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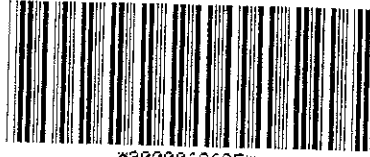
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**BRIAN FINEGAN**

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DOCUMENT: **2000069605**



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Titles: 1 / Pages: 26

Fees.... 83.00

Taxes...

Other...

AMT PAID 83.00

**DEED OF CONSERVATION EASEMENT**  
*(Openlands of The Santa Lucia Preserve, Phase C)*  
*(Combined Development Permit PC94-067)*  
*(Condition No. 109)*

THIS DEED OF CONSERVATION EASEMENT ("Deed") is made by RANCHO SAN CARLOS PARTNERSHIP, L. P., a California limited partnership ("Grantor"), to SANTA LUCIA CONSERVANCY, a California Nonprofit Public Benefit Corporation ("Grantee").

RECITALS

- A. Grantor is the owner in fee simple of certain real property in Monterey County, California, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Subject Property").
- B. The Subject Property is a part of a phased project known generally as The Santa Lucia Preserve, consisting of approximately 18,000 acres of Preserve Lands and approximately 2,000 acres of Settled Lands as those terms are used and described in the Comprehensive Development Plan (April 1994, "the Plan"), the Combined Development Permit Application (Revised November 14, 1994, "the Application") and the Resource Management Plan ("the RMP") for The Santa Lucia Preserve (Rancho San Carlos Partnership, April, 1994, rev. November, 1994) all of which are on file as File Number PC94067 in the office of the Monterey County Planning and

Building Inspection Department. Grantor has received entitlements from the County of Monterey (Resolution No. 96-060, Resolution No. 96-061 and Resolution No. 97-360) for the creation on the Subject Property of a project consisting of residential, recreational, open space and agricultural uses ("the Approved Project"), subject to conditions of approval imposed by the Monterey County Board of Supervisors pursuant to Resolution No. 96-060, Resolution No. 96-061 and Resolution No. 97-360 ("the Conditions of Approval").

- C. The Approved Project consists of "Settled Lands" (lands to be developed with residential and recreational uses) and "Preserve Lands" (lands to be preserved and used for agricultural, recreational, open space and conservation activities). The Preserve Lands of the Santa Lucia Preserve are comprised of Wildlands conveyed incrementally to Grantee in fee, or Openlands consisting of portions of the residential lots in the Approved Project (the "Lot or "Lots") conveyed in fee to the individual purchasers of such lots (hereinafter referred to as "Owner" or "Owners"), but subject to conservation easements in favor of Grantee. The Preserve Lands are restricted in perpetuity to a conservation program of scientific research and education, recreational activities and managed agricultural programs ensuring in perpetuity for the public benefit the protection and preservation of natural resources. The Settled Lands of the Santa Lucia Preserve are comprised of either Homelands, which will be used for residences, or Rancholands, which will be used for visitor accommodation, resident-serving commercial, and recreational uses.
- D. The Property possesses natural, scenic, ecological, cultural, open space, agricultural, scientific and aesthetic values ("the Protected Values") of great importance to Grantor, Grantee, the people of Monterey County and the people of the State of California.
- E. Condition No. 109 of the Conditions of Approval requires that conservation easements over the Openlands areas of each phase of the Approved Project be granted to the Santa Lucia Conservancy or other appropriate non-profit land trust organization concurrently with the filing of final maps for each phase of the Approved Project, and that such conservation easements restrict the permitted uses of the Openlands in perpetuity and grant to the County of Monterey the non-exclusive right to enforce said restrictive use covenants.
- F. Grantee Santa Lucia Conservancy is a non-profit public benefit corporation qualified under Section 501(c)(3) of the Internal Revenue Code, whose primary purpose is the preservation of areas of significant biological diversity through acquisitions

of natural areas, acceptance or creation of conservation easements, creation of managed and interpretive public access to areas of special ecological, aesthetic and educational value and the establishment of demonstration conservation projects.

- G. The Trust for Public Land is a publicly supported, tax-exempt nonprofit organization qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is to acquire on behalf of the general public open lands devoted to the preservation of native plants or animals, biotic communities, geological or geographical formations of scientific interest, or recreation and scenic beauty; and secondarily to seek, develop, and demonstrate practical ways to insure an ecologically balanced use of the nation's land resources which promotes optimum human living conditions in a biologically healthy environment.
- H. Grantor intends, as owner of the Subject Property, to convey easement rights to Grantee providing for the exclusive right to actively manage in perpetuity the ranching, recreational, research, educational and resource management activities on the Openlands of the Subject Property in order that the Protected Values of the Openlands of the Subject Property be managed and protected in perpetuity for public benefit, subject to the rights and interests reserved to Grantor as herein provided; and that the requirements of said Condition No. 109 be satisfied.
- I. Grantee intends, by acceptance of the grant made hereby, forever to honor the intentions of Grantor to protect the public interest in the Protected Values of the Openlands of the Subject Property by actively monitoring the ranching, recreational, research, educational and resource management activities as well as other permitted uses on the Openlands of the Subject Property in a manner consistent with the protection and preservation of the Protected Values, and by enforcing the covenants, conditions and restrictions contained in this deed.

NOW, THEREFORE, and in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of California including, *inter alia*, Sections 815-816 of the California Civil Code, Grantor does hereby voluntarily grant to Grantee an exclusive Conservation Easement in gross in perpetuity over the Openlands of the Subject Property as more particularly described in Exhibit "B" attached hereto, of the nature and character and to the extent hereinafter set forth (the "Easement").

