

Recording requested by:

**DEED OF AGRICULTURAL CONSERVATION EASEMENT  
WITH PREEMPTIVE RIGHT TO PURCHASE AT RESTRICTED AGRICULTURAL VALUE**

THIS DEED OF AGRICULTURAL CONSERVATION EASEMENT WITH PREEMPTIVE RIGHT TO PURCHASE AT RESTRICTED AGRICULTURAL VALUE (this "Easement") granted this , \_\_\_\_\_ day of \_\_\_\_\_, [YEAR], by [LANDOWNER NAMES] having an address at \_\_\_\_\_ ("Landowner"), to THE AMERICAN FARMLAND TRUST, a District of Columbia nonprofit corporation, with a principal place of business at 1150 Connecticut Avenue, NW, Suite 600, Washington, DC 20036 ("Holder").

W I T N E S S E T H:

Landowner owns certain agricultural real property located generally at \_\_\_\_\_, \_\_\_\_\_ County, [STATE], comprising approximately \_\_\_ acres, more or less, (the "Property") legally described in **Exhibit A** ("Legal Description"). The Property consists of two (2) parcels identified as APNs \_\_\_\_\_ and \_\_\_\_\_, and shown on **Exhibit B** ("Map"), attached to and made a part of this Easement.

Landowner desires and has agreed to convey to Holder this Easement, a perpetual restriction on the use which may be made of the Property in furtherance of the preservation of the Conservation Values (as defined below) of the Property.

The Property contains significant "Conservation Values", including active agricultural land with productive agricultural soils, open space, scenic values, forestland, water resources, and relatively natural habitat for plants and animals.

It is the mutual intention of Landowner and Holder that the Conservation Values of the Property be preserved and maintained, and Landowner intends to convey to Holder hereby the right to preserve and protect the Conservation Values of the Property in perpetuity.

In furtherance of the preservation and protection of the Conservation Values, it is the mutual intention of Landowner and Holder that the Property be forever used and managed pursuant to a holistic, systems approach to

agricultural production which protects and promotes the health of the agricultural and natural resources of the Property (such as soil health, air and water quality, biodiversity, and habitat) and endeavors to maximize the environmental benefits from agricultural systems, rather than just reducing harms.

Further, Landowner and Holder recognize the need to ensure farmers have access to affordable, quality farmland so that farmland remains available for agricultural use, rather than acquired by non-farmers and taken out of production, thereby driving up the price for farmland so that many farmers are no longer able to afford to begin, continue, or pass on farms to the next generation, resulting in a decline in farming or development of the land for other non-agricultural uses.

In furtherance of the preservation and protection of the Conservation Values, it is the mutual intention of Landowner and Holder that the Property forever continue in active commercial agricultural use and to forever ensure the availability of the Property for continued, active commercial agricultural use by enabling transfer of the Property at a restricted market value assuming its highest and best use is commercial agricultural production, so that the Property remains owned or used by, and affordable to, individuals actively engaged in agriculture on the Property.

Holder is a publicly supported, tax exempt organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), as that section may be amended from time to time, and in the regulations promulgated thereunder. Holder is eligible to hold conservation easements under [STATE CONSERVATION EASEMENT ENABLING STATUTE] as a nonprofit corporation among whose purposes include retaining or protecting the natural, scenic or open space values of real property and assuring the availability of real property for agricultural use. Holder maintains a Stewardship Fund for the legal defense of this Easement and the protection of the Conservation Values of the Property.

NOW, THEREFORE, in consideration of the facts recited above, the mutual covenants, terms, conditions and restrictions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned parties, and pursuant to the laws of the State of [STATE] and in particular [STATE CONSERVATION EASEMENT ENABLING STATUTE], the parties agree as follows:

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

Landowner hereby voluntarily grants and conveys to Holder, and Holder hereby voluntarily accepts, a perpetual conservation easement, an immediately vested interest in real property defined by [STATE CONSERVATION EASEMENT ENABLING STATUTE] of the nature and character described herein. Landowner will neither perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Landowner authorizes Holder to enforce these covenants in the manner described below.

### *2. Statement of Purpose*

The Property consists primarily of active, productive agricultural land. The majority of the soils on the Property have been classified as "prime farmland" or as "farmland of statewide importance" by the Natural Resources Conservation Service, U.S. Department of Agriculture. The primary purpose of this Easement is to protect the agricultural soils, agricultural viability, and agricultural productivity of the Property, and to assure the availability of the Property for agricultural use, in perpetuity. In furtherance of the purposes of this Easement, this Easement (i) requires the use of agricultural practices which, over time, are intended to enhance soil health, conserve soils, conserve and promote clean water, promote air quality and support biodiversity; (ii) requires the continued active commercial agricultural use of the Property; and (iii) includes a preemptive right to purchase at restricted agricultural value which limits the transfer of the Property to transfers at its restricted fair market value and promotes the affordability for, and ownership or use by, individuals actively engaged in agriculture on the Property. No activity which shall significantly impair the actual or potential use of the

Property for agricultural production shall be permitted. To the extent that the preservation and protection of the additional Conservation Values of the Property referenced above is consistent with the primary purpose of protecting the agricultural soils, viability, productivity, and availability of the Property in perpetuity, it is also the purpose of this Easement to protect those additional Conservation Values of the Property, and to such extent, no activity which shall significantly impair those additional Conservation Values of the Property shall be permitted.

### *3. Rights and Responsibilities Retained by Landowner; Inconsistent Uses Prohibited*

Landowner reserves all customary rights and privileges of ownership, including the rights to sell, lease, and devise the Property, as well as any other rights consistent with the Statement of Purpose set forth in Paragraph 2 above and not specifically prohibited or limited by this Easement. Unless otherwise specified below, nothing in this Easement shall require Landowner to take any action to restore the condition of the Property after any act of God or other event over which Landowner had no control. Nothing in this Easement relieves Landowner of any obligation with respect to the Property or restriction on the use of the Property imposed by law.

Notwithstanding the forgoing, no use shall be made of the Property, and no activity permitted thereon which, in the reasonable opinion of the Holder, is or is likely to become inconsistent with this Easement or will materially diminish the Conservation Values of the Property.

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

Landowner retains the right to use the Property for agricultural use and production, or to permit others to use the Property for agricultural use and production, in accordance with applicable law and Paragraph 5 below.

