

**PERMANENT AGRICULTURAL CONSERVATION EASEMENT
WITH FEDERAL FUNDING
BETWEEN COUNTY OF DAKOTA AND
NAME(S) OF GRANTOR
TRACT #**

This grant of a permanent agricultural conservation easement is made and entered this _____ day of _____ 2011, by _____ **Names of Grantor (s), marital status** (hereinafter referred to as "Grantor"), having an address at, _____ **address**, the County of Dakota, Minnesota, a political subdivision of the State of Minnesota, whose address is 1590 Highway 55, Hastings, MN 55033 (hereinafter referred to as "Grantee") and the United States of America (hereinafter referred to as "United States"), acting by and through the United States Department of Agriculture (hereinafter referred to as "USDA"), Natural Resources Conservation Service (hereinafter referred to as "NRCS") on behalf of the Commodity Credit Corporation as its interest appears herein.

1. RECITALS:

1.1. Land Ownership. Grantor is the fee simple owner of _____ acres, more or less, of real property in Dakota County, Minnesota.

1.2. Protected Property. Grantor is willing to grant a permanent agricultural conservation easement (hereinafter referred to as "Easement") on, over and under _____ ± acres of the above-cited property, legally described in Exhibit A and generally depicted in Exhibit A-1 attached hereto (hereinafter referred to as the "Protected Property").

The Protected Property is _____ **INSERT SPECIFIC DESCRIPTION OF PROPERTY**

This Easement is subject to the following encumbrances:

A. _____ **List as applicable**

1.3. Conservation Values. The Protected Property, in its present state, has significant agricultural, natural, aesthetic, scientific, and educational values as a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, or as that section may be amended from time to time, and in the regulations promulgated thereunder (hereinafter referred to collectively as "Conservation Values"). Such Conservation Values and the Protected Property's state of improvements are documented in a baseline documentation report (hereinafter referred to as "Property Report") as described in Section 8.2.

1.4. Existing Uses. The Protected Property is currently used for _____ **Describe e.g. row crops, pasture, natural areas, etc.** Improvements on the Protected Property include _____ **Describe e.g. fences, ponds, and access roads, etc.** and are related to _____ **Describe** The Conservation Values of the Protected Property have not been and are not likely to be adversely affected, to any substantial extent, by the use of the Protected Property, as authorized in this Easement.

1.5. Qualified Organization. Grantee is a qualified political subdivision under the laws of the State of Minnesota and is authorized by Minn. Stat. §375.18, subd. 12 to acquire development rights in the form of a conservation easement under Minn. Stat. Chapter 84C; and is an organization qualified under Section 170(h) of the Internal Revenue Code, or as that section may be amended from time to time, and in the regulations promulgated thereunder, to receive qualified conservation contributions.

Grantee is also an organization qualified to receive funds under the Farm and Ranch Lands Protection Program (hereinafter referred to as "FRPP"), 16 U.S.C 3838h and 3838i, which is administered by NRCS, an agency under the USDA, in accordance with the cooperative agreement No. 73-6332- [REDACTED] between the United States, Commodity Credit Corporation and Grantee.

It is the purpose of FRPP to purchase interests in land in order to protect prime, unique and other important agricultural soils by preventing the conversion of soils to non-agricultural uses.

2. GRANT OF CONSERVATION EASEMENT.

For and in consideration of the facts above recited and of the mutual covenants, terms, conditions, and restrictions herein contained and pursuant to the laws of the State of Minnesota, in particular Minn. Stat. Chapter 84C, and in consideration of the payment of \$ [REDACTED] to Grantor, Grantor hereby grants and conveys unto Grantee and its successors and assigns forever an Easement in perpetuity that runs with the Protected Property consisting of specific terms and conditions as set forth herein.

The United States is granted the same rights as Grantee under this Easement. However, the United States will only exercise those rights as specifically set forth below. When the United States does exercise its rights, the term "Grantees" shall be read to include both the "United States and the County of Dakota," unless text specifically indicates otherwise. Until such time, if ever, the United States exercises its rights, the parties agree that Grantee is the primary steward of this Easement.

3. PURPOSE.

It is the purpose of this Easement to assure that the Protected Property will be retained forever substantially unchanged from its present condition as agricultural, natural and open space and to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property. Grantor intends that this Easement will confine the use of the Protected Property to activities that are consistent with the purpose of this Easement.

4. PROHIBITED USES/RESTRICTIONS.

Any activity on or use of the Protected Property inconsistent with the purpose of this Easement is prohibited. Without limiting the applicability of the foregoing, the following activities and uses are expressly prohibited, except as provided, in Sections 4.3 and 7.5.

