

Recording requested by and when recorded please return to:

[*Steward's name & address*]

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DEED OF AGRICULTURAL CONSERVATION EASEMENT

This Deed of Agricultural Conservation Easement is granted on this ____ of _____ 2009, by [*Landowner's name*], [*Ownership status*], having an address at [*Landowner's address*] ("Landowner"), to [*Steward's name*], a California nonprofit public benefit corporation, having an address at [*Steward's address*] ("Steward"), for the purpose of forever conserving the agricultural productive capacity and open space character of the subject property.

RECITALS

A. The Landowner is the sole owner in fee simple of the [*farm/rangeland*] property ("Property") legally described in Exhibit A ("Legal Description"), attached to and made a part of this Agricultural Conservation Easement ("Easement"). The Property consists of approximately [*acres*] acres of land and is commonly known as the "[*Farm/Ranch name*]," together with buildings and other improvements, is located in [*County name*] County, California, and is identified by assessor's parcel number(s) [*parcel numbers*]. The existing buildings and improvements on the Property are shown within the Building Envelope as depicted in Exhibit B ("Building Envelope and Existing Improvements"), also attached to and made a part of this Easement. Except as shown in Exhibit B, the Property is open farmland, whose soils have been classified as [*prime farmland, farmland of statewide importance, etc.*] by the U.S. Department of Agriculture's Natural Resources Conservation Service, and by the California Department of Conservation's Farmland Mapping and Monitoring Program, because this land has the soil quality, growing season, and water supply needed for sustained agricultural production.

B. The agricultural and other characteristics of the Property, its current use and state of improvement, are documented and described in a Baseline Documentation Report ("Baseline Report"), prepared by the Steward with the cooperation of the Landowner and incorporated herein by this reference. The Landowner and the Steward acknowledge that the Baseline Report is complete and accurate as of the date of this Easement. Both the Landowner and the Steward shall retain duplicate original copies of the Baseline Report. The Baseline Report 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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C. The Department of Conservation’s California Farmland Conservancy Program (hereinafter alternatively referred to as the “Department” or “Department of Conservation”) has made a grant of funds to the Steward to support the acquisition of this Agricultural Conservation Easement. The Department’s funds represent a substantial investment by the people of the State of California in the long-term conservation of valuable agricultural land and the retention of agricultural land in perpetuity. The Property and this Easement have met the California Farmland Conservancy Program’s mandatory eligibility criteria and certain selection criteria and have multiple natural resource conservation objectives. The rights vested herein in the State of California arise out of the State’s statutory role in fostering the conservation of agricultural land in California and its role as fiduciary for the public investment represented here.

D. The Landowner grants this Easement for valuable consideration to the Steward for the purpose of assuring that, under the Steward’s perpetual stewardship, the agricultural productive capacity and open space character of the Property will be conserved and maintained forever, and that uses of the land that are inconsistent with these conservation purposes will be prevented or corrected. The parties agree, however, that the current agricultural use of, and improvements to, the Property are consistent with the conservation purposes of this Easement.

E. The conservation purposes of this Easement are recognized by, and the grant of this Easement will serve, the following clearly delineated governmental conservation policies:

The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. section 4201 et seq., whose purpose is “to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government and private programs and policies to protect farmland;”

Section 815 of the California Civil Code, which defines perpetual conservation easements;

California Constitution Article XIII, section 8, California Revenue and Taxation Code sections 421.5 and 422.5, and California Civil Code section 815.1, under which this Agricultural Conservation Easement is an enforceable restriction, requiring that the Property’s tax valuation be consistent with restriction of its use for purposes of food and fiber production and conservation of natural resources.

Section 10200 et seq. of the California Public Resources Code, which creates the California Farmland Conservancy Program within the Department;

Section 51220 of the California Government Code, which declares a public interest in the preservation of agricultural lands;

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The California General Plan law section 65300 et seq. and Section 65400 et seq. of the California Government Code, and the [County name] County General Plan, as updated on [Update date], which includes as one of its goals to protect all viable farmlands designated as prime, of statewide importance, unique, or of local importance from conversion to and encroachment of non-agricultural uses;

Resolution No. [Resolution number], approved by the Board of Supervisors of [County name] County on the [day] of [month], [year], which expresses support for the acquisition of this Easement and that the acquisition is consistent with the County’s General Plan. (NOTE: If the Property lies within the Sphere of Influence of an incorporated city, both the city and county must pass resolutions of support.)

F. The Steward is a California nonprofit organization within the meaning of California Public Resources Code section 10221 and California Civil Code section 815.3 and is a tax exempt and “qualified conservation organization” within the meaning of Sections 501(c)(3) and 170(b)(1)(A)(iv) as defined by the United States Internal Revenue Code.

GRANT OF AGRICULTURAL CONSERVATION EASEMENT

Now, therefore, for the reasons given, and in consideration of their mutual promises and covenants, terms, conditions and restrictions contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Landowner voluntarily grants and conveys to the Steward, and the Steward voluntarily accepts, a perpetual conservation easement, as defined by Section 815.1 of the California Civil Code and California Public Resources Code section 10211, and of the nature and character described in this Easement for the purpose described below, and agree as follows:

1. Purpose.

The conservation purposes (“Purpose”) of this Easement is to enable the Property to remain in productive agricultural use by preventing uses of the Property prohibited by the provisions of this Easement or that will impair or interfere with the Property’s agricultural productive capacity, its soils, and its agricultural character, values, and utility. To the extent that the preservation of the open space character and [scenic, habitat, natural, or historic, etc.] values of the Property are consistent with such use, it is within the Purpose of this Easement to protect those values.