As used herein, “agricultural use” or “agricultural production” is defined to include (a) the production for commercial purposes of grains, vegetables, fruits, seeds, nuts, flowers, and other plant products; mushrooms; aquatic produce including fish and shellfish; livestock and their products; bees and their products; and poultry and their products; (b) the production for commercial purposes of field crops and forage; (c) the production for commercial purposes of nursery stock to be removed and planted elsewhere; (d) commercial boarding, stabling, raising, feeding, grazing, exercising, riding, and training horses and instructing riders. Agricultural use shall include the processing or retail marketing of these crops, livestock and livestock products, and nursery products (consistent with the building limitations in Paragraph 12 of this Easement), if more than fifty percent (50%) of those processed or merchandised products are produced by the farm operator.

### *5. Agricultural Practices Management Plan*

All agricultural and other uses of the Property shall be conducted in accordance with an Agricultural Practices Management Plan (the “Plan”). The Plan will be developed by Landowner in consultation with, and subject to approval of, Holder. Holder may rely on the approval or development of the Plan by a certified technical service provider or local, state or federal government agency or similar entity. The Plan will guide the use and management of the Property and will encourage a holistic, systems approach to agricultural production and other uses of the Property permitted under this Easement.

The Plan shall include practices which, over time, are intended to (i) enhance soil health, conserve soils, and sequester carbon; (ii) conserve and promote the efficient use of water and energy; (iii) minimize waste; (iv) improve air quality; (v) support biodiversity; (vi) minimize adverse impacts of agricultural chemicals to agricultural resources and the environment; (vii) increase resilience to climate and environmental stressors; and (viii) produce abundant healthy food for animals or humans.

The Plan will address, at minimum, the following: (i) agricultural soils management and enhancement; (ii) non-productive land, including field edges, wetlands, scrub and shrub areas, land under and around structures, access roads; (iii) weed/invasive and pest management; (iv) water resources, including soil water retention, irrigation water management, drainage management and improvement; (v) wildlife habitat; (vi) crop placement and rotation; (vii) grazing management; and (viii) forested areas.

Landowner and Holder will develop a Plan as soon as reasonably practicable following the recording of this Easement. A copy of the Plan as approved by Holder shall be kept with Holder's records. The Plan may be updated from time to time to address changes in agricultural production and to include improved farming methods or techniques that may emerge as practical or desirable in the future. Any revised Plan shall endeavor to result in equal or greater outcomes for the agricultural and natural resources of the Property as provided under any previous Plan, provided however that Holder may temporarily approve less favorable practices which do not significantly impair the long-term protection of the agricultural and environmental resources to the extent necessary to maintain the economic and functional viability of the Property for agricultural uses. Landowner and Holder shall at a minimum review and update the Plan every 10 years and in the event of change of ownership of the Property. An amendment or update to the Plan does not constitute an amendment to this Easement.

#### *6. Affirmative Covenant to Actively Farm*

This Easement requires the Landowner to continuously use the Property for Productive Agricultural Use (as defined below) in accordance with the terms and provisions of this Paragraph. These "Affirmative Farming Covenants" are an integral part of this Easement and constitute an affirmative obligation assuring the availability of real property for agricultural use and a right and interest in real property that runs with the land. If Landowner fails to continuously use the Property for Productive Agricultural Uses, Holder shall have the right to lease the Property in accordance with the terms and provisions of this Paragraph 6 in order to restore, prepare and maintain the Property for Productive Agricultural Uses. These Affirmative Farming Covenants advance the purpose of this Easement and specifically support assuring the availability of farmland for agricultural use, the agricultural viability of the Property, and the continued active, commercial agricultural use of the Property by ensuring the Property remains available for Productive Agricultural Use. These Affirmative Farming Covenants shall be perpetual in duration and are made on the following terms and conditions:

(a) Productive Agricultural Uses of the Property Required. The Property shall be continuously used for Productive Agricultural Use. Productive Agricultural Use means a level of commercial agricultural use that is reasonably appropriate to the capacity of the Property, taking into consideration reasonable crop rotation and fallowing practices intended to mitigate the incidence of pathogens and pests, and to improve soil health, structure, and fertility and which are consistent with the Plan. For purposes of this paragraph, the temporary enrollment (in no event to exceed fifteen (15) consecutive years) of the Property, or a portion thereof, in a federal- or state-sponsored program (such as the Conservation Reserve Program) to reduce soil erosion, enhance water supply through groundwater recharge, improve water quality, increase wildlife habitat, or reduce damage caused by floods and other natural disasters shall be deemed consistent with Productive Agricultural Use.

(b) Failure to Use the Property for Productive Agricultural Uses. Holder shall notify Landowner if the Property is not being used for Productive Agricultural Use for a period of two (2) consecutive years. If Landowner fails to use the Property, or cause the Property to be used (for example, by leasing the Property to a Qualified Farmer as defined below), for Productive Agricultural Use, or fails to demonstrate extenuating circumstances to the satisfaction of Holder which prevent Landowner from using the Property, or causing the Property to be used, for Productive Agricultural use before the date that is six (6) months following such notice, Holder may lease the Property from Landowner on the terms set forth below, which shall be reflected in a written lease to be prepared by Holder and executed by both parties, to restore, prepare and maintain the Property for Productive Agricultural Use. Landowner hereby constitutes and appoints Holder as Landowner's true and

lawful attorney-in-fact for Landowner and in Landowner's name to execute, acknowledge and deliver said lease as the act and deed of Landowner. The lease shall contain substantially the following terms and conditions:

- (i) The term of the lease shall be for not less than two (2) years and not more than five (5) years.
- (ii) Holder may sublease the Property to a Qualified Farmer (as defined below) for Productive Agricultural Use.
- (iii) Holder shall pay over to Landowner as rent one-half of any rental income received by Holder on account of any such sublease, after deducting therefrom any reasonable expenses incurred by Holder in connection therewith, and no other rent shall be due. Holder shall be under no obligation to maximize the rental income generated from the Property.
- (iv) Landowner shall continue to be solely responsible for the upkeep, maintenance, repair and replacement all fixtures, facilities, equipment and improvements on the Property ("Improvements"). Landowner will maintain said Improvements in their condition existing as of the date of the commencement of the lease. In the event that Landowner fails to make a required repair or replacement of an improvement in a timely manner, Holder may make such repair or replacement, and in such event the actual cost incurred by Holder in making such repair shall be payable by Landowner and may be deducted from any payments of rent due hereunder.
- (v) Landowner shall maintain a comprehensive all-risk casualty and fire insurance policy covering all improvements at their full value, with a deductible of not less than \$1,000,000 and shall deliver a copy of said insurance policy to Holder. If, in the reasonable opinion of an insurance broker retained by Holder, the amount of insurance coverage at that time is not adequate, Landowner shall increase the liability limit of the insurance coverage as reasonably recommended by Holder's insurance broker. In the event that Landowner fails to maintain such insurance, Holder may do so; and in such event the actual cost incurred by Holder in maintaining such insurance shall be payable by Landowner and may be deducted from any payments of rent due hereunder.
- (vi) The lease shall include such other terms acceptable to Holder in Holder's sole discretion as may be reasonable or customary for agricultural leases in [COUNTY].

