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DEED OF AGRICULTURAL CONSERVATION EASEMENT

This Deed of Agricultural Conservation Easement is granted on this ____ of _____ 2012, by [Landowner's name], [Ownership status], having an address at [Landowner's address] ("Landowner"), to [Grantee's name], a California nonprofit public benefit corporation, having an address at [Grantee's address] ("Grantee"), 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") and generally depicted in Exhibit B ("Vicinity Map"), 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 C ("Building Envelope and Existing Improvements"), also attached to and made a part of this Easement. Except as shown in Exhibit C, 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 Grantee with the cooperation of the Landowner and incorporated herein by this reference. The Landowner and the Grantee acknowledge that the Baseline Report is complete and accurate as of the date of this Easement. Both the Landowner and the Grantee 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 Grantee 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 by the Department’s funds.

D. The Landowner grants this Easement for valuable consideration to the Grantee for the purpose of assuring that, under the Grantee’s perpetual granteeship, 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;”

California Civil Code at Part 2, Chapter 4, (commencing with section 815), which defines and authorizes 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;

85 Section 51220 of the California Government Code, which declares a public
86 interest in the preservation of agricultural lands, by providing that “agricultural
87 lands have a definitive public value as open space” and “that the discouragement of
88 premature and unnecessary conversion of agricultural land to urban uses is a matter
89 of public interest”;

90
91 California Food and Agriculture Code Section 821 states that one of the major
92 principles of the State's agricultural policy is “to sustain the long-term productivity
93 of the State's farms by conserving and protecting the soil, water, and air, which are
94 agriculture's basic resources;”

95
96 The California General Plan law section 65300 et seq. and Section 65400 et seq.
97 of the California Government Code, and the [*County name*] County General Plan,
98 as updated on [*Update date*], which includes as one of its goals to protect
99 farmlands designated as prime, of statewide importance, unique, or of local
100 importance from conversion to and encroachment of non-agricultural uses; and,

101
102 Resolution No. [*Resolution number*], approved by the Board of Supervisors of
103 [*County name*] County on the [*day*] of [*month*], [*year*], which expresses support
104 for the acquisition of this Easement and finds that the acquisition is consistent
105 with the County’s General Plan and the Resolution’s findings. (NOTE: If the
106 Property lies within the Sphere of Influence of an incorporated city, both the city
107 and county must pass resolutions of support.)

108
109 F. The Grantee is a California nonprofit organization within the meaning of
110 California Public Resources Code section 10221 and California Civil Code section 815.3
111 and is a tax exempt and “qualified conservation organization” within the meaning of
112 Sections 501(c)(3) and 170(b)(1)(A)(iv) as defined by the United States Internal Revenue
113 Code. Grantee, as certified by a resolution of Grantee's Board of Trustees, accepts the
114 responsibility of enforcing the terms of this Easement and upholding its conservation
115 purposes forever.

116 GRANT OF AGRICULTURAL CONSERVATION EASEMENT

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119 Now, therefore, for the reasons given, and in consideration of their mutual
120 promises and covenants, terms, conditions and restrictions contained herein, and other
121 good and valuable consideration, the receipt and adequacy of which are hereby
122 acknowledged, the Landowner voluntarily grants and conveys to the Grantee, and the
123 Grantee voluntarily accepts, a perpetual conservation easement, as defined by Section
124 815.1 and 815.2 of the California Civil Code and California Public Resources Code
125 section 10211, and of the nature and character described in this Easement for the purpose
126 described below, and agree as follows:

127 1. *Conservation Purpose.*

128 The conservation purpose (“Conservation Purpose” or “Purpose”) of this Easement is to
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131 enable the Property to remain in productive agricultural use in perpetuity by preventing
132 and correcting uses of the Property prohibited by the provisions of this Easement. To the
133 extent that the preservation of the open space character and [*scenic, habitat, natural, or*
134 *historic, etc.*] values of the Property are consistent with such use, it is within the Purpose
135 of this Easement to protect those values.

136
137 *2. Right to Use Property for Agricultural Purposes.*
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139 The Landowner retains the right to use the Property for agricultural purposes, or to permit
140 others to use the Property for agricultural purposes, in accordance with applicable law and
141 this Easement.

142
143 *3. Prohibited Uses.*
144

145 The Landowner shall not perform, nor knowingly allow others to perform, any act on or
146 affecting the Property that is inconsistent with this Easement. Any use or activity that
147 would diminish or impair the agricultural productive capacity and open space character
148 [*or scenic, habitat, natural, historic etc. values*] of the Property, or that would cause
149 significant soil degradation or erosion, restrict agricultural husbandry practices, or that is
150 otherwise inconsistent with the Conservation Purpose is prohibited (“Prohibited Use”).
151 “Husbandry practices” means agricultural activities, such as those specified in Section
152 3482.5(e) of the California Civil Code, conducted or maintained for commercial purposes
153 in a manner consistent with proper and accepted customs and standards, as established
154 and followed by similar agricultural operations in the same locality. This Easement
155 authorizes the Grantee to enforce these covenants in the manner described herein.
156 However, unless otherwise specified, nothing in this Easement shall require the
157 Landowner to take any action to restore the condition of the Property after any Act of
158 God or other event over which it had no control. The Landowner understands that
159 nothing in this Easement relieves it of any obligation or restriction on the use of the
160 Property imposed by law.

