

New York State Department of Agriculture and Markets
Model Agricultural Conservation Easement

[Deed of] Conservation Easement

{Italics text in brackets is informational to the drafter;

please delete when preparing first red-lined draft of this document}

{[Text in [brackets] is optional language for this Easement depending upon the project];
please delete all unused optional text when preparing first red-lined draft of this document}

THIS CONSERVATION EASEMENT ("Easement") is granted this ____ day of _____ 20__, by _____ [and _____] (the "Grantor") to _____, a New York {[municipal **{OR}** not-for-profit] corporation} **{OR}** [soil and water conservation district]} having an address of _____ [and to _____, a New York {[municipal **{OR}** not-for-profit] corporation **{OR}** [soil and water conservation district]} having an address of _____. *{If 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 approximately ***{nearest whole number}*** ____ acres, in ***{specify number}*** ____ tax map 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 with the _____ County Clerk simultaneously herewith.
- B. Grantee is a New York not-for-profit conservation organization 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) and 170(b)(1)(A)(vi) of the Internal Revenue Code (the "Code"), and is a "qualified organization" to accept, purchase, and hold conservation easements under Section 170(h) of the Code and Treasury Regulation Section 1.170A-14(c). ***{use B. if Grantee is a land trust; use C. below if Grantee is a town or county; use D. below if Grantee is a soil and water conservation district; or, use any combination of B., C. and/or D., 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 ECL to acquire conservation easements. ***{use C. if Grantee is a town or county}***

- D. Grantee is a local government created by the _____ County Board of Supervisors and has the authority pursuant to Section 9 (4-a) of the Soil and Water Conservation Districts Law to acquire conservation easements. *{use D. if Grantee is a soil & water conservation district}*
- E. Article 14, Section 4 of the New York State Constitution states: “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. Section 49-0301 of the ECL states: “The legislature hereby finds and declares 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, 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 25-AA of the New York State Agriculture and Markets Law (the “AML”). Section 300 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 AML states: “It is hereby found and declared that agricultural lands are irreplaceable state assets. In an effort to maintain the economic viability, and 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 adopted an Agricultural and Farmland Protection Plan in *{insert month year}*. The Plan recommends*{...add appropriate text}*;

- J. The Property is located within the Town of _____, which adopted an Agricultural and Farmland Protection Plan *{for other plan name}* in *{insert month year}*. The Plan recommends*{...add appropriate text}*;
- K. The Property consists primarily of productive agricultural land. The Property contains approximately _____ acres of prime soils, and approximately _____ acres of soils of statewide importance as defined by the U.S. Department of Agriculture Natural Resources Conservation Service.
- L. The Property also contains *{describe features and importance of any designated Resource Protection Areas}*
- M. [Grantee determined that accepting this Easement on the Property will enhance the long-term agricultural values of the Property and promote the use of soil conservation practices, which will further Grantee's charitable purposes of protecting the distinctive rural character of *{the Town of _____} OR [_____ County]* and its lands and waters of significant historic and ecological value. Therefore, the Board of Directors of the Grantee approved the permanent conservation of this Property, as reflected in the _____, 20__ minutes of the organization. Furthermore, the Property is located within a priority area for farmland and forestland conservation identified by the Grantee in its _____, adopted in *{insert month year}*.] *{IF Grantee is a land trust, Grantee may insert this or equivalent substitute WHEREAS here}*
- N. 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 (\$_____) *{specify a whole-dollar amount, which must equal the purchase price stipulated in the purchase agreement for this Easement transaction}* 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 of 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 Purpose of this Easement is to conserve Viable Agricultural Land by preventing the conversion of the Property to non-farm uses, except for those allowed herein. In achieving such

prevention the Property shall be forever reserved for continued Agricultural Use.

3. Implementation.

This Easement shall be implemented by limiting and restricting the non-agricultural development and non-farm 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 and the administration of its provisions shall not unreasonably restrict or regulate Farm Operations in contravention of the purposes of Article 25-AA of the AML.

4. Definitions.

{IF this Easement will refer to “Agricultural Units” and depict them on Exhibit B, then Grantee must insert the following definition or equivalent alternative:

["Agricultural Units" are defined as specific portions of the Property made up of a certain portion of the Farm Area and, in some cases, a Farmstead Area and/or a Rural Enterprise Area. The legal description of each Agricultural Unit is contained in Exhibit A and each Agricultural Unit is depicted on Exhibit B.}]

4(a). “Agricultural Use” shall be defined as those activities necessary to:

- (i.) produce “Crops, Livestock and Livestock Products”; or
- (ii.) use the Property as a “Farm Operation” to the extent permitted by this Easement; or
- (iii.) be actively enrolled in any federal or state or local program whose intent is to temporarily suspend (for a specified period of one or more years or crop seasons) the production of Crops, Livestock and Livestock Products for the stipulated purpose of soil and water conservation, wildlife habitat, or similar conservation purpose; or
- (iv.) manage the Property or a portion thereof in a fallow or otherwise idled manner provided such management is described in a Conservation Plan.

4(b). “Conservation Plan” shall be defined as an Agricultural Environmental Management (AEM) Conservation Plan (Tier 3 or higher), or such equivalent document that has been prepared by the local Soil and Water Conservation District, or other qualified conservation professional, in cooperation with the Grantor.

4(c). “Crops, Livestock and Livestock Products” shall be defined pursuant to Article 25-AA of the AML, or such successor law as enacted or amended. In the event that this definition or all of Article 25-AA (and all such successor laws) shall be repealed, then the definition existing at the time of repeal shall serve thereafter.

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 owner and/or operator, the worker is an essential employee of

the farm owner 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 and/or operator is not “Farm Labor Housing”.

