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DEED OF AGRICULTURAL CONSERVATION EASEMENT

This Deed of Agricultural Conservation Easement is granted on this ____ of _____ 201_, 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, unique farmland, or farmland of local importance] 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 warrant 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 a change in the use or condition of the Property has occurred,

1 but its existence shall not preclude the use of other evidence to establish the
2 condition of the Property as of the date of this Easement.
3

- 4 C. The California High-Speed Rail Act of 1996 (Chapter 796, Statutes of 1996 [SB
5 1420, Kopp]) authorized the planning and construction of an intercity high-speed
6 train that links the state's major population centers, including Sacramento, the San
7 Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange
8 County, and San Diego. Under the enabling legislation, the California High-
9 Speed Rail Authority ("Authority") was created to oversee the development and
10 implementation of the high-speed train project ("Project"). On June 28, 2013, the
11 Authority entered into an Interagency Agreement with the Department of
12 Conservation ("Department"), amended in part on April 16, 2014. Under the
13 Interagency Agreement, the Department is to assist the Authority by providing
14 services to meet the Authority's environmental commitments associated with the
15 conversion of agricultural land to non-agricultural uses by the Project. The
16 Department will assist the Authority with partial mitigation of those impacts via
17 the establishment of permanent agricultural conservation easements on land of
18 similar acreage, location, and quality to that impacted by the alignment and
19 maintenance facilities located within the Central Valley.
20
- 21 D. On behalf of the Authority, the Department's California Farmland Conservancy
22 Program ("Program") has made a grant of high-speed rail mitigation funds to the
23 Grantee. The California High-Speed Rail Authority has funded this agricultural
24 land conservation easement to mitigate for the impacts of the high-speed rail
25 project in the [*Merced to Fresno or Fresno to Bakersfield*] section on Agricultural
26 Lands. This funding fulfills, in part, the Authority's mitigation commitments for
27 impacts to Important Farmland, by permanently preserving Important Farmland
28 for agricultural use and preventing its conversion to non-agricultural use.
29
- 30 E. The Department's grant of funds represents a substantial investment by the people
31 of the State of California in the long-term conservation of valuable agricultural
32 land and the retention of agricultural land in perpetuity. The Property and this
33 Easement have met the Program's eligibility criteria stated in the Request for
34 Grant Applications, including the multiple natural resource conservation
35 objectives that derive from the conservation of agricultural and open space land.
36 The rights vested herein in the State of California arise out of the State's statutory
37 role in fostering the conservation of agricultural land in California, mitigating the
38 significant environmental impacts of its projects, and its role as fiduciary for the
39 public investment represented by these funds.
40
- 41 F. The Landowner grants this Easement for valuable consideration to the Grantee for
42 the purpose of assuring that, under the Grantee's perpetual stewardship, the
43 agricultural productive capacity and open space character of the Property will be
44 conserved and maintained forever, and that uses of the land that are inconsistent
45 with these conservation purposes will be prevented or corrected. The parties
46 agree, however, that the current agricultural use of, and improvements to, the

1 Property, as represented in the Baseline Report completed at the time of this
2 Easement's recordation, are consistent with the conservation purposes of this
3 Easement.
4

- 5 G. The conservation purposes of this Easement are recognized by, and the grant of
6 this Easement will serve, the following clearly delineated governmental
7 conservation and environmental policies:
8

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

16
17 The California Environmental Quality Act (PRC §§21000 et seq.) which
18 requires that significant impacts to the environment resulting from a
19 project be mitigated to the extent feasible;
20

21 California Civil Code at Part 2, Chapter 4, (commencing with section
22 815), which defines and authorizes perpetual conservation easements;
23

24 California Government Code Section 65966 (a), which states that "any
25 conservation easement created as a component of satisfying a local or state
26 mitigation requirement shall be perpetual in duration";
27

28 California Constitution Article XIII, section 8, California Revenue and
29 Taxation Code sections 421.5 and 422.5, and California Civil Code
30 section 815.1, under which this Agricultural Conservation Easement is an
31 enforceable restriction, requiring that the Property's tax valuation be
32 consistent with restriction of its use for purposes of food and fiber
33 production and conservation of natural resources;
34

35 Section 10200 et seq. of the California Public Resources Code, which
36 creates the California Farmland Conservancy Program within the
37 Department;
38

39 Section 51220 of the California Government Code, which declares a
40 public interest in the preservation of agricultural lands, by providing that
41 "agricultural lands have a definitive public value as open space" and "that the
42 discouragement of premature and unnecessary conversion of agricultural
43 land to urban uses is a matter of public interest";
44

45 California Food and Agriculture Code Section 821 states that one of the
46 major principles of the State's agricultural policy is "to sustain the long-term

1 productivity of the State's farms by conserving and protecting the soil, water,
2 and air, which are agriculture's basic resources;"

3
4 The California General Plan law section 65300 et seq. and Section 65400
5 et seq. of the California Government Code, and the [County name] County
6 General Plan, as updated on [Update date], which includes as one of its
7 goals to protect farmland designated as prime, of statewide importance,
8 unique, or of local importance from conversion to and encroachment of
9 non-agricultural uses; and,

10
11 Resolution No. [Resolution number], approved by the Board of
12 Supervisors of [County name] County on the [day] of [month], [year],
13 which expresses support for the acquisition of this Easement and finds that
14 the acquisition is consistent with the County's General Plan and the
15 Resolution's findings.

