

**Recording requested by and when recorded please return to:**

Sequoia Riverlands Trust  
427 S. Garden  
Visalia, CA 93277

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(Space above this line reserved for Recorder's use)

### DEED OF AGRICULTURAL CONSERVATION EASEMENT

This Deed of Agricultural Conservation Easement is granted on this \_\_\_\_ of \_\_\_\_\_ 20\_\_, by \_\_\_\_\_, having an address at \_\_\_\_\_ ("Landowner"), to SEQUOIA RIVERLANDS TRUST, a California nonprofit public benefit corporation, having an address at 427 S. Garden, Visalia, CA 93277 ("Grantee"), for the purpose of forever conserving the agricultural productive capacity and open space character of the subject property.

#### RECITALS

- A. The Landowner is the sole owner in fee simple of the conserved farmland property ("Property") legally described in **Exhibit A** ("Legal Description") and generally depicted in **Exhibit B** ("Map"), attached to and made a part of this Agricultural Conservation Easement ("Easement"). The Property consists of approximately \_\_\_\_\_ acres of land and is located in \_\_\_\_\_ County, California, being a portion of assessor's parcel number(s) \_\_\_\_\_. The Property is open farmland, whose soils have been classified as prime farmland or farmland of statewide importance by the U.S. Department of Agriculture's Natural Resources Conservation Service, and by the California Department of Conservation's Farmland Mapping and Monitoring Program, because this land has the soil quality, growing season, and water supply needed for sustained agricultural production.
- B. The agricultural and other characteristics of the Property, its current use and state of improvement, are documented and described in a Baseline Documentation Report ("Baseline Report"), prepared by the Grantee with the cooperation of the Landowner and incorporated herein by this reference. The Landowner and the Grantee warrant that the Baseline Report is complete and accurate as of the date of this Easement. Both the Landowner and the Grantee shall retain duplicate original

copies of the Baseline Report. The Baseline Report may be used to establish whether a change in the use or condition of the Property has occurred, but its existence shall not preclude the use of other evidence to establish the condition of the Property as of the date of this Easement.

- C. The City of \_\_\_\_\_ (“City”) is requiring Landowner to mitigate for the conversion of approximately \_\_\_\_\_ acres of “prime farmland” or “farmland of statewide importance” in connection with the annexation of land for the “\_\_\_\_\_ Project” in Tulare.
- D. The Landowner grants this Easement for valuable consideration to the Grantee for the purpose of assuring that, under the Grantee’s perpetual stewardship, the agricultural productive capacity and open space character of the Property will be conserved and maintained forever, and that uses of the land that are inconsistent with these conservation purposes will be prevented or corrected. The parties agree, however, that the current agricultural use of, and improvements to, the Property, as represented in the Baseline Report completed at the time of this Easement’s recordation, are consistent with the conservation purposes of this Easement.
- E. The conservation purposes of this Easement are recognized by, and the grant of this Easement will serve, the following clearly delineated governmental conservation and environmental policies:
  - 1. The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. section 4201 et seq., whose purpose is “to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland;”
  - 2. The California Environmental Quality Act (PRC §§21000 et seq.) which requires that significant impacts to the environment resulting from a project be mitigated to the extent feasible;
  - 3. California Civil Code at Part 2, Chapter 4, (commencing with section 815), which defines and authorizes perpetual conservation easements;
  - 4. California Government Code Section 65966 (a), which states that “any conservation easement created as a component of satisfying a local or state mitigation requirement shall be perpetual in duration”;
  - 5. California Constitution Article XIII, section 8, California Revenue and Taxation Code sections 421.5 and 422.5, and California Civil Code section 815.1, under which this Agricultural Conservation Easement is an enforceable restriction, requiring that the Property’s tax valuation be consistent with

restriction of its use for purposes of food and fiber production and conservation of natural resources;

6. Section 10200 et seq. of the California Public Resources Code, which creates the California Farmland Conservancy Program within the Department;
  7. Section 51220 of the California Government Code, which declares a public interest in the preservation of agricultural lands, by providing that "agricultural lands have a definitive public value as open space" and "that the discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest";
  8. California Food and Agriculture Code Section 821 states that one of the major principles of the State's agricultural policy is "to sustain the long-term productivity of the State's farms by conserving and protecting the soil, water, and air, which are agriculture's basic resources".
- F. The Grantee is a California nonprofit organization within the meaning of California Public Resources Code section 10221 and California Civil Code section 815.3 and is a tax exempt and "qualified conservation organization" within the meaning of Sections 501(c)(3) and 170(b)(1)(A)(iv) as defined by the United States Internal Revenue Code. Grantee, as certified by a resolution of Grantee's Board of Trustees, accepts the responsibility of enforcing the terms of this Easement and upholding its conservation purposes forever.

## GRANT OF AGRICULTURAL CONSERVATION EASEMENT

Now, therefore, for the reasons given, and in consideration of their mutual promises and covenants, terms, conditions and restrictions contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Landowner voluntarily grants and conveys to the Grantee, and the Grantee voluntarily accepts, a perpetual conservation easement, as defined by Sections 815.1 and 815.2 of the California Civil Code and Section 10211 of the California Public Resources Code, and of the nature and character described in this Easement for the purpose described below, and agree as follows:

### 1. *Conservation Purpose.*

The conservation purpose (“Purpose”) of this Easement is to enable the Property to remain in productive agricultural use in perpetuity by preventing and correcting uses of the Property prohibited by the provisions of this Easement. To the extent that the preservation of the open space character of the Property is consistent with such use, it is within the Purpose of this Easement to protect those values.

### 2. *Right to Use Property for Agricultural Purposes.*

The Landowner retains the right to use the Property for agricultural purposes, or to permit others to use the Property for agricultural purposes, in accordance with applicable law and this Easement.

### 3. *Prohibited Uses.*

The Landowner shall not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with this Easement. Any use or activity that would diminish or impair the agricultural productive capacity of the Property and open space character protected by this Easement, or that would cause significant soil degradation or erosion, restrict agricultural husbandry practices, or that is otherwise inconsistent with the Conservation Purpose is prohibited (“Prohibited Use”).

“Husbandry practices” means agricultural activities, such as those specified in Section 3482.5(e) of the California Civil Code, conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality.

This Easement authorizes the Grantee to enforce these covenants in the manner described herein. However, unless otherwise specified, nothing in this Easement shall require the Landowner to take any action to restore the condition of the Property after any Act of God or other similar event over which the Landowner had no control. The Landowner understands that nothing in this Easement relieves it of

any obligation or restriction on the use of the Property imposed by law.

4. *Permission of the Grantee.*

Where the Landowner is expressly required to obtain the Grantee's permission for a proposed use hereunder, said permission (a) shall not be unreasonably delayed or withheld by the Grantee, (b) shall be sought and given in writing, with copies of all documents to be provided to the City, and (c) shall in all cases be obtained by the Landowner prior to the Landowner's undertaking of the proposed use. The Grantee shall grant permission to the Landowner only where the Grantee, acting in the Grantee's sole reasonable discretion and in good faith, determines that the proposed use is not a "Prohibited Use" as defined in Section 3.

5. *Construction or Placement of Buildings and Other Improvements.*

The Landowner may undertake construction, erection, installation, or placement of buildings, structures, or other improvements on the Property only as provided in subsections (a) through (c) below. All other construction, erection, installation, or placement of buildings, structures, or other improvements on the Property is prohibited. Before undertaking any construction, erection, installation or placement that requires permission, the Landowner shall notify the Grantee and obtain prior written permission from the Grantee.

For purposes of this section, the term "improvements" shall not refer to, and specifically excludes, crops, plants, trees, vines, or other living improvements planted for agricultural purposes, nor shall it refer to irrigation improvements necessary or desirable to irrigate the Property for agricultural purposes, all of which may be made without permission of the Grantee.

- (a) Fences – Existing fences may be repaired and replaced without permission of the Grantee. New fences may be built anywhere on the Property for purposes of reasonable and customary agricultural management, and for security of farm produce, livestock, equipment, and improvements on the Property, without permission of the Grantee.
- (b) Utilities and Septic Systems – Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, energy generation, or other utility services solely to serve the improvements permitted herein or to transmit power generated on the Property may be installed, maintained, repaired, removed, relocated and replaced.
- (c) Power generation and transmission facilities primarily for agricultural and other permitted uses on the Property may be constructed only with permission of the Grantee pursuant to Paragraph 4, and must be located in an area not to exceed 0.22 acres. Power generated in excess of requirements on the Property may be sold to appropriate public utilities. Notwithstanding the foregoing, commercial

power generation, collection or transmission facilities, including wind or solar farms and the conveyance of any rights-of-way over, under or on the Property for any such purpose, are prohibited.

6. *No Subdivision.*

The division, subdivision, defacto subdivision, or partition of the Property, including transfer of development rights, whether by physical, legal, or any other process, is prohibited.

The Landowner and Grantee acknowledge and understand that the Property consists of one legal parcel(s) or portions thereof, and that no additional, separate legal parcels currently exist within the Property that may be recognized by a certificate of compliance or conditional certificate of compliance pursuant to California Government Code section 66499.35 based on previous patent or deed conveyances, subdivisions, or surveys. The Landowner will not apply for or otherwise seek recognition of additional legal parcels within the Property based on certificates of compliance or any other authority. The Landowner shall continue to maintain the legal parcels comprising the Property, and all interests therein, under common ownership, as though a single legal parcel.

Lot line adjustment may be permitted only with the written approval of the Grantee pursuant to Section 4, in conjunction with the approval of the local jurisdiction, and for purposes of maintaining, enhancing or expanding agricultural practices or productivity on the Property, provided that the boundaries of this Easement may not be altered by such Lot Line Adjustment.

7. *Extinguishment of Development Rights.*

The Landowner hereby grants to the Grantee all development rights except as specifically reserved in this Easement, that were previously, are now or hereafter allocated to, implied, reserved, appurtenant to, or inherent in the Property, and the parties agree that such rights are released, terminated, and extinguished, and may not be used on or transferred by either party to any portion of the Property as it now or later may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property. This Easement shall not create any development rights.

8. *General Prohibition on Surface Mining.*

Except as specifically authorized herein, the mining, removal or extraction on or from the area subject to this Easement of soil, sand, gravel, aggregate, rock, oil, natural gas, fuel, or any other mineral substance, through a surface mining, removal or extraction method or from above a depth of 150 feet below the surface of the Property is prohibited. This prohibition includes the installation of roads or

pipelines for transportation of the previously stated resources.

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Property at the time this Easement is executed, and their interests have not been subordinated to this Easement, the Landowner must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Paragraph 8. Any mineral leases or other conveyances of minerals entered into or renewed after the date of this Easement are subordinate to the terms of this Easement and must incorporate by reference the term of this Easement.

This section is not intended to interfere with Landowners' right to remove cobble and hardpan from farm areas in order to prepare the land for agricultural purposes.

9. *Paving and Road Construction.*

Other than existing roads as identified in the Baseline Report, no portion of the Property presently unpaved shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, unless such measures are required by air quality laws or regulations applicable to the Property. Except as otherwise permitted herein, no road for access or other purposes shall be constructed without the permission of the Grantee pursuant to Section 4. Notwithstanding the foregoing, construction of unpaved farm roads, as necessary or desirable by agricultural operations, is permitted without permission from the Grantee. The Landowner shall notify the Grantee of any significant relocation or net addition of unpaved farm roads.

10. *Trash and Storage.*

The dumping or accumulation on the Property of any kind of trash, refuse, vehicle bodies or parts, or "Hazardous Materials," as defined in Section 25 is prohibited. Farm-related trash and refuse produced on the Property may be temporarily stored on the Property subject to all applicable laws. The storage of agricultural products and byproducts produced on the Property and materials reasonably required for agricultural production on the Property, including Hazardous Materials, is permitted as long as it is done in accordance with all applicable government laws and regulations.

11. *Commercial Signs.*

Commercial signs (including billboards) unrelated to permitted activities conducted on the Property are prohibited.

12. *Recreational Uses; Motorized Vehicle Use Off Roadways*

Resort structures, athletic fields, golf courses, non-residential swimming pools, public or commercial airstrips, commercial equestrian facilities, public or commercial helicopter pads, and any other non-agricultural recreational structures or facilities are prohibited on the Property. The use of motorized vehicles off roadways is prohibited except where used for agricultural production, property maintenance and security, or for the purpose of monitoring this Easement.

13. *Water Rights.*

The Landowner shall retain and reserve all ground water, and all appurtenant, prescriptive, contractual or other water rights appurtenant to the Property at the time this Easement becomes effective. The Landowner shall not permanently transfer, encumber, lease, sell, or otherwise separate such quantity of water or water rights from title to the Property itself. Permanent separation of water or water rights is prohibited. All water shall be retained in Tulare County for agricultural production and used in conjunction with the improvements permitted by Section 5 of this Easement only.

Water may be temporarily distributed to a contiguous property or other property owned or leased by the Landowner on an annual basis for agricultural production only. Any temporary distribution of water shall not impair the long-term agricultural productive capacity or open space character of the Property.

14. *Rights Retained by the Landowner.*

Subject to Section 7 and to interpretation under Section 23, as owner of the Property, the Landowner reserves all interests in the Property not transferred, conveyed, restricted, prohibited or extinguished by this Easement. These ownership rights include, but are not limited to, the right to sell, lease, or otherwise transfer the Property to anyone the Landowner chooses, as well as the right to privacy, the right to exclude any member of the public from trespassing on the Property, and any other rights consistent with the Purpose of this Easement. Nothing contained herein shall be construed as a grant to the general public of any right to enter upon any part of the Property.

Nothing in this Easement relieves the Landowner of any obligation or restriction on the use of the Property imposed by law.

15. *Responsibilities of the Landowner and the Grantee Not Affected.*

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Landowner as owner of the Property. Among other things, this shall apply to:

- (a) Taxes – The Landowner shall be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantee ever pays any taxes or assessments on the Property, or if the Grantee pays levies on the Landowner’s interest in order to protect Grantee’s interests in the Property, the Landowner will reimburse the Grantee for the same. It is intended that this Easement constitute an enforceable restriction within the meaning of Article XIII, Section 8 of the California Constitution and that this Easement qualify as an enforceable restriction under the provisions of California Revenue and Taxation Code Sections 402.1(a)(8) and 423.
- (b) Upkeep and Maintenance – The Landowner shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property. If the Grantee acts to maintain the Property in order to protect the Grantee’s interest in the Property, the Landowner will reimburse the Grantee for any such costs.
- (c) Liability and Indemnification – In view of the Grantee’s and the City negative rights, limited access to the land, and lack of active involvement in the day-to-day management activities on the Property, the Landowner shall indemnify, protect, defend and holds harmless the Grantee and the City, their respective officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns (collectively, “Agents and Assigns”) from and against all liabilities, costs, losses, orders, liens, penalties, claims, demands, damages, expenses, or causes of action or cases, including without limitation reasonable attorneys’ fees, arising out of or in any way connected with or relating to the Property or the Easement. The Landowner shall be solely liable for injury or the death of any person, or physical damage to any property, or any other costs or liabilities resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence or willful misconduct of the Grantee, the City, and/or their respective Agents and Assigns. The Grantee shall be named as an additional insured on Landowner’s general liability insurance policy.

Neither the Grantee, the City, nor their Agents and Assigns shall have responsibility for the operation of the Property, monitoring of hazardous conditions on it, or the protection of the Landowner, the public or any third parties from risks relating to conditions on the Property. Without limiting the foregoing, neither the Grantee, nor the City, nor their respective Agents and Assigns shall be liable to the Landowner or other person or entity in connection with consents given or withheld, or in connection with any entry upon the Property occurring pursuant to this Easement, or on account of any claim, liability, damage or expense suffered or incurred by or threatened against the Landowner or any other person or entity, except as the claim, liability, damage, or expense is the result of the gross negligence or intentional misconduct of the

Grantee, or the City, or their respective Agents and Assigns.

The Landowner's indemnification of the City shall extend to ensure that the City shall not incur any liability for the actions or inactions addressed herein.

16. *Monitoring.*

- (a) The Grantee shall manage its responsibilities as holder of this Easement in order to uphold the Purpose of this Easement. The Grantee's responsibilities include, but are not limited to, annual monitoring, such additional monitoring as circumstances may require, record keeping, and enforcement of this Easement, for the purpose of preserving the Property's agricultural productive capacity and open space character in perpetuity. Failure of the Grantee to carry out these responsibilities shall not impair the validity of this Easement or limit its enforceability in any way. With reasonable advance notice (except in the event of an emergency circumstance or prevention of a threatened breach), Grantee shall have the right to enter upon, inspect, observe, monitor and evaluate the Property to identify the current condition of, and uses and practices on the Property and to determine whether the condition, uses and practices are consistent with this Easement.
- (b) Grantee shall indemnify, defend with counsel of Landowner's choice, and hold Landowner harmless from, all expense, loss, liability, damages and claims, including Landowner's attorneys' fees, if necessary, arising out of Grantee's entry on the Property, unless caused by a violation of this Easement by Landowner or by Landowner's negligence or willful misconduct.

17. *Enforcement.*

- (a) The Grantee may take all actions, including legal actions, that it deems necessary to ensure compliance with the terms, conditions, covenants, and purposes of this Easement. The Grantee shall have the right to prevent and correct violations of the terms, conditions, covenants, and purposes of this Easement. If the Grantee finds what it believes is a violation or potential violation, it may at its discretion take appropriate legal action to ensure compliance with the terms, conditions, covenants, and purposes of this Easement and shall have the right to correct violations and prevent the threat of violations. Except when an ongoing or imminent violation could irreversibly diminish or impair the agricultural productive capacity and open space character of the Property, the Grantee shall give the Landowner written notice of the violation or potential violation, and thirty (30) days to correct it, before filing any legal action.
- (b) If a court with jurisdiction determines that a violation may exist, has occurred, or is about to occur, the Grantee may obtain an injunction, specific performance,

or any other appropriate equitable or legal remedy, including (i) money damages, including damages for the loss of the agricultural conservation values protected by this Easement, (ii) restoration of the Property to its condition existing prior to such violation, and (iii) an award for all of the Grantee's expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorney's fees. The failure of the Grantee to discover a violation or potential violation, or to take immediate legal action to prevent or correct a violation or potential violation known to the Grantee, shall not bar the Grantee from taking subsequent legal action. The Grantee's remedies under this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- (c) Without limiting the Landowner's liability, the Grantee shall apply damages recovered to the cost of undertaking any corrective action on the Property. Should the restoration of lost values be impossible or impractical for whatever reason, the Grantee shall apply any and all damages recovered to furthering the Purpose of this Easement.
- (d) In the event the Grantee fails to enforce any term, condition, covenant or purpose of this Easement, as determined by the City, then the City, or their successors and assigns, shall have the right to enforce the Easement after giving notice to the Grantee and the Landowner and providing a reasonable opportunity under the circumstances for the Grantee to enforce any term, condition, covenant, or purpose of the Easement. In the event that the City have reasonable cause to suspect that the Grantee has failed to enforce any of the terms, conditions, covenants, or purposes of the Easement, the City and their successors and assigns shall be entitled to exercise the same right to enter the Property granted to the Grantee, including right of immediate entry in the event of an emergency or suspected emergency where the City or their successor or assign has reasonable cause to determine that immediate entry is required to prevent, terminate or mitigate a violation of this Easement.
- (e) Failure or refusal to exercise any rights under the terms of this Easement by the Grantee or the City in the event of a violation by the Landowner of any term herein shall not constitute a waiver or forfeiture of the Grantee's or the City right to enforce any term, condition, covenant, or purpose of this Easement.

18. *Transfer of Easement.*

- (a) This Easement may only be assigned or transferred to an entity authorized to hold such Easement as specified under Section 10211 of the Public Resources Code and has similar purposes to preserve, is capable of managing the Easement, and protecting the mitigation of the impacts to agricultural lands and open space. Such an assignment or transfer may proceed only if the organization or agency expressly agrees to assume the responsibility imposed on the Grantee by the terms of this Easement and is expressly willing and able

to hold this Easement for the Purpose for which it was created. All assignment and assumption agreements transferring the Easement shall be recorded in Tulare County within thirty (30) days.

- (b) If the Grantee should desire to assign or transfer this Easement, the Grantee must obtain written permission from the Landowner and the City, which permission shall not be unreasonably withheld.
- (c) If the Grantee or its successors ever ceases to exist or no longer qualifies under Section 170(h) of the U.S. Internal Revenue Code, or applicable state law, the City, in consultation with the Landowner, shall identify and select an appropriate private or public entity to whom this Easement shall be transferred.

19. *Perpetual Duration and No Merger of Title.*

- (a) Pursuant to California Civil Code at Part 2, Chapter 4, (commencing with section 815), which defines and authorizes perpetual conservation easements, and California Government Code Section 65966 (a) that requires conservation easements to be perpetual when created to satisfy a local or state mitigation requirement; this Easement shall run with the land in perpetuity. Every provision of this Easement that applies to the Landowner or the Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.
- (b) No merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to the Grantee, or its successors or assigns. It is the express intent of the parties that this Easement not be extinguished by, merged into, modified, or otherwise deemed affected by any other interest or estate in the Property now or hereafter held by the Grantee or its successors or assigns.

20. *Transfer of Property Interest.*

- (a) Any time the Property itself, or any interest in it, is transferred by the Landowner to any third party, the Landowner shall notify the Grantee and the City in writing at least thirty (30) days prior to the transfer of the Property or interest, and the document of conveyance shall expressly incorporate by reference this Easement. Any document conveying a lease of the Property shall expressly incorporate by reference this Easement. Failure of the Landowner to do so shall not impair the validity of this Easement or limit its enforceability in any way.
- (b) Prior to any sale, lease, license or other transfer of any interest in the Property, the Landowner shall inform the prospective transferee of this Easement and its terms and provide them with a copy of this Easement. Any such subsequent

owners, lessees, licensees, or transferees shall succeed to and be bound by the terms of the Easement.

21. *Amendment of Easement.*

- (a) This Easement may be amended only with the written consent of the Landowner, the Grantee, and the City. Any such amendment shall be consistent with the Purpose of this Easement and with the Grantee's easement amendment policies, and shall comply with all applicable laws, including Section 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section, and with Section 815 et seq. of the California Civil Code, and the California Farmland Conservancy Program Act as codified in Section 10200 et seq. of the California Public Resources Code, and any regulations promulgated thereunder. No amendment shall diminish or affect the perpetual duration or the Purpose of this Easement, nor the status or rights of the Grantee under the terms of this Easement.
- (b) This Easement and any amendment to it shall be recorded in Tulare County. A copy of the recorded amendment shall be provided to the City within thirty (30) days of recordation.

22. *Termination of Easement and Eminent Domain.*

- (a) Termination.
  - (i) It is the intention of the parties that the Conservation Purpose of this Easement shall be carried out forever as provided in the Section 10211 of the California Public Resources Code, Section 815 et seq. of the California Civil Code and California Government Code Section 65966 (a). Pursuant to California Government Code Section 65966 (a), this Easement is established to satisfy a local or state mitigation requirement, and cannot be terminated pursuant to the administrative termination provision defined in Public Resources Code sections 10270 et seq.

Accordingly, Landowner expressly waives on behalf of Landowner and Landowner's successors and assigns all rights to terminate or extinguish this Easement, or request that this Easement be terminated or extinguished pursuant to the administrative termination provisions set forth in sections 10270 et. seq. of the Public Resources Code.

- (ii) If circumstances arise in the future that render all of the Purposes of this Easement impossible to accomplish, this Easement may be terminated or extinguished, whether in whole or in part, on the initiative of the Grantee or the Landowner, but only by judicial proceedings in a court of competent jurisdiction. The Grantee shall give notice to the City of any prospective termination or extinguishment of this Easement not less than 60 business days before initiating such proceedings. The City may intervene in any such

judicial proceedings to protect or retain this Easement.

- (iii) No inaction or silence by the Grantee shall be construed as abandonment of the Easement. The fact that the Property is not in agricultural use, or that agricultural use is no longer possible, is not reason for termination or extinguishment of this Easement so long as any of the Purposes of this Easement remains possible to accomplish. Other than pursuant to eminent domain or an involuntary acquisition for a necessary public use by public agency, corporation, or other entity or individual with the power of eminent domain (Acquiring Entity), no other voluntary or involuntary sale, exchange, conversion, transfer, assignment, lease, mortgage or other encumbrance, alienation or conveyance of any kind of all or part of the Property, or of any interest in it, shall limit or terminate or extinguish the provisions of this Easement.
- (iv) Should all or part of the Property or any interest in it be proposed for acquisition for a necessary public use by an Acquiring Entity, the Landowner and the Grantee shall join in appropriate actions to recover the full value of the proposed acquisition and all incidental or direct damages resulting from the proposed acquisition as well as all other payments to which they may be entitled by law (Compensation). The Acquiring Entity shall pay Compensation directly to the Landowner and the Grantee. The Compensation of such proceeding of the Landowner and the Grantee shall be divided in accordance with the proportionate values of the Landowner's and the Grantee's interests as specified in this Section 22(b), unless otherwise provided by applicable law.
- (v) If the Landowner receives notice, formal or informal, that any Acquiring Entity intends to exercise its power of eminent domain as to the Property or any portion thereof or any interest therein, Landowner shall promptly, and in any event in not less than fifteen (15) business days after receipt of such notice, give written notice to the Grantee and the City of such receipt together with a copy of any and all communications related to such prospective eminent domain proceedings. The Landowner shall thereafter promptly provide to the Grantee and the City copies of all further communications related to such proceedings and cooperate with the Grantee and the City in responding to such proceedings.
- (vi) Acquisition of the Easement through the power of eminent domain is subject to the requirements of Section 10261 of the California Public Resources Code, the eminent domain laws of the State of California, including Section 1240.510 or Section 1240.610 of the Code of Civil Procedure, federal law, and this Easement. The Property may not be taken by eminent domain or in lieu of eminent domain if the planned use is more than seven (7) years in the future (California Code of Civil Procedure section 1240.220). Purchase in lieu of condemnation, or settlement of an

eminent domain proceeding, shall occur pursuant to applicable laws and procedures, including but not limited to California Government Code sections 7267.1 and 7267.2, and shall require approval of the Grantee, the City. The Grantee and the City shall have an opportunity to accompany the appraiser for the Acquiring Entity when the appraiser goes on the Property with Landowner.

- (vii) Should this Easement be condemned or otherwise terminated on any portion of the Property, the balance of the Property shall remain subject to this Easement and reimbursement shall be pro-rated. In this event, all relevant related documents shall be updated and re-recorded by the Grantee to reflect the modified easement area. Encumbrances junior to this Easement shall remain subordinate to the Easement as amended.
- (b) Compensation.
- (i) The grant of this Easement gives rise to a property right immediately vested in Grantee.
  - (ii) Compensation of the Grantee shall proceed as follows: The value of the Easement terminated or extinguished shall be determined in accordance with this Section 22(b), and the Grantee shall receive from the Landowner the entire value of the Easement to the extent terminated or extinguished. Until such compensation is paid to the Grantee in full, the amount of that compensation shall be a first priority lien on the Property with the same seniority as this Easement. This Easement shall not be deemed terminated or extinguished until such payment is received by the Grantee.
  - (iii) The parties stipulate and agree that except as otherwise required by state law, the fair market value of the Easement (the "Easement Value") shall be equal to: (1) the fair market value of the Property, unencumbered by the Easement (the "Property Value"), less (2) the fair market value of the Property as encumbered by the Easement each as determined on or about the date of the termination.
  - (iv) The Grantee is entitled to its full share of proceeds as calculated herein regardless of any amount owing to a lienholder, lender or other creditor of Landowner.
  - (v) The fair market valuation shall be determined by an appraisal performed by a qualified appraiser jointly selected by the Landowner, the Grantee and the City. Appraisals shall conform to the Uniform Standards of Professional Appraisal Practices.
  - (vi) If the Landowner has initiated termination of the Easement through a judicial proceeding, the Landowner shall pay the cost of the appraisal, and the appraisal is subject to approval by the City. Nothing herein shall prevent the Landowner, the Grantee, or the City from having an appraisal prepared at its own expense.

- (vii) If the Grantee obtains payment on a claim under a title insurance policy insuring this Easement, payment shall be distributed as set forth this Section 22(b).

23. *Interpretation.*

- (a) This Easement shall be interpreted under the laws of the State of California, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.
- (b) References to specific authorities in this Easement shall be to the statute, rule, regulation, ordinance, or other legal provision that is in effect at the time this Easement becomes effective.
- (c) No provision of this Easement shall constitute governmental approval of any improvements, construction or other activities that may be permitted under this Easement.

24. *Notices.*

Any notices to the Landowner and the Grantee required by this Easement shall be in writing and shall be personally delivered or sent by First-Class Mail to the following addresses, unless a party has been notified by the other of a change of address:

To the Landowner:

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

To the Grantee:

Sequoia Riverlands Trust  
427 S. Garden  
Visalia, CA 93277

Any notices required by this Easement to be sent to the City shall be in writing and shall be personally delivered or sent by First-Class Mail, at the following address, unless a party has been notified by the City, or either one of them, of a change of address:

To the City:

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

25. *The Landowner's Environmental Warranty.*

- (a) Nothing in this Easement shall be construed as giving rise to any right or ability in the Grantee or the City to exercise physical or management control over the day-to-day operations of the Property, or any of the Landowner's activities on the Property, or otherwise to become an "owner" or "operator" with respect to the Property as those words are defined and used in environmental laws, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended or any corresponding state and local statute or ordinance.
- (b) The Landowner warrants that it has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Property other than the use of Hazardous Materials in Landowner's farming operations in compliance with Environmental Laws. Moreover the Landowner hereby promises to defend and indemnify the Grantee and the City against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws. The Landowner's indemnification obligation shall not be affected by any authorizations provided by the Grantee to the Landowner with respect to the Property or any restoration activities carried out by the Grantee at the Property; provided, however, that the Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by the Grantee.
- (c) "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment or any other material defined and regulated by Environmental Laws.
- (d) The Landowner warrants that it shall remain in compliance with, all applicable Environmental Laws. The Landowner warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property.
- (e) "Environmental Law" or "Environmental Laws" means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, Hazardous Materials, worker

and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

- (f) If at any time after the effective date of this Easement there occurs a release, discharge or other incident in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, the Landowner agrees to take any steps that are required of the Landowner with respect thereto under federal, state, or local law necessary to ensure its containment and remediation, including any cleanup.

*26. The Landowner's Title Warranty; No Prior Conservation Easements.*

The Landowner represents and warrants that it owns the entire fee simple interest in the Property, including the entire mineral estate except as otherwise expressly identified in this Easement, and hereby promises to defend this Easement against all claims that may be made against it.

Any and all financial liens or financial encumbrances with priority over this Easement existing as of the date of the recording of this Easement have been subordinated.

The Landowner represents and warrants that the Property is not subject to any other conservation easement whatsoever.

*27. Granting Subsequent Easements, Interests in Land, or Use Restrictions.*

- (a) With permission of the Grantee pursuant to Section 4, the Landowner may grant subsequent easements, including conservation easements, interests in land, or use restrictions on the Property. Under no circumstances shall the Grantee approve the granting of subsequent easements, interests in land, or use restrictions that might diminish or impair the agricultural productive capacity or open space character of the Property.
- (b) The Grantee's written approval shall be obtained at least thirty (30) days in advance of the Landowner's execution of any proposed subsequent easement, interests in land, or use restriction on the Property, and such subsequent easements, interests in land, and use restrictions shall make reference to and be subordinate to this Easement.
- (c) The Grantee shall notify the City immediately upon receipt of request by the Landowner to grant a subsequent easement, interest in land, or use restriction

on the Property, and provide copies of documents associated with such a request to the City.

- (d) The Grantee shall notify the City in the event that it approves the grant of any subsequent easement, interest in land, or use restriction on the Property.

28. *Administrative Costs.*

The administration of this Easement by Grantee requires considerable time and expense. Grantee shall bear all routine administrative expenses related to the Easement including, but not limited to the following activities: routine easement monitoring and reporting, and notices of permitted activities, and routine staff work. Landowner agrees to pay the reasonable expenses of Grantee for non-routine administration of the Easement including, but not limited to actions requiring Grantee's prior approval, enforcement of Easement violations and any requests of Landowner that entail or require an amendment to this Easement.

29. *Severability.*

If any term, provision, covenant, condition, or restriction of this Easement is held by a court of competent jurisdiction to be unlawful, invalid, void, unenforceable, or not effective the remainder of this Easement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

30. *Entire Agreement.*

This Easement, including the attached exhibits and the Baseline Report, is the final and complete expression of the agreement between the parties with respect to the subject matter contained herein. Any and all prior or contemporaneous agreements with respect to this subject matter, written or oral, are merged into and superseded by this written instrument.

The exhibits attached to and included in this Easement are:

- Exhibit A - Legal Description
- Exhibit B - Map

31. *Acceptance.*

As attested by the signature of its Executive Director affixed hereto, as authorized by Grantee's Board of Directors/Trustees, in exchange for consideration, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Deed of Agricultural Conservation Easement.

To Have and To Hold, this Deed of Agricultural Conservation Easement unto the Grantee, its successors and assigns, forever.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

In Witness Whereof, the Landowner and the Grantee, intending to legally bind themselves, have set their hands on the date first written above.

LANDOWNER

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

GRANTEE

Sequoia Riverlands Trust,  
a California nonprofit public benefit corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ ) ss.

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ ) ss.

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Exhibit A  
(Property)

Exhibit B  
(Map)