- 4(e). **“Farm Operation”** shall be defined pursuant to Article 25-AA of the AML, or such successor law as enacted or amended. In the event that this definition or all of Article 25-AA (and all such successor laws) shall be repealed, then the definition existing at the time of repeal shall serve thereafter.
- 4(f). **“Grantor”** includes the original Grantor and his/her/its heirs, successors and assigns.
- 4(g). **“Grantee”** includes the original Grantee(s) and its 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.] ***fuse these two sentences if there are two or more Grantees who want to designate a Lead Grantee for this Easement***
- 4(h). **“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. As used herein, "permanent foundations" are defined to be any continuous hardened surface (e.g., concrete, asphalt, or other similar stabilizing material) that is attached to, placed on or inserted in the ground and that underlies such building, structure or improvement.
- 4(i). **“Owner”** is defined as any individual or entity, including any heir, successor or assign, 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(j). **“Recreational Uses”** are defined as lawful personal or commercial activities including, but not limited to, hunting, fishing, cross-country skiing, camping, horseback riding and snowmobiling. Recreational Uses shall not include golf courses and ranges.
- 4(k). **“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 and/or operator. ***{If this Easement does not designate or otherwise reserve a right for the landowner to establish a Residential Dwelling within a Farmstead Area, then this definition (and the use of this term elsewhere in this***

document) should be deleted.}

{ Grantee may insert the following definition or equivalent alternative:

["Rural Enterprises" are defined as commercial activities conducted on the Property, which are clearly incidental, secondary, and subordinate to the Agricultural Use of the Property, and are owned by, and primarily operated by, the Grantor and other residents of the Property, with limited outside employees, including, but not limited to, professional office, home office of salesperson, artist's studio, arts instruction, bed and breakfast, crafts production and sales, computer repair, small engine repair, firewood distribution, and beauty salon.}]

4(I). The following **"Use Areas"** are defined for the Easement:

{Choose ONE of the following three optional definitions, if applicable and as appropriate}

["Farmstead Area" is defined as area(s) depicted on Exhibit B, that centers on existing farm structures or future planned structures.]

{OR}

["Farmstead Area" is defined as area(s) to be designated within the Zone for Future Farmstead Area depicted on Exhibit B.]

{OR}

["Farmstead Area" is defined as the area that may be designated anywhere on the Property [outside of the Farmstead Area **{OR}** outside of the Zone for Future Farmstead Area] in accordance with the process set forth in Section 8 or pursuant to Section 26 ("Amendment of Easement").] *{one of the two optional phrases therein must be inserted IF either type of Use Area is or may be designated on the Property}*

["Zone for Future Farmstead Area" is the area so identified on Exhibit B within which a Farmstead Area may be designated in accordance with the process set forth in Section 8 or pursuant to Section 26 ("Amendment of Easement").]

["Resource Protection Area" is defined as the area(s) depicted on Exhibit B that contains unique or special natural features including, but not limited to, streams, wetlands, habitat or steep slopes and their supporting buffer lands.]

{Choose ONE of the following three optional definitions, if applicable and as appropriate}

["Rural Enterprise Area" is defined as area(s) depicted on Exhibit B, that centers on existing farm structures or future planned structures and differs from a Farmstead Area only in that Residential Dwellings or any other residential use other than Farm Labor Housing are not allowed.]

{OR}

["Rural Enterprise Area" is defined as area(s) to be designated within the Zone for Future Rural Enterprise Area depicted on Exhibit B. A Rural Enterprise Area differs

from a Farmstead Area only in that Residential Dwellings or any other residential uses other than Farm Labor Housing are not allowed.]

{OR}

[**“Rural Enterprise Area”** is defined as the area that may be designated anywhere on the Property [outside of the Farmstead Area **{OR}** outside of the Zone for Future Farmstead Area] in accordance with the process set forth in Section 8 or pursuant to Section 26 (“Amendment of Easement”). A Rural Enterprise Area differs from a Farmstead Area only in that Residential Dwellings or any other residential uses other than Farm Labor Housing are not allowed.] *{one of the two optional phrases therein must be inserted IF either type of Use Area is or may be designated on the Property}*

[**“Zone for Future Rural Enterprise Area”** is the area so identified on Exhibit B within which a Rural Enterprise Area may be designated pursuant to the provisions of Section ___ herein.]

“Farm Area” is defined as the remaining area of the Property, as depicted on Exhibit B, which Exhibit may be revised from time to time pursuant to [the process outlined in Section __ (“Designation of Additional Use Area(s)”) or pursuant to] Section 26 (“Amendment of Easement”) of this Easement.

4(m). “Viable Agricultural Land” is defined as land highly suitable for a Farm Operation.

5. Reserved Rights Retained by Grantor.

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, mortgage, and devise the Property. In addition, Grantor reserves other rights compatible with the Purpose set forth in Section 2 (“Purpose”) that are not specifically prohibited or limited by this Easement and which do not unreasonably restrict or regulate Farm Operations in contravention of the purposes of Article 25-AA of the AML.

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

Grantor has the right to engage in Agricultural Use of the Property and to use the Property as a Farm Operation provided that any processing, marketing or retailing of any Crops, Livestock and Livestock Products and that any similar activities involving any processed product associated with crops or livestock are not permitted on the Farm Area. As used in this Section 5(a), “processing” shall not include activities such as (i) boiling maple sap or (ii) grinding and mixing of any materials that result in feed for the livestock kept on the Property or on other properties owned or operated by the Grantor, provided that any such “processing” shall be conducted on a di minimus portion of the Farm Area. Said farming practices shall be carried out consistent with the Conservation Plan and conducted in accordance with sound agricultural practices, which are 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.

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

Grantor has the right to operate otherwise lawful Rural Enterprises, 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. *{ONLY if this Easement does not designate or otherwise reserve a right to establish a Farmstead Area AND a Rural Enterprise Area, then this section 5(b) (and any reference to this section elsewhere in this document) should be deleted.}*

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

Grantor retains the right to use the Property for Recreational Uses, subject to the limitations set forth in this Easement, including Section 8 (“Construction of Buildings and Other Improvements”). In all cases, 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 its choices of farm uses and management practices so long as those uses and practices are conducted in accordance with sound agricultural practices (as described in Section 5(a)) 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. Further, all farm uses and farming practices identified in the Conservation Plan shall be consistent with the Purpose of this Easement and shall be only those not otherwise specifically prohibited by this Easement. 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. The Conservation Plan shall be updated periodically and whenever the Farm Operation changes substantially. Upon request, Grantor shall provide a copy of the most current Conservation 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.