4.1. Non-agricultural Activities. The Protected Property shall not be converted to non-agricultural use. The recreation, open space, natural area preservation and/or restoration uses authorized under the terms of this Easement shall not be considered as conversion to non-agricultural use. There shall be no non-agriculturally related industrial, commercial, or for-profit recreational activity undertaken or allowed on the Protected Property. No right of passage shall be granted or retained across or upon the Protected Property if that right of passage is used in conjunction with such prohibited activities.

4.2 Agricultural Activities. All agricultural activities on the Protected Property shall be conducted in accordance with the Dakota County Stewardship Plan (hereinafter referred to as the “Stewardship Plan”) that is developed and approved by Grantor, Grantee and Dakota County Soil and Water Conservation District (hereinafter referred to as “SWCD”); and if applicable, in accordance with the NRCS Conservation Plan (hereinafter referred to as “Conservation Plan”) that complies with NRCS standards for Highly Erodible Land (hereinafter referred to as “HEL”). The Stewardship Plan shall include an initial work plan that describes activities, schedule, roles, responsibilities, estimated costs, and known funding sources. The Stewardship Plan shall be updated at least every five years, upon any change in the basic type of agricultural production being conducted on the Protected Property, and upon any change in Protected Property ownership. Agricultural lands shall be managed in accordance with sound soil and water conservation practices in a manner that will not destroy or substantially and irretrievably diminish the productive capability of the Protected Property. Requirements for the Stewardship Plan include:

- A. A permanent buffer, composed of primarily native vegetation, averaging 150 feet and not less than 75 feet in width from the ordinary high water level of any perennial stream, river, and/or wetland as identified in the Dakota County Protected Waters Farmland and Natural Areas Program Guidelines, or through subsequent County Board approval, shall be established and maintained by Grantor, unless otherwise determined in the approved Stewardship Plan.
- B. A permanent buffer composed of primarily native vegetation and not less than 75 feet in width from wetland boundaries as delineated by the SWCD, shall be established and maintained by Grantor, unless otherwise determined in the approved Stewardship Plan.
- C. A 30-foot wide permanent, grass waterway on both sides of any intermittent stream as designated by the SWCD and being within a defined Federal Emergency Management Agency floodplain, shall be established and maintained by Grantor, unless otherwise determined in the approved Stewardship Plan.
- D. A 10-foot to 30-foot wide permanent, grass waterway on both sides of any intermittent stream currently or potentially contributing to erosion, shall be established and maintained by Grantor unless otherwise determined in the approved Stewardship Plan, or by written approval of the SWCD, Grantor and Grantee.

As a condition of receiving funding from the FRPP, and as required by Section 1238I of the Food Security Act of 1985, as amended, Grantor, Grantor’s heirs, successors or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a Conservation Plan for HEL in consultation with NRCS and Grantee, and approved by the SWCD. This Conservation Plan shall be developed using the standards and specifications of the NRCS field Office Technical Guide and 7 CFR part 12 that are in effect on the date of this Easement. However, Grantor may develop and implement a stewardship plan that proposes a higher level of conservation and is consistent with the NRCS field Office Technical Guide standards and specifications.

If the NRCS standards and specifications for HEL are revised after the date of this grant of easement based on an Act of Congress, NRCS and SWCD will work cooperatively with Grantor to develop and implement a revised Conservation Plan. The provisions of this Section apply to the HEL conservation requirements of the FRPP Program and are not intended to affect any other natural resource conservation requirements to which Grantor may be or become subject.

If the standards and specifications for the Stewardship Plan are revised after the date of this Easement, Grantee and SWCD will work cooperatively with Grantor to develop and implement a revised Stewardship Plan. The provisions of this section apply to Grantee stewardship requirements and are not intended to affect any other natural resource conservation requirements to which Grantor may be or become subject.

4.3. Structures and Improvements. There shall be no construction or placing of any house, mobile home, garage, barn or other building; tennis or other recreational court; golf course; landing strip; swimming pool; fence or sign (other than those permitted or required by Grantee for appropriate management, prevention of hunting, trespass, etc.); concrete pavement; billboard or other advertising display; antenna, electrical transmission or cellular communication tower or pole and associated structures; petroleum or natural gas pipeline; fiber optic or telephone line or conduit; water or sanitary sewer; wind turbine; or any other temporary or permanent structure or facility on the Protected Property.

Grantor's rights to construct or reconstruct buildings and other improvements are described in subparagraphs (A) through (E) below. Any construction or reconstruction not permitted below is prohibited. Before undertaking any construction or reconstruction that requires advance permission, Grantor shall notify Grantee and obtain prior written permission. All construction or reconstruction is subject to zoning regulations and must be consistent with permits required by and issued by the Township or Dakota County under its laws and ordinances for such construction activities.

