

(12/2/14 draft per CDFW response)

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

**State of California
Wildlife Conservation Board
1807 13th Street, Suite 103
Sacramento, CA 95811**

Space Above Line for Recorder's Use Only

**CONSERVATION EASEMENT DEED
PARKER FLATS NORTH PARCEL**

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the _____ day of _____, 20____, by the County of Monterey ("Grantor"), in favor of the State of California ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor, the County of Monterey, a political subdivision of the State of California, is the sole owner in fee simple of certain real property consisting of approximately 134 acres, located within the former Fort Ord in the County of Monterey, State of California ("Property"). The Property is legally described and depicted in **Exhibit A** attached to this Conservation Easement and incorporated in it by this reference. The Property is a portion of Parcel E19.a.4 conveyed by the United States Government to the Fort Ord Reuse Authority (FORA) and from FORA to the County of Monterey. The County of Monterey accepted the Property by Quitclaim Deed recorded on September 11, 2014 at the Office of the Monterey County Recorder at Document No. 2014042926, which deed contains certain conditions, restrictions, and covenants that run with the land and are binding on Grantor.

B. The Property is in an unimproved natural condition and possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Property provides high quality natural upland habitat for California tiger salamander (*Ambystoma californiense*) and contains other species and habitats of

conservation importance. Individually and collectively, these wildlife and habitat values comprise the “Conservation Values” of the Property.

C. FORA is in the process of preparing an *Installation-Wide Multispecies Habitat Conservation Plan* (“Fort Ord HCP”) and preparing a Joint Exercise of Powers Agreement to establish a Joint Powers Authority to manage implementation of the Fort Ord HCP. The Fort Ord HCP would provide a comprehensive species and habitat conservation program as part of the closure, disposal, and reuse of the former Fort Ord. The Fort Ord HCP would also form the basis for the California Department of Fish and Wildlife (“CDFW”) to issue a Fort Ord Base-wide California Endangered Species Act Section 2081 Incidental Take Permit (“Fort Ord ITP”) to FORA and other permittees, including the Grantor. The Fort Ord HCP and Fort Ord ITP are collectively referred to as the Fort Ord HCP ITPs. The Property, as conserved, is expected to be part of the Fort Ord HCP’s conservation strategy and also contribute to the mitigation strategy for the Fort Ord ITP.

D. The Fort Ord HCP is anticipated to incorporate all relevant information from the Installation-Wide Multispecies Habitat Management Plan for former Fort Ord issued by the U.S. Army Corps of engineers in 1997 (“HMP”). The Fort Ord HCP is also anticipated to supersede the HMP as the primary conservation planning document for non-federal recipients of Fort Ord lands.

E. Because the Fort Ord HCP ITPs are still in progress, UCP, LLC sought its own CESA take authorization for the East Garrison Project, a development project that would have been covered by the Fort Ord HCP ITPs. This Conservation Easement provides mitigation for impacts of the East Garrison Project, as detailed in Incidental Take Permit No. [REDACTED], issued to UCP, LLC, dated [REDACTED], and its Attachments (the “ITP”), including the Management Plan which provides for habitat management of the Conservation Easement area in accordance with the Memorandum of Agreement Regarding Habitat Management on Portions of the Parker Flats Reserve at the Former Fort Ord, California (“Habitat Management MOA”). The ITP and Management Plan are intended to govern management of the Property until the Fort Ord HCP ITPs are finalized. At that time the Fort Ord HCP ITPs would govern management of the Property and this Conservation Easement would be amended as appropriate (see Recital G below).

