

## AGRICULTURAL CONSERVATION EASEMENT

THIS AGRICULTURAL CONSERVATION EASEMENT ("Easement") is granted \_\_\_\_ September 2002, by JAMES H. AIRY, ("Grantor") residing at 2616 Wiedrick Rd, Walworth, NY 14568 in the Town of Macedon, County of Wayne, and State of New York (mailing address 2616 Wiedrick Road, Walworth, New York 14568)

to

TOWN OF MACEDON, a municipal corporation organized under the laws of the State of New York, with an address of 1675 North Wayneport Road, Macedon, New York 14502, hereinafter referred to as "Grantee".

### WITNESSETH:

Grantor is the owner of certain agricultural real property in Wayne County, New York more particularly described in Exhibit A attached hereto (the "Property"); and

The purpose of the Farmland Protection Program, 16 U.S.C. Section 3830, note, is to purchase conservation easements or other interests in land with prime, unique, or other productive soil that is subject to a pending offer from a State, Tribe, or unit of local government for the purpose of protecting topsoil by limiting non-agricultural uses of the land; and

Article 14 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"; and

Article 25-AA, Section 300, of the New York Agriculture and Markets Law, states, in part, that "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,... [and that] it is the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for the production of foods and other agricultural products"; and

Article 25-AAA, Section 321 of the New York Agriculture and Markets Law states, in part, that "it is hereby found and declared that agricultural lands are irreplaceable state assets,... [and] it is therefore declared the policy of the state to promote local initiatives for agricultural and farmland protection"; and

The Property is located in Wayne County, which County has passed an Agricultural and Farmland Protection Plan which has identified the Property as a prime agricultural resource that should be conserved from conversion to residential development; and

The Property is located in the Town of Macedon, which has identified the conservation of farmland as a goal of its 1999 Comprehensive Plan, and

The Property consists primarily of productive agricultural and forest land. The majority of the soils on the Property have been classified as "prime" (ca. 213 acres) or "farmland of statewide or local importance" (ca. 50 acres) by the Natural Resources Conservation Service, U.S. Department of Agriculture.

Grantor intends to grant an Easement on the Property and the Grantee intends to accept that Easement for the exclusive purpose of ensuring that, under the perpetual stewardship of the Grantee, the agricultural conservation values will be conserved and maintained forever, and uses of the Property which are inconsistent with agricultural purposes will be prevented or corrected.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, terms, conditions and restrictions contained herein, the parties agree as follows:

### 1. *Grant of Agricultural Conservation Easement*

In consideration of Five hundred one thousand Dollars (\$ 501,000) Grantor for himself, and for his successors hereby grants, releases, and conveys to Grantee, its successors and assigns, a perpetual Conservation Easement, an immediately vested interest in real property defined by N.Y. Environmental Conservation Law, Art. 49, Title 3, Sec. 49-0303 of the nature and character described herein on the Property. 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. This Easement shall be deemed not to apply to any lands other than the Property.

## *2. Statement of Purpose*

The primary purpose of this Easement is to conserve, protect and encourage the Property to remain in agricultural use by preserving and protecting its agricultural soils and agricultural viability and productivity. No activity which shall significantly impair the actual or potential agricultural use of the Property, as described in NYS Agriculture and Markets Law Section 301 or any successor statute, shall be permitted. The agricultural soils and agricultural viability and productivity of the Property are collectively referred herein as the “agricultural conservation values” of the Property.

## *3. Rights and Responsibilities Retained by Grantor*

Notwithstanding any provisions of this Easement to the contrary, Grantor reserves all customary rights and privileges of ownership, including the rights to sell, lease, mortgage, give, devise and otherwise convey the Property, as well as any other rights consistent with the protection of the agricultural conservation values of the Property 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 or other event over which Grantor had no control. 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.

## *4. Right to Use Property for Agricultural Purposes*

Grantor retains the right to use the Property for agricultural purposes, as described in NYS Agriculture and Markets Law Article 25 – AA as amended, including operations primarily oriented to the on site raising or using of animals, or the on site raising of crops, trees or plants, as long as these activities are consistent with the stated purpose of this conservation easement. Agricultural purposes include those which are predominantly husbandry as well as uses which are predominantly nursery oriented, including commercial green house operations. Fish farms, apiaries and other non-farm animal raising operations are also considered agricultural purposes; or to permit others to use the Property for such agricultural purposes, in accordance with applicable law consistent with the conservation plan referenced in Paragraph 13.

## *5. Right to Control Access*

Grantor retains the right to control access and nothing herein shall be construed as a grant to the general public or anyone else, except as stated in this Easement, of any right to enter upon any part of the Property.

## *6. Right to Use the Property for Customary Agricultural Enterprises*

Grantor retains the right to use the Property for otherwise lawful and customary agricultural enterprises, such as, but not limited to, processing, packaging and marketing of farm products predominately grown or raised on the Property; farm machinery repair; or firewood distribution, so long as such uses are confined to locations within the “Farmstead Area” identified on the map attached as Exhibit B, (“Farmstead Area”).

