

New York State Department of Agriculture and Markets  
Standard Agricultural Easement – June 14, 2004

**Deed of Conservation Easement**

[Blue underlined text is optional language if applicable]

[Language in red required if USDA NRCS FRPP funding included]

[Green Italics Text in brackets is informational, to be deleted for first draft]

THIS CONSERVATION EASEMENT ("Easement") is granted this \_\_\_\_ day of \_\_\_\_\_ 200\_\_, by \_\_\_\_\_ ("Grantor") to \_\_\_\_\_ ("Grantee"), a New York municipal corporation having an office at \_\_\_\_\_ and to \_\_\_\_\_ ("Grantee"), a New York not-for-profit corporation having an office at \_\_\_\_\_. [for remove municipal Grantee and use only not-for-profit Grantee]

W HEREAUS:

A. Grantor is the owner of certain real property (the "Property") consisting of \_\_\_\_ acres, in \_\_\_\_ parcel[s] located on \_\_\_\_\_ and \_\_\_\_\_ Roads in the Town of \_\_\_\_\_, \_\_\_\_\_ County, New York, more fully described in EXHIBIT A and shown on the Easement Map ("EXHIBIT B"), both attached hereto; and

B. Grantee is a New York not-for-profit corporation within the meaning of Article 49, Title 3 of the Environmental Conservation Law of the State of New York (together with any successor statute, the "ECL"), is organized for, among other purposes, conserving real property, is a tax exempt and qualified organization within the meaning of Sections 501(c)(3), 509(a)(1) and 170(b)(1)(A)(iv) of the Internal Revenue Code, and is "qualified organization" to accept, purchase, and hold Conservation Easements under Section 170(h) of the Internal Revenue Code and Treasury Regulation Section 1.170A-14(c). [for a land trust grantee or use C. below if a municipality or use both if applicable]

C. Grantee is a municipal corporation and has the authority pursuant to Section 247 of the General Municipal Law and Article 49, Title 3 of the New York Environmental Conservation Law (the "ECL") to acquire conservation easements. [for a town or county grantee]

D. The Property consists primarily of productive agricultural land. The Property contains \_\_\_\_\_ acres of prime soils, and \_\_\_\_\_ acres of soils of statewide importance as defined by the U.S. Department of Agriculture Natural Resources Conservation Service.

E. The Federal Farm and Ranch Lands Protection Program's purpose is to purchase conservation easements on land with prime, unique, or other productive soil for the purpose of protecting topsoil from conversion to nonagricultural uses (16 U.S.C. 3838h and 3838i). Under the authority of the Farm and Ranch Lands Protection Program, the United States Department of Natural Resources Conservation

Service (hereinafter the “United States” has committed \$ \_\_\_\_ to the Grantee and for the acquisition of this Easement, entitling the United States to the rights identified herein.

F. Article 14, Section 4 of the New York State Constitution states that “the policy of this state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products;”

G. In Section 49-0301 of the ECL, the Legislature of the State of New York found and declared that “in order to implement the state policy of conserving, preserving and protecting its environmental assets and natural and man-made resources, the preservation of open spaces, and the preservation, development and improvement of agricultural and forest lands..., is fundamental to the maintenance, enhancement and improvement of...balanced economic growth and the quality of life in all areas of the state;”

H. The Property is located within \_\_\_\_\_ County’s Agricultural District #\_\_\_\_, created pursuant to Article 25AA of the New York State Agriculture and Markets Law. In Section 300, it states: “It is hereby found and declared that many of the agricultural lands in New York State are in jeopardy of being lost for any agricultural purposes. When nonagricultural development extends into farm areas, competition for limited resources results...It is therefore the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products...It is the purpose of this article to provide a locally-initiated mechanism for the protection and enhancement of New York State’s agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance;”

I. Article 25-AAA, Section 321 of the Agriculture and Markets Law states that “It is hereby found and declared that agricultural lands are irreplaceable state assets. In an effort to maintain the economic viability, and the environmental and landscape preservation values associated with agriculture...” the Commissioner is authorized to administer programs to assist counties in developing agricultural and farmland protection plans and to assist both county and municipal governments in the implementation of such plans. The Commissioner gives priority to projects that will preserve viable agricultural land, are located in areas facing significant development pressure and serve as a buffer for a significant natural public resource containing important ecosystem or habitat characteristics;

J. The Property is located within \_\_\_\_\_ County *[or]* [the Town of \_\_\_\_\_], which has adopted an Agricultural and Farmland Protection Plan *[or other plan name if a town]*. The Plan recommends...*[add appropriate text]*;

