

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Yolo Habitat Conservancy
PO Box 2202
Woodland, CA 95776
Attention: Executive Director

WITH A COPY TO:
State of California
Department of Fish and Wildlife
Attn: Habitat Conservation Planning Branch
Post Office Box 944209
Sacramento, CA 94244-2090

U.S. Fish and Wildlife Service
Sacramento Field Office
Attn: Field Supervisor
2800 Cottage Way, Room W-2605
Sacramento, CA 95825

Exempt from recording fees (Cal. Gov. Code § 27383)

APNs: 033-210-012 and 033-210-013

Space Above Line for Recorder's Use Only

DEED OF CONSERVATION EASEMENT AND PERMANENT RESTRICTIONS ON USE

THIS DEED OF CONSERVATION EASEMENT AND PERMANENT RESTRICTIONS ON USE (the “**Conservation Easement**”) is made this ____ day of _____, 2025, by Lila Land, Inc.(“**Landowner**”), in favor of and the Yolo County Natural Community Conservation Plan Joint Powers Agency, a California Joint Powers Agency (“**Easement Holder**” or “**Yolo Habitat Conservancy**”). Landowner and Easement Holder are also referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

A. Landowner is the owner in fee simple of certain real property containing approximately 321.9 acres, located in the County of Yolo, State of California, designated Assessor’s Parcel Numbers 033-210-012 and 033-210-013. Said real property is more particularly described and depicted in **Exhibit A** attached hereto and incorporated herein by this reference (the “**Property**”). Landowner intends to grant a Conservation Easement over 316.884 acres of the Property, as described and depicted in **Exhibit A.1** (the “**Easement Area**”).

B. The Easement Area possesses wildlife and habitat values of great importance to Easement Holder, the people of the State of California and the people of the United States. The Easement Area will provide high quality habitat for western burrowing owl (*Athene cunicularia*), Swainson’s hawk (*Buteo swainsoni*), and white-tailed kite (*Elanus leucurus*), and tricolored blackbird (*Agelaius tricolor*) within cultivated lands seminatural community and wetlands natural community lands. Individually and collectively, these wildlife and habitat values comprise the “**Conservation Values**” of the Easement Area. The status of the Conservation Values, including the agricultural uses that support these Conservation Values, as well as other uses and improvements within the Easement Area at the time of the execution of the Conservation Easement are described in the “**Baseline Documentation Report**”. Both Parties acknowledge, as described in **Exhibit B** attached hereto and incorporated herein by reference, that each has received a copy of the Baseline Documentation Report, and that it accurately represents the Easement Area as of the date of the Conservation Easement.

C. This Conservation Easement is being executed and delivered to satisfy certain habitat conservation requirements set forth in the following documents (collectively, the “**Yolo HCP/NCCP Instruments**”):

- a. The Yolo Habitat Conservation Plan/Natural Community Conservation Plan (“**Yolo HCP/NCCP**”), dated April 2018, prepared by the County of Yolo (“**County**”), City of Davis (“**Davis**”), City of West Sacramento (“**West Sacramento**”), City of Winters (“**Winters**”), and City of Woodland (“**Woodland**”), and approved by the United States Fish and Wildlife Service (“**USFWS**”) under Section 10 of the federal Endangered Species Act of 1973 (16 U.S.C. Section 1531 *et seq.*, as it may be amended from time to time) (“**ESA**”), and by the California Department of Fish and Wildlife (“**CDFW**”) under the California Natural Community Conservation Planning Act (California Fish and Game Code Section 2800 *et seq.*, as it may be amended from time to time) (“**NCCPA**”); and
- b. Implementing Agreement for the Yolo HCP/NCCP (the “**Implementing Agreement**”), dated January 10, 2019, by and among USFWS and CDFW (collectively, the “**Wildlife Agencies**”), the Yolo County Habitat/Natural Community Conservation Plan Joint Powers Agency (“**Yolo Habitat Conservancy**”), County, Davis, West Sacramento, Winters, and Woodland (collectively, the Yolo Habitat Conservancy, County, Davis, West Sacramento, Winters, and Woodland, are referred to herein as “**Permittees**”); and
- c. The federal incidental take permit issued by USFWS to Permittees for the Yolo HCP/NCCP pursuant to Section 10 of ESA; and
- d. The state NCCP permit issued by CDFW to Permittees for the Yolo HCP/NCCP pursuant to the NCCPA.

D. The State of California recognizes the public importance and validity of conservation easements by enactment of California Civil Code Section 815 *et seq.*

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

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

G. The Easement Holder is a California joint powers agency, and authorized to hold conservation easements pursuant to, among other provisions of law, California Civil Code Section 815.3.

