of a commercial feedlot is prohibited. For purposes of this Conservation Easement, "commercial feedlot" is defined as a permanently constructed confined area or facility which is used and maintained for purposes of engaging in the business of feeding livestock and which is not grazed or cropped annually.

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12. Industrial, Non-Agricultural Commercial, and Recreational Uses; Motorized Vehicles.

(a) Industrial Uses. All industrial uses of the Easement Area not expressly authorized herein are prohibited.

(b) Non-Agricultural Commercial Uses. With the exception of the commercial recreational uses authorized in Subsection 12(c), below, all non-agricultural commercial uses are prohibited on the Easement Area except with the advance written permission of El Rio Reyes Trust, which must be supported by Landowner's showing to the reasonable satisfaction of El Rio Reyes Trust that the proposed use is consistent with the Conservation Purposes.

(c) Recreational Uses. Non-commercial and commercial recreational uses such as hunting, fishing, horseback riding, camping, wildlife viewing, hiking, non-motorized cycling, non-motorized boating, rock collecting, and photography may be undertaken without further permission from El Rio Reyes Trust; *provided*, that no such use shall be allowed to impair Conservation Values. All other recreational uses are prohibited on the Easement Area except with the advance written permission of El Rio Reyes Trust, which must be supported by Landowner's showing to the reasonable satisfaction of El Rio Reyes Trust that the proposed use is consistent with the Conservation Purposes.

(d) Utility Facilities. Where utility facilities (including infrastructure) such as power lines and pipelines are, in the sole discretion of El Rio Reyes Trust, likely to be constructed through the Easement Area, or where existing utility facilities are being relocated, the Landowner and El Rio Reyes Trust may negotiate both compensation for and location of such facilities in order to avoid or reduce the impacts of such facilities on the Conservation Values. Any compensation shall be shared as provided in Paragraph 29 below and El Rio Reyes Trust's portion shall be used exclusively to further conservation either within or without the Easement Area. Renewable power generation facilities, such as solar, wind and hydroelectric, may be constructed within the Easement Area only with the prior written consent of El Rio Reyes Trust. The consent shall be granted only upon demonstration that such facilities will be properly permitted and located so as to not impair the Conservation Values.

(e) Motorized Vehicles. The commercial use of motorized vehicles off of roads is prohibited, except when necessary for maintenance of utilities or for emergency purposes. Landowner and Landowner's family members, employees and non-paying guests may use motorized vehicles for activities allowed by the Conservation Easement, except that motorized vehicle races and the construction of motorized off-road vehicle courses are specifically prohibited.

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13. **Trash.** The dumping or accumulation of any kind of trash, refuse or derelict equipment on the Easement Area is prohibited; *provided*, this prohibition shall not be interpreted to prevent the storage or accumulation of agricultural products and byproducts on the Easement Area in accordance with all applicable laws and regulations and in a manner that does not impair Conservation Values.

14. **Water Rights.** Landowner shall retain, maintain and preserve the right to use all water rights associated with the Easement Area. Landowner represents that those water rights are sufficient to sustain present and future agricultural productivity and other Conservation Values on the Easement Area. Landowner shall not transfer, encumber, lease, sell, or otherwise separate such water rights from the Easement Area.

15. **Rights Retained by Landowner.** The Landowner retains the right to perform any act not specifically prohibited or limited by this Conservation Easement. Landowner's present uses and compatible historic uses of the Easement Area for managed agriculture and other allowed agricultural uses as described in the Baseline Conditions Report and as limited by Section 10(c) [Agricultural Intensification], are deemed to be permitted activities consistent with the Conservation Purposes. Landowner retains all ownership rights consistent with such purposes, including, but not limited to, the right to exclude any member of the public from trespassing on the Easement Area (other than El Rio Reyes Trust and its representatives) and the right to sell or otherwise transfer the Easement Area to anyone Landowner chooses.

16. **Responsibilities of Landowner and El Rio Reyes Trust Not Affected.** Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the El Rio Reyes Trust, or in any way to affect any existing obligation of the Landowner as owner of the Easement Area. Among other things, this shall apply to:

(a) **Taxes.** Landowner shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Easement Area or the property underlying the Easement Area by competent authority. If the El Rio Reyes Trust is ever required to pay any taxes or assessments on the Easement Area or underlying property, Landowner will promptly reimburse El Rio Reyes Trust for the same.