K. Grantor has received independent legal and financial advice regarding this Easement to the extent that Grantor has deemed necessary. Grantor freely signs this Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing, [actual price paid if federal \$ used] Dollars (\$\_\_\_\_\_) and the mutual covenants, terms, conditions and restrictions contained herein, the parties agree as follows:

## 1. Grant of Conservation Easement

Grantor hereby grants and conveys to Grantee, a Conservation Easement (the "Easement"), an immediately vested interest in real property defined by Article 49, Title 3 of the ECL of the nature and character described herein, for the benefit of the general public, which Easement shall run with and bind the Property in perpetuity. Grantor will neither perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

## 2. Purpose.

It is the primary purpose of this Easement to: a) enable the Property to remain in agricultural or forestry use for current and future production of food and fiber, and livestock and livestock products, by protecting in perpetuity its agricultural and forestry values, use and utility, **including its prime, statewide important and unique agricultural soils**; and b) prevent any use of the Property that would significantly impair or interfere with its long-term agricultural and forestry viability. It is the secondary purpose of this Easement to conserve and protect the Property's open space resources, and their associated unique and special natural features to the extent that such protection does not conflict with the primary purpose of this Easement.

## 3. Implementation

This Easement shall be implemented by limiting and restricting the development and use of the Property in accordance with its provisions. No use of the property shall occur and no permanent or temporary structures or other buildings or improvements shall hereafter be constructed, placed or maintained on the Property, except as specifically provided herein. The Property remains subject to all applicable local, state and federal laws and regulations.

## 4. Definitions

As used in this Easement, the terms "Grantor" or "owner" include the original Grantor, its heirs, successors and assigns, all future owners of any legal or equitable interest in all or any portion of the Property, and any party entitled to the possession or use of all or any part thereof; and the term "Grantee" includes the original Grantee(s) and its[their] successors and assigns.

The term "Lead Grantee" is the Grantee designated by mutual agreement between the Grantees

to give and receive all notices and other communications to and from the Grantor as specifically indicated in this Easement and to pursue any legal action to enforce this Easement. The \_\_\_\_\_ shall be Lead Grantee unless the Grantors receive written notice of a change in such designation executed by both Grantees. *[use this paragraph if there are two or more Grantees and want to designate a lead grantee in the easement]*

The term “Sound Agricultural Practices” is defined as those practices necessary for on-farm production, preparation and marketing of agricultural commodities, provided such practices are legal, necessary, do not cause bodily harm or property damage off the farm, and achieve the intended results in a reasonable and supportable way. If necessary, to determine if a practice is “sound,” Grantee or Grantor may request the New York State Department of Agriculture and Markets to initiate a sound agricultural practice review pursuant to Section 308 of the New York State Agriculture and Markets Law, or any successor statute.

The term “Farm Labor Housing” means structures used to house seasonal and/or full-time employees where such residences are provided by the farm landowner and/or operator, the worker is an essential employee of the farm landowner and/or operator employed in the operation of the farm and the farm worker is not a partner or owner of the farm operation. For instance, a mobile or manufactured home used as the primary residence of a farm owner is not farm labor housing.

## **5. Conservation Plan.**

All agricultural operations on the Property shall be conducted in a manner consistent with a resource management system (RMS) Conservation Plan (the “Conservation Plan”) prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service utilizing the standards and specifications of the NRCS Field Office Technical Guide and approved by the \_\_\_\_\_ County Soil and Water Conservation District. All lands enrolled in the Farm and Ranch Lands Protection Program will be subject to the Conservation Plan.

Grantor shall give Grantee copies of the Conservation Plan upon request and advise Grantee of amendments thereto so as to enable Grantee to keep its records current.

## **6. Conservation Compliance Provisions of the Conservation Plan**

As required by Section 1238I of the Food Security Act of 1985, as amended, the Grantor, his / her heirs, successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a conservation plan prepared in consultation with NRCS and approved by the \_\_\_\_\_ County Soil and Water Conservation District. This Conservation Plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide (FOTG) and 7 CFR Part 12 that are in effect on \_\_\_\_\_ \_\_, 200\_\_ [insert easement signature date]. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Property, with advance notice to the Grantor, in order to monitor compliance with the Conservation Plan.