## *7. Permission of Grantee*

Where Grantor is required to obtain Grantee's permission or approval for a proposed action hereunder, said permission or approval (a) shall be given in writing by Grantee within thirty (30) days of receipt of Grantor's providing sufficient information on which to base a determination, (b) shall be sought and given in writing with copies of all documents provided to the United States Department of Agriculture Natural Resource Conservation Service, and (c) shall in all cases be obtained by Grantor prior to Grantor's taking the proposed action. Grantee shall grant permission or approval to Grantor only where Grantee, acting in Grantee's sole reasonable discretion and in good faith, determines that the proposed action will not substantially diminish or impair the agricultural conservation values of the Property and would unnecessarily be located on prime and or unique soils as defined by the USDA and is consistent with the stated purpose of this conservation easement. Grantee shall not be liable for any failure to grant permission or approval to Grantor hereunder. The Grantor is not required to obtain permission for an activity unless this Easement specifically requires permission.

The uses permitted hereunder are subject to any permits or approvals required by local, state or federal law, ordinance or regulation to the extent such law ordinance or regulation is consistent with applicable state law.

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

All construction, erection, installation or placement of buildings, structures, or other improvements on the Property is prohibited except Grantor may undertake construction, erection, installation or placement of buildings, structures, or other improvement to the Property as provided below. Grantor shall advise Grantee prior to undertaking any construction or other

improvement on the Property as permitted herein, so as to enable Grantee to keep its records current.

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

(b) *Existing Agricultural or Residential Structures and Improvements* -- Existing agricultural structures and improvements may be repaired, enlarged and replaced at their current locations.

(c) *New Agricultural Structures and Improvements* -- New buildings and other structures and improvements to be used primarily for agricultural purposes may be built on the Property within the Farmstead Area. New agricultural buildings, structures or improvements proposed for locations outside the Farmstead Area may be built only with the permission of the Grantee.

(d) *New Farm Support Housing* --New dwellings or structures to be used to house farm tenants, employees or others engaged in agricultural production on the Property ("Farm Support Housing") may be built on the Property, provided they are located within the Farmstead Area .

(e) *Existing Recreational Structures and Improvements* -- There are no existing recreational structures and improvements, on the Property.

(f) *New Recreational Structures and Improvements* -- New recreational structures and improvements may be built within the farmstead Area. Any new recreational improvements proposed for locations outside the Farmstead Area may be built only with the permission of Grantee. Athletic fields, polo arenas, golf courses or ranges, commercial airstrips, commercial helicopter pads or any other similar structure or improvement is inconsistent with current or future agricultural production and shall not be constructed on the Property.

(g) *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 herein 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.

## 9 *Future Farmstead Complex Zone*

The Grantor may at any time following the execution of this Conservation Easement, designate a new Farmstead Area, not to exceed (5) five acres, within the Future Farmstead Area Zone (FFAZ) as delineated on Exhibit B of this Conservation Easement. This Farmstead Area shall conform to the terms and conditions of this easement and at least thirty (30) days prior to commencing site work or construction of any new facilities within the Farmstead Area, the Grantor shall notify the Grantee in writing of their intention to establish the new Farmstead Area. Once selection of the Farmstead Area is made by the Grantor and the site is deemed buildable by the governmental entity with authority to issue a building permit for the Area, the parties shall, if requested by the Grantee, execute an appropriate amendment to this Conservation Easement evidencing selection of the Farmstead Area, including a map that designates the Farmstead Area boundaries. In the event the Grantor cannot obtain pertinent governmental approvals, including, but not limited to, zoning or Health Department approvals, for the first facilities proposed in the Farmstead Area, the Grantor and Grantee may jointly designate and define a new Farmstead Area on the Property, provided such designation will uphold the terms and purposes of this Conservation Easement and the site will be of similar character and nature as found in the FFAZ.

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

Grantor retains 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, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the agricultural conservation purposes of this Easement and is carried out in accordance with law and the Conservation Plan referenced in Paragraph 13 ("Conservation Plan"). The construction of ponds and reservoirs shall be constructed as consistent with the Conservation Plan.

## 11. *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.

#### 12. *Subdivision*

Except as permitted by Article 9 of the Real Property Actions and Proceedings Law (Action for Partition), 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. Such subdivision shall not include the right to construct any new habitable or commercial structures, or relocate any existing habitable or commercial structures outside of a Farmstead Complex, except as would otherwise be permitted by this Easement. Any partition or subdivision must comply with all applicable land use and subdivision regulations. Mortgages, or other non-possessory interests in land do not constitute subdivisions for the purpose herein, provided such interests encompass the whole Property. Any subdivided parcels would be subject to the terms of this Easement.

#### 13. *Conservation Plan*

All agricultural operations on the Property shall be conducted in a manner consistent with a 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 local Wayne County Soil and Water Conservation District. 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.

Should the property cease to be used for agricultural purposes for more than three (3) years, the agricultural fields will be mowed at least triennially or otherwise maintained, by the Grantor, 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.

#### 14. *Application of Waste Materials*

The land application and placement on the Property of domestic septic effluent and municipal, commercial or industrial sewage sludge or liquid for agricultural production purposes may be undertaken only if in accordance with applicable law and consistent with the Conservation Plan.

#### 15. *Forest Management*

Trees may be removed, cut and otherwise managed to control insects and disease, to prevent personal injury and property damage, for firewood, for construction of permitted improvements and fences on the Property. The cutting, removal or harvesting of trees, including clearing land for cultivation, use of livestock, or commercial timber harvesting, shall only be undertaken if in accordance with either the Conservation Plan or a forest management plan prepared by a qualified professional forester. Grantor shall provide Grantee with copies of forest management plan if not part of the Conservation Plan.