(b) **Upkeep and Maintenance.** Landowner shall continue to be solely responsible for the upkeep and maintenance of the Easement Area. El Rio Reyes Trust shall have no obligation for the upkeep or maintenance of the Easement Area.

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(c) Liability and Indemnification.

(1) Landowner shall and hereby agrees to hold harmless, indemnify, protect, and defend El Rio Reyes Trust, its officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns and each of them (collectively "**El Rio Reyes Trust Indemnified Parties**") from and against all liabilities, penalties, costs, losses, orders, liens, damages, expenses, causes of action, claims, demands, or judgments, including without limitation reasonable attorneys' and experts' fees, arising from or in any way connected with: (a) 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 Easement Area, regardless of cause, except to the extent caused by the negligence or willful misconduct of any of the Trust El Rio Reyes Indemnified Parties; (b) a violation of, or other failure to comply with, any state, federal or local law, regulation or requirement, by Landowner, or any party other than one of the El Rio Reyes Trust Indemnified Parties acting upon permission from Landowner, in any way affecting, involving or relating to the Easement Area; (c) the breach by Landowner of any of its obligations set forth in this Conservation Easement.

(2) El Rio Reyes Trust shall hold harmless, indemnify, and defend Landowner and its officers, directors, employees, contractors, legal representatives, agents, heirs, personal representatives, successors and assigns, and each of them (collectively "**Landowner Indemnified Parties**") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' and experts' fees, arising from or in any way connected with any 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 Easement Area to the extent caused by the negligence or willful misconduct of any of the El Rio Reyes Trust Indemnified Parties.

(d) Insurance.

(1) Landowner shall maintain an occurrence-basis commercial general liability policy insuring against bodily injury and property damage on the Easement Area in the amount of not less than _____ Dollars (\$_,000,000), which amount shall be adjusted every five (5) years to reflect the percentage increase during the past five (5) years in the "CPI," which means the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for all Urban Consumers (CPI-U, all items) (1982-84=100), or the

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successor of such index. El Rio Reyes Trust shall be named an additional insured on the policy. The liability insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to El Rio Reyes Trust. Landowner waives all rights of subrogation against El Rio Reyes Trust and its agents, representatives, officers, directors and employees for recovery of damages to the extent these damages are covered by insurance maintained pursuant to this Conservation Easement. Landowner shall furnish El Rio Reyes Trust with certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. Such certificates shall provide for thirty (30) days written notice to El Rio Reyes Trust prior to the cancellation or material change of any insurance referred to herein. Any failure of El Rio Reyes Trust to demand such certificate or other evidence of full compliance with these insurance requirements or failure of El Rio Reyes Trust to identify a deficiency from evidence that is provided shall not be construed as a waiver of Landowner's obligation to maintain such insurance. The foregoing insurance requirements do not replace, waive, alter or limit the hold harmless or indemnification provisions of this Conservation Easement.

(2) El Rio Reyes Trust shall maintain a comprehensive general liability policy insuring against bodily injury and property damage on the Easement Area in the amount of not less than one million dollars (\$1,000,000), which amount shall be adjusted every five (5) years to reflect the percentage increase during the past five (5) years in the CPI. The liability insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Landowner. El Rio Reyes Trust waives all rights of subrogation against Landowner and its agents, representatives, officers, directors and employees for recovery of damages to the extent these damages are covered by insurance maintained pursuant to this Conservation Easement. The foregoing insurance requirements do not replace, waive, alter or limit the hold harmless or indemnification provisions of this Conservation Easement. Notwithstanding the foregoing insurance requirements, El Rio Reyes Trust may self insure with the approval of Landowner, which approval shall not be unreasonably withheld.

