

New York State Department of Agriculture and Markets
Standard Agricultural Easement – August 22, 2008

Deed of Conservation Easement

[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 _____. *[Depending on the project, Grantee will be either the municipality or the not-for-profit or both]*

WHEREAS:

- 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 the legal survey description of the property ("EXHIBIT A") and shown on the Easement Map ("EXHIBIT B"), both attached hereto. *(and as depicted on a survey of the Property to be filed simultaneously with the County Clerk)*
- 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. The Property also contains *[describe features and importance of any designated Resource Protection Areas]*
- E. 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;”

- F. 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;”
- G. 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;”
- H. 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;
- I. The Property is located within _____ County which has adopted an Agricultural and Farmland Protection Plan. The Plan recommends...*[add appropriate text]*;
- J. The Property is located within the Town of _____, which has adopted an Agricultural and Farmland Protection Plan *[or other plan name]*. 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, 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.

The Primary Purpose of this easement is to conserve viable agricultural land and soil resources by preventing uses of the Property that will significantly impair or interfere with the Property’s agricultural and forestry viability and productive capacity.

All other purposes listed below shall be secondary and none shall conflict with or significantly diminish the Primary Purpose of this Easement. The Secondary Purposes of this Easement include: *[optional if secondary purposes exist]*

3. Implementation.

This Easement shall be implemented by limiting and restricting the development and use of the Property in accordance with its provisions. The Property remains subject to all applicable local, state and federal laws and regulations. This Easement shall not unreasonably restrict or regulate farm operations in contravention of the purposes of Article 25-AA of the Agriculture and Markets Law.

4. Definitions.

4.(a). “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.

4.(b). “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 these two sentences if there are two or more Grantees who want to designate a lead grantee in the easement]*

- 4.(c). **“Residential Dwelling”** means dwellings or structures, together with accessory improvements that comprise single-family, multi-family, apartments, “in-law” apartments, guest houses and farm labor housing, whether or not the structure(s) are used as the primary residence of a farm owner.
- 4.(d). **“Farm Labor Housing”** means dwellings or structures, together with accessory improvements 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 structure used as the primary residence of a farm owner is not “farm labor housing”.
- 4.(e). **“Farm Operation”** shall be defined as “the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise” in accordance with Section 301 of the New York State Agriculture and Markets Law (“Agriculture and Markets Law”), or such successor law as enacted or amended.
- 4.(f). **“Impervious Surfaces”** are defined as structures or improvements that permanently cover soil resources. Impervious Surfaces do not include permeable surfaces such as gravel roads and parking areas, structures whose principal purpose is to protect soil and water resources, such as manure storage areas, and structures and improvements lacking permanent foundations.
- 4.(g). **“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 that the New York State Department of Agriculture and Markets initiate a sound agricultural practice review pursuant to Section 308 of the New York State Agriculture and Markets Law, or any successor law as enacted or amended.
- 4.(h). **“Viable Agricultural Land”** is defined as land highly suited for agricultural production.
- 4.(i). The following use areas are defined for the Easement:
“Farmstead Area” is defined as area(s) depicted in Exhibit B, that centers on existing farm structures or future planned structures.
“Resource Protection Area” is defined as the area depicted in Exhibit B, which contains unique or important natural resources. *[optional if an RPA is designated]*
“Farm Area” is defined as the remaining area of the farm, depicted in Exhibit B.

5. Reserved Rights Retained by Grantor.

As the owner of the Property, 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 (“Purpose”) and not specifically prohibited or limited by this Easement.

However, 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 and nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any Act of God or Force Majeure.

5.(a). Right to Use Property for Agricultural Uses.

Grantor has the right to produce crops, livestock and livestock products and use the Property as a Farm Operation, 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 Sound Agricultural Practices as defined herein and in a manner consistent with the Conservation Plan.

5.(b). Right to Use Property for Rural Enterprises.