In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the Conservation Plan, NRCS will inform Grantee of the Grantor's noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the Conservation Plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the Conservation Plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

## **7. Reserved Rights Retained by Grantor.**

Notwithstanding any provisions of this Easement to the contrary, Grantor reserves all customary rights and privileges of ownership, including the right of exclusive use, possession and enjoyment of the Property, the rights to sell, lease, and devise the Property, as well as any other rights consistent with the Purpose set forth in Section 2 and not specifically prohibited or limited by this Easement. Unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any Act of God. Nothing in this Easement relieves Grantor of any obligation with respect to the Property or restriction on the use of the Property imposed by law.

## **8. Access**

Nothing contained in this Easement shall give or grant to the public a right to enter upon or to use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Easement.

## **9. Right to Use Property for Rural and Agricultural Uses**

Grantor has the right to produce crops, livestock and livestock products and conduct farm operations as defined under Section 301 of the New York State Agriculture and Markets Law ("Agriculture and Markets Law"), or such successor law as is later promulgated, which includes but is not limited to the right to establish, reestablish, maintain, and use cultivated fields, orchards, pastures and woodlands. Said farming practices shall be carried out in accordance with **the Conservation Plan and Sound Agricultural Practices** as defined herein. In addition, Grantor has the right to process, package and distribute farm products and to operate otherwise lawful and customary rural and agriculturally-

related enterprises, such as, but not limited to farm machinery repair and cottage industries, subject to the limitations set forth in this Easement, including Section \_\_\_\_\_ (“Construction of Buildings and Other Improvements”).

## **10. Right to Use the Property for Recreational Purposes**

Grantor retains the right to use the Property for otherwise lawful recreational uses, including, but not limited to, hunting, fishing, cross-country skiing and snowmobiling, subject to the limitations set forth in this Easement, including Section \_\_\_\_\_ (“Construction of Buildings and Other Improvements”).

## **11. Maintenance.**

Should the property cease to be used for agricultural purposes for more than three (3) years, the agricultural fields containing prime, statewide important and unique soils will be mowed in accordance with the Conservation Plan at least triennially or otherwise maintained in a condition which will prevent growth of woody vegetation that would interfere with future agricultural use or which might result in interference with drainage systems, or in reversion of significant portions of the Property to regulated wetland status. Similarly, during prolonged periods of disuse for agricultural purposes, artificial and natural drainage systems must be maintained in a functional state by the Grantor. If Grantor does not comply with this provision, Grantee shall have the right, but not the obligation, to mow such fields, at Grantee’s sole expense, if it so chooses.

## **12. Construction of Buildings and Other Improvements**

Permitted uses of the Property vary depending on where on the Property the use occurs. The Property is divided into two principal areas, which are depicted on the Easement Map attached hereto as Exhibit B: 1) the Farmstead Complex[es], described in Exhibit A attached hereto, which is centered around the now-existing farm structures; and 2) the Farm Area, described in Exhibit A attached hereto, which comprises the majority of the Property. Grantor may undertake construction, erection, installation, removal or placement of buildings, structures, or other improvement to the Property within these areas only as provided in this Easement and set forth below.

12(a) *Fences* -- Existing fences may be repaired, removed and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife and to prevent trespassing on the Property.

12(b) *Existing Agricultural Structures and Improvements* -- Existing agricultural structures and improvements may be repaired, removed, enlarged and replaced at their current locations, which are shown on Exhibit \_\_\_\_\_, pursuant to the coverage limitations set forth in Section \_\_\_\_ (c) below.

12(c) *New Agricultural Structures and Improvements* – Without permission of Grantee, Grantor may construct new buildings, structures and impervious improvements including asphalt and

concrete roads and parking areas within the Farmstead Complex to be used primarily for purposes related to a “Farm Operation,” as defined in New York State Agriculture and Markets Law § 301 or any successor statute and for such other agricultural purposes as (i) the production, storage or sale of farm products or by-products, or processing of farm products or by-products produced on-site, (ii) the storage of equipment used for agricultural production, (iii) the keeping of livestock or other animals and (iv) farm labor housing.

Without permission from Grantee, Grantor may construct new buildings, structures and impervious improvements for such purposes, except for those used for the processing and packaging of farm products, on up to 5% *[except the Department may require a larger percentage for extraordinary circumstances]* of the remaining farm area located outside the Farmstead Complex[es]. Such coverage limitations do not apply to permeable surfaces such as gravel roads and parking areas, structures that protect soil and water resources, such as manure storage areas, and structures and improvements lacking permanent foundations where the land underneath is not covered by impervious surfaces. Permission is required by Grantee for the construction of such buildings, structures and improvements that would cover more than 5% of such area.

12(d) *Existing Labor Housing* -- All existing dwellings or structures used for Farm Labor Housing may be repaired, enlarged and replaced at their current locations as shown on Exhibit \_\_\_\_.