#### *7. Preemptive Right to Purchase at Restricted Agricultural Value*

Holder shall have a preemptive right to purchase the Property at its restricted agricultural value in accordance with the terms and provisions of this Paragraph 7 (this "Preemptive Right"). This Preemptive Right is an integral part of this Easement and constitutes a restriction and a right and interest in real property that runs with the land. This Preemptive Right advances the purpose of this Easement and specifically supports assuring the availability of real property for agricultural use, the agricultural viability, and continued active commercial agricultural use of the Property by ensuring transfer of the Property at its restricted fair market value assuming its highest and best use, pursuant to the restrictions and covenants of this Easement, is commercial agricultural production. This Preemptive Right shall be perpetual in duration and is granted on the following terms and conditions:

- (a) Preemptive Right Trigger. Landowner shall not sell, transfer or convey the Property, in whole or in part, without first offering the Property for sale to Holder pursuant to this Paragraph 7.
- (b) Exceptions to Preemptive Right Trigger. Notwithstanding the foregoing in Paragraph 7(a) above, the following described transactions shall not trigger Holder's rights under this Preemptive Right:

(i) Any mortgage, pledge, or other assignment of the Property to a lender as security for indebtedness, provided the total indebtedness secured by all such mortgages, pledges, or other assignments is not greater than the Purchase Price which would be determined under Paragraph 7(e) below, and further provided Holder's interest under this Preemptive Right is treated as an interest in real estate such that in the event of foreclosure Holder is deemed a necessary party defendant in such foreclosure case and has the right to redeem the Property from the foreclosure action;

(ii) Any conveyance by Landowner to Landowner's Family, as defined below, by gift, inheritance, sale or other transfer provided any consideration paid for such transfer is not greater than the Purchase Price which would be determined under Paragraph (e) below. The term "Landowner's Family" means: (i) Landowner's spouse, (ii) Landowner's children, together with any of their spouses (iii) Landowner's grandchildren, (iv) Landowner's siblings, together with any of their spouses and children; (v) a corporation, partnership, or other legal entity which is wholly owned and controlled by Landowner, Landowner's Family members as defined in (i) – (iv) above; or (vi) a trust of which Landowner's Family members are the sole beneficiaries;

(iii) Any conveyance of the Property to a person who presently earns at least one-half of his or her annual gross income from the "business of farming," as that term is defined in Regulation 1.175-3 issued under the Internal Revenue Code of 1986 and who, in connection with the farming operations on the Property, will continue to earn at least one-half of his or her annual gross income from the "business of farming" (a "Qualified Farmer"), provided any consideration paid for such transfer is not greater than the Purchase Price which would be determined under Paragraph (e) below;

(iv) Any lease of the Property or any portion thereof to a Qualified Farmer (or any series of leases or subleases or similar arrangements that result in a Qualified Farmer farming and controlling the agricultural uses of the Property); or any lease of the Property or any portion thereof to any other party having a term of three (3) years or less, including renewal rights; provided, however, that any such lease shall expressly provide that, unless otherwise agreed by Holder, the lease shall terminate and possession shall be delivered free and clear of any rights of the tenant upon a closing of the sale of the Property following exercise of this Preemptive Right; and

(v) Any conveyance of the Property to an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, the purposes or powers of which include protecting and promoting the agricultural use and viability of agricultural land and promoting the affordability of such lands for use by individuals and entities actively engaged in agriculture, and which has the capacity to ensure the continued agricultural use of the Property, provided any consideration paid for such transfer is not greater than the Purchase Price which would be determined under Paragraph 7(e) below.

This Preemptive Right shall apply to all other sales and conveyances of the Property, including any sale or conveyance of any interest in the Property including any conveyance by, or conveyance of any interest in a corporation, limited liability company, partnership or other holding entity.

In the event of any intended or proposed sale, mortgage, or lease of the Property, Landowner shall notify Holder and shall give notice of this Easement, generally, and this Preemptive Right, specifically, to any other party to the proposed transaction.

(c) Notice of Intent to Sell. Whenever Landowner receives an offer that Landowner intends to accept (or that Landowner accepts subject to Holder's rights under this Preemptive Right) from a person or persons ("Buyer") to purchase or lease for a term in excess of three (3) years, including renewal rights (except as provided herein), all or any

part of the Property including an offer involving property other than the Property (the "Offer"), and Landowner accepts the Offer subject to this Preemptive Right, Landowner shall deliver to Holder a "Notice of Intent to Sell", which notice shall include, at a minimum:

(i) A complete duplicate of the Offer, together with such other instruments as may be required to show the bona fides of the Offer; and

(ii) A written description of the Buyer's training and experience as an agricultural producer and an agricultural business plan for the Property, including a description of the agricultural activities to be conducted or facilitated by Buyer, proposed improvements to the Property, and a statement of anticipated agricultural income and expenses for the three-year period following Buyer's acquisition of the Property or, if Buyer has no such training and experience or intention of operating an agricultural business on the Property, a written statement to that effect; and

(iii) If the Buyer is purported to be a Qualified Farmer or family member, the documents necessary to establish the Buyer as such, including the Buyer's most recent federal income tax filing, if applicable; and

(iv) Landowner's current mailing address.

Holder may request and Landowner shall promptly provide additional information from Landowner to assist Holder in its review of the offer, its review of whether its rights have been triggered under this Preemptive Right, and its decision as to whether to exercise the Preemptive Right.

Information delivered to Holder pursuant to this clause shall remain confidential and shall not be released to any person or entity not a party to this Easement, without the prior consent of Landowner.