#### 16. *Mining*

Exploration for, or development and extraction of, minerals and hydrocarbons from the Property by any surface mining methods or any other method that would impair or interfere with the agricultural conservation values of the Property is prohibited except in the case of surface mining involving gravel and sand removal, where such removal is small scale (no more than two acres in aggregate), is used solely on the Property, does not breach the water table, is necessary and incidental to carrying out the improvements and agricultural uses permitted on the Property by this Easement and is consistent with the Conservation Plan.

#### 17. *Paving and Road Construction*

Construction and maintenance of unpaved farm roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Easement are permitted. Other than roads and yard areas indicated within a Farmstead Area, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, unless consistent with the Conservation Plan.

## 18. *Dumping and Trash*

No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, waste, ash, or radioactive or hazardous waste, shall be placed, stored, dumped, buried or permitted to remain on the Property, except as reasonably required for the use of the Property as permitted herein, and except in accordance with applicable law. The storage of agricultural products, byproducts and agricultural equipment on the Property in accordance with applicable law is permitted.

## 19. *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:

(a) *Taxes* -- Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee ever pays any taxes or assessments on the Grantor's interest in the Property, Grantor will reimburse Grantee for the same.

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

(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 Conservation 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 Conservation 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, Wayne County, 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, Wayne County, 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.

## 20. *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.

## 21. *Baseline Documentation*

The agricultural conservation values of the Property and its current use and state of improvement are described in a Conservation Easement Documentation Report (the "Report"). Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. 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.

## 22. *Enforcement*

Grantee, Wayne County, New York State Department of Agriculture and Markets and the United States Department of Agriculture, or their agents, shall have the right to enter upon the Property upon reasonable advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. 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, or to begin curing 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 agricultural conservation values of the Property, 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 agricultural conservation values protected by 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. 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.

### *23. Contingent Right in 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 United States Department of Agriculture, the said Secretary and his or her successor and assigns shall have the right to enforce the terms of the 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 the Secretary of the United States Department of Agriculture and 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.

### *24. Transfer of Easement*

Grantee shall have the right, subject to the provisions of Section 23 herein, to transfer all or part of this Easement to any Wayne County public agency qualified to hold or co-hold this Easement under applicable state law. Grantee may also transfer an interest in this Easement to a non-governmental organization as co-grantee, provided a governmental body also co-hold the easement. Any easement transfer must be approved by the Grantor or any subsequent owner, the NYS Department of Agriculture and Markets, the Natural Resources Conservation Service and Wayne County. In either case, the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. If Grantee ever ceases to exist, a court of competent jurisdiction may transfer this Easement to another qualified public agency that agrees to assume the responsibilities imposed by this Easement. The New York State Department of Agriculture and Markets, the Natural Resources Conservation Service, and Wayne County will be notified in writing of any transfer of this Easement.

### *25. Transfer of Property*

Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which it transfers or divests itself of any interest, including, without limitation, a leasehold interest, in all or a portion of the Property. 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. Failure of Grantor to do so shall not impair the validity of this Easement or limit its enforceability in any way.

### *26. Amendment of Easement*

This Easement may be amended only with the written consent of Grantee and Grantor and with the approval of the State of New York, Department of Agriculture and Markets and the Secretary of the United States Department of Agriculture. Any such amendment shall be consistent with the Statement of Purposes of this Easement and shall comply with the N.Y. Environmental Conservation Law or any regulations promulgated thereunder. Any such amendment shall be duly recorded.

### *27. Extinguishment*

At the request of Grantor, Grantee, Wayne County, the State of New York, Department of Agriculture and Markets and the 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 or impractical to fulfill the agricultural conservation purposes of this Easement, extinguish or modify this Easement in accordance with applicable law. If this Easement is extinguished by judicial proceeding, through failure of title or other lawful means, the State of New York, Department of Agriculture and Markets and United States of America 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 herein.

### *28. Proceeds*

For purposes of calculating proceeds from a sale or other disposition of the Property as contemplated under Paragraph 27 above, this Easement shall have a value equal to a percentage (the "Proportionate Share") of the value of the Property unencumbered by this Easement. The Proportionate Share has been 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 seventy-five and one-tenth percent ( 75.1 %). The Proportionate Share shall remain constant. Said Proportionate Share shall be further allocated as follows: (a) to the State of New York, Department of Agriculture and Markets, Fifty-nine percent ( 59%), (b) to the United States of America, forty-one percent ( 41%).

If this Easement is terminated and the Property is subsequently sold, exchanged, or taken in condemnation then, the State of New York, Department of Agriculture and Markets and the United States of America shall be entitled to a portion of the proceeds from such sale, exchange or condemnation equal to the Proportionate Share, as provided herein.

All expenses related to the termination of this Easement shall be paid out of any recovered proceeds prior to distribution of the net proceeds as provided above.

### 29. *Interpretation*

This Easement shall be interpreted under the laws of the State of New York, or federal law, as appropriate, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

### 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. If a transfer of the fee ownership takes place, liability of the transferor for breach of any covenant under this easement automatically terminates.