12(e) *New Farm Labor Housing* – Without permission of Grantee, Grantor has the right to construct new dwellings or structures, together with new agricultural structures and improvements permitted in Section \_\_ (c) above, on up to 5% *[per % inserted in (c) above]* of the remaining farm area, for Farm Labor Housing as defined herein. With advance written permission of the Grantee, pursuant to Section \_\_\_\_ (Permission), Grantor has the right to construct such Farm Labor Housing within the remaining Farm Area. The land on which these structures stand shall not be subdivided, except as permitted in Section \_\_\_\_ (Subdivision).

12(f) *Existing Single-Family Residential Dwellings* -- All existing single-family residential dwellings, if any, may be repaired, enlarged and replaced at their current locations, which are shown on Exhibit B. Grantor has the right to establish and carry out home occupations or cottage industries within said permitted residential dwellings provided said activities are compatible with the agricultural character of the Property and subordinate to the agricultural and residential use.

12(g) *Customary Home Occupations or Cottage Industries* -- Grantor has the right to establish and carry out home occupations or cottage industries within the Farmstead Complex[es], provided said activities are compatible with the Purpose of this Easement and agriculture and forestry uses of the Property, and are subordinate to the agricultural and residential use of the Farmstead Complex[es]. Examples of customary home occupations or cottage industries are without limitation, professional offices within the home, bed and breakfasts, crafts production, and firewood distribution. Enterprises which market petroleum or chemical products are prohibited. The land on which these structures stand shall not be subdivided from the Farmstead Complex[es].

12(h) *Existing Recreational Improvements* -- All existing recreational improvements, if any, may be repaired, enlarged to a total footprint of 400 square feet or replaced at their current locations, [which are shown on Exhibit](#) .

12(i) *New Recreational Improvements* -- New non-habitable recreational improvements may be located within the area[s] identified as Farmstead Complex[es] on Exhibit B. Any one or more new recreational improvements proposed for locations outside the Farmstead Complex[es] that exceed an aggregate footprint of 400 square feet may be located only with the advance written permission of Grantee. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips, commercial helicopter pads or any other similar recreational improvements that interfere with the Purpose of this Easement, significantly disturb the farm soils, or otherwise adversely affect agricultural and forestry uses on a continuing basis be allowed on the Property.

12(j) *Utility Services and Septic Systems* -- Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted in this Easement may be installed, maintained, repaired, removed, relocated and replaced, and Grantor may grant easements over and under the Property for such purposes. Septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired or improved. Services are limited to structures permitted on the Property pursuant to Section \_\_\_\_ (“Permission”).

12(k) *Ancillary Improvements* – Without permission from Grantee, other improvements, including, but not limited to facilities for the generation and transmission of electrical power or telecommunications, such as cell towers, windmills, detached solar arrays may be built within the Farmstead Complex[es]. Such improvements may be built outside the Farmstead Complex[es] only with the permission of Grantee, pursuant to Section \_\_\_\_\_ (“Permission”).

### **13. Maintenance and Improvement of Water Sources**

Grantor maintains the right to use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. Grantor may alter the natural flow of water over the Property in order to improve drainage of agricultural soils, reduce soil erosion, provide irrigation for the Property or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with **the Conservation Plan**, Sound Agricultural Practices, the Purpose of this Easement and is carried out in accordance with applicable State and federal laws and regulations.

## 14. Water Rights

Grantor retains and reserves the right to use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property. Grantor shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

## 15. Subdivision

The Property is currently comprised of \_\_\_\_\_ separately deeded parcels owned by Grantor. Unless otherwise permitted by Grantee, Grantor shall maintain such parcels comprising the Property, and all interests therein, under common ownership, as though a single parcel. *[use this sentence if Property is made up of 2 or more tax parcels and do not want autonomy of parcels] [or use this next sentence rather than second of two optional sentences if want the 2 or more parcels to remain divided for conveyance]* Said deeded parcels may remain as separate parcels and may be conveyed individually.

Unless otherwise indicated above in this Section, the Property may be partitioned or subdivided only with the prior written permission of the Grantee, which permission shall be granted only if all parcels of land thereby created will remain viable for agricultural production either individually, or as part of an established farming operation. Any such subdivision shall not include the right to construct any new habitable or commercial structures, or relocate any existing habitable or commercial structures, except as otherwise permitted by this Easement. Any partition or subdivision also must comply with all applicable land use and subdivision regulations, and any subdivided parcels would be subject to the terms of this Easement. Any other subdivision, recording of a subdivision plan, partition, or any other attempt to internally or externally divide the Property into two or more parcels is prohibited.