16
17 *(NOTE: If the Property lies within the Sphere of Influence of an incorporated*
18 *city, both the city and county must pass resolutions of support.)*

- 19
20 H. The Grantee is a California nonprofit organization within the meaning of
21 California Public Resources Code section 10221 and California Civil Code
22 section 815.3 and is a tax exempt and "qualified conservation organization"
23 within the meaning of Sections 501(c)(3) and 170(b)(1)(A)(iv) as defined by the
24 United States Internal Revenue Code. Grantee, as certified by a resolution of
25 Grantee's Board of Trustees, accepts the responsibility of enforcing the terms of
26 this Easement and upholding its conservation purposes forever.

27
28 *(NOTE: Section H is customized as appropriate to represent the eligible*
29 *applicant/easement holder.)*

1 GRANT OF AGRICULTURAL CONSERVATION EASEMENT

2
3 Now, therefore, for the reasons given, and in consideration of their mutual promises and
4 covenants, terms, conditions and restrictions contained herein, and other good and
5 valuable consideration, the receipt and adequacy of which are hereby acknowledged, the
6 Landowner voluntarily grants and conveys to the Grantee, and the Grantee voluntarily
7 accepts, a perpetual conservation easement, as defined by Sections 815.1 and 815.2 of the
8 California Civil Code and Section 10211 of the California Public Resources Code, and of
9 the nature and character described in this Easement for the purpose described below, and
10 agree as follows:

11
12 1. *Conservation Purpose.*

13
14 The conservation purpose ("Purpose") of this Easement is to enable the Property
15 to remain in productive agricultural use in perpetuity by preventing and correcting
16 uses of the Property prohibited by the provisions of this Easement. To the extent
17 that the preservation of the open space character and [*scenic, habitat, natural, or*
18 *historic, etc.*] values of the Property are consistent with such use, it is within the
19 Purpose of this Easement to protect those values.
20

21 2. *Right to Use Property for Agricultural Purposes.*

22
23 The Landowner retains the right to use the Property for agricultural purposes, or to
24 permit others to use the Property for agricultural purposes, in accordance with
25 applicable law and this Easement.
26

27 3. *Prohibited Uses.*

28
29 The Landowner shall not perform, nor knowingly allow others to perform, any act
30 on or affecting the Property that is inconsistent with this Easement. Any use or
31 activity that would diminish or impair the agricultural productive capacity of the
32 Property and open space character [*or scenic, habitat, natural, historic etc.*
33 *values*] protected by this Easement, or that would cause significant soil
34 degradation or erosion, restrict agricultural husbandry practices, or that is
35 otherwise inconsistent with the Conservation Purpose is prohibited ("Prohibited
36 Use").
37

38 "Husbandry practices" means agricultural activities, such as those specified in
39 Section 3482.5(e) of the California Civil Code, conducted or maintained for
40 commercial purposes in a manner consistent with proper and accepted customs
41 and standards, as established and followed by similar agricultural operations in
42 the same locality.
43

44 This Easement authorizes the Grantee to enforce these covenants in the manner
45 described herein. However, unless otherwise specified, nothing in this Easement
46 shall require the Landowner to take any action to restore the condition of the

1 Property after any Act of God or other similar event over which the Landowner
2 had no control. The Landowner understands that nothing in this Easement
3 relieves it of any obligation or restriction on the use of the Property imposed by
4 law.

5

6 4. *Permission of the Grantee.*

7

8 Where the Landowner is expressly required to obtain the Grantee's permission for
9 a proposed use hereunder, said permission (a) shall not be unreasonably delayed
10 or withheld by the Grantee, (b) shall be sought and given in writing, with copies
11 of all documents to be provided to the Department, and (c) shall in all cases be
12 obtained by the Landowner prior to the Landowner's undertaking of the proposed
13 use. The Grantee shall grant permission to the Landowner only where the
14 Grantee, acting in the Grantee's sole reasonable discretion and in good faith,
15 determines that the proposed use is not a "Prohibited Use" as defined in Section 3.

16

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

18

19 The Landowner may undertake construction, erection, installation, or placement
20 of buildings, structures, or other improvements on the Property only as provided
21 in subsections (a) through (e) below. All other construction, erection, installation,
22 or placement of buildings, structures, or other improvements on the Property is
23 prohibited. Before undertaking any construction, erection, installation or
24 placement that requires permission, the Landowner shall notify the Grantee and
25 obtain prior written permission from the Grantee.

26

27 For purposes of this section, the term "improvements" shall not refer to, and
28 specifically excludes, crops, plants, trees, vines, or other living improvements
29 planted for agricultural purposes, nor shall it refer to irrigation improvements
30 necessary or desirable to irrigate the Property for agricultural purposes, all of
31 which may be made without permission of the Grantee.

32

33 (a) Fences – Existing fences may be repaired and replaced without permission of
34 the Grantee. New fences may be built anywhere on the Property for purposes
35 of reasonable and customary agricultural management, and for security of
36 farm produce, livestock, equipment, and improvements on the Property,
37 without permission of the Grantee.