### 31. *Severability*

Invalidation 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 notices required by this Easement shall be in writing and shall be: a) personally delivered, b) sent by first class mail or other US Postal Service mail delivery, to Grantor and Grantee respectively at the following addresses, or to such other addresses as the parties may designate by notice:

To Grantor:

2616 Wiedrick Rd  
Walworth, NY 14568

To:

New York State Department of Agriculture and Markets  
One Winners Circle  
Albany, NY 12235

To Grantee:

Supervisor  
Town of Macedon  
1675 North Wayneport Road  
Macedon, NY 14502

To

United States Natural Resource Conservation Service  
on behalf of the Commodity Credit Corporation  
Joseph DelVecchio, State Conservationist  
The Galleries of Syracuse  
441 S. Salina Street, Suite 354  
Syracuse, NY 13202-2450  
(315) 477-6504

33. *Grantor's Title Warranty*

Grantor warrants that it has good and marketable title to the Property, free from all encumbrances except those set forth in Exhibit C, and hereby promises to defend the same against all claims that may be made against it.

34. *Subsequent Liens on Property*

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for a subsequent borrowing, provided any subsequent liens are subordinate to this Easement.

35. *Subsequent Encumbrances*

The grant of any easements or use restrictions that might diminish or impair the agricultural conservation value of the Property is prohibited

36. *Perpetuation 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.

TO HAVE AND TO HOLD this Easement unto Grantee, its successors and assigns, forever.

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

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James H. Airy

Town of Macedon

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By: William Hammond  
Its Supervisor



**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* )  
 ) *ss.:*  
*County of .....* )

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

New York Statutory All Purpose Acknowledgment  
STATE OF NEW YORK )  
COUNTY OF WAYNE )

On the \_\_\_\_ day of September in the year 2002, before me, the undersigned, a notary public in and for said State, personally appeared James H. Airy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his capacity, and that by his signature on the instrument, the individual or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

New York Statutory All Purpose Acknowledgment

STATE OF NEW YORK )  
COUNTY OF WAYNE )

On the        day of September in the year 2002, before me, the undersigned, a notary public in and for said State, personally appeared William Hammond, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person on behalf of which the individual acted, executed the instrument.

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Notary Public

## Exhibit A

I. TAX ACCOUNT: 62113-00-754674 (formerly 30112-00-696673)

### PARCEL A

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Macedon, County of Wayne and State of New York, more particularly described as follows: Being the same premises described in a deed to Edward G. Scheik and Clara Scheik, his wife by Richard Scheik by deed dated October 13, 1947 and recorded in Wayne County Clerk's Office in Liber 367 of Deeds, page 583.

Excepting the premises conveyed by Edward G. Scheik and Clara Scheik, his wife to Richard B. Scheik and Winifred D. Scheik, his wife, by deed dated April 7, 1956 and recorded in Wayne County Clerk's Office in Liber 439 of Deeds, page 587.

Excepting and reserving from the above described premises that portion thereof bounded and described as follows:

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Macedon, County of Wayne and State of New York, being part of Town Lot 43 in said Town and being part of lands conveyed by Richard Scheik to Edward G. and Clara L. Scheik by deed dated October 13, 1947 and recorded in Wayne County Clerk's Office in Liber 367 of Deeds, page 583 and being more particularly described as follows: BEGINNING at an iron pipe monument on the southerly boundary line of N.Y.S. Route 31F, said point being 100 feet east of the westerly boundary line of the Estate of Clara L. Scheik; thence (1) easterly and along the southerly boundary line of N.Y.S. Route 31F, a distance of 281.55 feet to an iron pipe monument on the westerly boundary of lands of Richard D. and Winifred Scheik; thence (2) southerly and along the westerly boundary line of Richard D. and Winifred Scheik and forming an interior angle of  $88^{\circ} 04' 32''$  with course (1) a distance of 278.19 feet to an iron pipe monument; thence (3) easterly and along the south boundary line of Richard D. and Winifred Scheik and forming an interior angle of  $285^{\circ} 22' 00''$  with course (2) a distance of 84.75 feet to an iron pipe monument; thence (4) northerly and along the easterly boundary line of Richard D. and Winifred Scheik and forming an interior angle of  $262^{\circ} 01' 00''$  with course (3) a distance of 73.04 feet to an iron pipe monument; thence (5) easterly and along the southerly boundary line of Richard D. and Winifred Scheik and forming an interior angle of  $83^{\circ} 10' 00''$  with course (4) a distance of 49 feet to an iron pipe monument; thence (6) northerly and along the east boundary line of Richard D. and Winifred Scheik and forming an interior angle of  $250^{\circ} 09' 00''$  with course (5) a distance of 192.77 feet to an iron pipe monument on the southerly boundary of N.Y.S. Route 31F and forming an interior angle of  $109^{\circ} 01' 21''$  with course (6) a distance of 183.19 feet to an iron pipe monument; thence (8) easterly and along the southerly boundary line of N.Y.S. Route 31 F and forming an interior angle of  $178^{\circ} 22' 40''$  with course (7) a distance of 165.61 feet to an iron pipe monument on the easterly boundary of land of the Estate of Clara L. Scheik; thence (9) southerly and along the easterly boundary line of the Estate of Clara L. Scheik and forming an interior angle of  $92^{\circ} 21' 17''$  with course (8) a distance of 365.0 feet to an iron pipe monument; thence (1) westerly and forming an interior angle of  $86^{\circ} 27' 58''$  with course (9) a distance of 334.88 feet to an iron pipe monument; thence (11) southerly and forming an interior angle of  $271^{\circ} 59' 57''$  with course (10) a distance of 1895.00 feet to an iron pipe monument; thence (12) westerly and forming an interior angle of  $90^{\circ} 00' 00''$  with course (11) a distance of 477.47 feet to an iron pipe monument; thence (13) northerly and along a line 100 feet east of and parallel to the westerly boundary line of the Estate of Clara L. Scheik and forming an interior angle of  $90^{\circ} 00' 00''$  with course (12) a distance of 2259.02 feet to the point of beginning. Course (13) makes an interior angle of  $91^{\circ} 01' 15''$  with course (1). Containing 26.826 acres.