- A. Agricultural Support Buildings, Structures and Improvements – Construction of any buildings, structures or improvements deemed necessary to support agricultural use on the Protected Property may be allowed, but requires prior written agreement by Grantee as described in Section 7.5.
- B. Utility Services and Septic Systems – Maintenance, repair, replacement, removal, and relocation of existing electric, gas, and water facilities, sewer lines and/or other public or private utilities, including telephone or other communication services over or under the Protected Property for the purpose of providing electrical, gas, water, sewer, or other utilities to serve improvements outside of the Protected Property for such purposes, is permitted. Grantor shall not permit or grant easements for new utility transmission or distribution facilities or systems without the written consent of Grantee. Maintenance, repair or improvement of a septic system(s) or other underground sanitary system that exists on the Protected Property at the time of this Easement, or the construction of a septic or other underground sanitary system, for the benefit of any of the improvements permitted herein, is permitted. All other utilities are prohibited on the Protected Property. Following installation and construction, the surface and vegetation shall be restored to a condition consistent with the conservation purposes of this Easement in a timely and appropriate manner.
- C. Roads, Parking Areas, Paths, Trails and Impervious Surfaces – There shall be no building of new roads or other rights of ways except for paths and trails consistent with the preservation of the Protected Property. Existing unpaved roads, parking areas, paths and trails may be maintained or improved, but shall not be widened or improved, except as permitted under Section 7.5, in accordance with the NRCS Conservation Programs Manual Part 519, and with prior written approval of Grantee. Impervious surfaces shall not exceed [redacted] acres, or two percent of the total Protected Property area.

In order to prevent erosion and soil loss, Grantor may relocate existing unimproved pasture roads/trails on the Protected Property, provided the total number and cumulative length and width does not increase and the disturbance to soils is minimized. Existing pasture roads/trails are identified in the Property Report defined in Section 8.2. Abandoned roads/trails shall be returned to native vegetative cover, either by letting natural succession to occur or by replanting with appropriate, native species (based on soil type) using local seed if possible.

Paths or trails may be established on the Protected Property for non-motorized, recreational uses only in accordance with the Stewardship Plan. No other roads or other rights-of-way may be established or constructed on the Protected Property without the prior written approval of Grantee.

- D. Recreational Activities – Grantor expressly reserve the right to engage in low impact, recreational activities requiring no significant surface alteration of the land and posing no

threat to the Conservation Values set herein, such as hunting, fishing, hiking, and bird watching, and to control access of all persons for these purposes, and provided that these activities do not impact the protection and conservation of any animal habitat or other conservation values of the Protected Property as determined by Grantee.

- E. **Fences and Other Similar Structures** – Grantor may, but shall not be obligated to maintain, repair, replace, improve or remove any fence or corral located on the Protected Property. Grantor may construct, install, maintain, repair, replace, improve or remove additional fencing as Grantor deems necessary to secure the Protected Property, and as required for permitted grazing of livestock or wildlife management purposes on the Protected Property. Following prior written consent of Grantee, which consent may be given or withheld at Grantee's sole discretion, Grantor may also construct, repair, replace, maintain, improve or remove small structures and corrals necessary for the agricultural and ranching uses of the Protected Property as permitted herein, such as for the watering, feeding, handling, and temporary shelter of livestock.

4.5. **Subdivision.** The Protected Property may not be divided, partitioned, subdivided or conveyed except in its current configuration without prior written approval of Grantee.

4.6. **Development Rights.** There are [redacted] development rights on the Protected Property currently allowed by local ordinance. Grantor has conveyed [redacted] of [redacted] existing development rights to Grantee, and Grantor has retained [redacted] of [redacted] existing development rights. Development rights conveyed to Grantee by Grantor shall not be transferred by Grantor to any location outside the Protected Property, whether pursuant to a cluster development plan or any other agreement or plan for transferable development. Development rights retained by Grantor may be transferred to property outside of the Protected Property.

No portion of the Protected Property shall be used to satisfy land area requirements for other property not subject to this Easement for purposes of calculating building density, transferring development rights, lot coverage, or open space under otherwise applicable laws, regulations, or ordinances controlling land use.

4.7. **Topography, Surface Alteration and Mining.** There shall be no change to the topography of the Protected Property in any manner including ditching, trenching, draining, diking or filling except as reasonably required in the course of activities or uses in accordance with the Stewardship or Conservation Plan. Removal of subsoil or topsoil and the extraction of subsurface or deep mined minerals from the Protected Property, including natural gas and oil, and the commercial and non-commercial extraction of minerals, including limestone, shale, gravel, sand, and all other minerals through mining, drilling, exploring or other methods are prohibited.