38

39 (b) Agricultural Structures and Improvements – Existing agricultural structures
40 and improvements as shown in Exhibit C and more fully described in the
41 Baseline Report, may be repaired, reasonably enlarged, and replaced at their
42 current locations only and entirely within the Building Envelope for
43 agricultural purposes. New buildings and other structures and improvements
44 to be used solely for agricultural production on the Property or sale of farm
45 products predominantly grown or raised on the Property, including barns and
46 equipment sheds, but not including any dwelling or farm labor housing, may

be built, repaired, reasonably enlarged, and replaced on the Property only and entirely within the Building Envelope. Any other agricultural production or marketing-related structures may be constructed only with permission of the Grantee pursuant to Section 4, and then only and entirely within the Building Envelope.

- (c) Residential Dwellings – The single-family dwelling shown in Exhibit C may be repaired, enlarged or replaced only at the current location entirely within the Building Envelope. Said single-family dwelling shall not exceed three thousand square feet (3,000 sq. ft.) of living area. No other residential structures may be constructed or placed on the Property except for agricultural employee housing per Section 5(d).

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

- (d) Agricultural Employee Housing – The agricultural employee housing shown in Exhibit C may be repaired, enlarged or replaced only at the current location entirely within the Building Envelope. Additional agricultural employee housing may be constructed or placed on the Property with permission of the Grantee pursuant to Section 4 and only if the Landowner can demonstrate to the Grantee's satisfaction that such additional agricultural employee housing is reasonable and necessary for the agricultural operation of the Property. The aggregate living area of agricultural employee housing shall not exceed two thousand five hundred square feet (2,500 sq ft.). All agricultural employee housing must be located entirely within the Building Envelope.

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

- (e) Utilities and Septic Systems – Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, energy generation, or other utility services solely to serve the improvements permitted herein or to transmit power generated on the Property may be installed, maintained, repaired, removed, relocated and replaced. In addition, septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired, replaced, relocated or improved, but must be located within the Building Envelope.

Power generation and transmission facilities primarily for agricultural and other permitted uses on the Property may be constructed within the Building Envelope. Power generated in excess of requirements on the Property may be sold to appropriate public utilities. Notwithstanding the foregoing, commercial power generation, collection or transmission facilities, including wind or solar farms outside of Building Envelope, and the conveyance of any rights-of-way over, under or on the Property for any such purpose, are

prohibited.

6. *No Subdivision.*

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

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

Lot line adjustment may be permitted only with the written approval of the Grantee pursuant to Section 4, in conjunction with the approval of the local jurisdiction, and for purposes of maintaining, enhancing or expanding agricultural practices or productivity on the Property.

7. *Extinguishment of Development Rights.*

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

8. *General Prohibition on Surface Mining.*

Except as specifically authorized herein, the mining, removal or extraction on or from the area subject to this Easement of soil, sand, gravel, aggregate, rock, oil, natural gas, fuel, or any other mineral substance, through a surface mining, removal or extraction method or from above a depth of 150 feet below the surface of the Property is prohibited. This prohibition includes the installation of roads or pipelines for transportation of the aforesated resources.

This section is not intended to interfere with Landowners' right to remove cobble

1 and hardpan from farm areas in order to prepare the land for agricultural purposes.
2
3 (NOTE: For properties with existing mineral development activities or where the
4 mineral rights are under control of a third-party, this section may be modified.)
5

6 9. *Paving and Road Construction.*
7

8 Other than existing roads shown within the Building Envelope as identified in the
9 Baseline Report, no portion of the Property presently unpaved shall be paved or
10 otherwise covered with concrete, asphalt, or any other impervious paving
11 material, unless such measures are required by air quality laws or regulations
12 applicable to the Property. Except as otherwise permitted herein, no road for
13 access or other purposes shall be constructed without the permission of the
14 Grantee pursuant to Section 4. Notwithstanding the foregoing, construction of
15 unpaved farm roads, as necessary or desirable by agricultural operations, is
16 permitted without permission from the Grantee. The Landowner shall notify the
17 Grantee of any significant relocation or net addition of unpaved farm roads.
18

19 10. *Trash and Storage.*
20

21 The dumping or accumulation on the Property of any kind of trash, refuse, vehicle
22 bodies or parts, or "Hazardous Materials," as defined in Section 25 is prohibited.
23 Farm-related trash and refuse produced on the Property may be temporarily stored
24 on the Property subject to all applicable laws. The storage of agricultural
25 products and byproducts produced on the Property and materials reasonably
26 required for agricultural production on the Property, including Hazardous
27 Materials, is permitted as long as it is done in accordance with all applicable
28 government laws and regulations.
29

30 11. *Commercial Signs.*
31

32 Commercial signs (including billboards) unrelated to permitted activities
33 conducted on the Property are prohibited.
34

35 12. *Recreational Uses; Motorized Vehicle Use Off Roadways*
36

37 Resort structures, athletic fields, golf courses, non-residential swimming pools,
38 public or commercial airstrips, commercial equestrian facilities, public or
39 commercial helicopter pads, and any other non-agricultural recreational structures
40 or facilities are prohibited on the Property. Recreational structures or
41 improvements for the personal use of the Landowner and its guests (e.g.
42 swimming pool, tennis court) are permitted only within the Building Envelope.
43 The use of motorized vehicles off roadways and outside of the Building Envelope
44 is prohibited except where used for agricultural production, property maintenance
45 and security, or for the purpose of monitoring this Easement.
46

