

EXHIBIT D

DEED OF CONSERVATION EASEMENT EXCEPTED AND RESERVED TO THE STATE OF CALIFORNIA

APNs 243-211-025-000 & 243-211-026-000, Monterey County

The State of California ("State") expressly excepts and reserves to itself, through the State Coastal Conservancy ("Conservancy"), the following natural resource conservation easement, from the grant of real property to [GRANTEE] ("Grantee" or "Property Owner"):

Pertinent Facts

- A. Grantee is acquiring from State the fee interest in the real property ("the Property") known as the Victorine Ranch in the County of Monterey, California. The Property consists of approximately 74.7 unimproved acres, as described in **Exhibit A** to the grant deed to which this Conservation Easement ("Easement") is attached and incorporated to the entirety of the Property as an exception to title.
- B. California Civil Code sections 815 *et seq.* provide for the creation of conservation easements to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open space condition. In conveying the fee interest to Grantee, State intends to except and reserve this conservation easement in accordance with Civil Code Sections 815 *et seq.* The purpose of retaining this easement is to protect the property's natural habitat, natural resources, scenic values and open space character in perpetuity.
- C. The entire Property is restricted by this easement and consists, in part, of riparian areas, natural habitat for wildlife species and outstanding scenic resources. Preservation of the riparian areas, natural habitat, open space character and scenic values identified in this easement is consistent with use of portions of the Property for residential development pursuant to the policies of the Monterey County, California, Big Sur Coast Local Coastal Program.
- D. The Property contains Environmentally Sensitive Habitat Areas ("ESHA") and areas with a slope greater than or equal to 30 percent.
- E. The Open Space Area encompasses those portions of the Property presently known to contain ESHA and/or average slopes greater than or equal to 30 percent. No development shall occur in the "Open Space Area" as delineated in **Exhibit D-1**, except as described in this easement.
- F. Those areas not within the Open Space Area are collectively known as the "Remainder Areas" and are described and depicted in **Exhibit D-1**. This Easement in no way warrants the absence of Environmentally Sensitive Habitat Areas or slopes equal to or greater than 30 percent in the Remainder Areas.

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- G. The Property consists, in part, of outstanding scenic resources. Preservation of the scenic qualities is consistent with use of the Property for residential development pursuant to the policies of the Coastal Land Use Plan.
- H. The Property is located adjacent to State Route 1 (Highway 1), and adjoins property administered by the California Department of Parks and Recreation. Substantial portions of the Property are located within the Big Sur "Critical Viewshed," as defined in Section 3.2.1 of the Coastal Land Use Plan. This Easement in no way warrants the Property contains any areas outside of the "Critical Viewshed."
- I. The retention of a conservation easement by the Conservancy on the Property will also serve clearly delineated local and state governmental conservation policies, including, without limitation:
1. The Coastal Land Use Plan of the Monterey County Local Coastal Program provides specific policies for the protection of the sensitive habitats and visual resources of the Big Sur Coast; these policies generally prohibit new development that can be seen from State Highway Route 1 or certain other defined coastal vantage points;
 2. Monterey County zoning regulations, which specify the amount and type of development permitted on the Property;
 3. Section 30251 of the Coastal Act, which requires the protection of significant coastal visual resources, and requires new development in highly scenic areas to be subordinate to the character of its setting; and
 4. Chapter 5 of Division 21 of the Public Resources Code, which directs the Conservancy to undertake a program of restoration of coastal areas where existing land use patterns adversely affect the coastal environment, and authorizes the Conservancy to convey land for purposes of development in accordance with a restoration plan.
- J. The present condition of the Property is documented on maps and photographs (the "Baseline Conditions Report"), retained by the Conservancy and Grantee and incorporated by reference. The Baseline Conditions Report consists of maps, photographs, and other documents that the parties agree provide a current and accurate representation of the health of the Property's resources and conservation values at the time of the creation of this easement. The Baseline Conditions Report is intended to serve as an objective basis for monitoring compliance with this Easement and may be used to establish whether or not a change in the use or condition of the Property has occurred, but its existence shall not preclude the use of other evidence to establish the condition of the Property as of the date of this Easement.