4.8. **Water.** Alteration or manipulation of natural rivers, creeks and streams; surface or subsurface springs; and shorelines of lakes, ponds or wetlands on the Protected Property is not allowed. Alteration or manipulation to restore or enhance water quality, wildlife habitat, native biological communities, ecological functions, or to benefit grazing and/or grassland/range management, which are approved in writing by Grantee and consistent with the Stewardship or Conservation Plan, if applicable, is allowed. New stormwater conveyance from adjacent or nearby properties is not allowed. No activities or uses of the Protected Property that cause soil erosion or are detrimental to water quality are allowed.

4.9. **Waste Disposal.** There shall be no storage, accumulation, processing or disposal of trash, non-compostable garbage, hazardous or toxic substance or other unsightly or offensive material on the Protected Property. Hazardous or toxic substances and agricultural by-products may be stored on the Protected Property, as needed, in association with agricultural uses otherwise permitted in this Easement, so long as such storage is in accordance with all applicable laws and regulations.

4.10. **Motorized Vehicles.** The use of cars, trucks, and other farm and ranch vehicles, for agricultural purposes is allowed by this Easement. Operation of snowmobiles, motorcycles, all-terrain vehicles, or any other types of motorized vehicles for recreational use by family members and social

guests shall be permitted for use on the Protected Property, as long as the same does not significantly alter or degrade the natural features and ecological functions of the Protected Property, or contradicts the provisions of the Stewardship Plan. All other use of motorized vehicles is prohibited except for administrative, habitat management, law enforcement public safety, and emergency purposes.

4.11. Signs. Commercial signs, billboards, and outdoor advertising structures may not be displayed on the Protected Property. Informational signage is permitted and is limited to the following purposes:

- A. Displaying the name of the Protected Property;
- B. Agriculturally-related marketing activities or products;
- C. Announcing the existence of this Easement;
- D. Providing interpretive and directional information;
- E. Providing the name and address of Grantor, Grantee, project partners, and/or funding sources;
- F. Delineating the boundaries of the Protected Property in order to prohibit trespass or hunting or other non-permitted activities.

For all signs permitted by this section, the location, number, size, and design must not significantly diminish the scenic qualities of the Protected Property.

4.12. Plant Removal and Introduction. Except as permitted under Section 4.12, there shall be no excavation and/or removal of native plants on or from the Protected Property except for those designated as noxious weeds or considered to be an invasive woody plant species, or when, based on consultation with and written permission from Grantee, it is agreed that excavation and/or removal of other types of native plants would enhance the Conservation Values of the Protected Property. Grazing and uprooting of native plants by livestock or removal of native species by other agricultural range practices that do not significantly compromise the Conservation Values of the Protected Property shall not be considered excavation or removal. The planting or seeding of trees, grasses or other plant species is prohibited on the Protected Property without the prior written approval of Grantee or in accordance with the Stewardship or Conservation Plan, if applicable.

4.13. Chemical Application. Grantor, or their agent, shall be able to apply chemicals such as pre- and post-emergent herbicides and pesticides for agricultural use, provided they comply with all applicable federal and State regulations and Best Management Practices. Labeled and approved herbicides and pesticides may also be used for spot applications (including by gun or boom nozzles) to control State/County-designated noxious weeds, invasive woody species or pest insect infestations, provided their use is designed to minimize the impact on the Conservation Values of the Protected Property. Broadcast spraying of herbicides or pesticides, including aerial applications, is permitted if known infestation is determined to be a threat to human, animal and plant community health, provided that, at a minimum, the following conditions are met: (a) spot treatment is not practical because of the severity of the infestation; (b) timing of application is scheduled to minimize damage to non-target species; and (c) type of herbicide or pesticide used has the least impact to non-target species while still being effective in controlling target species.

4.14 Public Access. Nothing contained herein shall be construed as a dedication of title to any portion of the Protected Property to the public, or as affording the general public physical access to any portion of the Protected Property.

4.15 Inspection and Noncompliance. An annual inspection of the Protected Property shall be conducted by Grantee, or its designated representative, to assure Easement and Stewardship and

Conservation Plan compliance and to make changes as necessary. Grantee shall have the right to enter the Protected Property, with advance notice to Grantor, in order to monitor compliance.

