

California Farmland Conservancy Program

Easement Elements Checklist

NOTE TO USERS

This checklist is intended to assist existing and prospective California Farmland Conservancy Program (CFCP) grant recipients in developing conservation easements that meet CFCP standards. The content of the checklist is based on and linked to the CFCP Model Easement (included below). Use of the CFCP Model Easement or this checklist is encouraged but not a requirement for grant funding. However, most, if not all, of the elements in the checklist should typically be addressed in an agricultural conservation easement.

To facilitate review and document navigation, this checklist contains hyperlinks (colored, underlined text) to various locations within the document. Where the hyperlink is embedded in the word 'statement' or 'clause', users are encouraged to include the linked statement or clause verbatim. To open a window containing an outline of the CFCP model easement, select 'View' from the toolbar, then 'Document Map'. Quickly toggle between the checklist and the model easement by clicking on various headings enumerated in the outline window.

The CFCP, administered by Department of Conservation's Division of Land Resource Protection, is designed to ensure that the state's most valuable farmland can be preserved. Through the program, local governments and nonprofit organizations can receive grants to purchase development rights from willing landowners, thus creating permanent conservation easements.

California Farmland Conservancy Program
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Easement Elements Checklist

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Recitals	
	Property Description (sample)
	Baseline Report prepared (sample)
	Public investment statement
	Recognizing conservation purposes statement
	Governmental Conservation Policies (federal, state, local, including county/city resolution of support) (sample)
	If Steward is a nonprofit organization, include “qualified conservation organization” statement
Grant of Agricultural Conservation Easement	
	Granting of easement statement
	Conservation Purposes statement
	Right to use property for agricultural purposes (sample)
	Prohibited uses: Any use or activity that would diminish or impair the agricultural productive capacity and open space character or that would cause soil degradation or erosion is prohibited. (sample)
	Permission of the Steward in writing in advance of action, where required, with copies to DOC (sample)
	New agricultural structures and improvements prohibited outside building envelope, unless specifically allowed (sample)
	Construction or placement of housing prohibited unless specifically allowed and located in building envelope (sample)
Subdivision (sample)	
	Future division, subdivision, defacto subdivision or partitioning prohibited.
	No recognition of additional, separate legal parcels by a certificate of compliance pursuant to California Government Code section 66499.35 based on previous patent or deed conveyances, subdivisions, or surveys.
	Landowner shall continue to maintain the parcels comprising the Property, and all interests therein, under common ownership, as though a single legal parcel.
Additional Rights and Restrictions	
	Development rights clause
	Mining: Disturbing the surface of the land for mining is prohibited (sample)
	Paving and Road Construction: Advance permission to pave surfaces and to construct certain roads (sample)
	Commercial signs (including billboards) unrelated to permitted activities are prohibited (sample)
	Trash: No dumping or accumulation of trash (sample)
Recreational Use (sample)	
	No commercial recreational structures or facilities.
	Limitations on motorized vehicle use off roadways and outside building envelope.
Water Rights (sample)	
	Landowner shall retain and reserve all appurtenant water rights.

	Landowner shall not permanently separate water or water rights.
	Water retained in county for agricultural production only.
	Temporary water transfers shall not impair agricultural productivity capacity or open space character.
	Landowner reserves all interests not conveyed by easement (sample)
Responsibilities of the Landowner and Steward (sample)	
	Landowner solely responsible for payment of all taxes and assessments
	Landowner solely responsible for property upkeep and maintenance
	Indemnification and liability limitations for Steward and DOC (statement)
Monitoring (sample)	
	Steward's monitoring, record keeping, and enforcement responsibilities.
	Failure of the Steward to carry out its responsibilities shall not impair the validity of this Easement or limit its enforceability in any way.
	Steward's right of access
	Steward shall report to the Department of Conservation by June 30 of each year after the annual monitoring visit, describing method of monitoring, condition of the Property, stating whether any violations were found during the period, describing any corrective actions taken, the resolution of any violation, and any transfer of interest in the Property.
Enforcement (sample)	
	Steward shall have the right to prevent and correct violations or threatened violations of the terms, conditions, covenants, and purposes of this Easement.
	The Steward's remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
	Steward shall apply damages recovered to the cost of undertaking any corrective action on the Property.
	If Steward fails to enforce any term, condition, covenant or purpose of this Easement, as determined by DOC, DOC shall have the right to enforce the Easement and right of access granted to Steward.
	Failure or refusal to exercise any rights under the terms of this Easement by the Steward in the event of a breach by the Landowner of any term herein shall not constitute a waiver or forfeiture of the Steward's right to enforce any term, condition, covenant, or purpose of this Easement.
Transfer of Easement (sample)	
	Assignee or transferee must have appropriate qualifications.
	Written permission from DOC.
	Transfer by DOC, in consultation with Landowner, if the Steward or its successors ever ceases to exist or no longer qualifies
Transfer of Property Interest (sample)	
	Landowner shall provide prior written notification to Steward.
	Documents of conveyance shall expressly reference the easement.
Amendment of Easement (sample)	
	Written consent of all parties.
	Amendment consistent with purpose of easement, Steward's policies, and applicable laws.
	No diminishment or affect on: The perpetual duration or the purpose of the easement.
	No diminishment or affect on: The status or rights of the Steward.