17. Monitoring, Management and Issue Resolution.

(a) Right of Entry. El Rio Reyes Trust, its agents, representatives and contractors shall have the right to enter annually with reasonable advance notice onto the Easement Area for purposes of monitoring compliance with the terms of this Conservation Easement. Except when a problem has been identified during an annual visit, additional entry shall be permissive and therefore require notice and permission by Landowner. If the Easement Area is not accessible by public roads, Landowner hereby grants El Rio Reyes Trust adequate access to the Easement Area for the limited purposes of monitoring and enforcement of the terms of this Conservation Easement. El Rio Reyes Trust's monitoring and access activities shall not interfere with normal agricultural operations on the Property. *[If WCB is funding the*

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Conservation Easement, WCB will require the right to accompany the monitors once every three years. Additional language to that effect will be added here.]

(b) Cooperative Resource Stewardship. El Rio Reyes Trust believes that, in most cases, the existing stewardship on the farm/ranch it selects for conservation easement projects has supported and enhanced the conservation values these farms/ranches provide, and, consistent with that premise, El Rio Reyes Trust agrees with Landowner to take wherever possible a cooperative approach to monitoring and management of the Conservation Values. The Parties will conduct joint qualitative monitoring to ensure that the Conservation Values are being protected. This monitoring will be supported through the Baseline Conditions Report and subsequent reviews, using photographs and narrative descriptions, among other evaluation tools. Monitoring will also consider issues such as site potential, weather conditions, unusual economic circumstances, vegetative variety and quality and trends in resource conditions. As a general matter, El Rio Reyes Trust believes that a written management plan is a useful tool for guiding resource stewardship; however, El Rio Reyes Trust will not require a written management plan except under the circumstances in the following Stage 1 and Stage 2 processes.

Stage 1: If the Baseline Conditions Report, or subsequent monitoring, has identified circumstances requiring improvement to protect the Conservation Values, Landowner, upon written notice from El Rio Reyes Trust, shall develop a written management plan that addresses the particular resource management concern(s) identified by El Rio Reyes Trust. Landowner shall be encouraged but not required to engage the services of a Cooperative Extension specialist, a District Conservationist of the Natural Resources Conservation Service, U.S. Department of Agriculture (a "District Conservationist"), or other qualified professional to assist Landowner in the development of such a management plan. The required scope of the plan and the time allowed for its development shall depend on the nature and severity of the identified problems. The management plan shall be subject to El Rio Reyes Trust's approval. Landowner shall implement an approved plan for so long as is necessary to resolve the particular resource management problem(s) addressed by the plan. El Rio Reyes Trust shall monitor implementation of the plan, and results thereof, during its periodic monitoring, and may require modifications of the plan as the resource conditions warrant.

Stage 2: If Landowner does not diligently act to develop a management plan required under the preceding Stage 1 circumstances, or if an identified problem persists, or if Landowner and El Rio Reyes Trust disagree regarding the resource management concern(s) identified by El Rio Reyes Trust, then El Rio Reyes Trust, at Landowner's expense, shall engage a Cooperative Extension specialist, a District Conservationist, or other qualified professional to develop the management plan and, as warranted, to recommend interim remedial measures for implementation pending the development of the management plan. The management plan, and any interim remedial measures, proposed by such qualified professional shall be subject to El Rio Reyes

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Trust's approval. Landowner shall implement an approved plan for so long as is necessary to resolve the particular resource management problem(s) addressed by the plan. El Rio Reyes Trust shall monitor implementation of the plan, and the results thereof, during its periodic monitoring, and may require modifications of the plan as the resource conditions warrant.

(c) Judicial Enforcement. If, in El Rio Reyes Trust's judgment, substantial resource damage is threatened or is occurring, or if El Rio Reyes Trust finds what it considers to be a violation of any provision of the Conservation Easement that, in El Rio Reyes Trust's judgment, cannot be satisfactorily addressed through the processes set forth in Subsection 17(b), above, El Rio Reyes Trust has the right to bypass those processes and to instead pursue appropriate legal action; provided, that except when an ongoing or imminent violation could substantially diminish or impair Conservation Values of the Easement Area, or the parties have already met and discussed the violation, El Rio Reyes Trust shall give Landowner written notice of the violation and, not later than fourteen (14) days after the delivery of such written notice, the parties shall meet to discuss the circumstances of the violation and to attempt to agree on appropriate corrective action. If the parties are unable to agree to corrective action, El Rio Reyes Trust shall deliver a further written notice to Landowner to demand particular corrective action to cure the Easement Area resulting from any use or activity inconsistent with the Conservation Values or any of them, or the Easement Purpose, to restore the portion of the Easement Area so injured. Landowner shall cure the violation within thirty (30) days after receipt of such notice, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, shall commence curing such violation as soon as possible within such thirty (30) day period and shall continue diligently to cure such violation until finally cured.