Grantor has the right to operate otherwise lawful rural enterprises, such as, but not limited to, farm machinery repair, professional offices within the home, bed and breakfasts, crafts production and firewood distribution, subject to the limitations set forth in this Easement, including Section 8 (“Construction of Buildings and Other Improvements”). In all cases, such rural enterprises must be compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property.

5.(c). Right to Use Property for Recreational Purposes.

Grantor retains the right to use the Property for otherwise lawful personal or commercial recreational uses, including, but not limited to, hunting, fishing, cross-country skiing, camping, horseback riding and snowmobiling, subject to the limitations set forth in this Easement, including Section 8 (“Construction of Buildings and Other Improvements”). In all cases, such recreational uses must be compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property.

6. Conservation Plan.

Grantor and Grantee recognize that changes in economic and environmental conditions, in agricultural technologies, in accepted farm management practices and in the Farm Operations of Grantor may result in changes in the agricultural uses of the Property. It is the intention of this Easement to maintain Grantor’s discretion to employ their choices of farm uses and management practices so long as those uses and all farming operations are conducted in accordance with Sound Agricultural Practices as defined herein and in a manner consistent with a Conservation Plan

prepared by a qualified conservation professional or by the local Soil and Water Conservation District in cooperation with the Grantor. The Conservation Plan shall identify potential adverse environmental impacts of agricultural activities, as well as enhance the agricultural productivity and economic viability of the Property. This plan shall be updated periodically and whenever the Farming Operation changes substantially. Upon request, Grantor shall provide a copy of the most current plan to Grantee.

7. 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.

8. Construction of Buildings and Other Improvements.

The Property is divided into two [*three*] principal areas as further described in the Baseline Documentation Report, Section 18 (“Baseline Documentation”) and identified in the Easement Map attached hereto as Exhibit B: 1) the Farmstead Area[s]; and 2) the Farm Area [*; 3) the Resource Protection Area*]. 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.

8.(a). Impervious Surfaces

Subject to the limitations set forth below, Impervious Surfaces may be constructed or placed on up to a maximum of 10% of the Farm Area and without limitation in the Farmstead Area.

8.(b). Fences

Existing fences may be repaired, removed and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock and wildlife, safety and general management and to prevent trespassing on the Property.

8.(c). Agricultural Structures and Improvements

Any existing or subsequent agricultural structures and improvements may be repaired, removed, enlarged and replaced at their current locations, subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”).

Farmstead Area: Without permission of Grantee, Grantor may construct new buildings, structures and other improvements with impervious surfaces, including asphalt and concrete roads and parking areas within the Farmstead Area to be used primarily for purposes related to a Farm Operation and for such other agricultural purposes as (i) the production, storage, marketing or sale of farm products or by-products, or processing of farm products or by-products, (ii) the storage of equipment used for agricultural production, and (iii) the keeping of livestock or other animals.

Farm Area: Subject to the Impervious Surface coverage limitations set forth in Section 8(a)

(“Impervious Surfaces”), Grantor may construct buildings, structures and impervious improvements for such purposes related to the Farm Operation on up to 5% of the Farm Area without permission of Grantee. With permission of Grantee, Grantor may construct buildings, structures and improvements related to the Farm Operation that would cover up to an additional 5% of the Farm Area.

8.(d). Residential Dwellings

Existing residential dwellings, as defined in Section 4(c), if any, may be repaired, removed, enlarged and replaced at their current locations, which are shown on Exhibit B.

Farmstead Area: Without permission of Grantee, Grantor may construct, maintain, repair, remove or replace residential dwellings, together with accessory structures and improvements within the Farmstead Area, subject to any applicable local, state or federal laws and regulations.

Farm Area: Subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), Grantor may construct new dwellings or structures and improvements for Farm Labor Housing, as defined in Section 4(d) (“Farm Labor Housing”), on up to 1% of the Farm Area without permission of the Grantee. With permission, Grantor may construct additional Farm Labor Housing in the Farm Area as proven necessary to conduct current farm operations. The land on which these dwelling, structures and improvements stand shall not be subdivided, except as permitted in Section 11 (“Subdivision”).

