

CHAPTER 8—MODEL AGRICULTURAL CONSERVATION EASEMENT WITH OPTION TO PURCHASE

(Section-by-section commentary on this model document appears in Chapter 9.)

THIS CONSERVATION EASEMENT WITH OPTION TO PURCHASE (this “Easement”) granted this _____ day of _____, _____, by _____ and _____ (“Grantors”), in favor of _____, a _____ [name of state] not-for-profit corporation (“Grantee”).

RECITALS

A. WHEREAS Grantors are the owner in fee simple of certain real property in _____ County, state of _____, consisting of approximately ____ acres, more particularly described in Exhibit A: Property attached hereto (the “Property”).

B. WHEREAS the Property is actively used by the Grantors for agricultural purposes on a sustainable and economically viable basis, and the Grantors wish to see such use continue on a basis that will preserve the ecological integrity and agricultural viability of the Property.

C. WHEREAS Grantee is a publicly-supported not-for-profit organization, recognized as tax-exempt under Section 501(c)(3) of the United States Internal Revenue Code and qualified to do business in the State of _____, which has as a primary purpose the preservation, protection, or enhancement of land in its agricultural, natural, ecologically significant, scenic, open and forested condition for scientific, charitable and educational purposes.

D. WHEREAS Grantee and Grantors (collectively, the “Parties”) recognize that continued agricultural use will provide benefits to the surrounding community by preserving natural resources and open space, by providing a source of locally grown food for local residents, and by providing educational opportunities relating to nutrition, the natural environment and sustainable agriculture.

E. WHEREAS small farms across the country are disappearing as farmland is converted to non-farm uses because of economic forces that drive the unrestricted market value of the farmland higher than a farmer can afford to pay based on a revenue stream resulting from agricultural use; and whereas the Parties wish to ensure that the Property is kept affordable for economically viable agricultural use and not be converted to non-farm use.

F. WHEREAS this Easement conforms to the terms and conditions established by [identify state conservation easement statute], and the purposes of this Easement are consistent with and support the purposes of [identify any applicable federal, state or local laws].

ARTICLE I: GRANT OF EASEMENT AND OPTION

- A. Conveyance and Valuation.** In consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein and the receipt by Grantors from Grantee of the amount of _____ Dollars (\$_____) and pursuant to the laws of the state of _____ and in particular _____ [cite specific law(s)]____, Grantors hereby voluntarily grant and convey to Grantee this Easement on the terms and conditions hereinafter set forth. The amount of _____ Dollars (\$_____) referenced above is the monetary value of the Easement agreed to by Grantors and Grantee. It is based on an appraisal which valued the Property both restricted and unrestricted by this Easement. The difference between the unrestricted and restricted values equals the monetary consideration paid for the Easement.
- B. Duration.** The Easement (including the Option to Purchase) created hereby shall burden and run with the Property forever. Every provision of this Easement that applies to Grantors or Grantee shall also apply forever to and shall burden or benefit, as applicable, their respective agents, heirs, devisees, administrators, employees, personal representatives, lessees, and assigns, and all other successors as their interest may appear. The Grantors agree that transfer by Grantors of any interest in the Property shall be in accordance with the terms of the Option to Purchase included herein as Section IV.
- C. Grantors' Responsibilities.** Grantors shall be solely responsible for payment of all taxes and assessments levied against the Property and for the maintenance and upkeep of the Property to the extent required by law. Grantee shall have no responsibility for the upkeep or maintenance of the Property. Grantors shall indemnify Grantee against and hold Grantee harmless from any and all loss, claim, liability or expense (including reasonable attorneys' fees) arising with respect to the Property, unless due to the gross negligence or willful misconduct of Grantee.

ARTICLE II: STATEMENT OF PURPOSE

The purpose of this Easement is to protect and preserve agricultural lands, encourage sound soil management practices, preserve natural resources, maintain active agricultural use of the Property, and preserve the economic viability of commercial agricultural use of the Property by ensuring affordable resale prices. In addition, this easement is intended to regulate and control activities and uses that may be detrimental to the present or future agricultural productivity of the Property or the present or future viability of agricultural use of the Property, or that may be detrimental to water conservation, soil conservation, or to good agricultural and/or forestry management practices or that are wasteful of natural resources.