(d) Expert Assistance. The opinions of any Cooperative Extension specialist, District Conservationist or other qualified professional engaged to assist the Parties in the resolution of any claim of injury to any Conservation Value shall be admissible in any judicial proceedings conducted with respect to that asserted violation.

(e) Immediate Relief. Notwithstanding any of the foregoing, if at any time El Rio Reyes Trust determines that an ongoing or imminent violation could substantially diminish or impair Conservation Values, El Rio Reyes Trust may proceed immediately to seek an injunction to stop it, temporarily or permanently. El Rio Reyes Trust may also seek an injunction requiring the Landowner to restore, or pay for the restoration of, the Easement Area to its condition prior to the violation.

(f) Alternative and Cumulative Remedies. El Rio Reyes Trust's remedies described in this Section 17 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 Conservation Easement is made subject to all of the rights and remedies set forth therein. The prevailing party shall be

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entitled to recover its costs incurred in any such enforcement effort, including reasonable attorneys', consultants' and experts' fees and costs. El Rio Reyes Trust retains the discretion to choose the appropriate method to enforce the provisions of this Easement, and shall not be required to exhaust the provisions of one subsection hereof in order to be entitled to the benefits of another.

18. **Forbearance No Waiver.** Forbearance by the El Rio Reyes Trust to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Landowner shall not be construed to be a waiver by the El Rio Reyes Trust of such term or of any subsequent breach of the same or any other term of this Conservation Easement. No delay or omission in the exercise of any right or remedy upon any breach by Landowner shall impair such right or remedy or be construed as a waiver.

19. **El Rio Reyes Trust Transfer of Easement.**

(a) The Parties contemplate that El Rio Reyes Trust will continue to hold this Conservation Easement for so long as El Rio Reyes Trust remains in existence. Notwithstanding such contemplation, however, El Rio Reyes Trust may assign its interest under this Conservation Easement; *provided*, El Rio Reyes Trust shall first provide Landowner with written notice of such intention or requirement and shall allow Landowner a period of one hundred eighty (180) days within which to designate an assignee that is: (i) qualified to hold a conservation easement under Section 815.3 of the California Civil Code; (ii) a "qualified organization" as defined in Section 170(h)(3) of the U.S. Internal Revenue Code, 26 U.S.C. §170(h)(3); (iii) not an "Affiliate" (as defined below) of Landowner or any lessee of any portion of the Easement Area; and (iv) willing and financially able to assume all of the responsibilities imposed on El Rio Reyes Trust under this Conservation Easement including without limitation monitoring and enforcement. As used in this Subsection 19(a), "Affiliate" means an entity which directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person or entity. In the events that at the end of the one hundred eighty (180) day period either an assignment has not been made or Landowner has not petitioned a court of competent jurisdiction to transfer this Conservation Easement to an entity that meets the foregoing four designation criteria, El Rio Reyes Trust may proceed to transfer this Conservation Easement to any non-governmental entity that meets all of the foregoing designation criteria or to petition a court of competent jurisdiction to do so. The Parties intend that, in the selection of a transferee, preference be given to a qualified organization with an agricultural conservation purpose as well as requisite experience in preserving and protecting the other Conservation Values. Said organization should have a board, staff, or consultants with practical agricultural management experience. El Rio Reyes Trust shall not transfer this Conservation Easement to any governmental entity or public agency without the consent of Landowner, which consent shall

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be in Landowner's sole discretion.

(b) If El Rio Reyes Trust ever ceases to exist or no longer qualifies under Section 170(h) of the U.S. Internal Revenue Code, or applicable state law, or no longer meets all of the four designation criteria stated in Subsection 19(a), then Landowner shall petition a court of competent jurisdiction to transfer this Conservation Easement to an organization that meets all of those criteria. In the event that the court is unable to identify a non-governmental organization that meets those criteria, the court may transfer this Conservation Easement to a governmental entity that meets the criteria.