8.(e). Rural Enterprises

Rural enterprises may be established and carried out within the Farmstead Area, including but not limited to, professional offices within the home, bed and breakfasts, crafts production and firewood distribution. In all cases, such uses and any necessary structures or improvements, shall be compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property. Enterprises which market non-agricultural petroleum or chemical products are prohibited. The land on which these structures stand shall not be subdivided, except as permitted in Section 11 (“Subdivision”).

8.(f). Recreational Structures and Improvements

Existing recreational improvements, if any, may be repaired, relocated, removed and enlarged up to an aggregate 1,000 square feet, or replaced at their current locations, which are shown on Exhibit B, so long as such improvements and structures are compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property. *[optional clause if applicable]* Under no circumstances shall golf courses and/or ranges be allowed in the Farm Area.

Farmstead Area: Without permission of Grantee, Grantor may construct permanent, recreational improvements within the Farmstead Area, so long as such improvements are

compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property.

Farm Area: Subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), Grantor may construct permanent, recreational improvements in the Farm Area up to an aggregate of 1,000 square feet in size without permission of Grantee. With permission of Grantee, permanent recreational improvements that exceed an aggregate footprint of 1,000 square feet may be constructed in the Farm Area. All recreational structures and improvements shall be compatible with the Purpose of this Easement, subordinate to the agriculture use of the Property and located in a manner that minimizes the impact to prime or statewide important soils.

8.(g). Utility Services and Septic Systems

Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to or from 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. All such services and systems shall be compatible with the Purpose of this Easement, subordinate to the agricultural use of the Property and located in a manner that minimizes the impact to prime or statewide important soils.

8.(h). Alternative Energy and Communications Structures and Improvements

Structures and improvements necessary to undertake alternative energy and communications activities such as wind, solar, methane and other similar energy generation activities as well as cell towers or 911 communications towers are permitted as further described below provided they are compatible with the Purpose of this Easement, subordinate to the agricultural use of the Property and located in a manner that minimizes the impact to prime or statewide important soils.

Farmstead Area: Within the Farmstead Area, Grantor may construct such structures and improvements without permission of Grantee.

Farm Area: Subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), such structures and improvements, including roads and drainage ditches, may be built in the Farm Area only with the permission of Grantee, which may be conditioned upon the posting of a bond. These structures and improvements are permitted only if the activity is limited and localized in impact affecting no more than two percent (2%) of the Farm Area at one time.

Prior to determining the location of a site for these structures and improvements in the Farm

Area, the Grantor shall notify the Grantee, the New York State Department of Agriculture and Markets, and the local Soil and Water Conservation District to give them an opportunity to participate in an onsite meeting to review proposed locations. Grantor shall agree to comply with the New York State Department of Agriculture and Markets guidelines for agricultural mitigation for construction of such structures.

9. Maintenance and Improvement of Water Sources.

Grantor may use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement. Grantor may alter the natural flow of water over the Property in order to improve drainage of agricultural soils, reduce soil erosion and/or flooding, 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 local, state and federal laws and regulations.

10. Water Rights.

Grantor may use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property in accordance with applicable local, state and federal laws and regulations. Grantor shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

11. Subdivision.

The Property is currently comprised of _____ 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. *[optional paragraph]*

[Unless otherwise indicated above in this Section,] the Property may be partitioned or subdivided only with the 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 or relocate any new habitable or commercial structures, except as otherwise permitted by this Easement, and shall explicitly limit any existing farm labor housing in the Farm Area to that exclusive use. Any partition, subdivision or lot line adjustment also must comply with all applicable local, state or federal regulations, and any subdivided parcels shall be subject to the terms of this Easement. The Farmstead Area[s], as shown on Exhibits B and C, may not be subdivided or partitioned.