2. Right to Use Property for Agricultural Purposes.

The Landowner retains the right to use the Property for agricultural purposes, or to permit others to use the Property for agricultural purposes, in accordance with applicable law as long as the agricultural productive capacity and open space character of the Property are not

132 thereby significantly impaired.

133
134 3. *Prohibited Uses.*

135
136 The Landowner shall not perform, nor knowingly allow others to perform, any act on or
137 affecting the Property that is inconsistent with this Easement. Any use or activity that
138 would diminish or impair the agricultural productive capacity and open space character
139 (or scenic, habitat, natural, historic etc. values) of the Property or that would cause
140 significant soil degradation or erosion is prohibited. This Easement authorizes the
141 Steward to enforce these covenants in the manner described herein. However, unless
142 otherwise specified, nothing in this Easement shall require the Landowner to take any
143 action to restore the condition of the Property after any Act of God or other event over
144 which it had no control. The Landowner understands that nothing in this Easement
145 relieves it of any obligation or restriction on the use of the Property imposed by law.

146
147 4. *Permission of the Steward.*

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149 Where the Landowner is required to obtain the Steward's permission or approval for a
150 proposed action hereunder, said permission or approval (a) shall not be unreasonably
151 delayed or withheld by the Steward, (b) shall be sought and given in writing, with copies
152 of all documents to be provided to the Department, and (c) shall in all cases be obtained
153 by the Landowner prior to the Landowner's taking the proposed action. The Steward
154 shall grant permission or approval to the Landowner only where the Steward, acting in
155 the Steward's sole reasonable discretion and in good faith, determines that the proposed
156 action will not diminish or impair the agricultural productive capacity and open space
157 character of the Property and would not cause significant soil degradation or erosion.

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159 5. *Construction or Placement of Buildings and Other Improvements.*

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161 The Landowner may undertake construction, erection, installation, or placement of
162 buildings, structures, or other improvements on the Property only as provided in
163 subsections (a) through (d) below. All other construction, erection, installation, or
164 placement of buildings, structures, or other improvements on the Property is prohibited.
165 Before undertaking any construction, erection, installation or placement that requires
166 advance permission, the Landowner shall notify the Steward and obtain prior written
167 permission from the Steward.

168
169 For purposes of this section, "improvements" shall not refer to trees, vines, or other living
170 improvements planted for agricultural purposes, nor shall it refer to irrigation
171 improvements necessary or desirable to irrigate the Property for agricultural purposes, all
172 of which may be made without the permission of the Steward.

173
174 (a) Fences – Existing fences may be repaired and replaced without any further
175 permission of the Steward. New fences may be built anywhere on the Property
176 for purposes of reasonable and customary agricultural management, and for
177 security of farm produce, livestock, equipment, and improvements on the

178 Property, without any further permission of the Steward.

179

180 (b) Agricultural Structures and Improvements – Existing agricultural structures
181 and improvements as shown in Exhibit B may be repaired, reasonably enlarged,
182 and replaced at their current locations for agricultural purposes without further
183 permission from the Steward. New buildings and other structures and
184 improvements to be used solely for agricultural production on the Property or sale
185 of farm products predominantly grown or raised on the Property, including barns
186 and equipment sheds, but not including any dwelling or farm labor housing, may
187 be built on the Property within the Building Envelope depicted in Exhibit B,
188 without further permission of the Steward. All permissible new agricultural
189 structures may be repaired, reasonably enlarged, and replaced without further
190 permission of the Steward. Any other agricultural production or marketing-
191 related structures may be constructed only with the written permission of the
192 Steward pursuant to Section 4.

193

194 (c) Residential Dwellings – The single-family dwelling shown in Exhibit B may
195 be repaired, reasonably enlarged or replaced at the current location entirely within
196 the Building Envelope shown in Exhibit B without further permission of the
197 Steward. No other residential structures may be constructed or placed on the
198 Property except for agricultural employee housing per Section 5(d).

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200 (NOTE: This section may need to be modified depending on the existing
201 dwellings and Landowner’s development rights retained in the Easement.
202 Depending on the size of the Property and other circumstances, it may be
203 appropriate to establish a maximum size of the single-family dwelling.)

204

205 (d) Agricultural Employee Housing – No agricultural employee housing may be
206 constructed or placed on the Property without advance written permission of the
207 Steward. Steward may only grant permission pursuant to Section 4 and only if
208 the Landowner can demonstrate to the Steward’s satisfaction that such
209 agricultural employee housing is reasonable and necessary for the agricultural
210 operation of the Property. Any agricultural employee housing must be located
211 entirely within the Building Envelope shown in Exhibit B.

212

213 6. *Subdivision.*

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215 The division, subdivision, defacto subdivision, or partition of the Property, including
216 transfer of development rights, whether by physical, legal, or any other process, is
217 prohibited.