161
162 *4. Permission of the Grantee.*
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164 Where the Landowner is expressly required to obtain the Grantee’s permission for a
165 proposed use hereunder, said permission (a) shall not be unreasonably delayed or
166 withheld by the Grantee, (b) shall be sought and given in writing, with copies of all
167 documents to be provided to the Department, and (c) shall in all cases be obtained by the
168 Landowner prior to the Landowner's undertaking of the proposed use. The Grantee shall
169 grant permission to the Landowner only where the Grantee, acting in the Grantee's sole
170 reasonable discretion and in good faith, determines that the proposed use is not a
171 “Prohibited Use” per Section 3.

172
173 *5. Construction or Placement of Buildings and Other Improvements.*
174

175 The Landowner may undertake construction, erection, installation, or placement of
176 buildings, structures, or other improvements on the Property only as provided in

177 subsections (a) through (d) below. All other construction, erection, installation, or
178 placement of buildings, structures, or other improvements on the Property is prohibited.
179 Before undertaking any construction, erection, installation or placement that requires
180 permission, the Landowner shall notify the Grantee and obtain prior written permission
181 from the Grantee.

182
183 For purposes of this section, the term “improvements” shall not refer to, and specifically
184 excludes, crops, plants, trees, vines, or other living improvements planted for agricultural
185 purposes, nor shall it refer to irrigation improvements necessary or desirable to irrigate
186 the Property for agricultural purposes, all of which may be made without permission of
187 the Grantee.

188
189 (a) Fences – Existing fences may be repaired and replaced without permission of
190 the Grantee. New fences may be built anywhere on the Property for purposes of
191 reasonable and customary agricultural management, and for security of farm
192 produce, livestock, equipment, and improvements on the Property, without
193 permission of the Grantee.

194
195 (b) Agricultural Structures and Improvements – Existing agricultural structures
196 and improvements as shown in Exhibit C and more fully described in the Baseline
197 Report, may be repaired, reasonably enlarged, and replaced at their current
198 locations within the Building envelope for agricultural purposes without
199 permission from the Grantee. New buildings and other structures and
200 improvements to be used solely for agricultural production on the Property or sale
201 of farm products predominantly grown or raised on the Property, including barns
202 and equipment sheds, but not including any dwelling or farm labor housing, may
203 be built on the Property within the Building Envelope depicted in Exhibit B,
204 without permission of the Grantee. All permissible new agricultural structures
205 may be repaired, reasonably enlarged, and replaced without permission of the
206 Grantee. Any other agricultural production or marketing-related structures may
207 be constructed only with permission of the Grantee pursuant to Section 4.

208
209 (c) Residential Dwellings – The single-family dwelling shown in Exhibit C may
210 be repaired, enlarged or replaced at the current location entirely within the
211 Building Envelope shown in Exhibit C without permission of the Grantee. Said
212 single-family dwelling shall not exceed three thousand square feet (3,000 sq. ft.)
213 of living area. No other residential structures may be constructed or placed on the
214 Property except for agricultural employee housing per Section 5(d).

215
216 *(NOTE: With approval of the funder(s), this section may need to be modified*
217 *depending on the circumstances of the property and other factors)*

218
219 (d) Agricultural Employee Housing – The agricultural employee house shown in
220 Exhibit C may be repaired, enlarged or replaced at the current location entirely
221 within the Building Envelope shown in Exhibit C without permission of the
222 Grantee. No additional agricultural employee housing may be constructed or

223 placed on the Property without permission of the Grantee. Grantee may only
224 grant permission pursuant to Section 4 and only if the Landowner can
225 demonstrate to the Grantee's satisfaction that such additional agricultural
226 employee housing is reasonable and necessary for the agricultural operation of the
227 Property. The aggregate living area of agricultural employee housing shall not
228 exceed two thousand five hundred square feet (2,500 sq ft.). All agricultural
229 employee housing must be located entirely within the Building Envelope shown
230 in Exhibit C.

231

232 *(NOTE: With approval of the funder(s), this section may need to be modified*
233 *depending on the circumstances of the property and other factors)*

234

235 (e) Utilities and Septic Systems. Wires, lines, pipes, cables or other facilities
236 providing electrical, gas, water, sewer, communications, energy generation, or
237 other utility services solely to serve the improvements permitted herein or to
238 transmit power generated on the Property may be installed, maintained, repaired,
239 removed, relocated and replaced. In addition, septic or other underground
240 sanitary systems serving the improvements permitted herein may be installed,
241 maintained, repaired, replaced, relocated or improved, but must be located within
242 the Building Envelope. Power generation and transmission facilities primarily for
243 agricultural and other permitted uses on the Property may be constructed within
244 the Building Envelope. Power generated in excess of requirements on the
245 Property may be sold to appropriate public utilities. Notwithstanding the
246 foregoing, commercial power generation, collection or transmission facilities,
247 including wind or solar farms outside of Building Envelope, and the conveyance
248 of any rights-of-way over, under or on the Property for any such purpose, are
249 prohibited.