{IF the right has been reserved in this Easement to establish and designate additional Use Areas, such as a Farmstead Area or a Rural Enterprise Area, then ONE of the following two optional sections (as applicable) must be inserted here}

8. Designation of Additional Use Area(s).

{IF the right to create either a Farmstead Area OR a Rural Enterprise Area will be retained in this Easement (but NOT designated therein), then the following two paragraphs must be inserted here}

[Grantor may at any time propose one (1) [Farmstead Area ***{OR}*** [Rural Enterprise Area ***{select one and use same throughout this paragraph}***] of a contiguous area not to exceed ____ (____) acres anywhere on the Property ***{IF applicable, insert one or more of the following optional phrases to complete this sentence}*** [outside of the Rural Enterprise Area ***{OR}*** [outside of the Farmstead Area] ***{OR}*** [outside of the Zone for Future Rural Enterprise Area] ***{OR}*** [outside of the Zone for Future Farmstead Area]. Grantor’s proposal must be in writing and must be accompanied by a depiction of the proposed [Farmstead Area] ***{OR}*** [Rural Enterprise Area] on an existing survey or tax map, including boundary dimensions and total acreage. The information provided to the Grantee must be adequate to locate all boundaries of the [Farmstead Area] ***{OR}*** [Rural Enterprise Area] with reasonable certainty. Upon receipt of the request, Grantee will give its preliminary approval or disapproval of the proposal pursuant to Section 16 (“Permission of Grantee”). If the proposal is not approved, the response shall state the reason(s) for the disapproval, providing Grantor with the opportunity to amend the proposal accordingly. If the proposal is preliminarily approved, Grantor must submit a survey prepared by a licensed land surveyor depicting the boundaries of the proposed [Farmstead Area] ***{OR}*** [Rural Enterprise Area] for final approval pursuant to Section 16. Under no circumstances will a [Farmstead Area] ***{OR}*** [Rural Enterprise Area] be deemed to have been designated without Grantee’s final written approval of its creation following review of the required survey.

If approved by Grantee, Grantee shall file in the _____ County Clerk’s Office a map of a survey of the newly designated [Farmstead Area] ***{OR}*** [Rural Enterprise Area] and upon such filing, Exhibit B of this Easement will be deemed to have been amended. Any expense of preparing a map suitable for filing and any filing fees incurred by Grantee will be paid by Grantor.]

{IF a Zone for a Future Farmstead Area OR a Zone for a Future Rural Enterprise Area is designated in this Easement, then the following two paragraphs must be inserted here}

[Exhibit B depicts a Zone for Future [Farmstead Area ***{OR}*** Rural Enterprise Area ***{select one and use same throughout this paragraph}***] within which Grantor may at any time propose one (1) [Farmstead Area ***{OR}*** Rural Enterprise Area] of a contiguous area not to exceed ____ (____) acres. Grantor’s proposal must be in writing and must be accompanied by a depiction of the proposed [Farmstead Area ***{OR}*** Rural Enterprise Area] on an existing survey or tax map, including boundary dimensions and total acreage. The information provided to the Grantee must be adequate to locate all boundaries of the [Farmstead Area] ***{OR}*** [Rural Enterprise Area] with reasonable certainty. Upon receipt of the request, Grantee will give its preliminary approval or disapproval of the proposal pursuant to Section 16 (“Permission of Grantee”). If the proposal is not approved, the response shall state the reason(s) for the disapproval, providing Grantor with the opportunity to amend the proposal accordingly. If the proposal is preliminarily approved, Grantor must submit a survey prepared by a licensed land surveyor depicting the boundaries of the proposed [Farmstead Area ***{OR}*** Rural Enterprise Area] for final approval pursuant to Section 16. Under no

circumstances will a Farmstead Area be deemed to have been designated without Grantee's final written approval of its creation following review of the required survey.

If approved by Grantee, Grantee shall file in the _____ County Clerk's Office a map of a survey of the newly designated [Farmstead Area] *{OR}* [Rural Enterprise Area] and upon such filing, Exhibit B of this Easement will be deemed to have been amended. Any expense of preparing a map suitable for filing and any filing fees incurred by Grantee will be paid by Grantor. Upon the designation of a [Farmstead Area] *{OR}* [Rural Enterprise Area], the Zone for Future [Farmstead Area] *{OR}* [Rural Enterprise Area] shall no longer exist and the remainder of that former zone (i.e., the portion of the zone that was not newly designated as [Farmstead Area] *{OR}* [Rural Enterprise Area]) shall forever thereafter be designated as Farm Area.]

8. Construction of Buildings and Other Improvements.

The Property consists of ____ *{insert #}* Use Areas as further described in the Baseline Documentation Report (referenced in Section 20 herein) and identified on the Easement Map attached hereto as Exhibit B: 1) the Farmstead Area(s)*{OR, if applicable, Zone for Future Farmstead Area}*; and 2) the Farm Area; and 3) the Resource Protection Area; and 4) the Rural Enterprise Area *{OR, if applicable, Zone for Future Rural Enterprise 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.

It is the intention of this Easement to limit the extent of construction or placement of Impervious Surfaces on the Property. Subject to the limitations set forth below, Impervious Surfaces may be constructed or placed on up to a maximum of ten percent (10%) of the Farm Area [and without limitation within any designated Farmstead Area[and within any designated Rural Enterprise Area]. [Impervious Surfaces are prohibited in any designated Resource Protection 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.