The right to construct new impervious improvements set forth in Paragraph 8(a) shall be allocated at the time of a proposed subdivision. Such allocation of rights to construct new impervious improvements set forth in Paragraph 8(a) shall not result in greater than 10% of the Farm Area being covered by impervious surfaces. At the discretion of Grantee, a functionally and materially equivalent Easement may be recorded at the time of conveyance. 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.

12. Forest Management.

Without permission of Grantee, Grantor may clear forested areas for conversion to farmland, harvest wood for use on the Property including heating or construction of buildings and improvements, manage forested areas for wildlife habitat and recreation, and remove trees that are fallen, dead, diseased or invasive, so long as such activities are consistent with generally accepted forest best management practices.

Without permission from Grantee, Grantor may commercially harvest timber and other wood products, conduct timber stand improvements 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. All such activities shall be in accordance with generally-accepted forestry best management practices. Such commercial timber harvests and timber stand improvements shall be carried out 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, a Cooperating Consulting Forester with the New York State Department of Environmental Conservation or a qualified forester approved by Grantee.

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

13. Mining and On-Site Extractive Activity. [*Presumes no third party ownership of surface mining or other mineral rights*]

Exploration for, or development, storage and extraction of, minerals and hydrocarbons on or from the Property by any method are permitted only under the following conditions. 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) is compatible with the Purpose of this Easement; (c) is reasonably necessary and exclusively for the Farm Operation; and (d) minimizes the impact to the prime and statewide important soils.

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. Such activities must: (a) be limited and localized in impact; (b) be compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property; and (c) minimize the impact to prime and statewide important soils. Grantor shall use all practical means to

mitigate any adverse effect on the agricultural viability of the Property in carrying out any permitted exploration, development or extractive activities.

Prior to determining the location of a site for exploration, development or extraction activities, the Grantor shall notify the Grantee, the New York State Department of Agriculture and Markets, and the local Soil and Water Conservation District to give them an opportunity to participate in an onsite meeting to review proposed locations. Grantor shall agree to comply with the New York State Department of Agriculture and Markets guidelines for agricultural mitigation for construction of such structures and related extractive activities.

14. Road Construction.

Pursuant to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), Grantor may construct roads for residential driveways, barnyards, farm markets or other improvements necessary to provide access to, and parking for, permitted buildings or improvements, or to conduct other activities permitted by this Easement. Roads constructed in the Farm Area shall be located in a manner that minimizes impacts to the prime and statewide important soils.

15. 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 as described below. Without permission of Grantee, Grantor may 1) store, compost, apply or inject agriculturally-related waste or biodegradable material; 2) store old farm equipment to be used for parts; 3) temporarily store trash or household waste in receptacles for periodic off-site disposal and 4) compost or re-use biodegradable materials generated off the Property for use on the Property or commercial use or sale. All such activities shall be conducted in accordance with Sound Agricultural Practices and in a manner consistent with the Conservation Plan and all applicable local, state or federal laws and regulations. Notwithstanding the foregoing, the storage and treatment of sewage associated with buildings permitted on the Property, is permitted by this Easement.

16. Permission of Grantee.

When Grantor is required to obtain Grantee's permission for a proposed action pursuant to the Easement, such permission shall be requested in writing. Grantee shall grant permission unless it determines that such action is 1) incompatible with the Purpose of this Easement or 2) not subordinate to the agricultural use of the Property. Such permission shall not be unreasonably withheld. Grantee shall respond with a decision in writing within forty-five (45) days of receipt of the Grantor's written request which shall include all relevant building plans identifying the use, footprint and total square footage of any proposed structures, and related survey information, if available. If mutually agreed upon by Grantee and Grantor, this timeline may be reasonably extended.

17. 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:

17.(a). Taxes

Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property.

17.(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.

17.(c). Liability and Indemnification

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.

18. Extinguishment of Development Rights.

Except as otherwise reserved to the Grantor in this Easement, all non-agricultural 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.