In the event of noncompliance with the Easement, Stewardship or Conservation Plan, Grantee, or its designated representative, shall work with Grantor to explore methods of compliance and give Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the Stewardship Plan following written notification from the NRCS that: (a) there is a substantial, ongoing event or circumstance of non-compliance with the Stewardship Plan; and (b) Grantee has worked with Grantor to correct such noncompliance. If Grantor does not comply, NRCS will inform Grantee of Grantor's noncompliance. Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the Easement, Stewardship or Conservation Plan following written notification from NRCS that: (a) there is a substantial, ongoing event or circumstance of non-compliance with the Conservation Plan; (b) NRCS has worked with Grantor to correct such noncompliance; and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

5. GRANTOR RESERVED RIGHTS.

Grantor reserves for itself, Grantor heirs, successors and assigns, all rights as owners of the Protected Property to use the Protected Property for all purposes that are not expressly prohibited herein and are not inconsistent with this Easement. Without limiting the applicability of the foregoing, the following rights are expressly reserved:

5.1. Conveyance. Grantor may sell, give, mortgage, lease or otherwise convey all or a portion of the Protected Property, provided that such conveyance is subject to this Easement, is in accordance with Section 4.6, and prior written notice is provided to Grantee in accordance with Section 8.15.

Upon conveyance of all or a portion of the Protected Property, any new deed shall reference this recorded conservation easement.

5.2. Agricultural Production. The Protected Property may be used for the production, processing and marketing of agricultural crops for the purpose consistent with the terms of this Easement.

5.3. Haying and Grazing. The Protected Property may be used for haying and grazing livestock in a manner that will: (a) maintain native plant and animal communities; (b) minimize erosion; (c) minimize invasion by exotic plants by retaining healthy vegetative cover; (d) protect sensitive aquatic resources such as riparian areas, pools, ponds, springs and seeps; and (e) be consistent with the Stewardship and Conservation Plan, if any. Except for the vegetative buffer and erosion control requirements and jointly developed and signed Stewardship Work Plan, the decision to follow the Stewardship Plan lies at the sole discretion of Grantor, provided Grantor continues to abide by the terms of this Easement, including items (a) through (e) listed above. Grantor and Grantee, shall re-evaluate the Stewardship Plan at five-year intervals to reflect advances in sustainable grazing and haying practices. In developing the Stewardship Plan, the parties will ensure that the terms of the Stewardship Plan and Conservation Plan, if any, are consistent.

5.4. Water for Livestock. To the extent required for grazing of livestock on the Protected Property, Grantor may make improvements to existing stock ponds. New impoundments or expansions of existing impoundments are permitted only with the written permission of Grantee. Such alterations shall be made in a manner that does not adversely affect water quality or quantity, and minimizes negative impacts to soils. Water-pumping windmills, solar-power water pumps or other non-intrusive water pumping systems may be used to provide groundwater to livestock.

5.5. Hunting and Fishing. Grantor, Grantor invitees, licensees, and lessees may hunt and fish for native or naturalized species on the Protected Property in compliance with all State and federal laws and regulations.

5.6. Restoration. Grantor may, but shall not be obligated to undertake activities necessary to maintain or enhance the Conservation Values of the Protected Property, as identified in Section 1.3 of this Easement and in accordance with the Stewardship Plan. Any natural resource restoration or enhancement or pond creation allowed pursuant to this provision must be consistent with the NRCS Conservation Programs Manual (CPM) Part 519.64K that is in effect at the time this Easement is granted.

5.7. Timber Resources. Grantor may selectively harvest timber resources from the Protected Property for personal or commercial use in a manner consistent with all terms and conditions of this Easement, and in accordance with the Stewardship Plan to minimize harmful impacts to the Conservation Values of the Protected Property as determined by Grantee.

5.8. Agri-tourism. The Protected Property may be used for low impact, agri-tourism such as farm tours, work experiences, field trips, petting zoos, corn mazes, hay rides, and other similar activities.

6. RIGHTS OF THE UNITED STATES.

Under this Easement, the same rights granted to the Grantee are also granted to the United States. However, the Secretary of the USDA (hereinafter referred to as "Secretary"), on behalf of the United States, will only exercise these rights in the event that Grantee fails to enforce the terms of this Easement, as determined in the sole discretion of the Secretary. The Secretary and his or her successors and assigns may exercise the United States' rights to enforce the terms of the Easement through any and all authorities available under federal or State law.