Mortgages, or other non-possessory interests in land do not constitute subdivisions for the purpose herein, provided such interests encompass the whole parcel.

## 16. Forest Management

Without prior written permission from Grantee, Grantor may clear forested areas for conversion to farmland, may harvest wood for on-farm use including heating or construction of buildings and improvements, and may remove trees that are fallen, dead, diseased or dangerous, so long as it is consistent with Sound Agricultural Practices **and the Conservation Plan.**

Without prior written permission from Grantee, Grantor may commercially harvest timber and other wood products and construct, maintain, remove, and repair unpaved access roads and “staging areas” (those areas where logs are temporarily stored for transport) necessary for such activities, in accordance with generally-accepted forest best management practices (as outlined in a forest management and harvest plan) that shall not result in significant degradation of soil and water resources. Such commercial timber cutting shall be carried out only in accordance with a forest management plan and harvest plan prepared by a forester who is certified by the Society of American Foresters or such successor organization as is later

created, or a Cooperating Consulting Forester with the New York State Department of Environmental Conservation.

In order to facilitate the monitoring and stewardship of this Conservation Easement, to ensure continuing communication between parties, Grantor shall give Grantee, its successors or assigns, written notice thereof not less than forty-five (45) days prior to the anticipated commencement of any commercial timber harvest. Such written notice shall include submission of the current forest management plan and harvest plan.

## **17. Mining and On-Site Extractive Activity**

Exploration for, or development, storage and extraction of, minerals and hydrocarbons on or from the Property by any method is prohibited, except as otherwise provided herein. Grantor may remove sand and gravel on the Property, provided said removal: (a) is limited and localized in impact, affecting no more than two acres of the Property at one time; (b) does not conflict with the Purpose of this Easement; (c) does not breach the water table; and (d) is reasonably necessary for, and incidental to, carrying out the improvements and agricultural production uses permitted on the Property by this Easement; **and (e) impact to the prime, statewide important and unique soils is minimized.**

Grantor may undertake subsurface mineral and hydrocarbon exploration, development and extraction activities only with the permission of Grantee, which may be conditioned upon the posting of a bond. Grantor shall use all practical means to mitigate any adverse effect on the agricultural viability of the Property in carrying out any permitted extractive activities.

## **18. Road Construction**

Grantor may construct roads for residential driveways, barnyards, farm markets, farm roads, or other improvements necessary to provide access to, and parking for, permitted buildings or improvements, or to conduct other activities permitted by this Easement, **provided to the greatest extent practicable, impact to the prime, statewide important and unique soils is minimized.** No other portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material.

## **19. Dumping and Trash**

The dumping, land filling, burial, application, injection, or accumulation of any kind of garbage, trash or debris on the Property is prohibited, other than agriculturally-related waste or biodegradable material in accordance with Sound Agricultural Practices, **the Conservation Plan and** any applicable State or federal law or regulation. However, this shall not prevent the storage of agricultural products and byproducts, the storage of old farm equipment used for parts, temporary storage of trash or household waste in receptacles for periodic off-site disposal, and composting or re-use of biodegradable materials as permitted in Section \_\_\_\_ (“Right to Use Property for Agricultural Uses”), generated off the Property for use on the Property or commercial use so long as they are used and stored in accordance with Sound Agricultural Practices **and the Conservation Plan.** Notwithstanding

the foregoing, the storage and treatment of sewage associated with buildings permitted on the Property, is permitted by this Easement.

## **20. Permission of Grantee**

Where Grantor is required to obtain Grantee's permission for a proposed action hereunder, said permission shall be requested in writing. Grantee shall grant permission unless it determines that such action would 1) violate the Purpose of this Easement, 2) impair the potential for long-term agricultural viability associated with the Property, or 3) unnecessarily impede the use of Property's prime, statewide important or unique soils. Grantee shall respond in writing within forty-five (45) days of receipt of the Grantor's written request which shall include building plans identifying the use, footprint and total square footage of any proposed structures, and related survey information, if available. Grantee shall not be liable for damages for any failure to grant permission to Grantor.

## **21. Ongoing Responsibilities of Grantor and Grantee**

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any obligations of Grantor as owner of the Property, including, but not limited to, the following:

21(a) *Taxes* -- Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantor becomes delinquent in payment of taxes the Grantee, at its option, shall have the right to take such actions as may be necessary to protect the Grantee's interest in the Property and to assure the continued enforceability of this instrument and to recover all of its costs including reasonable attorney's fees. If, as a result of such actions, Grantee ever pays any taxes or assessments on Grantors interest in the Property, Grantor will promptly reimburse Grantee for the same.