As used in this Easement, "Agricultural Use" is defined as use for the raising of animals, including but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals, for the purpose of selling such animals or a product derived from such animals in the regular course of business, and use for horticultural purposes, including but not limited to, the raising of fruits, vegetables, berries, nuts and other foods for human

consumption, feed for animals, flowers, sod, trees, nursery, or greenhouse products, and ornamental plants and shrubs for the purpose of selling such products in the regular course of business, and also use for the production of forest products for the purpose of selling such products in the regular course of business. (Notwithstanding the broad nature of this definition, the Parties recognize that certain agricultural uses are prohibited or restricted by certain specific terms of this Easement, including terms established in the Exhibit B: Requirements and Restrictions.)

ARTICLE III: TERMS AND CONDITIONS

- A. Retained Rights.** Grantors hereby reserve to and for themselves and their heirs, devisees, legal representatives, successors and assigns, the customary rights and privileges of ownership not inconsistent with the stated purposes of this Easement, including but not limited to:
1. **Privacy.** The right to privacy and the right to exclude the public from the Property.
 2. **Agricultural activities.** The right to carry out all agricultural activities not restricted by the terms of this Easement.
 3. **Water rights.** The right to use any appurtenant water rights sufficient to maintain the permitted uses of the Property, and the right to develop such improvements as are necessary to access and utilize such water rights for such purposes, provided such improvements do not degrade existing ground water, water courses or wetlands or otherwise degrade the environment.
 4. **Farm roads.** The right to maintain and use existing trails and farm and wood roads on the Property substantially in their present condition or as reasonably necessary for their continued use for agricultural purposes.
 5. **Sand and gravel for farm roads.** The right to excavate and transport sand, gravel or similar substances for use in maintaining existing farm and wood roads on the Property.
 6. **Fences.** The right to construct and maintain such fences as are necessary for the permitted agricultural use of the Property.
 7. **Educational activities.** The right to carry out educational activities related to the agricultural use of the Property, including but not limited to educational activities addressing the subjects of sustainable agriculture, food production and nutrition, environmental conservation, and ecology.
 8. **Utilities and services.** The right to install, maintain, replace, and relocate telephone, electric, gas, water or sewer facilities, or other public or private utilities, over or under the Property for the purpose of providing energy or services to the Property for permitted uses, and the right to grant easements over or under the Property for these utility purposes.

9. **Temporary structures.** The right to construct or place temporary structures on the Property for permitted uses provided all such structures comply with all applicable laws and government regulations.

B. Prohibited Uses. The Property shall at all times be held, used and conveyed subject to, and not in violation of, the following prohibitions.

1. **Use inconsistent with Easement's purposes.** The Property shall not be used in any way that is inconsistent with the purposes of this Easement as stated in the Statement of Purpose.
2. **Extraction of soil and minerals.** Except as specifically permitted by the provisions of Section III(A) above, any mining or extraction of soil, sand, gravel, rock, ore, oil, natural gas, or other mineral substance that disturbs the surface of the land or degrades its agricultural productivity is prohibited.
3. **Structures not for permitted use.** Except for structures existing on the Property at the time of the granting of this Easement and except as otherwise specifically provided herein, temporary or permanent structures that are not appropriate for or intended to support permitted agricultural or educational use shall not be constructed, placed or permitted to remain on the Property; nor shall any permanent structure be developed on the Property the resale value of which would be likely to make the future purchase of the Property unaffordable for commercial agricultural use.
4. **Prohibitions stated in Exhibit B: Requirements and Restrictions.** All activities, structures and uses prohibited or restricted by the terms of the attached Exhibit B: Requirements and Restrictions (as such Exhibit may be amended from time to time by the mutual consent of the Parties) shall be thus prohibited or restricted by the terms of said Exhibit then in effect.
5. **Failure to achieve "Qualified Owner" status.** Agricultural use of the Property shall not be diminished or altered to such an extent that Grantors no longer qualify as "Qualified Owners" as defined in Part IV below and Exhibit B: Requirements and Restrictions. (The previous sentence notwithstanding, the Parties recognize that Grantors may, under the terms of Part IV below and Exhibit B: Requirements and Restrictions, qualify for such status on the basis of physical disability, age, or length of tenure, regardless of diminished agricultural use.)
6. **Prohibition of conveyances not subject to Easement.** Any conveyance of any ownership interest in the Property (including a leasehold interest) that is not fully and explicitly subject to the terms and conditions of this Easement as required by Section V(G) below is prohibited.

