

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

State of California
Wildlife Conservation Board
Post Office Box 944209
Sacramento, CA 94244-
2090

Space Above Line for Recorder's Use Only

**AMENDED, RESTATED AND CONSOLIDATED
CONSERVATION EASEMENT DEED
Alton Lane Conservation Bank**

This AMENDED, RESTATED AND CONSOLIDATED CONSERVATION EASEMENT DEED ("**Conservation Easement**") is made as of _____, 20___, by Alton Preserve, LLC, a California limited liability company ("**Grantor**"), in favor of the State of California acting by and through its Department of Fish and Wildlife ("**Grantee**" or "**CDFW**"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately 41.12 acres, located in the County of Sonoma, State of California, and designated Assessor's Parcel Number 034-042-081-000 (the "**Bank Property**"). The Bank Property is legally described and depicted in **Exhibit A**, attached hereto and incorporated herein by reference.

B. The Bank Property is currently encumbered by that certain Land Conservation Contract executed pursuant to California Government Code section 51200 *et seq.* (Williamson Act) and recorded in the Official Records of Sonoma County (the "**Official Records**") on May 14, 1969 as Instrument No. L-19535, Book 2394, Page 93 (the "**1969 Williamson Act Contract**") and that certain Land Conservation Contract executed pursuant to California Government Code section 51200 *et seq.* (Williamson Act) and recorded in the Official Records on March 2, 1972 as Instrument No. M-58028, Book 2608, Page 525 (the "**1972 Williamson Act Contract**" and collectively with the 1969 Williamson Act Contract, the "**Williamson Act Contracts**").

C. Grantor intends to replace the Williamson Act Contracts with a single open space contract in a form consistent with the Conservation Values (defined below) of this Conservation Easement (the "**Land Conservation Contract**"). The Land Conservation Contract will be recorded after and will be subject in all respects to, this Conservation Easement.

D. Pursuant to that certain Deed of Conservation Easement (the "**1989 Conservation Easement**") recorded on December 6, 1989, as Instrument No. 89117209 in the Official Records,

Grantor's predecessor-in-interest previously granted Grantee a conservation easement over approximately 17.853 acres of the Bank Property to provide and protect, among other things, *Lasthenia burkei* (Burke's goldfields) and *Blennosperma bakeri* (Sonoma sunshine) habitat (the "**1989 Protected Property**").

E. Pursuant to that certain Deed of Conservation Easement (the "**1990 Conservation Easement**") recorded on March 20, 1990, as Instrument No. 90027619 in the Official Records, Grantor's predecessor-in-interest previously granted Grantee a conservation easement over approximately 11.147 acres of the Bank Property to provide and protect, among other things, *Lasthenia burkei* (Burke's goldfields) and *Blennosperma bakeri* (Sonoma sunshine) habitat (the "**1990 Protected Property**").

F. Pursuant to that certain Deed of Conservation Easement (the "**1994 Conservation Easement**") recorded on January 21, 1994 as Instrument No. 1994 0009048 in the Official Records, Grantor's predecessor-in-interest previously granted Grantee a conservation easement over approximately 1.81 acres of the Bank Property to provide and protect, among other things, *Blennosperma bakeri* (Sonoma sunshine) habitat (the "**1994 Protected Property**") and 0.27 acre of real property designated Assessor's Parcel Number 034-042-080, which is part of the "Alton North Conservation Bank" now owned by CDFW (the "**ANCB Property**").

G. Pursuant to that certain Conservation Easement Deed (the "**1999 Conservation Easement**") recorded on December 30, 1999, as Instrument No. 1999 157862 in the Official Records, Grantor's predecessor-in-interest previously granted Grantee a conservation easement over approximately 6.42 acres of the Bank Property to provide and protect, among other things, *Lasthenia burkei* (Burke's goldfields) and *Blennosperma bakeri* (Sonoma sunshine) habitat (the "**1999 Protected Property**").

H. The 1989 Protected Property, the 1990 Protected Property, the 1994 Protected Property and the 1999 Protected Property are sometimes collectively referred to herein as the "**Currently Protected Property.**"

I. Portions of the 1994 Protected Property and the 1999 Protected Property overlap, and the 1989 Conservation Easement, the 1990 Conservation Easement, the 1994 Conservation Easement, and the 1999 Conservation Easement (collectively, the "**Original Conservation Easements**") encumber approximately 35.420 acres of the Bank Property.