SUBJECT TO the following **CONDITION SUBSEQUENT**, to wit, that if

Grantee, ceases to exist, ceases to qualify as a tax-exempt non-profit organization under Section 501(c)(3) of the Internal Revenue Code, or ceases to manage and protect the Protected Values of the Subject Property, or attempts to transfer, dedicate to the public or to any public entity, assign, convey, hypothecate, encumber or otherwise alienate any interest in the Openlands of the Subject Property in violation of the restriction upon transfer set forth below, all right title and interest of Grantee shall terminate automatically and without reentry by Grantor, and shall thereupon vest immediately and automatically in THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation, or in such successor organization as shall have been substituted for THE TRUST FOR PUBLIC LAND, whereupon THE TRUST FOR PUBLIC LAND or such successor organization shall be treated as "Grantee" for all purposes of this deed; provided, however, that Grantee's interest shall not terminate automatically on the ground of Grantee's ceasing to manage and protect the Protected Values of the Subject Property in accordance with the applicable covenants, conditions and restrictions unless Grantor or THE TRUST FOR PUBLIC LAND has first recorded in the office of the County Recorder of Monterey County, California, and served upon Grantee by certified mail at the address shown on the latest equalized county assessment roll, a Notice of Default as hereinafter provided, and Grantee fails to cure all of the defaults specified in the Notice of Default within ninety (90) days after the date of mailing the Notice of Default to Grantee, or, in the case of defaults which cannot be fully cured within ninety (90) days, to promptly commence and diligently and in good faith pursue the cure of such defaults within ninety (90) days after the date of mailing the Notice of Default to Grantee. The condition subsequent set forth herein is intended to create a power of termination as defined in California Civil Code Section 885.010(a), and the remainder in favor of THE TRUST FOR PUBLIC LAND is intended to create a conditional limitation as defined in California Civil Code Section 778. In the event that THE TRUST FOR PUBLIC LAND succeeds to the interest of SANTA LUCIA CONSERVANCY pursuant to the provisions of this CONDITION SUBSEQUENT, THE TRUST FOR PUBLIC LAND shall have the right, but not the obligation, to assign its interest to another nonprofit organization qualified under California Civil Code Section 815.3 to accept conservation easements and otherwise fulfilling the qualifications provided in Section 11(d) (i) and (ii) of this deed.

SUBJECT ALSO TO the following restriction upon transfer, to wit, that except as expressly provided herein, Grantee shall not transfer, assign, convey, hypothecate, encumber or otherwise alienate any interest in the Subject Property except to THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation, or to such successor organization as shall have been substituted for THE TRUST FOR PUBLIC LAND. It is the express intention and understanding of the Grantor in making this grant to Grantee, and of the Grantee in accepting title to the Subject Property pursuant

to this deed, that the foregoing restriction on transfer is a lawful and reasonable restraint on alienation, directly related to the primary purposes for which this grant is made and the public benefit purposes for which Grantee is formed, and consistent with and supportive of the resource protection and conservation policies of the parties, the County of Monterey and the State of California, and therefore is not repugnant to the interest created or violative of the provisions of California Civil Code Section 711.

1. Purpose. It is the purpose of the Easement in perpetuity a) to assure the preservation, management and protection of the Protected Values of the Subject Property, as described in the Plan and the RMP, in accordance with the terms and conditions of this Easement; b) to prevent any use of the Subject Property that would materially impair or interfere with the Protected Values; c) to promote the public interest in accordance with Article 13, Section 8 of the California Constitution, the Open-Space Easement Act of 1974 (Government Code Section 51070 et seq.), and the provisions of Title II, Chapter 4 of the California Civil Code (Section 815 et seq.) by retaining the land as open space as defined in Section 65560 of the California Government Code or predominantly in its natural, scenic, historic, agricultural, forested or open-space condition, thereby adding to the amenities of living in neighboring urbanized areas and preserving the rural character of the area in which the land is located; and d) to assure that any accessory or ancillary uses of the Subject Property in connection with the private use and development of the Settled Lands of the Santa Lucia Preserve are subordinate and incidental to the primary public interest in the preservation, management and protection of the Protected Values of the Subject Property. To the extent that Grantor's activities on and uses of the Subject Property are consistent with prudent management of the Protected Values of the Subject Property, and with the terms and conditions of the Conditions of Approval and this Easement, it is within the purpose of this Easement to permit the continuance of such activities and uses.

2. Affirmative Rights and Interests Conveyed. To accomplish the purpose of this Easement, the following rights and interests are conveyed to the Grantee:

(a) To preserve, protect and manage in perpetuity the Protected Values of the Subject Property.

(b) To enter upon, inspect, and observe the Subject Property for the purpose of monitoring the uses of and activities and practices upon the Subject Property to determine whether they are consistent with this Easement, to mitigate impacts upon the Protected Values of the Subject Property, and to enforce the covenants, conditions and restrictions contained herein. Such entry shall be permitted upon reasonable prior notice to Grantor,

the Owner or the successors in interest of either, and shall be made in a manner that will not unreasonably interfere with Grantor's or the Owner's use, management, and comfortable enjoyment of the Subject Property.

(c) To prevent any activity on or use of the Subject Property that is inconsistent with the purpose of this Easement and to require the restoration or rehabilitation of such areas or features of the Subject Property that may be damaged by any inconsistent activity or use.

(d) Subject to the prior written approval of Grantor and the Owner of the Lot, to carry on, and to license others to carry on, and to regulate, public education and interpretation programs, wildlife management programs and activities and scientific research and experimentation, and livestock activities, including grazing, fencing, loading, boarding and feed storage facilities, consistent with the terms and conditions of the Conditions of Approval.

