

Record and return to:  
Agricultural Stewardship Association, Inc.  
14 Main Street, Suite 100  
Greenwich, New York 12834

DEED OF CONSERVATION EASEMENT

DRAFT xx/xx/xxxx, subject to approval by NYSDAM and ASA Legal Counsel

\_\_\_\_\_ Farm  
\_\_\_\_\_ County, New York

THIS CONSERVATION EASEMENT ("Easement") is granted this \_\_\_\_ day of \_\_\_\_\_ 200\_\_, by \_\_\_\_\_ with a mailing address of \_\_\_\_\_ (herein referred to as "Grantor") to **Agricultural Stewardship Association, Inc.**, a New York not-for-profit corporation, with an address at 14 Main Street, Suite 100, Greenwich, New York 12834 (herein referred to as "Grantee").

WHEREAS

A. Grantor is the owner of certain real property consisting of approximately \_\_\_\_ acres more or less located on \_\_\_\_\_ in the Town of \_\_\_\_\_, \_\_\_\_\_ County, New York, [\_\_\_\_ acres more or less of which are being placed under easement,] more fully described in "EXHIBIT A", and further shown on the Easement Map "EXHIBIT B", both attached hereto and a part hereof ([which \_\_\_\_ acres are] referred to in this Easement as the "Property");

B. The Property consists primarily of productive agricultural land. The Property contains approximately \_\_\_\_ acres of prime soils and \_\_\_\_ acres of soils of statewide importance as defined by the U.S. Department of Agriculture, Natural Resources Conservation Service. [Furthermore, the Property is located adjacent to the approximately \_\_\_\_ acre \_\_\_\_\_ Farm which is protected by an agricultural conservation easement];

C. Secondary conservation attributes (water resources, wildlife habitat, etc.)

D. The Property is part of a scenic landscape that can be enjoyed by the public from \_\_\_\_\_ and \_\_\_\_\_, thereby yielding a significant public benefit;

E. In \_\_\_\_\_, the \_\_\_\_\_ County Agricultural and Farmland Protection Board [or town] submitted a Farmland Protection Implementation Grant application to the New York State Department of Agriculture and Markets ("NYSDAM") to purchase an agricultural conservation easement on the Property. In \_\_\_\_\_, the State awarded \_\_\_\_\_

County [town] a farmland protection grant to protect the Property;

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

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

H. The Property is located within \_\_\_\_\_ County’s Agricultural District # \_\_, created pursuant to Article 25AA of the New York State Agriculture and Markets Law (“AML”). 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;”

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

J. The Property is located within \_\_\_\_\_ County, which adopted an Agricultural and Farmland Protection Plan in \_\_\_\_ [WC 1996, RC 2001] pursuant to AML Article 25-AAA. The Plan recommends adopting a series of policy responses to protect viable agricultural land from non-farm development and encroaching residential subdivision, including the use of Purchase of Development Rights as a tool for agricultural protection;

K. The Property is located within the Town of \_\_\_\_\_ which has adopted a Right to Farm Life Law in \_\_\_\_ or comprehensive plan/subdivision regulation/zoning ordinance

protecting/supporting farmland conservation (include year of adoption)];

L. [The Property is located within the \_\_\_\_\_ Priority Conservation Area/Special Project Area/Scenic Corridor identified as a priority for farmland and forestland conservation by the Grantee in its Conservation Plan of 2006];

M. Grantee is a New York not-for-profit conservation organization as that term is defined in Article 49, Title 3 of the ECL, together with any successor statute, is organized for, among other purposes, conserving real property, is a tax exempt and qualified organization within the meaning of Sections 501(c)(3), 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code, and is a “qualified organization” eligible to accept, purchase, and hold conservation easements under Section 170(h) of the Internal Revenue Code and Treasury Regulation Section 1.170A-14(c);

N. Grantors and Grantee desire to ensure that as outlined in the Purpose of this Easement as stated below, the agricultural and forestry resources of the Property, water resources and general open space characteristics of the Property will be protected for the benefit of future generations, and desire to do this by entering into this Easement pursuant to the provisions of Article 49, Title 3 of the ECL and Section 170(h) of the Internal Revenue Code; and {tailor }

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 Purpose as defined herein.

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

## 2. Purpose

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

All other purposes listed below shall be secondary and none shall conflict with or significantly diminish the Primary Purpose of this Easement. The Secondary Purpose of this

Easement is to conserve and protect the Property's open space resources [water resources, wildlife habitat, etc.], and their associated unique and special natural features. The Primary and Secondary Purposes of this Easement shall be referred to collectively herein as the "Purpose."

### 3. Implementation

This Easement shall be implemented by limiting and restricting the development and use of the Property in accordance with its provisions. No use of the Property shall occur and no permanent or temporary structures or other buildings or improvements shall hereafter be constructed, placed or maintained on the Property, except as specifically provided herein. The Property remains subject to all applicable local, state and federal laws and regulations. This Easement and the administration of its provisions shall not unreasonably restrict or regulate the Farm Operation, as defined in AML Section 301 or any successor statute, in contravention of the purposes of Article 25-AA of the AML.

