

PLEASE NOTE:

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(Template Version Date: July 10, 2012)**

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

The Restoration Trust
95 Linden Street, Suite 3
Oakland, California 94607
Attn: John Zentner

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED
[Insert Conservation Site Name]

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the _____ day of _____, 20____, by Sonoma County Department of Transportation and Public Works ("Grantor"), in favor of The Restoration Trust ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately 14.48 acres, located in the County of Sonoma, State of California, and designated Assessor's Parcel Number 059-271-001-000 (the "Conservation Site Property"). The Conservation Site Property is legally described and depicted in **Exhibit A** attached to this Conservation Easement and incorporated in it by this reference.

B. The Conservation Site 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 Conservation Site Property will provide high quality natural, restored and/or enhanced habitat for Burke's goldfields (*Lasthenia burkei*) and contains seasonal wetlands, stands of valley oak (*Quercus lobata*) trees, grasslands, and riparian woodland. Individually and collectively, these wildlife and habitat values comprise the "Conservation Values" of the Conservation Site Property.

C. 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 (ESA), 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.

D. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a “qualified organization” as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use. Grantee is a member of the Land Trust Alliance, and intends to submit an entry into the registration lottery for accreditation by the Land Trust Alliance, and if chosen at random by the Land Trust Accreditation Commission to apply for accreditation will do so. If Grantee is not accredited by the Land Trust Accreditation Commission on or before December 31, 2023, the USFWS may designate an alternative entity qualified to hold the Conservation Easement and Grantee will voluntarily assign or transfer the Conservation Easement to the USFWS-designated entity.

E. This Conservation Easement is being established by Grantor and Grantee knowingly and voluntarily as a means to implement certain agreed upon conservation measures as described in the Biological Opinion, USFWS File No. 08ESMF00-2012-F-0050-1, issued by the Sacramento Fish and Wildlife Office of the USFWS. These conservation measures were proposed by Sonoma County as a means of minimizing the effect(s) of the Charles M. Schulz – Sonoma County Airport Runway Safety Area Improvement Project on Burke’s goldfields, federally listed as endangered under the ESA. To fully implement these conservation measures, a Conservation Site Development Plan, Interim Management Plan (if applicable), and a Long-term Management Plan have been developed, and are incorporated by this reference into this Conservation Easement as if fully set forth herein.

A final, approved copy of the Development Plan and the Management Plan, and any amendments thereto approved by the USFWS, shall be kept on file at the Sacramento Fish and Wildlife Office of the USFWS. If Grantor, or any successor or assign, requires an official copy of the Conservation Site Development Plan, Interim Management Plan, or Long-term Management Plan, it should request a copy from the USFWS at its address for notices listed in Section 12 of this Conservation Easement.

F. 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 United States and 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 Conservation Site Property.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Conservation

Site Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the Development Plan and the Management Plan, and to prevent any use of the Conservation Site Property that will impair or interfere with the Conservation Values of the Conservation Site Property. Grantor intends that this Conservation Easement will confine the use of the Conservation Site 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 Development Plan and the Management Plan and the protection of aviation operations.

2. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee, limited by and subject to Grantor's obligations as a federally obligated airport:

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

(b) To enter the Conservation Site Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the Development Plan, and the Management Plan and to implement at Grantee's sole discretion Development Plan and 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 Conservation Site Property.

(c) To prevent any activity on or use of the Conservation Site Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Conservation Site 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 and protect the biological resources and Conservation Values of the Conservation Site Property shall remain a part of and be put to beneficial use upon the Conservation Site 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 Conservation Site Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Conservation Site Property, nor any other property adjacent or otherwise.

3. Prohibited Uses.

Subject to Grantor's preexisting obligations as a federally obligated airport, any activity on Conservation Site 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 fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities;

and any and all other activities and uses which may impair or interfere with the purposes of this Conservation Easement, except for wetland habitat management and enhancement, invasive species management, grazing management, and wildfire management activities as specifically provided in the Development Plan, Interim Management Plan, and Long-term Management Plan.

