

for
Sallie
RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

WEINTRAUB GENSHLEA & SPROUL
Law Corporation
Attn: Malcolm S. Weintraub, Esq.
P.O. Box 15208
Sacramento, California 95851-0208

RECORDED AT REQUEST OF

012337

at 10 Min. Past 12 P M

DEC 23 1991

Official Records
Amador County, California

[Signature]
Recorder

(Space Above For Recorder's Use)

GRANT OF CONSERVATION EASEMENT
AND
AGREEMENT CONCERNING EASEMENT RIGHTS

This Grant of Conservation Easement and Agreement Concerning Easement Rights ("Easement Agreement") is made by and between James S. Moser and Nancy P. Moser, husband and wife (collectively, "Grantor") and Amador Land Trust, a California nonprofit corporation ("Grantee"). Grantor and Grantee (collectively, the "Parties") are entering into this Easement Agreement in view of the following facts:

A. Grantor is the sole owner in fee simple of that certain real property located in Amador County, California, which is more particularly described in Exhibit "A" attached hereto and incorporated herein ("Property").

B. Grantee is a publicly supported, tax-exempt, nonprofit organization, qualified under Section 501(c)(3) and Section 170(h) of the Internal Revenue Code. Grantee's primary purpose is the preservation and protection of land in its natural scenic open space condition.

C. The Property is comprised of land that is predominantly characterized as scenic open space. The preservation and protection of such open space is essential to the present and future use of the Property for scenic purposes.

D. The Parties have prepared a "Present Conditions Report" describing the Property and its natural features and all improvements as of the date of this Easement Agreement. The Parties agree that the Present Conditions Report accurately represents the condition of the Property for purposes of monitoring compliance with the terms of this Easement Agreement. The Present Conditions Report is on file at the offices of Grantee and is incorporated herein by this reference.

E. As more particularly described on Exhibit "A", the Property consists of four contiguous parcels, designated, respectively, with the following Assessor's Parcel Numbers: APN 30-3-22, APN 30-3-30, APN 21-21-33 and APN 23-7-76. There is currently a residence and related improvements on the Parcel

which is designated APN 30-3-22.

F. Grantor intends that the conservation values of the Property be preserved and maintained by the continuation of land use patterns existing at the time of this grant that do not significantly impair or interfere with those values.

G. Grantor wishes to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity. Accordingly, Grantor intends to convey to Grantee an open space preservation conservation easement over the Property. This easement is intended to be a "qualified conservation contribution" within the meaning of Section 170(h) of the Internal Revenue Code and a "conservation easement" within the meaning of Section 815.1 of the California Civil Code. The easement shall be exclusively for the purpose of conserving the Property's open space character for scenic enjoyment of the general public, while allowing for (i) limited residential development, (ii) limited use as a burial site, (iii) limited mining and timber harvesting activities on appropriate portions of the Property, and (iv) agricultural uses.

H. By accepting Grantor's grant, Grantee intends to honor Grantor's intentions stated herein and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this and all future generations.

GRANT AND AGREEMENT

1. Grant of Conservation Easement. Pursuant to the laws of the State of California and in particular Section 815 et seq. of the California Civil Code, Grantor voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent set forth in this Easement Agreement. This conservation easement shall be referred to herein as the "Easement."

2. Purpose. The purpose of this Easement is to assure that the Property will be retained forever, predominantly in its scenic open space condition, and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. Grantor intends that this Easement will confine the use of the Property to activities which are consistent with the purpose of this Easement, including without limitation restricted residential development, use as a burial site, mining, timber harvesting, and agricultural uses.

3. Rights of Grantee. To accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

(a) To preserve and protect the conservation values of the Property;

(b) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to Paragraph 7.

4. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) Residential Development. The legal or de facto subdivision of the Property for any purpose, except as may be required by law for the uses permitted in Paragraph 4(c).

(b) Commercial Development. Any commercial or industrial use of or activity on the Property other than those relating to home occupations as permitted under Paragraph 5(d) or mineral development meeting the requirements of Paragraph 4(k).