	Any amendments to be recorded, with copies to DOC
Termination (sample)	
	Administrative termination statement , unless waived.
	Other than pursuant to eminent domain or purchase in lieu of eminent domain, no voluntary or involuntary sale, exchange, conversion or conveyance shall limit or terminate the easement.
	Termination of the Easement through condemnation is subject to the requirements of Section 10261 of the Public Resources Code, the eminent domain laws of the State of California, federal law, and this Easement.
	The Easement and the Steward's property right therein shall have a value equal to the difference between the current fair market value of the Property as if unencumbered by this Easement and the current fair market value of the Property encumbered by this Easement, each as determined on or about the date of termination by an appraiser.
	Appraisal subject to DOC approval, who may have its own appraisal prepared at its own expense.
	If easement terminated on a portion, balance of property remains subject to easement.
	If credit taken for charitable donation, IRS ratio for disbursement of funds.
	Distribution percentages for termination proceeds or for a claim under title insurance policy
Interpretation (sample)	
	Interpretation under laws of California, resolving ambiguities in favor of conservation purposes.
	References to legal provisions shall be to those in effect when the easement is executed.
	Easement does not constitute government approval of any activities permitted under the easement
Other provisions	
	Perpetual duration clause
	No merger clause
	Notices section, including addresses (sample)
	Landowner's environmental warranty statement
Landowner's Title Warranty (sample)	
	Landowner warrants it is fee simple owner
	Existing financial liens/encumbrances subordinated. Other encumbrances of record listed in Exhibit
	Property not subject to other conservation easements
Subsequent Easements (sample)	
	No diminishment or impairment of productive capacity or open space character.
	No future restrictions on agricultural husbandry practices.
	Steward's written approval shall be obtained in advance of the Landowner's execution of any proposed subsequent easement, interests in land, or use restriction on the Property.
	Subsequent easements, interests in land, and use restrictions shall make reference to and be subordinate to the easement.
	Steward shall notify DOC if it approves a subsequent easement or use restriction.
Legal Clauses	
	Severability clause

	Entire agreement clause
	Acceptance clause
	Habendum clause
Exhibits	
	Legal Description
	Building Envelopes and Existing Improvements. (include linear dimensions of envelope)
	Prior Encumbrances

Recording requested by and when recorded please return to:

[*Steward's name & address*]

(Space above this line reserved for Recorder's use)

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1 **DEED OF AGRICULTURAL CONSERVATION EASEMENT**
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3 This Deed of Agricultural Conservation Easement is granted on this ____ of
4 _____ 2009, by [*Landowner's name*], [*Ownership status*], having an address at
5 [*Landowner's address*] ("Landowner"), to [*Steward's name*], a California nonprofit
6 public benefit corporation, having an address at [*Steward's address*] ("Steward"), for the
7 purpose of forever conserving the agricultural productive capacity and open space
8 character of the subject property.
9

10 **RECITALS**
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12 A. The Landowner is the sole owner in fee simple of the [farm/rangeland]
13 property ("Property") legally described in Exhibit A ("Legal Description"), attached to
14 and made a part of this Agricultural Conservation Easement ("Easement"). The Property
15 consists of approximately [*acres*] acres of land and is commonly known as the
16 "[*Farm/Ranch name*]," together with buildings and other improvements, is located in
17 [*County name*] County, California, and is identified by assessor's parcel number(s)
18 [*parcel numbers*]. The existing buildings and improvements on the Property are shown
19 within the Building Envelope as depicted in Exhibit B ("Building Envelope and Existing
20 Improvements"), also attached to and made a part of this Easement. Except as shown in
21 Exhibit B, the Property is open farmland, whose soils have been classified as [*prime*
22 *farmland, farmland of statewide importance, etc.*] by the U.S. Department of
23 Agriculture's Natural Resources Conservation Service, and by the California Department
24 of Conservation's Farmland Mapping and Monitoring Program, because this land has the
25 soil quality, growing season, and water supply needed for sustained agricultural
26 production.
27

28 B. The agricultural and other characteristics of the Property, its current use
29 and state of improvement, are documented and described in a Baseline Documentation
30 Report ("Baseline Report"), prepared by the Steward with the cooperation of the
31 Landowner and incorporated herein by this reference. The Landowner and the Steward
32 acknowledge that the Baseline Report is complete and accurate as of the date of this
33 Easement. Both the Landowner and the Steward shall retain duplicate original copies of
34 the Baseline Report. The Baseline Report may be used to establish whether or not a
35 change in the use or condition of the Property has occurred, but its existence shall not
36 preclude the use of other evidence to establish the condition of the Property as of the date
37 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

130 thereby significantly impaired.