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THE STATE DECLARES AS FOLLOWS, in light of the pertinent facts, above:

1. *Purpose*. The purpose of this reserved conservation easement is to preserve the natural habitat, natural resources, scenic values and open space character of the Property. These purposes are referred to collectively below as "the conservation purpose of this easement."
2. *Rights Retained*. State expressly retains to itself and its agents the rights:
 - (a) To identify, to preserve, and to protect in perpetuity the natural habitat, natural resources, open space and scenic values of the Property (collectively, "the protected values").
 - (b) To study and inspect the Property's natural habitat and natural resources, as indicated in the Baseline Conditions Report, to ensure that activities on the Property are consistent with the needs of threatened or endangered animal and plant species and their respective habitats subject to the rights and restrictions of Paragraph 7, below.
 - (c) To enforce the rights retained in this easement; to prevent or stop, by any legal means, any activity or use of the Property that, in the reasonable judgment of the Conservancy, is inconsistent with this easement; and to require restoration of areas or features damaged by activities inconsistent with this easement subject to the rights and restrictions in Paragraph 8, below.
 - (d) To assign the easement, or any part of it, to one or more assignees, subject to the conditions and restrictions in Paragraph 9, below.
3. *Permitted Uses and Practices*. Property Owner may use the Remainder Area for residential use, habitat preservation, enhancement and other uses that are described in this conservation easement. Property Owner may use the Open Space Area of the Property only for habitat preservation, enhancement and activities ancillary to the residential use of the Property that are described in this conservation easement.

The following uses and practices are not necessarily an exhaustive recital of uses and practices consistent with this reserved easement. However, these uses and practices are permitted under this easement, provided they are undertaken in accordance with the easement and all applicable governmental approvals and permits are properly obtained.

- (a) Residing on the Property consistent with the conservation purpose of this easement.
- (b) Within the Remainder Area, development of residences and other improvements accessory to allowable residential use of the Property. Before undertaking any construction, erection, installation or placement, the Property Owner shall notify the Conservancy. While these uses and practices are permitted under this Easement, all applicable governmental approvals and permits must still be properly obtained before development may commence.
- (c) The construction of hiking trails for use by the public on the Property.

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(d) Utilizing the Property for recreational or educational purposes that require no surface alteration or other development of the land, and that do not adversely affect wildlife habitat areas. Such activities may include, without limitation, hiking, horseback riding, fishing and nature study.

(e) Utilizing the Property for protecting or enhancing wildlife habitat or natural, scenic or open space values.

(f) The removal of hazardous substances or conditions or diseased plants or trees.

(g) The removal of invasive or non-native plant species.

(h) The management of any vegetation that constitutes or contributes to a fire hazard to residential use of neighboring properties, and which vegetation lies within 100 feet of existing or permitted residential development.

(i) Prescribed burning by the California Department of Forestry for purposes of vegetation management and environmental restoration.

(j) Grazing of livestock in a manner consistent with the environmental criteria of the Natural Resource Conservation Service.

(k) The placement of range fencing, including the repair or extension of existing range fencing.

4. *Prohibited Uses.* The Property Owner shall not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with this Easement. Prohibited uses include, but are not limited to:

(a) Any use or activity that would significantly diminish or impair the natural habitat, natural resources and open space character of the Open Space Areas, with the exception of public access trails..

(b) Any use of the Property, including but not limited to development, that is not consistent with the Monterey County Visual Resource Development Standards, Section 20.145.030 of the Monterey County Coastal Implementation Plan as adopted by the Monterey County Board of Supervisors on January 5, 1988 and included in relevant part as **Exhibit D-2**.

(c) Any development within the Open Space Area.

(d) Any use within the Open Space Area that would significantly adversely affect threatened or endangered plant or animal species or their habitat or result in significant disruption of Environmentally Sensitive Habitat Areas (as defined by the Monterey County Local Coastal Program).

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(e) Activities that adversely affect riparian habitat (as shown in the baseline documentation) including but not limited to any removal of riparian vegetation, except when authorized by the Conservancy or when necessary for the purposes of human safety, property protection, or the enhancement of wildlife habitat. Authorizations by the Conservancy shall be consistent with all applicable government regulatory requirements.

(f) The establishment of any commercial or industrial uses on the Property.

(g) The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance, using any method that disturbs the surface of the land.

(h) The construction, placement, or erection of any sign or billboards on the Property, excepting the following temporary signs:

i) A sign or signs reasonably necessary for the identification of the property or to advertise its sale or lease.

ii) A sign or signs advocating candidates or issues that will be presented to voters in a public election; provided that the sign or signs are permitted, constructed, and displayed in a manner consistent with Monterey County Code, Chapter 20.60.

iii) Signs necessary to control unauthorized or dangerous activities.

(i) Major alteration of land forms by grading or excavation of topsoil, earth, or rock, except as necessary for construction of residential structures and structures ancillary to (a) residence(s) pursuant to all applicable provisions of law, regulation or local ordinance and consistent with the conservation purpose of this easement.

(j) Uses of the Property that would unreasonably interfere with the public's use or enjoyment of adjacent lands.

“Development” as used in this Easement means the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z’berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). Development does not include fencing, the creation, grading and maintenance of trails for public use or other uses specifically permitted by Paragraph 3 of this Easement.