218

219 The Landowner agrees the Property has [*number*] existing legal parcel(s), and that no
220 additional, separate legal parcels currently exist within the Property that may be
221 recognized by a certificate of compliance pursuant to California Government Code
222 section 66499.35 based on previous patent or deed conveyances, subdivisions, or surveys.
223 The Landowner will not apply for or otherwise seek recognition of additional legal

224 parcels within the Property based on certificates of compliance or any other authority.
225 The Landowner shall continue to maintain the legal parcels comprising the Property, and
226 all interests therein, under common ownership, as though a single legal parcel.

227
228 Lot line adjustment may be permitted solely with the written approval of the Steward
229 pursuant to Section 4, and for purposes of maintaining, enhancing or expanding
230 agricultural practices or productivity on the Property. The Landowner shall take no other
231 steps towards lot line adjustment unless and until the Steward approves the request.

232

233 *7. Development Rights.*

234

235 The Landowner hereby grants to the Steward all development rights except as
236 specifically reserved in this Easement, that were previously, are now or hereafter
237 allocated to, implied, reserved, appurtenant to, or inherent in the Property, and the parties
238 agree that such rights are released, terminated, and extinguished, and may not be used on
239 or transferred by either party to any portion of the Property as it now or later may be
240 bounded or described, or to any other property adjacent or otherwise, or used for the
241 purpose of calculating permissible lot yield of the Property or any other property. This
242 Easement shall not create any development rights.

243

244 *8. Mining.*

245

246 The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other
247 mineral substance, using any method that disturbs the surface of the land, is prohibited.

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249 (NOTE: This section can be customized depending on the unique characteristics of the
250 property and the landowner's mineral interest therein.)

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253 *9. Paving and Road Construction.*

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255 No portion of the Property presently unpaved shall be paved or otherwise be covered with
256 concrete, asphalt, or any other paving material, nor shall any paved or unpaved road for
257 access or other purposes be constructed without the advance written permission of the
258 Steward pursuant to Section 4. Unpaved farm roads as required by agricultural operations
259 are permitted without further permission from the Steward. The Landowner shall notify
260 the Steward of any relocation or addition of unpaved farm roads.

261

262 *10. Trash and Storage.*

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264 The dumping or accumulation on the Property of any kind of trash, refuse, vehicle bodies
265 or parts, or "Hazardous Materials," as defined in Section 25 is prohibited. Farm-related
266 trash and refuse produced on the Property may be temporarily stored on the Property
267 subject to all applicable laws. The storage of agricultural products and byproducts
268 produced on the Property and materials reasonably required for agricultural production
269 on the Property, including Hazardous Materials, is permitted as long as it is done in

270 accordance with all applicable government laws and regulations.

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272 11. *Commercial Signs.*

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274 Commercial signs (including billboards) unrelated to permitted activities conducted on
275 the Property are prohibited.

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277 12. *Recreational Uses.*

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279 Resort structures, golf courses, non-residential swimming pools, public or commercial
280 airstrips, commercial equestrian facilities, public or commercial helicopter pads, and any
281 other non-agricultural recreational structures or facilities are prohibited on the Property.
282 Other buildings and facilities for any other private recreational use may not be built on
283 the Property without the advance written permission of the Steward pursuant to Section 4.
284 The use of motorized vehicles off roadways and outside of the building envelope is
285 prohibited except where used for agricultural production, property maintenance and
286 security, or for the purpose of monitoring this Easement.

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288 13. *Water Rights.*

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290 The Landowner shall retain and reserve all ground water, and all appropriative,
291 prescriptive, contractual or other water rights appurtenant to the Property at the time this
292 Easement becomes effective. The Landowner shall not permanently transfer, encumber,
293 lease, sell, or otherwise separate such quantity of water or water rights from title to the
294 Property itself. No permanent separation of water or water rights shall be permitted. All
295 water shall be retained in [*County name*] County for agricultural production and used in
296 conjunction with the Improvements permitted by Section 5 of this Easement only. Water
297 may be distributed to a contiguous property or other property owned or leased by the
298 Landowner on an annual basis for agricultural production only. Any temporary
299 distribution of water shall not impair the long-term agricultural productive capacity or
300 open space character of the Property.

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302 14. *Rights Retained by the Landowner.*

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304 Subject to Section 7 and to interpretation under Section 22, as owner of the Property, the
305 Landowner reserves all interests in the Property not transferred, conveyed, restricted or
306 prohibited by this Easement. These ownership rights include, but are not limited to, the
307 right to sell, lease, or otherwise transfer the Property to anyone the Landowner chooses,
308 as well as the right to privacy, the right to exclude any member of the public from
309 trespassing on the Property, and any other rights consistent with the Purpose of this
310 Easement. Nothing contained herein shall be construed as a grant to the general public of
311 any right to enter upon any part of the Property.

312

313 Nothing in this Easement relieves the Landowner of any obligation or restriction on the
314 use of the Property imposed by law.