- C. Prior Written Approval Required.** The following activities, structures and uses are prohibited unless prior written approval has been given by Grantee in accordance with the procedures described in Section III(D). below.
1. **Development of permanent structures.** Prior written approval is required for the construction or placing on the Property of any new permanent structure or for the expansion of any existing permanent structure that will increase the area of land covered by said structure by more than ____ square feet. Such construction or expansion shall not be approved for purposes inconsistent with the stated purposes of this Easement, and shall not be approved, regardless of the purpose stated by Grantors, if the character or size of the resulting structure is such as is likely to make the future purchase of the Property unaffordable for persons whose livelihood is to be derived from commercially farming the Property.
 2. **Residential Use.** Prior written approval is required for the use of any structures as dwellings for any persons who are not engaged in agricultural or educational work on the Property and are not members of the households of persons thus engaged.
 3. **Subdivision.** Prior written approval is required for subdivision or any division of the Property into two or more parcels, even if the Property is comprised of two or more deeded parcels on the date this Easement is granted. No subdivision or other division shall be approved without the condition that new agricultural conservation easements and purchase options substantially the same as this Easement and Option be recorded on all of the resulting parcels.
 4. **Leasing.** Prior written approval is required for the leasing of any portion of the Property to any third party for any period of time. Approval will be granted only for duly executed written lease agreements that are explicitly subject to the terms and conditions of this Easement and only when there is reasonable assurance that the lessee's use of the Property will in fact comply fully with said terms and conditions.
 5. **Approvals required by Exhibit B: Requirements and Restrictions.** Prior written approval is required for any activity or use for which Grantee's approval is required, at the time such activity or use is proposed, under the terms of the attached Exhibit B: Requirements and Restrictions.
 6. **Other uses inconsistent with purpose.** Prior written approval is required for any other activity or use which is not clearly consistent with the stated purposes of this Easement or about which there is any question as to its consistency with such purposes.
- D. Approval Process.** The following process shall be followed with regard to activities, structures and uses identified in Section III(C) above as requiring prior written approval.
1. **Grantors' request.** If the Grantors wish to undertake or establish any activity, structure, or use for which approval is required, Grantors shall submit a written request for approval to the Grantee (the "Grantors' Request"), describing the activity,

structure or use for which approval is requested in sufficient detail to allow Grantee to determine whether it is permitted and consistent with the purposes of this Easement.