19. Baseline Documentation.

By its execution of this Easement, Grantee acknowledges that the present uses of, and related structures and improvements on the Property are permitted by this Easement. In order to evidence the present condition of the Property so as to facilitate future monitoring and enforcement of this Easement, a Baseline Documentation Report, including relevant 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.

20. Right of Inspection.

Grantee shall have the right to enter upon the Property with 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 shall have the same right of inspection.

21. 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.

22. Third Party Enforcement.

The New York State Department of Agriculture and Markets and its successor agency shall have the right to enforce a material violation of this Easement subject to the following provisions.

22.(a). Prior to commencing an enforcement action, New York State Department of Agriculture and Markets must first notify Grantee and Grantor, give Grantee thirty (30) days to take appropriate action, including commencing an enforcement action, and give Grantor thirty (30) days from the receipt of such notice to cure the violation.

22.(b). If the New York State Department of Agriculture and Markets determines that Grantee is diligently prosecuting an enforcement action in good faith, it shall not have a right to take legal action for the same violation of this Easement unless pursuant to a written request by Grantee.

23. 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 21 ("Enforcement").

24. Transfer of Easement.

Both Grantees, acting together, or any sole remaining *[underlined part in this sentence for easements with co-grantees]* Grantee which has acquired the rights of another Grantee, shall have the right 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 "public body" or "not-for-profit conservation organization" as defined by Section 49 of New York State Environmental Conservation Law or "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 49 of New York State Environmental Conservation Law and Section 170(h) of the Code, 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 must be notified in writing in advance of any such transfer. The Department of Agriculture and Markets must approve the choice of any new non-governmental organization or public agency designated as "Grantee", which shall not unreasonably withhold or delay such approval.

25. 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 and the New York State Department of Agriculture and Markets 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 New York State Department of Agriculture and Markets 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.

26. 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. Any such amendment shall be consistent with the Purpose of this Easement and shall comply with the Environmental Conservation Law or any regulations promulgated thereunder, and shall not unreasonably restrict or regulate farm operations in contravention of the purposes of Article 25-AA of the Agriculture and Markets Law. Any such amendment shall be duly recorded.

27. Extinguishment of Easement.

At the mutual request of Grantor, Grantee, New York State Department of Agriculture and Markets 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 2 (“Purpose”), 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, 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 28 (“Proceeds”) herein.

In the event that grantor retains the Property subsequent to any such extinguishment or partial extinguishment, Grantee shall be entitled to receive from Grantor an amount equal to the fair market value of the Property or a portion of the Property as to which the extinguishment applies times the percentage determined under Section 28.

28. Proceeds.

The grant of this Easement gives rise to a property right, immediately vested in Grantee, which, for purposes of calculating value in the event of any such extinguishment or partial extinguishment or proceeds from a sale or other disposition of the Property as contemplated under Section 27 (“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).*[This section will vary depending on the on individual circumstances of each project]*

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 primary Purpose of this Easement; to enable land to remain in active agricultural and forestry use. 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]*

If any part or all of this Easement is terminated pursuant to Section 27 (“Extinguishment of Easement”), Grantee shall pay over to a) the Town of _____, ____%, b) the County of _____,

____%, the _____ Land Trust, Inc., ____%, and the New York State Department of Agriculture and Markets ____%, of the Proportionate Share of such proceeds received by Grantee.

29. 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 affect 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.

30. 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.

31. 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.

32. 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. 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.

33. 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.

34. 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. Any subsequent liens on the Property must be subordinate to this Easement.

35. Subsequent Encumbrances.

The grant of any easements or use restrictions is prohibited, except with the permission of Grantee. Any future encumbrances shall be consistent with the primary Purpose of this Easement and shall not unreasonably restrict or regulate farm operations in contravention of the purposes of Article 25-AA of the Agriculture and Markets Law.

36. Grantor's Environmental Warranty.

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 against, and hold Grantee and New York State Department of Agriculture and Markets 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.

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 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 or arranger 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.

37. 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.

38. 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 26 (“Amendment of Easement”).

39. 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.

40. 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.

41. 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: _____

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.

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