(c) Construction and Improvements. The placement or construction of any buildings, structures, or other improvements of any kind other than the following:

(i) The maintenance, renovation, expansion or replacement of existing residential and related buildings, structures and improvements in substantially their present location as shown on the Present Conditions Report;

(ii) After prior notice to Grantee, the placement or construction of not more than three (3) additional residential and related buildings, structures and improvements as described in the Present Conditions Report;

(iii) After prior notice to Grantee, the placement or construction of additional accessory structures and improvements for residential purposes (including without limitation private recreational facilities such as swimming pools and tennis courts) as described in the Present Conditions Report;

(iv) After prior notice to Grantee, the construction of any improvements reasonably necessary to

facilitate the burial of any of Grantor and members of Grantor's family in the area designated for burial site purposes on the Present Conditions Report;

(v) The placement or construction of improvements for agriculture purposes; and

(vi) The placement or construction of facilities for the development and utilization of energy resources, including without limitation wind, solar, hydroelectric, methane, wood, alcohol and fossil fuels, for use principally on the Property; provided that the design and location of any such facilities shall be subject to Grantee's prior written approval, and provided further that the development of fossil fuel resources shall be subject to the provisions of Paragraph 4(k).

(d) Surface Alteration. Any alteration of the surface of the land, including without limitation the excavation or removal of soil, sand, gravel, rock, peat or sod, except as may be required in the course of any activity permitted herein; provided that construction materials such as rock, dirt, sand and gravel may be taken for use on the Property from locations approved by Grantee.

(e) Soil and Water. Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.

(f) Ponds and Water Courses. The alteration or manipulation of the ponds and water courses located on the Property as shown in the Present Conditions Report, or the creation of new water impoundments or water courses, for any purpose other than permitted residential uses of the Property or the limited energy development permitted under Paragraph 5(h).

(g) Timber Harvesting. The pruning, cutting down or other destruction or removal of live trees except as necessary in accordance with generally accepted forestry conservation practices, including without limitation the control or prevention of hazard, disease, fire or overcrowding; or to provide firewood or construction materials for non-commercial uses.

(h) Commercial Feedlots. The establishment or maintenance of any commercial feedlot, which is defined for the purposes of this Easement Agreement as a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Property for feeding and fattening for market.

(i) Waste Dumps. The dumping or other disposal of wastes, refuse and debris on the Property, except that which is

generated by activities permitted herein; provided that any such dumping or disposal shall be in accordance with applicable law and that only the site or sites indicated in the Present Conditions Report may be used for this purposes, or such other site or sites as Grantee may approve in writing.

(j) Signs and Billboards. The placement of any signs or billboards on the Property, except that signs whose placement, number and design do not significantly diminish the scenic character of the Property may be displayed for the following purposes: to state the name and address of the Property and the names of persons living on the Property; to advertise an on-site activity permitted pursuant to Paragraph 5; to advertise the Property for sale or rent; to post the Property to control unauthorized use; and for any other purpose required by law.

(k) Mineral Development. The exploration for, or development and extraction of, minerals and hydrocarbons by any surface mining method or any other method that would significantly impair or interfere with the conservation values of the Property. Prior to engaging in any mineral exploration, development or extraction by any method not otherwise prohibited by this paragraph, Grantor must notify Grantee and submit a plan for Grantee's approval that provides for minimizing the adverse effects of the operation on the conservation values of the Property. In addition to such other measures as may be required to protect the conservation values of the Property, the plan must provide for:

(i) Concealing all facilities or otherwise locating them so as to be compatible with existing topography and landscape to the greatest practicable extent; and

(ii) Restoring any altered physical features of the land to their original state.

5. Reserved Rights. Grantor reserves unto Grantor, and to Grantor's 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 expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) Residence located on Parcel APN 30-3-22. The continued residential use, maintenance, expansion or replacement of the residence and related buildings, structures and improvements which are located on the Parcel designated APN 30-3-22.

(b) Construction of Additional Residences. After prior notice to Grantee, the right to construct and maintain a

total of three (3) additional residences and related buildings, structures, improvements, access roads and bridges ("residences") on the Property, subject to the following limitations:

(i) Each additional residence shall be located as described in the Present Conditions Report; and

(ii) No more than one of the additional residences shall be permitted on each of the contiguous Parcels. Nothing in this subparagraph (ii) shall be construed to prohibit the placement or construction of one of the additional residences on the Parcel designated APN 30-3-22.