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316 15. *Responsibilities of the Landowner and the Steward Not Affected.*
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318 Other than as specified herein, this Easement is not intended to impose any legal or other
319 responsibility on the Steward, or in any way to affect any existing obligation of the
320 Landowner as owner of the Property. Among other things, this shall apply to:

321
322 (a) Taxes – The Landowner shall be solely responsible for payment of all taxes
323 and assessments levied against the Property. If the Steward ever pays any taxes
324 or assessments on the Property, or if the Steward pays levies on the Landowner’s
325 interest in order to protect Steward’s interests in the Property, the Landowner will
326 reimburse the Steward for the same.

327
328 (b) Upkeep and Maintenance – The Landowner shall be solely responsible for the
329 upkeep and maintenance of the Property, to the extent it may be required by law.
330 The Steward shall have no obligation for the upkeep or maintenance of the
331 Property. If the Steward acts to maintain the Property in order to protect the
332 Steward’s interest in the Property, the Landowner will reimburse the Steward for
333 any such costs.

334
335 (c) Liability and Indemnification – In view of the Steward’s and the Department
336 of Conservation’s negative rights, limited access to the land, and lack of active
337 involvement in the day-to-day management activities on the Property, the
338 Landowner shall indemnify, protect, defend and holds harmless the Steward, the
339 Department of Conservation, their officers, directors, members, employees,
340 contractors, legal representatives, agents, successors and assigns (collectively,
341 “Agents and Assigns”) from and against all liabilities, costs, losses, orders, liens,
342 penalties, claims, demands, damages, expenses, or causes of action or cases,
343 including without limitation reasonable attorneys’ fees, arising out of or in any
344 way connected with or relating to the Property or the Easement. The Landowner
345 shall be solely liable for injury or the death of any person, or physical damage to
346 any property, or any other costs or liabilities resulting from any act, omission,
347 condition, or other matter related to or occurring on or about the Property,
348 regardless of cause, unless due to the negligence or willful misconduct of the
349 Steward, the Department of Conservation, and/or their respective Agents and
350 Assigns. The Steward shall be named as an additional insured on Landowner’s
351 general liability insurance policy.

352
353 Neither the Steward, the Department of Conservation, nor their Agents and
354 Assigns shall have responsibility for the operation of the Property, monitoring of
355 hazardous conditions on it, or the protection of the Landowner, the public or any
356 third parties from risks relating to conditions on the Property. Without limiting
357 the foregoing, neither the Steward, the Department, nor their respective Agents
358 and Assigns shall be liable to the Landowner or other person or entity in
359 connection with consents given or withheld, or in connection with any entry upon
360 the Property occurring pursuant to this Easement, or on account of any claim,
361 liability, damage or expense suffered or incurred by or threatened against the

362 Landowner or any other person or entity, except as the claim, liability, damage, or
363 expense is the result of the gross negligence or intentional misconduct of the
364 Steward, the Department, and/or their respective Agents and Assigns.
365

366 16. *Monitoring.*
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368 The Steward shall manage its responsibilities as holder of this Easement in order to
369 uphold the Purpose of this Easement. The Steward's responsibilities include, but are not
370 limited to, annual monitoring, such additional monitoring as circumstances may require,
371 record keeping, and enforcement of this Easement, for the purpose of preserving the
372 Property's agricultural productive capacity and open space character in perpetuity.
373 Failure of the Steward to carry out these responsibilities shall not impair the validity of
374 this Easement or limit its enforceability in any way. With reasonable advance notice
375 (except in the event of an emergency circumstance or prevention of a threatened breach),
376 Steward shall have the right to enter upon, inspect, observe, monitor and evaluate the
377 Property to identify the current condition of, and uses and practices on the Property and
378 to determine whether the condition, uses and practices are consistent with this Easement.
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380 Steward shall indemnify, defend with counsel of Landowner's choice, and hold
381 Landowner harmless from, all expense, loss, liability, damages and claims, including
382 Landowner's attorneys' fees, if necessary, arising out of Steward's entry on the Property,
383 unless caused by a violation of this Easement by Landowner or by Landowner's
384 negligence or willful misconduct.
385

386 The Steward shall report to the Department of Conservation by June 30 of each year after
387 the annual monitoring visit, describing method of monitoring, condition of the Property,
388 stating whether any violations were found during the period, describing any corrective
389 actions taken, the resolution of any violation, and any transfer of interest in the Property.
390 Failure to do so shall not impair the validity of this Easement or limit its enforceability in
391 any way.
392

393 17. *Enforcement.*
394

395 The Steward may take all actions that it deems necessary to ensure compliance with the
396 terms, conditions, covenants, and purposes of this Easement. The Steward shall have the
397 right to prevent and correct violations of the terms, conditions, covenants, and purposes
398 of this Easement. If the Steward finds what it believes is a violation or potential
399 violation, it may at its discretion take appropriate legal action to ensure compliance with
400 the terms, conditions, covenants, and purposes of this Easement and shall have the right
401 to correct violations and prevent the threat of violations. Except when an ongoing or
402 imminent violation could irreversibly diminish or impair the agricultural productive
403 capacity and open space character of the Property, the Steward shall give the Landowner
404 written notice of the violation or potential violation, and thirty (30) days to correct it,
405 before filing any legal action.
406

407 If a court with jurisdiction determines that a violation may exist, has occurred, or is about

408 to occur, the Steward may obtain an injunction, specific performance, or any other
409 appropriate equitable or legal remedy, including (i) money damages, including damages
410 for the loss of the agricultural conservation values protected by this Easement, (ii)
411 restoration of the Property to its condition existing prior to such violation, and (iii) an
412 award for all of the Steward's expenses incurred in stopping and correcting the violation,
413 including but not limited to reasonable attorney's fees. The failure of the Steward to
414 discover a violation or potential violation, or to take immediate legal action to prevent or
415 correct a violation or potential violation known to the Steward, shall not bar the Steward
416 from taking subsequent legal action. The Steward's remedies under this section shall be
417 cumulative and shall be in addition to all remedies now or hereafter existing at law or in
418 equity.