250

251 6. *No Subdivision.*

252

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

256

257 The Landowner and Grantee acknowledge and understand that the Property consists of
258 [number] legal parcel(s), and that no additional, separate legal parcels currently exist
259 within the Property that may be recognized by a certificate of compliance or conditional
260 certificate of compliance pursuant to California Government Code section 66499.35
261 based on previous patent or deed conveyances, subdivisions, or surveys. The Landowner
262 will not apply for or otherwise seek recognition of additional legal parcels within the
263 Property based on certificates of compliance or any other authority. The Landowner shall
264 continue to maintain the legal parcels comprising the Property, and all interests therein,
265 under common ownership, as though a single legal parcel.

266

267 Lot line adjustment may be permitted only with the written approval of the Grantee
268 pursuant to Section 4, in conjunction with the approval of the local jurisdiction, and for

269 purposes of maintaining, enhancing or expanding agricultural practices or productivity on
270 the Property.

271

272 *7. Extinguishment of Development Rights.*

273

274 The Landowner hereby grants to the Grantee all development rights except as specifically
275 reserved in this Easement, that were previously, are now or hereafter allocated to,
276 implied, reserved, appurtenant to, or inherent in the Property, and the parties agree that
277 such rights are released, terminated, and extinguished, and may not be used on or
278 transferred by either party to any portion of the Property as it now or later may be
279 bounded or described, or to any other property adjacent or otherwise, or used for the
280 purpose of calculating permissible lot yield of the Property or any other property. This
281 Easement shall not create any development rights.

282

283 *8. Mining.*

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

287

288 *(NOTE: With approval of the funder(s), this section may need to be modified depending*
289 *on the circumstances of the property and other factors)*

290

291 *9. Paving and Road Construction.*

292

293 Other than existing roads shown within the Building Envelope as identified in the Baseline
294 Report, no portion of the Property presently unpaved shall be paved or otherwise covered
295 with concrete, asphalt, or any other impervious paving material, unless such measures are
296 required by air quality laws or regulations applicable to the Property. Except as otherwise
297 permitted herein, no road for access or other purposes shall be constructed without the
298 permission of the Grantee pursuant to Section 4. Notwithstanding the foregoing,
299 construction of unpaved farm roads, as necessary or desirable by agricultural operations,
300 is permitted without permission from the Grantee. The Landowner shall notify the
301 Grantee of any significant net relocation or addition of unpaved farm roads.

302

303 *10. Trash and Storage.*

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305 The dumping or accumulation on the Property of any kind of trash, refuse, vehicle bodies
306 or parts, or "Hazardous Materials," as defined in Section 25 is prohibited. Farm-related
307 trash and refuse produced on the Property may be temporarily stored on the Property
308 subject to all applicable laws. The storage of agricultural products and byproducts
309 produced on the Property and materials reasonably required for agricultural production
310 on the Property, including Hazardous Materials, is permitted as long as it is done in
311 accordance with all applicable government laws and regulations.

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314 11. *Commercial Signs.*

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

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319 12. *Recreational Uses; Motorized Vehicle Use Off Roadways*

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321 Resort structures, athletic fields, golf courses, non-residential swimming pools, public or
322 commercial airstrips, commercial equestrian facilities, public or commercial helicopter
323 pads, and any other non-agricultural recreational structures or facilities are prohibited on
324 the Property. Recreational structures or improvements for the personal use of the
325 Landowner and its guests (e.g. swimming pool, tennis court) are permitted only within
326 the Building Envelope. The use of motorized vehicles off roadways and outside of the
327 Building Envelope is prohibited except where used for agricultural production, property
328 maintenance and security, or for the purpose of monitoring this Easement.

329

330 13. *Water Rights.*

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332 The Landowner shall retain and reserve all ground water, and all appurtenant,
333 prescriptive, contractual or other water rights appurtenant to the Property at the time this
334 Easement becomes effective. The Landowner shall not permanently transfer, encumber,
335 lease, sell, or otherwise separate such quantity of water or water rights from title to the
336 Property itself. Permanent separation of water or water rights is prohibited. All water
337 shall be retained in [*County name*] County for agricultural production and used in
338 conjunction with the improvements permitted by Section 5 of this Easement only. Water
339 may be distributed to a contiguous property or other property owned or leased by the
340 Landowner on an annual basis for agricultural production only. Any temporary
341 distribution of water shall not impair the long-term agricultural productive capacity or
342 open space character of the Property.

343

344 14. *Rights Retained by the Landowner.*

345

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

354

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

357

358

359 15. *Responsibilities of the Landowner and the Grantee Not Affected.*
360

361 Other than as specified herein, this Easement is not intended to impose any legal or other
362 responsibility on the Grantee, or in any way to affect any existing obligation of the
363 Landowner as owner of the Property. Among other things, this shall apply to:
364

365 (a) Taxes – The Landowner shall be solely responsible for payment of all taxes
366 and assessments levied against the Property. If the Grantee ever pays any taxes or
367 assessments on the Property, or if the Grantee pays levies on the Landowner’s
368 interest in order to protect Grantee’s interests in the Property, the Landowner will
369 reimburse the Grantee for the same. It is intended that this Easement constitute an
370 enforceable restriction within the meaning of Article XIII, Section 8 of the
371 California Constitution and that this Easement qualify as an enforceable
372 restriction under the provisions of California Revenue and Taxation Code
373 Sections 402.1(a)(8) and 423.
374

375 (b) Upkeep and Maintenance – The Landowner shall be solely responsible for the
376 upkeep and maintenance of the Property, to the extent it may be required by law.
377 The Grantee shall have no obligation for the upkeep or maintenance of the
378 Property. If the Grantee acts to maintain the Property in order to protect the
379 Grantee’s interest in the Property, the Landowner will reimburse the Grantee for
380 any such costs.
381