2. **If additional information is needed.** If Grantee finds that additional informational material is needed before it can make a determination regarding approval, it shall, as soon as possible and in any case within thirty days of receipt of Grantors' Request, submit a written request to Grantors specifying the additional material required. The informational material that may be thus requested may include but is not limited to reasonably detailed, scaled drawings of any proposed new structures or additions to existing structures.
 3. **Grantee's approval or denial.** Within 60 days of receipt of Grantors' request, or, if additional informational material has been requested, within 45 days of Grantee's receipt of such additional material, the Grantee shall notify Grantors in writing of its determination. If Grantee approves the Grantors' Request or approves the Grantors' Request with conditions, Grantee's notice to Grantors shall include a "Certificate of Approval," specifying the nature of what is approved in sufficient detail to be suitable for recording. If Grantee denies the Grantors' Request, Grantee's notice to Grantors shall include a written statement of the reason(s) for denial. At any time within said 60 or 45 day period, the parties may mutually agree to extend the length of such period.
- E. **Affirmative covenant regarding continued agricultural use.** It is a purpose of this Easement to maintain active agricultural use of the Property. Pursuant to this purpose, The Grantors agree, for themselves and their heirs, devisees, legal representatives, successors and assigns, that they as Grantors shall maintain the status of Qualified Owners as required by Section A of the attached Exhibit B: Requirements and Restrictions. Failure to maintain such status as thus required shall be a violation of this Easement. Such failure shall also authorize Grantee to exercise its option to purchase the Grantors' interest in the Property according to the terms of Part IV hereof.
- F. **Enforcement Of terms and conditions.** Grantee shall have the following rights with regard to the enforcement of this Easement.
1. **Grantee's right to enter.** The Grantors grant to Grantee, and its successors at law, the right to enter the Property in a reasonable manner and at reasonable times, for the purpose of (a) inspecting the Property to determine compliance with this Easement or a Certificate of Approval; (b) enforcing this Easement or a Certificate of Approval; and (c) any other action which may be necessary or appropriate, with or without order of court, to remedy or abate any violation of this Easement or a Certificate of Approval.
 2. **Grantee's right to any available remedy.** In the event of a violation of the terms of this Easement or a Certificate of Approval, the Grantee reserves the right to pursue any remedy available at law and equity, including injunctive relief.

3. **Rights not in limitation of.** The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for enforcement of this Easement or a Certificate of Approval.
4. **Grantors liable for costs of enforcement.** Grantors and Grantors' heirs, devisees, successors and assigns shall be liable for any costs incurred by Grantee in connection with enforcement of this Easement arising from a default or breach of this Easement.

ARTICLE IV: OPTION TO PURCHASE PROPERTY

Grantee shall have an option to purchase the Property in accordance with the provisions of this section (the "Option"). The Option is granted as an integral part of this Easement, the full consideration for which is set forth above. The Option constitutes a restriction that runs with the land and is binding in the event of a foreclosure of the Property. The intent of the Option is to preserve commercial agricultural use of the Property by Grantors and their successors and prevent the sale of the Property on terms that would preclude its profitable use for commercial agriculture.

- A. **Triggering of Option.** The Grantee shall have the right to exercise the Option upon the occurrence of either one of the two following events ("Triggering Events").
 1. Grantee shall have the right to exercise the Option in the event that Grantors propose to sell the Property and have entered into a bona fide Purchase and Sale Agreement with a third party for the sale of the Property (the "Purchase and Sale Agreement"). In such event, Grantors shall give Grantee written notice in accordance with Section IV(C)(1)(a) below.
 2. Grantee shall have the right to exercise the Option in the event that Grantors have violated the requirement that they maintain "Qualified Owner" status as defined in Part A of Exhibit B: Requirements and Restrictions and have failed to cure such violation in accordance with the provisions of Section A(1)(b) or Section A(3) of said Exhibit
- B. **Determination of Option Price.** The price for which Grantee shall have the right to purchase the Property (the "Option Price") shall be determined as follows.
 1. The Option Price shall be the lesser of the price stated in the Purchase and Sale Agreement (if Grantors have proposed to sell the Property and have entered into such an agreement) or a price equal to the as-restricted fair market value of the Property ("As-Restricted Value") determined by Grantors' choice of one of the two methods described in "a" and "b" below. (If the Option has been triggered by a violation of the "Qualified Owner" requirement as provided in Section A (2) above, the Option Price shall be the As-Restricted Value of the property as determined by Grantors' choice of methods "a" or "b" below.)
 - a. An appraisal of the As-Restricted Value of the Property, including all improvements thereon, shall be conducted by a duly licensed appraiser with experience in the appraisal of agricultural real estate in the _____

geographical area. Such appraisal shall be obtained and paid for by Grantors if the Triggering event has been Grantors' proposal to sell the Property as described in Section IV(A)(1) above. Such appraisal shall be obtained and paid for by Grantee if the Triggering Event has been Grantors' failure to cure the violation identified in Section IV(A)(2) above. The appraisal shall be conducted by a market comparison of the Property, including all permanent improvements, with comparable properties recently purchased or leased for agricultural use such as would be permitted under the terms of this Easement, and/or by such other appraisal methods as such appraiser finds appropriate for determining the As-Restricted Value of the Property. In conducting such appraisal, the appraiser shall take into consideration all restrictions and requirements imposed by this Easement and Option that may affect market value.