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

G. It is anticipated that this Conservation Easement will be transferred to a different easement holder upon approval/issuance of the Fort Ord HCP ITPs. Any subsequent easement holder shall be authorized to hold a Conservation Easement pursuant to California Civil Code Section 815.3 and Government Code Sections 65965 *et seq.* (and any successor or other provision(s) then applicable), and CDFW shall be a third party beneficiary. It is also anticipated that FORA, the Joint Powers Authority, or other entity will assume responsibility for management of the Property in accordance with the Fort Ord HCP after it is adopted. Grantor and Grantee acknowledge this Conservation Easement may need to be amended to conform to the HCP, executed implementation agreement, issued Fort Ord HCP ITPs, and the terms or conditions of any template conservation easement that would be used to implement the Fort Ord HCP, implementing agreement, or Fort Ord HCP ITPs. Grantor and Grantee intend to cooperate in adopting any such amendment.

I. Grantor is authorized to grant this easement pursuant to California Government Code section 25526.6 provided that the Board of Supervisors of Grantor finds that the conveyance of the easement is in the public interest and that the interest in land conveyed will not substantially conflict or interfere with the use of the property by the County.

J. A final, approved copy of the ITP and the Management Plan, and any amendments thereto are on file at the offices of CDFW. If Grantor, or any successor or assign, requires an official copy of the ITP or the Management Plan, it should request a copy from CDFW at its address for notices listed in Section 11 of this Conservation Easement.

The Habitat Management MOA, ITP and the Management Plan, and any amendments are incorporated by this reference into this Conservation Easement as if fully set forth herein.

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

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

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

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the ITP, and the Management Plan, and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. Grantor intends that this Conservation Easement will confine the use of the Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the ITP and the Management Plan, as amended and/or superseded. Grantor and Grantee acknowledge that the Property is subject to the HMP and is anticipated to be subject to the Fort Ord HCP ITPs if and when they are adopted/issued. Nothing in this Conservation Easement is intended to supersede the Fort Ord HCP. If the Conservation Easement and the Fort Ord HCP ITPs are inconsistent with each other, Grantor and CDFW, as Grantee or as third party beneficiary, agree to amend the Conservation Easement to make it consistent with the Fort Ord HCP ITPs.

2. Grantee's Rights.

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

(a) To preserve and protect the Conservation Values of the Property subject to the terms and conditions set forth in the following documents: .

- i. The Quitclaim Deed referenced in Recital A above recorded on September 11, 2014 at the Office of the Monterey County Recorder at Document No. 2014042926 and the conditions, restrictions, and covenants set forth in the Quitclaim Deed (“Quitclaim Deed”);
- ii. The *Installation-Wide Multispecies Habitat Management Plan for the Former Fort Ord*, U.S. Army Corps of Engineers, April 1997, as amended by the Memorandum of Understanding Concerning the Proposed East Garrison/Parker

Flats Land Use Modification (Agreement #A-09555, approved by the County Board of Supervisors September 23, 2003) (“HMP”) To enter the Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the Management Plan, as amended and/or superseded, and to implement at Grantee's sole discretion Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Property and provided that Grantee shall obtain Grantor's written consent, which consent shall not be unreasonably withheld, prior to undertaking any activity for which Grantee will seek monetary reimbursement from Grantor.

(b) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement, the Management Plan, as amended and/or superseded, Habitat Management MOA, and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement, the Management Plan, as amended and/or superseded, and Habitat Management MOA.

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

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

3. Prohibited Uses.

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

(a) Unseasonable watering; use of chemical fertilizers, pesticides, biocides, herbicides, rodenticides, fungicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may

adversely affect the Conservation Values of the Property or otherwise impair or interfere with the purposes of this Conservation Easement, except the use of agricultural chemicals, weed abatement and fire protection activities as specifically provided in the Management Plan or as allowed under the HMP.

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways, designated roadways, and fuel breaks as specifically provided in the ITP and Management Plan, as amended and/or superseded, or as allowed under the HMP.

(c) Agricultural activity of any kind except grazing for vegetation management as specifically provided in the ITP and Management Plan, as amended and/or superseded, or as allowed under the HMP.

(d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing, except such activities as are consistent with the purposes of this Conservation Easement and carried out in accordance with the ITP or Management Plan, as amended and/or superseded, and HMP. For example, this Conservation Easement does not prohibit using trails on the Property for hiking, biking, and horseback riding.