(d) Exercise of Preemptive Right. This Preemptive Right may be exercised by Holder as follows:

(i) Holder shall give written Notice of Intent to Exercise not more than thirty (30) days following receipt of the Notice of Intent to Sell described in Paragraph 7(c); failure by a Holder to provide such Notice of Intent to Exercise shall constitute a waiver of its rights under this Preemptive Right; and

(ii) Thereafter, Landowner and Holder shall fix the purchase price for the Property by establishing a Price Agreement in the manner described in Paragraph 7(e), below.

(iii) Holder shall exercise this Preemptive Right by giving written Notice of Intent to Purchase not more than thirty (30) days following Landowner's and Holder's establishment of the Price Agreement.

Notices required by this Paragraph 7(d) shall be delivered to Landowner in the manner provided for in Paragraph 35 below.

(e) Purchase Price. The purchase price (the "Purchase Price") for the Property shall be determined by mutual agreement of Landowner and Holder. If no such agreement can be reached within ten (10) business days, the Purchase Price shall be determined as follows:

(i) *Land, Existing Residential Dwelling, and Existing Agricultural Structures*. The Purchase Price of the land, any single-family residence and accessory structures and improvements thereto existing as of the date of the Easement and in existence as of the date of the Offer (as such structures may have been repaired, enlarged,

or replaced), and any and any agricultural structures existing as of the date of the Easement and in existence as of the date of the Offer (as such structures may have been repaired, enlarged or replaced), shall be:

\$\_\_\_\_\_ plus an inflation adjustment determined by multiplying the foregoing value by 1 (one) plus the fractional increase calculated from the date hereof in the Consumer Price Index for all Urban Consumers, \_\_\_\_\_ Region, All Items published by the Bureau of Labor Statistics, U.S. Department of Labor, or a successor index published by the United States government to the date of the Offer, provided however, that such adjusted amount shall not exceed an amount equal to 125% of the then-current fair market value of the land assuming its highest and best use is commercial agricultural production commonly occurring within the market area where the Property is located on the date of the Offer, as may be determined by mutual agreement of Landowner and Holder or, if no such agreement is reached, by an appraisal.

(ii) Subsequent Agricultural, Forestry or Minor Incidental Structures. With respect to any agricultural, forestry or minor incidental structures and improvements constructed or placed on the Property after the date of this Easement and in existence as of the date of the Offer (the "Additional Structures"), then in addition to the value determined under Paragraph 7(e)(i), the Purchase Price shall also include the value of such Additional Structures. Such value shall be:

determined by a disinterested appraiser using the replacement cost approach to valuation (i.e., the cost to replace the structures and improvements with those of comparable size and utility, less depreciation and functional obsolescence), provided however, that the value of the Additional Structures shall not exceed an amount equal to 125% of the contributory value of such structures and improvements as determined by the appraiser.

All appraisals to be conducted under this Paragraph 7(e) shall be performed by a duly licensed appraiser with experience in the appraisal of agricultural real estate in the geographic area where the Property is located. The appraisal shall be conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP), or any successor standard in effect at such time, and shall take into consideration the permitted and restricted uses set forth in, and the impact on fair market value caused by, this Easement. The appraiser shall be mutually selected by Landowner and Holder, such selection not to be unreasonably withheld, delayed, or conditioned by either party, with the expense of such appraisal divided equally between Landowner and Holder.

Landowner and Holder shall establish the Purchase Price by either entering into a written agreement (a "Price Agreement") fixing the Purchase Price as provided in this Paragraph 7(e), within ten (10) business days of reaching mutual agreement or, if no such agreement is reached, the Purchase Price shall be based upon the values determined in accordance with Paragraphs 7(e)(i) and (ii) which shall be the Purchase Price unless another Purchase Price is mutually agreed upon in writing by the parties within ten (10) business days after the last party's receipt of the appraisals. The passage of said ten business days shall constitute the effective date of establishing the Purchase Price. In any event, the parties shall cooperate in good faith to establish a Purchase Price and Price Agreement within ninety (90) days from the Notice of Intent to Exercise given by Holder.

(f) Entry onto the Property. After receiving the Notice of Intent to Sell, and upon reasonable notice to Landowner, Holder and its agents shall have the right to enter upon the Property from time to time for the purpose of considering whether to exercise the Preemptive Right and preparing for the purchase and disposition of the Property, including but not limited to preparing appraisals, conducting soils tests or engineering studies, advertising, showing prospective buyers or assignees, or obtaining other information about the Property. Holder's entry onto or testing of the Property shall be conducted in a manner that minimizes any disturbance to the land and to the use and enjoyment of the



Property by Landowner or any tenants in possession.

(g) Closing of the Purchase. If this Preemptive Right is exercised, the parties shall close on the sale on or before thirty (30) days from the delivery of the Notice of Intent to Purchase described in Paragraph 7(d)(iii), above, unless otherwise agreed. The following conditions shall apply to said closing:

(i) Landowner shall, by [STATE] Warranty Deed, deliver good, clear, record and marketable title to Holder, free of all liens or other encumbrances, other than those existing and in force and effect as of the date of recording of this Easement (and specifically including discharge or release of outstanding mortgages), sufficient for Holder to secure title insurance at Holder's sole expense. Holder agrees to accept title subject to (i) customary utility distribution easements, (ii) rights of the public to use roads laid out by municipalities, the state or federal government, (iii) rights of way and other easements that do not, in Holder's opinion, materially impair beneficial use of the Property; and (iv) the terms and conditions of this Easement. The state of title to the Property shall be determined by a title examination and a survey of the easements and rights-of-way if required for title insurance purposes, both of which shall be paid for by Holder.

(ii) Landowner agrees to use reasonable efforts to deliver marketable title as set forth in Paragraph 7(g)(i), above. In the event Landowner is unable to convey marketable title, then Holder may elect to terminate its exercise of this Preemptive Right. Holder shall have the right to elect to accept such title as Landowner can deliver and to pay the purchase price without reduction.

(iii) Landowner agrees to obtain at Landowner's sole expense any and all permits and approvals required under law or regulation for the conveyance of the Property to Holder under this Preemptive Right. The parties shall extend the closing date as necessary to enable Landowner to obtain all such final permits and approvals.