131

132 3. *Prohibited Uses.*

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

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145 4. *Permission of the Steward.*

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

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

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

166

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

171

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

176 Property, without any further permission of the Steward.

177

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

191

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

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

202

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

210

211 6. *Subdivision.*

212

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

216

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

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

225
226 Lot line adjustment may be permitted solely with the written approval of the Steward
227 pursuant to Section 4, and for purposes of maintaining, enhancing or expanding
228 agricultural practices or productivity on the Property. The Landowner shall take no other
229 steps towards lot line adjustment unless and until the Steward approves the request.

230

231 *7. Development Rights.*

232

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

241

242 *8. Mining.*

243

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

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

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251 *9. Paving and Road Construction.*

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

259

260 *10. Trash and Storage.*

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

268 accordance with all applicable government laws and regulations.

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270 11. *Commercial Signs.*

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

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275 12. *Recreational Uses.*

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

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286 13. *Water Rights.*

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

299

300 14. *Rights Retained by the Landowner.*

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

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

313

314 15. *Responsibilities of the Landowner and the Steward Not Affected.*
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316 Other than as specified herein, this Easement is not intended to impose any legal or other
317 responsibility on the Steward, or in any way to affect any existing obligation of the
318 Landowner as owner of the Property. Among other things, this shall apply to:
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320 (a) Taxes – The Landowner shall be solely responsible for payment of all taxes
321 and assessments levied against the Property. If the Steward ever pays any taxes
322 or assessments on the Property, or if the Steward pays levies on the Landowner’s
323 interest in order to protect Steward’s interests in the Property, the Landowner will
324 reimburse the Steward for the same.
325

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

333 (c) Liability and Indemnification – In view of the Steward’s and the Department
334 of Conservation’s negative rights, limited access to the land, and lack of active
335 involvement in the day-to-day management activities on the Property, the
336 Landowner shall indemnify, protect, defend and holds harmless the Steward, the
337 Department of Conservation, their officers, directors, members, employees,
338 contractors, legal representatives, agents, successors and assigns (collectively,
339 “Agents and Assigns”) from and against all liabilities, costs, losses, orders, liens,
340 penalties, claims, demands, damages, expenses, or causes of action or cases,
341 including without limitation reasonable attorneys’ fees, arising out of or in any
342 way connected with or relating to the Property or the Easement. The Landowner
343 shall be solely liable for injury or the death of any person, or physical damage to
344 any property, or any other costs or liabilities resulting from any act, omission,
345 condition, or other matter related to or occurring on or about the Property,
346 regardless of cause, unless due to the negligence or willful misconduct of the
347 Steward, the Department of Conservation, and/or their respective Agents and
348 Assigns. The Steward shall be named as an additional insured on Landowner’s
349 general liability insurance policy.
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351 Neither the Steward, the Department of Conservation, nor their Agents and
352 Assigns shall have responsibility for the operation of the Property, monitoring of
353 hazardous conditions on it, or the protection of the Landowner, the public or any
354 third parties from risks relating to conditions on the Property. Without limiting
355 the foregoing, neither the Steward, the Department, nor their respective Agents
356 and Assigns shall be liable to the Landowner or other person or entity in
357 connection with consents given or withheld, or in connection with any entry upon
358 the Property occurring pursuant to this Easement, or on account of any claim,
359 liability, damage or expense suffered or incurred by or threatened against the

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

364 16. *Monitoring.*
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366 The Steward shall manage its responsibilities as holder of this Easement in order to
367 uphold the Purpose of this Easement. The Steward's responsibilities include, but are not
368 limited to, annual monitoring, such additional monitoring as circumstances may require,
369 record keeping, and enforcement of this Easement, for the purpose of preserving the
370 Property's agricultural productive capacity and open space character in perpetuity.
371 Failure of the Steward to carry out these responsibilities shall not impair the validity of
372 this Easement or limit its enforceability in any way. With reasonable advance notice
373 (except in the event of an emergency circumstance or prevention of a threatened breach),
374 Steward shall have the right to enter upon, inspect, observe, monitor and evaluate the
375 Property to identify the current condition of, and uses and practices on the Property and
376 to determine whether the condition, uses and practices are consistent with this Easement.
377

378 Steward shall indemnify, defend with counsel of Landowner's choice, and hold
379 Landowner harmless from, all expense, loss, liability, damages and claims, including
380 Landowner's attorneys' fees, if necessary, arising out of Steward's entry on the Property,
381 unless caused by a violation of this Easement by Landowner or by Landowner's
382 negligence or willful misconduct.
383

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

391 17. *Enforcement.*
392

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

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

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

417
418 Without limiting the Landowner's liability therefor, the Steward shall apply damages
419 recovered to the cost of undertaking any corrective action on the Property. Should the
420 restoration of lost values be impossible or impractical for whatever reason, the Steward
421 shall apply any and all damages recovered to furthering its mission, with primary
422 emphasis on agricultural conservation easement acquisition and enforcement.