As used in this Paragraph “solid material or structure” includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

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This Easement authorizes the Conservancy to enforce these covenants in the manner described herein. However, unless otherwise specified, nothing in this Easement shall require the Property Owner to take any action to restore the condition of the Property after any Act of God or other event over which it had no control. The Property Owner understands that nothing in this Easement relieves it of any obligation or restriction on the use of the Property imposed by law.

5. Permission of the Conservancy. Where the Property Owner is required to obtain the Conservancy's permission or approval for a proposed action hereunder, said permission or approval (a) shall not be unreasonably delayed or withheld by the Conservancy, (b) shall be sought and given in writing, and (c) shall in all cases be obtained by the Property Owner prior to the Property Owner's taking the proposed action. The Conservancy shall grant permission or approval to the Property Owner only where the Conservancy, acting in the Conservancy's sole reasonable discretion and in good faith, determines that the proposed action will not diminish or impair the conservation purpose of this easement. Permission may be granted by the Conservancy with conditions.

6. Responsibilities of the Property Owner and the Conservancy Not Affected. Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Conservancy, or in any way to affect any existing obligation of the Property Owner. Among other things, this shall apply to:

(a) Taxes – The Property Owner shall be solely responsible for payment of all taxes and assessments levied against the Property.

(b) Upkeep and Maintenance – The Property Owner shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Conservancy shall have no obligation for the upkeep or maintenance of the Property.

(c) Liability and Indemnification – In view of the Conservancy's negative rights, limited access to the land, and lack of active involvement in the day-to-day management activities on the Property, the Property Owner shall indemnify, protect, defend and holds harmless the Conservancy, their officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns (collectively, "Agents and Assigns") from and against all liabilities, costs, losses, orders, liens, penalties, claims, demands, damages, expenses, or causes of action or cases, including without limitation reasonable attorneys' fees, arising out of or in any way connected with or relating to the Property or the Easement. The Property Owner shall be solely liable for injury or the death of any person, or physical damage to any property, or any other costs or liabilities resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence or willful misconduct of the Conservancy, and/or their respective Agents and Assigns.

Neither the State, the Conservancy, nor their Agents and Assigns shall have responsibility for the operation of the Property, monitoring of hazardous conditions on it, or the protection of the Property Owner, the public or any third parties from risks relating to

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conditions on the Property. Without limiting the foregoing, neither the State, the Conservancy, nor their respective Agents and Assigns shall be liable to the Property Owner or other person or entity in connection with consents given or withheld, or in connection with any entry upon the Property occurring pursuant to this Easement, or on account of any claim, liability, damage or expense suffered or incurred by or threatened against the Property Owner or any other person or entity, except as the claim, liability, damage, or expense is the result of the gross negligence or intentional misconduct of the State, the Conservancy or their respective Agents and Assigns.

7. *Monitoring.* The Conservancy shall manage its responsibilities as holder of this Easement in order to uphold the Purpose of this Easement. The Conservancy's responsibilities include, but are not limited to, annual monitoring, such additional monitoring as circumstances may require, record keeping, and enforcement of this Easement, for the purpose of preserving the Property's natural habitat, natural resources, scenic values and open space character in perpetuity. Failure of the Conservancy to carry out these responsibilities shall not impair the validity of this Easement or limit its enforceability in any way. With reasonable advance notice (except in the event of an emergency circumstance or prevention of a threatened breach where reasonable advanced notice is not necessary), the Conservancy shall have the right to enter upon, inspect, observe, monitor and evaluate the Property to identify the current condition of, and uses and practices on the Property and to determine whether the condition, uses and practices are consistent with this Easement.

The Conservancy shall indemnify, defend with counsel of Property Owner's choice, and hold Property Owner harmless from, all expense, loss, liability, damages and claims, including Property Owner's attorneys' fees, if necessary, arising out of the Conservancy's entry on the Property, unless caused by a violation of this Easement by Property Owner or by Property Owner's negligence or willful misconduct.

8. *Enforcement.* In the event of a violation of the terms, conditions, covenants, and purposes of this easement the Conservancy may take all actions that it deems necessary to ensure compliance. The Conservancy shall have the right to prevent and correct violations of the terms, conditions, covenants, and purposes of this easement. If the Conservancy finds what it believes is a violation or potential violation, it may at its discretion take appropriate legal action to ensure compliance with the terms, conditions, covenants, and purposes of this easement and shall have the right to correct violations and prevent the threat of violations. Except when an ongoing or imminent violation could irreversibly diminish or impair the protected values of the Property, the Conservancy shall give the Property Owner written notice of the violation or potential violation, and thirty (30) days to correct it, before filing any legal action.