(c) Accessory Structures. After prior notice to Grantee, the right to construct, maintain and use additional accessory structures and improvements for residential purposes (including without limitation private recreational facilities such as swimming pools and tennis courts) as described in the Present Conditions Report;

(d) Home Businesses. The right to engage in any business that is conducted by, and in the home of, a person residing in one of the residences on the Property.

(e) Recreation. The right to engage in and permit others to engage in recreational uses of the Property, including without limitation hunting and fishing, that require no surface alteration or other development of the land.

(f) Burial Site. After prior notice to Grantee, the right to construct any improvements reasonably necessary to facilitate the burial of any of Grantor and members of Grantor's family in the area designated for burial site purposes on the Present Conditions Report.

(g) Timber Harvesting. The right to prune, cut down or remove live trees as necessary in accordance with generally accepted forestry conservation practices, including without limitation the control or prevention of hazard, disease, fire or overcrowding; or to provide firewood or construction materials for non-commercial uses.

(h) Energy Resources. The right to place or construct facilities for the development and utilization of energy resources, including without limitation wind, solar, hydroelectric, methane, wood, alcohol and fossil fuels, for use principally on the Property, with Grantee's prior written approval as to the design and location of any such facilities.

(i) Mineral Development. The exploration for, or development and extraction of, minerals and hydrocarbons by any mining method (other than surface mining) that does not significantly impair or interfere with the conservation values

of the Property. Prior to engaging in any mineral exploration, development or extraction, Grantor must notify Grantee and submit a plan for Grantee's approval in accordance with Paragraph 4(k).

(j) Agricultural Uses. The right to engage in and permit others to engage in any agricultural uses of the Property, in accordance with sound, generally accepted agricultural practices, including without limitation grazing of livestock, cultivation of forage and feed crops, and planting and raising vines and orchards, and providing for irrigation and access reasonably related to any agricultural uses.

6. Notice of Intention to Undertake Certain Permitted Actions.

(a) Notification to Grantee. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided in this Easement Agreement, is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

(b) Grantee's Approval. Where Grantee's approval is required, as set forth in this Easement Agreement, Grantee shall notify Grantor in writing, within thirty (30) days of Grantee's receipt of Grantor's written request for approval, of Grantee's decision to grant or withhold approval. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. If Grantee fails to notify Grantor within the ten-day period, Grantor's request shall be deemed approved.

7. Grantee's Remedies.

(a) Notice to Grantor. If Grantee determines that Grantor is in violation of the terms of this Easement, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured.

(b) Failure to Cure. If (i) Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee; or (ii) under circumstances where the

violation cannot reasonably be cured within a thirty (30)-day period, (A) fails to begin curing such violation within the thirty (30)-day period, or (B) fails to continue diligently to cure such violation until finally cured; Grantee may bring an action at law or in equity in a court of competent jurisdiction to: (1) enforce the terms of this Easement; (2) enjoin the violation by temporary or permanent injunction; (3) recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values; and (4) require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(c) Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

8. Access. No right of physical access by the general public to any portion of the Property is conveyed by this Easement. Except as specifically permitted by Paragraph 3, no right of physical access by Grantee to any portion of the Property is conveyed by this Easement.

9. Costs and Liabilities.

(a) Generally. 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, including the maintenance of adequate comprehensive general liability insurance coverage.

(b) Taxes. Grantor shall pay before delinquency all taxes, assessments, 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 Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

(c) Hold Harmless.

(i) Grantor's Obligations. Grantor shall hold

harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Grantee Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence or willful misconduct of any of the Grantee Indemnified Parties; and (2) the obligations specified in this paragraph.

(ii) Grantee's Obligations. Grantee shall hold harmless, indemnify, and defend Grantor and Grantor's family members, guests, invitees, tenants, agents and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Grantor Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation reasonable attorneys' fees, arising from or in any way connected with (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property in connection with the rights of Grantee under this Easement Agreement, including Grantee's entry onto any portion of the Property, whether or not such entry was specifically permitted by the terms of this Easement Agreement, unless due to the negligence or willful misconduct of any of the Grantor Indemnified Parties; and (2) the obligations specified in this paragraph.