7. RIGHTS AND REMEDIES OF GRANTEE AND UNITED STATES.

In order to accomplish the conservation purposes of this Easement, Grantee and United States shall have the following rights and remedies:

7.1. Remedies. In the event that Grantee or United States becomes aware of a violation of the terms of this Easement, Grantee shall give notice to Grantor, at Grantor's last known post office address, of such violation via certified mail, return receipt requested, and request corrective action sufficient to abate such violation and restore the Protected Property to its previous condition. Failure by Grantor to cause discontinuance, abatement or such other corrective action as may be requested by Grantee within thirty (30) days after receipt of such notice shall entitle Grantee to enforce by proceedings at law or in equity the provisions of this Easement including, but not limited to, the right to require the restoration of the Protected Property to its condition at the date of this Easement, subject to the reserved rights of Grantor set forth herein. Grantee, or its successors or assigns, or the United States, or its successors or assigns, shall not waive or forfeit the right to take action as may be necessary to ensure compliance with the terms and conditions of this Easement by any prior failure to act. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period for cure to expire.

Nothing herein shall be construed to entitle Grantee or United States to institute any enforcement proceeding against Grantor for any changes to the Protected Property due to causes beyond Grantor control, such as changes caused by fire, flood, storm, infestations, natural deterioration, the acts of third parties legally authorized to act by recorded document or other legally established rights or the unauthorized wrongful acts of third persons; provided, however, that Grantor shall notify Grantee of any occurrence that would adversely affect or interfere with the conservation purpose of the Easement, whether caused by the acts or omissions of Grantor or third parties.

Grantee shall be entitled to seek expedited injunctive relief to enforce its rights with respect to the Protected Property, and Grantor waives any bond requirement otherwise applicable to any petition for such relief. Grantee shall have the right to report to regulatory authorities any environmental conditions or any potential or actual violations of environmental laws, including noxious weed laws, with respect to the Protected Property.

In the event either party becomes involved in legal proceedings against the other to enforce such party's respective rights or interests under this Easement, the prevailing party shall be entitled to receive from the non-prevailing party reasonable attorney's fees incurred in connection with any such proceedings.

7.2. Right of Entry. Grantee, or its designated representative, and United States, acting by and through the NRCS, shall have the right to enter the Protected Property, in a reasonable manner, with advance notice to Grantor and at reasonable times, for the purpose of ensuring that the Easement and Stewardship Plan and Conservation Plan required pursuant to Section 4.2 is being implemented appropriately, and as needed to exercise its contingent rights, for the following purposes:

- A. Inspecting the Protected Property to determine if Grantor or Grantor heirs, successors or assigns, are complying with the provisions of this Easement;
- B. Obtaining evidence for the purpose of seeking judicial enforcement of this Easement;
- C. With Grantor approval, making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by Grantor. Grantor shall be allowed to participate in all such observations and studies;
- D. Posting signs for the purpose of promoting provisions of this Easement, with Grantor approval as to the size and location of signs;
- E. Inspecting the Protected Property to determine if Grantor or Grantor heirs, successors or assigns, are complying with the provisions of the Stewardship Plan and Conservation Plan, if any;
- F. Removing or controlling invasive plants or animals, as agreed upon by Grantor and Grantee. Such activities by Grantee shall not relieve Grantor of the responsibility of removing and controlling invasive species in accordance with appropriate federal, State and County laws and regulations.
- G. If the Protected Property cannot be accessed directly from public right-of-way, Grantor will permit Grantee reasonable access rights over non-protected property belonging to Grantor. Grantee will provide advance notice of its need for access, will discuss with Grantor the most appropriate access route, and will minimize any damage to Grantor property by selecting appropriate vehicle(s) and weather conditions for obtaining access to the Protected Property.

All notices to Grantor under this section may be made either in writing or verbally, at the discretion of the party providing the notice.

7.3. Limitation of Grantee Rights. Nothing contained herein shall give rise, in the absence of a judicial decree, to any right or ability of Grantee or United States to become the owner, arranger or operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act by exercising physical control over the day-to-day operations of Grantor, or becoming involved in management decisions of Grantor regarding the generation, handling or disposal of hazardous substances.

7.4. Monitoring. Upon written or verbal notice to Grantor, Grantee shall have the right, but not the obligation, to monitor the condition of rare plant and animal populations, plant communities, and natural habitats on the Protected Property. A written summary of findings shall be provided to Grantor.

7.5. Discretionary Consent. Grantee consent for activities otherwise prohibited under Sections 4 and 5 or for any activities requiring Grantee consent under Sections 4 and 5 may be given under the following conditions and circumstances: if, owing to unforeseen or changed circumstances, any of the activities listed in Sections 4 and 5 are deemed desirable by Grantor and Grantee, Grantee may, at its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission, and requests for permission for activities requiring Grantee consent under Sections 4 and 5, shall be in writing and shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Easement. Grantee shall make reasonable efforts to respond to such written request within 60 days of receipt by Grantee. Grantee may give its permission only if it determines, at its sole discretion, that such activities: (a) do not violate the purpose of this Easement; and (b) either enhance or do not significantly impair any Conservation Values of the Protected Property. Notwithstanding the foregoing, Grantor and Grantee have no right or power to agree to any activities that would result in the termination of this Easement or to allow residential, commercial or industrial activities not provided for above. Grantee shall notify NRCS prior to granting consent for activities pursuant to this section.