3. Uses and Practices. Subject to the reserved rights set forth in Paragraph 4 of this deed, this Easement shall confine the uses of the Openlands of the Subject Property to the following:

a) Uses consistent with and supportive of the preservation, protection and management in perpetuity of the Protected Values;

b) Research, educational and resource management and facilities;

c) Ranching activities and facilities as described in the Revised Rancho San Carlos Cattle Grazing and Livestock Management Plan referred to in Condition #25 of the Conditions of Approval;

d) Outdoor recreation and facilities; and

e) Project infrastructure and uses described in the Application.

3.1 Prohibited Uses. Specifically, and without limiting the generality of the foregoing, the following itemized uses and activities are deemed inconsistent with the purpose of this Easement, and are hereby expressly prohibited by this deed:

a) Inconsistent Uses and Activities. Any use of or activity on the Openlands of the Subject Property not expressly permitted and which is inconsistent with the purpose of this Easement, or which threatens or compromises the Protected Values, is prohibited.

b) Subdivision & Development: The legal or *de facto* further subdivision of the Subject Property.

c) Residences & Commercial & Industrial Uses: Residential, commercial and industrial uses, including viticulture and wineries, golf, and commercial harvesting of timber.

d) Mineral Exploration & Development: Exploration, excavation, or surface extraction of any mineral resources.

e) Dumping & Disposal: The dumping or disposal of all non-biodegradable refuse or vegetative materials composed of non-native plant species, with the exception of composting sites for biodegradable materials supervised and managed by the Conservancy in accordance with the Monterey County Solid Waste Management Plan.

f) Motorized Vehicles: The use of motorized vehicles on all unimproved roads, trails, and off-road areas, except by Grantor and Grantee, or others under authorization of the Conservancy, for construction, repair or maintenance of the Approved Project infrastructure or accessory facilities and for permitted uses and emergency purposes. No trailer, camper, motor home, recreational vehicle, truck, boat, inoperable automobile, or similar vehicle or equipment shall be permitted upon any area within the Openlands of any Lot, except as necessary in connection with construction, repair or maintenance permitted by this sub-paragraph. No person shall construct, repair, service or maintain any motor vehicle within the Openlands of any Lot except for emergency repairs.

g) Water Development: The impoundment, pumping or removal of water beyond that necessary or appropriate for the development and maintenance of the Approved Project and the conduct of Permitted Uses as provided in Section 3.2 below, to the extent that such impoundment, pumping or removal would have or be likely to have a potentially significant adverse impact on aquatic life or creek, stream, spring, seep or other natural resources.

h) Agricultural: The tilling, terracing or other use of the Openlands of the Subject Property for agricultural purposes, including viticulture, other than livestock grazing and native plant cultivation and use as specifically provided herein.

i) Structures, Billboards & Signs: The construction, erection or placement of any billboards or of markers or signs, other than accessory to the Approved Project, such as street, directional, warning, safety, informational and hiking signs, structures accessory to permitted recreational uses, such as lean-tos, campgrounds and picnic facilities, and fencing, loading, boarding and feed storage facilities accessory to permitted livestock maintenance.

j) Native Vegetation Removal. Direct disturbance or removal of non-toxic and non-invasive native vegetation within the Openlands of any Lot except to the extent necessary for the

installation, maintenance, repair and replacement of Approved Project Infrastructure, construction and maintenance of fuel breaks and fire-safe areas, and creation and maintenance of view corridors. Any non-toxic or non-invasive native vegetation disturbed or removed as a result of necessary installation of Approved Project infrastructure shall be revegetated with non-toxic and non-invasive native vegetation.

k) Non-Native Plants and Vegetation. The planting, growing or maintenance of non-native plants or vegetation on the Openlands of any Lot.

3.2. Permitted Uses. Specifically, and without limiting the generality of the foregoing, the following itemized uses and activities of the Openlands of the Subject Property are deemed consistent with the purpose of this Easement, and are hereby expressly permitted by this deed; provided, however, that such uses shall be conducted in such a manner as to not materially impair or interfere with the Protected Values, or materially impair or interfere with the safety, security and comfortable enjoyment of the Owners of the Lots:

a) Fuel & Fire Management: The conduct of reasonable and prudent management of fuel and fire conditions on the Openlands of the Subject Property, including vegetation management, maintenance of fuel breaks, fire-safe areas, fire suppression and, with the prior written consent of the Owner of the Lot, prescribed burns.

b) Native Plant Cultivation & Use: The propagation, cultivation and transplantation of native plants and seeds for nursery development, habitat restoration and enhancement purposes exclusive to the Approved Project.

c) Wildlife & Habitat Management: The conduct of reasonable and prudent wildlife and habitat management activities on the Openlands of the Subject Property, including, but not limited to, the restoration, enhancement, reintroduction, exotics-control, and other forms of management useful to support, sustain and enjoy the native biodiversity of the Preserve, provided, however, that hunting or fishing shall not be permitted on the Openlands without the prior written consent of the Owner of the Lot.

d) Education, Recreation & Research: Subject to the prior written consent of the Owner of the Lot, resource-oriented education, interpretation, and other managed and passive uses, such as camping, picnicking, hiking, horseback riding; and scientific and academic training and research programs.

e) Trails and Trail Access. With the prior written consent of the Owner of the Lot, the construction, maintenance, repair and



replacement of trails and trail access in connection with permitted recreational uses of the Openlands of the Subject Property.

f) Tree & Wood Removal: The selective and limited removal of live trees in accordance with the Rancho San Carlos Forest Management Plan (Ralph Osterling Consultants, Inc., February 18, 1994, hereinafter referred to as "the FMP") and the Conditions of Approval, and selective and limited removal of downed trees and wood, provided that in all cases such removal does not increase erosion, sedimentation or adversely impact the Protected Values in any potentially significant way.