10. Extinguishment.

(a) Termination. If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by California law at the time, in accordance with this paragraph. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

(b) Proceeds. This Easement constitutes a real property interest immediately vested in Grantee. For the purpose of this paragraph, the Parties stipulate that the Easement has a fair market value determined by multiplying the

fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property without deduction for the value of the Easement at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purpose allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

(c) Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.

11. Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that (i) is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and (ii) is authorized to acquire and hold conservation easements under Section 815 et seq. of the California Civil Code (or any successor provision then applicable). As a condition of any such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.

12. Executory Limitation. If (i) Grantee ceases to exist, or (ii) Grantee ceases to be a qualified organization under Section 170(h) of the Internal Revenue Code, or (iii) Grantee ceases to be authorized to acquire and hold conservation easements under Section 815 et seq. of the California Civil Code, and a prior assignment is not made pursuant to Paragraph 11, then Grantee's rights and obligations under this Easement Agreement shall become immediately vested in the State of California, Department of Fish and Game, Wildlife Conservation Board ("Designated Successor Grantee"). If the Designated Successor Grantee (i) is no longer in existence at the time the rights and obligations under this Easement Agreement would otherwise vest in it, or (ii) is not qualified or authorized to hold conservation easements as provided for in an assignment pursuant to Paragraph 11, or (iii) refuses to accept the rights and obligations under this Easement Agreement, then the rights and obligations under this Easement Agreement shall vest in such organization as a court of competent jurisdiction shall direct pursuant to the applicable California law and with due regard to the requirements for an assignment pursuant to Paragraph 11.

13. Subsequent Transfers. Grantor agrees to incorporate

the terms of this Easement in any deed or other legal instrument by which Grantor divests Grantor of any interest in all or a portion of the Property, including without limitation a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least fifteen (15) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

14. Estoppel Certificates. Upon request by Grantor, Grantee shall within ten (10) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

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 (i) served personally, (ii) sent by first class mail, postage prepaid, or (iii) sent by telegram, telex, telecopy or other means of electronic transmission resulting in written copies, addressed as follows:

To Grantor:

Mr. James Moser
P.O. Box 467
Walnut Grove, CA 95690

To Grantee:

Amador Land Trust
211 Hoffman Street
Jackson, CA 95642

or to such other address as either Party from time to time shall designate by written notice to the other.

16. Recordation. Grantee shall record this instrument in timely fashion in the Official Records of Amador County, California, and may re-record it at any time as may be required to preserve its rights in this Easement.

17. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement Agreement. No amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including Section 815 et seq. of the California Civil Code or Section 170(h) of the Internal Revenue Code. Any amendment shall (a) be in writing; (b) be consistent with the purpose of this Easement; (c) not affect its perpetual duration; and (d) be recorded in the Official Records of Amador County, California.

18. Miscellaneous Provisions.

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of Section 815 et seq. of the California Civil Code. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Attorneys' Fees; Prejudgment Interest. If the services of an attorney are required by either Party to secure the performance of this Easement Agreement or otherwise upon the breach or default of the other Party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provision of this Easement Agreement or the rights and duties of any person in relation thereto, the prevailing Party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such Party may be entitled. Any award of damages following judicial remedy or arbitration as a result of the breach of this Easement Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

(e) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this Easement Agreement shall be valid or binding unless contained in an amendment that complies with Paragraph 17.

(f) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(g) Joint Obligation. The obligations imposed by this Easement upon Grantor shall be joint and several.

(h) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties and their respective personal representatives, heirs, successors, and assigns, and this Easement shall continue as a servitude running in perpetuity with the Property.

(i) Termination of Rights and Obligations. A Party's rights and obligations under this Easement shall terminate upon transfer of the Party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive the transfer.

(j) Captions. The captions in this Easement Agreement have been inserted solely for convenience of reference and are not a part of this Easement Agreement and shall have no effect upon construction or interpretation.

(k) Counterparts. The Parties may execute this instrument 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) Effective Date. This Easement Agreement is being executed to be effective as of the date it is recorded in the Official Records of Amador County, California.


Dated: December 23, 1991

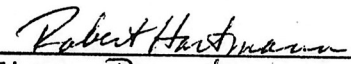

James S. Moser


Nancy P. Moser

Grantor

AMADOR LAND TRUST, a
California nonprofit
corporation

By: 
Its: Director

By: 
Its: Director

Grantee