1 13. *Water Rights.*

2
3 The Landowner shall retain and reserve all ground water, and all appurtenant, prescriptive, contractual or other water rights appurtenant to the Property at the
4 time this Easement becomes effective. The Landowner shall not permanently
5 transfer, encumber, lease, sell, or otherwise separate such quantity of water or
6 water rights from title to the Property itself. Permanent separation of water or
7 water rights is prohibited. All water shall be retained in [County name] County
8 for agricultural production and used in conjunction with the improvements
9 permitted by Section 5 of this Easement only.
10

11
12 Water may be distributed to a contiguous property or other property owned or
13 leased by the Landowner on an annual basis for agricultural production only. Any
14 temporary distribution of water shall not impair the long-term agricultural
15 productive capacity or open space character of the Property.
16

17 14. *Rights Retained by the Landowner.*

18
19 Subject to Section 7 and to interpretation under Section 23, as owner of the
20 Property, the Landowner reserves all interests in the Property not transferred,
21 conveyed, restricted, prohibited or extinguished by this Easement. These
22 ownership rights include, but are not limited to, the right to sell, lease, or
23 otherwise transfer the Property to anyone the Landowner chooses, as well as the
24 right to privacy, the right to exclude any member of the public from trespassing
25 on the Property, and any other rights consistent with the Purpose of this
26 Easement. Nothing contained herein shall be construed as a grant to the general
27 public of any right to enter upon any part of the Property.
28

29 Nothing in this Easement relieves the Landowner of any obligation or restriction
30 on the use of the Property imposed by law.
31

32 15. *Responsibilities of the Landowner and the Grantee Not Affected.*

33
34 Other than as specified herein, this Easement is not intended to impose any legal
35 or other responsibility on the Grantee, or in any way to affect any existing
36 obligation of the Landowner as owner of the Property. Among other things, this
37 shall apply to:
38

- 39 (a) Taxes – The Landowner shall be solely responsible for payment of all taxes
40 and assessments levied against the Property. If the Grantee ever pays any
41 taxes or assessments on the Property, or if the Grantee pays levies on the
42 Landowner's interest in order to protect Grantee's interests in the Property,
43 the Landowner will reimburse the Grantee for the same. It is intended that
44 this Easement constitute an enforceable restriction within the meaning of
45 Article XIII, Section 8 of the California Constitution and that this Easement
46 qualify as an enforceable restriction under the provisions of California

Revenue and Taxation Code Sections 402.1(a)(8) and 423.

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

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

Neither the Grantee, the Department, the Authority, nor their Agents and Assigns shall have responsibility for the operation of the Property, monitoring of hazardous conditions on it, or the protection of the Landowner, the public or any third parties from risks relating to conditions on the Property. Without limiting the foregoing, neither the Grantee, the Department, the Authority, nor their respective Agents and Assigns shall be liable to the Landowner or other person or entity in connection with consents given or withheld, or in connection with any entry upon the Property occurring pursuant to this Easement, or on account of any claim, liability, damage or expense suffered or incurred by or threatened against the Landowner or any other person or entity, except as the claim, liability, damage, or expense is the result of the gross negligence or intentional misconduct of the Grantee, the Department, the Authority, and/or their respective Agents and Assigns.

The Landowner’s indemnification of the Department and the Authority shall extend to ensure that neither the Department nor the Authority shall incur any liability for the actions or inactions addressed herein.

1 16. *Monitoring.*

- 2
- 3 (a) The Grantee shall manage its responsibilities as holder of this Easement in
4 order to uphold the Purpose of this Easement. The Grantee's responsibilities
5 include, but are not limited to, annual monitoring, such additional monitoring
6 as circumstances may require, record keeping, and enforcement of this
7 Easement, for the purpose of preserving the Property's agricultural productive
8 capacity and open space character in perpetuity. Failure of the Grantee to
9 carry out these responsibilities shall not impair the validity of this Easement or
10 limit its enforceability in any way. With reasonable advance notice (except in
11 the event of an emergency circumstance or prevention of a threatened breach),
12 Grantee shall have the right to enter upon, inspect, observe, monitor and
13 evaluate the Property to identify the current condition of, and uses and
14 practices on the Property and to determine whether the condition, uses and
15 practices are consistent with this Easement.
- 16
- 17 (b) Grantee shall indemnify, defend with counsel of Landowner's choice, and
18 hold Landowner harmless from, all expense, loss, liability, damages and
19 claims, including Landowner's attorneys' fees, if necessary, arising out of
20 Grantee's entry on the Property, unless caused by a violation of this Easement
21 by Landowner or by Landowner's negligence or willful misconduct.
- 22
- 23 (c) The Grantee shall report to the Department by June 30 of each year after the
24 annual monitoring visit, describing method of monitoring, condition of the
25 Property, stating whether any violations were found during the period,
26 describing any corrective actions taken, the resolution of any violation, and
27 any transfer of interest in the Property. Failure to do so shall not impair the
28 validity of this Easement or limit its enforceability in any way.