(iv) Landowner will represent to Holder that as of the date of the exercise of the Preemptive Right and through to the closing, to the best of Landowner's knowledge, either that Landowner is not aware of any hazardous waste having been dumped or placed upon the Property in violation of applicable laws during its ownership thereof, which has not been previously remediated, or that Landowner is aware of such dumping or placing occurring, in which case Landowner shall state specifically any knowledge it has regarding such dumping or placing. Landowner will update this representation in writing, to the extent it remains true, upon Holder's delivery of the Notice of Intent to Exercise described in Paragraph 7(d)(i), above and through to the closing. Such updated representation shall be as of the date of the delivery of the Notice of Intent to Exercise and the closing. Landowner agrees that Holder may, at Holder's expense, perform any and all tests or inspections necessary to confirm these representations. In the event that Holder discovers that hazardous wastes have been dumped or placed upon the Property, Holder may at Holder's option declare its exercise of this Preemptive Right to be null and void.

(v) Landowner will represent to Holder that as of the date of the exercise of the Option and through to the closing, to the best of Landowner's actual knowledge, there are no violations of any laws and Landowner has not received any notices of same from any governmental authority, which have not been previously remediated, and shall state specifically any knowledge it has regarding same. Landowner will update this representation in writing, to the extent it remains true, upon Holder's delivery of the Notice of Intent to Exercise described in Paragraph 7(d)(i) above and through to the closing. Such updated representation shall be as of the date of the delivery of the Notice of Intent to Exercise and the closing. Landowner agrees that Holder may, at Holder's expense, perform any and all tests and/or inspections necessary to confirm these representations. In the event that Holder discovers violations, Holder may at Holder's option declare its exercise of this Option to be null and void.

(vi) Landowner and Holder shall prorate property taxes, and any utility charges and other similar costs, as of the date of closing.

(vii) Landowner shall not physically alter the Property or the improvements on the Property or enter into any lease after Holder delivers the Notice of Intent to Exercise provided in Paragraph 7(d)(i), above, except to perform generally accepted agricultural practices and normal repairs. In the event any structure is substantially destroyed by fire or other casualty, Holder may elect to (1) proceed to closing and accept the proceeds of any insurance policy Landowner may have with respect to such destruction; or (2) if such insurance proceeds are less than the value of the structure as determined under Paragraph 7(e), above, proceed to closing and accept the proceeds of said insurance policy and reduce the purchase price by the difference between such value and insurance proceeds; or (3) withdraw its election to exercise this Preemptive Right.

(viii) The Property shall be conveyed free of all leases, tenancies, and occupants, unless Holder otherwise agrees in writing.

(ix) Unless otherwise mutually agreed upon by Landowner and Holder, all personal property, livestock, machinery and equipment not included in the sale shall be removed from the Property, and all other waste and debris shall be removed from the Property prior to closing. Landowner and Holder will jointly inspect the Property twenty-four (24) hours prior to closing.

(x) After closing, this Preemptive Right shall remain in full force and effect with respect to all subsequent conveyances of the Property, except as identified in Paragraph 7(b), above.

(h) Partial Release of Preemptive Right. At the request of Landowner, Holder shall execute a partial release of its rights under this Preemptive Right with respect to a particular Offer and Notice of Intent to Sell given by Landowner to Holder (the "Partial Release"), and upon the first to occur of the following events, Holder shall immediately deliver for recording the Partial Release to the [COUNTY] Register of Deeds for recording:

(i) Holder's failure to deliver the Notice of Intent to Exercise as described in Paragraph 7(d)(i), above;

(ii) Holder's failure to deliver the Notice of Intent to Purchase as described in Paragraph 7(d)(iii), above;

or

(iii) Holder's election to terminate its exercise of this Preemptive Right based on title defects as provided in Paragraph 7(g)(ii), hazardous materials as provided in Paragraph 7(g)(iv), violations of law as provided in Paragraph 7(g)(v), or destruction of structures as provided in Paragraph 7(g)(vii).

Should Holder not exercise this Preemptive Right as provided in Paragraph 7(d), above, or should Holder fail to close following its delivery of the Notice of Intent to Purchase, Landowner may proceed to close on the sale to the Buyer on the terms and conditions described in the Notice of Intent to Sell, within twelve (12) months of the delivery of said Notice to Holder. Provided, however, this Preemptive Right shall remain in full force and effect with respect to all subsequent conveyances of the Property, except as identified in Paragraph 7(b) above.

(i) Partial Assignment by Holder. Holder may partially assign its rights under this Preemptive Right with respect to the particular Offer and Notice of Intent to Sell given by Landowner to Holder, provided:

(i) No such assignment shall be made prior to Landowner and Holder establishing the Price Agreement

described in Paragraph 7(e), above;

(ii) Such assignment shall be in writing, with the assignee undertaking to discharge all obligations of Holder with respect to purchase of the Property, and a copy of the written assignment shall be delivered to Landowner;

(iii) The assignee shall be a party which, in the reasonable opinion of Holder, will use or will facilitate the use of the Property for commercial agricultural production; and

(iv) The partial assignment shall pertain only to a single exercise of this Preemptive Right in response to a discrete Notice of Intent to Sell delivered to Holder. While no consent of Landowner shall be required for said single exercise, Holder shall not otherwise assign all of its rights and interests under this Preemptive Right without the prior written consent of Landowner.

#### *8. Right to Privacy*

Landowner retains the right to privacy and the right to exclude any member of the public from trespassing on the Property.

#### *9. Right to Use the Property for Customary Rural Enterprises*

Landowner retains the right to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, processing, packaging and marketing of farm products; farm machinery repair; sawmills; and firewood distribution; provided such uses are confined to locations within the Farmstead Area (as defined below) or are otherwise permitted by Holder's written approval pursuant to Paragraph 11.

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

Landowner retains the right to use the Property for otherwise lawful recreational uses, including, but not limited to, hunting and fishing, provided that those activities are consistent with the primary purpose of this Easement.

#### *11. Permission of Holder*

Where Landowner is required to obtain Holder's permission or approval for a proposed action hereunder, said permission or approval (a) shall not be unreasonably delayed by Holder, (b) shall be sought and given in writing, and (c) shall in all cases be obtained by Landowner prior to Landowner's taking the proposed action. Holder shall grant permission or approval to Landowner only where Holder, acting in Holder's sole reasonable discretion and in good faith, determines that the proposed action will not substantially diminish or impair the Conservation Values of the Property. Holder shall not be liable for any failure to grant permission or approval to Landowner hereunder.