g) Livestock Maintenance: On the Openlands of Lots 187, 190, 191, 223, 224, 225, 242, 243, 244, 247, 248, 249, and 250 the keeping of horses by the Owner of the Lot; and, subject to the prior written consent of the Owner of the Lot, the grazing of cattle exclusively by Grantee on the Openlands of Lots 187, 190, 191, 242, 243 and 250; and provided that they are not used by the Owner of the Lot for the keeping of horses, the grazing of cattle exclusively by Grantee on the Openlands of Lots 223, 224, 225, 244, 247, 248, 249, 252 and 254, with or without the permission of the Owner. For the purposes of this sub-section (g), the term "grazing of cattle" shall include, but not be limited to, the construction and maintenance of pasture fencing and structures appurtenant and accessory thereto, in accordance with sub-section (C)(ii)(k) of Article III, Section 1 of the Declaration of Protective Restrictions for the Homelands and Openlands of the Santa Lucia Preserve, recorded on November 24, 1998, as Document No. 9882399, and re-recorded on December 4, 1998, as Document No. 9885190, Official Records of Monterey County, California ("the CC&Rs"), and subject to the regulations and standards contained in the Revised Rancho San Carlos Cattle Grazing and Livestock Management Plan referred to in Condition #25 of the Conditions of Approval.

h) Approved Infrastructure and Accessory Uses: The use and maintenance of existing dirt ranch roads located within the Subject Property for public safety and emergency ingress and egress purposes; construction, operation and maintenance of approved Project infrastructure, including roads, utilities (including, but not limited to, water wells, storage tanks, treatment facilities and pipelines), driveways, bridges, trails, camp sites, culverts, drainage and erosion control structures and facilities, which is exclusively accessory to and in accordance with the Approved Project and the uses permitted hereby.

i) Utilities. The right to construct, maintain, repair and replace facilities for the conveyance of utility services, including but not limited to, water (including, but not limited to, water wells, storage tanks, treatment facilities and pipelines), sewer, natural gas, electricity and communications and

appurtenances thereto approved or required by the County of Monterey for the approved use and development of the Approved Project; and non-exclusive easements as necessary or appropriate over, under and across the Openlands of the Subject Property for such facilities.

### 3.3. Subordinate Interests.

a) The covenants, conditions and restrictions contained in the CC&Rs and in the Declaration of Annexation to Declaration of Protective Restrictions for the Homelands and Openlands of the Santa Lucia Preserve (Phase C), recorded on OCTOBER 24, 2000, ~~1999~~, as Document No. 2000069608, Official Records of Monterey County, California ("the Declaration of Annexation"), shall be and are hereby declared to be subject and subordinate to the easements granted hereby.

b) The easements, covenants and restrictions contained in that certain Archaeological/Wetlands/Conservation/Scenic Easement Deed, recorded on OCTOBER 24, 2000, as Document No. 2000069607, Official Records of Monterey County, California ("the County Easement") shall be and are hereby declared to be subject and subordinate to the easements granted hereby.

3.4. Interpretation. The uses and practices set forth above are not intended to be, and shall not be construed to be, exhaustive recitals of consistent and inconsistent uses and practices, respectively, but are intended to establish specific permitted and prohibited activities and uses, and to provide guidance in determining the consistency of other uses and practices with the purpose of the Easement.

4. Interests and Rights Reserved. Grantor reserves to itself, and to its successors and assigns, all rights accruing from its ownership of the Subject Property that are not inconsistent with the rights granted by this Easement, including the right to engage in or permit or invite others to engage in all uses of the Subject Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement, which rights shall be exercised by Grantor and Grantor's successors in interest in such a manner as reasonably to minimize damage to the Protected Values caused by such exercise, and in such a manner as to best preserve and protect the Protected Values. Without limiting the generality of the foregoing, the following rights are expressly reserved to Grantor:

a) Approved Infrastructure and Accessory Uses. The right to use and maintain existing dirt ranch roads located within the Easement for public safety and emergency ingress and egress purposes; to develop, construct, install, improve, maintain, repair, relocate and replace approved public or private roads,

driveways and bridges approved or required by the County of Monterey for ingress to and egress from the Homelands of the Santa Lucia Preserve, minor encroachments for landscaping and improvements (other than buildings) appurtenant and accessory to the Homelands of a Lot, drainage and flood control facilities, utilities (including, but not limited to, water wells, storage tanks, treatment facilities and pipelines), approved septic tank drainfields, pedestrian, hiking, bicycle and equestrian trails, fences, recreation and camping facilities, fuel management zones, firebreaks, and firesafe zones (hereinafter referred to as "Project Improvements") necessary or appropriate for the full development of the Settled Lands of the Santa Lucia Preserve in accordance with the Conditions of Approval.

b) Utilities. The right to construct, maintain, repair and replace facilities for the conveyance of utility services, including but not limited to, water (including, but not limited to, water wells, storage tanks, treatment facilities and pipelines), sewer, natural gas, electricity and communications and appurtenances thereto approved or required by the County of Monterey for the approved use and development of the Approved Project; and non-exclusive easements as necessary or appropriate over, under and across the Subject Property for such facilities.

c) Recreation. The use and maintenance (but not to the exclusion of Grantee's other rights as provided herein) of the Subject Property for camping, picnicking, hiking, horseback riding and other managed and passive recreational uses, specifically including the construction, maintenance, repair and replacement of signs, fences, camp sites, picnic sites, shelters and similar facilities accessory to such uses, and the licensing of such uses and activities to other individuals and organizations subject to the supervision of Grantor.

d) Tree & Wood Removal: The selective and limited removal of standing live trees due to the construction of infrastructure (roads, driveways, utilities, etc.) for the Approved Project in accordance with the FMP and the Conditions of Approval, and selective and limited removal of downed trees and wood exclusive to use on the Approved Project, provided that in all cases such removal does not increase erosion, sedimentation or adversely impact the Protected Values in any potentially significant way and shall otherwise be in accordance with the RMP.