382 (c) Liability and Indemnification – In view of the Grantee’s and the Department
383 of Conservation’s negative rights, limited access to the land, and lack of active
384 involvement in the day-to-day management activities on the Property, the
385 Landowner shall indemnify, protect, defend and holds harmless the Grantee, the
386 Department of Conservation, their officers, directors, members, employees,
387 contractors, legal representatives, agents, successors and assigns (collectively,
388 “Agents and Assigns”) from and against all liabilities, costs, losses, orders, liens,
389 penalties, claims, demands, damages, expenses, or causes of action or cases,
390 including without limitation reasonable attorneys’ fees, arising out of or in any
391 way connected with or relating to the Property or the Easement. The Landowner
392 shall be solely liable for injury or the death of any person, or physical damage to
393 any property, or any other costs or liabilities resulting from any act, omission,
394 condition, or other matter related to or occurring on or about the Property,
395 regardless of cause, unless due to the negligence or willful misconduct of the
396 Grantee, the Department of Conservation, and/or their respective Agents and
397 Assigns. The Grantee shall be named as an additional insured on Landowner’s
398 general liability insurance policy.
399

400 Neither the Grantee, the Department of Conservation, nor their Agents and
401 Assigns shall have responsibility for the operation of the Property, monitoring of
402 hazardous conditions on it, or the protection of the Landowner, the public or any
403 third parties from risks relating to conditions on the Property. Without limiting
404 the foregoing, neither the Grantee, the Department, nor their respective Agents

405 and Assigns shall be liable to the Landowner or other person or entity in
406 connection with consents given or withheld, or in connection with any entry upon
407 the Property occurring pursuant to this Easement, or on account of any claim,
408 liability, damage or expense suffered or incurred by or threatened against the
409 Landowner or any other person or entity, except as the claim, liability, damage, or
410 expense is the result of the gross negligence or intentional misconduct of the
411 Grantee, the Department, and/or their respective Agents and Assigns.
412

413 16. *Monitoring.*
414

415 The Grantee shall manage its responsibilities as holder of this Easement in order to
416 uphold the Purpose of this Easement. The Grantee's responsibilities include, but are not
417 limited to, annual monitoring, such additional monitoring as circumstances may require,
418 record keeping, and enforcement of this Easement, for the purpose of preserving the
419 Property's agricultural productive capacity and open space character in perpetuity.
420 Failure of the Grantee to carry out these responsibilities shall not impair the validity of
421 this Easement or limit its enforceability in any way. With reasonable advance notice
422 (except in the event of an emergency circumstance or prevention of a threatened breach),
423 Grantee shall have the right to enter upon, inspect, observe, monitor and evaluate the
424 Property to identify the current condition of, and uses and practices on the Property and
425 to determine whether the condition, uses and practices are consistent with this Easement.
426

427 Grantee shall indemnify, defend with counsel of Landowner's choice, and hold
428 Landowner harmless from, all expense, loss, liability, damages and claims, including
429 Landowner's attorneys' fees, if necessary, arising out of Grantee's entry on the Property,
430 unless caused by a violation of this Easement by Landowner or by Landowner's
431 negligence or willful misconduct.
432

433 The Grantee shall report to the Department of Conservation by June 30 of each year after
434 the annual monitoring visit, describing method of monitoring, condition of the Property,
435 stating whether any violations were found during the period, describing any corrective
436 actions taken, the resolution of any violation, and any transfer of interest in the Property.
437 Failure to do so shall not impair the validity of this Easement or limit its enforceability in
438 any way.
439

440 17. *Enforcement.*
441

442 The Grantee may take all actions that it deems necessary to ensure compliance with the
443 terms, conditions, covenants, and purposes of this Easement. The Grantee shall have the
444 right to prevent and correct violations of the terms, conditions, covenants, and purposes
445 of this Easement. If the Grantee finds what it believes is a violation or potential
446 violation, it may at its discretion take appropriate legal action to ensure compliance with
447 the terms, conditions, covenants, and purposes of this Easement and shall have the right
448 to correct violations and prevent the threat of violations. Except when an ongoing or
449 imminent violation could irreversibly diminish or impair the agricultural productive
450 capacity and open space character of the Property, the Grantee shall give the Landowner

451 written notice of the violation or potential violation, and thirty (30) days to correct it,
452 before filing any legal action.

453

454 If a court with jurisdiction determines that a violation may exist, has occurred, or is about
455 to occur, the Grantee may obtain an injunction, specific performance, or any other
456 appropriate equitable or legal remedy, including (i) money damages, including damages
457 for the loss of the agricultural conservation values protected by this Easement, (ii)
458 restoration of the Property to its condition existing prior to such violation, and (iii) an
459 award for all of the Grantee's expenses incurred in stopping and correcting the violation,
460 including but not limited to reasonable attorney's fees. The failure of the Grantee to
461 discover a violation or potential violation, or to take immediate legal action to prevent or
462 correct a violation or potential violation known to the Grantee, shall not bar the Grantee
463 from taking subsequent legal action. The Grantee's remedies under this section shall be
464 cumulative and shall be in addition to all remedies now or hereafter existing at law or in
465 equity.