#### *12. Procedure to Construct Buildings and Other Improvements*

Except as otherwise provided herein, Landowner may undertake construction, reconstruction, or other improvement of the Property only as provided in subparagraphs 12(a) through (j), inclusive. Landowner shall advise Holder prior to undertaking any construction, reconstruction or other improvement of single-family dwellings or recreational improvements on the Property as permitted herein, so as to enable Holder to review the proposed activity for compliance

with the terms hereof.

(a) *Building Areas* – One (1) two and one-half (2 ½)-acre Farmstead Area (the “Farmstead Area”) is designated and depicted in **Exhibit B**, attached to and made a part of this Easement.

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

(c) *Existing Agricultural Structures & Improvements* – Existing agricultural structures and improvements may be repaired, reasonably enlarged and replaced at their current locations, which are shown on Exhibit B or the Present Condition Report (defined in Paragraph 24 below).

(d) *New Agricultural Structures & Improvements* – With the exception of minor agricultural structures which are insubstantial, portable or temporary in nature and do not have fixed foundations (such as, but not limited to, an animal run-in shelter) and irrigation systems pursuant to subparagraph 12(k) below, new buildings and other structures and improvements to be used primarily for agricultural production and not to be used for any dwelling or agricultural employee housing may be built on the Property within the Farmstead Area. Any other buildings and other structures and improvements to be used primarily for agricultural purposes to be located outside the Farmstead Area may only be built, constructed, erected, installed or placed with the permission of Holder pursuant to Paragraph 11 if Holder also determines both of the following: (i) the building, structure, or improvement shall be used for agricultural uses; (ii) the building or improvement cannot be reasonably be accommodated within the Farmstead Area; and (iii) the total footprint of all buildings, structures, and improvements located outside of the Farmstead Area will not exceed 0.5 acres, which is approximately 2% of the acreage of the Property. “Footprint” is defined as the total area of the land occupied by a structure, calculated on the basis of the exterior dimensions of the outermost perimeter walls or bounds of the structure whether at ground level or above, and does not include, underground utilities, roadways, or fences. As of the date of this Easement, the total footprint of all buildings, structures, and improvements located outside of the Farmstead Area is zero (0) acres.

(e) *Agricultural Housing* – New agricultural housing to house owners, operators, employees, and laborers may be constructed or placed on or within the Farmstead Area. New agricultural housing proposed for locations outside the Farmstead Area may be built only with the permission of Holder. In addition to the requirements of Paragraph 11, Holder may grant permission only if it determines in its sole reasonable discretion and in good faith that (i) the agricultural housing cannot be accommodated within the Farmstead Area; (ii) the agricultural housing is necessary to sustain a viable agricultural operation; (iii) the agricultural housing, including associated improvements and access roads, will not be located on land that is “well-suited to agricultural production”, which land has been identified in the Present Condition Report (defined in Paragraph 24 below); (iv) is consistent with the Agricultural Management Plan; and (v) the total footprint of agricultural housing located outside of the Farmstead Area will not exceed two thousand (2,000) square feet.

(f) *Existing Residential Dwelling* – There is one (1) existing single-family residential dwelling with accessory structures. Such residential structures are located in the Farmstead Area and depicted in Exhibit B and identified in the Present Condition Report (as defined in Paragraph 24 below). Such residential structures may be repaired, enlarged or replaced entirely within the Farmstead Area. Reasonable accessory structures for such residential dwelling such as garages and sheds, may and shall be built entirely within the Farmstead Area.

(g) *Existing Recreational Improvements* – All existing recreational improvements may be repaired, reasonably enlarged or replaced at their current locations, as depicted in Exhibit B or identified in the Present Condition Report (defined in Paragraph 24 below).

(h) *New Recreational Improvements* – New recreational improvements may be built within the Farmstead Area. Under no circumstances shall resort structures, athletic fields, golf courses or ranges, commercial airstrips or commercial helicopter pads, or racetracks be constructed on the Property.

(i) *Utility Services and Septic Systems* – Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services solely to and serving the improvements permitted herein, including any and all presently existing or future improvements to be installed in the Farmstead Area, or to transmit power to the Property, including the Farmstead Area, may be built, constructed, demolished, erected, installed, maintained, placed, repaired, removed, relocated and replaced without permission from Holder. Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Property. Renewable power generation and transmission facilities for agricultural and other permitted uses on the Property may be constructed within the Farmstead Area. Generation facilities shall be scaled to match the on-farm demand for energy. Power generated in excess of requirements on the Property may be sold to appropriate public utilities. Notwithstanding the foregoing, commercial power generation, collection, or transmission facilities, including wind or solar farms outside of the Farmstead Area, and the conveyance of any rights-of-way over, under, or on the Property for any such purpose, are prohibited. Renewable energy generation structures and facilities that are primarily for the generation of energy for the use of permitted minor agricultural structures and irrigation systems located outside of Farmstead Area, and that are not connected to the electricity utility grid, may be constructed outside the Farmstead Area.

(j) *Irrigation Systems and Facilities* – Landowner retains the right to locate, construct and maintain irrigation systems and/or facilities for agricultural production purposes on the Property, including without limitation, the right to install, remove and replace ditches, delivery systems, drip irrigation systems, drains, and stock watering facilities; and the right to repair, replace, maintain and move existing and/or historic water control and conveyance structures and the right to construct new water control and conveyance structures as necessary, including water retention basins and tail-water return systems, consistent with the Plan.

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

Landowner retains and reserves 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 Landowner does not materially impair the natural course of the surface water drainage or runoff flowing over the Property and such use is consistent with the Plan. Landowner 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 conservation purposes of this Easement and the Plan and is carried out in accordance with law. The construction of ponds and reservoirs shall be permitted only with the permission of Holder.

### *14. Water Rights*

The Property subject to this Easement includes all water and water rights, ditches and ditch rights, springs and spring rights, reservoir and storage rights, wells and groundwater rights, and other rights in and to the use of water historically used on or otherwise appurtenant to the Property (collectively, the “Water Rights”).

Landowner shall not transfer, encumber, sell, lease or otherwise separate the Water Rights for the Property or change the historic use of the Water Rights without the consent of Holder. Landowner shall not abandon or allow the abandonment of, by action or inaction, any of the Water Rights without the consent of Holder.