Agricultural structures and improvements are those structures and improvements in which any Agricultural Use is conducted therein. Such structures and improvements may be placed or constructed on the Property in accordance with the provisions of this Section 8(c) and may be repaired, removed, enlarged and replaced at their respective locations, subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces").

Farmstead Area[and Rural Enterprise Area]: Without permission of Grantee, agricultural structures and improvements, including accessory roads and parking areas, are permitted

within a designated Farmstead Area[or within a designated Rural Enterprise Area].

[Resource Protection Area: With permission of Grantee, Grantor may place or construct agricultural structures and improvements within a designated Resource Protection Area provided each agricultural structure or improvement shall not contain Impervious Surfaces.]

Farm Area: Subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), Grantor may place or construct agricultural structures and improvements on up to two percent (2%) of the Farm Area without permission of Grantee. However, no building, structure or improvements on the Farm Area shall be used in any manner that is associated with the processing, marketing or retailing of any Crops, Livestock and Livestock Products and no similar activities involving any processed product associated with crops or livestock shall be permitted on the Farm Area. As used in this Section 8(c), “processing” shall not include activities such as (i) boiling maple sap or (ii) grinding and mixing of any materials that result in feed for the livestock kept on the Property or on other properties owned or operated by the Grantor, provided that any such “processing” shall be conducted on a di minimus portion of the Farm Area. With permission of Grantee, Grantor may place or construct agricultural structures and improvements that would cover up to an additional eight percent (8%) of the Farm Area. In the construction or placement of any Impervious Surfaces within the Farm Area, the Grantor shall use all practical means to minimize the extent of coverage over or associated impacts to prime soils and soils of statewide importance.

8(d). Residential Dwellings.

Residential Dwellings may be placed or constructed on the Property in accordance with the provisions of this Section 8(d). Each such Residential Dwelling may be repaired, removed, enlarged and replaced at its respective location. Residential uses shall be compatible with the Purpose of this Easement and subordinate to the Agricultural Uses of the Property.

Farmstead Area: Without permission of Grantee, Residential Dwellings, together with accessory structures and improvements, are permitted within a designated Farmstead Area, subject to any applicable local, state or federal laws and regulations.

[Rural Enterprise Area: No Residential Dwellings, except those used exclusively for Farm Labor Housing, are permitted within a designated Rural Enterprise Area.]

[Resource Protection Area: Any Residential Dwelling, including those for Farm Labor Housing, is prohibited within any designated Resource Protection Area.]

Farm Area: Subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), Grantor may place or construct Residential Dwellings to be used exclusively for Farm Labor Housing on up to one percent (1%) of the Farm Area without permission of the Grantee. With permission, Grantor may place or construct

additional Farm Labor Housing in the Farm Area as proven necessary to conduct current Farm Operations. The land on which these dwellings, structures and improvements stand shall not be subdivided, except as permitted in Section 11 (“Subdivision”).

8(e). Rural Enterprises. *{If no Farmstead Area or Rural Enterprise is or may be designated on the Property through a right reserved in this Easement, then this section must be deleted as well as any use of the term “rural enterprise” throughout this Easement.}*

Rural Enterprises may only be established and carried out within a designated Farmstead Area[or within a designated Rural Enterprise Area]. 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. Prohibited enterprises include, but are not limited to those that market non-agricultural petroleum or chemical products. Rural Enterprises shall not include the operation of a junk yard, gas station or any similar enterprise. The land on which these structures and improvements stand shall not be subdivided, except as permitted in Section 11 (“Subdivision”).

8(f). Structures and Improvements associated with Recreational Uses.

Structures and improvements associated with Recreational Uses are permitted on the Property in accordance with the provisions of this Section 8(f) so long as such structures and improvements are compatible with the Purpose of this Easement and subordinate to the Agricultural Use of the Property. No structures or improvements associated with Recreational Uses shall impair in any way the Agricultural Use of the Farm Area. Structures and improvements may be repaired, removed, enlarged and replaced at their respective locations subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”).

Farmstead Area[and Rural Enterprise Area]: Without permission of Grantee, structures and improvements associated with Recreational Uses are permitted within a designated Farmstead Area[or within a designated Rural Enterprise Area].

[Resource Protection Area: {Choose one} [Any structures and improvements associated with Recreational Uses are prohibited] ***{OR}*** [Permission of Grantee is required prior to the placement or construction of any structure or improvement associated with Recreational Uses] within any designated Resource Protection Area.]

Farm Area: Subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), Grantor may place or construct structures and improvements associated with Recreational Uses in the Farm Area up to an aggregate of one thousand (1,000) square feet in size without permission of Grantee. Permission of Grantee is required for structures and improvements associated with Recreational Uses that exceed an aggregate footprint of one thousand (1,000) square feet. All structures and improvements associated with Recreational Uses shall be located in a manner that minimizes the impact to prime soils or soils of statewide importance.

8(g). Utility Services and Septic Systems.

Wires, lines, pipes, cables, tanks, or other facilities providing electrical, gas, water, sewer, sanitary sewer, septic, communications, or other like services to or from the improvements permitted in this Easement may be installed, maintained, repaired, removed, relocated and replaced for such purposes. 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 soils or soils of statewide importance[and to any Resource Protection Area].

8(h). Structures and Improvements associated with Renewable Energy and Telecommunications.

Pursuant to this Section 8(h), renewable energy and telecommunications shall have the meanings and be considered in relation to this Easement as described herein. Renewable energy is derived from a fuel source that readily restores over short periods of time and typically does not diminish. Such fuel sources include the sun, wind, moving water, organic plant and waste material (e.g., biomass) and the earth's heat (i.e., geothermal). Telecommunications is the transmission, receipt, or exchange of information through the use of technology involving the Property and any other location.

Structures and improvements necessary to undertake renewable energy generation or telecommunications are permitted on the Property 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 soils or soils of statewide importance. Such structures and improvements may be placed or constructed on the Property in accordance with the provisions of this Section 8(h) and may be maintained, repaired, removed, enlarged and replaced at their respective locations subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces").