ALL THAT TRACT OR PARCEL OF LAND, situate, lying and being in the Town of Macedon, County of Wayne and State of New York, more particularly described as follows:

Being the same premises described in a deed to Benjamin F. Harbou and Ruth J. Harbou, his wife by David J. Katz by deed dated July 31, 1945 and recorded in the Wayne County Clerk's Office in Liber 353 of Deeds, page 404.

Excepting premises appropriated by the People of the State of New York by Appropriation dated May 28, 1971 and recorded in the Wayne County Clerk's Office in Liber 622 of Deeds, page 5.

Excepting and reserving from the above described premises that portion thereof bounded and described as follows:

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Macedon, County of Wayne and State of New York, being part of Town Lot 43 in said Town and being part of lands conveyed by David J. Katz to Benjamin F. and Ruth J. Harbou by deed dated July 31, 1945 and recorded in the Wayne County Clerk's Office in Liber 353 of Deeds, page 404 and being more particularly described as follows:

BEGINNING at an iron pipe monument on the intersection of the southwesterly boundary line of N.Y.S. Route 31F and the westerly boundary of N.Y.S. Route 350; thence (1) southerly and along the westerly boundary line of Route 350 a distance of 246.79 feet to an iron pipe monument; thence (2) westerly and forming an interior angle of  $89^{\circ} 20' 00''$  with course (1) a distance of 621.82 feet to an iron pipe monument; thence (3) northerly and forming an interior angle of  $88^{\circ} 29' 42''$  with course (2) a distance of 344.17 feet to an iron pipe monument on the southerly boundary of N.Y.S. Route 31F; thence (4) easterly and along the southerly boundary line of N.Y.S. Route 31F and forming an interior angle of  $93^{\circ} 52' 20''$  with course (3) a distance of 299.27 feet to an iron pipe monument; thence (5) southeasterly and along the southerly boundary line of N.Y.S. Route 31F and forming an interior angle of  $171^{\circ} 52' 47''$  with course (4) a distance of 233.44 feet to an iron pipe monument; thence (6) southeasterly and along the southwesterly boundary line of N.Y.S. Route 31F and forming an interior angle of  $138^{\circ} 06' 41''$  with course (5) a distance of 116.70 feet to the point of beginning. Course (6) forms an interior angle of  $138^{\circ} 18' 30''$  with course (1). Containing 4.809 acres.

EXCEPTING AND RESERVING FROM PARCEL A ABOVE.

- 1) James H. Airy to Thomas J. Henderson, Jr. recorded in the Wayne County Clerk's Office on August 27, 1997 in Liber 941 of Deeds page 393.
- 2) 100' by 2,259.02' strip located on the west side of a 21.724 acre parcel and a 3.000 acre parcel as shown on a survey known as the Scheik Subdivision made by Robert M. Dunn dated December 8, 2000, and filed in the Wayne County Clerk's Office on March 2, 2001 as Map number 24871.
- 3) Appropriation by the State of New York recorded in the Wayne County Clerk's Office on December 29, 1995 in Liber 863 of Deeds at page 27.

II TAX ACCOUNT: 62112-00-926995 (FORMERLY 30112-00-895990)

ALL THAT TRACT OR PARCEL OF LAND, being part of Town Lots 53 and 54, Town of Macedon, County of Wayne, State of New York, all as shown on a map prepared by Donald B. Schwartz, Professional Land Surveyor, dated April 8, 1981, being Job No. 81-614-003, and being more particularly described as follows:

Beginning at a point on the centerline of Wiedrick Road, said point being  $N 0^{\circ} 13' 57'' W$ , along said centerline of Wiedrick Road, a distance of 608.63 feet from the intersection of the centerline of said Wiedrick Road with the north highway boundary of Macedon Center Road (New York State Routes 31-F & 350), and said point of beginning being further defined by New York State Plane Coordinates  $X = 307,900.12$  and  $Y = 1,128,818.62$  for the Central Zone; thence (1)  $N 0^{\circ} 13' 57'' W$ , along the centerline of said Wiedrick Road, a distance of 27.33 feet to a point; thence (2)  $N 0^{\circ} 09' 29'' E$ , along the centerline of said Wiedrick Road, a distance of 1,389.62 feet to a point; thence (3) northerly along the centerline of said Wiedrick Road, on a curve to the left tangent to the last course, having a radius of 683.51 feet, a distance of 27.90 feet to a point; thence (4)  $S 89^{\circ} 30' 36'' E$ , not tangent to the last course, a distance of 914.77 feet to a point on the east line of Town Lot 54; thence (5)  $N 0^{\circ} 41' 36'' W$ , along the east line of Town Lot 54, a distance of 754.78 feet to a point; thence (6)  $N 0^{\circ} 57' 12'' E$ , along the east line of Town Lot