### 4. Definitions

As used in this Easement:

- 4.(a). **"Agricultural Improvements"** shall mean buildings, structures and impervious improvements (including asphalt and concrete roads and parking areas) used for purposes related to a "Farm Operation," as defined in AML § 301 (or any successor statute) or for such other agricultural purposes as (i) the production, processing, storage or sale of farm products or by-products produced on-site, (ii) the storage of equipment used for agricultural production, and (iii) the keeping of livestock or other animals.
- 4.(b). **"Grantor"** or "owner" include the original Grantor, its heirs, successors and assigns, all future owners of any legal or equitable interest in all or any portion of the Property, and any party entitled to the possession or use of all or any part thereof.
- 4.(c). **"Grantee"** includes the original Grantee and its successors and assigns.
- 4.(d). **"Residential Dwelling Unit"** means a dwelling or structure, together with accessory improvements that comprise single-family, multi-family, apartments, "in-law" apartment, guest house and farm labor housing, whether or not the structure(s) are used as the primary residence of a farm owner.
- 4.(e). **"Farm Labor Housing"** means dwellings or structures, together with accessory improvements, used to house seasonal and/or full-time farm employees where such residences are provided by the farm landowner and/or operator, where the employee is an essential employee of the farm landowner and/or operator, is engaged in production or support function(s) of the Farm Operation, and is not a partner or owner of the Farm Operation. For instance, a structure used as the primary residence

of a farm owner is not “farm labor housing”.

- 4.(f). “Farm Operation”** shall be defined as “the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise” in accordance with Section 301 of the AML, or such successor law as may be enacted or amended.
- 4.(g). “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 where the land underneath is not covered by Impervious Surfaces.
- 4.(h). “Sound Agricultural Practices”** is defined as those practices necessary for on-farm production, preparation and marketing of agricultural commodities, provided such practices are legal, necessary, do not cause bodily harm or property damage off the farm, and achieve the intended results in a reasonable and supportable way. If necessary, to determine if a practice is “sound,” Grantee or Grantor may request that NYSDAM initiate a sound agricultural practice review pursuant to Section 308 of the AML, or any successor law as may be enacted or amended.
- 4.(i). “Viable Agricultural Unit”** is defined as an area of land highly suited for agricultural production, of sufficient size and configuration to support a Farm Operation.
- 4.(j). “Rural Enterprises”** are defined as small 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, but not including the operation of a junk yard, gas station, or any similar enterprise. No such activity or use may be leased to someone that is not a resident or owner of the Property. Enterprises that market non-agricultural petroleum or chemical products are prohibited.
- 4.(k). The following use areas are defined for the Easement:**
- i. **“Farmstead Area”** is defined as an area(s) of the Property depicted on Exhibit B and described in Exhibit C, and as further defined in Section 11, that center(s) on existing farm structures or planned future farm structures.

ii. **“Agricultural Area”** is defined as the remaining area of the Property that is not within the Farmstead Area(s), as depicted on Exhibit B and described in Exhibit C, and as further defined in Section 11.

## **5. Sound Agricultural Practices**

All agricultural operations on the Property shall be conducted in a manner consistent with Sound Agricultural Practices, as defined in Section 4(h) above.

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

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

## **7. Access**

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

## **8. Right to Use Property for Agricultural Uses**

Grantor retains the right to produce crops, livestock and livestock products and use the Property as a Farm Operation, which includes but is not limited to the right to establish, reestablish, maintain, and use cultivated fields, orchards, pastures and woodlands. Said farming practices shall be carried out in accordance with Sound Agricultural Practices as defined herein.

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

Grantor retains the right to operate otherwise lawful Rural Enterprises, subject to the limitations set forth in this Easement, including Section 11 (“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.

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

[IF 40% ESTATE VALUATION REDUCTION DESIRED, INSERT THIS SENTENCE AND THE

WORD"NONCOMMERCIAL" IN THE NEXT: Commercial recreational activities shall be prohibited, other than *de minimus* commercial activities which do not exceed the limit set forth in Internal Revenue Code Section 2031(c)(8)(B).]

Grantor retains the right to use the Property for otherwise lawful personal and commercial [noncommercial] recreational uses, including, but not limited to, hiking, hunting, fishing, cross-country skiing, camping, horseback riding and snowmobiling, subject to the limitations set forth in this Easement, including Section 11 ("Construction of Buildings and Other Improvements"). Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips, commercial helicopter pads or any other similar recreational improvements that interfere with the Purpose of this Easement, significantly disturb the farm soils, or otherwise adversely affect agricultural and forestry uses on a continuing basis be allowed on the Property. In all cases, such recreational uses must be compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property.