### *15. Subdivision and Common Ownership of the Property.*

The Property is currently comprised of multiple legal parcels, all owned by Landowner. Unless otherwise permitted by Holder, Landowner shall maintain all of the parcels comprising the Property, and all interests therein, under common ownership, as though a single legal parcel. Subdivision of any of said parcels, recording of a subdivision plan, partition of any of said parcels, or any other attempt to divide any of said parcels into two or more legal parcels without the permission of Holder is prohibited. Holder may only grant permission under this Paragraph if in Holder's sole reasonable discretion it determines that all parcels then comprising the Property will remain viable for agricultural production either individually, integrated with the farming operation on the rest of the Property, or as part of another established farming operation. Such parcels shall remain subject to this Easement.

#### *16. Application of Waste Materials*

The land application, storage and placement on the Property of domestic septic effluent and municipal, commercial or industrial sewage sludge or liquid generated from such sources for agricultural purposes may be undertaken only if in accordance with applicable law and the Plan, and only if a qualified professional environmental consultant certifies in writing that the application of said materials will not substantially diminish the viability and productivity of the agricultural soils on the Property.

#### *17. Agritourism Activities.*

Low impact, nonpermanent, agritourism activities, such as farm tours, work experiences, historic displays, field trips, petting zoos, corn mazes, and hay rides (collectively, "Agritourism Activities"), are permitted, provided that: (i) the conservation values are not substantially impaired or diminished; (ii) all parking related to the Agritourism Activities is within the Farmstead Area; (iii) uses and activities that cause significant soil degradation or erosion are prohibited; and (iv) all such uses and activities are incidental or ancillary to the primary agricultural activities permitted on the Property

#### *18. Forest Management*

Landowner reserves the right to conduct commercial forest management by silviculturally sound selective cutting and pruning methods only, and only in accordance with a forest management plan designed to achieve compliance with current best management practices and to conserve biological diversity and its associated values, water resources, soils, and unique and fragile ecosystems and landscapes, and, by so doing, maintain the ecological functions and the integrity of the forest. Examples of best management practice approaches include implementing the principles and criteria promoted by the Forest Stewardship Council and the management standards and practices promoted by the Sustainable Forestry Initiative. The forest management plan shall be consistent with, and incorporated into, the Agricultural Practice Management Plan.

Notwithstanding the foregoing to the contrary, trees may be removed, cut, and otherwise managed to prevent personal injury and property damage, for firewood for domestic use in the dwellings on the Property, and for construction of permitted improvements and fences on the Property.

Notwithstanding the foregoing to the contrary, forested areas may be cleared for the immediate conversion to, and continued use as, farmland with permission of Holder and provided such conversion and use is in accordance with the Agricultural Practices Management Plan.

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

Exploration for, or development and extraction of, minerals and hydrocarbons on or from the Property by any method is prohibited, except as otherwise provided herein. Landowner may remove sand and gravel from the Property,

provided said removal is: (a) limited and localized in impact, affecting no more than one (1) acre of the Property in the aggregate at any time; (b) not irretrievably destructive of significant conservation interests; and (c) reasonably necessary for, and incidental to, carrying out the improvements and agricultural production uses permitted on the Property by this Easement.

#### *20. Paving and Road Construction*

Landowner shall have the right within the Farmstead Area to construct parking areas and a driveway covered with concrete, asphalt, or other impervious paving material serving structures located in the Farmstead Area. No other portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, without the permission of Holder. 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 without permission from Holder.

#### *21. Dumping and Trash*

No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, waste, or radioactive or hazardous waste, shall be placed, stored, dumped, buried, burned, or permitted to remain on the Property, except as reasonably required for the use of the Property as permitted hereby, and except in accordance with applicable law. Agricultural products; agricultural chemicals (including herbicides, pesticides, fungicides, fertilizers, and other materials commonly used in farming operations); oil, fuels, and petroleum products for use in agricultural operations on the Property; agricultural byproducts; and agricultural equipment used on the Property may be stored on the Property in accordance with applicable law.

#### *22. Ongoing Responsibilities of Landowner and Holder*

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

(a) *Taxes* – Landowner shall be solely responsible for, and shall pay before delinquency, all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property by competent authority (collectively, “taxes”), including any taxes imposed upon, or incurred as a result of, this Easement. Landowner shall furnish Holder with satisfactory evidence of payment of taxes upon request. Holder may (but shall not be obligated to) make or advance any payment of taxes upon three (3) days’ notice to Landowner, in accordance with any bill, statement or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement or estimate. If Holder is ever required or elects to pay any taxes or assessments on its interest in the Property, Landowner will reimburse Holder for the same.

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

(c) *Liability and Indemnification* – Landowner shall indemnify Holder against, and hold Holder harmless from, any and all loss, cost, claim, liability, or expense (including reasonable attorneys’ fees) arising from or with respect to the Property, unless due to the gross negligence or willful misconduct of Holder. Landowner shall keep the Property insured with comprehensive general liability insurance against claims for personal injury, death and Property damage, cause Holder to be named as an additional insured party on all such insurance policies, and provide evidence of such insurance to Holder promptly upon request.

#### *23. Extinguishment of Development Rights*

Except as otherwise reserved to Landowner 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.

#### *24. Baseline Documentation*

The Conservation Values of the Property and its current use and state of improvement are described in a Present Condition Report (the "Report") prepared by Holder with the cooperation of Landowner. Landowner and Holder 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 Holder to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Holder of other evidence to establish the condition of the Property as of the date of this Easement.

#### *25. Enforcement*

Holder shall have the right to enter upon the Property upon reasonable advance notice to Landowner for the purpose of inspecting for compliance with the terms of this Easement. If Holder determines that a violation of this Easement has occurred, Holder shall so notify Landowner, giving Landowner thirty (30) days to cure the violation.

Notwithstanding the foregoing, where Holder in Holder's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the Conservation Values of the Property, Holder may bring an action to enjoin the violation, *ex parte* if necessary, through temporary or permanent injunction.

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

- (a) money damages, including damages for the loss of the Conservation Values protected by this Easement; and
- (b) restoration of the Property to its condition existing prior to such violation, including the removal of offending structures;

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, Landowner shall reimburse Holder for all its expenses incurred in preventing, stopping and correcting the violation, including, but not limited to, reasonable attorneys' fees. The failure of Holder to discover a violation or to take immediate legal action shall not bar Holder from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

#### *26. Transfer of Easement*

Holder shall have the right to transfer this Easement to any private nonprofit organization or public agency that, at the time of transfer, is a "qualified organization" under Section 170(h) of the Code and a "Holder" under [STATE CONSERVATION EASEMENT ENABLING STATUTE], provided the transferee expressly agrees to assume the responsibility imposed on Holder by this Easement. If Holder ever ceases to exist or no longer qualifies under Section 170(h) of the Code, or applicable state law, a court of competent jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibilities imposed by this Easement.