20. Landowner Transfer of the Easement Area.

(a) Notification. Any time the Easement Area itself or any interest in it is transferred by the Landowner to any third party, the Landowner shall notify El Rio Reyes Trust in writing prior to the transfer of the Easement Area, and the deed of conveyance shall expressly refer to this Conservation Easement. Failure to notify El Rio Reyes Trust or include the required reference to this Conservation Easement in the deed shall not affect the continuing validity and enforceability of this Conservation Easement.

(b) Transfer Fee. A transfer of the ownership of the Easement Area may result in an additional burden on the monitoring and enforcement responsibilities of El Rio Reyes Trust; therefore, each such transfer (except for (i) transfers solely to change the method of holding title by the same party or parties, and (ii) inter-generational transfers between members of the same family) shall require the payment of a transfer fee to El Rio Reyes Trust's monitoring fund in the amount of 0.4 percent (four tenths of one percent) of the fair market value of the Land Value, as hereinafter defined. "Land Value" shall be the value of the land (without improvements) established by agreement of the Parties, or, if there is not agreement, by the County Assessor upon reassessment of the land (not improvements) following the transfer. El Rio Reyes Trust may reduce or waive this fee at its sole discretion.

(c) No Merger. The Parties intend that a transfer to El Rio Reyes Trust of the fee interest in the Easement Area, or any portion thereof, shall not be deemed to result in a merger of the Conservation Easement into the fee title. In the event of such transfer, El Rio Reyes Trust shall continue to manage the Easement Area in accordance with the Conservation Purposes and, in the event of a subsequent transfer by El Rio Reyes Trust of its fee interest in the Easement Area, El Rio Reyes Trust shall reserve therefrom the Conservation Easement.

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21. **Amendment of Easement.** This Conservation Easement may be amended only with the written consent of El Rio Reyes Trust and Landowner. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Section 170(h) of the U.S. Internal Revenue Code, California Civil Code Section 815, et seq., or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with California law governing conservation easements. All amendments shall refer to this Conservation Easement and shall be recorded in the official records of the county(ies) identified in Recital A of this Conservation Easement.

22. **No Public Dedication or Public Access.** Nothing contained in this Conservation Easement shall be deemed to be a gift or dedication of any portion of the Easement Area for use by the general public. This instrument does not convey a general right of access to the public.

23. **Landowner's Title Warranty; No Prior Conservation Easements.** Landowner represents and warrants that Landowner has good fee simple title to the Easement Area, free from any and all liens or encumbrances except the permitted encumbrances shown in Exhibit C, and hereby promises to defend the same against all claims that may be made against it.⁷ Landowner represents and warrants that the Easement Area is not subject to any other conservation easement. Landowner may grant any subsequent conservation easements on the Easement Area provided that such easements do not interfere with the Conservation Purposes. El Rio Reyes Trust shall be notified at least ninety days in advance, in writing, of any proposed conservation or other easement for the Easement Area, which notice shall include the proposed easement.

24. **Environmental Provisions.**

(a) El Rio Reyes Trust Not An Owner, Operator, Or Responsible Party.

(1) Notwithstanding any other provision herein to the contrary, the parties do not intend this Conservation Easement to be construed such that it creates in or gives the El Rio Reyes Trust:

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(A) the obligations or liability of an "owner" or "operator" as those words are defined and used in environmental laws, as defined below, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC § 9601 et seq. and hereinafter "CERCLA");

(B) the obligations or liability of a person described in 42 U.S.C. § 9607(a)(3) or (4);

(C) the obligations of a responsible person under any applicable Environmental Laws, as defined below;

(D) the right to investigate and remediate any Hazardous Substance (as defined below) associated with the Property; or

(E) any control over Landowner's ability to investigate, remove, remediate, or otherwise clean up any Hazardous Substance (as defined below) associated with the Property.