419
420 Without limiting the Landowner's liability therefor, the Steward shall apply damages
421 recovered to the cost of undertaking any corrective action on the Property. Should the
422 restoration of lost values be impossible or impractical for whatever reason, the Steward
423 shall apply any and all damages recovered to furthering its mission, with primary
424 emphasis on agricultural conservation easement acquisition and enforcement.

425
426 In the event the Steward fails to enforce any term, condition, covenant or purpose of this
427 Easement, as determined by the Director of the Department of Conservation, the Director
428 of the Department and his or her successors and assigns shall have the right to enforce the
429 Easement after giving notice to the Steward and the Landowner and providing a
430 reasonable opportunity under the circumstances for the Steward to enforce any term,
431 condition, covenant, or purpose of the Easement. In the event that the Director of the
432 Department determines that the Steward has failed to enforce any of the terms,
433 conditions, covenants, or purposes of the Easement, the Director of the Department and
434 his or her successors and assigns shall be entitled to exercise the same right to enter the
435 Property granted to the Steward, including right of immediate entry where the Director of
436 the Department or his or her successor or assign determines that immediate entry is
437 required in the event of an emergency circumstance or prevention of a threatened
438 violation of this Easement.

439
440 Failure or refusal to exercise any rights under the terms of this Easement by the Steward
441 in the event of a violation by the Landowner of any term herein shall not constitute a
442 waiver or forfeiture of the Steward's right to enforce any term, condition, covenant, or
443 purpose of this Easement.

444
445 18. *Transfer of Easement.*

446
447 This Easement may only be assigned or transferred to a private nonprofit organization
448 that, at the time of transfer, is a "qualified organization" under Section 170(h) of the
449 United States Internal Revenue Code and under Section 815.3(a) of the California Civil
450 Code and has similar purposes to preserve agricultural lands and open space. If no such
451 private nonprofit organization exists or is willing to assume the responsibilities imposed
452 by this Easement, then this Easement may be transferred to any public agency authorized
453 to hold interests in real property as provided in Section 815.3(b) of the California Civil

454 Code. Such an assignment or transfer may proceed only if the organization or agency
455 expressly agrees to assume the responsibility imposed on the Steward by the terms of this
456 Easement and is expressly willing and able to hold this Easement for the Purpose for
457 which it was created. All transfers shall be duly recorded.

458

459 If the Steward should desire to assign or transfer this Easement, the Steward must obtain
460 written permission from the Landowner and the Department of Conservation, which
461 permission shall not be unreasonably withheld.

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463 If the Steward or its successors ever ceases to exist or no longer qualifies under Section
464 170(h) of the U.S. Internal Revenue Code, or applicable state law, the Department of
465 Conservation, in consultation with the Landowner, shall identify and select an
466 appropriate private or public entity to whom this Easement shall be transferred.

467

468 19. *Transfer of Property Interest.*

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470 Any time the Property itself, or any interest in it, is transferred by the Landowner to any
471 third party, the Landowner shall notify the Steward and the Department of Conservation
472 in writing at least thirty (30) days prior to the transfer of the Property or interest, and the
473 document of conveyance shall expressly incorporate by reference this Easement. Any
474 document conveying a lease of the Property shall expressly incorporate by reference this
475 Easement. Failure of the Landowner to do so shall not impair the validity of this
476 Easement or limit its enforceability in any way.

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478 20. *Amendment of Easement.*

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480 This Easement may be amended only with the written consent of the Landowner, the
481 Steward, and the Director of the Department of Conservation. Any such amendment
482 shall be consistent with the Purpose of this Easement and with the Steward's easement
483 amendment policies, and shall comply with all applicable laws, including Section 170(h)
484 of the Internal Revenue Code, or any regulations promulgated in accordance with that
485 section, and with Section 815 et seq. of the California Civil Code, and the California
486 Farmland Conservancy Program Act as codified in Section 10200 et seq. of the California
487 Public Resources Code, and any regulations promulgated thereunder. No amendment
488 shall diminish or affect the perpetual duration or the Purpose of this Easement, nor the
489 status or rights of the Steward under the terms of this Easement.

490

491 This Easement and any amendment to it shall be recorded in [*County name*] County.
492 Copies of any amendments to this Easement shall be provided to the Department of
493 Conservation.