21(b) *Upkeep and Maintenance* -- Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law and this Easement. Grantee shall have no obligation for the upkeep or maintenance of the Property.

21(c) *Liability and Idemnification* - Grantor agrees to indemnify and hold Grantee and the State of New York, Department of Agriculture and Markets harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due to the negligence of Grantee or its agents, in which case liability shall be apportioned accordingly. *[only use this clause if no federal funding, otherwise only use one below]*

21(c) *Liability and Indemnification* – Grantee has no obligations whatsoever, express or implied, relating to the use, maintenance or operation of the Property. Grantee's exercise of, or failure to exercise, any right conferred by this Easement shall not be deemed to be management or control of the activities on the Property. Grantee shall not be liable to Grantor for injuries or death to persons or damage to property or any other harm in connection with Grantee's administration and/or enforcement of this Easement, unless such harm is due to the negligence of Grantee or its agents, in which case liability shall be apportioned accordingly. Grantor agrees to indemnify and hold harmless Grantee, New York State Department of Agriculture and Markets, and the United States of America from any and all costs, claims or liability, including but not limited to reasonable attorneys fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due to the negligence of Grantee or its agents, in which case liability shall be apportioned accordingly. Grantor further agrees to indemnify and hold harmless Grantee, New York State Department of Agriculture and Markets, and the United States of America from and against any and all claims, costs, expenses, fines, penalties, assessments, citations, personal injury or death, and the like arising from or out of the existence (actual or alleged) of any and all environmentally hazardous or toxic substances or materials whatsoever on or under the Property.

## **22. Extinguishment of Development Rights**

Except as otherwise reserved to the Grantor in this Easement, all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter 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.

## **23. Baseline Documentation**

By its execution of this Easement, Grantee acknowledges that the present uses of the Property are permitted by this Easement. In order to evidence the present condition of the Property (including both natural and man-made features) so as to facilitate future monitoring and enforcement of this Easement, a Baseline Documentation Report, including maps [and photographs], describing such condition at the date hereof, has been prepared and subscribed by both parties, and a copy thereof has been delivered to Grantor and a copy will be kept on file with Grantee. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

## **24. Right of Inspection**

Grantee shall have the right to enter upon the Property upon forty-eight (48) hours advance

notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. Such inspection shall be conducted between the hours of 9 a.m. and 7 p.m. on a weekday that is not a legal holiday recognized by the State of New York or at a date and time agreeable to the Grantee and Grantor. In the instance of a violation or suspected violation of the terms of this Easement which has caused or threatens to cause irreparable harm to any of the agricultural or other resources this Easement is designed to protect, no such advance notice is required. Representatives of the New York State Department of Agriculture and Markets and the United States Department of Agriculture shall have the same right of inspection.

## **25. Enforcement**

If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation. Notwithstanding the foregoing, where Grantee in Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the Purpose of this Easement, Grantee may bring an action to enjoin the violation, *ex parte* if necessary, through temporary or permanent injunction.

In addition to injunctive relief, Grantee shall be entitled to seek the following remedies in the event of a violation:

(a) money damages, including damages for the loss of the resources protected under the Purpose of this Easement; and

(b) restoration of the Property to its condition existing prior to such violation.

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limited to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

## **26. Contingent Rights of the United States of America.**

In the event that Grantee fails to enforce any of the terms of this Easement, as determined in the sole discretion of the Secretary of the U.S. Department of Agriculture, the said Secretary and his or her successor and assigns shall have the right to enforce the terms of this Easement through any and all authorities available under Federal or State law.

Further, in the event that Grantee attempts to terminate, transfer or otherwise divest itself of any rights, title or interest of this Easement without the prior consent of said Secretary and without payment of consideration to the United States as provided herein, then, at the option of such Secretary, all right, title and interest in this Easement shall become vested in the United States of America.

## **27. Dispute Resolution [optional clause]**

If a dispute arises between the Grantor and the Grantee concerning the consistency of any proposed use or activity with the purposes of this Easement or any of the specific provisions contained herein, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may request a meeting between the parties, or refer the dispute to mediation by written request. Within ten (10) days of such request, Grantee shall schedule a meeting or the parties shall select a single trained and impartial mediator knowledgeable about production agriculture to recommend potential resolutions of the dispute. Reasonable costs associated with the mediation process shall be determined by the impartial mediator. Nothing in this clause shall diminish Grantee's rights under Section \_\_\_\_\_ ("Enforcement").