e) Water Rights. All right, title, and interest without limitation or restriction in and to tributary and non-tributary water, water rights (including, but not limited to riparian rights), and related interests in, on, under, or appurtenant to the Subject Property, provided that such water rights are exercised within the Approved Project, are used in a manner consistent with the purpose of this Easement and in compliance with the Conditions

of Approval, and the exercise of such water rights and the use of the water does not preclude or adversely affect the Protected Values.

f) Equestrian Uses. Maintenance, raising, breeding, boarding and keeping of horses, and the construction, maintenance and use of fencing, barns, paddocks, stalls, storage and other facilities appurtenant thereto, on the Openlands of Lots 187, 190, 191, 223, 224, 225, 242, 243, 244, 247, 248, 249 and 250, in accordance with the regulations and standards contained in the Revised Rancho San Carlos Cattle Grazing and Livestock Management Plan referred to in Condition #25 of the Conditions of Approval.

g) Notice of Intention to Undertake Actions and Approval. Should Grantor or Grantor's successors in interest propose to undertake any activity on the Openlands of the Subject Property which i) is not listed as a permitted use in Section 3.2 above, or ii) is not permitted by reason of the reserved rights listed in this Section 4; or iii) would exercise any of the reserved rights listed in this Section 4 in a manner materially different from that described in the Baseline Data described in Section 5 below, Grantor or Grantor's successor in interest shall notify Grantee in writing of its intention to undertake such activity ("Notice of Intention") not less than fifteen (15) days prior to the date such activity is proposed to commence. The Notice of Intention shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement. Grantee shall grant or withhold its approval in writing within fifteen (15) days after receipt of the Notice of Intention. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

5. Baseline Documentation; Current Practices and Conditions.

a) Grantee's Inspection. Grantee acknowledges by acceptance of this Easement that Grantee has inspected the natural resources of the Openlands of the Subject Property and is familiar with the condition of the Openlands of the Subject Property as of the date of this conveyance.

b) Resource Reports. Grantee further acknowledges by acceptance of this Easement that Grantee has received from Grantor copies of the resource reports, studies and other documentation of the resource values of the Openlands of the Subject Property as listed in Exhibit "C" attached hereto.

c) Updated Report. Grantee further acknowledges by acceptance of this Easement that Grantee has had access to the

Geographic Information System data base known as The Rancho San Carlos Natural Resources Inventory accessible at the offices of Hart/Howerton, 30 Hotaling Place, San Francisco, California, which contains an updated report on the condition of the Openlands of the Subject Property and its resources as of the date of this conveyance.

d) Accuracy of Reports. Grantee further acknowledges by acceptance of this Easement that the information contained in the materials supplied by Grantor as set forth in sub-paragraphs b) and c) of this paragraph 5 (the "Baseline Documentation") provide collectively an accurate representation of the condition of the resources of the Openlands of the Subject Property as of the time of this conveyance and which are intended to serve as an objective, though non-exclusive, information baseline for monitoring compliance with the terms of this grant. The execution of this deed by Grantor and Grantee shall constitute the acknowledgement by both parties that the Baseline Documentation accurately represents the condition of the Openlands of the Subject Property at the time of the transfer as required by Treasury Regulation §1.170A-14(g)(5)(i).

e) Change in Conditions. Grantor and Grantee recognize and acknowledge that the condition of the Openlands of the Subject Property will change over time as a result of ecologic and climatic conditions, ranch management practices, recreation practices, and the development of the Approved Project, and that such changes are consistent with the purpose of this Easement and do not threaten or impair the Protected Values so long as the Openlands of the Subject Property are managed and used in a manner consistent with the terms of this Easement and with the Conditions of Approval.

## 6. REMEDIES AND ENFORCEMENT.

### 6.1. Enforcement by Grantee.

a) Grantee shall have and exercise powers of enforcement of the covenants, conditions and restrictions contained in this deed, including the power to commence and maintain in its own name on behalf of itself, actions and suits to restrain and enjoin the breach or threatened breach of the covenants, conditions and restrictions contained in this deed, and to recover from the defaulting party the reasonable costs of such enforcement. The Grantee may bring an action against the person or entity violating the terms of this deed at law or in equity in a court of competent jurisdiction to enforce the terms of this deed, to enjoin the violation, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this deed, including damages for the loss of scenic, ecological or scientific values, and to require the restoration of the Openlands to the condition existing prior to any such violation.

b) Grantee shall have the power and authority to impose reasonable monetary penalties as appropriate discipline for violation of or failure to comply with any of the covenants, conditions and restrictions contained in this deed or in any rules, regulations, guidelines or procedures duly adopted and promulgated by Grantee pertaining to the use and occupancy of the Openlands of the Subject Property pursuant to this deed.

c) The powers of enforcement created in Grantee shall also vest in THE TRUST FOR PUBLIC LAND or such successor organization as shall have been substituted for THE TRUST FOR PUBLIC LAND as provided herein upon succession to the interest of SANTA LUCIA CONSERVANCY pursuant to the provisions of the Condition Subsequent contained herein.

#### 6.2. Enforcement by County.

a) Subject to the provisions of sub-section b) of this Section 6.2, the County of Monterey shall have the non-exclusive right to enforce the covenants, conditions and restrictions contained in this deed relative to the use and occupancy of the Openlands as provided in Section 3 of this deed, including the power to commence and maintain in its own name on behalf of itself, or on behalf of the public, actions and suits to restrain and enjoin the breach or threatened breach of such covenants, conditions and restrictions, and to recover from the defaulting party the reasonable costs of such enforcement.

b) If the County determines that the Grantee has failed to enforce the provisions of this deed, the County shall give the Grantee written notice of such failure and demand corrective action sufficient to prevent any use of or activity on the Subject Property inconsistent with the provisions of this deed. If the Grantee fails to enforce the provisions of this deed as specified in such written notice within thirty (30) days after receipt of such written notice, the County may bring an action against the person or entity violating the terms of this deed, including the Grantee or its successor entity or entities, at law or in equity in a court of competent jurisdiction to enforce the terms of this deed, to enjoin the violation, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this deed, including damages for the loss of scenic, ecological or scientific values, and to require the restoration of the Openlands of the Subject Property to the condition existing prior to any such violation.