494

495 21. *Termination of Easement.*

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497 (*NOTE: Landowners may waive the administrative termination provision defined in*
498 *Public Resources Code sections 10270-77, in which case potential easement termination*
499 *shall be governed solely by judicial termination proceedings. Under such cases, Section*
21(a) shall be removed and Section 21(c) updated to remove the following language from

500 the second sentence “at the time of a voluntary termination pursuant to Sections 10270-
501 10277 of the Public Resources Code or...”. The following paragraph should be added:

502

503 *Waiver of Administrative Termination Rights. It is the intention of the parties that the*
504 *conservation purposes of this Easement shall be carried out forever as provided in*
505 *Section 10211 of the Public Resources Code and Section 815.2 et seq. of the Civil Code.*
506 *Liberal construction is expressly required for purposes of effectuating this Easement in*
507 *perpetuity, notwithstanding conditions or hardship of any kind that may provide a basis*
508 *for termination of this Easement at law or in equity. Accordingly, Landowner hereby*
509 *affirmatively waives on behalf of Landowner and Landowner’s successors and assigns all*
510 *right to request a non-judicial termination of this Easement pursuant to the provisions set*
511 *forth in the California Public Resources Code Sections 10270 through 10277, inclusive.*
512 *If circumstances arise in the future such as render the purpose of this Easement*
513 *impossible to accomplish, this Easement can only be terminated or extinguished, whether*
514 *in whole or in part, by judicial proceedings in a court of competent jurisdiction.*

515

516 *Landowner’s Initials:* _____

517

518 (a) Termination of the Easement shall be governed by Sections 10270-10277 of
519 the Public Resources Code of California. This Easement shall not be terminated
520 unless it meets the criteria for termination of this Easement including, California
521 Constitution, Article XIII, section 8; California Public Resources Code sections
522 10273 - 10275, Revenue and Taxation Code sections 421.5 and 422.5; and other
523 applicable laws, rules and regulations. The Steward and the Department of
524 Conservation shall be notified at least thirty (30) days prior to any initiation of
525 any proceedings to terminate this Easement. No inaction or silence by the
526 Steward shall be construed as abandonment of the Easement. The fact that the
527 land is not in agricultural use is not reason for termination of this Easement.

528

529 (b) Other than pursuant to eminent domain or purchase in lieu of eminent domain,
530 no other voluntary or involuntary sale, exchange, conversion, or conveyance of
531 any kind of all or part of the Property, or of any interest in it, shall limit or
532 terminate the provisions of this Easement. Termination of the Easement through
533 condemnation is subject to the requirements of Section 10261 of the Public
534 Resources Code, the eminent domain laws of the State of California, federal law,
535 and this Easement. The Property may not be taken by eminent domain or in lieu
536 of eminent domain if the planned use is more than seven years in the future
537 (California Code of Civil Procedure section 1240.220). Steward shall be paid by
538 the condemnor the value of the Easement at the time of condemnation (Public
539 Resources Code section 10261(a)(2)). Purchase in lieu of condemnation, or
540 settlement of an eminent domain proceeding, shall occur pursuant to applicable
541 laws and procedures, including but not limited to California Government Code
542 sections 7267.1 and 7267.2, and shall require approval of Steward and the
543 Director of the Department of Conservation. Steward shall have an opportunity to
544 accompany the appraiser for the condemning agency when the appraiser goes on
545 the Property with Landowner. Should this Easement be condemned or otherwise

546 terminated on any portion of the Property, the balance of the Property shall
547 remain subject to this Easement. In this event, all relevant related documents
548 shall be updated and re-recorded by the Steward to reflect the modified easement
549 area and encumbrances junior to this Easement shall remain subordinate to the
550 Easement as amended.

551
552 (c) The grant of this Easement gives rise to a property right immediately vested in
553 the Steward. For the purpose of determining the amount to be paid by the
554 Landowner in a repurchase of the Easement at the time of a voluntary termination
555 pursuant to Sections 10270-10277 of the Public Resources Code or pursuant to
556 judicial proceedings, and for the purpose of allocating proceeds from a sale or
557 other disposition of the Property at the time of termination, the Easement and the
558 Steward's property right therein shall have a value equal to the difference between
559 the current fair market value of the Property as if unencumbered by this Easement
560 and the current fair market value of the Property encumbered by this Easement,
561 each as determined on or about the date of termination. The values shall be
562 determined by an appraisal performed by an appraiser jointly selected by the
563 Landowner and the Steward. The Landowner shall pay the cost of the appraisal,
564 and the appraisal is subject to approval by the Department. Nothing herein shall
565 prevent the Landowner, the Steward, or the Department from having an appraisal
566 prepared at its own expense.

567
568 Upon approval of termination of this Easement or any portion thereof, the
569 Landowner shall reimburse the State of California, Department of Conservation
570 California Farmland Conservancy Program Fund and [*Other funders*] the amount
571 equal to the value of the Easement that is terminated pursuant to Section 10276 of
572 the Public Resources Code. The amount required to be paid in connection with
573 the Landowner's repurchase shall be distributed as follows: (i) to the State of
574 California, Department of Conservation, California Farmland Conservancy
575 Program Fund, [*percentage*] (%); and (ii) to the [*Other funder*], [*percentage*] (%),
576 representing the proportion of easement value originally contributed by these
577 agencies for the purchase of this Easement. This Easement shall not be deemed
578 terminated until such payment is received by all parties. The Steward, in using
579 any funds received from the termination of this Easement, shall use the funds in a
580 manner consistent with the Purpose of this Easement.