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways, except for implementation of the wetland habitat modifications and associated attainment of performance criteria as specifically provided in the Development Plan, and except for implementation of wetland habitat management, invasive species management, grazing management, and wildfire management activities as specifically provided in the Interim Management Plan, and Long-term Management Plan.

(c) Agricultural activity of any kind except grazing for vegetation management as specifically provided in the Interim Management Plan, and Long-term Management Plan.

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

(e) Commercial, industrial, residential, recreational, or institutional uses, but not including adjacent airport operations or future airport development not on the Conservation Site Property.

(f) Any legal or de facto division, subdivision or partitioning of the Conservation Site Property.

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind, except for fences, signage, and grazing infrastructure as specifically provided in the Development Plan, Interim Management Plan, and Long-term Management Plan.

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

(i) Planting, introduction or dispersal 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, sand, gravel, rock or other material on or below the surface of the Conservation Site Property, or granting or authorizing surface entry for any of these purposes.

(k) Altering the surface or general topography of the Conservation Site Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Conservation Site Property with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Development

Plan or Management Plan.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, (iii) prevention or treatment of disease, or (iv) including but not limited to Title 14 Code of Federal Regulations Part 77; and except for tree, shrub, and vegetation removal or trimming as specifically provided in the Development Plan, Interim Management Plan, and Long-term Management Plan.

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Conservation Site 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, except for implementation of the wetland habitat modifications and associated attainment of performance criteria as specifically provided in the Development Plan.

(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 Conservation Site 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 Conservation Site 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 Conservation Site Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Conservation Site Property.

(o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations including, but not limited to Federal Aviation Administration standards regarding Hazardous Wildlife Attractants On or Near Airports, Advisory Circular 150/5200-33, as well as any use or activity that conflicts with the existing antenna field or prevents the continued use, maintenance and repair of the navigational aids, such as the remote transmitter/receiver antenna, or policies applicable to Grantor, the Conservation Site Property, or the use or activity in question.

4. 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 a minimum on an annual basis, compliance monitoring inspections of the Conservation Site Property; and

(2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the USFWS on an annual basis.

5. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Conservation Site 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 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the Development Plan and the Management Plan.

6. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Conservation Site Property, including the right to engage in or permit or invite others to engage in all uses of the Conservation Site Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

7. Grantee's Remedies.

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"). 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 Conservation Site 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 Conservation Site Property to the condition in which it existed prior to any 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 Conservation Site Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Conservation Site 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.

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.* The failure of Grantee to

discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

(a) Costs of Enforcement.

All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantor. Likewise, all costs incurred by Grantor, where Grantor is the prevailing party, in defending the terms of this Conservation Easement against Grantee, including, but not limited to, costs of suit and attorneys' fees, and any costs related to negligence or breach of this Conservation Easement, shall be borne by Grantee.

(b) Grantee's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee 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 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 in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) 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 Conservation Site Property resulting from (i) 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 Conservation Site Property resulting from such causes; or (ii) acts by Grantee or its employees.

(d) Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by the Third-Party Beneficiaries (as defined in Section 14(m)). These enforcement rights are in addition to, and do not limit, the rights of enforcement under the Development Plan or the Management Plan. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Conservation Site 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.

(e) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee or a Third-Party Beneficiary with which it is impossible for Grantor to comply consistent with any prior uncured Notice of Violation or its pre-existing obligations, including any grant assurances, as a recipient of federal funding, Grantor shall give written notice of the conflict (hereinafter "Notice of

Conflict") to the Grantee and Third-Party Beneficiaries. In order to be valid, a Notice of Conflict shall be given within thirty (30) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notice of Violation or other conflicting, pre-existing obligations, and shall describe the conflict with specificity, including how the conflict makes compliance with the Notice of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notice of Violation until such time as the entity issuing the conflicting Notice of Violation issues a revised Notice of Violation that resolves the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section, unless in Grantor's reasonable determination the conflict has not been resolved. The failure of Grantor to issue a valid Notice of Conflict within thirty (30) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

(f) Reversion.