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

(f) Any legal or de facto division, subdivision or partitioning of the Property, including a request for a certificate of compliance pursuant to the Subdivision Map Act (Gov. Code Section 66499.35). This Conservation Easement does not prohibit Grantee from processing and recording a subdivision map, official map, certificate of compliance, or other appropriate document under the Subdivision Map Act so that the Property may be a single legal parcel rather than a portion of a larger parcel, so long as such actions are consistent with the purposes of this Conservation Easement.

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind, except as allowed under the HMP.

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

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

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

(k) Altering the surface or general topography of the Property, including but not limited to any alterations to habitat, building roads, paving or otherwise covering the Property with concrete, asphalt or any other impervious material except for those activities authorized in this Conservation Easement, the Habitat Management MOA, any habitat management activities specified in the ITP and Management Plan as amended and/or superseded, or as allowed by the HMP.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law and in conformance with a CDFW-approved management plan or the HMP for (i) fire breaks, (ii) maintenance of existing trails or roads, or (iii) prevention or treatment of disease.

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

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

(o) Engaging in any use or activity that may violate, or may fail to comply

with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Property, or the use or activity in question.

4. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Property or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the ITP and the Management Plan as amended and/or superseded. Grantor anticipates that the Property will be included within the Fort Ord HCP's designated Habitat Management Areas (HMAs) following issuance of state and federal ITPs to FORA, its members and successors, and other permittees including the Grantor, by USFWS and CDFW, at which time this Conservation Easement may be transferred and responsibility for management of the Property may be transferred from the County to such Joint Powers Authority or other entity designated to implement the Fort Ord HCP. The County of Monterey and CDFW agree that upon request by either the County of Monterey or CDFW they shall amend any of this Conservation Easement's terms or conditions to be consistent with any final Fort Ord HCP, executed Implementation Agreement, or issued Fort Ord ITP, as well as the terms or conditions of any template conservation easement that would be used to implement the Fort Ord HCP, Implementing Agreement, or Fort Ord ITP.

5. Reserved Rights.

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

6. Grantee's Remedies.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). Notice shall be provided in accordance with Section 11 of this Conservation Easement. If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-

day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Property; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Property. Notwithstanding the above, prior to initiating litigation against Grantor, Grantee shall make a good faith effort to meet and confer with Grantor with the goal of resolving alleged violations of the Conservation Easement without resort to litigation.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Property, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

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

If at any time in the future Grantor or any subsequent transferee uses or threatens to use the Property for purposes inconsistent with this Conservation Easement then, despite the provisions of Civil Code section 815.7, the California Attorney General, any person and any entity with a justiciable interest in the preservation of this Conservation Easement has standing

as an interested party in any proceeding affecting this Conservation Easement.

(a) Costs of Enforcement.

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

(b) Grantee's Discretion.

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

(c) Acts Beyond Grantor's Control.

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

(d) Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and remain enforceable by CDFW if this Conservation Easement is transferred as contemplated by the parties in the Recitals above (see also section 13(m) below). These enforcement rights are in addition to, and do not limit, the rights of enforcement under the ITP or the Management Plan, as amended and/or superseded. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General has standing as an interested party in any proceeding affecting this Conservation Easement.

(e) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee. In order to be valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

7. Access.

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

8. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, subject to the Memorandum of Agreement Regarding Habitat Management on Portions of the Parker Flats Reserve at the Former Fort Ord and the Fort Ord HCP and any Joint Exercise of Powers Agreement or other agreement to implement the Fort Ord HCP should those documents take effect. Grantor may transfer said responsibility, cost and liability to FORA or other suitable land manger, such as a future Joint Powers Authority with responsibility to implement the Fort Ord HCP. Grantor agrees that Grantee and any third party beneficiary shall have no duty or responsibility for the ownership, operation, upkeep or maintenance of the Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor or such other entity as is responsible for managing the Property pursuant to the Fort Ord HCP and Joint Exercise of Powers Agreement or other agreement remain solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement including permits and approvals required from Grantee acting in its

regulatory capacity, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

To the extent applicable to Grantor as a political subdivision of the State, Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep the Property free from any liens, including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim to the extent due to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 4, 8 and 8(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding.