#### *27. Transfer of Property*



Landowner 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. Landowner shall notify Holder in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. Failure of Landowner to do so shall not impair the validity of this Easement or limit its enforceability in any way.

#### *28. Amendment of Easement*

This Easement may be amended only with the written consent of Holder and Landowner. Any such amendment shall be (a) consistent with the Statement of Purpose of this Easement; (b) consistent with the mission of the Holder; (c) will not affect the qualification of this Easement or the status of Holder under any applicable law; (d) will not affect the perpetual duration of this Easement; (e) will not result in a private benefit or private inurement prohibited under the Code; and (f) will be consistent with Holder's easement amendment policies in place at the time of amendment. Any such amendment shall be duly recorded.

#### *29. Extinguishment*

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 Statement of Purpose of this Easement, extinguish or modify this Easement in accordance with applicable state law, at the joint request of both Landowner and Holder. If this Easement is extinguished by judicial proceeding, Holder shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, calculated in accordance with Paragraph 30 below. Holder shall use its portion of said proceeds in a manner consistent with the Statement of Purpose of this Easement.

#### *30. Proceeds*

The grant of this Easement gives rise to a Property right, immediately vested in Holder, which, for purposes of calculating proceeds from a sale or other disposition of the Property as contemplated under Paragraph 29 above, shall have a value equal to a percentage (the "Proportionate Share") of the value of the Property unencumbered by this Easement. The Proportionate Share is \_\_\_\_%

Unless state law provides otherwise, if this Easement is terminated and the Property is subsequently sold, exchanged, or taken by exercise of the power of eminent domain then, as required by Treas. Reg. Sec. 1.170A-14(g)(6), Holder shall be entitled to a portion of the proceeds from such sale, exchange or condemnation equal to the Proportionate Share.

#### *31. Procedure in the Event of Taking by Eminent Domain*

If this Easement is taken, in whole or in part, by exercise of the power of eminent domain, Holder shall be entitled to compensation in accordance with applicable law.

#### *32. Interpretation*

This Easement shall be interpreted under the laws of the State of [STATE]. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to effect the Statement of Purpose of this Easement. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the Statement of Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

### 33. *Successors*

Every provision of this Easement that applies to Landowner or Holder shall be binding on and inure to the benefit of the parties and their respective agents, heirs, executors, administrators, assigns, and other successors in interest, and shall continue as a servitude running in perpetuity with the Property.

### 34. *Severability*

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

### 35. *Notices*

Any notices required by this Easement shall be in writing and shall be personally delivered or sent by first class mail, to Landowner and Holder respectively at the following addresses, or to such other addresses as the parties may designate by notice:

To Landowner:

[LANDOWNER ADDRESS]

To Holder:

American Farmland Trust  
[ADDRESS]

### 36. *Landowner's Title Warranty*

Landowner warrants that it has good and sufficient title to the Property, free from all encumbrances except those set forth in **Exhibit C** ("Prior Encumbrances"), attached to and made a part of this Easement, and hereby promises to defend the same against all claims that may be made against it. All holders of liens of other encumbrances arising from borrowing have agreed to subordinate their interests in the Property to this Easement.

### 37. *Subsequent Liens on Property*

No provisions of this Easement shall be construed as impairing the ability of Landowner to use this Property as collateral for future indebtedness.

### 38. *Subsequent Encumbrances*

The grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Property or otherwise diminish or impair the Conservation Values of the Property is prohibited, except with the permission of Holder.

### 39. *Landowner's Environmental Warranty*

Nothing in this Easement shall be construed as giving rise to any right or ability in Holder to exercise physical or

management control over the day-to-day operations of the Property, or any of Landowner's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) or any corresponding state and local statute or ordinance.

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, Landowner 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.

#### *40. Perpetual Duration; No Merger or Forfeiture*

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, (specifically including any interest or estate pursuant to Holder's Preemptive Right to Purchase in Paragraph 3 above) to Holder, it being the express intent of the parties that this Easement not be extinguished by, or merged into, or modified, or otherwise deemed affected by any other interest or estate in the Property now or hereafter held by Holder or its successors or assigns.

#### *41. Recordation*

Holder may record this instrument in the land records of [COUNTY], [STATE], and may re-record it at any time so as to preserve Holder's rights hereunder.

#### *42. Waiver*

No waiver by Holder 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 the party making the waiver.

#### *43. Acceptance*

Holder hereby accepts the rights and responsibilities conveyed by this Easement.

TO HAVE AND TO HOLD this Deed of Agricultural Conservation Easement with Preemptive Right to Purchase at Restricted Agricultural Value unto Holder, its successors and assigns, forever.

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

Witness:

LANDOWNER(S)

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

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

#### Acknowledgements

County of \_\_\_\_\_)  
State of \_\_\_\_\_), ss:

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and that the execution of this Deed of Agricultural Conservation Easement with Preemptive Right to Purchase at Restricted Agricultural Value is his/her/their free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

County of \_\_\_\_\_)  
State of \_\_\_\_\_), ss:

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and that the execution of this Deed of Agricultural Conservation Easement with Preemptive Right to Purchase at Restricted Agricultural Value is his/her/their free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

Witness:

HOLDER

AMERICAN FARMLAND TRUST  
a District of Columbia nonprofit corporation

By: \_\_\_\_\_  
Name:  
Title:

County of \_\_\_\_\_ )  
Commonwealth of \_\_\_\_\_ ), ss:

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and  
acknowledged that he/she/they is/are the \_\_\_\_\_ of American Farmland Trust, a District of  
Columbia nonprofit corporation, and that the execution of this Deed of Agricultural Conservation Easement with  
Preemptive Right to Purchase at Restricted Agricultural Value is the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

Exhibit A (Legal Description) Attached  
Exhibit B (Map) Attached  
Exhibit C (Prior Encumbrances) Attached

This document drafted by:  
American Farmland Trust

After recording, please return to:

Exhibit A  
Legal Description

**Exhibit C**  
**Prior Encumbrances**