H. The Yolo Habitat Conservancy serves as the “**Implementing Entity**” of the Yolo HCP/NCCP, and as such, is responsible for overseeing implementation of the Yolo HCP/NCCP Instruments, including carrying out planning and design, habitat restoration, monitoring, adaptive management programs, and periodic coordination with the Wildlife Agencies. The Yolo HCP/NCCP Instruments confer separate rights and obligations on the Implementing Entity that will survive any future transfer of the Conservation Easement.

I. Following recordation of this Conservation Easement, the Easement Area will be incorporated into the Reserve System (as such term is defined in the Yolo HCP/NCCP (“**Reserve System**”)) and will count toward the land acquisition requirements set forth in the Yolo HCP/NCCP.

J. The Yolo Habitat Conservancy has developed a management plan, known as “Lucky Land Site-Specific Management Plan,” that applies to the Easement Area (the “**Management Plan**”) incorporated herein by reference. The Management Plan has been developed in accordance with the applicable requirements of the Yolo HCP/NCCP Instruments and the Yolo HCP/NCCP Cultivated Lands Reserve Unit Management Plan. The Management Plan also includes provisions that preserve and maintain the productive agricultural use of the Easement Area to the fullest extent such use is compatible with the preservation of its Conservation Values.

Landowner and Easement Holder recognize that changes (e.g., in agricultural practices and technologies, weather cycles, natural resource management technologies, conservation practices) may dictate changes in the management of the Easement Area, consistent with the purposes of this Conservation Easement and the Yolo HCP/NCCP Instruments. The Management Plan may be revised from time to time only with the written approval of both the Landowner and Easement Holder, so long as the revisions are consistent with the requirements of the Yolo HCP/NCCP Instruments and the Yolo HCP/NCCP Cultivated Lands Reserve Unit Management Plan. The final, approved copy of the Management Plan, and any amendments thereto approved by the Parties, shall be kept on file at the Yolo Habitat Conservancy.

AGREEMENT

NOW, THEREFORE, in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the laws of the State of California, including California Civil Code Section 815 *et seq.*, Landowner hereby voluntarily grants and conveys to Easement Holder, its successors and assigns, a conservation easement forever in, on, over and across the Easement Area, subject to the terms and conditions set forth herein, restricting in perpetuity the uses which may be made of the Easement Area, and the Parties agree as follows:

1. **Purposes.** The purposes of this Conservation Easement are to ensure the Easement Area will be retained forever in its enhanced agricultural or otherwise functional habitat condition as contemplated by the Yolo HCP/NCCP and the site-specific Management Plan, and to prevent any use of the Easement Area that will impair or interfere with the Conservation Values of the Easement Area. Landowner intends that this Conservation Easement will confine the use of the Easement Area to such activities that are consistent with the purposes set forth herein. The Parties agree that the protection of the Conservation Values may be achieved through the continuation of existing compatible agricultural and other uses on the Easement Area provided that the uses preserve the Easement Area's covered species and their associated functional habitats as described in the Baseline Documentation Report and consistent with the terms and conditions of this Conservation Easement and the Management Plan.

2. **Reserved Rights.** Landowner reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Landowner's ownership of the Easement Area, including the right to engage in or permit or invite others to engage in agricultural activities, including lawful and routine agricultural and ranching practices, so long as such activities are consistent with the purposes of this Conservation Easement, as set forth above in Section 1, the Management Plan, and do not impair the Conservation Values.

(a) **Development Envelope.** The Easement Area includes a 5.473-acre Development Envelope, as shown and described in **Exhibit A.1**. All structures and activities within the Development Envelope are subject to the provisions of the Conservation Easement except where explicitly stated otherwise and allowable uses within the Development Envelope cannot interfere with the protection or enhancement of the Conservation Values on the portions of the Easement Area that are not included in the Development Envelope.

3. **Rights of Easement Holder.** To accomplish the purposes of this Conservation Easement, Landowner hereby grants and conveys the following rights to Easement Holder:

- (a) To preserve and protect the Conservation Values of the Easement Area;
- (b) To restore or enhance the Conservation Values with the consent of the Landowner in accordance with the Management Plan and the terms and conditions of this Conservation Easement;

- (c) To enter upon the Easement Area, no less than once annually, at reasonable times to monitor compliance with and otherwise enforce the terms of this Conservation Easement or to carry out, at Easement Holder's sole cost and expense, scientific research and management and monitoring requirements applicable to the Easement Area that are set forth in the Management Plan and in Yolo HCP/NCCP Chapters 6 and 7, provided that Easement Holder shall not unreasonably interfere with Landowner's allowed uses and quiet enjoyment of the Easement Area. Except where there is an imminent threat to the Easement Area or its Conservation Values, Easement Holder and its employees, contractors or agents will only enter the Easement Area at reasonable times and with at least forty-eight (48) hours advance notice to Landowner in writing or by phone. The Landowner may waive these requirements in whole or in part by written notice to Easement Holder;
- (d) To prevent any activity on or use of the Easement Area that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Easement Area 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;
- (e) To require that all mineral, air, and water rights that Easement Holder deems necessary to preserve and protect the Conservation Values of the Easement Area shall remain a part of and be put to beneficial use upon the Easement Area, consistent with the purposes of this Conservation Easement; and
- (f) All present and future development rights and wind power rights appurtenant to, allocated, implied, reserved or inherent in the Easement Area; 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.