29

30 17. *Enforcement.*

- 31
- 32 (a) The Grantee may take all actions, including legal actions, that it deems
33 necessary to ensure compliance with the terms, conditions, covenants, and
34 purposes of this Easement. The Grantee shall have the right to prevent and
35 correct violations of the terms, conditions, covenants, and purposes of this
36 Easement. If the Grantee finds what it believes is a violation or potential
37 violation, it may at its discretion take appropriate legal action to ensure
38 compliance with the terms, conditions, covenants, and purposes of this
39 Easement and shall have the right to correct violations and prevent the threat
40 of violations. Except when an ongoing or imminent violation could
41 irreversibly diminish or impair the agricultural productive capacity and open
42 space character of the Property, the Grantee shall give the Landowner written
43 notice of the violation or potential violation, and thirty (30) days to correct it,
44 before filing any legal action.
- 45
- 46 (b) If a court with jurisdiction determines that a violation may exist, has occurred,

1 or is about to occur, the Grantee may obtain an injunction, specific
2 performance, or any other appropriate equitable or legal remedy, including (i)
3 money damages, including damages for the loss of the agricultural
4 conservation values protected by this Easement, (ii) restoration of the Property
5 to its condition existing prior to such violation, and (iii) an award for all of the
6 Grantee's expenses incurred in stopping and correcting the violation,
7 including but not limited to reasonable attorney's fees. The failure of the
8 Grantee to discover a violation or potential violation, or to take immediate
9 legal action to prevent or correct a violation or potential violation known to
10 the Grantee, shall not bar the Grantee from taking subsequent legal action.
11 The Grantee's remedies under this section shall be cumulative and shall be in
12 addition to all remedies now or hereafter existing at law or in equity.
13

14 (c) Without limiting the Landowner's liability, the Grantee shall apply damages
15 recovered to the cost of undertaking any corrective action on the Property.
16 Should the restoration of lost values be impossible or impractical for whatever
17 reason, the Grantee shall apply any and all damages recovered to furthering
18 the Purpose of this Easement.
19

20 (d) In the event the Grantee fails to enforce any term, condition, covenant or
21 purpose of this Easement, as determined by the Director of the Department,
22 the Director and his or her successors and assigns shall have the right to
23 enforce the Easement after giving notice to the Grantee and the Landowner
24 and providing a reasonable opportunity under the circumstances for the
25 Grantee to enforce any term, condition, covenant, or purpose of the Easement.
26 In the event that the Director of the Department has reasonable cause to
27 suspect that the Grantee has failed to enforce any of the terms, conditions,
28 covenants, or purposes of the Easement, the Director of the Department and
29 his or her successors and assigns shall be entitled to exercise the same right to
30 enter the Property granted to the Grantee, including right of immediate entry
31 in the event of an emergency or suspected emergency where the Director of
32 the Department or his or her successor or assign has reasonable cause to
33 suspect that immediate entry is required to prevent, terminate or mitigate a
34 violation of this Easement.
35

36 (e) Failure or refusal to exercise any rights under the terms of this Easement by
37 the Grantee or the Department in the event of a violation by the Landowner of
38 any term herein shall not constitute a waiver or forfeiture of the Grantee's or
39 the Department's right to enforce any term, condition, covenant, or purpose of
40 this Easement.
41

42 18. *Transfer of Easement.*

43

44 (a) This Easement may only be assigned or transferred to an entity authorized to
45 hold such Easement as specified under Section 10211 of the Public Resources
46 Code and has similar purposes to preserve, is capable of managing the

Easement, and protecting the mitigation of the impacts to agricultural lands and open space. Such an assignment or transfer may proceed only if the organization or agency expressly agrees to assume the responsibility imposed on the Grantee by the terms of this Easement and is expressly willing and able to hold this Easement for the Purpose for which it was created. All assignment and assumption agreements transferring the Easement shall be recorded in <County name> County within thirty (30) days.

(b) If the Grantee should desire to assign or transfer this Easement, the Grantee must obtain written permission from the Landowner and the Department, which permission shall not be unreasonably withheld.

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

19. Perpetual Duration and No Merger of Title.

(a) Pursuant to California Civil Code at Part 2, Chapter 4, (commencing with section 815), which defines and authorizes perpetual conservation easements, and California Government Code Section 65966 (a) that requires conservation easements to be perpetual when created to satisfy a local or state mitigation requirement; this Easement shall run with the land in perpetuity. Every provision of this Easement that applies to the Landowner or the Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

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

20. Transfer of Property Interest.

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

1 limit its enforceability in any way.

- 2
- 3 (b) Prior to any sale, lease, license or other transfer of any interest in the Property,
- 4 the Landowner shall inform the prospective transferee of this Easement and its
- 5 terms and provide them with a copy of this Easement. Any such subsequent
- 6 owners, lessees, licensees, or transferees shall succeed to and be bound by the
- 7 terms of the Easement.
- 8

9 *21. Amendment of Easement.*

10

- 11 (a) This Easement may be amended only with the written consent of the
- 12 Landowner, the Grantee, and the Director of the Department. Any such
- 13 amendment shall be consistent with the Purpose of this Easement and with the
- 14 Grantee's easement amendment policies, and shall comply with all applicable
- 15 laws, including Section 170(h) of the Internal Revenue Code, or any
- 16 regulations promulgated in accordance with that section, and with Section 815
- 17 et seq. of the California Civil Code, and the California Farmland Conservancy
- 18 Program Act as codified in Section 10200 et seq. of the California Public
- 19 Resources Code, and any regulations promulgated thereunder. No
- 20 amendment shall diminish or affect the perpetual duration or the Purpose of
- 21 this Easement, nor the status or rights of the Grantee under the terms of this
- 22 Easement.
- 23