8. GENERAL PROVISIONS.

8.1. Perpetual Burden. This Easement shall run with and burden the Protected Property in perpetuity and shall bind Grantor, Grantor heirs, successors and assigns.

8.2. Easement Documentation. Grantor and Grantee agree that the natural and agricultural characteristics, the ecological and aesthetic features, the physical condition, the present uses, and the Conservation Values of the Protected Property at the time of this grant are documented in the Property Report. The Property Report, including reports, maps, photographs and other documentation prepared by Grantee and signed and acknowledged by Grantor and a representative of Grantee, establishes the condition of the Protected Property at the time of this grant of Easement. A copy of the Property Report is maintained at the office of Grantee and may be used by Grantee in any enforcement action.

8.3. Access. Nothing in this easement shall be construed to preclude Grantor rights to access all portions of the Protected Property, so long as the same does not significantly alter or degrade the natural features and ecological functions of the Protected Property, or contradicts the provisions of the Stewardship Plan.

8.4. Assignment. This Easement is in gross and may be assigned or transferred by Grantee, with the approval of the Secretary, or his or her successors or assigns, and such transfer shall be duly recorded. Grantee agrees that if it transfers or assigns its interest in this Easement:

- A. The organization or entity receiving this interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder, and which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder; and
- B. The transferee or assignee will be required to carry out in perpetuity the conservation purposes that this Easement was originally intended to advance.

8.5. Dissolution of Grantee. In the event of the dissolution of Grantee, and United States declines to exercise its rights under Section 7, Grantee interest will be assigned only to a public body or to a private non-profit organization qualified to hold and monitor this Easement.

8.6. Subsequent Transfers by Grantor. Unless this Easement is extinguished, as set forth section 8.7, Grantor agrees that the terms, conditions, restrictions, and purposes of this Easement will be incorporated by reference in any subsequent deed or other legal instrument by which Grantor divests himself/herself of any interest in all or a portion of the Protected Property. Grantor agrees to notify Grantee, its successors and assigns, and United States of any such conveyance in writing by certified mail within fifteen (15) days after closing.

8.7. Extinguishment. Grantor agrees that this grant of a perpetual Easement gives rise to a property right, immediately vested in Grantee and United States, with a fair market value that is equal to the proportionate value that the Easement, at the time of this conveyance, bears to the fee title value of the Protected Property as a whole at the time of conveyance. The proportionate value of Grantee and United States property rights shall remain a constant fractional share of the unrestricted value of the Protected Property. United States has contributed [REDACTED] percent of the purchase price of the Easement, and Grantee and United States shall each hold a fifty (50) percent interest in the Easement.

If a subsequent unexpected change in the conditions of or surrounding the Protected Property makes impossible or impractical the continued use of the Protected Property for the conservation purposes described herein, and if the restrictions of this Easement are extinguished by judicial proceedings (including, but not limited to, eminent domain proceedings) and approved by United States, then upon the sale, exchange or involuntary conversion of the Protected Property, Grantee shall be entitled to a share of the proceeds at least equal to the proportionate value of the Easement described above. In such event, Grantee shall return [REDACTED] percent of those proceeds to United States, which represents the United States share of the cost of the Easement. Grantee will use its share of any and all proceeds received for such sale, exchange or involuntary conversion in a manner consistent with the conservation purposes of this Easement or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, as that section may be amended from time to time, and in regulations promulgated thereunder.

8.8. Title Warranty. Grantor hereby warrants and represents that Grantor is the fee simple owner of the Protected Property and has good right to grant and convey this Easement, that the Protected Property is free and clear of any and all encumbrances except those of record that have been approved by Grantee, and that Grantee and its successors and assigns shall enjoy all of the benefits derived from and arising out of this Easement. Any present or future mortgage on the Protected Property has been or will be subordinated to this Easement.

8.9. General Indemnification. Grantor shall indemnify and hold harmless Grantee and United States, their employees, agents, and assigns from any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee and United States may be subject or incur relating to the Protected Property, which may arise from, but is not limited to, Grantor negligent acts or omissions or Grantor breach of any representation, warranty, covenant, agreements contained in this Deed, or violations of any federal or State laws, including all Environmental Laws.