54, a distance of 453.10 feet to a point; thence (7) N 89° 57' 53" E, a distance of 866.58 feet to a point; thence (8) S 7° 51' 00" W, a distance of 1,320.00 feet to a point; thence (9) S 89° 25' 00" E, a distance of 573.67 feet to a point on the west highway boundary of Macedon-Ontario Center Road (New York State Route 350); thence (10) S 7° 41' 44" W, along said west highway boundary of Macedon-Ontario Center Road, a distance of 89.69 feet to a point; thence (11) S 9° 55' 01" E, along said west highway boundary, a distance of 76.01 feet to a point; thence (12) S 7° 41' 44" W, along said west highway boundary, a distance of 547.74 feet to a point; thence (13) S 18° 59' 32" W, along said west highway boundary of Macedon-Ontario Center Road, a distance of 143.46 feet to a point; thence (14) N 71° 01' 27" W, a distance of 104.22 feet to a point; thence (15) S 27° 02' 09" W, a distance of 312.99 feet to a point; thence (16) S 71° 01' 27" E, a distance of 107.19 feet to a point on the northwest highway boundary of said Macedon-Ontario Center Road; thence (17) S 31° 26' 27" W, along said northwest highway boundary of Macedon-Ontario Center Road, a distance of 65.56 feet to a point; thence (18) S 48° 26' 20" W, along said northwest highway boundary, a distance of 267.30 feet to a point; thence (19) S 59° 09' 48" W, along said northwest highway boundary, a distance of 679.66 feet to a point; thence (20) S 59° 13' 26" W, along said northwest highway boundary of Macedon-Ontario Center Road, a distance of 215.45 feet to a point; thence (21) N 0° 20' 42" E, a distance of 176.95 feet to a point; thence (22) S 87° 38' 18" , a distance of 405.98 feet to a point; thence (23) N 0° 13' 57" W, a distance of 323.88 feet to a point; thence (24) S 89° 46' 03" W, a distance of 509.12 feet to the point of place of beginning, containing 98.248 acres of land, more or less.

EXCEPTING AND RESERVING FROM THE ABOVE:

1.) Appropriation by the State of New York recorded in the Wayne County Clerk's Office on December 29, 1995 in Liber 863 of Deeds page 25.

III TAX ACCT.: 62113-00-854223 (FORMERLY 30113-00-841121)

PARCEL a

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Macedon, County of Wayne, New York being part of Town Lot No. 54 in said town, bounded and described as follows: Commencing at a point in the center line of the dirt highway known as the Weidrick Road, running in a northerly direction from the Fairport-Macedon center State highway, and which said point is the northeast corner of premises heretofore conveyed by Louis J. Years and Minnie A. Years, his wife, to Redford J. Hoad and wife, by deed recorded in the Wayne County Clerk's Office in Liber 373 of Deeds at page 506; running thence northerly along the center line of said Weidrick Road to the northeast corner of the premises conveyed by Henry b. Welch and Mary S. Welch, his wife, to the said Louis J. Years and Minnie A. Years, his wife, by deed dated March 30, 1922, and recorded in Wayne County Clerk's Office in Liber 259 of Deeds at page 432; thence running westerly along the South line of premises formerly owned by one Green and nor or formerly owned by one J. Robert Roland, to a point in the east line of premises formerly owned by one Fritts, now or formerly occupied or owned by Edward G. Scheik, thence running southerly along said Scheik's east line to the northwest corner of the said premises conveyed by said Louis J. Years and Minnie A. Years his wife to Bedford J. Hoad and wife, and which said point is marked by an iron pipe; running thence S 82° 00' East, a distance of Eight Hundred Seventy (870) feet on a line running parallel to and thirty (30) feet measured southerly from the barn situate on the premises hereby conveyed and which said line passes over an iron pipe set in the west fence line of the Weidrick Road, and to the point and place of beginning, and consisting of about fifty (50) acres of land, to the same more or less, as the case may be.

ALWAYS EXCEPTING AND RESERVING from the above described premises all that tract or parcel of land situate in the Town of Macedon on the Weidrick Road, in the County of Wayne bounded and described as follows:

Beginning at a point in the center line of Weidrick Road, which point is opposite the division line fence between lands of James Airy and Vernon Derrenbacher; thence along said road center line S. 4° 00' W. 950.00 feet to a point, which point is 944.0 feet north of the northeast corner of lands of Redford Hoad; thence N. 86°00' W. 24.75 feet to

an iron pipe and continuing N. 86° W 225.25 feet for a total distance of 250.00 feet to an iron pipe; thence N. 4° 00' E 950.00 feet to an iron pipe; thence S. 86° 00' E 225.25 feet to an iron pipe and continuing S. 86° 00' E. 24.75 feet for a total distance 250 feet to the point of beginning and containing 5.542 acres of land as shown on a map made from a survey by Walter R. Muller C. E. on April 7, 1959.

#### PARCEL B

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Macedon, County of Wayne and State of New York, being part of Lot No. 53 and bounded as follows, Beginning on the west side of lot No. 53 at the south west corner of land owned by Anthony Spears; thence South eighty two degrees East eleven chains and ninety six links; thence South six and one half degrees West one chain and sixty six links; thence North eighty two degrees West eleven chains and ninety-nine links; thence North seven and one half degrees East one chain and sixty six links to the place of beginning two acres of land and no more.