- 24 (b) This Easement and any amendment to it shall be recorded in [*County name*]
- 25 County. A copy of the recorded amendment shall be provided to the
- 26 Department within thirty (30) days of recordation.
- 27

28 *22. Termination of Easement and Eminent Domain.*

29

- 30 (a) Termination.
- 31

- 32 (i) It is the intention of the parties that the Conservation Purpose of this
- 33 Easement shall be carried out forever as provided in the Section 10211 of
- 34 the California Public Resources Code, Section 815 et seq. of the California
- 35 Civil Code and California Government Code Section 65966 (a). Pursuant
- 36 to California Government Code Section 65966 (a), this Easement is
- 37 established to satisfy a local or state mitigation requirement, and cannot be
- 38 terminated pursuant to the administrative termination provision defined in
- 39 Public Resources Code sections 10270 et seq.
- 40

41 Accordingly, Landowner expressly waives on behalf of Landowner and

42 Landowner's successors and assigns all rights to terminate or extinguish

43 this Easement, or request that this Easement be terminated or extinguished

44 pursuant to the administrative termination provisions set forth in sections

45 10270 et. seq. of the Public Resources Code.

46

- 1 (ii) If circumstances arise in the future that render all of the Purposes of this
2 Easement impossible to accomplish, this Easement may be terminated or
3 extinguished, whether in whole or in part, on the initiative of the Grantee
4 or the Landowner, but only by judicial proceedings in a court of
5 competent jurisdiction. The Grantee shall give notice to the Department
6 of any prospective termination or extinguishment of this Easement not less
7 than 60 business days before initiating such proceedings. The Department
8 may intervene in any such judicial proceedings to protect or retain this
9 Easement.
- 10
- 11 (iii) No inaction or silence by the Grantee shall be construed as abandonment
12 of the Easement. The fact that the Property is not in agricultural use, or
13 that agricultural use is no longer possible, is not reason for termination or
14 extinguishment of this Easement so long as any of the Purposes of this
15 Easement remains possible to accomplish. Other than pursuant to eminent
16 domain or an involuntary acquisition for a necessary public use by public
17 agency, corporation, or other entity or individual with the power of
18 eminent domain (Acquiring Entity), no other voluntary or involuntary
19 sale, exchange, conversion, transfer, assignment, lease, mortgage or other
20 encumbrance, alienation or conveyance of any kind of all or part of the
21 Property, or of any interest in it, shall limit or terminate or extinguish the
22 provisions of this Easement.
- 23
- 24 (iv) Should all or part of the Property or any interest in it be proposed for
25 acquisition for a necessary public use by an Acquiring Entity, the
26 Landowner and the Grantee shall join in appropriate actions to recover the
27 full value of the proposed acquisition and all incidental or direct damages
28 resulting from the proposed acquisition as well as all other payments to
29 which they may be entitled by law (Compensation). The Acquiring Entity
30 shall pay Compensation directly to the Landowner and the Grantee. The
31 Compensation of such proceeding of the Landowner and the Grantee shall
32 be divided in accordance with the proportionate values of the Landowner's
33 and the Grantee's interests as specified in this Section 22(b), unless
34 otherwise provided by applicable law.
- 35
- 36 (v) If the Landowner receives notice, formal or informal, that any Acquiring
37 Entity intends to exercise its power of eminent domain as to the Property
38 or any portion thereof or any interest therein, Landowner shall promptly,
39 and in any event in not less than fifteen (5) business days after receipt of
40 such notice, give written notice to the Grantee, the Department and the
41 Authority of such receipt together with a copy of any and all
42 communications related to such prospective eminent domain proceedings.
43 The Landowner shall thereafter promptly provide to the Grantee and the
44 Department copies of all further communications related to such
45 proceedings and cooperate with the Grantee and the Department in
46 responding to such proceedings.

(vi) Acquisition of the Easement through the power of eminent domain is subject to the requirements of Section 10261 of the California Public Resources Code, the eminent domain laws of the State of California, including Section 1240.510 or Section 1240.610 of the Code of Civil Procedure, federal law, and this Easement. The Property may not be taken by eminent domain or in lieu of eminent domain if the planned use is more than seven (7) years in the future (California Code of Civil Procedure section 1240.220). Purchase in lieu of condemnation, or settlement of an eminent domain proceeding, shall occur pursuant to applicable laws and procedures, including but not limited to California Government Code sections 7267.1 and 7267.2, and shall require approval of the Grantee, the Director of the Department, and the Authority. The Grantee and the Department shall have an opportunity to accompany the appraiser for the Acquiring Entity when the appraiser goes on the Property with Landowner.

(vii) Should this Easement be condemned or otherwise terminated on any portion of the Property, the balance of the Property shall remain subject to this Easement and reimbursement shall be pro-rated. In this event, all relevant related documents shall be updated and re-recorded by the Grantee to reflect the modified easement area. Encumbrances junior to this Easement shall remain subordinate to the Easement as amended.

(b) Compensation.