## 11. Construction of Buildings and Other Improvements

Permitted uses of the Property vary depending on where on the Property the use occurs. The Property is divided into \_\_\_\_ principal areas,: 1) the approximately \_\_-acre, more or less, "Farmstead Area A", shown on Exhibit B and described in Exhibit C attached hereto and a part hereof[, \_\_) the approximately \_\_-acre, more or less, "Farmstead Area B", shown on Exhibit B and described in Exhibit C attached hereto and a part hereof, \_\_) and \_\_) the Agricultural Area, encompassing approximately \_\_ acres, which comprises the remainder of the Property. If Exhibits B and C conflict, Exhibit C shall control. Subdivisions of the Property are subject to the limitations set forth in Section 14 ("Subdivision") of this Easement.

Grantor may undertake construction, erection, installation, removal or placement of buildings, structures, or other improvements to the Property within the Farmstead Area or Agricultural Area [list other areas] only as provided in this Easement and set forth below.

*11(a) Impervious Surfaces* – Impervious Surfaces may be constructed or placed on up to a maximum of 10% (x acres) of the Agricultural Area, as provided for below, and without limitation in the Farmstead Area.

In the Agricultural Area, the Grantor may construct or place a total footprint of all Impervious Surfaces of up to 5% (x acres) of the Agricultural Area without permission of the Grantee. With permission of Grantee pursuant to Section 19 ("Permission of Grantee"), the construction or placement of Impervious Surfaces that would cover up to an additional 5% (x acres) of the Agricultural Area may be allowed. Impervious Surfaces may be constructed or placed without limitation in the Farmstead Area.

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

wildlife and to prevent trespassing on the Property.

*11(c) Agricultural Improvements* – Any existing or subsequent Agricultural Improvements may be repaired, removed, enlarged and replaced at their current locations, subject to the Impervious Surface coverage limitations set forth in Section 11(a) (“Impervious Surfaces”). Grantor may construct or place new Agricultural Improvements, as follows:

***Farmstead Area:*** Within the Farmstead Area, without the permission of Grantee, Grantor may construct or place new Agricultural Improvements, including asphalt and concrete roads and parking areas, to be used primarily for purposes related to a Farm Operation and for such other agricultural purposes as (i) the production, storage, marketing or sale of farm products or by-products, or processing of farm products or by-products, (ii) the storage of equipment used for agricultural production, and (iii) the keeping of livestock or other animals.

***Agricultural Area:*** Without the permission of Grantee, subject to the Impervious Surface coverage limitations set forth in Section 11(a) (“Impervious Surfaces”), Grantor may construct or place new Agricultural Improvements with Impervious Surfaces for such purposes related to the Farm Operation, except those used for processing or packaging of farm products, on up to 5% of the Agricultural Area. With the permission of Grantee, Grantor may construct or place such Agricultural Improvements with Impervious Surfaces related to the Farm Operation, except those used for processing or packaging of farm products, that would cover up to an additional 5% of the Agricultural Area. The foregoing notwithstanding, with the permission of Grantee, maple sap boiling houses may be constructed or placed in the Agricultural Area, subject to the Impervious Surface coverage limitations set forth in Section 11(a) (“Impervious Surfaces”), which improvements may not include facilities for further processing, or packaging, of sap or syrup, or the sale thereof.

*11(d) Residential Dwelling Units* – There is xxx (x) Residential Dwelling Unit located within the Farmstead Area at the time of the granting of this Easement, as shown on Exhibit B, as follows. Existing and future permitted Residential Dwelling Units may be repaired, removed, enlarged and replaced at their respective locations. Grantor may construct or place new dwellings or structures or convert or adapt all or a portion of structures used for other purposes into Farm Labor Housing, as follows.

***Farmstead Area:*** Without the permission of Grantee, Grantor may construct, place, maintain, repair, remove or replace Residential Dwellings Units, together with accessory structures and improvements, which may include, but are not limited to, swimming pools, storage sheds, garages, tennis courts and patios, within the Farmstead Area, subject to any applicable local, state or federal laws and regulations.

***Agricultural Area:*** Subject to the Impervious Surface coverage limitations set forth in

Section 11(a) (“Impervious Surfaces”), Grantor may construct or place Residential Dwelling Units, together with accessory structures and improvements, exclusively for Farm Labor Housing, as defined in Section 4(e) (“Farm Labor Housing”), on up to 1% of the Agricultural Area without permission of the Grantee. All land associated with Farm Labor Housing that is taken out of agricultural or forestry production shall count towards the 1% limitation. [With the permission of the Grantee, Grantor may construct additional Farm Labor Housing in the Agricultural Area as proven necessary to conduct current Farm Operations. *Case by case?*] The land on which these dwellings, structures and improvements stand shall not be subdivided, except as permitted by Section 14 (“Subdivision”).