Farmstead Area[and Rural Enterprise Area]: Without permission of Grantee, structures and improvements associated with renewable energy generation or telecommunications, including access roads and other accessory improvements, are permitted within a designated Farmstead Area[and a designated Rural Enterprise Area].

[Resource Protection Area: Any structures or improvements associated with renewable energy generation or telecommunications are prohibited within any designated Resource Protection Area.]

Farm Area: Subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces"), Grantor may place or construct structures and improvements associated with renewable energy or telecommunications, including access roads and other accessory improvements, may be placed or constructed in the Farm Area only with the permission of Grantee, which may be conditioned upon the posting of a bond. Any such 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. Any such structure or improvement may be enlarged or relocated, but only with the permission of the Grantee.

Prior to determining the location or relocation 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 comply with the New York State Department of Agriculture and Markets guidelines regarding agricultural impact avoidance, mitigation and remediation for construction of such structures and improvements.

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 and is conducted in accordance with sound agricultural practices (as described in Section 5(a)), is compatible with 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.

{Choose the Subdivision clause that best fits the circumstances associated with the Property. Insert only the version of this clause that you select and delete all other versions from this easement. The three versions shown below are as follows: (1) Option #1 = standard clause; (2) Option #2 = alternative clause when multiple parcels comprising the Property shall be maintained as if one parcel; OR (3) Option #3 = alternative clause when multiple parcels comprising the Property are aggregated into Agricultural Units.}

{Option #1:}

The Property is currently comprised of *[specify the number of parcels]*_____ tax map parcels owned by Grantor.

Any division, partition, subdivision, or other legal or de facto creation of lots or parcels of any portion of the Property into separate ownership is hereafter referred to as “Subdivision” or to “Subdivide” and any portion of the Property subject to Subdivision as “Subdivided.” However, under no circumstance shall any designated Farmstead Area or any designated Rural Enterprise Area or any designated Zone for Future Farmstead Area or any designated Zone for Future Rural Enterprise Area be solely Subdivided from the Property and shall not be internally Subdivided.

With prior written permission of the Grantee, Grantor may Subdivide the Property and convey a portion of the Property to a new owner or owners. Grantor’s request for permission to Subdivide will be governed by the provisions set forth in Section 16 (“Permission of Grantee”) of this Easement and the provisions of this Section. In addition, Grantee shall grant such permission only if Grantee determines that the Subdivision: (a) is for agricultural purposes; (b) is compatible with the Purpose of this Easement; (c) will not diminish or substantially impair the agricultural viability of the Property; and (d) shall ensure that all parcels of land thereby created will remain Viable Agricultural Land either individually, or as part of an established Farm Operation. Any such Subdivision shall not include the right to construct, place or relocate any structures on the Property, 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 Subdivision also must comply with all applicable local, state or federal regulations, and any Subdivided parcels shall be subject to the terms of this Easement.

In the event that any Subdivision of the Property is approved by the Grantee, any portion of the Property so Subdivided shall remain subject to this Easement and approval by the Grantee must allocate to the Subdivided portion of the Property any portion of the following rights then remaining which are to be applied to the Subdivided portion:

- (a) Construction of Impervious Surfaces as set forth in Section 8(a) (“Impervious Surfaces”);
- (b) Construction or placement of agricultural structures and improvements under Section 8(c), (“Agricultural Structures and Improvements”);
- (c) Construction or placement of Residential Dwellings under Section 8(d), (“Residential Dwellings”);
- (d) Construction or placement of recreational improvements under Section 8(f),

- (“Recreational Structures and Improvements”); and
- (e) Construction of renewable energy and telecommunications structures and improvements under Section 8(h), (“Renewable Energy and Telecommunications Structures and Improvements”).

Such allocation of the rights in the noted sections shall not result in allowances greater than those allowed under each such section. At the discretion of Grantee, a functionally and materially equivalent Easement covering the Subdivided portion of the Property may be required and, if so, it shall be recorded immediately following its conveyance.

Lot line adjustments, which do not create additional building lots, are permitted only with the prior written permission of the Grantee, which permission shall ensure that such lot line adjustments shall not result in a material reduction in the size of the Property.

Mortgages, or other non-possessory interests in land do not constitute “Subdivision” as intended in this Section 11 herein, provided such interests encompass the whole Property or such portion of the Property for which the Grantee has approved a Subdivision as noted above.

{Option #2:}

The Property is currently comprised of [*specify the number of parcels*]_____ tax map parcels owned by Grantor. [Grantor shall maintain such parcels comprising the Property, and all interests therein, under unified ownership (whether joint or undivided), as though a single parcel. *{If this optional sentence is used, then the next four paragraphs are deleted, leaving the last two paragraphs as the remainder of this Section.}*]

Any division, partition, subdivision, or other legal or de facto creation of lots or parcels of any portion of the Property into separate ownership is hereafter referred to as “Subdivision” or to “Subdivide” and any portion of the Property subject to Subdivision as “Subdivided.” However, under no circumstance shall any designated Farmstead Area or any designated Rural Enterprise Area or any designated Zone for Future Farmstead Area or any designated Zone for Future Rural Enterprise Area be solely Subdivided from the Property and shall not be internally Subdivided.

With prior written permission of the Grantee, Grantor may Subdivide the Property and convey a portion of the Property to a new owner or owners. Grantor’s request for permission to Subdivide will be governed by the provisions set forth in Section 16 (“Permission of Grantee”) of this Easement and the provisions of this Section. In addition, Grantee shall grant such permission only if Grantee determines that the Subdivision: (a) is for agricultural purposes; (b) is compatible with the Purpose of this Easement; (c) will not diminish or substantially impair the agricultural viability of the Property; and (d) shall ensure that all parcels of land thereby created will remain Viable Agricultural Land either individually, or as part of an established Farm Operation. Any such Subdivision shall not include the right to construct, place or relocate any structures on the Property, 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 Subdivision also must comply with all

applicable local, state or federal regulations, and any Subdivided parcels shall be subject to the terms of this Easement.