(2) Grantor shall hold harmless, protect and indemnify any third party beneficiary and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third Party Beneficiary Indemnified Party") from and against any and all liabilities, penalties, costs, losses,

damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim to the extent due to the negligence of that Third Party Beneficiary Indemnified Party or any of its employees; (ii) the obligations specified in Sections 4, 8 and 8(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Third Party Beneficiary Indemnified Party by reason of any such Claim to which the indemnification in this Section 8(b)(2) applies, then at the election of and upon written notice from the Third Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third Party Beneficiary Indemnified Party or reimburse Third Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(3) As indicated in the Recitals above, it is anticipated that this Conservation Easement will be transferred to a different easement holder upon approval of the Fort Ord HCP, USFWS issuance of the Section 10(a)(1)(B) incidental take permit, and CDFW issuance of a Fort Ord Base-wide California Endangered Species Act Section 2081 Incidental Take Permit to FORA, its members and other permittees, including the Grantor. The County of Monterey and CDFW agree that upon request by either the County of Monterey or CDFW they shall amend any of this Conservation Easement's terms or conditions, including but not limited to this section 8(b) Hold Harmless, to be consistent with any final Fort Ord HCP, executed Implementation Agreement, or issued Fort Ord ITP, as well as the terms or conditions of any template conservation easement that would be used to implement the Fort Ord HCP, Implementing Agreement, or Fort Ord ITP.

(c) Extinguishment.

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

(d) Condemnation.

This Conservation Easement is a "wildlife conservation easement" acquired by a public agency, the condemnation of which is prohibited except as provided in

California Fish and Game Code Section 1348.3. If the Conservation Easement is condemned, the net proceeds from the condemnation shall be used in compliance with Government Code section 65966(j).

9. Transfer of Conservation Easement or Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee only to an entity or organization authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Sections 65965 *et seq.* (and any successor or other provision(s) then applicable), or the laws of the United States, including but not limited to the Fort Ord HCP Joint Powers Authority. Grantee shall require the assignee to record the assignment in the county where the Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 10. Upon transfer of this Conservation Easement by CDFW, it shall become a third-party beneficiary to this Conservation Easement but retain the same ability to enforce this Conservation Easement as if it continued to be the Grantee.

(b) Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the ITP, the Management Plan, as superseded and/or amended. Grantor further agrees to give written notice to Grantee of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it), the ITP and the Management Plan, as amended and/or superseded. The failure of Grantor or Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 10.

10. Merger.

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

11. Notices.

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

To Grantor: County of Monterey
168 West Alisal Street, 2d Floor
Salinas, CA 93901
Attn: Director of County Resource Management Agency

To Grantee: Department of Fish and Wildlife
Central Region
1234 East Shaw Avenue
Fresno, CA 93710
Attn: Regional Manager

With a copy to: Department of Fish and Wildlife
Office of General Counsel
1416 Ninth Street, 12th Floor
Sacramento, CA 95814-2090
Attn: General Counsel

or to such other address a party shall designate by written notice to Grantor and Grantee. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight

courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

12. Amendment.

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

13. Additional Provisions.

(a) Controlling Law.

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

(b) Liberal Construction.

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

(c) Severability.

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

(d) Entire Agreement.

This document (including its exhibits and the ITP and the Management Plan, as amended and/or superseded, incorporated by reference in this document) sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all

prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 12.

(e) No Forfeiture.

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

(f) Successors.

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

(g) Termination of Rights and Obligations.

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

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) Other than as mentioned in the next sentence, Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Property, or transported to or from or affecting the Property. Grantor and Grantee are aware that the deed conveying the Property from FORA to the County indicates the presence of Hazardous Materials and other potential environmental contaminants on the Property and as a result Grantor's representation and warranty is qualified to reflect the information in the deed.