*11(e) Rural Enterprises* - Grantor reserves the right to establish and carry out Rural Enterprises (as defined in Section 4) within the Farmstead Area[s], provided said activities are compatible with the Purpose of this Easement, are subordinate to the agricultural use of the Property, and are permitted by local laws. The land on which any structures or improvements used for such purposes stand shall not be subdivided, except as permitted in Section 14 (“Subdivision”).

*11(f) Recreational Improvements* – Without permission of Grantee, nonhabitable recreational improvements may be constructed, placed, repaired, relocated, removed, enlarged, or replaced within the Farmstead Area without size restrictions, if such improvements are consistent with Section 10. With advance written permission of Grantee, subject to Impervious Surface coverage limitations set forth above, nonhabitable recreational improvements may be constructed, repaired, relocated, removed, enlarged, or replaced within the Agricultural Area, if such improvements are consistent with Section 10, provided that the total aggregate footprint of all recreational improvements within the Agricultural Area shall not exceed 400 square feet. Trails for recreational purposes shall not be subject to the 400 square foot limit, but must not diminish or interfere with the Purpose of this Easement.

*11(g) Utility Services and Septic Systems* - Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to or from the improvements permitted in this Easement may be installed, maintained, repaired, removed, relocated and replaced, and Grantor may grant easements over and under the Property for such purposes. Septic or underground sanitary systems serving improvements permitted herein may be installed, maintained, repaired or improved. Such services shall be limited to structures permitted on the Property pursuant to this Section 11 (“Construction of Buildings and Other Improvements”). The installation of any utilities shall be implemented, as much as practicable, to avoid fragmenting the Property and diminishing the agricultural or forestry viability of the Property.

*11(h) Alternative Energy and Communications Structures and Improvements* – Structures and improvements necessary to undertake alternative energy and communications activities such as wind, solar, methane and other similar energy generation activities as well as cell towers or 911 communications towers are permitted as further limited below provided they are compatible with the Purpose of this Easement, subordinate to the agricultural use of the Property and located in a manner

that minimizes the impact to prime or statewide important soils.

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

***Agricultural Area:*** Subject to the Impervious Surface coverage limitations set forth in Section 11(a), such structures and improvements, including roads and drainage ditches, may be built in the Agricultural Area only with the permission of Grantee, which may be conditioned upon the posting of a bond. These structures and improvements are permitted only if the activity is limited and localized in impact affecting no more than two percent (2%) of the Agricultural Area at one time.

Prior to determining the location of a site for these structures and improvements in the Agricultural Area, the Grantor shall notify the Grantee, NYSDAM, 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 NYSDAM guidelines for agricultural mitigation for construction of such structures.

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

Grantor reserves the right to use, construct, maintain 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 Sound Agricultural Practices and the Purpose of this Easement and is carried out in accordance with applicable State and federal laws and regulations.

## **13. Water Rights**

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

## **14. Subdivision**

The Property is currently comprised of \_\_\_ [# or several] deed parcel[s] owned by Grantor. [Separately deeded parcels may be combined into one [or more] larger parcels.] [A \_\_\_ acre portion of land owned by the Grantor, located \_\_\_\_\_, as depicted on Exhibit B as the “Excluded Area,” is not subject to the terms of this Easement and may be subdivided from the parcel and conveyed as a separate land parcel.]

The Farmstead Area and the Farm Labor Housing may not be internally subdivided, nor may

they be separated from the Property, except as provided below. The Property may be otherwise partitioned or subdivided beyond its current configuration, or merged in whole or part, into an adjacent parcel, only with the advance written permission of the Grantee, which permission may be granted upon compliance with the following conditions:

- a) Grantor has demonstrated that the proposed subdivision or merger:
  - 1. is for agricultural purposes,
  - 2. is consistent with the Purpose of this Easement,
  - 3. will not substantially diminish or impair the agricultural values of the Property,
  - 4. shall ensure that all parcels of land thereby created shall remain part of a Viable Agricultural Unit either individually, or as part of an established Farm Operation,
  - 5. shall ensure that the Farmstead Area shall remain part of a Viable Agricultural Unit, and
  - 6. shall ensure that any Farm Labor Housing located in the Agricultural Area shall remain part of a Viable Agricultural Unit and shall be under the same ownership as (i) the Farmstead Area which is subject to this Easement or (ii) a Farmstead Area of an adjacent property on which a conservation easement is held by Grantee.
- b) Such subdivided or merged parcels shall remain subject to the terms and conditions set forth in this Easement.
- c) The deed(s) of conveyance of such subdivided or merged parcels shall contain a metes and bounds description of the subdivided or merged parcel(s) prepared by a licensed professional land surveyor at Grantor's sole cost, which description shall have been reviewed and approved by Grantee prior to conveyance of the subdivided or merged parcel(s), and shall be in compliance with local subdivision regulations where applicable.
- d) Grantor agrees to pay for all costs, fees and other expenses, including staff time and reasonable attorneys' fees, incurred in reviewing any proposed subdivision or merger, and in preparing baseline documentation reflecting the subdivision or merger, including but not limited to maps, supporting text(s) and photographs, if Grantee deems such materials necessary for the long term management of this Easement.
- e) Grantor shall contribute a stewardship endowment equal to the amount the Grantee typically requests for all new easements at the time that the Property is subdivided pursuant to this paragraph to the Grantee for compliance and enforcement of the terms of this Easement. Notwithstanding the foregoing, a merger, a lot line or boundary adjustment with an adjacent property that is subject to a conservation easement held by Grantee is not subject to the requirement to make a stewardship endowment payment.