581
582 (NOTE: Additional language IRS language may need to be used for landowners
583 seeking IRS recognition of a charitable donation)

584
585 (d) If the Steward obtains payment on a claim under a title insurance policy
586 insuring this Easement, payment shall be distributed as set forth in Section 21(c).

587
588 22. *Interpretation.*

589
590 (a) This Easement shall be interpreted under the laws of the State of California,
591 resolving any ambiguities and questions of the validity of specific provisions so as

592 to give maximum effect to its conservation purposes.

593

594 (b) References to specific authorities in this Easement shall be to the statute, rule,
595 regulation, ordinance, or other legal provision that is in effect at the time this
596 Easement becomes effective.

597

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

601

602 23. *Perpetual Duration.*

603

604 Pursuant to California Civil Code section 815.1, this Easement shall run with the land in
605 perpetuity. Every provision of this Easement that applies to the Landowner or the
606 Steward shall also apply to their respective agents, heirs, executors, administrators,
607 assigns, and all other successors as their interests may appear.

608

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

615

616 24. *Notices.*

617

618 Any notices to the Landowner and the Steward required by this Easement shall be in
619 writing and shall be personally delivered or sent by First-Class Mail to the following
620 addresses, unless a party has been notified by the other of a change of address:

621

622 To the Landowner:

623

624 _____

625 _____

626 _____

627

628 To the Steward:

629

630 _____

631 _____

632 _____

633

634 Any notices required by this Easement to be sent to the Department shall be in writing
635 and shall be personally delivered or sent by first class mail, at the following address,
636 unless a party has been notified by the Department of a change of address:

637

638 To the Department of Conservation:

639

640 Department of Conservation

641 801 K Street, MS 18-01

642 Sacramento, CA 95814

643 Attn: California Farmland Conservancy Program

644

645 25. *The Landowner's Environmental Warranty.*

646

647 (a) Nothing in this Easement shall be construed as giving rise to any right or
648 ability in the Steward or the Department of Conservation to exercise physical or
649 management control over the day-to-day operations of the Property, or any of the
650 Landowner's activities on the Property, or otherwise to become an "owner" or
651 "operator" with respect to the Property as those words are defined and used in
652 environmental laws, including the Comprehensive Environmental Response,
653 Compensation, and Liability Act of 1980 ("CERCLA"), as amended or any
654 corresponding state and local statute or ordinance.

655

656 (b) The Landowner warrants that it has no actual knowledge of a release or
657 threatened release of any Hazardous Materials on, at, beneath or from the
658 Property. Moreover the Landowner hereby promises to defend and indemnify the
659 Steward and the Department of Conservation against all litigation, claims,
660 demands, penalties and damages, including reasonable attorneys' fees, arising
661 from or connected with the release or threatened release of any Hazardous
662 Materials on, at, beneath or from the Property, or arising from or connected with a
663 violation of any Environmental Laws. The Landowner's indemnification
664 obligation shall not be affected by any authorizations provided by the Steward to
665 the Landowner with respect to the Property or any restoration activities carried
666 out by the Steward at the Property; provided, however, that the Steward shall be
667 responsible for any Hazardous Materials contributed after this date to the Property
668 by the Steward.

669

670 (c) The Landowner warrants that it shall remain in compliance with, all applicable
671 Environmental Laws. The Landowner warrants that there are no notices by any
672 governmental authority of any violation or alleged violation of, non-compliance
673 or alleged non-compliance with or any liability under any Environmental Law
674 relating to the operations or conditions of the Property.

675

676 (d) "Environmental Law" or "Environmental Laws" means any and all Federal,
677 state, local or municipal laws, rules, orders, regulations, statutes, ordinances,
678 codes, guidelines, policies or requirements of any governmental authority
679 regulating or imposing standards of liability or standards of conduct (including
680 common law) concerning air, water, solid waste, Hazardous Materials, worker
681 and community right-to-know, hazard communication, noise, radioactive
682 material, resource protection, subdivision, inland wetlands and watercourses,
683 health protection and similar environmental health, safety, building and land use

684 as may now or at any time hereafter be in effect.

685

686 (e) “Hazardous Materials” means any petroleum, petroleum products, fuel oil,
687 waste oils, explosives, reactive materials, ignitable materials, corrosive materials,
688 hazardous chemicals, hazardous wastes, hazardous substances, extremely
689 hazardous substances, toxic substances, toxic chemicals, radioactive materials,
690 infectious materials and any other element, compound, mixture, solution or
691 substance which may pose a present or potential hazard to human health or the
692 environment or any other material defined and regulated by Environmental Laws.

693

694 (f) If at any time after the effective date of this Easement there occurs a release,
695 discharge or other incident in, on, or about the Property of any substance now or
696 hereafter defined, listed, or otherwise classified pursuant to any federal, state, or
697 local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise
698 contaminating to the air, water, or soil, or in any way harmful or threatening to
699 human health or the environment, the Landowner agrees to take any steps that are
700 required of the Landowner with respect thereto under federal, state, or local law
701 necessary to ensure its containment and remediation, including any cleanup.