If the party that did not obtain the appraisal is not satisfied with the appraisal, such party may commission, at its cost, a second appraisal of the Property in accordance with the provisions of the paragraph above by a duly licensed appraiser with experience in the appraisal of agricultural real estate in the _____ geographical area. If the value reported by such second appraisal is no more than ten percent (10%) higher or lower than the value reported by the first appraisal, the As-Restricted Value, for purposes of determining the Option Price, shall be the average of the two appraised values. If the second appraised value is more than ten percent (10%) higher or lower than the first appraised value, then Grantors' appraiser and Grantee's appraiser shall together appoint a third duly licensed appraiser with experience in the appraisal of agricultural real estate in the _____, who shall appraise the Property according to the requirements of the paragraph above. The cost of the third appraisal shall be equally borne by Grantee and Grantors. The value of the Property determined by the third appraiser in such case shall be the As-Restricted Value for purposes of determining the Option Price.

- b. Alternatively, at the election of Grantors, the As-Restricted Value for purposes of determining the Option Price may be determined as follows: the amount of the As-Restricted Value of the Property, including improvements, determined by the appraisal relied upon for the acquisition of this Easement (the "Governing Appraisal") shall be multiplied by the Inflation Rate. The Inflation Rate shall be equal to 1 plus the fractional increase in the Consumer Price Index for All Urban Consumers in _____ published by the Bureau of Labor Statistics, U. S. Department of Labor, or successor Index published by the U.S. Government appropriately correlated to the prior index by a published conversion factor, where indicated, from the date of the Governing Appraisal to the date of the Purchase and Sale Agreement.

C. **Procedures for Exercising Option.** Upon the occurrence of a Triggering Event, the following procedures shall be followed.

1. If the Triggering Event is Grantors' intent to sell as described in Section IV(A)(1) above:
 - a. The Grantors shall give to the Grantee a written notice of their intent to sell the Property (the "Intent to Sell Notice"), to which shall be attached (a) a copy of the Purchase and Sale Agreement and (b) either a copy of an appraisal determining the As-Restricted Value of the Property in accordance with Section IV(B)(1)(a) above or Grantors' own calculation of As-Restricted Value by the method described in Section IV(B)(1)(b) above.
 - b. If Grantee chooses to obtain a second appraisal in accordance with Section IV(B)(1)(a) above, such appraisal shall be commissioned within 15 days of Grantee's receipt of the Intent to Sell Notice.
 - c. Grantee shall notify Grantors in writing of its election to exercise the Option (Election to Exercise Notice) or its waiver of the Option within 90 days of its receipt of the Intent to Sell Notice or, in the event that multiple appraisals have been commissioned, within 60 days of its receipt of the final appraisal conducted in accordance with Section IV(B)(1)(a) above.
2. If the Triggering Event is Grantors' failure to cure a violation as described in Section IV(A)(2) above:
 - a. Having given notice to Grantors of their failure to cure as required by Section A(1)(b) or Section A(3) of Exhibit B: Requirements and Restrictions, Grantee may initiate the process of determining the Option Price by obtaining an appraisal of the As-Restricted Value of the Property in accordance with Section IV(B)(1)(a) above. Upon the completion of the appraisal, Grantee shall notify Grantors in writing that Grantee is reviewing its Option to Purchase (the "Notice of Review") and shall attach to said notice a copy of the appraisers report.
 - b. Within 15 days of Grantors' receipt of the Notice of Review, Grantors shall either (i) notify Grantee that they accept the result of the appraisal as representing the Option Price, or (ii) commission a second appraisal in accordance with Section IV(B)(1)(a) above, or (iii) notify Grantee that they accept the results of the Inflation-Rate calculation described in Section IV(B)(1)(b) above as representing the Option Price.
 - c. In the event that two or three appraisals are commissioned in accordance with Section IV(B)(1)(a) above, Grantors shall, within 15 days of receipt of the final appraisal, notify Grantee either (i) that they accept the As-Restricted Value determined by the appraisal process described in said Section IV(B)(1)(a) as representing the Option Price, or (ii) that they accept the results of the Inflation-Rate calculation described in Section IV(B)(1)(b) as representing the Option Price.
 - d. Within 90 days of its receipt of Grantors' notice of acceptance of an Option Price, given in accordance with either Section IV(C)(2)(b) or Section IV(C)(2)(c), Grantee