If a subdivision or merger is approved by Grantee and subsequently is carried out, Grantor shall give Grantee written notice within fourteen (14) days after the deed or other document(s) effecting such subdivision or merger is recorded in the Office of the County Clerk.

Mortgages or other non-possessory interests in land do not constitute subdivisions for the purpose of this Easement, provided that such interests encompass the whole Property. Only a part of the Property that has been legally sold or conveyed separately from the remainder of the Property, in

conformity with this Section 14, may be mortgaged separately from the remainder of the Property.

## 15. Forest Management

Without prior approval from Grantee, Grantor may clear forested areas for conversion to farmland, may harvest wood for use on the Property, including heating and construction of structures and improvements, and may remove trees that are fallen, dead, diseased or dangerous, so long as these forestry practices will not significantly impair the Purpose of this Easement.

Without prior approval from Grantee, Grantor may commercially harvest timber and other wood products and construct, maintain, remove, and repair unpaved access roads and “staging areas” (those areas where logs are temporarily stored for transport) necessary for such activities, in accordance with generally-accepted forestry best management practices that shall not result in significant degradation of soil and water resources. Such commercial timber cutting shall be carried out only under the supervision of a qualified forester in good standing, but such supervision shall not be required on a continuing basis onsite throughout the timber harvest. A qualified forester is defined as a graduate of a four-year forestry education program that is certified by the Society of American Foresters or such successor organization as is later created, a New York State Cooperating Forester, or a person who has attained other professional credentials mutually agreed to by Grantor and Grantee.

In order to facilitate the monitoring and stewardship of this Conservation Easement and to ensure continuing communication between parties, Grantor shall give Grantee, its successors or assigns, written notice pursuant to Section 34 (“Notices”) hereof prior to the anticipated commencement of any commercial timber harvest. Such written notice shall include submission of the qualified forester’s name and contact information, and a statement signed by the qualified forester that s/he has reviewed this Easement and will ensure that the commercial timber harvest and other forest management activities will be conducted in a manner compliant with the terms of this Easement.

## 16. Mining and On-Site Extractive Activity

*16(a) Surface Mining* - Surface exploration, development, storage, or extraction of minerals and hydrocarbons on or from the Property by any method is prohibited, except that Grantor may excavate sand and gravel on the Property to the extent permitted under Internal Revenue Code Section 170(h)(5) and applicable U.S. Treasury Regulations, as they may be amended from time to time, and provided that said excavation: (1) is limited and localized in impact and affects no more than two acres of unreclaimed land on the Property at any one time; (2) is consistent with the Purpose of this Easement and is not irretrievably destructive of significant conservation values; (3) is reasonably necessary for, and incidental to, carrying out the improvements and agricultural or forestry production uses permitted for the Farm Operation; and (4) minimizes the excavation’s impact to the prime and statewide important soils on the Property. Following cessation of any such excavation of sand and gravel, or when more than two acres has been

disturbed by such activity, the land so affected shall be reclaimed in accordance with a mined land reclamation plan that meets the requirements of Section 23-2713 of the ECL, and applicable regulations. Such a plan shall be required regardless of whether or not a Mined Land Reclamation Law permit was required to be issued by the New York State Department of Environmental Conservation ("NYSDEC").

*16(b) Subsurface Mining - Applicability* - This Section 16 shall apply to all actions related to subsurface exploration, development, storage or extraction of minerals and hydrocarbons on or from Property, including, but not limited to, development, construction and operation of roads, structures and wells, drilling, distribution and other such activities.

*16(b)(1) - When Allowed* - Subsurface exploration, development, storage or extraction of minerals and hydrocarbons on or from Property by any mining method is prohibited except to the extent permitted under Internal Revenue Code Section 170(h)(5) and applicable U.S. Treasury Regulations, as they may be amended from time to time, to the extent permitted by this Section 16. Grantor or a lessee may undertake subsurface mineral and hydrocarbon exploration, development, storage, and extraction activities only with the permission of the Grantee pursuant to Section 19 ("Permission of Grantee"), which permission may be conditioned upon the posting of a bond.