702

703 26. *The Landowner’s Title Warranty; No Prior Conservation Easements.*

704

705 The Landowner represents and warrants that it owns the entire fee simple interest in the
706 Property, including the entire mineral estate, and hereby promises to defend this
707 Easement against all claims that may be made against it. Any and all financial liens or
708 financial encumbrances with priority over this Easement existing as of the date of the
709 recording of this Easement have been subordinated. Exhibit C (Prior Encumbrances) sets
710 forth all prior encumbrances. The Landowner represents and warrants that the Property
711 is not subject to any other conservation easement whatsoever.

712

713 27. *Granting Subsequent Easements, Interests in Land, or Use Restrictions.*

714

715 The grant of any subsequent easements, interests in land, or use restrictions that might
716 diminish or impair the agricultural productive capacity or open space character of the
717 Property is prohibited. The Landowner may grant subsequent easements, including
718 conservation easements, interests in land, or use restrictions on the Property provided that
719 they do not restrict agricultural husbandry practices or interfere with any of the terms of
720 this Easement, as determined by the Steward. “Husbandry practices” means agricultural
721 activities, such as those specified in Section 3482.5(e) of the California Civil Code,
722 conducted or maintained for commercial purposes in a manner consistent with proper and
723 accepted customs and standards, as established and followed by similar agricultural
724 operations in the same locality. The Steward’s written approval shall be obtained at least
725 thirty (30) days in advance of the Landowner’s execution of any proposed subsequent
726 easement, interests in land, or use restriction on the Property, and such subsequent
727 easements, interests in land, and use restrictions shall make reference to and be
728 subordinate to this Easement. The Steward shall notify the Department immediately
729 upon receipt of request by the Landowner to grant a subsequent easement, interest in

730 land, or use restriction on the Property. The Steward shall notify the Department in the
731 event that it approves the grant of any subsequent easement, interest in land, or use
732 restriction on the Property. The Steward shall disapprove the granting of any proposed
733 subsequent easement, interest in land, or use restriction that appears to restrict
734 agricultural husbandry practices, or diminishes or impairs the agricultural productive
735 capacity or open space character of the Property

736
737 28. *Severability.*

738
739 If any term, provision, covenant, condition, or restriction of this Easement is held by a
740 court of competent jurisdiction to be unlawful, invalid, void, unenforceable, or not
741 effective the remainder of this Easement shall remain in full force and effect and shall in
742 no way be affected, impaired, or invalidated.

743
744 29. *Entire Agreement.*

745
746 This Easement is the final and complete expression of the agreement between the parties
747 with respect to the subject matter contained herein. Any and all prior or
748 contemporaneous agreements with respect to this subject matter, written or oral, are
749 merged into and superseded by this written instrument.

750
751 30. *Acceptance.*

752
753 As attested by the signature of its [*Position title*] affixed hereto, in exchange for
754 consideration, the Steward hereby accepts without reservation the rights and
755 responsibilities conveyed by this Deed of Agricultural Conservation Easement.

756
757 To Have and To Hold, this Deed of Agricultural Conservation Easement unto the
758 Steward, its successors and assigns, forever.

759
760 In Witness Whereof, the Landowner and the Steward, intending to legally bind
761 themselves, have set their hands on the date first written above.

762
763 LANDOWNER

764
765 [*Landowner's Name*].

766
767 By: _____

768
769 Name: _____

770
771 Title: _____

772
773 STEWARD

774
775 [*Steward's Name*],

776 a California nonprofit public benefit corporation

777

778 By: _____

779

780 Name: _____

781

782 Title: _____

783

784 ACKNOWLEDGEMENTS

785

786

787 STATE OF CALIFORNIA } ss

788 COUNTY OF }
789

790 On _____ before me, _____, Notary Public of the
791 State of California, personally appeared _____,
792 who proved to me on the basis of satisfactory evidence to be the person(s) whose name
793 is/are subscribed to the within instrument and acknowledged to me that he/she/they
794 executed the same in his/her/their authorized capacity(ies), and that by his/her/their
795 signature(s) on the instrument the person(s), or the entity upon behalf of which the
796 person(s) acted, executed the instrument.

797

798 I certify under PENALTY OF PERJURY under the laws of the State of California that
799 the foregoing paragraph is true and correct.

800

801 WITNESS my hand and official seal.

802

803 Signature _____

804

805

806

807 STATE OF CALIFORNIA } ss

808 COUNTY OF }
809

810 On _____ before me, _____, Notary Public of the
811 State of California, personally appeared _____,
812 who proved to me on the basis of satisfactory evidence to be the person(s) whose name
813 is/are subscribed to the within instrument and acknowledged to me that he/she/they
814 executed the same in his/her/their authorized capacity(ies), and that by his/her/their
815 signature(s) on the instrument the person(s), or the entity upon behalf of which the
816 person(s) acted, executed the instrument.

817

818 I certify under PENALTY OF PERJURY under the laws of the State of California that
819 the foregoing paragraph is true and correct.

820

821 WITNESS my hand and official seal.

822

823 Signature _____

824

825

826

827 Exhibit A (Legal Description) Attached

828 Exhibit B (Building Envelope and Existing Improvements) Attached

829 Exhibit C (Prior Encumbrances) Attached