- (i) The grant of this Easement gives rise to a property right immediately vested in Grantee.
- (ii) Compensation of the Grantee and the Department shall proceed as follows. The value of the Easement terminated or extinguished shall be determined in accordance with this Section 22(b), and the Grantee shall receive from the Landowner the entire value of the Easement to the extent terminated or extinguished. Until such compensation is paid to the Grantee in full, the amount of that compensation shall be a first priority lien on the Property with the same seniority as this Easement.
- (iii) This Easement shall not be deemed terminated or extinguished until such payment is received by the State of California, Department of Conservation California Farmland Conservancy Program Fund. The Department, in using any proceeds received, shall use the funds in accordance with the intent of the Interagency Agreement, as referenced in Recital C.
- (iv) Any compensation or proceeds paid to the Grantee for the taking by eminent domain or by purchase in lieu of eminent domain of all or any portion of this Easement, whether by agreement, by court order or

1 otherwise, shall be allocate between the Grantee and the Department
2 proportionately to the contribution each made to the purchase of this
3 Easement as specified below:

4 The proportionate shares for this Easement are:
5 X% Grantee and X% Department.
6

7 (v) As of the date of this Easement and based on the appraisal relied upon to
8 fund the acquisition of this Easement, "Easement Percentage" is hereby
9 defined and established as the ratio of the value of the Easement at the
10 time of this acquisition to the value of the Property, unencumbered by the
11 Easement, at the time of this acquisition. The values shall exclude any
12 amounts attributable to improvements on the Property. This Easement
13 Percentage shall remain constant.

14 The Easement Percentage on this Property is: X%.
15

16 (vi) The parties stipulate and agree that the Easement shall have a fair market
17 value determined as the greater of:
18

19 (A) The fair market value of the Property, excluding the value of the
20 improvements on the Property, as though unencumbered by this
21 Easement, at the time of the proposed termination, multiplied by the
22 Easement Percentage; or
23

24 (B) The fair market value of the Easement at the time of the proposed
25 termination.
26

27 (C) The fair market valuation shall be determined by an appraisal
28 performed by a qualified appraiser jointly selected by the Landowner,
29 the Grantee and the Department. Appraisals shall conform to the
30 Uniform Standards of Professional Appraisal Practices.
31

32 (D) If the Landowner has initiated termination of the Easement through a
33 judicial proceeding, the Landowner shall pay the cost of the appraisal,
34 and the appraisal is subject to approval by the Department. Nothing
35 herein shall prevent the Landowner, the Grantee, or the Department
36 from having an appraisal prepared at its own expense.
37

38 (vii) If the Grantee obtains payment on a claim under a title insurance policy
39 insuring this Easement, payment shall be distributed as set forth this
40 Section 22(b).
41

42 *(NOTE: Additional IRS language may need to be used for landowners seeking*
43 *IRS recognition of a charitable donation)*
44

45 23. Interpretation.

46

47 (a) This Easement shall be interpreted under the laws of the State of California,

1 resolving any ambiguities and questions of the validity of specific provisions
2 so as to give maximum effect to its conservation purposes.
3

4 (b) References to specific authorities in this Easement shall be to the statute, rule,
5 regulation, ordinance, or other legal provision that is in effect at the time this
6 Easement becomes effective.
7

8 (c) No provision of this Easement shall constitute governmental approval of any
9 improvements, construction or other activities that may be permitted under
10 this Easement.
11

12 **24. Notices.**
13

14 Any notices to the Landowner and the Grantee required by this Easement shall be
15 in writing and shall be personally delivered or sent by First-Class Mail to the
16 following addresses, unless a party has been notified by the other of a change of
17 address:
18

19 To the Landowner:

20
21 To the Grantee:

22
23 Any notices required by this Easement to be sent to the Department shall be in
24 writing and shall be personally delivered or sent by First-Class Mail, at the
25 following address, unless a party has been notified by the Department of a change
26 of address:
27

28 To the Department:

29
30 Department of Conservation
31 801 K Street, MS 14-01
32 Sacramento, CA 95814
33 Attn: California Farmland Conservancy Program
34

35 Any notices required by this Easement to be sent to the Authority shall be in
36 writing and shall be personally delivered or sent by First-Class Mail, at the
37 following address, unless a party has been notified by the Authority of a change
38 of address:
39

40 To the High Speed Rail Authority:

High Speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814
Attn: Environmental Planning

25. *The Landowner's Environmental Warranty.*

- (a) Nothing in this Easement shall be construed as giving rise to any right or ability in the Grantee, the Department, or the Authority to exercise physical or management control over the day-to-day operations of the Property, or any of the Landowner's activities on the Property, or otherwise to become an "owner" or "operator" with respect to the Property as those words are defined and used in environmental laws, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended or any corresponding state and local statute or ordinance.
- (b) The Landowner warrants that it has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Property. Moreover the Landowner hereby promises to defend and indemnify the Grantee, the Department, and the Authority against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws. The Landowner's indemnification obligation shall not be affected by any authorizations provided by the Grantee to the Landowner with respect to the Property or any restoration activities carried out by the Grantee at the Property; provided, however, that the Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by the Grantee.
- (c) Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment or any other material defined and regulated by Environmental Laws.
- (d) The Landowner warrants that it shall remain in compliance with, all applicable Environmental Laws. The Landowner warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property.