466

467 Without limiting the Landowner's liability therefor, the Grantee shall apply damages
468 recovered to the cost of undertaking any corrective action on the Property. Should the
469 restoration of lost values be impossible or impractical for whatever reason, the Grantee
470 shall apply any and all damages recovered to furthering its mission, with primary
471 emphasis on agricultural conservation easement acquisition and enforcement.

472

473 In the event the Grantee fails to enforce any term, condition, covenant or purpose of this
474 Easement, as determined by the Director of the Department of Conservation, the Director
475 of the Department and his or her successors and assigns shall have the right to enforce the
476 Easement after giving notice to the Grantee and the Landowner and providing a
477 reasonable opportunity under the circumstances for the Grantee to enforce any term,
478 condition, covenant, or purpose of the Easement. In the event that the Director of the
479 Department determines that the Grantee has failed to enforce any of the terms,
480 conditions, covenants, or purposes of the Easement, the Director of the Department and
481 his or her successors and assigns shall be entitled to exercise the same right to enter the
482 Property granted to the Grantee, including right of immediate entry in the event of an
483 emergency or suspected emergency where the Director of the Department or his or her
484 successor or assign determines that immediate entry is required to prevent, terminate or
485 mitigate a violation of this Easement.

486

487 Failure or refusal to exercise any rights under the terms of this Easement by the Grantee
488 in the event of a violation by the Landowner of any term herein shall not constitute a
489 waiver or forfeiture of the Grantee's right to enforce any term, condition, covenant, or
490 purpose of this Easement.

491

492 18. *Transfer of Easement.*

493

494 This Easement may only be assigned or transferred to a private nonprofit organization
495 that, at the time of transfer, is a "qualified organization" under Section 170(h) of the
496 United States Internal Revenue Code and meets the requirements of Section 815.3(a) of

497 the California Civil Code and has similar purposes to preserve agricultural lands and
498 open space. If no such private nonprofit organization exists or is willing to assume the
499 responsibilities imposed by this Easement, then this Easement may be transferred to any
500 public agency authorized to hold interests in real property as provided in Section 815.3(b)
501 of the California Civil Code. Such an assignment or transfer may proceed only if the
502 organization or agency expressly agrees to assume the responsibility imposed on the
503 Grantee by the terms of this Easement and is expressly willing and able to hold this
504 Easement for the Purpose for which it was created. All assignment and assumption
505 agreements transferring the Easement shall be duly recorded in <County name> County.
506

507 If the Grantee should desire to assign or transfer this Easement, the Grantee must obtain
508 written permission from the Landowner and the Department of Conservation, which
509 permission shall not be unreasonably withheld.
510

511 If the Grantee or its successors ever ceases to exist or no longer qualifies under Section
512 170(h) of the U.S. Internal Revenue Code, or applicable state law, the Department of
513 Conservation, in consultation with the Landowner, shall identify and select an
514 appropriate private or public entity to whom this Easement shall be transferred.
515

516 *19. Perpetual Duration and No Merger of Title.*
517

518 Pursuant to California Civil Code at Part 2, Chapter 4, (commencing with section 815),
519 which defines and authorizes perpetual conservation easements; this Easement shall run
520 with the land in perpetuity. Every provision of this Easement that applies to the
521 Landowner or the Grantee shall also apply to their respective agents, heirs, executors,
522 administrators, assigns, and all other successors as their interests may appear.
523

524 No merger of title, estate or interest shall be deemed effected by any previous,
525 contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the
526 Property, or any portion thereof, to the Grantee, or its successors or assigns. It is the
527 express intent of the parties that this Easement not be extinguished by, merged into,
528 modified, or otherwise deemed affected by any other interest or estate in the Property
529 now or hereafter held by the Grantee or its successors or assigns.
530

531 *20. Transfer of Property Interest.*
532

533 Any time the Property itself, or any interest in it, is transferred by the Landowner to any
534 third party, the Landowner shall notify the Grantee and the Department of Conservation
535 in writing at least thirty (30) days prior to the transfer of the Property or interest, and the
536 document of conveyance shall expressly incorporate by reference this Easement. Any
537 document conveying a lease of the Property shall expressly incorporate by reference this
538 Easement. Failure of the Landowner to do so shall not impair the validity of this
539 Easement or limit its enforceability in any way.
540
541

542 21. *Amendment of Easement.*

543

544 This Easement may be amended only with the written consent of the Landowner, the
545 Grantee, and the Director of the Department of Conservation. Any such amendment shall
546 be consistent with the Purpose of this Easement and with the Grantee's easement
547 amendment policies, and shall comply with all applicable laws, including Section 170(h)
548 of the Internal Revenue Code, or any regulations promulgated in accordance with that
549 section, and with Section 815 et seq. of the California Civil Code, and the California
550 Farmland Conservancy Program Act as codified in Section 10200 et seq. of the California
551 Public Resources Code, and any regulations promulgated thereunder. No amendment
552 shall diminish or affect the perpetual duration or the Purpose of this Easement, nor the
553 status or rights of the Grantee under the terms of this Easement.

554

555 This Easement and any amendment to it shall be recorded in [*County name*] County.
556 Copies of any amendments to this Easement shall be provided to the Department of
557 Conservation within 30 days of recordation.