423
424 In the event the Steward fails to enforce any term, condition, covenant or purpose of this
425 Easement, as determined by the Director of the Department of Conservation, the Director
426 of the Department and his or her successors and assigns shall have the right to enforce the
427 Easement after giving notice to the Steward and the Landowner and providing a
428 reasonable opportunity under the circumstances for the Steward to enforce any term,
429 condition, covenant, or purpose of the Easement. In the event that the Director of the
430 Department determines that the Steward has failed to enforce any of the terms,
431 conditions, covenants, or purposes of the Easement, the Director of the Department and
432 his or her successors and assigns shall be entitled to exercise the same right to enter the
433 Property granted to the Steward, including right of immediate entry where the Director of
434 the Department or his or her successor or assign determines that immediate entry is
435 required in the event of an emergency circumstance or prevention of a threatened
436 violation of this Easement.

437
438 Failure or refusal to exercise any rights under the terms of this Easement by the Steward
439 in the event of a violation by the Landowner of any term herein shall not constitute a
440 waiver or forfeiture of the Steward's right to enforce any term, condition, covenant, or
441 purpose of this Easement.

442
443 18. *Transfer of Easement.*

444
445 This Easement may only be assigned or transferred to a private nonprofit organization
446 that, at the time of transfer, is a "qualified organization" under Section 170(h) of the
447 United States Internal Revenue Code and under Section 815.3(a) of the California Civil
448 Code and has similar purposes to preserve agricultural lands and open space. If no such
449 private nonprofit organization exists or is willing to assume the responsibilities imposed
450 by this Easement, then this Easement may be transferred to any public agency authorized
451 to hold interests in real property as provided in Section 815.3(b) of the California Civil

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

456

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

460

461 If the Steward or its successors ever ceases to exist or no longer qualifies under Section
462 170(h) of the U.S. Internal Revenue Code, or applicable state law, the Department of
463 Conservation, in consultation with the Landowner, shall identify and select an
464 appropriate private or public entity to whom this Easement shall be transferred.

465

466 *19. Transfer of Property Interest.*

467

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

475

476 *20. Amendment of Easement.*

477

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

488

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

492

493 *21. Termination of Easement.*

494

495 *(NOTE: Landowners may waive the administrative termination provision defined in*
496 *Public Resources Code sections 10270-77, in which case potential easement termination*
497 *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

498 *the second sentence “at the time of a voluntary termination pursuant to Sections 10270-*
499 *10277 of the Public Resources Code or...”. The following paragraph should be added:.)*

500

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

513

514 *Landowner’s Initials: _____*

515

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

526

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

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

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

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

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

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

586 22. *Interpretation.*

587

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

590 to give maximum effect to its conservation purposes.

591

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

595

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

599

600 23. *Perpetual Duration.*

601

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

606

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

613

614 24. *Notices.*

615

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

619

620 To the Landowner:

621

622 _____

623

624 _____

625

626 To the Steward:

627

628 _____

629

630 _____

631

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

635

636 To the Department of Conservation:

637

638 Department of Conservation

639 801 K Street, MS 18-01

640 Sacramento, CA 95814

641 Attn: California Farmland Conservancy Program

642

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

644

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

653

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

667

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

673

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

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

683

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

691

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

700

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

702

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

710

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

712

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

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

734

735 28. *Severability.*

736

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

741

742 29. *Entire Agreement.*

743

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

748

749 30. *Acceptance.*

750

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

754

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

757

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

760

761 LANDOWNER

762

763 [*Landowner's Name*].

764

765 By: _____

766

767 Name: _____

768

769 Title: _____

770

771 STEWARD

772

773 [*Steward's Name*],

774 a California nonprofit public benefit corporation

775

776 By: _____

777

778 Name: _____

779

780 Title: _____

781

782 ACKNOWLEDGEMENTS

783

784

785 STATE OF CALIFORNIA } ss

786 COUNTY OF }
787

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

795

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

798

799 WITNESS my hand and official seal.

800

801 Signature _____

802

803

804

805 STATE OF CALIFORNIA } ss

806 COUNTY OF }
807

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

815

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

818

819 WITNESS my hand and official seal.

820

821 Signature _____

822

823

824

825 Exhibit A (Legal Description) Attached

826 Exhibit B (Building Envelope and Existing Improvements) Attached

827 Exhibit C (Prior Encumbrances) Attached