## **28. Transfer of Easement**

Both Grantees, acting together, or any sole remaining [blue underlined part in this sentence for easements with co-grantees] Grantee which has acquired the rights of another Grantee, shall have the right, subject to the provisions of Section \_\_\_\_\_ ("Contingent Rights of the United States of America"), to transfer this Easement to any remaining co-grantee or any private non-governmental organization or public agency that, at the time of transfer is a "qualified organization" under Section 170(h) of the Code, provided the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. If Grantee ever ceases to exist or qualify under Section 170(h) of the Code, or applicable state law, a court of competent jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibilities imposed by this Easement. Grantor and the New York State Department of Agriculture and Markets **and the NRCS State Office** will be notified in writing in advance of such transfer. **The NRCS State Office** must approve the choice of any new non-governmental organization.

## **29. Transfer of Property**

Any subsequent conveyance, including, without limitation, transfer, lease or mortgage of the Property, shall be subject to this Easement, and any deed or other instrument evidencing or effecting such conveyance shall contain language substantially as follows: "This {conveyance, lease, mortgage, easement, etc.} is subject to a Conservation Easement which runs with the land and which was granted to \_\_\_\_\_ by instrument dated \_\_\_\_\_, and recorded in the office of the Clerk of \_\_\_\_\_ County at Liber [or] Cartridge \_\_\_\_\_ of Deeds at Page [or] Frame \_\_\_\_\_." Grantor shall notify Grantee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. The failure to notify Grantee or to include said language in any deed or instrument shall not, however, affect the validity or applicability of this Easement to the Property or limit its enforceability in any way.

## **30. Amendment of Easement**

This Easement may be amended only with the written consent of Grantee and current Grantor

and with the approval of the New York State Department of Agriculture and Markets **and the Secretary of the U.S. Department of Agriculture**. Any such amendment shall be consistent with the Purpose of this Easement and shall comply with the Conservation Law or any regulations promulgated thereunder. Any such amendment shall be duly recorded.

### **31. Extinguishment of Easement**

At the mutual request of Grantor, Grantee, New York State Department of Agriculture and Markets **and United States of America**, a court with jurisdiction may, if it determines that conditions surrounding the Property have changed so much that it becomes impossible to fulfill the Purpose of this Easement described in Section \_\_\_\_, extinguish or modify this Easement in accordance with applicable law. In that case, the mere cessation of farming on the Property shall not be construed to be grounds for extinguishment of this Easement.

Notwithstanding the foregoing, if condemnation by exercise of the power of eminent domain **approved in advance by the United States Department of Agriculture NRCS**, make impossible the continued use of the Property for Purpose of this Easement as described in Section 2 ("Purpose") herein, the restrictions may be extinguished by judicial proceeding. In either case, upon any subsequent sale, exchange or involuntary conversion by the Grantor, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, or title insurance proceeds, in accordance with Section \_\_\_\_ ("Proceeds") herein.

### **32. Proceeds**

The grant of this Easement gives rise to a property right, immediately vested in Grantee, which, for purposes of calculating proceeds from a sale or other disposition of the Property as contemplated under Section \_\_\_\_ ("Extinguishment of Easement"), shall have a value equal to a percentage of the value of the Property unencumbered by this Easement (the "Proportionate Share"). The Proportionate Share is determined by dividing the value of this Easement, calculated as of the date hereof, by the unencumbered value of the Property, also calculated as of the date hereof. The Proportionate Share is \_\_\_\_%. The Proportionate Share shall remain constant (subject to reasonable adjustment to the extent permissible under Section 170(h) of the Internal Revenue Code for any improvements which may hereafter be made on the Property).

With regard to the portion of such Proportionate Share equal to the percentage of the purchase price of this Easement that was paid using State Farmland Protection Program Grant funds, Grantees agree to use such portion in a manner consistent with the Purpose of this Easement. Prior to such re-use, Grantee must notify the New York State Department of Agriculture and Markets and may proceed only with the written consent of [name of municipality]\_\_\_. *[if Grantee is not the municipality then name of municipal awardee of State grant goes in blank space] [this last full paragraph must be deleted and the next paragraph used in place if there are federal FRPP funds used on this project]*

**If any part or all of this Easement is terminated pursuant to Section \_\_\_\_ ("Extinguishment of**

Easement”), Grantee shall pay over to the State of New York Department of Agriculture and Markets \_\_\_\_\_ %, and over to the United States of America \_\_\_\_\_ %, of the Proportionate Share of such proceeds received by Grantee.