(2) Without limiting the obligations of Grantor under Section 8 (b),

and as between Grantor and Grantee only so as to not undo or in any way limit any other agreement or arrangement Grantor may have with another entity pertaining to Hazardous Materials liability, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 8 (b) (1)) from and against any and all Claims (defined in Section 8 (b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding.

(3) Without limiting the obligations of Grantor under Section 8(b), and as between Grantor and any Third Party Beneficiary only so as to not undo or in any way limit any other agreement or arrangement Grantor may have with another entity pertaining to Hazardous Materials liability, Grantor hereby releases and agrees to indemnify, protect and hold harmless any Third Party Beneficiary Indemnified Party (defined in Section 8(b)(2)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except that this release and indemnification shall be inapplicable to a Third Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third Party Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against the Third Party Beneficiary Indemnified Party by reason of any such Claim, Grantor shall, at the election or upon written notice form the Third Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the

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

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

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

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

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

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

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

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

human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and any third party beneficiary that activities upon and use of the Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(7) As indicated in the Recitals above, it is anticipated that this Conservation Easement will be transferred to a different easement holder upon approval of the Fort Ord HCP, USFWS issuance of the Section 10(a)(1)(B) incidental take permit, and CDFW issuance of a Fort Ord Base-wide California Endangered Species Act Section 2081 Incidental Take Permit (ITP) (collectively, the “Fort Ord HCP ITPs) to FORA, its members and other permittees, including the Grantor. The County of Monterey and CDFW agree that upon request by either the County of Monterey or CDFW they shall amend any of this Conservation Easement’s terms or conditions, including but not limited to this section 13(i) No Hazardous Materials Liability, to be consistent with any final HCP, executed Implementation Agreement, or issued ITP, as well as the terms or conditions of any template conservation easement that would be used to implement the HCP, Implementing Agreement, or ITP.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of fee simple title to the Property and that the Property is not subject to any other conservation easement, except Grantor and Grantee acknowledge that the Property is subject to the conditions, restrictions, and covenants set forth in the Quitclaim Deed including but not limited to the reversionary interest held by the United States Government with respect to implementation of the HMP. The interests specified in the Quitclaim Deed with respect to this Property, which is a part of parcel E19.a.4 as specified in the Quitclaim Deed, run with the land and are not subordinate to this Conservation Easement.

(k) Additional Interests.

Grantee acknowledges that this Property is subject to conditions, restrictions, and covenants specified in the Quitclaim Deed with respect to Parcel E.19a.4, which predate this Conservation Easement and are not modified by this Conservation Easement. Subject to that qualification, Grantor shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a “Transfer”) any mineral, air, or water right or any water associated with the Property, without

first obtaining the written consent of Grantee. Such consent may be withheld if Grantee reasonably determines that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Property. This Section 13(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Property that is subject to this Conservation Easement and complies with Section 9. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee.

(l) Recording.

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

(m) Third Party Beneficiary.

Grantor and Grantee acknowledge that upon transfer of this Conservation Easement by the California Department of Fish and Wildlife as contemplated in the Recitals above, the California Department of Fish and Wildlife will be a third party beneficiary of this Conservation Easement with the right of access to the Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor's obligations under Section 13, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) Exhibits.

The following Exhibit(s) referenced in this Conservation Easement are attached to and incorporated by reference in this Conservation Easement:

EXHIBIT A – Legal Description of Property

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

GRANTOR: [*Notarization Required*]

[Insert full legal name of Grantor]

BY: _____

NAME: _____

TITLE: _____

DATE: _____

[NOTE: ATTACH EXHIBIT(S) AND FORM OF NOTARY ACKNOWLEDGMENT]

CERTIFICATE OF ACCEPTANCE

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

GRANTEE:

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

By: _____

Title: _____

Authorized Representative

Date: _____