- 1 (e) “Environmental Law” or “Environmental Laws” means any and all federal,
2 state, local or municipal laws, rules, orders, regulations, statutes, ordinances,
3 codes, guidelines, policies or requirements of any governmental authority
4 regulating or imposing standards of liability or standards of conduct
5 (including common law) concerning air, water, solid waste, Hazardous
6 Materials, worker and community right-to-know, hazard communication,
7 noise, radioactive material, resource protection, subdivision, inland wetlands
8 and watercourses, health protection and similar environmental health, safety,
9 building and land use as may now or at any time hereafter be in effect.
10
11 (f) If at any time after the effective date of this Easement there occurs a release,
12 discharge or other incident in, on, or about the Property of any substance now
13 or hereafter defined, listed, or otherwise classified pursuant to any federal,
14 state, or local law, regulation, or requirement as hazardous, toxic, polluting, or
15 otherwise contaminating to the air, water, or soil, or in any way harmful or
16 threatening to human health or the environment, the Landowner agrees to take
17 any steps that are required of the Landowner with respect thereto under
18 federal, state, or local law necessary to ensure its containment and
19 remediation, including any cleanup.
20

21 *26. The Landowner’s Title Warranty; No Prior Conservation Easements.*
22

23 The Landowner represents and warrants that it owns the entire fee simple interest
24 in the Property, including the entire mineral estate except as otherwise expressly
25 identified in this Easement, and hereby promises to defend this Easement against
26 all claims that may be made against it.
27

28 Any and all financial liens or financial encumbrances with priority over this
29 Easement existing as of the date of the recording of this Easement have been
30 subordinated. Exhibit D (Prior Encumbrances) sets forth all prior encumbrances.
31

32 The Landowner represents and warrants that the Property is not subject to any
33 other conservation easement whatsoever.
34

35 *27. Granting Subsequent Easements, Interests in Land, or Use Restrictions.*
36

- 37 (a) With permission of the Grantee pursuant to Section 4, the Landowner may
38 grant subsequent easements, including conservation easements, interests in
39 land, or use restrictions on the Property. Under no circumstances shall the
40 Grantee approve the granting of subsequent easements, interests in land, or
41 use restrictions that might diminish or impair the agricultural productive
42 capacity or open space character of the Property.
43
44 (b) The Grantee’s written approval shall be obtained at least thirty (30) days in
45 advance of the Landowner’s execution of any proposed subsequent easement,
46 interests in land, or use restriction on the Property, and such subsequent

1 easements, interests in land, and use restrictions shall make reference to and
2 be subordinate to this Easement.

3
4 (c) The Grantee shall notify the Department immediately upon receipt of request
5 by the Landowner to grant a subsequent easement, interest in land, or use
6 restriction on the Property, and provide copies of documents associated with
7 such a request to the Department.

8
9 (d) The Grantee shall notify the Department in the event that it approves the grant
10 of any subsequent easement, interest in land, or use restriction on the
11 Property.

12
13 28. *Severability.*

14
15 If any term, provision, covenant, condition, or restriction of this Easement is held
16 by a court of competent jurisdiction to be unlawful, invalid, void, unenforceable,
17 or not effective the remainder of this Easement shall remain in full force and
18 effect and shall in no way be affected, impaired, or invalidated.

19
20 29. *Entire Agreement.*

21
22 This Easement, including the attached exhibits and the Baseline Report, is the
23 final and complete expression of the agreement between the parties with respect
24 to the subject matter contained herein. Any and all prior or contemporaneous
25 agreements with respect to this subject matter, written or oral, are merged into and
26 superseded by this written instrument.

27
28 The exhibits attached to and included in this Easement are:

29 Exhibit A - Legal Description

30 Exhibit B - Vicinity Map

31 Exhibit C - Building Envelope and Existing Improvements

32 Exhibit D - Prior Encumbrances

33
34 30. *Acceptance.*

35
36 As attested by the signature of its [*Position title*] affixed hereto, as authorized by
37 Grantee's Board of Directors/Trustees, in exchange for consideration, the Grantee
38 hereby accepts without reservation the rights and responsibilities conveyed by this
39 Deed of Agricultural Conservation Easement.

40
41 To Have and To Hold, this Deed of Agricultural Conservation Easement unto the
42 Grantee, its successors and assigns, forever.

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

3

4 LANDOWNER

5

6 [*Landowner's Name*].

7

8 By: _____

9

10 Name: _____

11

12 Title: _____

13

1
2 GRANTEE
3
4 [*Grantee's Name*],
5 a California nonprofit public benefit corporation
6
7 By: _____
8
9 Name: _____
10
11 Title: _____
12
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ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

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

1 ACKNOWLEDGEMENT
2
3

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

4
5 State of California
6 County of _____)
7

8
9 On _____ before me, _____, personally appeared
10 _____, who proved to me on the basis of satisfactory evidence to
11 be the person(s) whose name(s) is/are subscribed to the within instrument and
12 acknowledged to me that he/she/they executed the same in his/her/their authorized
13 capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the
14 entity upon behalf of which the person(s) acted, executed the instrument.
15

16 I certify under PENALTY OF PERJURY under the laws of the State of California that
17 the foregoing paragraph is true and correct.
18

19
20 WITNESS my hand and official seal.
21
22

23
24 Signature _____
25
26
27

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Exhibit A
(Legal Description)

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Exhibit B
(Vicinity Map)

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Exhibit C
(Building Envelope and Existing Improvements)

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Exhibit D
(Prior Encumbrances)