4. **Prohibited Uses.** Any activity on or use of the Easement Area that adversely affects the purpose of this Conservation Easement, as set forth in Section 1, above, is prohibited except as may be otherwise expressly provided in this Conservation Easement or in the Management Plan. Without limiting the generality of the foregoing, the Landowner, Landowner's personal representatives, heirs, successors, assigns, employees, agents, lessees, licensees and invitees are expressly prohibited from doing or allowing any of the following uses and activities on the Easement Area, unless, and then only to the extent that, a generally prohibited activity set forth below is a management practice, lawful and routine agricultural practice, or other activity that does not impair the Conservation Values of the Easement Area and is allowed in the Management Plan.

- (a) Unseasonal watering activities that promote the establishment of invasive species that act as predators of covered species, impair the habitat quality of the site for covered species, or otherwise impair the Conservation Values of the site;

- (b) Use of fertilizers, pesticides, biocides, herbicides or other chemicals except as allowable under applicable law and as provided in the Management Plan in connection with the agricultural use of the Easement Area or other activities or uses that are authorized or reserved hereunder. Under no circumstance are rodenticides allowed to be used within the Easement Area unless specifically authorized in writing by the Easement Holder and the Wildlife Agencies due to unforeseen or exceptional circumstance, such as proclamation of a local state of emergency;
- (c) Use of heavy equipment, off-road vehicles, or other motorized vehicles, except on existing roadways or use of equipment or vehicles as required to conduct any management practice, lawful and routine agricultural practice, or other activity as provided for in the Management Plan. The long-term storage of wrecked, dismantled, or inoperative nonagricultural vehicles and industrial or commercial equipment [except within the Development Envelope] is prohibited;
- (d) Except as set forth in the Management Plan or within the Development Envelope, any construction, reconstruction, relocation or placement of any road, building, billboard, or sign, or any other structure or improvement of any kind, or altering the surface or general topography of the Easement Area without written approval by the Easement Holder and Wildlife Agencies;
- (e) Vineyards, orchards, nurseries, intensive livestock use (e.g., dairy, feedlot), and other agricultural uses except as allowed in the Management Plan;
- (f) Commercial, industrial, residential, or other institutional uses except within the Development Envelope;
- (g) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials, except in connection with lawful and routine agricultural practices (e.g., tilling, soil amendments, laser leveling) and other uses that do not impair the Conservation Values of the Easement Area and are allowed in the Management Plan;
- (h) Planting, introduction, or dispersal of invasive plant or animal species;
- (i) Filling, dumping, excavating, draining, dredging, mining, drilling, removing, or exploring for or extracting minerals, loam, soil, sands, gravel, rocks, or other material on or below the surface of the Easement Area, or granting or authorizing any surface entry for any exploring for or extracting minerals. This provision is not intended to prohibit lawful and routine agricultural practices (e.g., tilling, soil amendments, laser leveling) and other uses that are associated with site management activities, do not impair the Conservation Values of the Easement Area, and are allowed in the Management Plan;

- (j) Removing, destroying, or cutting of trees, shrubs, or other vegetation except as allowed in the Management Plan;
- (k) Manipulating, impounding, or altering any water course, body of water, or water circulation on the Easement Area, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or subsurface waters, except as needed to conduct a management practice, lawful and routine agricultural practice, or other activity that does not impair the Conservation Values of the Easement Area and is allowed in the Management Plan;
- (l) Without the prior written consent of Easement Holder, which Easement Holder may reasonably withhold or condition, transferring, encumbering, selling, leasing or otherwise separating the mineral, air or water rights for the Easement Area; 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 Easement Area, 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 Easement Area; and (iv) any water from wells that are in existence or may be constructed in the future on the Easement Area. In determining whether to consent to a short-term transfer (i.e. a transfer of water from the Property for a period of not more than one year as defined by California law) or other change relating to water rights under this subsection (k), the Easement Holder shall evaluate whether the transfer will, during the transfer period, preclude the Landowner from maintaining the Conservation Values, for the covered species that the Easement Area is managed to benefit at the time of the proposed transfer. This determination shall be subject to approval by the Wildlife Agencies and the Yolo Habitat Conservancy;
- (m) All Subdivisions, including but not limited to the Subdivision of rangeland, open space, and other types of land not used for the active cultivation of crops. The fee transfer of less than the entire Easement Area is also prohibited to the extent such a transfer would constitute a subdivision of land under California law, including but not limited to the Subdivision Map Act; and
- (n) Any activity or use that may violate or fail to comply with relevant federal, state, or local laws, regulations, or policies applicable to Landowner, the Easement Area, or the activity or use in question.