#### 6.3. Enforcement by Grantor.

a) Subject to the provisions of sub-section b) of this Section 6.3, Grantor, or its successor or successors in interest, including without limitation any Owner of any Lot or parcel of the

Approved Project shall be entitled to enforce any and all conditions, covenants and restrictions contained in this deed relative to the use and occupancy of the Openlands as provided in Section 3 of this deed, in the manner provided by law for enforcing equitable servitudes.

b) If any Owner determines that the Grantee and the County have failed to enforce the provisions of this deed, such Owner shall give the Grantee and the County written notice of such failure and demand corrective action sufficient to prevent any use of or activity on the Subject Property inconsistent with the provisions of this deed. If the Grantee and the County fail to enforce the provisions of this deed as specified in such written notice within thirty (30) days after receipt of such written notice, such Owner may bring an action against the person or entity violating the terms of this deed, including the Grantee or its successor entity or entities, at law or in equity in a court of competent jurisdiction to enforce the terms of this deed, to enjoin the violation, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this deed, including damages for the loss of scenic, ecological or scientific values, and to require the restoration of the Subject Property to the condition existing prior to any such violation.

6.4. Violation as Nuisance. Every act or omission whereby any restriction, condition or covenant in this deed set forth or to which the Subject Property or any portion is subject, is violated in whole or in part is declared to be and shall constitute a nuisance and may be enjoined or abated, subject to the provisions of sub-Sections 6.1, 6.2 and 6.3 of this Section 6, by the Grantee, the County or any Owner. The rights of enforcement granted by this Section 6 apply equally in the event of either actual or threatened violations of the terms of this deed. In any action or proceeding to enforce the provisions of this deed it shall be conclusively presumed that remedies at law for any violation of the terms of this deed are inadequate and that the enforcing party shall be entitled to the injunctive relief described in this Section, both prohibitory and mandatory, in addition to such other relief to which such party may be entitled, including specific performance of the terms of this deed, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The 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.

6.5 Costs of Enforcement. Any costs incurred by any party in enforcing the terms of this deed, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by a violation of the terms of this deed shall be borne by the violating party.

6.6 Forbearance. Any forbearance by any party to exercise its rights under this deed in the event of any breach or violation of any term of this deed shall not be deemed or construed to be a waiver by such party of such term or of any subsequent breach or violation of the same or any other term of this deed or of any of other rights under this deed. No delay or omission in the exercise of any right or remedy upon any breach or violation by any party shall impair such right or remedy or be construed as a waiver.

6.7. Acts Beyond Control. Nothing contained in this deed shall be construed to entitle any party to bring any action against any other party for any injury to or change in the Openlands of the Subject Property resulting from causes beyond such party's control, including, without limitation, fire, flood, storm or earth movement, or from any prudent action taken by such party under emergency conditions to prevent, abate or mitigate significant injury to the Openlands of the Subject Property or the other Preserve Lands or Settled Lands of the Santa Lucia Preserve resulting from such causes.

7. Costs of Upkeep. Grantee shall bear all costs and liabilities of any kind related to the exercise of its rights granted by this deed, including the maintenance of adequate comprehensive general liability insurance coverage for its activities in furtherance of the rights granted by this deed. Except as thus specifically provided, Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related generally to the ownership, operation, upkeep and maintenance of the Subject Property of which the Openlands are a part, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Openlands of the Subject Property free of any materialman's or laborer's lien arising out of any work performed for, or materials furnished to, or obligations incurred by Grantor. Owner shall keep the Openlands of the Subject Property free of any materialman's or laborer's lien arising out of any work performed for, or materials furnished to, or obligations incurred by Owner.

8. No Access. Nothing contained in this deed shall be construed or interpreted to convey or authorize any express or implied public dedication or any right of public access to the Openlands of the Subject Property or any part or parcel thereof.

9. Taxes. Grantor and, upon conveyance of the Subject Property, Grantor's successors in interest or the Owner of a Lot, shall pay before delinquency all taxes, assessments and charges of whatever description levied on or assessed against the Openlands of the owned Lot by competent authorities (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this deed, and shall furnish Grantee upon demand with satisfactory evidence of payment.



10. Assignment of Grantee's Interest.

a) To a TPL Successor. Notwithstanding anything to the contrary contained in this deed, THE TRUST FOR PUBLIC LAND shall have the unconditional right to convey all of its right title and interest as Grantee under the operation of the Condition Subsequent contained in this deed to a successor Grantee possessing the characteristics set forth in Section 11(d) of this deed.

b) Licensing by Grantee. Notwithstanding anything to the contrary contained in this deed, Grantee shall have the right to license any of the permitted uses listed in Section 3.2 above not otherwise reserved to Grantor in Section 4 above to other persons, organizations or entities, subject to the terms and conditions of this deed and subject to the regulation and control of Grantee.

c) No Other Assignment. Except as expressly provided herein, any assignment by Grantee of its interests under this deed is expressly prohibited.