*16(b)(2) - Limitations* - (i) Such subsurface mineral and hydrocarbon exploration, development, storage, and extraction activities must: (a) be limited and localized in impact; (b) be consistent with the Purpose of this Easement and not irremediably destructive of significant conservation values; (c) be subordinate to the agricultural use of the Property; (d) minimize the permitted activity's impact on the prime and statewide important soils on the Property; and (e) avoid adverse impacts to the agricultural and forestry viability of the Farm Operation, and where that is not practicable, such impacts shall be minimized and mitigated to the maximum extent practicable.

(ii) Grantor and any lessee shall comply with any applicable NYSDAM and NYSDEC guidelines for agricultural impact avoidance and mitigation for such subsurface exploration, development, storage, or extraction activities, and comply with all other applicable laws, regulations, criteria and guidelines, including any conditions, criteria, or thresholds established by NYSDEC or other agencies as part of any site-specific or generic environmental impact statement or other such environmental impact review process.

(iii) No drilling wastes, petroleum, petroleum products, or toxic or hazardous wastes, substances or materials may be disposed of on the Property.

(iv) Upon the completion of any activity or part thereof on any site on the Property, Grantor or any lessee shall fully restore the affected part of the Property, including restoring the quality of the topsoil and the slope contours. Such restoration shall be done so as to be acceptable to Grantee, NYSDAM, and the local Soil and Water Conservation District.

*16(b)(3) - Site Selection* - Prior to the Grantor or any lessee selecting the location of any site

for subsurface exploration, development, storage, or extraction activities, the Grantor shall notify the Grantee, NYSDAM, and the local Soil and Water Conservation District to give them an opportunity to participate in an on-site meeting to review and determine whether to approve the proposed location(s).

*16(b)(4) - Mineral Leasing* - Pursuant to Section 27 (“Transfer of Property”) Grantor may lease the Property for such subsurface exploration, development, storage, or extraction of minerals and hydrocarbons on or from Property, provided that the lease provides that this Easement, including, but not limited to, this Section 16, shall be binding on the lessee.

## **17. Road Construction**

Subject to the Impervious Surface coverage limitations set forth in Section 11(a) (“Impervious Surfaces”), Grantor may construct or maintain roads for driveways, barnyards, farm markets, farm roads, or other improvements necessary to provide access to, and parking for, permitted buildings or improvements, or to conduct other activities permitted by this Easement, provided that to the greatest extent practicable, impact to the prime, statewide important and unique soils is minimized. No other portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, except as provided for herein.

In the event that any road or railroad [*leave in only if applicable*] adjoining the Property is abandoned or otherwise becomes owned by Grantor, then it shall become part of the Property, and it may be used by Grantor for ingress and egress to the Agricultural Area and the Farmstead Area for all purposes allowed in those areas by this Easement; and Grantor may maintain and improve it within the current boundaries of the road or railroad [*leave in only if applicable*]; and it shall otherwise be used consistently with the requirements of this Easement for the adjoining lands of Grantor, in the Agricultural Area and the Farmstead Area, respectively.

## **18. Dumping and Trash**

The dumping, land filling, burial, application, injection, burning, or accumulation of any kind of garbage, trash or debris on the Property is prohibited, other than agriculturally-related waste or biodegradable material in accordance with Sound Agricultural Practices and any applicable State or federal law or regulation. However, this shall not prevent the Grantor from conducting any of the following without the permission of the Grantee: (i) the storage of agricultural products and byproducts, (ii) the storage of old farm equipment used for parts, (iii) the temporary storage of trash or household waste in receptacles for periodic off-site disposal, or (iv) the composting or re-use of biodegradable materials as permitted in Section 8 (“Right to Use Property for Agricultural Uses”), generated off the Property for use on the Property so long as they are used and stored in accordance with Sound Agricultural Practices. Notwithstanding the foregoing, the storage and treatment of sewage associated with buildings permitted on the Property is permitted by this Easement.

## **19. Permission of Grantee**

Where Grantor is required to obtain Grantee's permission or approval for a proposed use or activity hereunder, said permission or approval shall be sought, and given or denied in writing and, where appropriate, a request for approval shall include building plans identifying the use, footprint and total square footage of any proposed structures or other improvements, and related survey information, if available. Grantee may request such other information as it deems necessary to review such request and Grantor shall provide the requested information as soon as reasonably possible. Grantee shall not unreasonably delay its decision, and shall use its best efforts to respond to any request within forty-five (45) days after receiving all requested information from Grantor. If mutually agreed upon by Grantee and Grantor, this timeline may be reasonably extended. Grantee shall grant permission or approval unless it determines that such action would (i) violate the terms and conditions of this Easement or is incompatible with the Purpose of this Easement, or (ii) is not subordinate to the agricultural use of the Property. Grantee shall not be liable for damages for any failure to grant permission or approval to Grantor. All requests and approvals or denials shall be made pursuant to Section 34 ("Notices") of this Easement.

## **20. 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:

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

*20(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.