5. **Unlawful Entry.** Landowner shall undertake all reasonable actions to prevent the unlawful entry and trespass on the Easement Area by persons whose uses or activities may degrade

or harm the Conservation Values or are otherwise inconsistent with the purposes of this Conservation Easement. Reasonable actions to prevent trespass and related activities may include, but are not limited to, posting “No Trespassing” signs, constructing barriers and gates, and good faith efforts to exclude any person who is not a designated representative of Landowner, Easement Holder, or others with lawful access rights. In addition, Landowner shall undertake all necessary actions to perfect the rights of Easement Holder under Section 3 of this Conservation Easement.

6. **Easement Holder’s Remedies.** If Easement Holder or any Third-Party Beneficiary (as defined in **Section 6(d)** below) determines there is a violation of the terms of this Conservation Easement or that such violation is threatened, written notice of such violation and a demand for corrective action sufficient to cure the violation shall be given to Landowner, with a copy provided to Easement Holder and each Third-Party Beneficiary. The notice of violation shall specify the measures the Landowner must take to cure the violation. If Landowner fails to cure the violation within thirty (30) days after receipt of written notice and demand from Easement Holder or any Third-Party Beneficiary, as applicable; or if the cure reasonably requires more than thirty (30) days to complete and Landowner fails to begin the cure within such thirty (30) day period; or Landowner fails to continue diligently to complete the cure, Easement Holder or any Third-Party Beneficiary may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to recover any damages to which Easement Holder and the Third-Party Beneficiaries may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values, 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, or for legal or other equitable relief, including, but not limited to, the restoration of the Easement Area to the condition in which it existed prior to any such violation or injury, or to otherwise enforce this Conservation Easement. Without limiting Landowner's liability therefor, any damages recovered may be applied to the cost of undertaking any corrective action on the Easement Area at the election of the party receiving such damages.

If Easement Holder in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values, Easement Holder and/or any Third-Party Beneficiary may pursue its remedies under this section without prior notice to Landowner or without waiting for the period provided for cure to expire. The rights of Easement Holder and the Third-Party Beneficiaries under this section apply equally to actual or threatened violations of the terms of this Conservation Easement. Landowner agrees that Easement Holder’s and Third-Party Beneficiaries’ remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Easement Holder and/or any Third-Party Beneficiary shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Easement Holder and the Third-Party Beneficiaries may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. 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 Easement Holder or any Third-Party Beneficiary to discover a violation or to take immediate legal action in response to such action shall not bar such party from taking legal action at a later time.

If at any time in the future Landowner 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, and the Third-Party Beneficiaries each has standing as an interested party in any proceeding affecting this Conservation Easement.

(a) **Costs of Enforcement.** Any reasonable costs incurred by the Easement Holder or any Third-Party Beneficiary, where it is the prevailing party, in enforcing the terms of this Conservation Easement against the Landowner, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by Landowner's negligence or breach of this Conservation Easement shall be borne by Landowner. In any action where an agency of the United States is a party, the right to recover fees and costs shall be governed by federal law.

(b) **Enforcement Discretion.** Enforcement of the terms of this Conservation Easement against Landowner shall be at the respective discretion of Easement Holder and each of the Third-Party Beneficiaries, and any forbearance by any such party to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver by such party of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of such party's rights under this Conservation Easement. No delay or omission by Easement Holder or any Third-Party Beneficiary in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

(c) **Acts Beyond Landowner's Control.** Nothing contained in this Conservation Easement shall be construed to entitle Easement Holder or any Third-Party Beneficiary to bring any action against Landowner for any injury to or change in the Property resulting from (i) any natural cause beyond Landowner's control, including, without limitation, fire not caused by Landowner, flood, storm, and earth movement, or any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (ii) acts by Easement Holder or any Third-Party Beneficiary or employees of Easement Holder or any Third-Party Beneficiary; or (iii) acts by persons that entered the Easement Area unlawfully or by trespass whose activities degrade or harm the Conservation Values of the Easement Area or whose activities are otherwise inconsistent with this Conservation Easement where Landowner has undertaken all reasonable actions to prevent such activities.

(d) **Third-Party Beneficiary Rights.** The parties intend for Yolo Habitat Conservancy (during any such period, if any, that Yolo Habitat Conservancy does not also constitute Easement Holder), USFWS and CDFW (collectively, "**Third-Party Beneficiaries**") to be third-party beneficiaries of this Conservation Easement. All rights and remedies conveyed to Easement Holder under this Conservation Easement shall extend to and are enforceable by each of the Third-Party Beneficiaries in accordance with the terms hereof. Landowner and Easement Holder acknowledge that, as Third-Party Beneficiaries of this Conservation Easement, the Third-Party Beneficiaries shall have the same rights of access to the Easement Area granted to Easement Holder in **Section 3** above, and with rights to enforce all of the provisions of this Conservation Easement. If at any time in the future Landowner uses, allows the use, or threatens to use or allow use of, the Easement

Area for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and each Third-Party Beneficiary has standing as an interested party in any proceeding affecting the Conservation Easement.