8.10. Hazardous Waste. Grantor represents and warrants that no hazardous substance or materials or toxic waste exists or has been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that there are not now any underground storage tanks located on the Protected Property.

Subject to the limitations of Grantor's liability contained in Section 8.9, Grantor, Grantor's heirs, successors and assigns shall indemnify, defend and hold Grantee and United States harmless from any liability related to Grantor's representations and warranties in this paragraph or related to the use, deposit or release of any hazardous substance or material or toxic waste on the Protected Property after the date of this Easement.

Grantor warrants that Grantor is in compliance with and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Protected Property.

Grantor warrants that he/she has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property. Moreover Grantor hereby promises to defend and indemnify Grantee and United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee or United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

"Environmental Law" or "Environmental Laws" means any and all federal, State, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

8.11. Real Estate Taxes. Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Protected Property.

8.12. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantee shall have no duty or responsibility to manage or maintain the Protected Property. If, however, the Protected Property is damaged by causes beyond Grantor control, such as changes caused by fire, flood, storm, infestations, natural deterioration, the acts of third parties legally authorized to act by recorded document or other legally established rights, or the unauthorized wrongful acts of third persons, Grantor and Grantee will meet and seek to arrive at an equitable solution to restore the Protected Property. Grantor shall keep Grantee interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

8.13. Re-recording. Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement; for such purpose, Grantor appoints Grantee as Grantor's attorney-in-fact to execute, acknowledge and deliver any necessary instrument on Grantor's behalf. Without limiting the foregoing, Grantor agrees to execute any such instruments upon request.

8.14. Definitions. The terms "Grantor," "Grantee" and "United States" as used herein shall be deemed to include, respectively, Grantor, Grantor's heirs, successors and assigns; Grantee, its successors and assigns; and United States, its successors and assigns

8.15. Notices. Any notices required under Sections 4.2, 4.3, 5.1, 7.1, 7.2, 7.4, 7.5, 8.2, and 8.6 of this Easement or any other notices shall be sent by registered or certified mail, return receipt requested, to the following addresses or such addresses as may be hereafter specified in writing:

GRANTOR



GRANTEE

Alan Singer, Land Conservation Manager, or Successor
Dakota County
14955 Galaxie Avenue
Apple Valley, MN 55124

UNITED STATES

Don A. Baloun, State Conservationist, or Successor
Natural Resources Conservation Service
375 Jackson Street, Suite 600
St. Paul, MN 55101

8.16. Severability. If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

8.17. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purpose of Minnesota Stat. Chapter 84C et. seq. If any provision in this instrument 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.

8.18. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussion, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

8.19. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions prior to transfer shall survive transfer.

8.20. No Merger. Should Grantee acquire fee title to the Protected Property, no merger shall occur and this Easement and the fee shall continue to be managed as separate estates.

TO HAVE AND TO HOLD the above-described Easement to the use, benefit and behalf of Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, Grantor has executed this Permanent Agricultural Conservation Easement this _____ day of _____, 2011.

GRANTOR

Landowner Name

Landowner Name

STATE OF MINNESOTA)
)SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by
_____, name (s) _____, marital status.

Notary Public

GRANTEE

Dakota County hereby approves and accepts the foregoing Permanent Agricultural Conservation Easement and the rights conveyed therein on this ____ day of _____ 2011.

Thomas A. Eagan, Chair
Dakota County Board of Commissioners

Attested to By:

Kelly D. Olson
Clerk to the Board

Approved by Dakota County
Board Resolution No. 10-____

Approved as to Form:

Michael R. Ring,
Assistant County Attorney

Date: _____

C- _____
Contract # _____

UNITED STATES

The Natural Resources Conservation Service, The United States of America, an agency of the United States Government, hereby accepts and approves the foregoing conservation easement deed, and the rights conveyed therein, on behalf of the United States of America.

Don A. Baloun, Minnesota State Conservationist
Natural Resources Conservation Service

STATE OF MINNESOTA)
)SS.
COUNTY OF RAMSEY)

On this _____ day of _____ 2011, before me, the undersigned, a Notary Public in and for the State of Minnesota, personally appeared Don A. Baloun known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that he is the Minnesota State Conservationist of the Natural Resources Conservation Service, United States Department of Agriculture, is authorized to sign on behalf of the agency, and acknowledged and accepted the rights conveyed by the Permanent Agricultural Conservation Easement to be his voluntary act and deed.

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

Notary Public

Drafted by:
Alan Singer
Dakota County
14955 Galaxie Avenue
Apple Valley, MN 55124
(952) 891-7001

Farmland and Natural Areas Program

Legal Description of Name Agricultural Conservation Easement