J. Effective as of the date of this Conservation Easement, Grantor and Grantee hereby intend to: (1) consolidate the Original Conservation Easements into a single conservation easement where the rights and obligations of the Grantee and Grantor can be ascertained by reference to a singular source; (2) amend and restate in full, and thereby supersede, the Original Conservation Easements; and (3) grant a conservation easement over the entire Bank Property, which includes the Currently Protected Property and an additional 5.71 acres not encumbered by the Original Conservation Easements, resulting in a total of 41.12 acres encumbered by this Conservation Easement.

K. The Bank Property possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Bank Property provides, or will provide high quality natural, established, restored and/or enhanced habitat for the California tiger salamander, *Lasthenia burkei* (Burke's goldfields) and *Blennosperma bakeri* (Sonoma sunshine) and contains, or will contain, seasonal wetland habitat and native and non-native grasslands, and restored, created, enhanced and/or preserved jurisdictional waters of the United States. Individually and collectively, these wildlife and habitat values comprise the "**Conservation Values**" of the Bank Property.

L. CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code Section 1802. CDFW is authorized to hold conservation easements for these purposes pursuant to California Civil Code Section 815.3, Fish and Game Code Section 1348, and other provisions of California law.

M. The United States Fish and Wildlife Service (the "**USFWS**"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law.

N. This Conservation Easement is granted pursuant to the Conservation Bank Enabling Instrument (the "**CBEI**") by and among Alton Preserve, LLC, a California limited liability company, as bank sponsor, Grantor, CDFW (CDFW Tracking No. 1798-2014-04-R3), and USFWS (USFWS File No. **insert number**), entered into in connection with this Conservation Easement, and the Interim Management Plan and Long-Term Management Plan (as applicable, the "**Management Plan**") created under the CBEI. CDFW and USFWS are together referred to in this Conservation Easement as the "**Signatory Agencies**".

Final, approved copies of the CBEI and the Management Plan, and any amendments thereto approved by the Signatory Agencies, shall be kept on file at the respective offices of the Signatory Agencies. If Grantor, or any successor or assign, requires an official copy of the CBEI or the Management Plan, or any amendment, it should request a copy from one of the Signatory Agencies at its address for notices listed in Section 22 of this Conservation Easement.

The CBEI and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein.

O. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Bank Property.

1. Recitals.

The Recitals to this Conservation Easement are hereby incorporated herein by this reference as if fully set forth hereinbelow.

2. Purposes.

The purposes of this Conservation Easement are to ensure that the Bank Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the CBEI and the Management Plan, and to prevent any use of the Bank Property that will impair or interfere with the Conservation Values of the Bank Property. Grantor intends that this Conservation Easement will confine the use of the Bank Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the CBEI and the Management Plan.

3. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

(a) To preserve and protect the Conservation Values of the Bank Property.

(b) To enter the Bank Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, and the Management Plan and to implement at Grantee's sole discretion Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Bank Property.

(c) To prevent any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Bank Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.

(d) To require that all mineral, air and water rights as Grantee deems necessary to preserve, protect and sustain the biological resources and Conservation Values of the Bank Property shall remain a part of and be put to beneficial use upon the Bank Property, consistent with the purposes of this Conservation Easement.

(e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Bank Property; such rights are hereby terminated and extinguished and may not be used on or transferred to any portion of the Bank Property, nor any other property adjacent or otherwise.

4. Third-Party Beneficiary.

Grantor and Grantee acknowledge that the USFWS (the “***Third-Party Beneficiary***”) is a third-party beneficiary of this Conservation Easement with the right of access to the Bank Property and the right to enforce all of its provisions and all other rights and remedies of the Grantee under this Conservation Easement.

5. Prohibited Uses.

Any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of chemical fertilizers, pesticides, biocides, herbicides, rodenticides, fungicides or other agents; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the Conservation Values of the Bank Property or otherwise interfere with the purposes of this Conservation Easement except for the use of herbicides as specifically provided in the Management Plan and approved by the Signatory Agencies.

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways except for the use of an all-terrain vehicle (ATV) to conduct monitoring activities and a commercial mower as specifically provided in the Management Plan.

(c) Agricultural activity of any kind except for grazing for vegetation management activities as specifically provided in the Management Plan.

(d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing except such activities as are consistent with the purposes of this Conservation Easement and specifically provided for in the Management Plan.

(e) Commercial, industrial, residential, or institutional structures or uses.