These rights are in addition to, and do not limit, the Easement Holder's obligations under federal, state, and local laws and regulations relating to the protection of biological resources and the environment. In addition, if the Wildlife Agencies reasonably determines that the Easement Area is not being held, monitored, or stewarded for conservation purposes in the manner specified in this Conservation Easement, the Yolo HCP/NCCP Instruments, or the Management Plan, the Conservation Easement shall revert to the State of California or another entity as described in California Government Code Section 65967(e), and subject to approval as set forth therein.

7. **Public Access.** Nothing contained in this Conservation Easement gives or grants to the public an independent right to enter upon or use the Easement Area or any portion thereof. Nor shall this Conservation Easement extinguish any existing public right to enter upon or use the Easement Area, provided said right is disclosed to the Easement Holder and documented in the Management Plan and/or an exhibit to this Conservation Easement.

8. **Costs and Liabilities.** Except for those specific obligations to be undertaken by Easement Holder under Section 3 above, or in the Management Plan, Landowner shall retain all responsibilities and shall bear all costs and liabilities of any kind related to Landowner's ownership, operation, upkeep, management, and maintenance activities on and relating to the Easement Area as well as the Easement Area itself. Landowner agrees that neither the Easement Holder nor Third Party Beneficiaries shall have any duty or responsibility for the operation, upkeep, or maintenance of the Easement Area, the monitoring of hazardous conditions thereon, or the protection of Landowner, the public or any third parties from risks relating to conditions on the Easement Area. Landowner shall remain responsible for obtaining any applicable governmental permits and approvals for any activity or use allowed on the Easement Area under this Conservation Easement, and Landowner shall undertake all allowed activities and uses of the Easement Area in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements. Landowner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Easement Area by competent authority (collectively "**taxes**"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Easement Holder with satisfactory evidence of payment upon request.

9. **Indemnification.**

(a) **Indemnification by Landowner.** Landowner shall hold harmless, protect and indemnify Easement Holder and the Third-Party Beneficiaries, and their respective members, directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "**Landowner Indemnified Party**" and, collectively, the "**Landowner Indemnified Parties**") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' and experts' fees and costs), 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 Easement Area, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, regardless of cause, except that this indemnification shall be inapplicable to Landowner Indemnified Parties with respect to any Claim due solely to the negligence of Landowner Indemnified parties; (ii) the obligations specified in Sections 5 and 8; and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Landowner Indemnified Parties by reason of any such Claim, Landowner shall, at the election of and upon written notice from Landowner Indemnified Parties, defend such action or proceeding by counsel reasonably acceptable to the Landowner Indemnified Parties or reimburse Landowner Indemnified Parties for all charges incurred for services of the California Attorney General in defending the action or proceeding.

(b) **Indemnification by Easement Holder.** Easement Holder shall hold harmless, protect, and indemnify Landowner and the Third-Party Beneficiaries, and their respective members, directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each, an “**Easement Holder Indemnified Party,**” and collectively, the “**Easement Holder Indemnified Parties**”) from and against any and all Claims arising from or in any way connected with: (a) the activities of Easement Holder on the Easement Area, including without limitation the Easement Holder’s performance of management and monitoring activities set forth in the Management Plan; (b) breach by Easement Holder of any provision of this Conservation Easement; (c) any injury to or the death of any person, or physical damage to any Easement Area occurring on or about the Easement Area resulting from any act, omission, condition, or other matter related to, an activity on, or use of, the Easement Area by Easement Holder, including without limitation, those performed under the Management Plan, unless due solely to the negligence or willful misconduct of the Easement Holder Indemnified Party; and (d) any violation of, or failure to comply with, any state, federal or local law, regulation or requirement, by Easement Holder in any way affecting, involving or relating to the Easement Area. If any action or proceeding is brought against any of the Easement Holder Indemnified Parties by reason of any such Claim, Easement Holder shall, at the election of and upon written notice from Landowner, defend such action or proceeding by counsel reasonably acceptable to the Easement Holder Indemnified Party.

10. **Extinguishment.** The Conservation Easement created by this agreement constitutes a property right. It is the Parties’ intention that the terms and conditions of this Conservation Easement shall be carried out in perpetuity. Liberal construction is expressly required for purposes of effectuating the Conservation Easement in perpetuity, notwithstanding economic hardship or changed conditions of any kind. If circumstances arise in the future that render the 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 commenced after written notice of the anticipated initiation of proceedings is provided in the same manner, and to the same entities, as set forth in Section 12(a), below. In addition, no such extinguishment shall affect the value of Yolo Habitat Conservancy’s interest in the Easement Area, and if the Easement Area, or any interest therein, is sold, exchanged or taken by power of

eminent domain after such extinguishment, the Yolo Habitat Conservancy shall be entitled to receive the fair market value of the Conservation Easement at the time of such extinguishment. If such extinguishment occurs with respect to fewer than all acres of the Easement Area, the amounts described above shall be calculated based on the actual number of acres subject to extinguishment.