(b) Environmental Liabilities and Indemnification. Landowner and Landowner's successors in interest shall indemnify, protect and defend with counsel acceptable to El Rio Reyes Trust, and hold harmless the El Rio Reyes Trust Indemnified Parties (as defined in Subsection 16(c)(1) above) from and against any claims (including, without limitation, third party claims for personal injury or death, damage to property, or diminution in the value of property), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlements of claims), remedial action, compliance requirements, enforcement and clean-up actions of any kind, interest or losses, attorneys' fees (including any fees and expenses incurred in enforcing this indemnity), consultant fees, and expert fees that arise directly or indirectly from or in connection with: (i) the claimed presence or Release (as defined below) of any Hazardous Substance whether into the air, soil, surface water or groundwater of or at the Property; (ii) any violation or alleged violation of Environmental Law (as defined below) affecting the Property, whether occurring prior to or during Landowner's ownership of the Property and whether caused or permitted by Landowner or any person other than Landowner; or (iii) any claim or defense by Landowner or any third party that any El Rio Reyes Trust Indemnified Party is liable as an "owner" or "operator" of the Property under any Environmental Law. The foregoing indemnity

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obligations shall not apply with respect to any Hazardous Substance released or deposited as a result of action by El Rio Reyes Trust Indemnified Parties on or about the Easement Area. The indemnity obligations of any successor in interest of Landowner pursuant to this Subsection 24 (c) shall be limited to the portion of the Easement Area to which the successor takes title. Notwithstanding any statutory limitation otherwise applicable, the indemnity obligations of Landowner to El Rio Reyes Trust Indemnified Parties pursuant to this Subsection 24(c) shall continue after transfer to a successor in interest unless a written request for consent to assignment of such indemnity obligations to a successor in interest is approved by El Rio Reyes Trust. In considering any such request, El Rio Reyes Trust may take into account the financial capabilities of the successor in interest, without regard to any third party financial assurances. El Rio Reyes Trust's consent to such assignment may be denied only if there is a commercially reasonable basis for such denial.

(c) Definitions.

(1) The term "Environmental Law" shall include, but shall not be limited to, each statute named or referred to below, and all rules and regulations thereunder, and any other local, state and/or federal laws, ordinances, rules, regulations, orders and decrees, whether currently in existence or hereafter enacted, which govern (i) the existence, cleanup and/or remedy of contamination or pollution on property; (ii) the protection of the environment from soil, air or water contamination or pollution, or from spilled, deposited or otherwise emplaced contamination or pollution; (iii) the emission or discharge of Hazardous Substances into the environment; (iv) the control of Hazardous Substances; or (v) the use, generation, transport, treatment, removal or recovery of Hazardous Substances.

(2) The term "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Substance into the environment (including, without limitation, the continuing migration of Hazardous Substances into, onto or through the soil, surface water, or groundwater, and the abandonment or discarding of barrels, containers, and other receptacles containing any Hazardous Substance), whether or not caused by, contributed to, permitted by, acquiesced to or known to Landowner.

(3) The term "Hazardous Substance" shall mean (i) any oil, flammable substance, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which pose a hazard to the Property or to persons on or about the Property, or cause the Property to be in violation of any Environmental Law; (ii) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of

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polychlorinated biphenyls, or radon gas; (iii) any chemical, material or substance defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including: CERCLA, 42 USC Section 9601, et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 USC Section 6901, et seq.; the Hazardous Materials Transportation Act, 49 USC Section 1801, et seq.; the Federal Water Pollution Control Act, 33 USC Section 1251, et seq.; the California Hazardous Waste Control Law ("HWCL"), Cal. Health & Safety Section 25100, et seq., Hazardous Substance Account Act ("HSAA"), Cal. Health & Safety Code section 25300, et seq., the Porter-Cologne Water Quality Control Act (the "Porter-Cologne Act"), Cal. Water Code Section 13000, et seq., the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); Title 22 of the California Code of Regulations, Division 4, Chapter 30; (iv) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety of the occupants of the Property or the owners and/or occupants of property adjacent to or surrounding the Property, or any other person coming upon the Property or adjacent property; and (v) any other chemical, materials or substance which may or could pose a hazard to the environment.

25. **Interpretation.** This instrument shall be interpreted under the laws of the State of California, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Conservation Purposes. If any provision of this Conservation Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provisions 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.

26. **Captions.** The captions in this Conservation Easement have been inserted solely for convenience of reference and shall have no effect upon construction or interpretation.

27. **Perpetual Duration.** The easement created by this instrument shall be a servitude running with the land in perpetuity.