11. Termination. If SANTA LUCIA CONSERVANCY shall cease, after determination by the Internal Revenue Service that it is described under Internal Revenue Code Section 501(c)(3), to be authorized to acquire and hold conservation easements under California law, or ceases to manage and protect the Protected Values of the Openlands of the Subject Property, or attempts to transfer, assign, convey, hypothecate, encumber or otherwise alienate any interest in the Openlands of the Subject Property in violation of the restriction upon transfer set forth herein, or otherwise fails or refuses to discharge its obligations under this deed, then Grantor shall have the right to terminate the rights of SANTA LUCIA CONSERVANCY under this deed in accordance with the following procedure:

(a) If Grantor contends that ground for revocation of the easements granted by this deed exists, Grantor shall serve written Notice of Default on SANTA LUCIA CONSERVANCY containing a statement identifying the ground or grounds for revocation of the easements, and stating that if each ground or grounds for revocation is not cured within ninety (90) days after the date of the notice, that the easements will be revoked.

(b) If SANTA LUCIA CONSERVANCY contends that grounds set forth in the Notice of Default do not exist, or that such grounds have been or will be cured within the ninety (90) day reinstatement period, SANTA LUCIA CONSERVANCY shall serve written Notice of Dispute on Grantor, setting forth the facts upon which SANTA LUCIA CONSERVANCY bases its contention that grounds for revocation do not exist or have been cured.

(c) If Grantor, upon receipt of the SANTA LUCIA CONSERVANCY's

Notice of Dispute, nevertheless wishes to proceed with the revocation of the Easement, the matter shall be submitted to binding arbitration as provided herein.

(d) If the rights of SANTA LUCIA CONSERVANCY under this deed are terminated as provided above, all right title and interest of SANTA LUCIA CONSERVANCY shall terminate automatically and without reentry by Grantor, and shall thereupon vest immediately and automatically in THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation, or in such successor organization as shall have been substituted for THE TRUST FOR PUBLIC LAND, whereupon THE TRUST FOR PUBLIC LAND or such successor organization shall be treated as "Grantee" for all purposes of this deed. If THE TRUST FOR PUBLIC LAND has succeeded SANTA LUCIA CONSERVANCY as the Grantee hereunder by operation of the Condition Subsequent contained in this deed, THE TRUST FOR PUBLIC LAND shall have the right, but not the obligation, to appoint a successor Grantee possessing the characteristics set forth in this sub-Section (d) and to convey its interest as Grantee to such organization, subject to the consent of Grantor, which consent may be withheld by Grantor only upon a reasonable determination by Grantor that the proposed successor Grantee is not qualified to actively monitor and enforce the provisions of this deed, provided, however, that the consent of the Grantor shall not be required if Grantor or its successors in interest are in material default of its obligations under the terms of the Endowment Agreement between Grantor and the SANTA LUCIA CONSERVANCY. If THE TRUST FOR PUBLIC LAND has ceased to exist and no successor organization shall have been substituted for THE TRUST FOR PUBLIC LAND, the successor Grantee shall be appointed by arbitration as provided herein. No matter how appointed, the successor Grantee shall possess the following minimum characteristics:

i) The successor Grantee shall be a tax-exempt nonprofit organization qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation and protection of ecologically significant, open-space and scenic lands.

ii) The successor Grantee shall have an established track record demonstrating that such successor Grantee is qualified to monitor and enforce the covenants, conditions and restrictions contained in this deed with respect to ecologically significant, open-space and scenic lands.

12. Arbitration. Any and all disputes or controversy relative to either party's performance under this deed shall be submitted to binding arbitration in accordance with the provisions of Part II, Title 9 of the California Code of Civil Procedure (Sections 1280 - 1294.2). The party seeking arbitration shall serve written notice to arbitrate upon the other party or parties,

which notice shall include i) identification of the issue or issues to be submitted to arbitration, ii) the name and address of the requesting party's arbitrator and iii) the names and addresses of three (3) nominees to serve as a neutral arbitrator. The responding party shall respond in writing within five (5) days, which response shall include i) identification of any additional issue or issues to be submitted to arbitration, ii) the name and address of the responding party's arbitrator, and iii) either acceptance of one of the requesting party's nominees as the neutral arbitrator or the names and addresses of three (3) nominees to serve as neutral arbitrator. If the parties are unable to agree upon a neutral arbitrator within five (5) days after service of the responding party's response, the neutral arbitrator shall be selected by the presiding judge of the Superior Court for Monterey County from among the persons nominated by the parties. The prevailing party in any such arbitration proceedings, determined in accordance with the provisions of California Civil Code Section 1717(b), shall be entitled to recover its costs and reasonable attorneys fees incurred in connection with the arbitration proceedings.

13. Protection of Mortgages or Deeds of Trust. Upon request, Grantee agrees to subordinate its rights under this Easement to the valid claims of any future mortgage holders or beneficiaries of deeds of trust to the proceeds of any sale, condemnation proceedings, or insurance involving the Subject Property, or to the leases, rents and profits thereof, and likewise to subordinate its rights under any lien that may be created by Grantee's exercise of any of its rights under this deed after the date of such subordination; PROVIDED, that any such mortgage or deed of trust shall remain subordinate and junior to the Easement to the extent necessary to permit Grantee to enforce the purpose of this deed in perpetuity and to prevent any modification or extinguishment of the Easement by the exercise of any rights of such mortgage holder or trust deed beneficiary. Grantee agrees to execute any documents required to effect a subordination pursuant to the terms of this Section.

14. Environmental Compliance.

14.1 Representations and Warranties. Grantor represents and warrants that, to the best of its knowledge:

(a) No substance defined, listed, or otherwise classified as hazardous, toxic or polluting pursuant to any federal, state, or local law, regulation, or requirement regulating the use, storage, discharge or disposal of hazardous, toxic or polluting substances (hereinafter referred to as "Environmental Laws"), exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Subject Property;

(b) There are not now any underground storage tanks located on the Subject Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Subject Property in a manner not in compliance with Environmental Laws;

(c) Grantors and the Subject Property are in compliance with all Environmental Laws; and

(d) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any Environmental Laws, nor do there exist any facts or circumstances that Grantors might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

14.2 Remediation. If, at any time, there occurs, or has occurred, a release in, on or about the Subject Property of any substance now or hereafter defined, listed or otherwise classified pursuant to any Environmental Laws as hazardous, toxic, polluting, Grantors agree to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

14.3 Control. Nothing in this deed shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Subject Property, or any of Grantors' activities on the Subject Property, or otherwise to become an operator with respect to the Subject Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").

14.4 Hold Harmless. Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from and in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Subject Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any Environmental Laws, by any

person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Subject Property; (3) the presence or release in, on, from or about the Subject Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to the Environmental Laws as hazardous, toxic or polluting; and (4) the representations and warranties of Section 14.1.

15. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Subject Property, including, without limitation, a leasehold interest. The failure of Grantor to perform any act required by this Section 15 shall not impair the validity of this Easement or limit its enforceability in any way.

16. General Provisions.

(a) Controlling Law. This deed shall be governed and construed in accordance with California law.

(b) Liberal Construction. This deed shall be liberally construed in order to carry out the express intentions of the parties as set forth in this deed.

(c) Severability. All of said restrictions, conditions, covenants and reservations contained in this deed shall be construed together; but if it shall at any time be held that any one or more of these restrictions, conditions, covenants, or reservations, or any part thereof, is invalid or for any reason becomes unenforceable, no other restrictions, conditions, covenants or reservations or any part thereof shall be thereby affected or impaired.

(d) Entire Agreement. This deed contains the entire agreement between the parties respecting the matter set forth, and expressly supersedes all previous or contemporaneous agreements, understandings, representations, or statements between the parties respecting this matter, other than the Endowment Agreement.

(e) Successors. This deed shall be binding on and inure to the benefit of the parties, and their respective heirs, personal representatives, successors, and assigns.

(f) Further Assurances. Whenever requested to do so by the other party, each party shall execute, acknowledge, and deliver all further instruments of further assurance, approvals, consents, and all further instruments and documents as may be necessary, expedient, or proper in order to carry out the intent and purpose of this deed.

(g) Time. Time is of the essence of this deed and of each and every provision thereof.

(h) Amendments.

i) The restrictive use covenants contained in this deed shall not be amended without the prior written consent of a) Grantor, so long as Grantor owns any interest in the Approved Project; b) the Board of Directors of the Approved Project homeowners association if Grantor no longer owns any interest in the Approved Project, c) the Conservancy, d) The Trust for Public Land or such successor organization as shall have been substituted for THE TRUST FOR PUBLIC LAND, and e) the Monterey County Board of Supervisors. Any such amendment shall be consistent with the purpose of the Easement and shall not affect its perpetual duration. Consent may be withheld only upon a reasonable determination by the party whose consent is required that the proposed amendment would be inconsistent with the purpose of this Easement. Any such amendment shall be recorded in the official records of Monterey County, California.

ii) The provisions of the RMP shall not be amended without the prior written consent of Grantee.

(i) Counterparts. This deed may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same deed.

IN WITNESS WHEREOF, the Grantor and the Grantee have caused this instrument to be executed by their duly authorized officers.

Date: July 24, 2000

RANCHO SAN CARLOS PARTNERSHIP, L.P.

A California Limited Partnership

By Thomas A. Gray  
Thomas A. Gray  
Its: Authorized Representative

"GRANTOR"

# ACCEPTANCE

The undersigned Grantee herein named accepts the foregoing Deed of Conservation Easement subject to all of the intentions, understandings, covenants, conditions, restrictions, reservations and remainders contained therein.

Date: October 3, 2000

SANTA LUCIA CONSERVANCY  
A California Nonprofit Public Benefit  
Corporation

By 

Its CHAIRMAN

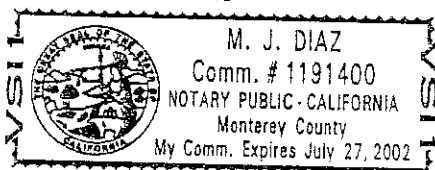
And by 

Its PRESIDENT

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF MONTEREY )

On this 29<sup>th</sup> day of July, 2000, before me, the undersigned, personally appeared Thomas A. Gray, personally known to me or 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.

Witness my hand and official seal.

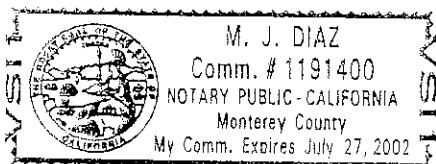


M. J. Diaz  
Notary Public in and for the  
State of California

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF MONTEREY )

On this 3<sup>rd</sup> day of October, 2000, before me, the undersigned, personally appeared Robert Binneweis and Jeffrey Froke, personally known to me or 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.

Witness my hand and official seal.



M. J. Diaz  
Notary Public in and for the  
State of California



EXHIBIT "A"

Lots 187 through 210, inclusive, Lots 223 through 244, inclusive, and Lots 247 through 254, inclusive as shown on the map of Tract No. 1353 "SANTA LUCIA PRESERVE PHASE C", filed for record on OCTOBER 24,     , 2000, in Volume 21 of maps "Cities and Towns", at Page 20, Official Records of Monterey County, California.

## EXHIBIT "B"

The Openlands portions of Lots 187 through 210, inclusive, Lots 223 through 244, inclusive, and Lots 247 through 254, inclusive as said Lots and said Openlands are shown and described on the final subdivision map of Tract No. 1353, "The Santa Lucia Preserve, Phase C", filed for record on OCTOBER 24, 2000, in Volume 21 of Maps, "Cities and Towns," at Page 20, Official Record of Monterey County, California.

**END OF DOCUMENT**