11. **Condemnation.** This Conservation Easement is a “conservation easement” as defined in California Code of Civil Procedure section 1240.055(a)(1) and constitutes “property appropriated to public use” as defined in California Code of Civil Procedure section 1240.055(a)(3). A person authorized to acquire property for public use by eminent domain shall seek to acquire the Property, if at all, only as provided in Code of Civil Procedure § 1240.055. CDFW is a public entity that imposed conditions of approval on a project that were satisfied, in whole or part, by the creation of this Conservation Easement. If any person seeks to acquire the Property for public use, Easement Holder shall provide notice to CDFW and comply with all obligations of the holder of a conservation easement under Code of Civil Procedure § 1240.055. If the Conservation Easement is condemned, the net proceeds from condemnation of the Conservation Easement interest shall be distributed according to Paragraph 10 above and, as applicable, used in compliance with Government Code § 65966(j).

12. **Transfer of Conservation Easement.**

(a) This Conservation Easement may be assigned or transferred by Easement Holder upon written approval of Third-Party Beneficiaries which approval shall not be unreasonably withheld or delayed; provided, that Easement Holder shall give the Third-Party Beneficiaries and Landowner at least sixty (60) calendar days prior written notice of the proposed assignment or transfer. Easement Holder may transfer its rights under this Conservation Easement only to an entity or organization: (a) authorized to acquire and hold conservation easements pursuant to California law, including Civil Code Section 815.3 and California Government Code Section 65967(c) (and any successor or other provisions applicable at the time of the proposed transfer), or the laws of the United States; (b) otherwise reasonably acceptable to the Third-Party Beneficiaries. Easement Holder shall require the transferee to record the conveyance in the Official Records of the County where the Easement Area is located. The failure of Easement Holder 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 shall be subject to the requirements of **Section 16** below.

13. **Transfer of Easement Area.** Landowner agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Landowner divests itself of any interest in all or any portion of the Easement Area, including, without limitation, a leasehold interest. For all transfers except routine and customary agricultural leases, Landowner further agrees to give written notice to Easement Holder and the Third-Party Beneficiaries of the intent to transfer any interest at least thirty (30) calendar days prior to the date of such transfer. Easement Holder and the Third-Party Beneficiaries shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given actual notice of the covenants, terms, conditions and restrictions of this Conservation Easement. The failure of Landowner 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 successor in interest or lessor of

Landowner, by acceptance of a deed, lease, or other document purporting to convey an interest in the Easement Area, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Conservation Easement.

14. **Transfer Fee Easement Holder.** Landowner and Easement Holder recognize and agree that any transfer of the Easement Area and any division of ownership will result in an additional burden on the monitoring and enforcement responsibilities of Easement Holder. Therefore, each transfer of the Easement Area (except for a Permitted Transfer) shall require Landowner's payment of a transfer fee to Easement Holder's easement stewardship fund. The fee shall be equal to the greater of three-fourths of one percent (0.75%) of the fair market value of the property transferred or twenty-five hundred dollars (\$2,500.00), whichever is greater. Easement Holder may reduce or waive this fee at its sole discretion. For purposes of this Easement, "**Permitted Transfer**" shall mean any of the following: (i) a transfer without consideration (e.g. an inter vivos or testamentary gift), (ii) a transfer to an entity in which Landowner continues to retain both at least fifty-one percent (51%) of the voting rights in, and direct control of and participation in, such entity, or (iii) any transfer of any portion of the Property made as a result of condemnation or eminent domain proceedings, including any negotiated transfer made to an entity with condemning authority in response to actual or threatened condemnation proceedings by that entity. Landowner and Easement Holder agree to execute and record a "NOTICE OF PAYMENT OF TRANSFER FEE REQUIRED" in accordance with California Civil Code Section 1098.5 respecting the transfer fee. The transfer fee shall be the obligation of the seller of the Property and shall be paid to Easement Holder at the address for giving notices to Easement Holder as set forth hereinbelow.

15. **Notices.** Any notice, demand, request, consent, approval, or communication that Landowner, Easement Holder, or any Third-Party Beneficiary desires or is required to give to the others shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class mail, postage fully prepaid, addressed as follows:

To Landowner: Lila Land, Inc.
 Attn:
 Address
 City, State
 Attn:
 Telephone:

To Easement Holder: Yolo Habitat Conservancy
 Attn: Executive Director
 P.O. Box 2202
 Woodland, CA 95776
 (530) 723-5504

To Third-Party Beneficiaries:

United States Fish and Wildlife Service
Attn: Sacramento Valley Division Supervisor
2800 Cottage Way, Room W-2605

*Sacramento, CA 95825
Telephone: (916) 414-6600*

*California Department of Fish and Wildlife
Attn: Regional Manager
1701 Nimbus Road
Rancho Cordova, CA 95670
Telephone: (916) 358-2900*

With a copy to: *California Department of Fish and Wildlife
Office of the General Counsel
Attn: General Counsel
1416 Ninth Street, 12th Floor
Sacramento, California 95814-2090
Telephone: 916-445-8448*

or to such other address as a party shall designate by written notice to the others. 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, five (5) calendar days after deposit into the United States mail.