28. **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 any other common method whereby receipt is confirmed, and addressed as

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follows or such other address as either party from time to time shall designate by written notice to the other.

To LANDOWNER: _____

To EL RIO REYES TRUST: P.O. Box 1339

Reedley, CA 95654

29. **Condemnation.** This Conservation Easement constitutes a real property interest immediately vested in El Rio Reyes Trust. If the Property is taken, in whole or in part, by exercise of the power of eminent domain, El Rio Reyes Trust shall be entitled to compensation in accordance with applicable law for the value of the Easement taken, and Landowner shall be entitled to compensation in accordance with applicable law for the value of the underlying fee title taken. For the purposes of this Section 29, the parties agree that the fair market value of this Conservation Easement will be determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value attributable to improvements made after the Effective Date) by _____ percent, which the parties agree is the ratio of the value of the Conservation Easement to the value of the Property unencumbered by the Conservation Easement as of the Effective Date, as determined by an appraisal approved by the parties as of the Effective Date. El Rio Reyes Trust shall use all proceeds received as an award in a condemnation proceeding for a taking of the Conservation Easement in a manner consistent with the Conservation Purposes. *The parties intend by the provisions of this Section 29 to satisfy the requirements of 26 C.F.R. § 1.170A-14(g)(6) as applicable on the Effective Date.*

30. **Extinguishment.** If circumstances arise in the future such as render the Conservation Purposes impossible to accomplish, including circumstances resulting from a default under the Conservation Easement, this Conservation Easement can only be terminated or

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extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which El Rio Reyes Trust 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 Section 31, below. El Rio Reyes Trust shall use all such proceeds in a manner consistent with the conservation purposes of this Conservation Easement.

31. **Compensation.** This easement constitutes a real property interest immediately vested in El Rio Reyes Trust. For the purposes of Section 30, above, the parties agree that the fair market value of this Conservation Easement as of the date of the termination or extinguishment shall be the amount of compensation due El Rio Reyes Trust as the result of such termination or extinguishment. Such fair market value of the Conservation Easement will be determined by multiplying the fair market value of the Property as if unencumbered by the Conservation Easement (minus any increase in value attributable to improvements made after the Effective Date) by the greater of (i) the ratio of the value of the Conservation Easement at the time of its termination or extinguishment to the value of the Property as if unencumbered by the Conservation Easement at that time, or (ii) _____ percent (which the parties agree is the ratio of the value of the Easement to the value of the Property unencumbered by the Conservation Easement as determined by the appraisal previously approved by the parties). The fair market values of the Property and the Conservation Easement as of the date of termination or extinguishment shall be determined by a complete appraisal conducted by a qualified appraiser approved by the parties. The cost of such appraisal shall be borne by the party who initiates the judicial action for termination or extinguishment. *The parties intend by the provisions of this Section 31 to satisfy the requirements of 26 C.F.R. § 1.170A-14(g)(6)(ii) as applicable on the Effective Date.*

32. **Laws Currently in Effect.** All references in this Conservation Easement to statutes, regulations and other laws shall be deemed to refer to those statutes, regulations and laws currently in effect, or as amended (or any successor provision then applicable).

33. **Recordation.** El Rio Reyes Trust shall promptly record this instrument in the official records of the county(ies) identified in Recital A, above, and promptly notify the Landowner through the mailing of a conformed copy of the recorded Conservation Easement.

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34. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement Area and supersedes all prior discussions, negotiations, understandings or agreements relating to the Easement Area, all of which are herein merged.

35. **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.

36. **Attorneys' Fees.** Should proceedings be brought to enforce or interpret any of the terms of this instrument, the prevailing party in any such proceedings shall be entitled to recover from the non-prevailing party its costs, including reasonable attorneys' fees.