558

559

560 22. *Termination of Easement.*

561 (*NOTE: Landowners may waive the administrative termination provision defined in*
562 *Public Resources Code sections 10270-77, in which case Scenario A shall be used below,*
563 *with potential easement termination shall be governed solely by judicial termination*
564 *proceedings. Otherwise, Scenario B on page 15 shall be used.*)

565

566 **[Scenario A: Landowner's Administrative Termination Rights Waived]**

567

568 (a) It is the intention of the parties that the Conservation Purpose of this Easement
569 shall be carried out forever as provided in the Section 10211 of the Public
570 Resources Code and Section 815 et seq. of the Civil Code. Accordingly,
571 Landowner hereby waives on behalf of the Landowner and the Landowner's
572 successors and assigns all rights at law or inequity to request a termination of this
573 Easement pursuant to Public Resources Code Sections 10270 et seq.

574

575 Waiver of Right to Request Administrative Termination:

576

577 Landowner's Initials: _____ [*and* _____]

578

579 (b) Other than pursuant to eminent domain or purchase in lieu of eminent
580 domain, no other voluntary or involuntary sale, exchange, conversion, or
581 conveyance of any kind of all or part of the Property, or of any interest in it, shall
582 limit or terminate the provisions of this Easement. This Easement can only be
583 terminated or extinguished, whether in whole or in part, by judicial proceedings in
584 a court of competent jurisdiction. The fact that the land is not in agricultural use
585 is not reason for termination of this Easement.

586

587 Termination of the Easement through condemnation is subject to the requirements

588 of Section 10261 of the Public Resources Code, the eminent domain laws of the
589 State of California, federal law, and this Easement. The Property may not be
590 taken by eminent domain or in lieu of eminent domain if the planned use is more
591 than seven (7) years in the future (California Code of Civil Procedure section
592 1240.220). Grantee shall be paid by the condemnor the value of the Easement at
593 the time of condemnation (Public Resources Code section 10261(a)(2)). Purchase
594 in lieu of condemnation, or settlement of an eminent domain proceeding, shall
595 occur pursuant to applicable laws and procedures, including but not limited to
596 California Government Code sections 7267.1 and 7267.2, and shall require
597 approval of the Grantee, the Director of the Department, and the [match funder].
598 Grantee shall have an opportunity to accompany the appraiser for the condemning
599 agency when the appraiser goes on the Property with Landowner. Should this
600 Easement be condemned or otherwise terminated on any portion of the Property,
601 the balance of the Property shall remain subject to this Easement. In this event,
602 all relevant related documents shall be updated and re-recorded by the Grantee to
603 reflect the modified easement area. Encumbrances junior to this Easement shall
604 remain subordinate to the Easement as amended.
605

606 (c) In the event the Landowner is notified that a public entity intends or proposes
607 to acquire the Easement Area in whole or in part by eminent domain, the
608 Landowner shall provide the Grantee, the Department, and the [match funder]
609 with a copy of the notification within five (5) business days of having received
610 such notification. In the event the Landowner intends to seek termination of the
611 easement pursuant to initiation of a judicial proceeding which is not based on
612 eminent domain, the Landowner shall notify the Grantee, the Department and the
613 [match funder] of such intent no later than sixty (60) days before initiating such
614 proceedings. No inaction or silence by the Grantee, the Department, or the
615 [match funder] shall be construed as abandonment of the Easement.
616

617 (d) The grant of this Easement gives rise to a property right immediately vested in
618 the Grantee. For the purpose of determining the amount to be paid by the
619 Landowner in a repurchase of the Easement pursuant to judicial proceedings, and
620 for the purpose of allocating proceeds from a sale or other disposition of the
621 Property at the time of termination, the Easement and the Grantee's property right
622 therein shall have a value equal to the difference between the current fair market
623 value of the Property as if unencumbered by this Easement and the current fair
624 market value of the Property encumbered by this Easement, each as determined
625 on or about the date of termination. The values shall be determined by an
626 appraisal performed by an appraiser jointly selected by the Landowner and the
627 Grantee. The Landowner shall pay the cost of the appraisal, and it is subject to
628 approval by the Department and the [match funder]. Nothing herein shall prevent
629 the Landowner, the Grantee, the Department, or the [match funder] from having
630 an appraisal prepared at its own expense.
631

632 (e) Upon approval of termination of this Easement or any portion thereof, the
633 Landowner shall reimburse the State of California, Department of Conservation

634 California Farmland Conservancy Program Fund and *[match funder]*, the amount
635 equal to the value of the Easement that is terminated. If the entire Easement is
636 terminated, the amount required to be paid in connection with the Landowner's
637 repurchase shall be distributed as follows: (i) to the State of California,
638 Department of Conservation, California Farmland Conservancy Program Fund,
639 ?%; and (ii) to the *[match funder]*, ?%, representing the proportion of easement
640 value originally contributed by these agencies for the purchase of this Easement.
641 If only a portion of the Easement is so terminated, the reimbursement shall be
642 pro-rated. This Easement shall not be deemed terminated under a judicial
643 termination proceeding until such payment is received by the State of California,
644 Department of Conservation California Farmland Conservancy Program Fund, the
645 *[match funder]* and Grantee *[if any bargain sale occurred]*. Grantee, in using any
646 funds received from the termination of this Easement, shall use the funds in a
647 manner consistent with the Purpose of this Easement.

648
649 *(NOTE: Additional language IRS language may need to be used for landowners*
650 *seeking IRS recognition of a charitable donation)*

651
652 (f) If the Grantee obtains payment on a claim under a title insurance policy
653 insuring this Easement, payment shall be distributed as set forth in Section 22(e).

654
655 ***[Scenario B: Landowner's Administrative Termination Rights NOT Waived]***

656
657 (a) Other than pursuant to eminent domain or purchase in lieu of eminent domain,
658 no other voluntary or involuntary sale, exchange, conversion, or conveyance of
659 any kind of all or part of the Property, or of any interest in it, shall limit or
660 terminate the provisions of this Easement. This Easement can only be terminated
661 or extinguished, whether in whole or in part, by judicial proceedings in a court of
662 competent jurisdiction or by administrative termination pursuant to Section
663 10270-10277 of the Public Resources Code. The fact that the land is not in
664 agricultural use is not reason for termination of this Easement.

665
666 Termination of the Easement through condemnation is subject to the requirements
667 of Section 10261 of the Public Resources Code, the eminent domain laws of the
668 State of California, federal law, and this Easement. The Property may not be
669 taken by eminent domain or in lieu of eminent domain if the planned use is more
670 than seven (7) years in the future (California Code of Civil Procedure section
671 1240.220). Grantee shall be paid by the condemnor the value of the Easement at
672 the time of condemnation (Public Resources Code section 10261(a)(2)). Purchase
673 in lieu of condemnation, or settlement of an eminent domain proceeding, shall
674 occur pursuant to applicable laws and procedures, including but not limited to
675 California Government Code sections 7267.1 and 7267.2, and shall require
676 approval of the Grantee, the Director of the Department, and the *[match funder]*.
677 Grantee shall have an opportunity to accompany the appraiser for the condemning
678 agency when the appraiser goes on the Property with Landowner. Should this
679 Easement be condemned or otherwise terminated on any portion of the Property,

680 the balance of the Property shall remain subject to this Easement. In this event,
681 all relevant related documents shall be updated and re-recorded by the Grantee to
682 reflect the modified easement area. Encumbrances junior to this Easement shall
683 remain subordinate to the Easement as amended.

684
685 (b) In the event the Landowner is notified that a public entity intends or proposes
686 to acquire the Easement Area in whole or in part by eminent domain, the
687 Landowner shall provide the Grantee, the Department, and the [match funder]
688 with a copy of the notification within five (5) business days of having received
689 such notification. In the event the Landowner intends to seek termination of the
690 easement pursuant to administrative termination or judicial proceeding that is not
691 based on eminent domain, the Landowner shall notify the Grantee, the
692 Department and the [match funder] of such intent no later than sixty (60) days
693 before initiating such proceedings. No inaction or silence by the Grantee, the
694 Department, or the [match funder] shall be construed as abandonment of the
695 Easement.

696
697 (c) The grant of this Easement gives rise to a property right immediately vested in
698 the Grantee. For the purpose of determining the amount to be paid by the
699 Landowner in a repurchase of the Easement at the time of a administrative
700 termination or pursuant to judicial proceedings, and for the purpose of allocating
701 proceeds from a sale or other disposition of the Property at the time of
702 termination, the Easement and the Grantee's property right therein shall have a
703 value equal to the difference between the current fair market value of the Property
704 as if unencumbered by this Easement and the current fair market value of the
705 Property encumbered by this Easement, each as determined on or about the date
706 of termination. The values shall be determined by an appraisal performed by an
707 appraiser jointly selected by the Landowner and the Grantee. The Landowner
708 shall pay the cost of the appraisal, and it is subject to approval by the Department
709 and the [match funder]. Nothing herein shall prevent the Landowner, the Grantee,
710 the Department, or the [match funder] from having an appraisal prepared at its
711 own expense.

712
713 (d) Upon approval of termination of this Easement or any portion thereof, the
714 Landowner shall reimburse the State of California, Department of Conservation
715 California Farmland Conservancy Program Fund and [match funder], the amount
716 equal to the value of the Easement that is terminated. If the entire Easement is
717 terminated, the amount required to be paid in connection with the Landowner's
718 repurchase shall be distributed as follows: (i) to the State of California,
719 Department of Conservation, California Farmland Conservancy Program Fund,
720 ?%; and (ii) to the [match funder], ?%, representing the proportion of easement
721 value originally contributed by these agencies for the purchase of this Easement.
722 If only a portion of the Easement is so terminated, the reimbursement shall be
723 pro-rated. This Easement shall not be deemed terminated under a judicial
724 termination proceeding until such payment is received by the State of California,
725 Department of Conservation California Farmland Conservancy Program Fund, the

726 [match funder] and Grantee [if any bargain sale occurred]. Grantee, in using any
727 funds received from the termination of this Easement, shall use the funds in a
728 manner consistent with the Purpose of this Easement.

729
730 (NOTE: Additional language IRS language may need to be used for landowners
731 seeking IRS recognition of a charitable donation)

732
733 (s) If the Grantee obtains payment on a claim under a title insurance policy
734 insuring this Easement, payment shall be distributed as set forth in Section 22(d).

735

736 23. Interpretation.

737

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

741

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

745

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

749

750 24. Notices.