#### PARCEL C

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Macedon, County of Wayne and State of New York, being part of lot no. 54, bounded and described as follows, viz: Beginning in the center of Wiedrick Road at the northwest corner of lands formerly belonging to William Greene; thence east along the north line of said William Greene's land to lands formerly belonging to Myron L. Hoag; thence northerly on the west line of lands formerly belonging to Myron L. Hoag and William Wilson to lands formerly belonging to Thomas A. Foskett; thence westerly along the south line of said Foskett's land to the center of the highway; thence south along the center of the highway to the place of beginning, containing thirty acres of land more or less; EXCEPTING AND RESERVING, therefrom the following described parcel: commencing at the east line of Wiedrick Road at the northerly line of the above described parcel; thence running easterly along said Northerly line 580 feet to a point; thence southerly parallel to the easterly line of said road 900 feet plus or minus to the center of a drainage ditch running generally easterly from said road; thence generally westerly along the center of said drainage ditch 580 feet plus or minus to the easterly line of said road; thence northerly along the easterly line of said road 800 feet plus or minus to the place of beginning, together with all rights to the easterly half of Wiedrick Road abutting said excepted and reserved parcel; granting, nevertheless, to the parties of the second part, their heirs and assigns, for the purpose of ingress and egress from Weidrick Road to that portion of the premises hereby conveyed, a 15 foot right of way along the northerly side of said drainage ditch.

ALSO, ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Macedon, County of Wayne and State of New York, being part and parcel of lots number fifty-four and fifty-three in said town bounded as follows, to wit: Beginning at the northwest corner of land formerly owned by Hiram Simmons on said lot number fifty four, running thence along the east line of Jeremiah Soper's land nineteen and one-half rods to the northeast corner of the ten acre lot conveyed to hm by Zonas Leland; thence on the north line of said ten acre lot eleven rods to the northwest corner thereof thence North one hundred and twenty-one rods and six links to the northwest corner of the farm formerly owned by Thomas Lapham being a parcel of said lot number forty-four; thence east on the north line of said farm to the northeast corner thereof and the east line of lot 54; thence south on the east line of said lot to the southwest corner of land formerly owned by said Hiram Simmons on said lot number fifty-three; thence East on the south line of said Simmons six acre lot twelve chains and forty-eight (48) links to land formerly owned by Humphrey S. Lapham; thence southerly on said Lapham's west line to the southwest corner of said Lapham's land; thence west on the north line of Henry Fallows land to the northwest corner thereof; thence North to the northeast corner of said Hiram Simmons' land on said lot number fifty-four (54); thence west on said Simmons north line to the place of beginning to contain seventy-three and one-half acres be the same more or less, EXCEPTING AND RESERVING therefrom the premises described in a deed executed by Joseph Green to Hiram Simmons dated April 5 1847 and recorded in the Wayne County Clerk's Office August 17, 1847, in Liber 40 of deeds at page 303. And further EXCEPTING AND RESERVING therefrom the premises described in a deed executed by the grantors herein to Dale S. Thomas and Lois F. Thomas, his wife, dated June 1, 1955, and recorded in the Wayne County Clerk's Office on June 16, 1955, in Liber 431 of deeds at page 42.

ALSO, ALL THAT OTHER TRACT OR PARCEL OF LAND, situate in said Town of Macedon, County and State aforesaid,

bounded and described as follows: Being a part of lot number fifty-four and the south part of about one hundred acres of land conveyed by James Smalley and wife to Charles F. Whitney April 1, 1855, the north line of which shall be parallel with the south one and so far therefrom as to contain twenty-five acres which is hereby conveyed bounded as follows: Beginning at a stake in the southwest corner of land owned or formerly owned by Joseph Green; thence northerly in the center of the highway seventy-five rods and seventeen links to a stake and stones; thence westerly fifty-three rods and four links to a stake and stones in the east line of lands owned or formerly owned by Richard Soper; thence southerly along the line of said Soper's land seventy-five rods and seventeen links to a stake and stones in the north line of lands owned or formerly owned by John Fritts; thence along the north line of said Fritts' and Soper fifty-three rods and four links to the place of beginning.

EXCEPTING AND SERVING FROM PARCELS A, B AND C ABOVE:

- 1.) James H. and Arlene Airy to Town of Macedon recorded in the Wayne County Clerk's Office on July 17, 1959 in Liber 473 of Deeds page 451.
- 2.) James and Arlene Airy to Harold S. Hicks and Jean S. Hicks recorded in the Wayne County Clerk's Office on December 15, 1959 in Liber 478 of Deeds page 246.
- 3.) Appropriation by the State of New York recorded in Wayne County Clerk's Office on December 29, 1995 in Liber 863 of deeds page 29.
4. James H. Airy to Arlene R. Airy recorded in the Wayne County Clerk's Office on July 12, 1991 in Liber 859 of Deeds page 497.