(f) Any legal or de facto division, subdivision or partitioning of the Bank Property, including a request for a certificate of compliance pursuant to the California Subdivision Map Act (California Government Code Section 66499.35).

(g) Construction, reconstruction, expansion, location, relocation, installation or placement of any building, billboard or sign, or any other structure or improvement of any kind, except for installation of grazing infrastructure and signs identifying the function of the Bank Property as specifically provided in the Management Plan.

(h) Deposit or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.

(i) Planting, introduction or dispersion of non-native or exotic plant or animal species.

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Bank Property, or granting or authorizing surface entry for any of these purposes.

(k) Altering the surface or general topography of the Bank Property, including but not limited to any alterations to habitat, building roads or trails, or paving or otherwise covering any portion of the Bank Property except for those habitat management activities specified in the Management Plan.

(l) Removing, disturbing, altering, destroying, or cutting of trees, shrubs or other vegetation, except as required by law and in accordance with a plan approved in writing by the Signatory Agencies for (i) fire breaks, (ii) maintenance of existing foot trails or roads, (iii) prevention or treatment of disease, and/or (iv) mowing for fire control if grazing is not sufficient to control fuel load, and except for herbicide application and manual removal to control invasive plant species as specifically provided in the Management Plan.

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Bank Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters.

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Bank Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Bank Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Bank Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Bank Property.

(o) Any use or activity that may violate, or fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Bank Property, or the use or activity in question.

(p) Any action, use or activity under the Williamson Act Contracts or Land Conservation Contract which may interfere with, or otherwise contravene, the Conservation Values of this Conservation Easement.

6. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at least annually, compliance monitoring inspections of

the Bank Property; and

(2) Prepare written reports on the results of the compliance monitoring inspections and provide these reports to each of the Signatory Agencies on an annual basis.

(b) In the event the Grantee's interest in this Conservation Easement reverts to or is transferred to the State of California, CDFW will carry out the tasks specified in Section 6(a) to the extent that funds and staff are available for that purpose. If CDFW determines that it cannot carry out the specified tasks, the Third-Party Beneficiary may identify a replacement Grantee, acceptable to all, and CDFW, subject to obtaining all necessary approvals, will transfer this Conservation Easement to the identified replacement Grantee in compliance with Section 20(a) of this Conservation Easement.

7. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Bank Property or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 3 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the CBEI and the Management Plan.

8. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Bank Property, including the right to engage in or permit or invite others to engage in all uses of the Bank Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement. Notwithstanding anything to the contrary herein, such reservation of rights shall not include the right to take any action under the Williamson Act Contracts or Land Conservation Contract which interferes with, or otherwise contravenes, the Conservation Values of this Conservation Easement as determined by Grantee in its sole and absolute discretion.

9. Grantee's Remedies.

(a) If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("**Notice of Violation**"). At the time of giving any such notice, Grantee shall give a copy of the notice to the Third-Party Beneficiary (or, if Third-Party Beneficiary gives a Notice of Violation, it also shall give a copy of the notice to Grantee). Notice shall be provided according to Section 22 of this Conservation Easement.

(b) If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the

Conservation Values of the Bank Property; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Bank Property to the condition in which it existed prior to any such violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Bank Property.

(c) If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Bank Property, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement. Grantee shall notify the Grantor and the Third-Party Beneficiary within thirty (30) days of such an occurrence.

(d) Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.*

(e) If Grantor receives a Notice of Violation with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict ("**Notice of Conflict**") to Grantee and the Third-Party Beneficiary in accordance with Section 22. In order to be valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon giving a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities that gave said conflicting Notices of Violation give revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in Section 9(b). The failure of Grantor to give a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

10. Costs of Enforcement.

Grantor shall bear all costs incurred by Grantee or Third-Party Beneficiary, where Grantee or Third-Party Beneficiary is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor. These costs include, but are not limited to, the following: costs of suit and attorneys' and experts' fees, and any costs for restoration necessitated by Grantor's negligence or breach of this Conservation Easement.

11. Grantee's and Third-Party Beneficiary's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee and/or Third-Party Beneficiary shall be at the discretion of the enforcing party, and any forbearance by Grantee or Third-Party Beneficiary to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver by Grantee or Third-Party Beneficiary of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee or Third-Party Beneficiary in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

12. Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Bank Property resulting from (a) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Bank Property resulting from such causes; or (b) acts by Grantee or its employees.

13. Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by CDFW and the Third-Party Beneficiary. These enforcement rights are in addition to, and do not limit, the rights of enforcement under the CBEI or the Management Plan. If at any time in the future Grantor or any subsequent transferee uses, allows the use, or threatens to use or allow use of, the Bank Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and the Third-Party Beneficiaries each has standing as an interested party in any proceeding affecting this Conservation Easement. Excepting Third-Party Beneficiary and Third-Party Indemnified Parties (defined below) there are no intended third-party beneficiaries of any right or obligation of this Conservation Easement.

14. Access.

This Conservation Easement does not convey a general right of access to the public.

15. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Bank Property. Grantor agrees that neither Grantee nor Third-Party Beneficiary shall have any duty or responsibility for the operation, upkeep or maintenance of the Bank Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Bank Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement, including those permits and approvals required from Grantee or Third-Party Beneficiary acting in its regulatory capacity, and any activity or use shall be undertaken in

accordance with all applicable federal, state, local and administrative agency statutes, codes, ordinances, rules, regulations, orders and requirements.

16. Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Bank Property by competent authority (collectively "**Taxes**"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee and Third-Party Beneficiary with satisfactory evidence of payment upon request. Grantor shall keep the Bank Property free from any liens (other than a security interest that is expressly subordinate to this Conservation Easement, as provided in Section 24(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Bank Property.

17. Hold Harmless.

(a) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "**Grantee Indemnified Party**" and collectively, "**Grantee's Indemnified Parties**") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "**Claim**" and, collectively, "**Claims**"), 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 Bank Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence or willful misconduct of Grantee; (2) the obligations specified in Sections 7, 15 and 16; and (3) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding.

(b) Grantor shall hold harmless, protect and indemnify Third-Party Beneficiary and its respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns (each a "**Third-Party Beneficiary Indemnified Party**" and collectively, "**Third-Party Beneficiary Indemnified Parties**") from and against any and all Claims arising from or in any way connected with 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 Bank Property, regardless of cause. *Provided, however*, that the indemnification in this Section 17 (b) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence or willful misconduct of that Third-Party Beneficiary Indemnified Party. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 17 (b) applies, then at the

election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

18. Extinguishment.

If circumstances arise in the future that render the preservation of Conservation Values, including wetland functions and values, or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can be terminated or extinguished, in whole or in part, only by judicial proceedings in a court of competent jurisdiction.

19. Condemnation.

This Conservation Easement is a "wildlife conservation easement" acquired by a State agency, the condemnation of which is prohibited except as provided in California Fish and Game Code Section 1348.3. If the Conservation Easement is condemned, the net proceeds from the condemnation shall be used in compliance with California Government Code Section 65966(j).

20. Transfer of Conservation Easement or Bank Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Third-Party Beneficiary, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Third-Party Beneficiary at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer this Conservation Easement only to an entity or organization authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65967 (and any successor or other provision(s) then applicable), and the laws of the United States and otherwise reasonably acceptable to the Third-Party Beneficiary. Grantee shall require the assignee to record the assignment in the county where the Bank Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 21.

(b) Bank Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Bank Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee and the Third-Party Beneficiary of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Third-Party Beneficiary shall have the right to prevent any subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor or Grantee to perform any act provided in

this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 21.

21. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Bank Property, or any portion thereof, become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Third-Party Beneficiary otherwise agree in writing, a replacement conservation easement containing the same protections embodied in this Conservation Easement shall be recorded against the Bank Property.

22. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to the Third-Party Beneficiary, and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: Alton Preserve, LLC,
a California limited liability company
336 Bon Air Center, Box 232
Greenbrae, CA 94904
Attn: Mr. Harvey O. Rich, Managing Member

To Grantee: California Department of Fish and Wildlife
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
Attn: Regional Manager

With a copy to: Department of Fish and Wildlife
Office of General Counsel
PO Box 944209
Sacramento, CA 94244-2090
Attn: General Counsel

To USFWS: United States Fish and Wildlife Service
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Attn: Field Supervisor

or to such other address as a party or the Third-Party Beneficiary shall designate by written notice to Grantor, Grantee and the Third-Party Beneficiary. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

23. Amendment.

This Conservation Easement may be amended by Grantor and Grantee only by mutual written agreement and written approval of the Third-Party Beneficiary, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Bank Property is located, and Grantor and Grantee shall promptly provide a conformed copy of the recorded amendment to the Third-Party Beneficiary.

24. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to accomplish the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This instrument (including its exhibits and the CBEI and the Management Plan incorporated by reference in this document) together set forth the entire agreement of Grantor, Grantee and the Third-Party Beneficiary with respect to the Conservation Easement and supersede all prior discussions, negotiations, understandings, or agreements of such parties relating to the Conservation Easement, including without limitation, the Original Conservation Easements, which shall be deemed of no further force or effect whatsoever following the date hereof. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 23.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Bank Property.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Bank Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) 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 its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Bank Property, or transported to or from or affecting the Bank Property.

(2) Without limiting the obligations of Grantor under Section 17, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 17(a)) from and against any and all Claims (defined in Section 17(a)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except any Hazardous Materials placed, disposed or released by Grantee. This release and indemnification includes, without limitation, Claims for injury to or death of any person or physical damage to any property; and the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding.

(3) Without limiting the obligations of Grantor under Section 17, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 17(b)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party. This release and indemnification

includes, without limitation, Claims for injury to or death of any person or physical damage to any property; and the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or any Third-Party Beneficiary any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "**CERCLA**"); or

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

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right or duty to investigate and remediate any Hazardous Materials associated with the Bank Property; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Bank Property.

(5) The term "**Hazardous Materials**" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "**RCRA**"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "**HTA**"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "**HCL**"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "**HSA**"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "**Environmental Laws**" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, code, ordinance, rule, regulation, order or requirement relating to pollution, protection of

human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and Third-Party Beneficiary that all activities upon and use of the Bank Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of fee simple title to the Bank Property. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Signatory Agencies pursuant to the Bank Property Assessment and Warranty signed by Grantor and attached as an exhibit to the CBEI, the Bank Property is not subject to any other conservation easement and there are no outstanding mortgages, liens, encumbrances or other interests in the Bank Property (including, without limitation, water and mineral interests) that may conflict or are otherwise inconsistent with this Conservation Easement and which have not been expressly subordinated to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the Signatory Agencies.

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Bank Property (other than a security interest that is expressly subordinate to this Conservation Easement), or grant, transfer, abandon or relinquish (each a “*Transfer*”) any mineral, air, or water right or any water associated with the Bank Property, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or any of the Signatory Agencies determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or may impair or interfere with the Conservation Values of the Bank Property. This Section 24(k) shall not limit the provisions of Section 3(d) or 5(n), nor prohibit transfer of a fee or leasehold interest in the Bank Property that is subject to this Conservation Easement and complies with Section 20. Grantor shall provide a certified copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

(l) Recording.

Grantee shall record this Conservation Easement in the official records of the county in which the Bank Property is located and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Funding.

Endowment funding for the perpetual management, maintenance and monitoring of the Bank Property is specified in and governed by the CBEI and the Management Plan.

(n) Management Plan. The Management Plan may be amended without amending this Conservation Easement; provided that any such amendment to the Management Plan shall be done in accordance with the CBEI. The Management Plan shall not replace, modify, or amend any of the terms, covenants, or conditions of this Conservation Easement. Except as expressly set forth herein, if any provision of the Management Plan is contrary to or inconsistent with any provision of the Conservation Easement, the provisions of the Conservation Easement shall govern. Final approved copies of the Management Plan and any

amendments thereto shall be kept on file at the offices of CDFW and the USFWS.

25. Exhibits.

The following Exhibit referenced in this Conservation Easement is attached to and incorporated by reference herein:

Exhibit A – Legal Description and Map of Bank Property

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed as of the day and year first above written.

GRANTOR: [*Notarization Required*]

Alton Preserve, LLC, a California limited liability company

BY: _____

NAME: Harvey O. Rich

TITLE: Managing Member

DATE: _____

[Delete this page if CDFW will not be Grantee. If the Grantee will be a government agency, that agency must include its own Certificate of Acceptance.]

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Conservation Easement Deed by _____, dated _____, 20____, to the State of California, Grantee, acting by and through its Department of Fish and Wildlife, a governmental agency (under Government Code § 27281), is hereby accepted by the undersigned officer on behalf of the Grantee pursuant to the California Fish and Game Code.

GRANTEE:

STATE OF CALIFORNIA, by and through its
DEPARTMENT OF FISH AND WILDLIFE

By: _____

Title: _____
Authorized Representative

Date: _____

APPROVED AS TO FORM:

U.S. FISH AND WILDLIFE SERVICE

By: _____

Title: _____
Authorized Representative

Date: _____