shall notify Grantors in writing of its election to exercise the Option (Election to Exercise Notice) or its waiver of the Option.

D. Completion of Purchase. In the event that the Grantee elects to exercise the Option and purchase the Property or assign the Option to another party (the “Assignee”), the transaction shall be completed by Grantors and Grantee or Assignee within 90 days of Grantors’ receipt of the Election to Exercise Notice.

1. Grantee may assign the Option at any time after giving the Election to Exercise Notice, provided that the Assignee, in the Grantee’s opinion, will use the Property for commercial agricultural production in accordance with the terms of this Easement. Such assignment shall be made in writing, with a copy delivered to Grantors.
2. The deed delivered to Grantee or the Assignee upon completion of the transaction shall convey a good and clear title to the Property free of all encumbrances, and at such time the Property shall be in the same condition as it was at the time of the Election to Purchase Notice, reasonable wear and tear and use thereof excepted.

E. If Option Is Not Exercised. If Grantors have executed a Purchase and Sale Agreement with a third party, Grantors may sell the Property to such third party only in the event that Grantee (1) has declined or failed to exercise its Option in writing within the specified time period, or, (2) having elected to exercise its Option, has failed to complete the purchase within the specified time period.

F. Transfers Exempt from Option. The obligations of the Grantors under an Option triggered by an event described in Section IV(A)(1) above shall not apply where the proposed transfer of ownership will be a result of:

1. A gift for nominal consideration to the Grantors’ spouse, parent, children or grandchildren (whether by blood, marriage or adoption), siblings and/or their children or grandchildren (whether by blood, marriage or adoption);
2. The devise (or conveyance) of the Property by the will or intestacy of the Grantors, their heirs, successors or assigns;
3. Any sale of the Property to a partner of the Grantors who is physically engaged in the day-to-day agricultural operation of the Property.

However, any subsequent transfer by a party acquiring the Property under this Section F or Section E above shall again be subject to this Option.

ARTICLE V. MISCELLANEOUS PROVISIONS

- A. **Notices.** Any notices required herein shall be in writing and shall be deemed delivered if delivered in hand or mailed, postage prepaid by certified or registered mail return receipt requested, to Grantors and Grantee respectively at the following addresses, or to such other addresses as either party may designate by notice to the other:
- To Grantors:
[legal address]
- To Grantee:
[legal address]
- B. **Severability.** If any section or provision of this Easement shall be held to be unenforceable by any court of competent jurisdiction, the Easement shall be construed as though such section had not been included in it.
- C. **Construction.** If any section or provision of this Easement shall be subject to two constructions, one of which would render such section or provision invalid, then such section or provision shall be given the construction that would render it valid.
- D. **Governing Law.** This Easement shall be interpreted in accordance with the laws of the State of _____.
- E. **Headings.** Section headings and subheadings have been inserted solely for convenience of reference and are not part of this Easement and shall have no effect upon its interpretation.
- F. **Entire Agreement.** This Easement, together with the attached exhibits and schedules, and any documents incorporated herein by reference, constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings of the Parties.
- G. **Subsequent Transfers by Grantors.** The Grantors agree to incorporate the terms of this Easement and Option by reference in any deed or legal instrument by which they divest any interest in the Property, including without limitation any lease. Grantors agree to give Grantee at least thirty [30] days written notice prior to the date of such transfer, and to provide therein the name, address and telephone number of the transferee. Grantors' failure to perform any act required by this Section G does not impair the validity of this Easement or limit its enforceability against Grantors or any transferee.
- H. **Assignment by Grantee.** The Grantee may assign this Easement, provided that any transfer shall be made only to an organization that, at the time of transfer, is qualified as an eligible donee under Internal Revenue Code Section 170(h)(3) or its successor, and is qualified pursuant to *[applicable state law if any]*, or any subsequent State law governing the creation, transfer and enforcement of conservation easements.