*20(c) Liability and Indemnification* – Grantee has no obligations whatsoever, express or implied, relating to the use, maintenance or operation of the Property. Grantee's exercise of, or failure to exercise, any right conferred by this Easement shall not be deemed to be management or control or arrangement of the activities on the Property. Grantee shall not be liable to Grantor for injuries or death to persons or damage to property or any other harm in connection with Grantee's administration and/or enforcement of this Easement, unless such harm is due to the negligence of Grantee or its agents, in which case liability shall be apportioned accordingly. Grantor agrees to indemnify and hold harmless Grantee and State of New York from any and all costs, claims or liability, including but not limited to reasonable attorneys fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due to the negligence of Grantee or its agents, in which case liability shall be apportioned accordingly. Grantor

further agrees to indemnify and hold harmless Grantee and State of New York from and against any and all claims, costs, expenses, fines, penalties, assessments, citations, personal injury or death, and the like arising from or out of the existence (actual or alleged) of any and all environmentally hazardous or toxic substances or materials whatsoever on or under the Property.

## **21. 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.

## **22. Baseline Documentation**

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

## **23. Right of Inspection**

Grantee shall have the right to enter upon the Property upon forty-eight (48) hours advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. Such inspection shall be conducted between the hours of 9 a.m. and 7 p.m. on a weekday that is not a legal holiday recognized by the State of New York or at a date and time agreeable to the Grantee and Grantor. In the case 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, and in such a case, entry onto the Property by Grantee shall not be limited to the days or hours set forth above. Representatives of NYSDAM shall have the same right of inspection.

## **24. 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 and may apply, ex parte, if necessary, for a temporary restraining order or preliminary injunction.

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

- (a) money damages, including damages for the loss of the resources protected under the Purpose of this Easement; and
- (b) restoration of the Property to its condition existing prior to such violation.

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limited to, reasonable attorneys' fees, consultants' fees, staff time, and restoration costs, if applicable. 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.

If Grantor is required to and fails to restore the Property in the event of a violation of this Easement, then Grantee, at its sole discretion, may do so, and Grantee may have judgment against Grantor for the cost thereof.

## **25. Dispute Resolution**

If a dispute arises between the Grantor and the Grantee concerning the consistency of any proposed use or activity on the Property 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 ten (10) days of such request, Grantee shall schedule a meeting or the parties shall jointly 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. Nothing in this clause shall diminish Grantee's rights under Section 24 ("Enforcement").

## **26. Transfer of Easement**

Grantee shall have the right to transfer this Easement to any private non-governmental organization or public agency that, at the time of transfer is a "public body" or "not-for-profit conservation organization" as defined by Article 49, Title 3 of the ECL and is a "qualified organization" under Section 170(h) of the Internal Revenue Code, provided the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. If Grantee ever ceases to exist or qualify under Section 170(h) of the Internal Revenue Code, or applicable state law, a court of

competent jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibilities imposed by this Easement. Grantor and NYSDAM will be notified in writing in advance of any such transfer. NYSDAM must approve the choice of any new non-governmental organization or public body designated as "Grantee", provided a court of competent jurisdiction does not order otherwise. NYSDAM shall not unreasonably withhold or delay such approval.

## **27. 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 Agricultural Stewardship Association, Inc. by instrument dated \_\_\_\_\_, and recorded in the office of the Clerk of \_\_\_\_\_ County at Book \_\_\_\_\_ of Deeds at Page \_\_\_\_." Grantor shall notify Grantee and NYSDAM 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 NYSDAM 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.

## **28. Amendment of Easement**

This Easement may be amended only upon the written consent of Grantee and the then current Grantor of the Property and with the approval of NYSDAM. Any such amendment must comply with the Grantee's then-current amendment policy as in effect from time to time. No amendment shall be approved unless Grantor has demonstrated that the proposed amendment is consistent with the Purpose of this Easement, shall not unreasonably restrict or regulate Farm Operations in contravention of the purposes of Article 25-AA of the AML, and shall not affect the perpetual duration of this Easement.

Any amendment of this Easement shall comply with Article 49, Title 3, of the ECL, and Section 170(h) of the Internal Revenue Code and all other applicable laws and regulations. Any such amendment that does not comply with said Article 49 or said Section 170(h), or other applicable laws or regulations, shall be void and of no force or effect.

Grantor agrees to reimburse Grantee for all costs, fees and other expenses, including staff time, surveys, appraisals, title costs, and reasonable attorneys' fees, incurred by Grantee in connection with the review of a request by Grantor to amend this Easement. Grantor further agrees that Grantee may require the submission of plans and other documentation as Grantee deems necessary to make its determination. Any amendment shall be recorded in the office of the County Clerk, \_\_\_\_\_ County, New York, at Grantor's expense.

## 29. Extinguishment of Easement

At the mutual request of Grantor, Grantee, and NYSDAM, 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, extinguish or modify this Easement in accordance with applicable law. Mere cessation of farming on the Property shall not be construed to be grounds for extinguishment of this Easement. In the event that this Easement is extinguished by judicial proceeding, upon any subsequent sale, exchange, or involuntary conversion of the Property by Grantor, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, determined in accordance with Section 30 ("Proceeds") below.