If the USFWS determines that Grantee is not holding, monitoring or managing this Conservation Easement for conservation purposes in the manner specified in this Conservation Easement or in the Development Plan or the Management Plan then, pursuant to California Government Code Section 65967(e), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable) and approved by the USFWS.

8. Access.

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

9. 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 Conservation Site Property. Grantor agrees that neither Grantee nor any Third-Party Beneficiaries shall have any duty or responsibility for the operation, upkeep or maintenance of the Conservation Site 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 Conservation Site Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) 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 Conservation Site Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep the Conservation Site Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 14(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 Conservation Site Property.

(b) Hold Harmless.

(1) 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: (i) 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 Conservation Site Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 5, 9 and 9(a); and (iii) 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.

(2) Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (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: (i) 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 Conservation Site Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. *Provided, however,* that the indemnification in this Section 9 (b) (2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. 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 9 (b) (2) 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.

(c) Extinguishment.

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

(d) Condemnation.

The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680

notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

10. Transfer of Conservation Easement or Conservation Site Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the USFWS, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the USFWS at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the USFWS. Grantee shall require the assignee to record the assignment in the county where the Conservation Site 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 11.

(b) Conservation Site 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 Conservation Site Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the Development Plan, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the USFWS of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the USFWS shall have the right to prevent any 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 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 11.

11. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Conservation Site Property 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 USFWS otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Conservation Site Property.

12. 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 USFWS, and 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: Sonoma County Department of Transportation and Public Works
Charles M. Schulz – Sonoma County Airport
2290 Airport Boulevard
Santa Rosa, California 95403
Attn: Jon Stout, Airport Manager

To Grantee: The Restoration Trust
95 Linden Street, Suite 3
Oakland, California 94607
Attn: John Zentner

To USFWS: United States Fish and Wildlife Service
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825
Attn: Vincent Griego

or to such other address a party or the USFWS shall designate by written notice to Grantor, Grantee and the USFWS. 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.

13. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the USFWS, 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 Conservation Site Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the USFWS.

14. 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 effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* and Government Code Section 65965, *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 document (including its exhibits and the Development Plan and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties and the USFWS with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 13.

(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 Conservation Site 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 Conservation Site 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 Conservation Site Property, or transported to or from or affecting the Conservation Site Property.

(2) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's

Indemnified Parties (defined in Section 9 (b) (1)) from and against any and all Claims (defined in Section 9 (b)(1)) 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 Conservation Site Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) 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

(3) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 9 (b)(2)) 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 Conservation Site 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 or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) 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 Beneficiaries 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 to investigate and remediate any Hazardous

Materials associated with the Conservation Site Property; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Conservation Site 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, 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 Beneficiaries that, 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 the Conservation Site Property. Grantor also represents and warrants that there are no outstanding mortgages, liens, encumbrances or other interests in the Conservation Site Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement, with the exception that this Conservation Easement is subordinate to any existing or future agreement relating to development, operation, or maintenance of the airport between the Grantor (Airport Owner) and the United States, including, but not limited to, the August 23, 1993 Airport Improvement Program Grant Agreement and Grantor's grant assurances that are required as a recipient of federal funds (as may be amended from time to time).

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Conservation Site Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Conservation Site Property, without first obtaining the written consent of Grantee and the USFWS. Such consent may be withheld if Grantee or the USFWS determines that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Conservation Site Property. This Section

14(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Conservation Site Property that is subject to this Conservation Easement and complies with Section 10. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and USFWS.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Conservation Site Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiary.

Grantor and Grantee acknowledge that the USFWS is a third party beneficiary of this Conservation Easement with the right of access to the Conservation Site Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor's obligations under Section 14, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) Funding.

Endowment funding for the perpetual management, maintenance and monitoring of the Conservation Site Property is specified in and governed by the Long-term Management Plan.

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

GRANTOR: [*Notarization Required*]

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Approved as to form:

GRANTEE:

USFWS:

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____