- I. **Amendment.** This Easement may be amended only with the written consent of Grantee and Grantors. Any such amendment shall be consistent with the Statement of Purpose of this Easement and shall comply with Section 170(h) of the Internal Revenue Code and any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with [applicable state statute] Any such amendment shall be duly recorded.
- J. **Extinguishment.** If a court with jurisdiction determines that conditions affecting the property have changed so much that it is no longer possible or practical to achieve the stated purposes of this Easement, such court may extinguish or modify this Easement in accordance with applicable state law, at the joint request of Grantors and Grantee. If this Easement is extinguished by judicial proceeding, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or disposition of the Property, calculated in accordance with the following Section K. Grantee shall use its portion of such proceeds in a manner consistent with the stated purposes of this Easement.
- K. **Proceeds.** The grant of this Easement gives rise to a property right, immediately vested in Grantee, which the Parties agree shall have a value equal to a percentage (the "Proportionate Share") of the value of the Property unencumbered by this Easement but excluding any increase in value attributable to improvements constructed or placed on the Property subsequent to the date hereof. The Proportionate Share shall be determined by dividing the value of this Easement, calculated as of the date hereof, by the unencumbered value of the Property, also calculated as of the date hereof.

WITNESS the execution hereof under seal this ____ day of _____.

By:

Etc....

Exhibit A: Property

(a description of the Property as it is described on Grantor's deed)

Exhibit B: Requirements and Restrictions

A. Active Agricultural Use and Qualified Owner Requirement

For the purpose of promoting active agricultural use of the Property the Grantors agree that they shall maintain “Qualified Owner” status in accordance with the following provisions. As used herein, the term “Owner” means the Grantors and their successors in title, and the term “Qualified Owner” means any such Owner who is qualified on the basis of either Section A(1) or Section A(2) below.

1. The Grantors may qualify by actively farming the Property through their own direct management and oversight, so as to maintain at least \$_____ in average annual gross agricultural income, which shall be calculated and documented as follows.
 - a. No later than May 1 of each year, Grantors shall submit to Grantee a copy of their federal income tax return(s) for the previous tax year, including a copy of Schedule F (Farm Income) or such other form or schedule as is then required by the Internal Revenue Service for reporting farm income. After three such annual submissions, and each year thereafter, Grantee shall determine the average annual gross agricultural income by adding together all gross agricultural income reported by the Grantors for the three preceding years and dividing the sum by three.
 - b. If the average annual gross agricultural income, calculated as described above, is less than the required amount stated above, Grantee shall give written notice to Grantors stating this fact and stating that they are therefore in violation of the terms and conditions of this Easement and further stating that Grantors will have one year in which to cure said violation. The violation shall be cured if, after the submission of the next annual tax return(s), the average annual gross agricultural income for the three preceding year as of that time is equal to or more than the required amount. If the violation is not thus cured, Grantee shall notify Grantors that they have failed to cure the violation, and Grantee may thereupon exercise the Option to Purchase as provided in Part IV of the Easement. (Notwithstanding the foregoing, Grantors shall not be in violation if they qualify under Section A(2) below.)
2. Grantors who have not met the requirement stated in Section A(1) above may still achieve the status of Qualified Owners in either of the following two ways (a or b).
 - a. Grantors may qualify for such status if the average age of all Grantors at the time is at least sixty years and if such Grantors have previously met the average annual gross agricultural income requirement for a total of ten years (including the first three years following the execution of this Easement).

- b. Grantors may qualify for such status if they can provide reasonable evidence that they were prevented by illness or disability from meeting the requirement stated in Section A(1) above.
3. If Grantors have failed to submit the required tax returns by the date specified in Section A(1) above and have failed as well to submit evidence that they are Qualified Owners on the basis of either Section A(2)(a) or A(2)(b) above, Grantee shall notify Grantors that they are in violation of the terms and conditions of this Easement. Upon receipt of such notice, Grantors shall have sixty days in which to cure said violation by submitting the tax returns required in Section A(1) above or reasonable evidence of qualification on the basis of Section A(2)(a) or A(2)(b) above. If said violation is not thus cured within said sixty day period, Grantee shall notify Grantors of this fact and may exercise Grantee's Option to Purchase as provided in Part IV of the Easement.

B. (Sample) Land Use Restrictions

1. The spreading of animal manure on any portion of the Property between _____ [date] and _____ [date] or at any time when the ground is snow-covered or frozen is prohibited.
2. The dumping, storage or disposal of wastes, refuse, debris, or hazardous substances on the Property, except for organic compost and composting operations, is prohibited.
3. Paving or otherwise covering any portion of the Property with concrete, asphalt or gravel without the prior written permission of the Grantee is prohibited. Grantee shall give such permission unless it determines that the proposed covering of the soil will significantly diminish or impair the agricultural productivity of the Property.
4. Any disturbance of the soil or pasturing of animals is prohibited within ____ feet of _____ [Identify specific bodies of water, wetlands or watercourses by name and/or by reference to an attached map.]
5. The establishment or maintenance of any commercial feedlot on the Property is prohibited. For purposes hereof, "feedlot" is defined as a confined area or facility within which the land is not grazed or cropped at least annually, and which is used primarily to receive and hold livestock that has been raised off the Property.
6. The Grantors shall not use the Property primarily for the production of sod, nursery stock, ornamental shrubs, ornamental trees or other similar products not used for food, clothing or to meet other basic human needs (collectively, the "Restricted Products"). Average annual gross income from the sale of such Restricted Products shall not exceed fifty percent (50%) of average annual gross agricultural income calculated as provided in Section A(1) above.

C. Amendment of Exhibit

The terms and conditions of this Exhibit B: Requirements and Restrictions may be amended by mutual agreement of the Parties in accordance with the following procedures.

1. Either Party may propose one or more such amendments by written notice to the other Party, provided that neither party shall propose amendments more often than once in each calendar year. Such notice shall include an explanation of the rationale for the proposed amendment(s).
2. The Party receiving such notice shall respond in writing to the other Party within 30 days of receipt of such notice. In the written response, the responding Party shall either (a) agree to the proposed amendment or (b) explain why it is unwilling to agree to such an amendment, or (c) request a meeting of the Parties to discuss the proposal. If the responding Party has expressed unwillingness to agree to the proposed amendment(s), the Party that has proposed the amendment may submit to the other Party a written request for a meeting to discuss the proposal.
3. If, in the course of the process described above, either party has requested a meeting to discuss the proposed amendment, such a meeting shall be scheduled at a mutually convenient time, not later than 30 days following receipt of the request for a meeting.
4. If such a meeting is scheduled, the Parties may agree to invite the participation of one or more other parties who would bring relevant information or experience to the discussion. In any such discussion the goal shall be to give due consideration to changes in circumstances affecting the use of the Property while continuing to apply the stated purposes of the Easement and to abide by all applicable laws and regulations. Variations of the originally proposed amendment(s) may be considered. The Parties may agree to adjourn, seek additional information, and reconvene; however, the process shall not be extended beyond the initial meeting if both parties do not agree to such an extension.
5. If the Parties agree on one or more amendments prior to, during, or subsequent to the initial meeting, the exact wording of the amendment(s) shall be written, signed by authorized representatives of both Parties, and entered into the permanent records of both Parties.

Any amendment adopted by the parties shall be consistent with the Statement of Purpose of the Easement and shall comply with Section 170(h) of the Internal Revenue Code and any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with [applicable state statute].