37. **Permission; Landowner to Bear Costs and Expenses of Review.** Whenever El Rio Reyes Trust's permission, consent or approval is required pursuant to this Conservation Easement, such permission, consent or approval shall be obtained in advance and in writing from El Rio Reyes Trust. Except as otherwise provided in this Conservation Easement, whether permission, consent or approval should be granted or denied shall be determined based upon the purposes of this Conservation Easement, and shall not be unreasonably withheld. Landowner shall be solely responsible for bearing all reasonable costs and expenses, including reasonable attorneys' and consultants' fees and costs, of: (i) El Rio Reyes Trust's review of any request by Landowner for El Rio Reyes Trust's permission, consent or approval of any development or other use of the Easement Area for which El Rio Reyes Trust's discretionary permission, consent or approval is required under this Conservation Easement; and (ii) El Rio Reyes Trust's participation, at Landowner's request, in any regulatory proceeding for consideration of proposed development or other use of the Easement Area allowed under this Conservation Easement.

38. **Compliance with Applicable Laws.** Landowner remains solely responsible for obtaining any applicable governmental permits or other approvals for any activity or use allowed under this Conservation Easement. No right or privilege granted in this Conservation Easement, nor any right retained by Landowner, shall be interpreted as exempting Landowner from complying with all statutes, laws, ordinances, rules, regulations, codes, orders, or other restrictions applicable to the Property.

39. **Exhibits.** The exhibits attached hereto are incorporated herein by this reference:

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Exhibit A: Property Description

Exhibit B: Property Map

Exhibit C: Permitted Encumbrances

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40. **Effective Date.** This Conservation Easement is effective upon recordation in the Official Records of the county(ies) identified in Recital A.

Agreed to and executed by:

LANDOWNER:

Date

EL RIO REYES TRUST

By: _____

Date

[Add notary acknowledgments.]

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Exhibit A

Property Description

Insert legal description. Confirm legal matches description on the latest title report.

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Exhibit B

Property Map

Insert map of the Property showing the following items:

Residential Building Envelope – paragraph 3(c)

Agricultural Intensified Areas – paragraph 10

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Exhibit C: Permitted Encumbrances

¹ The form of the easement is subject to periodic review and revision. In addition, each easement is tailored to the specifics of the transaction.

ⁱⁱ Following is an example of an additional recital that would be added if the California Wildlife Conservation Board is a funding source for the transaction.

El Rio Reyes Trust has entered into Grant Agreement No. _____ with the California Wildlife Conservation Board (“WCB”), pursuant to which WCB provided funding for the acquisition of this Conservation Easement (the “WCB Grant Agreement”), a copy of which has been provided to Landowner. A notice of the WCB Grant Agreement is being recorded concurrently herewith. Landowner acknowledges that, in the event of a “Default” by El Rio Reyes Trust under the WCB Grant Agreement, as that term is defined in the WCB Grant Agreement, WCB may elect to require El Rio Reyes Trust to assign its interest under this Conservation Easement to a qualified entity; provided, that such assignment must be made in accordance with the provisions of Section 19 of this Conservation Easement. WCB is not a party to this Conservation Easement and Landowner is not granting any interest or rights to WCB by its conveyance of this Conservation Easement to El Rio Reyes Trust, other than as expressly provided in Section 19 of this Conservation Easement.

³ The delineation of the residential building envelope will be based on such considerations as proximity to existing infrastructure, protection of agricultural and natural resources, and protection of the viewshed from the vantage of public roads. Once established, a building envelope can only be re-located with the written consent of El Rio Reyes Trust and must be based upon demonstration that the new location/configuration will be essentially as protective of Conservation Values as the original location/configuration and will not materially increase the retained development rights.

⁴ If funding by the California Wildlife Conservation Board has been provided for the acquisition of the Conservation Easement, the following *proviso* will be added:

. . . ; provided further, that, if the State of California, acting by and through the Department of Fish and Game, Wildlife Conservation Board (“DFG-WCB”) is one of El Rio Reyes Trust’s funding sources, Landowner hereby agrees that any logo requested by DFG-WCB to be part of such signage shall be acceptable to Landowner.

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⁵ WARNING TO LANDOWNER: It is unclear whether the extraction or removal of sand and gravel would jeopardize a charitable contribution deduction under Internal Revenue Code Section 170. See, e.g., Great Northern Nekoosa Corporation vs. U.S., 1998 Stand. Fed. Tax Rep. (CCH) P 49,811, 97-2 USTC ¶50,591 (1997). Your tax counsel should review this and any other tax issues with you carefully.

⁷ No deed of trust shall be allowed to have priority over the Conservation Easement.