If a court with jurisdiction determines that a violation may exist, has occurred, or is about to occur, the Conservancy may obtain an injunction, specific performance, or any other appropriate equitable or legal remedy, including (i) money damages, including damages for the loss of the scenic, open space and natural resources values protected by this easement, (ii) restoration of the Property to its condition existing prior to such violation, and (iii) an award for all of the Conservancy's expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorney's fees. The failure of the Conservancy to discover a violation or

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potential violation, or to take immediate legal action to prevent or correct a violation or potential violation known to the Conservancy, shall not bar the Conservancy from taking subsequent legal action. The Conservancy's remedies under this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

Without limiting the Property Owner's liability therefore, the Conservancy shall apply damages recovered to the cost of undertaking any corrective action on the Property. Should the restoration of lost values be impossible or impractical for whatever reason, the Conservancy shall apply any and all damages recovered to furthering its mission.

Failure or refusal to exercise any rights under the terms of this easement by the Conservancy in the event of a violation by the Property Owner of any term herein shall not constitute a waiver or forfeiture of the Conservancy's right to enforce any term, condition, covenant, or purpose of this easement.

9. Transfer of Easement. The Conservancy shall hold this easement exclusively for conservation purposes and shall not transfer its rights and obligations under the easement except to another public agency or nonprofit organization qualified to hold such interests under applicable state and federal laws, and committed to holding this easement exclusively for the conservation purposes.

If a successor in interest to the Conservancy seeks to abandon this easement, or if the existence of that successor is terminated for any reason, title to this easement shall vest either in the State of California (acting by and through the State Coastal Conservancy) immediately upon acceptance by the Conservancy and approval by the Public Works Board, or in another public agency or nonprofit organization approved by the Executive Officer of the State Coastal Conservancy upon acceptance by that agency or nonprofit organization; and upon recordation of a notice to that effect in the Official Records of Monterey County

10. Transfer of Property Interest. Any time the Property itself, or any interest in it, is transferred by the Property Owner to any third party, the Landowner shall notify the Conservancy in writing at least thirty (30) days prior to the transfer of the Property or interest, and the document of conveyance shall expressly incorporate by reference this Easement. Any document conveying a lease of the Property shall expressly incorporate by reference this Easement. Failure of the Property Owner to do so shall not impair the validity of this Easement or limit its enforceability in any way.

11. Amendment of Easement. This Easement may be amended only with the written consent of the Property Owner and the Executive Officer of the Conservancy. Any such amendment shall be consistent with the conservation purposes of this Easement, the Conservancy's easement amendment policies, and shall comply with all applicable laws, including Section 815 et seq. of the California Civil Code. No amendment shall diminish or affect the perpetual duration or the purpose of this easement, nor the status or rights of the Conservancy under the terms of this easement. Amendments to this easement are subject to applicable government regulatory requirements and shall be recorded in Monterey County.

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12. Condemnation. If this easement or some portion of it is condemned for public use, the Conservancy shall be entitled to compensation for its interest in accordance with applicable law.

13. Interpretation.

(a) This Easement shall be interpreted under the laws of the State of California, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

(b) Unless specifically stated and attached to this Easement, references to specific authorities in this Easement shall be to the statute, rule, regulation, ordinance, or other legal provision that is in effect at the time this Easement becomes effective.

(c) No provision of this Easement shall constitute governmental approval of any improvements, construction or other activities that may be permitted under this Easement.

14. Perpetual Duration. Pursuant to California Civil Code section 815.1, this Easement shall be a burden upon the Property and shall continue as a restrictive covenant and equitable servitude running with the land in perpetuity and shall bind Property Owner and Property Owner's heirs, personal representatives, lessees, successors, and assigns forever.

No merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to the Conservancy, or its successors or assigns. It is the express intent of the Conservancy that this Easement not be extinguished by, merged into, modified, or otherwise deemed affected by any other interest or estate in the Property now or hereafter held by the Conservancy or its successors or assigns.

15. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantee: [ADDRESS]

To the Conservancy: Executive Officer
Coastal Conservancy
1330 Broadway, 13th Floor
Oakland, California 94612-2530

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or to a later address specified in written notice to the other party. Notice, if mailed, shall be deemed to have been given upon the day following the day shown on the postmark of the envelope in which the notice is mailed.

16. Successors and Assigns. The terms "Grantee" or "Property Owner" and "Conservancy" or "State," wherever used in this easement, and any pronouns used in place of those terms, mean Grantee or Property Owner and their successors, assigns, and lessees; and the Conservancy or State and their successors and assigns, respectively.

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

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

19. Recordation. This easement shall be recorded in the official records of the County of Monterey.

Exhibit D-1 (Open Space Areas and Remainder Areas) Attached

Exhibit D-2 (Monterey County Visual Resource Development Standards, Monterey County Coastal Implementation Plan, Sections 20.145.030 & 20.145.020.V) Attached