In the event that any Subdivision of the Property is approved by the Grantee, any portion of the Property so Subdivided shall remain subject to this Easement and approval by the Grantee must allocate to the Subdivided portion of the Property any portion of the following rights then remaining which are to be applied to the Subdivided portion:

- (a) Construction of Impervious Surfaces as set forth in Section 8(a) (“Impervious Surfaces”);
- (b) Construction or placement of agricultural structures and improvements under Section 8(c), (“Agricultural Structures and Improvements”);
- (c) Construction or placement of Residential Dwellings under Section 8(d), (“Residential Dwellings”);
- (d) Construction or placement of recreational improvements under Section 8(f), (“Recreational Structures and Improvements”); and
- (e) Construction of renewable energy and telecommunications structures and improvements under Section 8(h), (“Renewable Energy and Telecommunications Structures and Improvements”).

Such allocation of the rights in the noted sections shall not result in allowances greater than those allowed under each such section. At the discretion of Grantee, a functionally and materially equivalent Easement covering the Subdivided portion of the Property may be required and, if so, it shall be recorded immediately following its conveyance.

Lot line adjustments, which do not create additional building lots, are permitted only with the prior written permission of the Grantee, which permission shall ensure that such lot line adjustments shall not result in a material reduction in the size of the Property.

Mortgages, or other non-possessory interests in land do not constitute “Subdivision” as intended in this Section 11 herein, provided such interests encompass the whole Property or such portion of the Property for which the Grantee has approved a Subdivision as noted above.

{Option #3:}

[The Property is currently comprised of [portions of]_____ (___) tax map parcels owned by Grantor which are grouped into _____ (___) Agricultural Units, being Agricultural Units ___ and ___ as depicted on the Easement Map (“Exhibit B”). Except as provided by this Section, each separate Agricultural Unit must remain, as a whole, in unified ownership, which may be joint or undivided, but without division, partition, subdivision, or other legal or de facto creation of lots or parcels of any portion of an Agricultural Unit into separate ownership.

Any division, partition, subdivision, or other legal or de facto creation of lots or parcels of any portion of an Agricultural Unit into separate ownership is hereafter referred to as “Subdivision” or to “Subdivide” and any portion of an Agricultural Unit subject to Subdivision as “Subdivided”.

However, under no circumstance shall any designated [Zone for Future Farmstead Area or any designated Zone for Future Rural Enterprise Area or any designated Farmstead Area or any designated Rural Enterprise Area] be solely Subdivided from the Property and shall not be internally Subdivided.

Without permission of Grantee, Grantor may convey any one or more of the Agricultural Units to a new owner or owners provided that each such Agricultural Unit is conveyed in whole. Any portion of the Property so conveyed shall remain subject to this Easement and the conveyance must specifically allocate to the conveyed Agricultural Unit any portion of the following rights then remaining which are to be applied to the conveyed Agricultural Unit:

- (a) Construction of Impervious Surfaces as set forth in Section 8 (a) (“Impervious Surfaces”);
- (b) Construction or placement of agricultural structures and improvements under Section 8(c), (“Agricultural Structures and Improvements”);
- (c) Construction or placement of Residential Dwellings under Section 8(d), (“Residential Dwellings”);
- (d) Construction or placement of recreational structures and improvements under Section 8(f), (“Recreational Structures and Improvements”); and
- (e) Construction of renewable energy and telecommunications structures and improvements under Section 8(h), (“Renewable Energy and Telecommunications Structures and Improvements”).

Such allocation of the rights in the noted sections shall not result in allowances greater than those allowed under each such section. If the conveyance does not allocate such rights, none of the rights or allowances under the noted sections will be deemed to apply to the conveyed Agricultural Unit.

However, any of the rights in the noted sections which remain after other Agricultural Units have been conveyed will be deemed to be retained by the remaining Agricultural Unit or Units regardless of whether the instrument or instruments effecting a conveyance of the remaining Agricultural Unit or Units so provides. In addition, any such rights which were allocated to an Agricultural Unit in a prior conveyance will be deemed to be retained by the conveyed Agricultural Unit in any subsequent conveyance of that Agricultural Unit regardless of whether the instrument effecting the subsequent conveyance so provides.

With prior written permission of Grantee, Grantor may Subdivide the Property and convey a portion of the Property, including a portion of an Agricultural Unit, to a new owner or owners. Grantor’s request for permission to Subdivide will be governed by the provisions set forth in Section 16 (“Permission of Grantee”) of this Easement and the provisions of this Section. In addition, Grantee shall grant such permission only if Grantee determines that the Subdivision: (a) is for agricultural purposes; (b) is compatible with the Purpose of this Easement; (c) will not diminish or substantially impair the agricultural viability of the Property; and (d) shall ensure that all parcels of land thereby created shall remain Viable Agricultural Land either individually, or as part of an

established Farm 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 Subdivision also must comply with all applicable local, state or federal regulations, and any Subdivided parcels shall be subject to the terms of this Easement.

In the event that any Subdivision of the Property is approved by the Grantee, the rights described above pertaining to Sections 8(a), (c), (d), (f) and (g) of this Easement must be allocated as part of the approval by Grantee of the proposed Subdivision. Such allocation of the rights in the noted sections shall not result in allowances greater than those allowed under each such section. At the discretion of Grantee, a functionally and materially equivalent Easement covering the Subdivided portion of the Property may be required and, if so, it shall be recorded immediately following its conveyance.

Lot line adjustments, which do not create additional building lots, are permitted only with the prior written permission of the Grantee, which permission shall ensure that such lot line adjustments shall not result in a material reduction in the size of the Property.

Mortgages or other non-possessory interests in land do not constitute Subdivision for the purpose herein, provided such interests encompass the whole Property, one or more entire Agricultural Units, or such portion of the Property for which the Grantee has approved a Subdivision as noted above.]

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.

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.