16. **Amendment.** This Conservation Easement may not be amended, modified or otherwise changed in any manner, except by a written amendment executed by the Landowner and the Easement Holder, or their successors in interest, in their sole discretion. Any such amendment shall be subject to the prior written consent of the Third-Party Beneficiaries. Any amendment that is not made in strict accordance with the consent and other requirements of this Section shall be void and without effect. Any such amendment shall be consistent with the purposes of the Conservation Easement and shall not affect the perpetual duration of the Conservation Easement. Any such amendment must refer to this Conservation Easement by reference to its recordation data and must be recorded in the Official Records of the County where the Easement Area is located.

17. **Merger.** The doctrine of merger shall not operate to extinguish the Conservation Easement if the Conservation Easement and the Easement Area become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, a replacement conservation easement, with a new Easement Holder identified by the Yolo Habitat Conservancy and approved by the Third-Party Beneficiaries, containing the same protections embodied in this Conservation Easement shall be recorded against the Easement Area.

18. **No Hazardous Materials Liability.** Landowner represents and warrants that Landowner has no knowledge or notice of any Hazardous Materials (as defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Easement Area, or transported to or from or affecting the Easement Area. Landowner further represents, warrants and covenants that activities upon and use of the Easement Area by Landowner, its agents, employees, invitees and contractors shall comply

with all Environmental Laws (as defined below) in using the Easement Area and that Landowner shall keep the Easement Area free of any material environmental defect, including, without limitation, contamination from Hazardous Materials (as defined below). Without limiting the obligations of Landowner under this Conservation Easement, including **Section 9(a)**, Landowner hereby releases and agrees to indemnify, protect and hold harmless the Landowner Indemnified Parties (as defined in **Section 9(a)**) from and against any and all Claims (as defined in **Section 9(a)**) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from, or about or otherwise associated with the Easement Area at any time, except any Hazardous Materials placed, disposed or released by Landowner Indemnified Parties, or their employees or agents. This release and indemnification includes, without limitation, Claims for (a) injury to or death of any person or physical damage to any Easement Area; and (b) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (as defined below). If any action or proceeding is brought against any of the Landowner Indemnified Parties by reason of any such Claim, Landowner shall, at the election of and upon written notice, defend such action or proceeding by counsel reasonably acceptable to the Landowner Indemnified Party including reimbursing CDFW for all charges incurred for services of the California Attorney General in defending the action or proceeding.

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 Easement Holder or the Third-Party Beneficiaries any of the following:

- (a) The obligations or liability of a “Landowner” or “operator,” as those terms are defined and used in Environmental Laws (as defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.; hereinafter, “**CERCLA**”); or
- (b) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or
- (c) The obligations of a responsible person under any applicable Environmental Laws; or
- (d) The right to investigate and remediate any Hazardous Materials associated with the Easement Area; or
- (e) Any control over Landowner’s ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Easement Area.

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. Section 6901 et seq.; hereinafter “**RCRA**”); the Hazardous Materials Transportation Act (49 U.S.C.

Section 6901 et seq.; hereinafter “**HTA**”); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 et seq.; hereinafter “**HCL**”); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300 et seq.; hereinafter “**HAS**”), 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.

The term “**Environmental Laws**” includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, code, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials.

19. **Representations and Warranties.** Landowner hereby makes the following representations and warranties for the benefit of Easement Holder and the Third-Party Beneficiaries:

(a) **Authority.** Landowner has good and sufficient title to the Easement Area including all appurtenances thereto, including, without limitation, all minerals and mineral rights and all water and water rights, and Landowner has full right and authority to enter into this Conservation Easement and convey the Conservation Easement to Easement Holder. There are no monetary liens and encumbrances recorded against the Easement Area except as expressly identified in **Exhibit C**, that may conflict or are otherwise inconsistent with this Conservation Easement and which have not been expressly subordinated to this Conservation Easement by a written Subordination Agreement approved by Easement Holder and the Wildlife Agencies. All deeds of trust and mortgages recorded against the Easement Area, or any portion thereof, are and shall continue to be subordinated to this Conservation Easement; documentation of such subordinations are contained in **Exhibit C**. No provisions of this Conservation Easement should be construed as impairing the ability of the Landowner to use the Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinated to this Deed of Conservation Easement.