### **33. Interpretation**

This Easement shall be interpreted under the laws of the State of New York, or federal law, as appropriate. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to effect the Purpose of this Easement. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

### **34. Successors**

Every provision of this Easement that applies to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and other successors in interest, and shall continue as a servitude running in perpetuity with the Property.

### **35. Severability**

Invalidity of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

### **36. Notices**

Any notice required or desired to be given under this Easement shall be in writing and shall be sent by (i) personal delivery, (ii) via registered or certified mail, return receipt requested, or (iii) via Federal Express or other private courier of national reputation providing written evidence of delivery. Notice shall be deemed given upon receipt in the case of personal delivery, and upon delivery by the U.S. Postal Service or private courier. All notices shall be properly addressed as follows: (a) if to Grantee, at the address set forth above; (b) if to Grantor, at the address set forth above; (c) if to any subsequent owner, at the address of the Property; (d) if to New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235; or (e) if to the United States Department of Agriculture, Natural Resources Conservation Services on behalf of the Commodity Credit Corporation, \_\_\_\_\_, State Conservationist, The Galleries of Syracuse, 441 South Salina Street, Suite 354, Syracuse, New York 13202-2450. Any party can change the address to which notices are to be sent to him, her or it by duly giving notice pursuant to this Section.

### **37. Title.**

The Grantor covenants and represents that the Grantor is the sole owner and is seized of the

Property in fee simple and has good right to grant and convey the aforesaid Easement; that the Property is free and clear of any and all mortgages not subordinated to this Easement, and that the Grantee shall have the use of and enjoyment of the benefits derived from and existing out of the aforesaid Easement.

### **38. Subsequent Liens on Property**

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property, or a portion thereof encompassing entire separately deeded parcels, as collateral for a subsequent borrowing.

### **39. Subsequent Encumbrances**

The grant of any easements or use restrictions is prohibited, except with the permission of Grantee.

### **40. Grantor's Environmental Warranty**

Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee, or the New York State Department of Agriculture and Markets or the United States Department of Agriculture to exercise physical or management control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") or any corresponding state and local statute or ordinance.

Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee, and New York States Department of Agriculture and Markets, and United States Department of Agriculture against, and hold Grantee, New York State Department of Agriculture and Markets and United States Department of Agriculture harmless from, any and all loss, cost, claim (without regard to its merit), liability or expense (including reasonable attorneys' fees) arising from or with respect to any release of hazardous waste or violation of environmental laws.

If at any time after the effective date of this Easement there occurs a release in, on, or about the property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps that may be required under federal, state, or local law necessary to assure its containment and remediation, including any cleanup.

### **41. Duration of Easement**

Except as expressly otherwise provided herein, this Easement shall be of perpetual duration, and 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 Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

#### **42. Entire Agreement**

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

#### **43. Waiver**

No waiver by Grantee of any default, or breach hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default or breach hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No waiver shall be binding unless executed in writing by Grantee.

#### **44. Binding Effect.**

The provisions of this Easement shall run with the Property in perpetuity and shall bind and be enforceable against the Grantor and all future owners and any party entitled to possess or use the Property or any portion thereof while such party is the owner or entitled to possession or use thereof. Notwithstanding the foregoing, upon any transfer of title, the transferor shall, with respect to the Property transferred cease being a Grantor or owner with respect to such Property for purposes of this Easement and shall, with respect to the Property transferred, have no further responsibility, rights or liability hereunder for acts done or conditions arising thereafter on or with respect to such Property, but the transferor shall remain liable for earlier acts and conditions done or occurring during the period of his or her ownership or conduct.

#### **45. Captions**

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

IN WITNESS WHEREOF, Grantor and Grantee, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

Grantor: \_\_\_\_\_  
(Grantor's name)

Grantee:

By: \_\_\_\_\_

**Acceptance of Property Interest by the Natural Resources Conservation Service**

**The Natural Resources Conservation Service, an agency of the United States Government, hereby accepts and approves the foregoing conservation easement deed, and the rights conveyed therein, on behalf of the United States of America.**

\_\_\_\_\_

Authorized Signatory for the NRCS

*State of New York* )

*County of* ), ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (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 capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature/office of individual taking acknowledgement

*State of New York* )

*County of* ), ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of

satisfactory evidence to be the individual (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 capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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Signature/office of individual taking acknowledgement

*State of New York*     )

*County of*                   ), ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (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 capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature/office of individual taking acknowledgement