13(a). Sand and Gravel Extractive Activities.

Grantor may remove sand and gravel on the Property, provided said removal: (i) is limited and localized in impact, affecting no more than two (2) acres of the Property at one time; (ii) is compatible with the Purpose of this Easement and subordinate to the Agricultural Use of the Property; (iii) is reasonably necessary and exclusively for the Farm Operation; and (d) minimizes the impact to prime soils and soils of statewide importance.

13(b). Subsurface Minerals and Hydrocarbons.

{Choose the Subsurface Minerals and Hydrocarbons subsection clause that best fits the circumstances associated with the Property. Insert only the version of this subsection clause that you select and delete the other version from this easement. The two versions shown below are as follows: (1) Option #1 = standard clause (i.e., when no oil/gas leases exist) OR (2) Option #2 = alternative clause when oil/gas lease(s) already exist.}

{Option #1:}

Notwithstanding any facilities or activities that are duly authorized under the Federal Natural Gas Act (15 U.S.C. Sections 717-717w) pursuant to ECL Section 49-0305(3)(b), the exploration for, or development, transmission, storage and extraction of, minerals and hydrocarbons on or from the Property by any method are permitted by this Easement only under the following conditions. 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: (i) be limited and localized in impact; (ii) be compatible with the Purpose of this Easement and subordinate to the Agricultural Use of the Property; and (iii) minimize the impact to prime soils and soils of statewide importance. 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 regarding agricultural impact avoidance, mitigation and remediation for construction of those structures deemed necessary and related extractive activities.

{Option #2:}

Notwithstanding any facilities or activities that are duly authorized under the Federal Natural Gas Act (15 U.S.C. Sections 717-717w) pursuant to ECL Section 49-0305(3)(b), the exploration for, or development, transmission, storage and extraction of, minerals and hydrocarbons on or from the Property by any method are permitted by this Easement only under the following conditions. 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: (i) be limited and localized in impact; (ii) be compatible with the Purpose of this Easement and subordinate to the Agricultural Use of the Property; and (iii) minimize the impact to prime soils and soils of statewide importance. 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.

[Grantee acknowledges that the following oil and gas lease(s) encumbers the Property:

Oil and Gas Lease granted by _____ to _____ dated _____, _____, [a memorandum of]which was recorded on _____ in the _____ County Clerk's Office in Liber _____ of Deeds at Page____[, as subsequently assigned];

With regard to the above-referenced oil and gas lease, Grantor shall (in addition to the requirements set forth above):

- (i) Notify Grantee and NYSDAM prior to consenting to the location of any well site in order to give Grantee and NYSDAM an opportunity to participate in a meeting at the Property to determine a mutually agreeable location for the well site;
- (ii) Notify Grantee, NYSDAM and the local SWCD prior to a well site's reclamation and restoration to agricultural land in order to give NYSDAM and/or SWCD the opportunity to review the proposed reclamation and restoration plan, and if requested, to participate in a meeting at the Property with regard thereto;
- (iii) Following the cessation of any exploration, development, or extraction activities, assume responsibility for reclaiming and restoring that portion of the Property impacted by those activities in accordance with NYSDAM guidelines regarding agricultural impact avoidance, mitigation and remediation of such impacted areas, and any other guidelines reasonably required by Grantee, NYSDAM, and/or SWCD, including compliance with timeframes by which the work must be completed;
- (iv) Notify Grantee, NYSDAM and SWCD of the completion of any required reclamation, restoration or mitigation work set forth above and provide an opportunity for inspection of the work; and
- (v) If the work does not comply with NYSDAM guidelines regarding agricultural impact avoidance, mitigation and remediation of such impacted areas or any other guidelines reasonably required by Grantee, NYSDAM, and/or SWCD, assume responsibility for meeting those guidelines to the satisfaction of Grantee, NYSDAM and/or SWCD, at Grantor's sole expense.

Grantor shall not extend the term of the above-referenced gas lease, or in any other way modify the gas lease, without the permission of Grantee. Grantee may withhold permission if the proposed extension or modification is inconsistent, in the sole discretion of Grantee, with the criteria set

forth in this Section 13 or does not strengthen the conservation considerations as part of the gas lease. Grantor acknowledges that Grantee will require substantive revisions to the above-referenced oil and gas lease as a condition of the granting of such permission.]

14. Road Construction.

Subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), Grantor may construct, maintain and repair 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 prime soils and soils of statewide importance.

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 (i) store, compost, apply or inject agriculturally-related waste or biodegradable material; (ii) store old farm equipment to be used for parts; (iii) temporarily store trash or household waste in receptacles for periodic off-site disposal and (iv) 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 (as described in Section 5(a)) 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 when it determines that such action is 1) compatible with the Purpose of this Easement and 2) 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. State as Intervenor and Mediator Regarding Interpretation of Selected Definitions and Terms and Selected Implementation of Provisions.

Consistent with the policy of this state as contained in Section 4 of Article 14 of the New York State Constitution and as (i) articulated in Section 300 of Article 25-AA of the AML, and (ii) demonstrated by the New York State share of the consideration paid for this Easement as authorized by Section 325 of Article 25-AAA of the AML, the New York State Department of Agriculture and Markets shall perpetually retain the right to intervene on any of the matters listed below provided any such intervention or mediation shall also be specifically limited as set forth below:

- (i.) advise the Grantor and Grantee of the State's interpretation of the following specific terms and definitions contained in and as used throughout this Easement –
 - a. Agricultural Use,
 - b. Conservation Plan,
 - c. Crops, Livestock and Livestock Products,
 - d. Farm Labor Housing,
 - e. Farm Operation,
 - f. sound agricultural practices (as described in Section 5(a)), and
 - g. Viable Agricultural Land;
- (ii.) advise the Grantor and Grantee of the State's interpretation of the Purpose of this Easement; and
- (iii.) advise the Grantor and Grantee of the State's interpretation of the Grantee's proposed or demonstrated administration of the provisions of this Easement that the Department would deem as unreasonably restrictive on the Farm Operation on this Property so as to be in contravention of the purposes of Article 25-AA of the AML.