751

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

755

756 To the Landowner:

757

758 _____

759 _____

760 _____

761

762 To the Grantee:

763

764 _____

765 _____

766 _____

767

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

771

772 To the Department of Conservation:

773

774 Department of Conservation

775 801 K Street, MS 18-01

776 Sacramento, CA 95814

777 Attn: California Farmland Conservancy Program

778

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

780

781 (a) Nothing in this Easement shall be construed as giving rise to any right or
782 ability in the Grantee or the Department of Conservation to exercise physical or
783 management control over the day-to-day operations of the Property, or any of the
784 Landowner's activities on the Property, or otherwise to become an "owner" or
785 "operator" with respect to the Property as those words are defined and used in
786 environmental laws, including the Comprehensive Environmental Response,
787 Compensation, and Liability Act of 1980 ("CERCLA"), as amended or any
788 corresponding state and local statute or ordinance.

789

790 (b) The Landowner warrants that it has no actual knowledge of a release or
791 threatened release of any Hazardous Materials on, at, beneath or from the
792 Property. Moreover the Landowner hereby promises to defend and indemnify the
793 Grantee and the Department of Conservation against all litigation, claims,
794 demands, penalties and damages, including reasonable attorneys' fees, arising
795 from or connected with the release or threatened release of any Hazardous
796 Materials on, at, beneath or from the Property, or arising from or connected with a
797 violation of any Environmental Laws. The Landowner's indemnification
798 obligation shall not be affected by any authorizations provided by the Grantee to
799 the Landowner with respect to the Property or any restoration activities carried
800 out by the Grantee at the Property; provided, however, that the Grantee shall be
801 responsible for any Hazardous Materials contributed after this date to the Property
802 by the Grantee.

803

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

809

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

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

819

820 (e) "Hazardous Materials" means any petroleum, petroleum products, fuel oil,
821 waste oils, explosives, reactive materials, ignitable materials, corrosive materials,
822 hazardous chemicals, hazardous wastes, hazardous substances, extremely
823 hazardous substances, toxic substances, toxic chemicals, radioactive materials,
824 infectious materials and any other element, compound, mixture, solution or
825 substance which may pose a present or potential hazard to human health or the
826 environment or any other material defined and regulated by Environmental Laws.

827

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

836

837 26. *The Landowner's Title Warranty; No Prior Conservation Easements.*

838

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

846

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

848

849 With permission of the Grantee pursuant to Section 4, the Landowner may grant
850 subsequent easements, including conservation easements, interests in land, or use
851 restrictions on the Property. Under no circumstances shall the Grantee approve the
852 granting of subsequent easements, interests in land, or use restrictions that might diminish
853 or impair the agricultural productive capacity or open space character of the Property.
854 The Grantee's written approval shall be obtained at least thirty (30) days in advance of
855 the Landowner's execution of any proposed subsequent easement, interests in land, or use
856 restriction on the Property, and such subsequent easements, interests in land, and use
857 restrictions shall make reference to and be subordinate to this Easement. The Grantee
858 shall notify the Department immediately upon receipt of request by the Landowner to
859 grant a subsequent easement, interest in land, or use restriction on the Property. The
860 Grantee shall notify the Department in the event that it approves the grant of any
861 subsequent easement, interest in land, or use restriction on the Property.

862

863 28. *Severability.*

864

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

869

870 29. *Entire Agreement.*

871

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

876

877 30. *Acceptance.*

878

879 As attested by the signature of its [*Position title*] affixed hereto, as authorized by
880 Grantee's Board of Directors/Trustees, in exchange for consideration, the Grantee hereby
881 accepts without reservation the rights and responsibilities conveyed by this Deed of
882 Agricultural Conservation Easement.

883

884 To Have and To Hold, this Deed of Agricultural Conservation Easement unto the
885 Grantee, its successors and assigns, forever.

886

887 In Witness Whereof, the Landowner and the Grantee, intending to legally bind
888 themselves, have set their hands on the date first written above.

889

890 LANDOWNER

891

892 [*Landowner's Name*].

893

894 By: _____

895

896 Name: _____

897

898 Title: _____

899

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901
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GRANTEE

[*Grantee's Name*],
a California nonprofit public benefit corporation

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENTS

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958

State of California) ss
County of)

On _____ before me, _____, personally appeared
_____, who proved to me on the basis of satisfactory evidence to
be the person(s) whose name is subscribed to the within instrument and acknowledged to
me that he executed the same in his authorized capacity, and that by his signature on the
instrument the person, or the entity upon behalf of which the person acted, executed the
instrument.

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

WITNESS my hand and official seal.

Signature _____

Notary Public

State of California) ss
County of)

On _____ before me, _____, personally appeared
_____, who proved to me on the basis of satisfactory evidence to
be the person(s) whose name is subscribed to the within instrument and acknowledged to
me that he executed the same in his authorized capacity, and that by his signature on the
instrument the person, or the entity upon behalf of which the person acted, executed the
instrument.

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

WITNESS my hand and official seal.

Signature _____

Notary Public

959 Exhibit A (Legal Description) Attached
960 Exhibit B (Vicinity Map) Attached
961 Exhibit C (Building Envelope and Existing Improvements) Attached
962 Exhibit D (Prior Encumbrances) Attached
963
964

965
966
967
968
969
970

Exhibit A
(Legal Description)

971
972
973
974
975
976

Exhibit B
(Vicinity Map)

977
978
979
980
981
982

Exhibit C
(Building Envelope and Existing Improvements)

983
984
985
986
987

Exhibit D
(Prior Encumbrances)