If the Property or this Easement is condemned by exercise of the power of eminent domain, the parties shall be entitled to compensation in such condemnation proceeding in accordance with applicable law, and Grantee shall use any condemnation award received by Grantee in such proceeding as provided in Section 30 ("Proceeds").

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 to the portion of the Property as to which the extinguishment applies, times the Proportionate Share percentage determined under Section 30 ("Proceeds").

## 30. Proceeds

The grant of this Easement gives rise to a property right, immediately vested in Grantee, which, for purposes of calculating value in the event of any such extinguishment or partial extinguishment or proceeds from a sale or other disposition of the Property as contemplated under Section 29 ("Extinguishment of Easement"), shall have a value equal to a percentage of the value of the Property unencumbered by this Easement (the "Proportionate Share"). The Proportionate Share is determined by dividing the value of this Easement, calculated as of the date hereof, by the unencumbered value of the Property, also calculated as of the date hereof. The Proportionate Share is \_\_\_\_%. The Proportionate Share shall remain constant (subject to reasonable adjustment to the extent permissible under Section 170(h) of the Internal Revenue Code for any improvements which may hereafter be made on the Property).

If any part or all of this Easement is terminated pursuant to Section 29 ("Extinguishment of Easement"), then the Proportionate Share shall be paid to Grantee, provided that such funds shall be used for farmland conservation purposes, and that such use shall be subject to approval by \_\_\_\_\_ County [or the Town of \_\_\_\_\_]. Prior to such re-use, Grantee must notify NYSDAM.

## 31. Interpretation

This Easement shall be interpreted under the laws of the State of New York, or federal law,

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

### **32. 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.

### **33. Severability**

If a court of competent jurisdiction shall declare any of the covenants, terms or conditions of this Easement, or any part thereof, to be invalid or unenforceable, such ruling shall not affect the validity of any other provision of this Easement, which shall otherwise remain in full force and effect.

### **34. Notices**

Any notice required or desired to be given under this Easement shall be in writing and shall be sent by (i) personal delivery, (ii) via registered or certified mail, return receipt requested, or (iii) via Federal Express or other private courier of national reputation providing written evidence of delivery. Notice shall be deemed given upon receipt in the case of personal delivery, and upon delivery by the U.S. Postal Service or private courier. All notices shall be properly addressed, if addressed as follows: (a) if to Grantee, at the address set forth above; (b) if to Grantor, at the address set forth above; (c) if to any subsequent owner, at the address of the Property; or (d) if to NYSDAM, 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.

### **35. 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.

*[Insert this paragraph only if applicable]* In addition to the land described on page 1 of this Easement and in Exhibit A hereto, the Property includes all of Grantor's right, title, and interest, if any, in and to: (a) any land lying within or under any public road or street adjoining the Property, subject to the rights of the public and the government, if any, to use and maintain such roads or streets; (b) any land, including land under water, below the mean high water mark of any lake, river,

or stream adjoining the Property, subject to the rights, if any, of the public of navigation on any such lake, river, or stream that is navigable in law or fact; and (c) any land which may be added to the Property by accretion.

### **36. Subsequent Liens on Property**

No provision of this Easement should be construed as prohibiting the ability of Grantor to use the 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.

### **37. Subsequent Encumbrances**

The grant of any easements or use restrictions is prohibited except with the advance written permission of Grantee. Any future encumbrances shall be consistent with the Purpose of this Easement and shall not unreasonably restrict or regulate Farm Operations in contravention of the purposes of Article 25-AA of the AML.

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

Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee and NYSDAM 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 meanings contained in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") or any corresponding state or local statute or ordinance.

Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes in, on, under, or about the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee, and NYSDAM against, and hold Grantee, NYSDAM harmless from, any and all loss, cost, claim (without regard to its merit), liability or expense (including reasonable attorneys' fees) arising from or with respect to any release of hazardous waste or hazardous substance, 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 ensure its containment and remediation, including any cleanup.

### **39. 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.

#### **40. 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 28 (“Amendment of Easement”).

#### **41. 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.

#### **42. Binding Effect**

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

#### **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 its 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.



STATE OF NEW YORK                    )  
  ) SS.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_ day of \_\_\_\_\_ in the year 2010 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 this instrument.

\_\_\_\_\_  
Notary Public  
(Affix stamp or seal)

State of \_\_\_\_\_  
Qualified in \_\_\_\_\_ County  
Commission No. \_\_\_\_\_  
Commission Expires \_\_\_\_\_

EXHIBIT A  
Legal Description of the Property  
[from survey]

EXHIBIT B  
Easement Map  
[based on survey map]

EXHIBIT C  
Legal Description of the Farmstead Area[s]  
[from survey]

This description is not a subdivision of the premises described herein.