Any such intervention by the Department shall be offered and intended to serve as non-binding advice to the Grantor and Grantee in an effort to avoid potential violations of this Easement that would have arisen from either party's misinterpretation of any specific item noted above.

Furthermore, if a dispute arises between the Grantor and the Grantee concerning the consistency of

any proposed use or activity with the Purpose(s) 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 and the New York State Department of Agriculture and Markets for mediation. Within ten (10) days of such request, Grantor and Grantee shall schedule a meeting with the New York State Department of Agriculture and Markets, which will recommend potential resolutions of the dispute.

Notwithstanding anything in Section 3 (“Implementation”), nothing in this clause shall [preempt or prohibit the Grantor or the Grantee from requesting mediation pursuant to Section 23 (“Dispute Resolution”) or to otherwise] diminish Grantee’s rights under Section 22 (“Enforcement”).

19. 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.

20. 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 (the “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.

21. 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 that is mutually 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.

22. 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.

Grantee shall also be entitled to seek the following remedies in the event of a violation: 1) money damages, including damages for the loss of the resources protected under the Purpose of this Easement; and 2) 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.

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 from damage or change that could not be reasonably anticipated by Grantor or that is beyond Grantor's reasonable control and occurring without Grantor's fault or negligence, including but not limited to natural disasters such as earthquakes, hurricanes or floods or to political or social upheavals such as wars or riots.

{Grantee may insert a provision here regarding Third Party Right of Enforcement, but NYSDAM shall not accept that role in any conservation easement}

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 Purpose 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 twenty (20) 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. The actual total cost of the mediator and any reimbursable expenses of the mediator shall be divided equally between the Grantor and Grantee. For all other associated expenses (such as legal fees and witness costs), each party shall pay its own costs.

As an alternative to the mediation described above or as an initial step prior to initiating the mediation described above, either party may request mediation pursuant to Section 18 (“State as Intervenor and Mediator Regarding Interpretation of Selected Definitions and Implementation of Provisions”). However, any mediation conducted subject to Section 18 shall not preempt or prohibit the mediation allowed under this Section 23. Furthermore, nothing in this clause shall diminish Grantee’s rights under Section 22 (“Enforcement”).

24. Transfer of Easement.

Both Grantees, acting together, or any sole remaining ***{underlined part in this sentence if this Easement has co-grantees; delete all if this Easement has a single Grantee}*** 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 a “not-for-profit conservation organization” as defined by Article 49 of the ECL or a “qualified organization” under Section 170(h) of the Code or a soil and water conservation district board pursuant to Section 9 (4-a) of the Soil and Water Conservation Districts Law, provided the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. If Grantee ceases to exist or qualify under Article 49 of the ECL 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.”

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 [Cartridge] _____ of Deeds at Page [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 the then current Owner of the Property and with the approval of the New York State Department of Agriculture and Markets. Any such amendment shall be compatible with the Purpose of this Easement and shall comply with the ECL 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 AML or such successor law as enacted or amended. Any such amendment to this Easement shall be duly recorded.

27. Extinguishment of Easement.

At the mutual request of Grantor, Grantee, and the 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. 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 makes it impossible to continue use of all or such portion of the Property for the Purpose of this Easement as described in Section 2 (“Purpose”) herein, the restrictions may be extinguished as to any such portion so condemned by judicial proceeding. Upon any subsequent sale, exchange or involuntary conversion (pursuant to this Section) 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 property right has a monetary value in the event of an extinguishment or partial extinguishment or proceeds from a sale or other disposition of the Property as contemplated in Section 27 (“Extinguishment of Easement”). That monetary value is determined as follows: multiply (a) times (b), where –

- (a) = the Grantee’s Proportionate Share, and
- (b) = the value of that portion of the Property no longer encumbered by this Easement as the result of the extinguishment.

Grantee’s Proportionate Share shall be 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. For this Easement, the Grantee’s Proportionate Share is _____ percent (___%), and shall remain constant, subject only to reasonable adjustment to the extent permissible under Section 170(h) of the

Code for any improvements which may hereafter be made on the Property).

With regard to the portion of such Proportionate Share equal to that paid using State grant funds, Grantee agrees to use such portion in a manner compatible with the Purpose of this Easement. Prior to such re-use, Grantee must provide written notification to the New York State Department of Agriculture and Markets and to the _____ County Agricultural and Farmland Protection Board.

29. Interpretation.

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

30. Recitals and Exhibits Incorporated Herein.

Any and all recitals in this Easement are agreed by the parties to be accurate, are incorporated into this Easement by this reference, and shall constitute integral terms and conditions of this Easement. Any and all exhibits and addenda attached to and referred to in this Easement are hereby incorporated into this Easement as if fully set out in their entirety herein.

31. 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.

32. 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.

33. Notices.

Any notice required or desired to be given under this Easement shall be in writing and shall be sent (i) by 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: 1) if to Grantee, at the address set forth above; 2) if to Grantor, at the address set forth above; 3) if to any subsequent owner, at the address of the Property; or 4) 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.

34. 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.

35. 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.

36. Subsequent Encumbrances.

The grant of any easements or use restrictions is prohibited, except with the permission of Grantee or as authorized in Section 8(g) (“Utility Services and Septic Systems”). 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.

37. 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 hold harmless, defend, and indemnify Grantee and New York State Department of Agriculture and Markets against and 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.

38. 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.

39. 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”).

40. 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.

41. 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 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.

42. Lien Law.

This conveyance is made subject to the trust fund provisions of Section Thirteen of the New York Lien Law.

43. 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: _____

{IF a Third Party Right of Enforcement is inserted into this Easement, a signature block (and notary block) acknowledging acceptance of that role must be inserted here}

State of New York)

County of), ss:

On the ____ day of _____ in the year 20__ 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 20__ 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 20__ 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