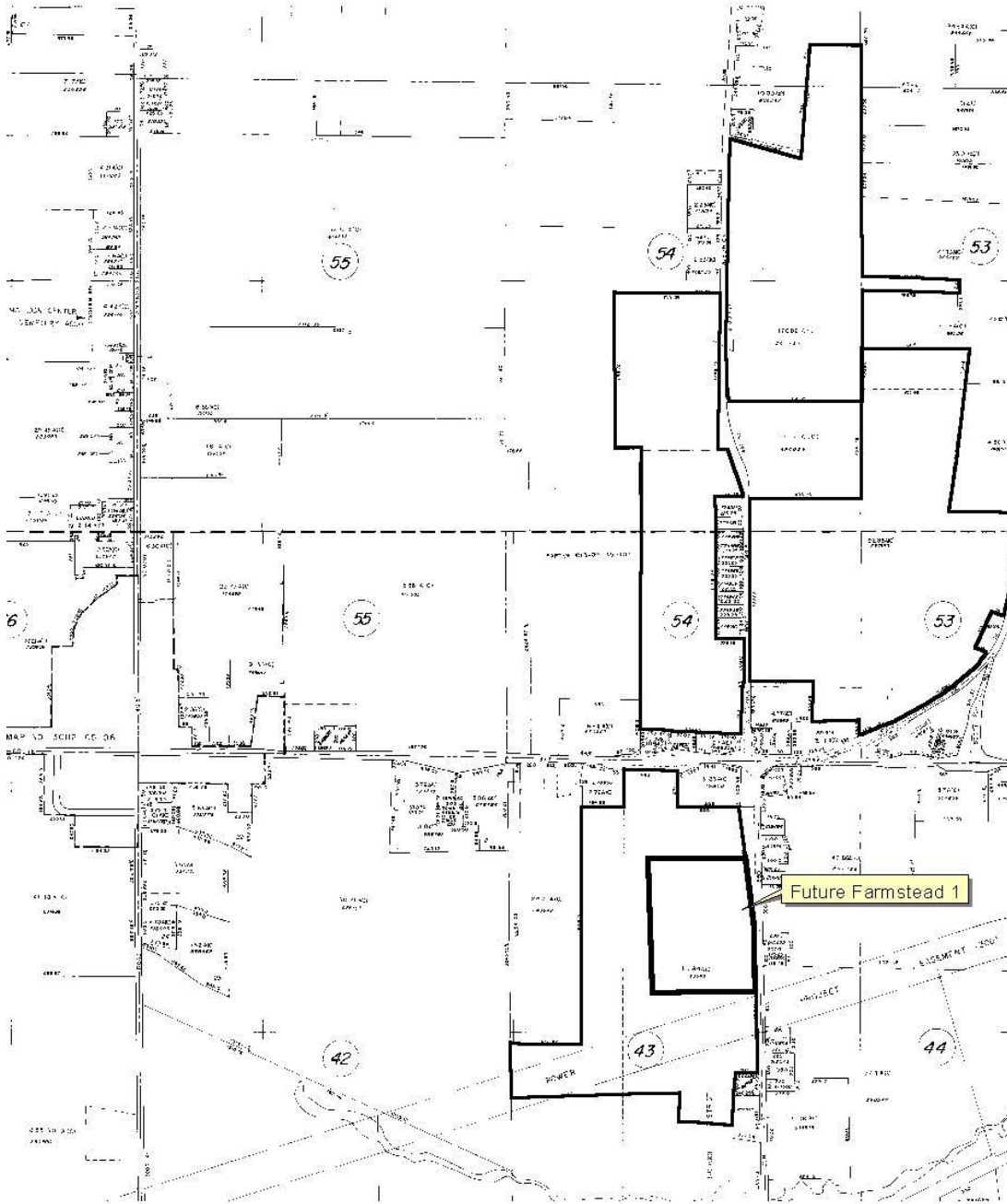
IV. TAX ACCOUNT: 63113-00-014067 (FORMERLY 30113-00-985062)

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Macedon, County of Wayne and State of New York, bonded and described as follows: Being a part of lot No. 53 in said town; - beginning in the center of the highway at the north east corner of land formerly owned by W. W. Mumford; thence north along the center of the highway 20 chains; thence west 9 chains and 25 links; thence south parallel with the east line of said lot 20 chains thence east along the north line of said Mumfords land 9 chains and 25 links to the place of beginning. Containing eighteen and one (1/2) half acres of land. EXCEPTING AND RESERVING therefrom four (4) acres of land conveyed by the party of the first part to Morris J. O'Brien by deed bearing even date herewith. Being a part of the same premises conveyed to the party of the first part by James F. Paton by deed dated June 4th, 1892 and recorded in Wayne County Clerk's Office June 4th, 1892, in Liber 164 of Deeds at page 108.

EXCEPTING AND RESERVING FROM THE ABOVE

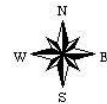
- 1.) Fred and Kate Jeerings to the County of Wayne recorded in the Wayne County Clerk's Office on August 7, 1929 in Liber 291 of Deeds page 138.
- 2.) James H. Airy to Jeffrey James Airy recorded in Wayne County Clerk's Office on October 28, 1996 in Liber 926 of Deeds page 262 and as corrected by Deed recorded on November 14, 1996 in Liber 927 of deeds page 136.
- 3.) Appropriation by the State of New York recorded in the Wayne County Clerk's Office in Liber 864 of deeds page 31, Liber 864 of deeds page 47, and Liber 864 of Deeds page 67.

# Exhibit B Future Farmstead Zone



 Future farmsteads Draft  
 Airy Farm

0.3      0      0.3      0.6 Miles





**Exhibit C**

Schedule "B", Section II, of the Monroe Title Insurance Corporation Commitment for Title Insurance, Title No.: AGT 201-08878 dated September 10, 2002, a copy of which has been deposited with each of the parties hereto.