(b) **Compliance with Laws.** Landowner has not received notice of, and has no knowledge of, any material violation of any federal, state, county or other governmental or quasi-governmental statute, ordinance, regulation, law or administrative or judicial order with respect to the Easement Area.

(c) **No Litigation.** There is no action, suit or proceeding which is pending or threatened against the Easement Area or any portion thereof relating to or arising out of the ownership or use of the Easement Area, or any portion thereof, in any court or in any federal, state, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality.

20. **General Provisions.**

(a) **Controlling Law.** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state, and by applicable federal law.

(b) **Liberal Construction.** Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to accomplish the purposes of this Conservation Easement and the policy and purpose of 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. It is the intent of this Conservation Easement to preserve the condition of the Easement Area and each of the Conservation Values protected herein, notwithstanding economic or other hardship or changes in circumstances or conditions. The provisions of this Conservation Easement shall be liberally construed to effectuate the purposes of the Conservation Easement and to allow Landowner's use and enjoyment of the Easement Area to the extent consistent with such purposes. Liberal construction is expressly required for purposes of effectuating this Conservation Easement in perpetuity, notwithstanding changed conditions of any kind. The Conservation Easement created by this agreement is the intended best and most productive use of the Easement Area. No remedy or election given by any provision in this Conservation Easement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have had the opportunity to review and revise this Conservation Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Conservation Easement.

(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 other persons or circumstances.

(d) **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with **Section 15.**

(e) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Landowner'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 hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Easement Area.

(g) **Termination of Rights and Obligations.** A party's rights and obligations under this Conservation Easement terminate upon a valid transfer of the party's interest in the Conservation Easement in accordance with the terms and provisions hereof, except that liability for acts or 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) **Additional Easements.** Landowner 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), or grant, transfer, or otherwise abandon or relinquish (each a "Transfer") any mineral, air, or water right or agreement relating to the Property, without first obtaining the written consent of Easement Holder and the Third-Party Beneficiaries. Easement Holder and the Third-Party Beneficiaries may withhold such consent if it determines that the proposed interest or transfer is inconsistent with the purposes of this Conservation Easement or may impair or interfere with the Conservation Values. This section shall not prohibit transfer of a fee or leasehold interest in the Property that is subject to this Conservation Easement and complies with **Section 13**. Landowner shall provide a certified copy of any recorded or unrecorded grant or Transfer document to Easement Holder and Third-Party Beneficiaries.

(j) **Recording.** Easement Holder shall record this Conservation Easement in the Official Records of the county where the Easement Area is located and may re-record it at any time as Easement Holder deems necessary to preserve its rights hereunder.

(k) **Counterparts.** The parties may execute this Conservation Easement in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(l) **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 and Map of the Easement Area

Exhibit B – Baseline Documentation Certification

Exhibit C – Title Encumbrances

Exhibit D – Notice/Memorandum of Unrecorded Site-Specific Management Plan

Exhibit D shall be executed and recorded concurrently with this Conservation Easement as separate document in the chain of title for the Property.

21. **Sale of Carbon Credits.** Landowner will ensure that the terms and conditions of the Conservation Easement are taken into account when calculating the baseline/business as usual of the Easement Area for purposes of establishing carbon credits or other emissions offsets that the Landowner proposes to authorize, create, sell, exchange or transfer, and to notify Yolo Habitat Conservancy at least 45 days prior to any such proposed establishment. Upon receipt of any such notice Yolo Habitat Conservancy will promptly furnish a copy of the notice to the Third-Party Beneficiaries.

22. **Sign.** Easement Holder may purchase and install a sign to be placed on the Easement Area that identifies this Conservation Easement, the name of the property, the landowner’s name (if desired), and the Easement Holder. The Easement Holder will maintain and replace the sign, as necessary, at the Easement Holder’s sole cost and expense. The size, location, number, text and design of the signage shall be subject to the approval of Landowner and Easement Holder, which approval shall not be unreasonably withheld, conditioned or delayed.

23. **Ecological Use.** Notwithstanding the use of this Conservation Easement towards the land acquisition requirements of the Yolo HCP/NCCP Instruments, neither the Easement Area, nor the Conservation Easement or any portions thereof may be used for mitigation or satisfaction of any requirement or condition imposed by any other permit, agreement, authorization or entitlement for use, including but not limited to any requirement to compensate for or otherwise offset impacts of an activity, without the prior written approval of the Yolo Habitat Conservancy.

IN WITNESS WHEREOF, Landowner and Easement Holder have executed this Conservation Easement the day and year first above written.

LANDOWNER:

LILA LAND, INC.

By: David R. Gilliland, President

Date:

By: Therese J. Gilliland, President

Date:

EASEMENT HOLDER:

YOLO HABITAT CONSERVANCY

By: Christine Alford, Interim Executive
Director

Date:

APPROVED AS TO FORM:

By: Philip J. Pogledich, County Counsel
Counsel to the Yolo Habitat Conservancy

Date: