

AGRICULTURAL CONSERVATION EASEMENT LANGUAGE  
FROM SELECTED FARMLAND PROTECTION PROGRAMS

[Purpose](#)

[Definition of Agriculture](#)

[Right to Use the Property for Rural and Agricultural Purposes](#)

[Access](#)

[Conservation Plan](#)

[Maintenance](#)

[Agricultural Structures](#)

[Farm Labor Housing – Existing and New](#)

[Residential Construction](#)

[Customary Home Occupations for Cottage Industries](#)

[Recreational Uses/Improvements](#)

[Utility Services and Septic Services](#)

[Ancillary Improvements](#)

[Road Construction](#)

[Water Rights/Maintenance and Improvements of Water Sources](#)

[Subdivision](#)

[Forest Management](#)

[Mining and On-site Extractive Activity](#)

[Dumping and Trash](#)

[Extinguishment of Development Rights](#)

[Baseline Documentation](#)

[Right of Inspection/Monitoring](#)

[Enforcement](#)

[Dispute Resolution](#)

[Transfer of Property](#)

[Amendment of Easement](#)

[Extinguishment of Easement](#)

[Grantor's Environmental Warranty](#)

[Right of First Refusal](#)

[Option to Purchase at Ag Value](#)

[Resource Protection Area](#)

## **PURPOSE**

### **California**

“The conservation purposes (“Purpose”) of this Easement is to enable the Property to remain in productive agricultural use by preventing uses of the Property that will impair or interfere with the Property’s agricultural productive capacity, its soils and its agricultural character, values and utility. To the extent that the preservation of the open space character and [scenic, habitat, natural or historic, etc.] values of the Property are consistent with such use, it is within the Purpose of this Easement to protect those values.”

### **Delaware**

Not addressed in easement.

### **Kentucky**

“A) Grantor and Grantee acknowledge that the Purposes of this Grant are as follows (hereinafter “Purpose of Grant”):

B) Consistent with the goals set forth in KRS 262.900 to 262.920, it is the Purpose of this Conservation Easement to conserve productive agricultural and forest lands in order to facilitate active and economically viable farm use of the Property now and in the future.

C) Grantor and Grantee recognize the agricultural and silvicultural values of the Property, and share the common purpose of conserving these values by the conveyance of conservation restrictions and development rights, to prevent the use or development of the property for any purpose or manner which would conflict with the maintenance of these agricultural and silvicultural values. Grantee accepts such conservation restrictions and development rights in order to conserve these values for present and future generations.”

### **Maryland**

“It is the purpose of this Easement to enable the land to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural value, character, use and utility, and to prevent any use or condition of the land that would impair or interfere with its agricultural value, character, use or utility. To the extent that the preservation of open space of the land is consistent with such use, it is within the purpose of this easement to protect that open space.”

### **Massachusetts**

“By obtaining this Agricultural Preservation Restriction with Option to Purchase at Agricultural Value, it is the primary intent of the Commonwealth to perpetually protect and preserve agricultural lands, encourage sound soil management practices in accordance with normally accepted agricultural practices, preserve natural resources, maintain land in active commercial agricultural use, and ensure resale of the Premises at Fair Market Agricultural Value (“FMAV”)<sup>1</sup>. In addition, this Restriction is intended to regulate and control activities and/or uses which may be detrimental to the actual or potential agricultural viability of the Premises, or detrimental to water conservation, soil conservation, or to good agricultural and/or forestry management practices or which may be wasteful of the natural resources of the Premises.”

### **New Jersey**

Not addressed in easement.

### **Ohio**

“It is the purpose of this Easement to assure that the Protected Property will be retained predominantly in agricultural use by preserving and protecting its agricultural soils as identified on Exhibit B – Present Condition Report and viability through a perpetual restriction on the use of the Protected Property.”

### **Pennsylvania**

Not addressed in easement.

## **Vermont**

“Grantor and Grantees acknowledge that the Purposes of this Grant are as follows:

1. Consistent with the goals set forth in 10 V.S.A. §§ 821 and 6301, the primary purpose of this Grant is to conserve productive agricultural and forestry lands and to promote the sustainable management of soil resources in order to facilitate active and economically viable farm use of the Protected Property now and in the future.
2. As a secondary objective, to conserve scenic and natural resources associated with the Protected Property, to improve the quality of life for Vermonters, and to maintain for the benefit of future generations the essential characteristics of the Vermont countryside. Natural resource conservation includes, but is not limited to, landform and vegetation changes that may accommodate riparian, floodplain and wetland functions, and therefore protects natural flowages and stream equilibrium conditions.
3. The objective of encouraging sustainable management of soil resources will be further advanced by the Grantor’s agreement to work cooperatively with NRCS to limit soil erosion on highly erodible land (“HEL”) in accordance with NRCS standards.
4. The objective of ensuring that working and productive agricultural lands remain available for production agriculture, affordable and owned by individuals actively engaged in farming will be further advanced by the Option to Purchase at Agricultural Value, as incorporated below....”

## **Watershed Agricultural Council**

“This Conservation Easement is intended to protect the water quality of the New York City watersheds, and to protect agricultural and forestry lands by limiting the form, location, and density of development and promoting good stewardship by the implementation of Whole Farm Plans.”

## **New York**

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

All other purposes listed below shall be secondary and none shall conflict with or significantly diminish the Primary Purpose of this Easement. The Secondary Purposes of this Easement include: *[optional if secondary purposes exist]*.

## **DEFINITIONS OF AGRICULTURE**

### **California**

Not addressed in easement.

### **Delaware**

Not addressed in easement.

### **Kentucky**

“The property shall be used solely for the production of crops, livestock and livestock products, and nursery and greenhouse products including the processing or retail marketing of these crops, livestock and livestock products, and nursery and greenhouse products if more than fifty percent (50%) of the processed or merchandised products are produced on the subject land, and for the raising and stabling of horses for commercial purposes. For the purposes of this section and administrative regulations promulgated under its provisions, “crops, livestock and livestock products, and nursery and greenhouse products” include, but are not limited to: (i) tobacco; (ii) wheat, soybeans, and all commercially-produced fruits and vegetables; (iii) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees, and flowers; (iv) livestock and livestock products, including horses, cattle, poultry, milk, swine, and eggs; and (v) Aquatic plants and animals and their by-products.”

## **Maryland**

Not addressed in easement.

## **Massachusetts**

“Agricultural use: 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; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for market, as defined in General Laws, Chapter 61A, §1, as amended. Also horticultural uses, the raising of fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, 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; or when primarily and directly used in raising forest products under a program certified by the state forester to be a planned program to improve the quantity and quality of a continuous crop for the purpose of selling such products in the regular course of business; or when primarily, directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products and preparing them for market, as defined in General Laws, Chapter 61A, §2, as amended.”

## **New Jersey**

“Agricultural use shall mean the use of the Premises for common farmsite activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management and grazing.”

## **Ohio**

“The Protected Property consists of land devoted exclusively to agricultural use as defined by Section 5713.30 of the Ohio Revised Code and is valued for real property taxation at its current value for agricultural uses under Section 5713.31 of the Ohio Revised Code.”

## **Pennsylvania**

“During the term of the agricultural conservation easement conveyed herein, the subject land shall be used solely for the production for commercial purposes of crops, equine, livestock and livestock products, including the processing or retail marketing of such crops, equine, livestock or livestock products if more than fifty percent of such processed or merchandised products are produced on the subject land (hereinafter “agricultural production”). For the purpose of this Deed, “crops, equine, livestock and livestock products” include, but are not limited to:

- a) Field crops, including corn, wheat, oats, rye, barley, soybeans, spelt, buckwheat, hay, potatoes and dry beans;
  - b) Fruits, including apples, peaches, grapes, cherries, pears and berries;
- c) Vegetables, including tomatoes, pumpkins, snap beans, cabbage, carrots, beets, onions, sweet corn and mushrooms;
  - d) Horticultural specialties, including nursery stock ornamental shrubs, ornamental trees and flowers;
- e) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs;
  - f) Timber, wood, and other wood products derived from trees; and
  - g) Aquatic plants and animals and their byproducts.
- h) Commercial equine activity including boarding of equine, training of equine, instruction of people in handling, driving or riding equines, use of equines for riding or driving purposes, pasturing equines all of where a fee is collected. THE TERM DOES NOT INCLUDE ACTIVITY LICENSED UNDER THE ACT OF DECEMBER 17, 1981 (P.L. 435, NO. 135), KNOWN AS THE “RACE HORSE INDUSTRY REFORM ACT.”

## **Vermont**

Not addressed in easement.

## **Watershed Agricultural Council**

“Sound Agricultural Practices: As defined in Section 308 of the New York State Agriculture and Markets Law, as amended, Sound Agricultural Practices refer to those practices necessary for the on-farm production, preparation and marketing of agricultural commodities. Such practices shall be evaluated by the Commissioner of Agriculture and Markets, upon request, on a case-by-case basis.” . . . . “Grantor and Grantee recognize that changes in economic conditions, in agricultural technologies, in accepted farm and ranch management practices, and in the operations of Grantor may result in an evolution of agricultural uses of the Property. Grantor shall retain the discretion to employ any farm uses and management practices provided all agricultural activities are considered Sound Agricultural Practices pursuant to Section 308 of the New York State Agriculture and Markets Law (“Section 308”), as amended, and are consistent with a current Whole Farm Plan as described herein in Section 2.s for the Property or its equivalent, and comply with the terms of this Easement. Any activity which is deemed by Grantee not to comply with either Section 308, the Whole Farm Plan, or this easement shall be immediately discontinued unless and until approved by Grantee as part of the Whole Farm Plan.

## **New York**

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

## **RIGHT TO USE THE PROPERTY FOR RURAL AND AGRICULTURAL PURPOSES**

### **California**

“The Landowner retains the right to use the Property for agricultural purposes, or to permit others to use the Property for agricultural purposes, in accordance with applicable law as long as the agricultural productive capacity and open space character of the Property are not thereby significantly impaired.”

### **Delaware**

“Activities conducted on the real property shall be limited to agricultural and related uses as defined in 3Del. C. §902.”

### **Kentucky**

“(a) Agricultural Uses:

(1) The property shall be used solely for the production of crops, livestock and livestock products, and nursery and greenhouse products including the processing or retail marketing of these crops, livestock and livestock products, and nursery and greenhouse products if more than fifty percent (50%) of the processed or merchandised products are produced on the subject land, and for the raising and stabling of horses for commercial purposes. For the purposes of this section and administrative regulations promulgated under its provisions, “crops, livestock and livestock products, and nursery and greenhouse products” include, but are not limited to: (i) tobacco; (ii) wheat, soybeans, and all commercially-produced fruits and vegetables; (iii) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees, and flowers; (iv) livestock and livestock products, including horses, cattle, poultry, milk, swine, and eggs; and (v) Aquatic plants and animals and their by-products.

(2) All other commercial or industrial uses are prohibited.

(3) During the term of this Conservation Easement, the landowner and the landowner’s assigns, agents, or lessees shall not perform, nor knowingly allow others to perform, any act on or affecting the property that is inconsistent with the provisions of this section.”

## **Maryland**

“Provided that the Purpose of the Easement as specified under Section I is fulfilled, the Grantor reserves the right to use the land for any farm use, and to carry on all normal farming practices, including the operation at any time of machinery used in farm production or the primary processing of any agricultural products; the right to conduct upon the land any agricultural operation which is in accordance with good husbandry practices and which does not cause bodily injury or directly endanger human health, including any operation directly relating to the processing, storage, or sale of farm, agricultural or woodland products produced on the land.”

## **Massachusetts**

“Grantors retain all agricultural rights in the Premises except as otherwise limited by the terms and conditions of this Agreement.”

“In addition to the Grantors’ retained agricultural rights hereinbefore mentioned, the Grantors to and for themselves and their Successors in Title, agree that certain other rights pertaining to care, custody and control of the Premises not inconsistent with the terms and conditions of this Restriction or with General Laws, Chapter 184, Sections 31 through 33 and Chapter 20, Sections 23 through 26; and the rules, regulations and policies thereunder; and normally associated with ownership, including the right to privacy and to carry out regular farming practices, shall remain with Grantors.”

## **New Jersey**

“The Premises shall be retained for agricultural use and production in compliance with N.J.S.A. 4:1C-11 et seq., P.L. 1983, c. 32, and all other rules promulgated by the State Agriculture Development Committee, (hereinafter Committee).”

## **Ohio**

“The Grantor reserves for himself, his heirs, successors and assigns, all rights and privileges of ownership of the Protected Property to use the Protected Property for all purposes that are not inconsistent with the purpose of this Easement and not expressly prohibited by this Easement. The following rights are expressly reserved by the Grantor:

5.2 Right to Farm - Grantor retains the right to farm, or to permit others to farm, in accordance with applicable local, state and federal laws and regulations and the conservation plan identified in Paragraph C.

5.3 Agricultural Education Programs - As a part of the agricultural activities of the farm, the Grantor reserves the right to conduct or authorize another party (individual or organization) to conduct educational programs and public field days on the Protected Property for the purpose of teaching about agricultural practices and promoting awareness of agriculture as long as it does not affect the agricultural values or status of the Protected Property.”

## **Pennsylvania**

“During the term of the agricultural conservation easement conveyed herein, the subject land shall be used solely for the production for commercial purposes of crops, equine, livestock and livestock products, including the processing or retail marketing of such crops, equine, livestock or livestock products if more than fifty percent of such processed or merchandised products are produced on the subject land (hereinafter “agricultural production”).”

[See Definition of Agriculture above for additional language.]

## **Vermont**

“... Grantor shall have the right to make the following uses of the Protected Property:

1. The right to establish, re-establish, maintain and use cultivated fields, orchards and pastures together with the right to construct, maintain and repair fences and gravel or other permeable surfaced access roads for these purposes, all in accordance with sound agricultural practices and sound husbandry principles; provided however, that Grantor shall obtain Grantees’ prior written approval to clearcut forest land to establish fields,

orchards or pastures. Grantees' approval shall not be unreasonably withheld if such clearcutting is consistent with the Purposes of this Grant.

2. The right to conduct maple sugaring operations, and the right to harvest timber and other wood products, together with the right to construct and maintain roads necessary for both such activities in accordance with sound forestry practices and in accordance with a forest management plan for which Grantor has received the prior written approval of Grantees....”

### **Watershed Agricultural Council**

“Within the area identified as Agricultural Conservation Easement Area (ACEA) on the Conservation Easement Survey, Grantor has the right to produce crops, livestock and livestock products, to clear land for cultivation or pasture and conduct farm operations as defined under Section 301 of the New York State Agriculture and Markets Law, as amended, which shall be in accordance with a Whole Farm Plan, as well as the right to engage in all other uses permitted by this Easement.”

### **New York**

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

“Sound Agricultural Practices” is defined as those practices necessary for on-farm production, preparation and marketing of agricultural commodities, provided such practices are legal, necessary, do not cause bodily harm or property damage off the farm, and achieve the intended results in a reasonable and supportable way. If necessary, to determine if a practice is “sound,” Grantee or Grantor may request that the New York State Department of Agriculture and Markets initiate a sound agricultural practice review pursuant to Section 308 of the New York State Agriculture and Markets Law, or any successor law as enacted or amended.”

## **ACCESS**

### **California**

“Subject to Section 7 and to interpretation under Section 22, as owner of the Property, the Landowner reserves all interests in the Property not transferred, conveyed, restricted or prohibited by this Easement. These ownership rights include, but are not limited to ... the right to privacy, the right to exclude any member of the public from trespassing on the Property, and any other rights consistent with the Purpose of this Easement. Nothing contained herein shall be construed as a grant to the general public of any right to enter upon any part of the Property.”

### **Delaware**

Not addressed in easement.

### **Kentucky**

“Grantor retains the right to perform any act not specifically prohibited or limited by this Conservation Easement. These rights include, but are not limited to, the right to exclude any member of the public from trespassing on the restricted land, the right of quiet enjoyment...”

### **Maryland**

“This easement does not grant the public any right to access or any right of use of the above described land.”

### **Massachusetts**

“Except as otherwise provided herein, this Restriction does not grant to the Grantee, the public, or any other person any right to enter upon the Premises.”

**New Jersey**

“Nothing shall be construed to convey a right to the public of access to or use of the Premises except as stated in this Deed of Easement or as otherwise provided by law.”

**Ohio**

“Right to Privacy - Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Protected Property. Notwithstanding this provision, Grantee and NRCS shall have the right to inspect the Protected Property and enforce the provisions of this Easement in accordance with Recital C above and Paragraph 8.3 below.”

**Pennsylvania**

Not addressed in easement.

**Vermont**

Not addressed in easement.

**Watershed Agricultural Council**

“As Owner of the Property, Grantor retains the right to perform any act not specifically prohibited or limited by this Easement and that is consistent with its Conservation Purposes. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property...”

**New York**

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

**CONSERVATION PLAN****California**

Not addressed in easement.

**Delaware**

Not addressed in easement.

**Kentucky**

“(B) Conservation Plan:

(1) As required by section 12381 of the Food Security Act of 1985, as amended, the Grantor, his heirs, successors or assigns, shall conduct all agricultural operations on the protected property in a manner consistent with a conservation plan prepared in consultation with the Natural Resources Conservation Service (NRCS) and approved by the Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12, effective on \_\_\_\_\_. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the property, with advance notice to the Grantor, in order to monitor compliance with the plan.

(2) In the event of noncompliance with the conservation plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve (12) months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform Grantee of the Grantor’s noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance, and if necessary, appropriate legal action) to secure compliance with the conservation plan



following written notification from NRCS (a) that there is a substantial, ongoing event or circumstance of noncompliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

(3) If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.”

### **Maryland**

“The Grantor shall implement all soil conservation and water quality practices that are contained within a soil conservation plan approved by the local soil conservation district, made or revised within the last ten years of the date of the application to sell an easement, which lists all soil conservation and water quality problem areas on the land. The plan shall be implemented according to the schedule of implementation contained within the plan which exists at the time of easement settlement. Revisions to the schedule of implementation may be made as approved by the Board of Supervisors of the local soil conservation district, however, the plan shall be fully implemented within ten years of the easement settlement date. Exceptions may be considered by the Grantee on a case by case basis.”

“The land shall be managed in accordance with sound agricultural soil and water conservation practices so as to promote the agricultural capability of the land; also, woodland shall be managed in accordance with sound forestry practices; provided, however, the Grantor reserves the right to selectively cut or clear cut from time to time trees which will not alter the agricultural character of the land or diminish its productive capability.”

### **Massachusetts**

“Grantors application shall include: (i.) a copy of a current Farm Conservation Plan, prepared by the USDA/Natural Resource Conservation Service, when requested by the Grantee;”

### **New Jersey**

“No activity shall be permitted on the Premises which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the Premises. i. Grantor shall obtain within one year of the date of this Deed of Easement, a farm conservation plan approved by the local soil conservation district. ii. Grantor’s long term objectives shall conform with the provisions of the farm conservation plan.”

### **Ohio**

“In the event of noncompliance with the conservation plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform Grantee of the Grantor’s noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary and to the extent that State appropriated funds are lawfully available, take appropriate legal action) to enforce the easement 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 the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this easement based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.”

## **Pennsylvania**

“All agricultural production or commercial equine activity on the subject land shall be conducted in accordance with a conservation plan approved by the County Conservation District or the County Board. Such plan shall be updated upon any change in the basic type of agricultural production or commercial equine activity being conducted on the subject land. In addition to the requirements established by the County Conservation District of the County Board, the conservation plan shall include an installation schedule and maintenance program and a nutrient management component which, when completely implemented, will improve and maintain the soil, water and related plant and animal resources of the land and shall require that:

- (i.) The use of the land for growing sod, nursery stock ornamental trees, and shrubs does not remove excessive soil from the subject land, and
- (ii) The excavation of soil, sand, gravel, stone or other materials for use in agricultural production or commercial equine activities on the land is conducted in a location and manner that preserves the viability of the subject land for agricultural production or commercial equine activity.

As part of the settlement documents, the executed Conservation Plan Agreement shall be recorded with the Deed of Easement at the County Recorder of Deeds.”

## **Vermont**

“As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor shall conduct all agricultural operations on the Protected Property in a manner consistent with a conservation plan for highly erodible land (“conservation plan”) prepared in consultation with NRCS and approved by the Conservation District. 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 (INSERT EASEMENT SIGNATURE DATE). However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation that could include protecting and restoring stream equilibrium, wetlands, riparian and floodplain functions, and is consistent with the NRCS Policies and Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Property, with advance notice to the Grantor, in order to monitor compliance with the conservation plan.

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

If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised HEL conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.”

## **Watershed Agricultural Council**

“A Watershed Agricultural Council (WAC) Whole Farm Plan (WFP) is a document that identifies, addresses and mitigates environmental concerns to protect the water resources of the New York City watershed without negatively impacting the economic viability of the agricultural enterprise while integrating farm business objectives into the decision making process.

The Whole Farm Planning Process—A WFP is developed by agricultural/conservation professionals and the participating landowner/producer following WAC policy, guidelines and standard operating procedures. The WFP gives specific consideration to aspects of the farm business that relate to water quality objectives and

landowner/producer goals. The WFP addresses water quality issues identified through environmental assessments (Environmental Review/Problem Diagnosis (ERPD) and Agricultural Environmental Management (AEM). The mitigation of these water quality concerns is achieved through the implementation of Best Management Practices (BMPs) consistent with NRCS and/or WAC Standards. The landowner/producer agrees to implement BMPs according to the WFP schedule and shall maintain and operate BMPs for their designated life span. The plan may periodically be updated or otherwise revised and shall remain in effect for any period when WAC either funds or otherwise ensures that funding is secured for Grantor for construction of BMPs. Grantor must maintain such BMPs in accordance with the Whole Farm Plan and any related contractual obligations.

**Funding Restrictions**—In the event that the Whole Farm Plan ceases to be funded and all contractual obligations the Grantor may have with respect to BMPs have expired, agricultural uses and activities on the Property shall be consistent with the New York State Environmental Conservation Law (ECL) including, but not limited to, requirements applicable to Concentrated Animal Feeding Operations (CAFPs) under ECL Article 17, Title 7, and with the federal Clean Water Act, 33 U.S.C. § 1251 et seq.

A WFP document can include the following documents, but not limited to: Environmental Assessment using the Environmental Review/Problem Diagnosis (ERPD) or Agricultural Environmental Management (AEM); RUSLE2 Soil Erosion Assessment, WINPST Pesticide Leaching and Run-off Assessment and other NRCS assessments as required; Plan narrative and photo documentation (pre and post planning and implementation); Nutrient Management Plan; WFP Summary (Farm Mission, Vision and goals); WFP-2 Funding and Scheduling Agreement; All WAC BMP procurement documentation, i.e. BMP Funding Agreement (WFP-1); BMP Operations and Maintenance Agreements (O&M); Record of communication with the Landowner/Participant; BMP designs and completed “as built;” Annual Status Reviews; Any contractual obligations that will affect the development and implementation of new and/or revised WFP, i.e. federal programs, easements.”

### **New York**

“Grantor and Grantee recognize that changes in economic and environmental conditions, in agricultural technologies, in accepted farm management practices and in the Farm Operations of Grantor may result in changes in the agricultural uses of the Property. It is the intention of this Easement to maintain Grantor’s discretion to employ their choices of farm uses and management practices so long as those uses and all farming operations are conducted in accordance with Sound Agricultural Practices as defined herein and in a manner consistent with a Conservation Plan prepared by a qualified conservation professional or by the local Soil and Water Conservation District in cooperation with the Grantor. The Conservation Plan shall identify potential adverse environmental impacts of agricultural activities, as well as enhance the agricultural productivity and economic viability of the Property. This plan shall be updated periodically and whenever the Farming Operation changes substantially. Upon request, Grantor shall provide a copy of the most current plan to Grantee.”

## **MAINTENANCE**

### **California**

“The Landowner shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Steward shall have no obligation for the upkeep or maintenance of the Property. If the Steward acts to maintain the Property in order to protect the Steward’s interest in the Property, the Landowner will reimburse the Steward for any such costs.”

### **Delaware**

Not addressed in easement.

**Kentucky**

Not addressed in easement.

**Maryland**

Not addressed in easement.

**Massachusetts**

“Nothing herein shall impose upon the Grantee any duty to maintain or require that the Premises be maintained in any particular state or condition, notwithstanding the Grantee's acceptance hereof.”

**New Jersey**

“No activity shall be permitted on the Premises which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the Premises.

[See above Conservation Plan for additional language.]

And

“Nothing shall impose upon the Grantor any duty to maintain the Premises in any particular state, or condition, except as provided for in this Deed of Easement.”

**Ohio**

“6.2 Upkeep and Maintenance - The Grantor shall continue to be solely responsible for the upkeep and maintenance of the Protected Property, to the extent it may be required by local, state and federal laws and regulations. The Grantee shall have no obligation for the upkeep and maintenance of the Protected Property.”

**Pennsylvania**

“Grantor shall continue to be solely responsible for the maintenance of the subject land and all improvements erected thereon.”

**Vermont**

“Each time that the agricultural land on the Protected Property lies fallow for more than two successive years (the “fallow land”), Grantor shall cooperate with Grantees, at Grantees’ request, to maintain the fallow land in an open condition (meaning without trees and brush) and in active agricultural use. For example, Grantor shall permit access to the fallow land by Grantees and Grantees’ contractors to crop, mow or brush-hog. No obligation is hereby imposed upon Grantor or Grantees to maintain this fallow land in an open condition or in active agricultural use.”

**Watershed Agricultural Council**

Not addressed in easement.

**New York**

“Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law and this Easement. Grantee shall have no obligation for the upkeep or maintenance of the Property.”

**AGRICULTURAL STRUCTURES****California**

“The Landowner may undertake construction, erection, installation or placement of buildings, structures, or other improvements on the Property only as provided in subsections (a) through (d) below. All other construction, erection, installation, or placement of buildings, structures or other improvements on the Property

is prohibited. Before undertaking any construction, erection, installation or placement that requires advance permission, the Landowner shall notify the Steward and obtain prior written permission from the Steward.

For purposes of this Section 5, “improvements” shall not refer to trees, vines or other living improvements planted for agricultural purposes, nor shall it refer to irrigation improvements necessary or desirable to irrigate the Property for agricultural purposes, all of which may be made without the permission of the Steward.

(a) Fences – Existing fences may be repaired and replaced, and new fences may be built anywhere on the Property for the purposes of reasonable and customary agricultural management, and for security of farm produce, livestock, equipment, and improvements on the Property, without any further permission of the Steward.

(b) Agricultural Structures and Improvements – Existing agricultural structures and improvements as shown in Exhibit B may be repaired, reasonably enlarged, and replaced at their current locations for agricultural purposes without further permission from the Steward. New building and other structures and improvements to be used solely for agricultural production on the Property or sale of farm products predominantly grown or raised on the Property, including barns and equipment sheds, but not including any dwelling or farm labor housing, may be built on the Property within the Building Envelope depicted in Exhibit B, without further permission of the Steward. All permissible new agricultural structures may be repaired, reasonably enlarged, and replaced without further permission of the Steward. Any other agricultural production or marketing-related structures may be constructed only with the written permission of the Steward pursuant to Section 4.”

#### **Delaware**

Not addressed in easement.

#### **Kentucky**

“New buildings and other structures and improvements to be used solely for agricultural purposes including the processing or sale of farm products grown or raised on the restricted land, but not including any dwelling for farm labor may only be built on the restricted land with the advance written approval of the Grantee. The Grantee shall grant permission or approval to Grantor only where Grantee, acting in Grantee’s sole reasonable discretion and in good faith, determines that the proposed action will not diminish or impair the agricultural values of the property and the proposed structure to be built will not be located on prime or unique farmland, unless there is no alternative (that is, the parcel is 100% prime, statewide, and/or unique farmland). Existing agricultural structures may be repaired or replaced at their current locations without permission of the PACE Board.”

#### **Maryland**

Not addressed in easement.

#### **Massachusetts**

“The following uses, acts or structures (hereinafter “uses” or “activities”) are allowed only with the prior written approval of the Grantee. Requests for such approvals, and the granting thereof, shall be governed by the procedures set forth in Section III, D of this Restriction: 1. The construction or placing of permanent structures for housing seasonal agricultural employees or for other agriculturally related uses, including related retail sales, where the need for such structures is not a result of the use of existing structures for approved non-agricultural uses or activities.”

#### **New Jersey**

“Grantor may construct any new buildings for agricultural purposes.”

## **Ohio**

“Agricultural Structures and Improvements - The existing agricultural structures and improvements may be repaired, enlarged and replaced at their current locations as shown on the Report, without any further permission from the Grantee. New buildings and other structures and improvements to be used predominantly for agricultural purposes, including the processing or sale of farm products predominantly grown or raised on the Protected Property, but not including any dwelling or farm labor housing, may be built on the Protected Property without any further permission of the Grantee. However, such construction shall be necessary for the operations and shall be sited so as to minimize impact to prime and unique soils.”

## **Pennsylvania**

“The construction or use of any building or other structure on the subject land other than as existing on the date of the delivery of this Deed is prohibited except that:

- (a) The erection of fences for agricultural production or a commercial equine activity and protection of watercourses such as lakes, streams, springs and reservoirs is permitted.
- (c) The construction or use of any building or other structure for agricultural production or a commercial equine activity is permitted. The maximum building coverage may be restricted if the County Agricultural Conservation Easement Purchase Program approved by the State Board imposes such a restriction.”
- (f) The renovation or modification of an existing agricultural building or structure, or an addition to an existing agricultural building or structure, is permitted. The maximum building coverage may be restricted if the County Agricultural Conservation Easement Purchase Program approved by the State Board imposes such a restriction.”

## **Vermont**

“Grantor shall have the right to make the following uses of the Protected Property: (3) The right to construct, maintain, repair, renovate, replace, enlarge, rebuild, and use new and existing barns, sugar houses, or similar non-residential structures or facilities, together with necessary access drives and utilities for agricultural and forestry uses, on the Protected Property; provided, however, that

- (a) the structures are used exclusively for agricultural or forestry purposes, and
- (b) any new construction, other than normal maintenance and repair, has been approved in writing in advance by Grantees. Grantees’ approval may include designation of a complex surrounding the structures and shall not otherwise be unreasonably withheld or conditions; provided however, that the structure or other improvement is located in a manner which is consistent with the Purposes of this Grant. Grantor shall not deem unreasonable a condition by Grantees that certain structures must be located within an existing complex or a complex which may be designated in the future as provided in this Section III.”

## **Watershed Agricultural Council**

“Grantor may remove, repair, enlarge, reconstruct or construct Agricultural Buildings and Improvements within the ADA (Acceptable Development Area) consistent with the Whole Farm Plan. New Agricultural Buildings, or the enlargement of existing Agricultural Buildings, within the Farm Area are permitted with prior notice to the Grantee to ensure such buildings’ construction is not located within the RPA (Resource Protection Area) and does not exceed an aggregate total of 5,000 square feet. Grantor may enlarge or construct Agricultural Buildings in the Farm Area greater than the aggregate 5,000 square foot threshold specified above only with prior approval from the Grantee. Prior to commencing any proposed action where Grantor is required to obtain Grantee’s approval hereunder, Grantor shall request such approval in writing and shall provide Grantee with information and plans as may be reasonably necessary for Grantee to evaluate such request. Grantee shall give approval within 45 days of receipt of Grantor’s written request, unless it determines that the proposed Agricultural Buildings and Improvements would be unnecessarily located on productive soils, or would otherwise substantially diminish or impair the agricultural productivity or water quality benefits of the Property. Approval shall be deemed given if no written decision is provided by Grantee within 45 days of receipt of Grantor’s written request.”

## **New York**

“The Property is divided into two [*three*] principal areas as further described in the Baseline Documentation Report, Section 18 (“Baseline Documentation”) and identified in the Easement Map attached hereto as Exhibit B: 1) the Farmstead Area[s]; and 2) the Farm Area [*; (3) the Resource Protection Area*]. Grantor may undertake construction, erection, installation, removal or placement of buildings, structures, or other improvement to the Property within these areas only as provided in this Easement and set forth below.

- (a). Impervious Surfaces: Subject to the limitations set forth below, Impervious Surfaces may be constructed or placed on up to a maximum of 10% of the Farm Area and without limitation in the Farmstead Area.
- (b). Fences: Existing fences may be repaired, removed and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock and wildlife, safety and general management and to prevent trespassing on the Property.
- (c). Agricultural Structures and Improvements : Any existing or subsequent agricultural structures and improvements may be repaired, removed, enlarged and replaced at their current locations, subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”).

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

*Farm Area:* Subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), Grantor may construct buildings, structures and impervious improvements for such purposes related to the Farm Operation on up to 5% of the Farm Area without permission of Grantee. With permission of Grantee, Grantor may construct buildings, structures and improvements related to the Farm Operation that would cover up to an additional 5% of the Farm Area.”

## **FARM LABOR HOUSING – EXISTING AND NEW**

### **California**

“The Landowner may undertake construction, erection, installation or placement of buildings, structures, or other improvements on the Property only as provided in subsections (a) through (d) below. All other construction, erection, installation, or placement of buildings, structures or other improvements on the Property is prohibited. Before undertaking any construction, erection, installation or placement that requires advance permission, the Landowner shall notify the Steward and obtain prior written permission from the Steward.

For purposes of this Section 5, “improvements” shall not refer to trees, vines or other living improvements planted for agricultural purposes, nor shall it refer to irrigation improvements necessary or desirable to irrigate the Property for agricultural purposes, all of which may be made without the permission of the Steward.

(d) Agricultural Employee Housing – No agricultural employee housing may be constructed or placed on the Property without advance written permission of the Steward. Steward may only grant permission pursuant to Section 4 and only if the Landowner can demonstrate to the Steward’s satisfaction that such agricultural employee housing is reasonable and necessary for the agricultural operation of the Property. Any agricultural employee housing must be located entirely within the Building Envelope shown in Exhibit B.”

### **Delaware**

“Residential use of the real property shall be limited to dwelling housing for the owner, relatives of the owner and persons providing permanent or seasonal farm labor services; provided however, that any such dwelling housing shall be limited to usage of no more than 1 acre of land for each 20 acres of usable land owned in the

Agricultural Preservation District, with a maximum of 10 acres of land being allowed for dwelling housing on owner's land within a District.”

### **Kentucky**

“New buildings and other structures and improvements to be used solely for agricultural purposes including the processing or sale of farm products grown or raised on the restricted land, but not including any dwelling for farm labor may only be built on the restricted land with the advance written approval of the Grantee.”

### **Maryland**

“1. Subject to the Grantee's approval and the provisions of COMAR 15.15.03 (“Tenant House Requirements”), the Grantor, or its successors and assigns in the fee ownership of the land (hereinafter referred to as the “landowner”), may construct housing for tenants fully engaged in operation of the farm, but this construction may not exceed one (1) tenant house per full 100 acres (for example, one (1) tenant house for 100-199 acres; two (2) tenant houses for 200-299 acres). The land on which a tenant house is constructed may not be subdivided or conveyed to any person, nor may the tenant house be conveyed separately from the land, as governed by Section II.B.1. herein. The land under and surrounding the tenant house shall not be released from the Easement, it being understood that the tenant house is an accessory structure to the agricultural use of the farm and such its use is intended to be consistent with the Purpose stated herein.

2. The Landowner shall make written application to the Grantee that a) the landowner has signed; b) contains a declaration that the tenant house is necessary for the operation of the farm and is only for the use of tenants fully engaged in operation of the farm; c) is accompanied by evidence that demonstrates the need for a full-time tenant for the operation of the farm; d) includes signed statements from the local agricultural land preservation advisory board that the tenant house is necessary for the operation of the farm and confirmation from the county planning and zoning department that the proposed tenant house appears to meet local zoning regulations; e) includes a description of the land to be affected by both the tenant house and access to that tenant house, so as to gauge the impact that both will have on the agricultural operations of the farm; f) includes a scaled plan for the tenant house, and accompanying outbuildings, including the square footage thereof; and g) includes a map showing the location of the proposed tenant house.

3. For the purposes of this subparagraph, the terms below are defined as follows:

- a) “Tenant” shall be defined as a natural person or persons fully engaged in operation of the farm, and who are not the landowner, and/or who do not have a financial interest in the landowner, including a shareholder interest, partnership interest or membership interest, full, limited, or otherwise.
- b) “Tenant house” shall be an accessory structure consisting of no more than 2000 square feet, calculated by first multiplying the exterior footprint of the portions of the structure with multiple stories by the number of stories with windows and then adding the exterior footprint of any portions of the structure with one story, but excluding basements, attics porches not used as a living space, garages, and unenclosed decks, in which the tenant resides.”

### **Massachusetts**

“The following uses, acts or structures (hereinafter “uses” or “activities”) are allowed only with the prior written approval of the Grantee. Requests for such approvals, and the granting thereof, shall be governed by the procedures set forth in Section III, D of this Restriction: 1. The construction or placing of permanent structures for housing seasonal agricultural employees or for other agriculturally related uses, including related retail sales, where the need for such structures is not a result of the use of existing structures for approved non-agricultural uses or activities.”

### **New Jersey**

“At the time of this conveyance, Grantor has (\_\_\_\_) existing single family residential buildings on the Premises and (\_\_\_\_) residential buildings used for agricultural labor purposes. Grantor may use, maintain, and improve existing buildings on the Premises for agricultural, residential and recreational uses subject to the following conditions:



- i. Improvements to agricultural buildings shall be consistent with agricultural uses;
- ii. Improvements to residential buildings shall be consistent with agricultural or single and extended family residential uses. Improvements to residential buildings for the purpose of housing agricultural labor are permitted only if the housed agricultural labor is employed on the Premises; and
- iii. Improvements to recreational buildings shall be consistent with agricultural or recreational uses.”

And

“Grantor may construct any new buildings for agricultural purposes. The construction of any new buildings for residential use, regardless of its purpose, shall be prohibited except as follows:

- i. To provide structures for housing of agricultural labor employed on the Premises but only with the approval of the Grantee and the Committee. If Grantee and the Committee grant approval for the construction of agricultural labor housing, such housing shall not be used as a residence for Grantor, Grantor’s spouse, Grantor’s parents, Grantor’s lineal descendants, adopted or natural, Grantor’s spouse’s parents, Grantor’s spouses’ lineal descendants, adopted or natural; and...
- (ii) To construct a single family residential building anywhere on the Premises in order to replace any single family residential building in existence at the time of the conveyance of this Deed of Easement but only with the approval of the Grantee and Committee.
- (iii) ( ) residual dwelling site opportunity(ies) have been allocated to the Premises pursuant to the provisions of N.J.A.C. 2:76-6.17, “Residual Dwelling Site Opportunity”. The Grantor’s request to exercise a residual dwelling site opportunity shall comply with the rule promulgated by the Committee in effect at the time the request is initiated...[paragraph on subdivision]...(OR)
- (iii) No residual dwelling site opportunities have been allocated pursuant to the provisions of N.J.A.C. 2:76-6.17. No residential buildings are permitted on the Premises except as provided in this Deed of Easement.

For the purposes of this Deed of Easement: “Residual dwelling site opportunity” means the potential to construct a residential unit and other appurtenant structures on the Premises in accordance with N.J.A.C. 2:76-6.17. “Residual dwelling site” means the location of the residential unit and other appurtenant structures. “Residential unit” means the residential building to be used for single-family residential housing and its appurtenant uses. The construction and use of the residential units shall be for agricultural purposes. “Use for agricultural purposes” as related to the exercise of a residential dwelling site opportunity and the continued use of the residential unit constructed thereto, means at least one person residing in the residential unit shall be regularly engaged in common farmsite activities on the Premises including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage, water management and grazing...”

### **Ohio**

“New buildings and other structures and improvements to be used predominantly for agricultural purposes, including the processing or sale of farm products predominantly grown or raised on the Protected Property, but not including any dwelling or farm labor housing, may be built on the Protected Property without any further permission of the Grantee.”

### **Pennsylvania**

“The construction or use of any building or other structure on the subject land other than as existing on the date of the delivery of this Deed is prohibited except that:

- (b)The construction of one additional residential structure is permitted if;

- (i) The construction and use of the residential structure is limited for the landowner's principal residence or for the purpose of providing necessary housing for persons employed in farming the subject land on a seasonal or full-time basis.
- (ii) No other residential structure has been constructed on the restricted land at any time since the delivery of the Deed,
- (iii) The residential structure and its curtilage occupy no more than two acres of the restricted land, and
- (iv) The location of the residential structure and its driveway will not significantly harm the economic viability of the subject land for agricultural production or a commercial equine activity...
- (f) The renovation or modification of an existing agricultural building or structure, or an addition to an existing agricultural building or structure, is permitted. The maximum building coverage may be restricted if the county Agricultural Conservation Easement Purchase Program approved by the State Board imposes such a restriction."

## Vermont

"Assignment of "Farm Labor Housing" status to an existing home:

The right to maintain, repair, renovate, enlarge or rebuild the existing (single-family/two-family) dwelling identified as "FLH" on the \_\_\_\_\_ Farm Plan as a farm labor housing unit, together with appurtenant non-residential structures and improvements, including drives and utilities, normally associated with a residence; provided, however, that the farm labor housing unit shall be (a) occupied by Grantor or at least one person who is a member of Grantor's family or who is employed on the farm, and (b) located in the area depicted as "FLH Complex" on the \_\_\_\_\_ Farm Plan, and described in Schedule C attached hereto and incorporated herein. Grantor shall notify Grantees in writing prior to commencing construction on any new structure or improvement within the FLH Complex. In the event the farm labor housing unit is not required for housing a farm employee, Grantor, or a member of Grantor's family, Grantor may rent the unit to other persons for successive lease terms not to exceed one year each, but shall not otherwise transfer ownership or possession of the farm labor housing unit. The farm labor housing unit shall not be conveyed separately from the Protected Property, but may be subdivided with the prior written approval of Grantees if such subdivision is required by state or local regulation. Grantees, in their sole discretion, may permit, in a written letter of approval, an alternative FLH site; provided, however, such an alternative FLH site is (i) located in a manner consistent with the Purposes of this Grant as stated in Section I, above, and (ii) found by Grantees to have no greater negative impact on the conservation values underlying the Purposes of this Grant than the original FLH site.

Farm Labor Housing to be added in the future:

The right to construct, maintain, repair, renovate, replace, enlarge, rebuild, and use one (1) farm labor housing unit ("FLH"), together with the right to convert said unit to a duplex, provided however, it does not exceed \_\_\_\_\_ [acceptable range is 2,000 to 2,500] square feet of total floor area measured from the exterior walls, excluding the attic crawl space, attached garage, and any floor completely below grade level, together with appurtenant non-residential structures and improvements, including drives and utilities, normally associated with a residence; provided, however, that the FLH shall be (a) occupied by Grantor or at least one person who is a member of Grantor's family or who is employed on the farm, and (b) located in the area depicted as "Farmstead Complex" on the \_\_\_\_\_ Farm Plan [or located in the area depicted as "FLH Site" on the \_\_\_\_\_ Farm Plan]. Delete this sentence if FLH is in the Farmstead Complex: Grantor shall notify Grantees in writing prior to commencing construction on any new structure or improvement in the area depicted as FLH Site. Grantees in their sole discretion may permit an increase over the \_\_ square foot limit, provided, however, such larger structure is deemed necessary and found by Grantees to have no greater negative impact on the conservation values and affordability goals underlying the Purposes of this Grant than the original size. Delete this sentence if FLH is in the Farmstead Complex: Upon construction of the FLH, Grantees, in their sole discretion, may designate a Farm Labor Housing Complex around it no larger than is necessary to accommodate the FLH and its appurtenant structures. In the event the FLH is not required for housing a farm employee, Grantor, or a member of Grantor's family, Grantor may rent the FLH to other persons for successive lease terms not to exceed one year each, but shall not otherwise transfer ownership or possession of the FLH. The FLH

shall not be conveyed separately from the Protected Property, but may be subdivided with the prior written approval of Grantees if such subdivision is required by state or local regulation. Grantees, in their sole discretion, may permit, in a written letter of approval, an alternative FLH site; provided, however, such an alternative FLH site is (i) located in a manner consistent with the Purposes of this Grant as stated in Section I, above, and (ii) found by Grantees to have no greater negative impact on the conservation values underlying the Purposes of this Grant than the original FLH site.”

### **Watershed Agricultural Council**

(From definitions): “Farm Support Housing shall consist of apartments, single or multi-family dwellings, or other buildings, including trailers or mobile homes, to be used to house farm tenants, employees, seasonal employees, family members or others engaged in agricultural production on the Property.”

(From Construction of Bldg and Improvements): “Existing Farm Support Housing and associated Accessory Buildings and Improvements may be removed, repaired, replaced and enlarged within the ADA. New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing is permitted within the ADA only with the prior written approval of the Grantee. If the Farm Support Housing is no longer needed for that purpose, the buildings may continue in residential use. Construction of Farm Support Housing outside of the ADA is prohibited.”

### **New York**

“Farm Labor Housing” means dwellings or structures, together with accessory improvements used to house seasonal and/or full-time employees where such residences are provided by the farm landowner and/or operator, the worker is an essential employee of the farm landowner and/or operator employed in the operation of the farm and the farm worker is not a partner or owner of the Farm Operation. For instance, a structure used as the primary residence of a farm owner is not “farm labor housing”.

And

“Existing residential dwellings, as defined in Section 4(c), if any, may be repaired, removed, enlarged and replaced at their current locations, which are shown on Exhibit B.

*Farmstead Area:* Without permission of Grantee, Grantor may construct, maintain, repair, remove or replace residential dwellings, together with accessory structures and improvements within the Farmstead Area, subject to any applicable local, state or federal laws and regulations.

*Farm Area:* Subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), Grantor may construct new dwellings or structures and improvements for Farm Labor Housing, as defined in Section 4(d) (“Farm Labor Housing”), on up to 1% of the Farm Area without permission of the Grantee. With permission, Grantor may construct additional Farm Labor Housing in the Farm Area as proven necessary to conduct current farm operations. The land on which these dwelling, structures and improvements stand shall not be subdivided, except as permitted in Section 11 (“Subdivision”).”

## **RESIDENTIAL CONSTRUCTION**

### **California**

“The Landowner may undertake construction, erection, installation or placement of buildings, structures, or other improvements on the Property only as provided in subsections (a) through (d) below. All other construction, erection, installation, or placement of buildings, structures or other improvements on the Property is prohibited. Before undertaking any construction, erection, installation or placement that requires advance permission, the Landowner shall notify the Steward and obtain prior written permission from the Steward.

For purposes of this Section 5, “improvements” shall not refer to trees, vines or other living improvements planted for agricultural purposes, nor shall it refer to irrigation improvements necessary or desirable to irrigate the Property for agricultural purposes, all of which may be made without the permission of the Steward.

(c) Residential Dwellings – The single-family dwelling shown in Exhibit B may be repaired, reasonably enlarged or replaced at the current location entirely within the Building Envelope shown in Exhibit B without further permission of the Steward. No other residential structures may be constructed or placed on the Property except for agricultural employee housing per Section 5(d). (NOTE: This section may need to be modified depending on the existing dwellings and Landowner’s development rights retained in the Easement. Depending on the size of the Property and other circumstances, it may be appropriate to establish a maximum size of the single-family dwelling)”

### **Delaware**

“Residential use of the real property shall be limited to dwelling housing for the owner, relatives of the owner and persons providing permanent or seasonal farm labor services; provided however, that any such dwelling housing shall be limited to usage of no more than 1 acre of land for each 20 acres of usable land owned in the Agricultural Preservation District, with a maximum of 10 acres of land being allowed for dwelling housing on owner’s land within a District.”

### **Kentucky**

“Existing single family residential dwellings may be repaired, reasonably enlarged, and replaced at their current locations without permission of the PACE Board. No new single family residential dwellings may be built on the property without the advance approval of the PACE Board. The PACE Board shall give approval within reasonable time, unless it determines that a proposed dwelling would not be properly located or would significantly diminish the agricultural production capacity of the property.”

### **Maryland**

“LOT RELEASE FROM EASEMENT – It is the purpose of this section to limit development rights to maximize the preservation of the agricultural land.

A. Family Lot Release (Option A): The Grantee, on written application from the Grantor, shall release free of the easement restrictions only for the Grantor who originally sold this easement, one (1) acre or less, except as provided under Section IV.F. herein, for the purpose of constructing a dwelling house for the use only of that Grantor or the Grantor’s child, subject to the following conditions:

1. The total number of lots allowed to be released under this paragraph may not exceed (a) one (1) lot if the size of the Easement Property is 20 acres or more, but fewer than 70 acres; (b) two (2) lots if the size of the Easement Property is 70 acres or more, but fewer than 120 acres; or (c) three (3) lots if the size of the Easement Property is 120 acres or more provided that the resulting density on the land does not exceed the density allowed under zoning of the land before the Grantee purchased the Easement. The right reserved to the Grantor under this subparagraph belongs only to the Grantor who originally sold this easement and may be exercised only by the Grantor named in the instrument, and is extinguished upon the death of the Grantor or a transfer of 100% of the Grantor’s interest in the land.
2. The Grantor shall pay the Grantee for any acre or portion thereof released at the price per acre that the Grantee paid the Grantor for the easement, provided that the Maryland Agricultural Land Preservation Foundation’s Board of Trustees has the right to approve the location and configuration of the parcel(s) so released from easement; it being the intent that the agricultural use of the land not be impaired by said partitions;
3. Before any release from easement, the Grantor, and/or the Grantor’s child, if applicable, shall agree not to divide further any portion of the land allowed to be released; the agreement shall be recorded among the land records where the land is located and shall bind all future owners; and
4. If, while the land was in an agricultural preservation district, the Foundation released free of the district's restrictions for a person owning that land, one (1) acre or less for the purpose of constructing a

dwelling house, the Grantee shall not release free of easement restrictions for the Grantor, an additional lot for the same purpose; for each lot that the Grantor had excluded from the district's restrictions, the number of lots that the Grantor otherwise would be entitled to have released under this Section IV.A. is reduced by one.

5. Regardless of the number of agricultural districts or easements encumbering land owned by the Grantor herein, if the Grantee released one (1) acre or less for the purpose of constructing a dwelling house for the use of the Grantor or the Grantor's child, under a separate Agricultural District, the Grantee shall not release free of easement restrictions for the Grantor or Grantor's child, an additional lot on the land for the same purpose; for each lot that the Grantor or Grantor's child had excluded from another district's restrictions for this purpose, the number of lots that the Grantor or Grantor's child otherwise would be entitled to have released under this Section IV.A. is reduced by one.
6. Regardless of how the property is titled, and subject to the requirements and conditions of this Section IV.A., the Grantor, \_\_\_\_\_ (fill in all name(s) of title owners of record) agrees that the following individuals are the only family members eligible for release of a family lot: \_\_\_\_\_ [fill in names of Grantors if individuals and "children of them," or, in the case of a family entity owner, its partners/ members/ shareholders as applicable, and "children of them." Note: Do not fill in children's names in case of after-born children].”

OR

“A. Unrestricted Lot Release (Option B): The Grantor, or subsequent landowner, has the right to apply at any time for release of one (1) unrestricted lot from this easement, to be retained by the Grantor or subsequent landowner, or conveyed to anyone, to construct one (1) residential dwelling, subject to the following conditions:

1. The resulting density on the property shall be less than the density allowed under zoning of the property before the Foundation purchased the Easement;
2. The size of an unrestricted lot shall be one (1) acre or less except as provided under Section IV.F. herein;
3. The Grantor or subsequent landowner shall agree not to subdivide further for residential purposes any acreage allowed to be released, and the agreement shall be recorded among the Land Records where the Land is located and shall bind all future owners;
4. The right to the lot has been taken into consideration in the appraisal of fair market value and determination of easement value;
5. The Grantor or subsequent landowner shall pay the Grantee for any acre or portion thereof released at the price per acre that the Grantee paid the Grantor for the easement
6. The location of the lot to be subdivided is subject to the approval of the local agricultural advisory board and the Foundation; and
7. The Grantor or subsequent landowner has not previously excluded land from the Easement.
8. If, while the land was in an agricultural preservation district, the Foundation released free of the district's restrictions one (1) acre or less for the purpose of constructing a dwelling house for the use of the Grantor or Grantor's child, or for conveyance to a third party, the Grantee shall not release free of easement restrictions for the Grantor or subsequent landowner, an additional lot for the same purpose; the lot that the Grantor had excluded from the district's restrictions shall be the only release of a lot to which the Grantor or subsequent landowner is entitled.”

### **Massachusetts**

“No residential dwelling...or other such non-agriculturally related temporary or permanent structure shall be constructed, placed or permitted to remain on the Premises, except structures existing on the Premises at the time of the execution of this Restriction.”

## **New Jersey**

“At the time of this conveyance, Grantor has (\_\_\_\_\_) existing single family residential buildings on the Premises and (\_\_\_\_\_) residential buildings used for agricultural labor purposes. Grantor may use, maintain, and improve existing buildings on the Premises for agricultural, residential and recreational uses subject to the following conditions:

- i. Improvements to agricultural buildings shall be consistent with agricultural uses;
- ii. Improvements to residential buildings shall be consistent with agricultural or single and extended family residential uses. Improvements to residential buildings for the purpose of housing agricultural labor are permitted only if the housed agricultural labor is employed on the Premises; and
- iii. Improvements to recreational buildings shall be consistent with agricultural or recreational uses.

And

Grantor may construct any new buildings for agricultural purposes. The construction of any new buildings for residential use, regardless of its purpose, shall be prohibited except as follows:

- ii. To construct a single family residential building anywhere on the Premises in order to replace any single family residential building in existence at the time of conveyance of this Deed of Easement but only with the approval of the Grantee and Committee.
- iii. \_\_\_\_\_residual dwelling site opportunity(ies) have been allocated to the Premises pursuant to the provisions of N.J.A.C. 2:76-6.17, “Residual Dwelling Site Opportunity”. The Grantor’s request to exercise a residual dwelling site opportunity shall comply with the rules promulgated by the Committee in effect at the time the request is initiated.”

## **Ohio**

“OPTION A:

5.7 Existing Personal Residence - Notwithstanding any other provision herein, Grantor may improve, maintain, repair, replace, and restore the existing singlefamily house and residence-related appurtenances such as attached or detached garages, septic systems, utilities, underground pipes and wires, or overhead wires in substantially their same locations within the existing <insert size> acre “Homestead Area” shown on the Report.

OPTION B

5.7 Existing Personal Residence - There is no existing personal residence on the Protected Property.

And

OPTION A (no new house):

5.14 New Personal Residences – Except as provided in Paragraph 5.7, no new houses or residence-related appurtenances are permitted on the Protected Property.

OPTION B (one new house *with* marked Homestead):

5.14 New Personal Residence - Notwithstanding any other provision herein but subject to the requirements of this Paragraph 5.14, the Grantor may construct, improve, maintain, repair, replace, and restore on the Protected Property one new single family house with residence-related appurtenances such as attached or detached garages, septic systems, utilities, underground pipes and wires, or overhead wires. The Grantor must locate the new house and all of its residence-related appurtenances within the <insert size> acre “New Homestead Area” shown on the Report.

Although the Grantor need not obtain approval of the Grantee in order to exercise any reserved rights in Paragraph 5, unless otherwise stated herein, the Grantor hereby agrees to notify the Grantee in writing before exercising any reserved right which may have an adverse impact on the conservation of the agricultural values associated with the Protected Property.”

### **Pennsylvania**

“The construction of use of any building or other structure on the subject land other than as existing on the date of the delivery of this Deed is prohibited except that:

- (b) The construction of one additional residential structure is permitted if:
  - (i) The construction and use of the residential structure is limited for the landowner’s principal residence or for the purpose of providing necessary housing for persons employed in farming the subject land on a seasonal or full-time basis.
  - (ii) No other residential structure has been constructed on the restricted land at any time since the delivery of the Deed,
  - (iii) The residential structure and its curtilage occupy no more than two acres of the restricted land, and
  - (iv) The location of the residential structure and its driveway will not significantly harm the economic viability of the subject land for agricultural production or a commercial equine activity...
- (d) The replacement of a residential structure existing on the restricted land on the date of the granting of the easement is permitted if the preexisting residential structure is razed or removed and the replacement residential structure is erected within the cartilage of the residential structure it replaces.
- (e) The renovation or modification of an existing residential structure, or an addition to an existing residential structure, is permitted if it would not increase the curtilage of the residential structure.”

### **Vermont**

“Grantor shall have the right to make the following uses of the Protected Property:

The right to maintain, repair, renovate, replace, enlarge, rebuild, and use: (a) the existing (single-family/two-family) dwelling for residential purposes, (b) the existing farm buildings for non-residential, agricultural uses, (c) the existing non-residential appurtenant structures and improvements, including drives and utilities, normally associated with a dwelling or farm, and (d) construct, maintain, repair, renovate, replace, enlarge, rebuild, use and occupy new farm buildings for non-residential, agricultural uses and appurtenant structures and improvements, including drives and utilities, normally associated with a dwelling or farm, all within the designated Farmstead Complex without the prior written approval of Grantees. The Farmstead Complex is an area consisting of \_\_\_ acres, more or less, and is more particularly described in Schedule B attached hereto and incorporated herein, and is depicted on the \_\_\_\_\_ Farm Plan described in Schedule A attached hereto and incorporated herein. Grantor shall notify Grantees in writing prior to commencing construction on any new structure or improvement within the Farmstead Complex.”

### **Watershed Agricultural Council**

“Existing residential structures and associated Accessory Buildings and Improvements may be removed, repaired, replaced and enlarged within the ADA. With prior notice to the Grantee, no more than (#) new residential structures and their Accessory Buildings and Improvements may be constructed, provided that such structures and improvements are located within the ADA. Construction of residential structures outside the ADA is prohibited.”

### **New York**

“Residential Dwelling” means dwellings or structures, together with accessory improvements that comprise single-family, multi-family, apartments, “in-law” apartments, guest houses and farm labor housing, whether or not the structure(s) are used as the primary residence of a farm owner.

Existing residential dwellings, as defined in Section 4(c), if any, may be repaired, removed, enlarged and replaced at their current locations, which are shown on Exhibit B.

*Farmstead Area:* Without permission of Grantee, Grantor may construct, maintain, repair, remove or replace residential dwellings, together with accessory structures and improvements within the Farmstead Area, subject to any applicable local, state or federal laws and regulations.”

## **CUSTOMARY HOME OCCUPATIONS OR COTTAGE INDUSTRIES**

### **California**

Not addressed in easement.

### **Delaware**

Not addressed in easement.

### **Kentucky**

Not addressed in easement.

### **Maryland**

“No signs, billboards, or outdoor advertising displays may be erected, displayed, placed or maintained on the land; provided, however, the Grantor reserves the right to erect signs not exceeding 4 feet x 4 feet for each of the following purposes:

...b. to advertise any home or ancillary occupations consistent with the purposes of this easement subject to the approval of the Grantee;”

### **Massachusetts**

“The Grantee, with the approval of the Co-Holder, if any, upon request and application of Grantors, may issue a special permit approving certain commercial non-agricultural uses and activities on the Premises, providing that the Premises is being actively utilized for full-time commercial agriculture, and that such uses and activities are ancillary and subordinate to the agricultural use of the Premises (“Special Permit”). In addition, such uses and activities shall not be inconsistent with the intent and purpose of this Restriction. Further, commercial non-agricultural uses and activities for which the Grantors receive payment, compensation, or any other type of monetary or non-monetary remuneration require issuance of a Special Permit granted by the Grantee. A Special Permit for commercial non-agricultural uses and activities shall be approved only upon a finding by the Agricultural Lands Preservation Committee that the requirements under Section III, D (2) (b) above have been met. Any approval shall be conditioned upon the Special Permit being:

1. limited to the current owner(s) who applied for and obtained the Special Permit;
2. limited to a period no longer than five (5) years, renewable at the discretion of the Grantee for an additional term(s) of no longer than five (5) years, upon reapplication;
3. terminated upon transfer of ownership;
4. limited to uses and activities ancillary and subordinate to the agricultural use;
5. limited to uses and activities that will not impair the agricultural viability of the soil;
6. limited to uses and activities occurring in existing structures;
7. limited to existing structures requiring only minor renovations; and
8. limited to uses and activities requiring no new construction.”

### **New Jersey**

“Grantor certifies that at the time of the application to sell the development easement to the Grantee and at the time of the execution of this Deed of Easement the nonagricultural uses indicated on attached Schedule (b)



existed on the Premises. All other nonagricultural uses are prohibited except as expressly provided in this Deed of Easement.”

And

“All nonagricultural uses, if any, existing on the Premises at the time of the landowner’s application to the Grantee as set forth in Section 3 above may be continued and any structure may be restored or repaired in the event of partial destruction thereof, subject to the following:

- i. No new structures or the expansion of pre-existing structures for nonagricultural use are permitted;
- ii. No changed in the pre-existing nonagricultural use is permitted;
- iii. No expansion of the pre-existing nonagricultural use is permitted; and
- iv. In the event that the Grantor abandons the pre-existing nonagricultural use, the right of the Grantor to continue the use is extinguished.”

### **Ohio**

“Right to use the Protected Property for Customary Rural Enterprises – Grantor retains the right to use the Protected Property for otherwise lawful and customary rural enterprises, such as, but not limited to, processing, packaging and marketing of farm products primarily produced on the Protected Property; farm machinery repair; roadside market stands; and riding stables so long as these uses do not adversely affect the soils or agricultural values of the Protected Property.”

### **Pennsylvania**

“Rural Enterprises – Customary part-time or off-season minor or rural enterprises and activities which are provided for in the County Agricultural Easement Purchase Program approved by the State Board are permitted.”

### **Vermont**

“The right to conduct rural enterprises consistent with the Purposes of this Grant, especially the economically viable use of the Protected Property for agriculture, forestry and open space and the conservation of agriculturally and silviculturally productive land. In connection with such rural enterprises, the right to maintain, repair, enlarge, replace and use permitted structures with associated utility services, drives and appurtenant improvements within a Farmstead Complex, Barn Complex, Farm Labor Housing Complex or other designated complex permitted by this Section III. Grantees may approve a new, non-residential, structure for an approved rural enterprise only if an existing structure is not suitable and the new structure is:

- a) located within a permitted Farmstead Complex, Barn Complex, Farm Labor Housing Complex or other designated complex
- b) fewer than 1500 square feet as an exterior measure of the footprint and no more than 25 feet from the lowest undisturbed ground level to the roof peak;
- c) inclusive of all storage space so that no part of the business is conducted outside of the structure;
- d) of a nature, intensity, scope, size, appearance, type and quantity compatible with the existing agricultural structures;
- e) located in a way that minimizes negative impact on future operations and expansion of agricultural uses, does not interfere with current agricultural operations and does not displace farm or forestry storage, use or functions;
- f) non-residential; and
- g) not inconsistent with the Purposes of this Grant.

No use or structure contemplated under this Section III (\_\_\_) shall be commenced, constructed or located without first securing the prior written approval of Grantees, which approval Grantees may deny or condition in their sole discretion. All structures and uses shall conform with all applicable local, state and federal ordinances, statutes and regulations. Grantees' approval may be conditioned upon, without limitation, receipt of copies of any necessary governmental permits and approvals that Grantor obtains for such use or construction. Grantee

VHCB shall not approve a new structure for a non-agricultural approved rural enterprise unless the proposed structure meets factors (a) through (g), above. However, VHCB may waive factors (b), (c) or (d) if the Grantees determine that the unique circumstances of the situation warrant waiver and approval.”

### **Watershed Agricultural Council**

“Existing Rural Enterprise buildings and improvements may be removed, repaired, replaced and enlarged within the ADA. New Rural Enterprise buildings and improvements and the renovation of existing non-habitable buildings to create Rural Enterprise buildings is permitted within the ADA only with the prior written approval of the Grantee. Construction of Rural Enterprise buildings outside of the ADA is prohibited.”

### **New York**

“Rural enterprises may be established and carried out within the Farmstead Area, including but not limited to, professional offices within the home, bed and breakfasts, crafts production and firewood distribution. In all cases, such uses and any necessary structures or improvements, shall be compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property. Enterprises which market non-agricultural petroleum or chemical products are prohibited. The land on which these structures stand shall not be subdivided, except as permitted in Section 11 (“Subdivision”).”

## **RECREATIONAL USES/IMPROVEMENTS**

### **California**

“Resort structures, golf courses, non-residential swimming pools, public or commercial airstrips, commercial equestrian facilities, public or commercial helicopter pads, and any other non-agricultural recreational structures or facilities are prohibited on the Property. Other buildings and facilities for any other private recreational use may not be built on the Property without the advance written permission of the Steward pursuant to Section 4. The use of motorized vehicles off roadways and outside of the building envelope is prohibited except where used for agricultural production, property maintenance and security, or for the purpose of monitoring this Easement.”

### **Delaware**

Not addressed in easement.

### **Kentucky**

“Golf courses or ranges, helicopter pads, athletic fields, airstrips, cell towers, or any other structure or improvement inconsistent with current or future agricultural production including but not limited to the afore mentioned are prohibited. Other facilities for recreational use not inconsistent with current or future agricultural production may be built, but only with the advance written approval from Grantee.”

### **Maryland**

Not addressed in easement.

### **Massachusetts**

“No residential dwelling, tennis court, in-ground swimming pool, commercial recreational horse riding or boarding facility, golf course, golf range, airport landing strip, cell tower, or other such non-agriculturally related temporary or permanent structure shall be constructed, placed or permitted to remain on the Premises, except structures existing on the Premises at the time of the execution of this Restriction.”

### **New Jersey**

“Grantor may use the Premises to derive income from certain recreational activities such as hunting, fishing, cross country skiing and ecological tours, only if such activities do not interfere with the actual use of the land for agricultural production and that the activities only utilize the Premises in its existing condition. Other

recreational activities from which income is derived and which alter the Premises, such as golf courses and athletic fields, are prohibited.”

### **Ohio**

“Existing Recreational Improvements - All existing recreational improvements may be repaired or replaced at their current locations without further permission of the Grantee.”

“New Recreational Improvements - New personal recreational improvements may be built and existing personal recreational improvements may be reasonably enlarged for the Grantor’s personal use within the area identified as the “Homestead Area” on the Report without further permission of the Grantee. Also, any new personal recreational improvements or enlargements of existing personal recreational improvements proposed for locations outside the area identified as the “Homestead Area” on the Report may be built only with the advanced written permission of the Grantee. However, no new commercial recreational improvements are permitted anywhere on the Protected Property without the advance written permission of the Grantee. Permission will only be granted for de minimus personal recreational improvements or commercial recreational improvements upon a determination by the Grantee that such personal recreational improvements or commercial recreational improvements are not inconsistent with the goals of the Ohio Agricultural Easement Purchase Program and the soil-conservation purpose of this conservation easement deed.”

### **Pennsylvania**

Not addressed in easement.

### **Vermont**

“The right to clear, construct, and maintain trails for non-commercial walking, horseback riding, skiing and other non-commercial, non-motorized recreational activities within and across the Protected Property, all in a manner consistent with the Purposes of this Grant. Non-commercial snowmobiling may be permitted at the discretion of Grantor. All-terrain vehicles may be permitted by Grantor only in those circumstances as expressly provided in Section III(9) below.”

And

“The right to construct, use, maintain, repair and replace one (1) camp being no more than fifteen (15) feet high as measured from the average undisturbed ground level to the roof peak and no more than 600 square feet in total useable floor area, or, in the alternative, one (1) tent platform, lean-to or Adirondack shelter not to exceed 300 square feet in area provided, however, that any such structure shall be used exclusively for non-commercial, periodic camping, hunting and recreational purposes, and not for permanent occupancy; shall not have commercial utility services or an access road improved beyond what is minimally required to afford reasonable vehicular access; and shall be located on non-agricultural land but not within the Special Treatment Area described in Section IV, below. Grantor shall notify Grantees in writing prior to commencing the placement, construction or relocation of such permitted structure or access so that Grantees may review and approve the proposed location and dimensions of the camp and access, in order to ensure that the dimensions of the structure are in compliance with this section and the camp and access are located in a manner consistent with the Purposes of this Grant. In addition, Grantor may place a limited number of small hunting blinds on the Property in order to carry-out permitted hunting activities, provided that the location of such blinds must be consistent with the Purposes of this Grant.”

### **Watershed Alliance Council**

“Use of the Property for rural recreational uses is permitted anywhere on the Property. These uses may include, but are not limited to, hunting, fishing, trapping, skiing, snowmobiling, horseback riding, hiking, and non-commercial camping. Golf courses, commercial recreational uses involving motorized vehicles, and commercial camping outside the ADA(s) is prohibited on the Property. The construction of buildings and improvements for

recreational uses are allowed anywhere on the Property, with the exception of the RPA, and shall not be improved by permanent utilities. An aggregate 1,000 square feet of recreational buildings is permitted, with prior notice to Grantee. Construction or conversion of buildings over the 1,000 square foot aggregate, up to a maximum 5,000 square foot aggregate, is permitted only with advance written approval of the Grantee.”

### **New York**

“Existing recreational improvements, if any, may be repaired, relocated, removed and enlarged up to an aggregate 1,000 square feet, or replaced at their current locations, which are shown on Exhibit B, so long as such improvements and structures are compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property. [optional clause if applicable] Under no circumstances shall golf courses and/or ranges be allowed in the Farm Area.

*Farmstead Area:* Without permission of Grantee, Grantor may construct permanent, recreational improvements within the Farmstead Area, so long as such improvements are compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property.

*Farm Area:* Subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), Grantor may construct permanent, recreational improvements in the Farm Area up to an aggregate of 1,000 square feet in size without permission of Grantee. With permission of Grantee, permanent recreational improvements that exceed an aggregate footprint of 1,000 square feet may be constructed in the Farm Area. All recreational structures and improvements shall be compatible with the Purpose of this Easement, subordinate to the agriculture use of the Property and located in a manner that minimizes the impact to prime or statewide important soils.”

## **UTILITY SERVICES AND SEPTIC SERVICES**

### **California**

Not addressed in easement.

### **Delaware**

Not addressed in easement.

### **Maryland**

“No rights-of-way, easements, oil, gas or mineral leases, or other similar servitude may be conveyed, or permitted to be established on the land for any commercial, industrial or residential use, without the Grantee’s express written permission.”

### **Kentucky**

“The granting of rights-of-ways for any purpose, including the installation of, transportation of, or use of, lines for water, sewage, electric, telephone, gas, oil, or oil products is prohibited, except when necessary to carry out permitted uses on the property.”

### **Massachusetts**

“The following uses, acts or structures (hereinafter “uses” or “activities”) are allowed only with the prior written approval of the Grantee. Requests for such approvals, and the granting thereof, shall be governed by the procedures set forth in Section III, D of this Restriction:

(3) The maintenance or improvement of a septic or other underground sanitary system which exists on the Premises, or the construction of a septic or other underground sanitary system, for the benefit of existing agriculturally related structures on the Premises.

(5) The construction or placement of an...utility pole, conduit or line in support of a temporary or permanent structure or improvement to the Premises, for the benefit of the Premises only.”

### **New Jersey**

Not addressed in easement.

### **Ohio**

“Utility Services and Septic Systems - Installation, maintenance, repair, replacement, removal and relocation of electric, gas, geothermal, 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 permitted herein, and the right to grant easements over and under the Protected Property for such purposes, is permitted without further permission of the Grantee. Maintenance, repair or improvement of a septic system(s) or other underground sanitary system which exists on the Protected Property at the time of this Easement, or the construction of septic or other underground sanitary system for the benefit of any of the permitted improvements is permitted without further approval of the Grantee.”

### **Pennsylvania**

“The granting of rights-of-way by the Grantor, his heirs, executors, administrators, successors and assigns, or any person, partnership, corporation or other entity claiming title under or through Grantor in and through the subject land for the installation, transportation or use of, lines for water, sewage, electric, telephone, coal by underground mining methods, gas, oil or oil products is permitted. The term “granting of rights-of-way” includes the right to construct or install such lines. The construction or installation of utility lines other than of the type stated in this paragraph is prohibited on the subject land.”

### **Vermont**

“No rights-of-way, or easements of ingress or egress, driveways, roads, utilities, or other easements or rights shall be constructed, developed, granted, or maintained into, on, over, under or across the Protected Property, without the prior written permission of Grantees, except as otherwise specifically permitted under this Grant, and as appear of record prior to the date of this Grant. Grantees may grant permission for any rights-of-way, easements of ingress or egress, driveways, roads, utilities, or other easements or rights, if they determine, in their sole discretion, that any such rights-of-way, easements of ingress or egress, driveways, roads, utilities, other easements or rights are consistent with the Purposes of this Grant.”

And

“The right to construct, maintain, repair, replace, relocate, improve and use systems for disposal of human waste and for supply of water for human consumption (collectively “systems”) on the Protected Property for the benefit of buildings or structures permitted under this Section III within a designated building complex (“Complex”) and for not more than one single-family residence which may be located on the land owned by the original Grantor herein at the date of this Grant but excluded from the Protected Property under Schedule A hereto (“Exclusion”). Any such systems may be constructed, maintained, operated, repaired, replaced, relocated or improved on the Protected Property only if there does not exist within the Exclusion or the designated Complex any suitable location for such systems, under the then applicable law or regulations, as determined by a licensed designer as defined in the wastewater system and potable water supply rules, retained at Grantor’s sole cost and expense. Grantor shall first obtain the written approval of Grantees for the location, relocation, replacement or improvement of such systems on the Protected Property, which approval shall not be unreasonably withheld nor conditioned, provided that:

- (a) All reasonable attempts to locate, relocate, replace or improve the systems within the Exclusion or the Complex in a manner that complies with the then current law and regulations are exhausted; and

- (b) Such systems are located in a manner consistent with the Purposes of this Grant and especially minimize the loss of agricultural soils; and,
- (c) Such systems are designed by a licensed designer as defined in the wastewater system and potable water supply rules retained at Grantor's sole cost and expense, certified by the licensed designer as complying with the wastewater system and potable water supply rules, installed in compliance with the wastewater system and potable water supply rules, certified by an installer or licensed designer as being installed in accordance with the certified design and approved in accordance with all the then applicable State and Local ordinances, statutes and regulations.

After Grantor has obtained Grantees' approval for systems serving any Exclusion, Grantor shall have the right to convey legal access to the successor owners of the Exclusion for construction, operation, and maintenance of the systems as an appurtenance only to the Exclusion."

### **Watershed Agricultural Council**

"No rights-of-way, easements of ingress or egress or utility easements shall be granted or developed, on, over, under or across the Property without prior written approval of Grantee."

### **New York**

"Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to or from the improvements permitted in this Easement may be installed, maintained, repaired, removed, relocated and replaced, and Grantor may grant easements over and under the Property for such purposes. Septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired or improved. All such services and systems shall be compatible with the Purpose of this Easement, subordinate to the agricultural use of the Property and located in a manner that minimizes the impact to prime or statewide important soils.

## **ANCILLARY IMPROVEMENTS**

### **California**

Not addressed in easement.

### **Delaware**

Not addressed in easement.

### **Maryland**

Not addressed in easement.

### **Kentucky**

"Golf courses or ranges, helicopter pads, athletic fields, airstrips, cell towers, or any other structure or improvement inconsistent with current or future agricultural production including but not limited to the aforementioned are prohibited."

### **Massachusetts**

Not addressed in easement.

### **New Jersey**

Not addressed in easement.

### **Ohio**

"Structures - There shall be no new structures or placing of any dwelling, building, athletic or recreational structure, landing strip, helicopter pad, fence or sign (other than those signs permitted, required or allowed by

the Grantee for appropriate management, prevention of hunting or trespass, etc.), asphalt, concrete pavement, billboard or other advertising display, antenna, utility pole, telecommunication tower, tower, conduit line, or any other temporary or permanent structure or facility on the Protected Property, except as provided in Paragraph 5 below.”

### **Pennsylvania**

Not addressed in easement.

### **Vermont**

Not addressed in easement.

### **Watershed Agricultural Council**

“Communication towers or devices, wind turbines, satellite or television antennae or such similar equipment may be placed on the Property, subject to applicable governmental approval, but only in a manner consistent with the Conservation Purposes of this Easement and with prior written approval of Grantee if such devices or equipment is located outside of the ADA and the FADA.”

### **New York**

“Structures and improvements necessary to undertake alternative energy and communications activities such as wind, solar, methane and other similar energy generation activities as well as cell towers or 911 communications towers are permitted as further described below provided they are compatible with the Purpose of this Easement, subordinate to the agricultural use of the Property and located in a manner that minimizes the impact to prime or statewide important soils.

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

*Farm Area:* Subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), such structures and improvements, including roads and drainage ditches, may be built in the Farm Area only with the permission of Grantee, which may be conditioned upon the posting of a bond. These structures and improvements are permitted only if the activity is limited and localized in impact affecting no more than two percent (2%) of the Farm Area at one time.

Prior to determining the location of a site for these structures and improvements in the Farm Area, the Grantor shall notify the Grantee, the New York State Department of Agriculture and Markets, and the local Soil and Water Conservation District to give them an opportunity to participate in an onsite meeting to review proposed locations. Grantor shall agree to comply with the New York State Department of Agriculture and Markets guidelines for agricultural mitigation for construction of such structures.”

## **ROAD CONSTRUCTION**

### **California**

“No portion of the Property presently unpaved shall be paved or otherwise be covered with concrete, asphalt, or any other paving material, nor shall any paved or unpaved road for access or other purpose be constructed without the advance written permission of the Steward pursuant to Section 4. Unpaved farm roads as required by agricultural operations are permitted without further permission from the Steward. The Landowner shall notify the Steward of any relocation or addition of unpaved farm roads.”

### **Delaware**

Not addressed in easement.

**Kentucky**

“No portion of the property shall be paved or otherwise be covered with concrete, asphalt, gravel, or any other paving material, nor shall any road for access or other purposes be constructed without the advance written approval of Grantee as set forth herein.”

**Maryland**

Not addressed in easement.

**Massachusetts**

“The following uses, acts or structures (hereinafter “uses” or “activities”) are allowed only with the prior written approval of the Grantee. Requests for such approvals, and the granting thereof, shall be governed by the procedures set forth in Section III, D of this Restriction:

(5) The construction or placement of an asphalt driveway, road, parking lot, utility pole, conduit or line in support of a temporary or permanent structure or improvement to the Premises, for the benefit of the Premises only.”

**New Jersey**

“Nothing in this Deed of Easement shall be deemed to restrict the right of Grantor, to maintain all roads and trails existing upon the Premises as of the date of this Deed of Easement. Grantor shall be permitted to construct, improve, or reconstruct any roadway necessary to service crops, bogs, agricultural buildings or reservoirs as may be necessary.”

**Ohio**

“Roads - There shall be no building of new roads, parking lots, or other paved surfaces, or the widening of existing such surfaces, except on the Homestead Area, local or state highway rights-of-way, and those improvements permitted under 5.12 below.

5.12 Paving and Road Construction - Construction of new roads, parking lots, or other paved surfaces, or the widening of existing such surfaces, are permitted outside the Homestead Area consistent with the agricultural purposes of this Easement with the advance written permission of the Grantee. The Grantee shall not give such permission, unless the Grantee determines that the proposed paving or covering of the soil, or the location of any such road, will not substantially diminish or impair the agricultural values of the Protected Property and will be used for agricultural purposes.”

**Pennsylvania**

Not addressed in the easement.

**Vermont**

“No rights-of-way, or easements of ingress or egress, driveways, roads, utilities, or other easements or rights shall be constructed, developed, granted, or maintained into, on, over, under or across the Protected Property, without the prior written permission of Grantees, except as otherwise specifically permitted under this Grant, and as appear of record prior to the date of this Grant. Grantees may grant permission for any rights-of-way, easements of ingress or egress, driveways, roads, utilities, or other easements or rights, if they determine, in their sole discretion, that any such rights-of-way, easements of ingress or egress, driveways, roads, utilities, other easements or rights are consistent with the Purposes of this Grant.”

**Watershed Agricultural Council**

“Except for roads, driveways, barnyards, lanes or other improvements constructed within the ADA or consistent with the provisions of a current Whole Farm Plan, no portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other impervious paving material. Logging roads are allowed so long as



they are in accordance with a Forestry Harvest Plan. The location and construction of impervious surfaces and roads shall be implemented, in so far as practicable, to avoid substantially diminishing or impairing the agricultural productivity or water quality benefits of the Property.”

#### **New York**

“Pursuant to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), Grantor may construct roads for residential driveways, barnyards, farm markets or other improvements necessary to provide access to, and parking for, permitted buildings or improvements, or to conduct other activities permitted by this Easement. Roads constructed in the Farm Area shall be located in a manner that minimizes impacts to the prime and statewide important soils.”

### **WATER RIGHTS/ MAINTENANCE AND IMPROVEMENT OF WATER SOURCES**

#### **California**

“The Landowner shall retain and reserve all ground water, and all appurtenant, prescriptive, contractual or other water rights appurtenant to the Property at the time this Easement becomes effective. The Landowner shall not permanently transfer, encumber, lease, sell, or otherwise separate such quantity of water or water rights from title to the Property itself. No permanent separation of water or water rights shall be permitted. All water shall be retained in [County name] County for agricultural production only. Water may be distributed to a contiguous property or other property owned or leased by the Landowner on an annual basis for agricultural production only. Any temporary distribution of water shall not impair the long-term agricultural productive capacity or open space character of the Property.”

#### **Delaware**

“Activities conducted on the real property shall be limited to agricultural and related uses as defined in 3 Del. C. §902. “Agricultural and related uses” does not include, among other things, such activities as:

(b) acts, actions and neglect which are detrimental to drainage, flood control, water conservation, erosion control or soil conservation;”

#### **Kentucky**

“The construction of ponds or reservoirs shall be permitted only upon the prior written approval of Grantee and only when necessary to carry-out the permitted agricultural operations. In no event, may such approved water resources exceed the 2% impervious surface limit.”

#### **Maryland**

Not addressed in easement.

#### **Massachusetts**

Not addressed in easement.

#### **New Jersey**

“No activity shall be permitted on the Premises which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the Premises.”

#### **Ohio**

“Grantor shall not transfer, encumber, lease, sell, or otherwise separate such water rights from title to the Protected Property itself.”

“Grantor shall retain and reserve the right to use any appurtenant water rights necessary and sufficient to maintain the agricultural productivity of the Protected Property.”

### **Pennsylvania**

Not addressed in easement.

### **Vermont**

Permitted uses...”The right to use, maintain, establish, construct, and improve water sources, courses, and bodies within the Protected Property for uses permitted in this Grant; provided, however, that Grantor does not unnecessarily disturb the natural course of the surface water drainage and runoff flowing over the Protected Property. Grantor may disturb the natural water flow over the Protected Property in order to improve drainage of agricultural soils, reduce soil erosion or improve the agricultural potential of areas used for agricultural purposes, but shall do so in a manner that has minimum impact on the natural water flow and is otherwise consistent with the Purposes of this Grant and complies with all applicable laws and regulations. The construction of ponds or reservoirs shall be permitted only upon the prior written approval of Grantees, which approval shall not be unreasonably withheld or conditioned; provided, however, that such pond or reservoir is located in a manner which is consistent with the Purposes of this Grant. Notwithstanding the foregoing, after obtaining the prior written approval of Grantees, which approval shall not be unreasonably withheld or conditioned, Grantor may disturb the existing water flow over the Protected Property as part of a state, federal, or other qualified conservation program to restore wetland and floodplain function, and the natural course of surface waters, including practices that encourage long-term stream equilibrium conditions.”

### **Watershed Agricultural Council**

“Grantor my use, maintain, establish and construct, water sources, water courses, and water bodies, including ponds, on the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. Grantor may alter the non-channelized, natural flow of water over the Property in order to improve drainage of agricultural or forest soils, reduce soil erosion, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the purposes of this Easement and is carried out in accordance with the Whole Farm Plan.

Any stream work, including but not limited to, gravel removal, streambank and bed disturbance or stabilization, and bridge and culvert construction, shall only be undertaken with prior approval of the Grantee, except for emergency work resulting from natural events beyond the control of the Grantor, such as the need to restore transportation routes, maintain farm operations, and to protect health, safety and property.”

And

“Filtration or other treatment of all or any portion of the water supply this Easement seeks to protect, now or in the future, shall not be deemed to defeat the purpose, terms or enforcement of this Easement.”

### **New York**

“Grantor may use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement. Grantor may alter the natural flow of water over the Property in order to improve drainage of agricultural soils, reduce soil erosion and/or flooding, provide irrigation for the Property or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the Conservation Plan, Sound Agricultural Practices, the Purpose of this Easement and is carried out in accordance with applicable local, state and federal laws and regulations.”

“Grantor may use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property in accordance with applicable local, state and federal laws and regulations. Grantor shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.”

## **SUBDIVISION**

### **California**

“The division, subdivision, defacto subdivision, or partition of the Property, including transfer of development rights, whether by physical, legal or any other process, is prohibited. The Landowner agrees the Property has [number] existing legal parcel(s), and that no additional, separate legal parcels currently exist within the Property that may be recognized by a certificate of compliance pursuant to California Government Code section 66499.35 based on previous patent or deed conveyances, subdivisions, or surveys. The Landowner will not apply for or otherwise seek recognition of additional legal parcels within the Property based on certificates of compliance or any other authority. The Landowner shall continue to maintain the legal parcels comprising the Property, and all interests therein, under common ownership, as though a single legal parcel.

Lot line adjustment may be permitted solely with the written approval of the Steward pursuant to Section 4, and for purposes of maintaining, enhancing or expanding agricultural practices or productivity on the Property. The Landowner shall take no other steps towards lot line adjustment unless and until the Steward approves the request.”

### **Delaware**

“No rezoning or major subdivision of the real property shall be allowed.”

### **Kentucky**

“The PACE Board shall grant approval to requests to subdivision so long as any resulting parcel is not found to diminish the agricultural value of each remaining parcel.”

### **Maryland**

“The division, partition, or subdivision (“division”) of the land for any purpose, including off conveyance and boundary line adjustment, is prohibited, unless written approval has first been obtained from the Grantee. Notwithstanding the fact that the land subject to this Deed of Easement may comprise existing subdivided parts (whether separately described parcels or government assigned tax parcels or accounts), it is the intent of the Grantor and the Grantee that the total of the parts remains in common ownership. To that end, the Grantor may not sell, transfer, off convey, devise, give, bequeath, donate, or otherwise divide, any existing or future subdivided part or parts separately from the total of the parts, whether voluntarily, involuntarily, or by reason of foreclosure or bankruptcy. However, the Grantee may approve a division of the total of the parts of the land and separate ownership of a part of parts of the land for reasons which the Grantee, in its sole discretion, deems sufficiently extraordinary to justify an exception to the prohibition against division. For purposes of this subparagraph, the terms, “divide” and “division” shall include the lease of any part of parts less than 100% of the total parts of the land for a term in excess of twenty (20) years.”

### **Massachusetts**

The following uses, acts or structures (hereinafter “uses” or “activities”) are allowed only with the prior written approval of the Grantee. Requests for such approvals, and the granting thereof, shall be governed by the procedures set forth in Section III, D of this Restriction:

(4) The subdivision, recording of a subdivision plan, partition, or any other division of the Premises, or any portion thereof, into two or more parcels, even in the event that the Premises is comprised of one or more deeded parcels at the date of this Restriction. No subdivision shall be approved without the condition that the current updated Agricultural Preservation Restrictions be recorded on the subdivided, partitioned, or otherwise divided parcels.”

### **New Jersey**

“In the event a division of the Premises occurs in compliance with deed restriction No. 15 below, the Grantor shall prepare or cause to be prepared a Corrective Deed of Easement reflecting the reallocation of the residual dwelling site opportunities to the respective divided lots. The Corrective Deed shall be recorded with the County Clerk. A copy of the recorded Corrective Deed shall be provided to the Grantee and Committee. In the event a residual dwelling site opportunity has been approved by the Grantee, the Grantor shall prepare or cause to be prepared a Corrective Deed of Easement at the time of Grantee’s approval. The Corrective Deed of Easement shall reflect the reduction of residual dwelling site opportunities allocated to the Premises. The Corrective Deed shall be recorded with the County Clerk. A copy of the recorded Corrective Deed shall be provided to the Grantee and Committee.”

“The land and its buildings which are affected may be sold collectively or individually for continued agricultural use as defined in Section 2 of the Deed of Easement. However, no division of the land shall be permitted without the joint approval in writing of the Grantee and the Committee. In order for the Grantor to receive approval, the Grantee and Committee must find that the division shall be for an agricultural purpose and result in agriculturally viable parcels. Division means any division of the Premises, for any purpose, subsequent to the effective date of this Deed of Easement.

i. For the purposes of this Deed of Easement, “Agriculturally viable parcel” means that each parcel is capable of sustaining a variety of agricultural operations that yield a reasonable economic return under normal conditions, solely from each parcel’s agricultural output.”

### **Ohio**

“The legal subdivision of the Protected Property, recording of a subdivision plan, partition, or any other division of the Protected Property into two or more parcels, is prohibited, except a subdivision of the Protected Property is permitted only with the advance written permission of the State Grantee, who agrees that each separated parcel can stand alone as viable agricultural land. This prohibition applies regardless of how many separately described parcels are contained in the legal description attached as Exhibit A. If a Homestead Area exists or is ever established, which includes the residential dwelling and agricultural buildings as shown on the Report, it shall not be subdivided and shall remain a part of the Protected Property. In the event of subdivision, the terms of this easement shall be conveyed and recorded with the separate deeds.”

### **Pennsylvania**

“The land under the Agricultural Conservation Easement is subject to the Subdivision Guidelines of the County of \_\_\_\_\_, Agricultural Land Preservation Program, approved by the State Agricultural Land Preservation Board on \_\_\_\_\_, year of \_\_\_\_\_, as may be attached hereto. If the subject land is subdivided, the Deeds to all of the subdivided parcels shall state on which of the subdivided parcels the residential structure permitted by this Deed may be constructed. Deeds to all other parcels shall recite that no additional residential structure is permitted.”

### **Vermont**

“The Protected Property shall not be subdivided or conveyed in separate parcels, nor shall ownership of the buildings on the Protected Property be separated from the ownership of the Protected Property without the prior written approval of Grantees, which approval may be granted, conditioned or denied in Grantees’ sole discretion except as otherwise specifically permitted in this Grant.”

### **Watershed Agricultural Council**

“Subdivision of the Property and conveyance of any such subdivided parcel is prohibited except as set forth below:

In order to facilitate effective easement stewardship, no more than \_\_\_\_ (#) additional tax parcels may be created by subdivision of the Property. Such subdivided parcels may be conveyed only in accordance with prior written approval of the Grantee, upon compliance with the following conditions:

- (a) Grantor has demonstrated that the proposed subdivision is consistent with the Conservation Purposes of this Easement and will not substantially diminish or impair the agricultural, forestry or water quality values of the Property.
- (b) Such subdivided parcels shall remain subject to the terms and conditions set forth in this Easement. The size (square foot) limitations for structures, and the number of subdivisions set forth in this Easement shall be reallocated at the time of the proposed subdivision or conveyance, in a manner to be reviewed and approved by Grantee and set forth in the Deed of each new subdivided parcel. At the discretion of the Grantee, a functionally and materially equivalent Deed of Conservation Easement may be recorded at the time of conveyance.
- (c) The deed(s) of conveyance of all such subdivided parcels shall contain a metes and bounds description of the subdivided parcel(s) prepared by a licensed professional land surveyor at Grantor's sole cost, which description shall have been reviewed and approved by Grantee prior to conveyance of the subdivided parcel(s).
- (d) All costs resulting from the subdivision of the Property and conveyance of subdivided parcels, including but not limited to reasonable Grantee and associated staff time, including but not limited to time expended on legal review of documents and updating of baseline documentation, are to be borne by Grantor.

Any further subdivision of the Property and/or conveyance of newly subdivided parcels, beyond that provided for above, may be permitted at the sole discretion of the Grantee in accordance with its current subdivision approval policies and with the Conservation Purposes of this Easement.”

#### **New York**

“The Property is currently comprised of \_\_\_\_\_ parcels owned by Grantor. Unless otherwise permitted by Grantee, Grantor shall maintain such parcels comprising the Property, and all interests therein, under common ownership, as though a single parcel. [*optional paragraph*]

[Unless otherwise indicated above in this Section,] the Property may be partitioned or subdivided only with the permission of the Grantee, which permission shall be granted only if all parcels of land thereby created will remain viable for agricultural production either individually, or as part of an established farming operation. Any such subdivision shall not include the right to construct or relocate any new habitable or commercial structures, except as otherwise permitted by this Easement, and shall explicitly limit any existing farm labor housing in the Farm Area to that exclusive use. Any partition, subdivision or lot line adjustment also must comply with all applicable local, state or federal regulations, and any subdivided parcels shall be subject to the terms of this Easement. The Farmstead Area[s], as shown on Exhibits B and C, may not be subdivided or partitioned.

The right to construct new impervious improvements set forth in Paragraph 8(a) shall be allocated at the time of a proposed subdivision. Such allocation of rights to construct new impervious improvements set forth in Paragraph 8(a) shall not result in greater than 10% of the Farm Area being covered by impervious surfaces. At the discretion of Grantee, a functionally and materially equivalent Easement may be recorded at the time of conveyance. Any other subdivision, recording of a subdivision plan, partition, or any other attempt to internally or externally divide the Property into two or more parcels is prohibited.

Mortgages, or other non-possessory interests in land, do not constitute subdivisions for the purpose herein, provided such interests encompass the whole parcel.”

## **FOREST MANAGEMENT**

### **California**

Not addressed in easement.

### **Delaware**

Not addressed in easement.

### **Kentucky**

“Timber may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the restricted land. Trees may also be cut to clear land for cultivation or use of livestock, but only if done in accordance with the conservation plan required by this section. Any commercial timber harvesting on the restricted land shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester.”

### **Maryland**

“The land shall be managed in accordance with sound agricultural soil and water conservation practices so as to promote the agricultural capability of the land; also, woodland shall be managed in accordance with sound forestry practices; provided, however, the Grantor reserves the right to selectively cut or clear cut from time to time trees which will not alter the agricultural character of the land or diminish its productive capability.”

“The Grantor shall implement a Forest Stewardship Plan in accordance with the Management Practice Schedule of the Plan, if the land contains 25 acres or more of contiguous forest.”

### **Massachusetts**

Not addressed in easement.

### **New Jersey**

Not addressed in easement.

### **Ohio**

Not addressed in easement.

### **Pennsylvania**

Not addressed in easement.

### **Vermont**

“The right to conduct maple sugaring operations, and the right to harvest timber and other wood products, together with the right to construct and maintain roads necessary for both such activities, in accordance with sound forestry practices and in accordance with a forest management plan for which Grantor has received the prior written approval of Grantees. Grantor may conduct maple sugaring operations, and may harvest firewood for heating residences and structures located on the Protected Property, both on existing woods roads only, without submission and approval of a plan. Grantees’ approval of forest management plans that may be submitted from time to time shall not be unreasonably withheld or conditioned, if such plans have been approved by a professional forester and if such plans are consistent with the Purposes of this Grant.”

### **Watershed Agricultural Council**

“Trees may be cut to control insects, disease and invasive species, to enhance wildlife habitat, to prevent personal injury and property damage, and for other domestic uses, including firewood and construction of

permitted buildings and fences on the Property. The application of pesticide and fertilizer shall be prohibited unless: (i) such use is necessary for forest management; and (ii) such use is in compliance with an approved Forest Management Plan for the property; and (iii) Grantee has approved such use; and (iv) such use is consistent with the terms of this Easement. Any and all Commercial Forestry activities shall require a Forest Management Plan and a Forest Harvest Plan, approved by WAC or its successor pursuant to Section 14 of this Easement, submitted at Grantor's sole cost, and consistent with the New York City Department of Environmental Protection's "Water Quality Guidelines for Timber Harvesting" or such successor standard approved by Grantee. In the event that Grantor submits a Forest Management Plan and/or Forest Harvest Plan to Grantee for approval, and Grantee (or its successor pursuant to Section 14 of this Easement) notifies the Grantor in writing that it has no program to approve such a Plan or Plans, Grantor may undertake Commercial Forestry activities so long as the activities are conducted consistent with the NYSDEC Forest Management Stewardship Plans and in accordance with the technical standards set forth in the New York State Department of Environmental Conservation's "Best Management Practices for Water Quality" field guide or such successor standards. "

### **New York**

"Without permission of Grantee, Grantor may clear forested areas for conversion to farmland, harvest wood for use on the Property including heating or construction of buildings and improvements, manage forested areas for wildlife habitat and recreation, and remove trees that are fallen, dead, diseased or invasive, so long as such activities are consistent with generally accepted forest best management practices.

Without permission from Grantee, Grantor may commercially harvest timber and other wood products, conduct timber stand improvements and construct, maintain, remove, and repair unpaved access roads and "staging areas", those areas where logs are temporarily stored for transport necessary for such activities. All such activities shall be in accordance with generally-accepted forestry best management practices. Such commercial timber harvests and timber stand improvements shall be carried out in accordance with a forest management plan and harvest plan prepared by a forester who is certified by the Society of American Foresters or such successor organization as is later created, a Cooperating Consulting Forester with the New York State Department of Environmental Conservation or a qualified forester approved by Grantee.

In order to facilitate the monitoring and stewardship of this Conservation Easement, and ensure continuing communication between parties, Grantor shall give Grantee, its successors or assigns, written notice not less than forty-five (45) days prior to the anticipated commencement of any commercial timber harvest or timber stand improvement. Such written notice shall include submission of the current forest management plan and harvest plan."

## **MINING AND ON-SITE EXTRACTIVE ACTIVITY**

### **California**

"The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance, using any method that disturbs the surface of the land, is prohibited. (NOTE: This section can be customized depending on the unique characteristics of the property and the landowner's mineral interest therein."

### **Delaware**

"Activities conducted on the real property shall be limited to agricultural and related uses as defined in 3 Del. C. §902. "Agricultural and related uses" does not include, among other things, such activities as:

- (a) Excavation, filling, borrow pits, extraction, processing and removal of sand, gravel, loam, rock or other minerals, unless such activities are currently required by or ancillary to any preparation for, or operation of any activities involving aquaculture, farm ponds, cranberry operations, manure handling facilities, and other activities directly related to agricultural production on the Parcel;"

**Kentucky**

“The mining or extraction, using any method, of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance is prohibited. However, the Grantee may, in its sole discretion, authorize specific mining activities for gravel or similar materials that are limited in scope and impact, if the Grantee determines that the mining activities are in direct furtherance of the agricultural operations being conducted on the Property. However, any such permitted mining shall not exceed 1 acre and shall be reclaimed as soon as practicable after extraction has been completed.”

**Maryland**

“No rights-of-way, easements, oil, gas or mineral leases, or other similar servitude may be conveyed, or permitted to be established on the land for any commercial, industrial or residential use, without the Grantee’s express written permission.”

**Massachusetts**

“The following uses, acts or structures (hereinafter “uses” or “activities”) are allowed only with the prior written approval of the Grantee. Requests for such approvals, and the granting thereof, shall be governed by the procedures set forth in Section III, D of this Restriction:

(2) The excavation, dredging, depositing on, or removal from the Premises of loam, peat, gravel, soil, sand, rock other mineral resources, or natural deposits.”

**New Jersey**

“No sand, gravel, loam, rock, or other minerals shall be deposited on or removed from the Premises excepting only those materials required for the agricultural purpose for which the land is being used.”

**Ohio**

“Mining - Under no circumstances shall surface mining be permitted on the Protected Property. To the extent permitted under Section 170(h)(5) of the Internal Revenue Service Code and applicable Treasury Regulations, Grantor may undertake subsurface exploration, development and extraction of oil and gas. Upon completion of the subsurface oil and gas well activities, Grantor shall promptly restore any portion of the Protected Property affected thereby as nearly as possible to its condition existing prior to commencement of the subsurface oil and gas well activities. In addition, and to the extent permitted under Section 170(h)(5) of the Internal Revenue Service Code and applicable Treasury Regulations, Grantor may remove sand and gravel for normal farm use on the Protected Property. However, such removal is to be limited and located in such a manner so as to minimize the impact to prime and unique soils.”

And

“Topography - There shall be no ditching; draining; diking; filling; excavating; removal of topsoil, sand, gravel, rock, or other materials; or any change in the topography of the land in any manner, unless in accordance with the farm conservation plan for agricultural use on the Protected Property referenced in Paragraph C above.”

**Pennsylvania**

“The granting of leases, assignments or other conveyances or the issuing of permits, licenses or other authorization for the exploration, development, storage or removal of coal by underground mining methods, oil and gas by the owner of the subject land or the owner of the underlying coal by underground mining methods, oil and gas or the owner of the rights to develop the underlying coal by underground mining methods, oil and gas or the development of appurtenant facilities related to the removal of coal by underground mining methods, oil or gas development or activities incident to the removal or development of such minerals is permitted.”



And

“...the conservation plan shall ...require that:

(ii) The excavation of soil, sand, gravel, stone or other materials for use in agricultural production or commercial equine activities on the land is conducted in a location and manner that preserves the viability of the subject land for agricultural production or commercial equine activity.”

### **Vermont**

“There shall be no disturbance of the surface, including but not limited to filling, excavation, removal of topsoil, sand, gravel, rocks or minerals or change of the topography of the land in any manner, except as may be reasonably necessary to carry out the uses permitted on the Protected Property under this Grant. In no case shall surface mining or subsurface oil, gas, or other minerals be permitted.”

### **Watershed Agricultural Council**

“Except as may be reasonably necessary to carry out the uses permitted on the Property under the terms of this Easement, the exploration for or development and extraction of, soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance by any surface mining method or any other method is prohibited with the exception of bluestone extraction undertaken with written approval of the Grantee.

Prior to commencing any commercial bluestone mining, Grantor, at their sole cost, shall submit a Bluestone Extraction Plan following the guidelines described in the City’s “Water Quality Protection Guidelines for Bluestone Quarrying” or such successor standard approved by Grantee. Prior to commencing any commercial bluestone mining, such plan shall be reviewed and approved by Grantee.”

### **New York**

*“[Presumes no third party ownership of surface mining or other mineral rights]*

Exploration for, or development, storage and extraction of, minerals and hydrocarbons on or from the Property by any method are permitted only under the following conditions. Grantor may remove sand and gravel on the Property, provided said removal: (a) is limited and localized in impact, affecting no more than two acres of the Property at one time; (b) is compatible with the Purpose of this Easement; (c) is reasonably necessary and exclusively for the Farm Operation; and (d) minimizes the impact to the prime and statewide important soils.

Grantor may undertake subsurface mineral and hydrocarbon exploration, development and extraction activities only with the permission of Grantee, which may be conditioned upon the posting of a bond. Such activities must: (a) be limited and localized in impact; (b) be compatible with the Purpose of this Easement and subordinate to the agricultural use of the Property; and (c) minimize the impact to prime and statewide important soils. Grantor shall use all practical means to mitigate any adverse effect on the agricultural viability of the Property in carrying out any permitted exploration, development or extractive activities.

Prior to determining the location of a site for exploration, development or extraction activities, the Grantor shall notify the Grantee, the New York State Department of Agriculture and Markets, and the local Soil and Water Conservation District to give them an opportunity to participate in an onsite meeting to review proposed locations. Grantor shall agree to comply with the New York State Department of Agriculture and Markets guidelines for agricultural mitigation for construction of such structures and related extractive activities.”

### **DUMPING AND TRASH**

#### **California**

“The dumping or accumulation on the Property of any kind of trash, refuse, vehicle bodies or parts, or

“Hazardous Materials,” as defined in Section 25 is prohibited. Farm-related trash and refuse produced on the Property may be temporarily stored on the Property subject to all applicable laws. The storage of agricultural products and byproducts produced on the Property and materials reasonably required for agricultural production on the Property, including Hazardous Materials, is permitted as long as it is done in accordance with all applicable government laws and regulations.”

### **Delaware**

Not addressed in easement.

### **Kentucky**

“The dumping or accumulation of any kind of trash or refuse on the restricted land is prohibited. However, this shall not prevent the storage of agricultural products and by-products produced or generated on the Property, so long as it is done in accordance with all applicable laws, administrative regulations and ordinances. “

### **Maryland**

“No ashes, sawdust, bark, trash, rubbish or any other material may be dumped on the land, except that used in normal agricultural practices.”

### **Massachusetts**

“No refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, oil, radio-active or hazardous waste, or other such substance or material whatsoever shall be placed, stored, dumped, or permitted to remain on the Premises, except as required for the use of the Premises for normal agricultural activities.”

### **New Jersey**

“No dumping or placing of trash or waste material shall be permitted on the Premises unless expressly recommended by the [State Agriculture Development] Committee as an agricultural management practice.”

### **Ohio**

“Dumping - There shall be no new dumping of trash, non-compostable garbage, hazardous or toxic substances or other unsightly or offensive material, except as reasonably required for the use of the Protected Property in accordance with applicable local, state and federal laws and regulations.”

### **Pennsylvania**

Not addressed in easement.

### **Vermont**

“The placement, collection, or storage of trash, refuse, human waste, or any other unsightly or offensive material on the Protected Property shall not be permitted except at such locations, if any, and in such a manner as shall be approved in advance in writing by Grantee, in their sole discretion. The on-site storage and spreading of agricultural inputs, including, but not limited to, lime, fertilizer, pesticides, compost or manure for agricultural practices and purposes, the storage of feed, and the temporary storage of trash generated on the Protected Property in receptacles for periodic off-site disposal, shall be permitted without such prior written authority.”

### **Watershed Agricultural Council**

“Except as permitted herein, the dumping, storage, application, land filling, or accumulation of any kind of Waste in, on or upon the Property is prohibited.

The routine containerized storage of household trash and garbage is permitted only if stored for purposes of eventual transport off site for proper disposal. The storage and treatment of sewage by an individual subsurface sewage treatment system servicing residential dwellings, Farm Support Housing and other buildings used for

rural enterprises allowed under this Easement is permitted only within the ADA, or with prior written approval of Grantee if location outside of the ADA.

The routine storage or accumulation of farm related building debris and other farm related refuse or equipment generated or used on the property, that does not substantially diminish or impair the agricultural or forest productivity or water quality of the Property, is permitted only within the ADA and/or the FADA, or with prior written approval of Grantee if located outside of the ADA and/or the FADA.

Application in, on or upon the Property of domestic septic effluent and/or municipal, commercial or industrial sewage sludge or liquid for agricultural production purposes is prohibited without the prior written approval of Grantee. Any approved application shall be undertaken only if compliant with applicable law and consistent with the Whole Farm Plan.”

### **New York**

“The dumping, land filling, burial, application, injection, or accumulation of any kind of garbage, trash or debris on the Property is prohibited, other than agriculturally-related waste or biodegradable material as described below. Without permission of Grantee, Grantor may 1) store, compost, apply or inject agriculturally-related waste or biodegradable material; 2) store old farm equipment to be used for parts; 3) temporarily store trash or household waste in receptacles for periodic off-site disposal and 4) compost or re-use biodegradable materials generated off the Property for use on the Property or commercial use or sale. All such activities shall be conducted in accordance with Sound Agricultural Practices and in a manner consistent with the Conservation Plan and all applicable local, state or federal laws and regulations. Notwithstanding the foregoing, the storage and treatment of sewage associated with buildings permitted on the Property, is permitted by this Easement.”

## **EXTINGUISHMENT OF DEVELOPMENT RIGHTS**

### **California**

“The Landowner hereby grants to the Steward all development rights except as specifically reserved in this Easement, that were previously, are now and hereafter allocated to, implied, reserved, appurtenant to, or inherent in the Property and the parties agree that such rights are released, terminated, and extinguished and may not be used on or transferred by either party to any portion of the Property as it now or later may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property. This Easement shall not create any development rights.”

### **Delaware**

Not addressed in the easement.

### **Kentucky**

“All development rights hereby conveyed to the Grantee shall include the development rights except those specifically reserved by the Grantor herein and those reasonably required to carry out the permitted uses of the property as herein described.”

“To the extent that Grantor is entitled to development rights, which may exist some time hereafter by reason of the fact that under any applicable zoning or similar ordinance, the Property may be developed to use more intensive (in terms of height, bulk, or other objective criteria related by such ordinances) than the Property is devoted as of the date hereof, such development rights shall not be exercisable on, above, or below the Property, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the purpose of the Conservation Easement.”

**Maryland**

“Except as provided in Section IV herein, all development rights associated with the land are hereby extinguished. No development rights from the land may be transferred to another area, or to another person, or to a political subdivision, notwithstanding any prior agreement to the contrary; nor may the land be used for the purpose of calculating permissible lot yield of any other property. In addition, Grantor agrees that it shall not be permitted to develop the within described property based on any existing, retained, or after acquired Development Rights, except for that which the Grantee has given approval in accordance with Section IV herein.”

**Massachusetts**

“By making such grant, the Grantors grant to the Grantee all non-agricultural rights in the Premises except as otherwise described in section III.”

**New Jersey**

“Grantor, Grantor’s heirs, executors, administrators, personal or legal representatives, successors and assigns further transfers and conveys to Grantee all of the nonagricultural development right and development credits appurtenant to the lands and Premises described herein. Nothing contained herein shall preclude the conveyance or retention of said rights by the Grantee as may be permitted by the laws of the State of New Jersey in the future. In the event that the law permits the conveyance of said development rights, Grantee agrees to reimburse the Committee (\_\_\_\_\_) percent of the value of the development rights as determined at the time of the subsequent conveyance.”

**Ohio**

Not addressed in the easement.

**Pennsylvania**

Not addressed in the easement.

**Vermont**

Not addressed in easement.

**Watershed Agricultural Council**

“The development rights hereby conveyed to Grantee shall include all development rights except those specifically reserved by Grantor herein and those reasonably required to carry out the Conservation Purposes of this Easement. Grantee shall transfer such development rights only to a qualified organization in accordance with the laws of the State of New York and the regulations established by the Internal Revenue Service governing such transfers.”

**New York**

“Except as otherwise reserved to the Grantor in this Easement, all non-agricultural development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.”

**BASELINE DOCUMENTATION****California**

“The agricultural and other characteristics of the Property, its current use and state of improvement, are documented and described in a Baseline Documentation Report (“Baseline Report”), prepared by the Steward with the cooperation of the Landowner and incorporated herein by reference. The Landowner and the Steward

acknowledge that it is complete and accurate as of the date of this Easement. Both the Landowner and the Steward shall retain duplicate originals of the Baseline Report. The Baseline Report may be used to establish whether or not a change in the use or condition of the Property has occurred, but its existence shall not preclude the use of other evidence to establish the condition of the Property as of the date of this Easement.”

### **Delaware**

Not addressed in easement.

### **Kentucky**

“The baseline documents contained herein may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by the Grantee of other evidence to establish the condition of the property as of the date of this Conservation Easement.”

### **Maryland**

Not addressed in easement.

### **Massachusetts**

Not addressed in easement.

### **New Jersey**

“Grantor certifies that at the time of the application to sell the development easement to the Grantee and at the time of the execution of this Deed of Easement the nonagricultural uses indicated on attached Schedule (B) existed on the Premises. All other nonagricultural uses are prohibited except as expressly provided in this Deed of Easement.”

### **Ohio**

“Present Condition Report- The Grantor and Grantee agree that the natural characteristics, the soil types, the physical conditions, the physical structures, and the agricultural use of the Protected Property at the time of this purchase are documented in a Present Condition Report (hereinafter referred to as the “Report”) prepared by the Local Grantee and signed and acknowledged by the Grantor and a representative of the Local Grantee establishing the condition of the Protected Property at the time of this Easement conveyance, including photographs, maps and other documents, as set forth in Exhibit B.”

### **Pennsylvania**

Not addressed in easement.

### **Vermont**

“It is further agreed that the Protected Property is accurately depicted and described in both the \_\_\_ Farm Plan and a Baseline Documentation Report (BDR) signed by the original Grantor on or about the date of this Grant and held by Grantee VLT, on behalf of all Grantees. Grantees may use the \_\_\_ Farm Plan or BDR in enforcing this Grant, but are not limited in their use of the \_\_\_ Farm Plan and BDR to show a change of conditions.”

### **Watershed Agricultural Council**

“The conservation values, various use areas and the current use, size, location and condition of improvements of the Property are described in a Baseline Documentation Report (the Report). Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but the report shall not preclude the use by Grantee of other evidence to establish the conditions of the Property as of the date of this Easement.”

## **New York**

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

## **RIGHT OF INSPECTION/MONITORING**

### **California**

“The Steward shall manage its responsibilities as holder of this Easement in order to uphold the Purpose of this Easement. The Steward’s responsibilities include, but are not limited to, annual monitoring, such additional monitoring as circumstances may require, record keeping, and enforcement of this easement, for the purpose of preserving the Property’s agricultural productive capacity and open space character in perpetuity. Failure of the Steward to carry out these responsibilities shall not impair the validity of this Easement or limit its enforceability in any way. With reasonable advance notice (except in the event of an emergency circumstance or prevention of a threatened breach), Steward shall have the right to enter upon, inspect, observe, monitor and evaluate the Property to identify the current condition of, and uses and practices on the Property to determine whether the condition, uses and practices are consistent with this Easement.

Steward shall indemnify, defend with counsel of Landowner’s choice and hold Landowner harmless from, all expense, loss, liability, damages and claims, including Landowner’s attorneys’ fees, if necessary, arising out of Steward’s entry on the Property, unless caused by a violation of this Easement by Landowner or Landowner’s negligence or willful misconduct.

The Steward shall report to the Department of Conservation by June 30 of each year after the annual monitoring visit, describing method of monitoring, condition of the Property, stating whether any violations were found during the period, describing any corrective actions taken, the resolution of any violation, and any transfer of interest in the Property. Failure to do so shall not impair the validity of this Easement or limit its enforceability in any way.”

### **Delaware**

Not addressed in easement.

### **Kentucky**

“Upon request by Grantee, Grantor shall promptly furnish Grantee with certification that, to the best of Grantee’s knowledge, Grantor is in compliance with the obligations of Grantor contained herein, or that otherwise evidences the status of this Conservation Easement to the extent of Grantor’s knowledge thereof.”

“With reasonable prior notice to the Grantor, representatives of the Grantee shall be permitted to inspect the property.”

### **Maryland**

“During regular business hours, the Grantee or its authorized representative will have the right to enter on the land from time to time for the sole purpose of inspection and enforcement of the easement, covenants, conditions, limitations and restrictions herein contained, provided, however, that the Grantee will have no right to inspect the interior of any structures on the land.”

**Massachusetts**

“The Grantors grant to the Grantee, and any Successors in Title, the right to enter upon the Premises in a reasonable manner and at reasonable times, for the purposes of inspecting the Premises to determine compliance with this Restriction, any Certificate of Approval, Special Permit, or General Laws, Chapter 184, Sections 31 through 33 and Chapter 20, Sections 23 through 26, and rules, regulations and policies thereunder; the right to enforce this Restriction, any Certificate of Approval, Special Permit, or General Laws, Chapter 184, Sections 31 through 33 and Chapter 20, Sections 23 through 26, and rules, regulations and policies thereunder; and the right to take any other action which may be necessary or appropriate in the determination of Grantee, with or without order of court, to remedy or abate any violation of this Restriction, or of any Certificate of Approval, Special Permit, or of General Laws, Chapter 184, Sections 31 through 33 and Chapter 20, Sections 23 through 26, and rules, regulations and policies thereunder.”

**New Jersey**

“Grantee and Committee and their agents shall be permitted access to, and to enter upon, the Premises at all reasonable times, but solely for the purpose of inspection in order to enforce and assure compliance with the terms and conditions of this Deed of Easement. Grantee agrees to give Grantor, at least 24 hours advance notice of its intention to enter the Premises, and further, to limit such times of entry to the daylight hours on regular business days of the week.”

**Ohio**

“Monitoring- The Local Grantee shall conduct at least an annual monitoring visit of the Protected Property verifying that the Grantor is in compliance with the terms and conditions of this deed, and shall submit an annual monitoring report, as provided by the State Grantee and the United States. If the Local Grantee determines the provisions of the deed are not being complied with and these violations cannot be resolved with the Grantor, then the Local Grantee shall notify the State Grantee of the alleged violation. The Grantees shall then determine if judicial action is necessary to enforce the deed, and shall assume responsibility for all necessary enforcement action in court. Notwithstanding any other provisions in this deed the State Grantee or the State Grantee’s designee reserves the right to conduct an inspection of the Protected Property and enforce any violations of the deed.”

And

“Right of Entry - The Grantee or its agents shall have the right to enter the Protected Property, in a reasonable manner and at reasonable times, for the purposes of:

- 8.3.1 Inspection of the Protected Property to determine if the Grantor, or his heirs, successors or assigns, is complying with the provisions of this Easement;
- 8.3.2 Obtaining evidence for the purpose of seeking judicial enforcement of this Easement;
- 8.3.3 NRCS, its successors or assigns, will have a right to access to the easement area to ensure conservation plan implementation and compliance.”

**Pennsylvania**

“Annually, Grantee, its successors, assigns or designees shall have the right to enter the subject land for the purpose of inspecting to determine whether the provisions of this Deed are being observed. Written notice of such annual inspection shall be mailed to the Grantor, his heirs, executors, administrators, successors or assigns at least ten days prior to such inspection. The annual inspection shall be conducted between the hours of 8 a.m. and 5 p.m. on a weekday that is not a legal holiday recognized by the Commonwealth of Pennsylvania or at a date and time agreeable to the county and the landowner.

Grantee, its successors, assigns or designees shall also have the right to inspect the subject land at any time, without prior notice, if Grantee has reasonable cause to believe the provisions of this Deed have been or are being violated.”

### **Vermont**

“Grantees shall make reasonable efforts from time to time to assure compliance by Grantor with all of the covenants and restrictions herein. In connection with such efforts, Grantees may make periodic inspection of all or any portion of the Protected Property, and for such inspection and enforcement purposes, Grantees shall have the right of reasonable access to the Protected Property. In the event that a Grantee becomes aware of an event or circumstance of non-compliance with this Grant, Grantee shall give notice to Grantor and the other Grantees of such event or circumstance of non-compliance via certified mail, return receipt requested, and demand corrective action by Grantor sufficient to abate such event or circumstance of non-compliance and restore the Protected Property to its previous condition.”

And

“Grantees shall periodically monitor the Protected Property to assure compliance with the terms and conditions of this Grant and, if an event of non-compliance or violation is discovered, Grantees shall take all reasonable steps to secure compliance with this Grant, including efforts at securing voluntary compliance and, if necessary, appropriate legal action.”

### **Watershed Agricultural Council**

“Upon reasonable notice to Grantor, Grantee shall have the right to enter the Property, exclusive of residential dwellings, for the purpose of monitoring the property. This may include maintaining Farm Easement (All Use Areas) boundary lines, determining whether the provisions of this Easement are being observed, and/or enforcing provisions of this Easement. If Grantee identifies activities or practices that it believes may cause or contribute to violations of State water quality standards during an inspection of the Property, Grantee shall notify the State Department of Environmental Conservation of such activities and practices. Grantee shall also have the right to monitor the Property exclusive of residential dwellings, at any time, without prior notice, if Grantee has reasonable cause to believe the provisions of this Easement have been or are being materially violated. However, under all circumstances, Grantee will make its best efforts to notify the Grantor in advance.”

### **New York**

“Grantee shall have the right to enter upon the Property upon forty-eight (48) hours advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. Such inspection shall be conducted between the hours of 9 a.m. and 7 p.m. on a weekday that is not a legal holiday recognized by the State of New York or at a date and time agreeable to the Grantee and Grantor. In the instance of a violation or suspected violation of the terms of this Easement which has caused or threatens to cause irreparable harm to any of the agricultural or other resources this Easement is designed to protect, no such advance notice is required. Representatives of the New York State Department of Agriculture and Markets [and the United States Department of Agriculture – if using FRPP] shall have the same right of inspection.”

## **ENFORCEMENT**

### **California**

“The Steward may take all actions that it deems necessary to ensure compliance with the terms, conditions, covenants, and purposes of this Easement. The Steward shall have the right to prevent and correct violations of the terms, conditions, covenants and purposes of this Easement. If the Steward finds what it believes is a violation or potential violation, it may at its discretion take appropriate legal action to ensure compliance with the terms, conditions, covenants and purposes of this Easement and shall have the right to correct violations and



prevent the threat of violations. Except when an ongoing or imminent violation could irreversibly diminish or impair the agricultural productive capacity and open space character of the Property, the Steward shall give the Landowner written notice of the violation or potential violation, and thirty (30) days to correct it, before filing any legal action.

If a court with jurisdiction determines that a violation may exist, has occurred, or is about to occur, the Steward may obtain an injunction, specific performance, or any other appropriate equitable or legal remedy, including (i) money damages, including damages for the loss of the agricultural conservation values protected by this Easement, (ii) restoration of the Property to its condition existing prior to such violation, and (iii) an award for all of the Steward's expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorney's fees. The failure of the Steward to discover a violation or potential violation, or to take immediate legal action to prevent or correct a violation or potential violation known to the Steward, shall not bar the Steward from taking subsequent legal action. The Steward's remedies under this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

Without limiting the Landowner's liability therefore, the Steward shall apply damages recovered to the cost of undertaking any corrective action on the Property. Should the restoration of lost values be impossible or impractical for whatever reason, the Steward shall apply any and all damages recovered to furthering its mission, with primary emphasis on agricultural conservation easement acquisition and enforcement.

In the event the Steward fails to enforce any term, condition, covenant or purpose of this Easement, as determined by the Director of the Department of Conservation, the Director of the Department and his or her successors and assigns shall have the right to enforce the Easement after giving notice to the Steward and the Landowner and providing a reasonable opportunity under the circumstances for the Steward to enforce any term, condition, covenant, or purposes of the Easement. In the event that the Director of the Department determines that the Steward has failed to enforce any of the terms, covenants, or purposes of the Easement, the Director of the Department and his or her successors and assigns shall be entitled to exercise the right to enter the Property granted to the Steward, including right of immediate entry where the Director of the Department or his or her successor or assign determines that immediate entry is required in the event of an emergency circumstance or prevention of a threatened breach of this Easement.

Failure or refusal to exercise any rights under the terms of this Easement by the Steward in the event of a breach by the Landowner of any term herein shall not constitute a waiver or forfeiture of the Steward's right to enforce any term, condition, covenant, or purpose of this Easement."

### **Delaware**

"This easement shall be deemed a covenant which runs with and binds the parcel permanently as set forth in 3 Del. C. §909(c), the terms and conditions of which shall be subject to specific performance and other action allowed under 3 Del. C. §920."

### **Kentucky**

"Grantor shall be deemed to have authorized the PACE Board to enforce these provisions. Unless otherwise specified, the landowner shall not be required to take any action to restore the condition of the property after any act of God or other event over which the landowner had not control. Nothing in the PACE Program shall relieve the landowner of any obligation or restriction on the use of the property imposed by law."

Grantee may, following reasonable written notice to Grantor, institute suit(s) to enjoin any violation of the terms of this conservation easement by ex parte, preliminary, temporary, and/or permanent injunction, including prohibitory and/or mandatory injunction relief. Except where an ongoing or imminent violation could irreversibly diminish or impair agricultural productivity of the restricted land, Grantee shall give the Grantor written notice of the violation and sixty (60) days to correct it before taking legal action. Grantee shall also have

available all legal and other equitable remedies to enforce Grantor's obligations hereunder. In the event Grantor is found to have violated any of its obligations, Grantor shall bear all costs associated with the correction of a violation of the Conservation Easement, including costs of work required and materials used to correct the violation and restore the restricted land to its condition prior to the violation; administrative costs incurred by Grantee, and court costs and reasonable attorney's fees incurred by the Grantee in enforcing the easement."

"Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time."

### **Maryland**

"If the easement or any covenant, condition, limitation, restriction or other provisions herein contained is violated or breached, the Grantee may after due notice to the Grantor, the Grantor's personal representatives, successors or assigns, institute an action in equity to enjoin, by ex parte, temporary or permanent injunction, such violation or breach; to require the restoration of the above described land to its condition prior to such violation or breach (including, but not limited to, re-conveyance of title to land conveyed in violation of covenants herein); to recover damages; and to take such other legal action as may be necessary to insure compliance with the easement and the covenants, conditions, limitations and restrictions or other provisions herein contained."

### **Massachusetts**

"In the event of a violation of the terms of this Restriction, Certificate of Approval, Special Permit, or General Laws, Chapter 184, Sections 31 through 33 and Chapter 20, Sections 23 through 26, and rules, regulations and policies thereunder, the Grantee reserves the right to pursue any remedy available at law and equity, including injunctive relief.

3. The enforcement 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 Restriction, Certificate of Approval, Special Permit, or General Laws, Chapters 184, Sections 31 through 33 and Chapter 20, Sections 23 through 26, and rules, regulations and policies thereunder.

4. The Grantors and their Successors in Title, shall be jointly and severally liable for any violation of the terms of this Restriction, Certificate of Approval, Special Permit, or General Laws, Chapters 184, Sections 31 through 33 and Chapter 20, Sections 23 through 26, and rules, regulations and policies thereunder."

### **New Jersey**

"In the event of any violation of the terms and conditions of this Deed of Easement, Grantee or the Committee may institute, in the name of the State of New Jersey, any proceedings to enforce these terms and conditions including the institution of suit to enjoin such violations and to require restoration of the Premises to its prior condition. Grantee or the Committee do not waive or forfeit the right to take any other legal action necessary to insure compliance with the terms, conditions, and purpose of this Deed of Easement by a prior failure to act."

### **Ohio**

"Remedies – In accordance with the provisions set forth in the Ohio Administrative Code §901-2-11, the Grantee shall have the right 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 the grant of this Easement, subject to the reserved rights of the Grantor set forth herein. The Grantee, 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. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceeding against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's 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 the

Grantor shall notify Grantee of any occurrence which would adversely affect or interfere with the agricultural purposes of the Easement, whether caused by the acts or omissions of the Grantor or third parties, or by natural occurrences.”

“Enforcement Costs - All reasonable costs incurred by the State Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys’ fees, and any costs of restoration necessitated by Grantor’s violation of the terms of this Easement shall be borne by the Grantor. However, it is understood by the parties that if the Grantor ultimately prevails in a judicial enforcement action, the Grantee shall pay all reasonable costs; provided, however, that if the United States exercises its contingent right, which is described in Paragraph 17 of this Deed, this sentence shall be of no effect. The State Grantee may request assistance from the Local Grantee in its effort to enforce the terms of this Easement.”

### **Pennsylvania**

“Grantor acknowledges that any violation of the terms of this Deed shall entitle Grantee, its successors, assigns or designees to obtain an injunction against such violation from a court of competent jurisdiction along with an order requiring Grantor, his heirs, executors, administrators, successors or assigns to restore the subject land to the condition it was in prior to the violation, and recover any costs or damages incurred including reasonable attorney’s fees. Such relief may be sought jointly, severally, or serially.”

### **Vermont**

“In the event there has been an event or circumstance of non-compliance which is corrected through negotiation and voluntary compliance, but which has caused Grantees to incur extraordinary costs, including staff time, in investigating the non-compliance and securing its correction, Grantor shall, at Grantees’ request, reimburse Grantees for all such costs incurred in investigating the non-compliance and in securing its correction.

Failure by Grantor to cause discontinuance, abatement, or such other corrective action as may be demanded by Grantees within a reasonable time after receipt of notice and reasonable opportunity to take correction action shall entitle Grantees to bring an action in a court of competent jurisdiction to enforce the terms of this Grant and to recover any damages arising from such non-compliance. Such damages, when recovered, may be applied by Grantees to corrective action on the Protected Property, if necessary. If the court determines that Grantor has failed to comply with this Grant, Grantor shall reimburse Grantees for any reasonable costs of enforcement, including court costs and reasonable attorneys’ fees, in addition to any other payments ordered by such court. In the event that a Grantee initiates litigation and the court determines that Grantor has not failed to comply with this Grant and that one or more of Grantees have initiated litigation without reasonable cause or in bad faith, then the Grantee(s) who commenced the court proceedings shall reimburse Grantor for any reasonable costs of defending such action, including court costs and reasonable attorneys’ fees; provided however, that this clause shall not apply to the VAAF and the United States of America. The parties to this Grant specifically acknowledge that events and circumstances of non-compliance constitute immediate and irreparable injury, loss, and damage to the Protected Property and accordingly entitle Grantees to such equitable relief, including but not limited to injunctive relief, as the court deems just. The remedies described herein are in addition to, and not in limitation of, any other remedies available to Grantees at law, in equity, or through administrative proceedings.

No delay or omission by Grantees in the exercise of any right or remedy upon any breach by Grantor shall impair Grantees’ rights or remedies or be construed as a waiver. Nothing in this enforcement section shall be construed as imposing a liability upon a prior owner of the Protected Property, when the event or circumstance of non-compliance occurred after said prior owner’s ownership or control of the Protected Property terminated.”

And

“In the event that Grantees fail to enforce any of the terms of this Grant the United States has a right to enforce this Grant, which shall be exercised by mailing a written notice (the “Notice”) by certified mail to Grantees or

the last known address of any successors or assigns. Said Notice shall declare that the right of enforcement is being exercised and shall state the specific event of non-compliance which caused the action. Except in the case of imminent harm, Grantees shall have a period of sixty (60) days from the date of their receipt of said Notice to correct the non-compliance. If, in the opinion of the United States, the non-compliance is not cured within said sixty (60) day period, the United States' right of enforcement shall become final. The rights of the United States contained in this Section shall not terminate or otherwise alter Grantees' interests in this Grant."

### **Watershed Agricultural Council**

"In the event a violation or imminent violation of this Easement occurs, Grantee shall immediately notify the Grantor to request that the activity cease and arrange a site visit to mutually resolve the situation to the satisfaction of both parties.

If the Grantor ceases the activity in violation, but is unwilling or unable to cure any violations within ten (10) calendar days after the Grantee's initial site visit, Grantee shall send Grantor a written notice of non-compliance, which shall notify Grantor of the violation and the measures reasonably calculated to cure such violation or imminent violation. Grantor shall have twenty (20) calendar days from the date the Grantor receives such notice, or such other period Grantee may deem appropriate, to cure the conditions constituting the violation. In the event the Grantor fails to cure the violation within the aforementioned twenty (20) calendar days or period designated by Grantee, Grantee shall seek to enforce such other legal and/or equitable remedies, as Grantee deems necessary to ensure compliance with the terms and purposes of this Easement.

In the event that the Grantor refuses to cease such activity or agree to a site visit, or when Grantee determines that a violation or imminent violation could substantially impair the purposes of this Easement, or that an imminent or immediate threat to the City's drinking water supply exists, Grantee may seek an injunction to stop it, temporarily or permanently. If a court with jurisdiction determines that a violation may exist or has occurred, the court may also issue an order requiring the Grantor to restore the Property to its condition prior to the violation.

In any case where a court finds that a violation has occurred, the Grantor shall reimburse the Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limited to reasonable attorney's fees. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time."

AND

Third Party Enforcement: "The City of New York, the New York State Attorney General and their successors shall have the right to enforce a material breach of this Easement subject to the following provisions:

- (a) Prior to commencing an enforcement action in a court of competent jurisdiction, the City of New York, or the New York State Attorney General must first notify Grantee and Grantor, give Grantee sixty (60) days to take appropriate action, including commencing an enforcement action and give Grantor sixty (60) days from the receipt of such notice to cure the breach.
- (b) If Grantee is diligently prosecuting an enforcement action, in either an administrative or judicial proceeding, the City of New York, or the New York State Attorney General shall not have a right to prosecute and action for the same breach of this Easement.
- (c) Nothing contained herein shall be construed as providing the New York State Attorney General with the right to physically inspect or otherwise enter the Property.
- (d) The City and its duly authorized agents, employees and representatives shall have joint access to the Property in order to monitor and/or maintain boundaries, to determine compliance with and/or enforce the terms of this Easement in the following instances: (i) the City shall have the right to jointly inspect the Property with Grantee, during any of Grantee's inspections; (ii) notwithstanding the above, the City shall have the right to inspect the Property subject to the Easement without Grantee, when the City

determines that an imminent or immediate threat to the City's drinking water supply exists, or where a Grantor may be violating this Easement through gross or willful negligence and the City has been unable, after good faith efforts, to provide notice to Grantee of such threat or violation, or in the event that Grantee is unable or unwilling to inspect the Property.”

### **New York**

“If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation. Notwithstanding the foregoing, where Grantee in Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the Purpose of this Easement, Grantee may bring an action to enjoin the violation, ex parte, if necessary, through temporary or permanent injunction.

In addition to injunctive relief, Grantee shall be entitled to seek the following remedies in the event of a violation: (a) money damages, including damages for the loss of resources protected under the Purpose of this Easement; and (b) restoration of the Property to its condition existing prior to such violation. Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limited to reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.”

“The New York State Department of Agriculture and Markets and its successor agency shall have the right to enforce a material violation of this Easement subject to the following provisions.

- (a). Prior to commencing an enforcement action, New York State Department of Agriculture and Markets must first notify Grantee and Grantor, give Grantee thirty (30) days to take appropriate action, including commencing an enforcement action, and give Grantor thirty (30) days from the receipt of such notice to cure the violation.
- (b). If the New York State Department of Agriculture and Markets determines that Grantee is diligently prosecuting an enforcement action in good faith, it shall not have a right to take legal action for the same violation of this Easement unless pursuant to a written request by Grantee.”

## **DISPUTE RESOLUTION**

### **California**

Not addressed in easement.

### **Delaware**

Not addressed in easement.

### **Kentucky**

Not addressed in easement.

### **Maryland**

Not addressed in easement.

### **Massachusetts**

Not addressed in easement.

### **New Jersey**

Not addressed in easement.

**Ohio**

Not addressed in easement.

**Pennsylvania**

Not addressed in easement.

**Vermont**

Not addressed in easement.

**Watershed Agricultural Council**

“If a dispute arises between the Grantor and Grantee concerning the consistency of any proposed use or activity with the purposes of this Easement or any of the specific provisions contained herein, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may request a meeting between the parties, or refer the dispute to binding arbitration by requesting in writing that NYSDEC appoint an Administrative Law Judge (“ALJ”) to act as an Arbitrator to conduct the arbitration and issue a binding determination. The ALJ shall conduct the arbitration under the version of the AAA Commercial Dispute Resolution Procedures Expedited Procedure Rules then in effect. The party seeking arbitration shall provide simultaneous notice to the other party by overnight mail and fax of such request. The request shall state with particularity the nature of the issue in question. Each party will bear its own costs, including half of any costs assessed by NYSDEC for the ALJ’s time and expenses. The parties agree that the decision of the ALJ is binding upon the parties.”

**New York**

“If a dispute arises between the Grantor and the Grantee concerning the consistency of any proposed use or activity with the purposes of this Easement or any of the specific provisions contained herein, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may request a meeting between the parties, or refer the dispute to mediation by written request. Within ten (10) days of such request, Grantee shall schedule a meeting or the parties shall select a single trained and impartial mediator knowledgeable about production agriculture to recommend potential resolutions of the dispute. Reasonable costs associated with the mediation process shall be determined by the impartial mediator. Nothing in this clause shall diminish Grantee’s rights under Section 21 (“Enforcement”).”

**TRANSFER OF PROPERTY****California**

“Any time the Property itself, or any interest in it, is transferred by the Landowner to any third party, the Landowner shall notify the Steward and the Department of Conservation in writing at least thirty (30) days prior to the transfer of the Property or interest, and the document of conveyance shall expressly incorporate by reference this Easement. Any document conveying a lease of the Property shall expressly incorporate by reference this Easement. Failure of the Landowner to do so shall not impair the validity of this Easement or limit its enforceability in any way.”

**Delaware**

“This easement shall be deemed a covenant which runs with and binds the parcel permanently as set forth in 3 Del. C. §909(c), the terms and conditions of which shall be subject to specific performance and other action allowed under 3 Del. C. §920, and shall be subject to release only under 3 Del. C. §917. This easement shall be binding upon the heirs, executors, administrators, successors and assigns of the Grantor.”

### **Kentucky**

“Grantor shall promptly notify Grantee in writing of any proposed sale of the property and provide the opportunity for Grantee to explain the terms of the Conservation Easement to potential new owners prior to sale closing.”

“The obligations imposed by this Conservation Easement shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Property. This Conservation Easement shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming under or through Grantor and Grantee and the words “Grantor” and “Grantee” when used herein shall include all such persons. Any right, title, or interest herein granted to grantee shall also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word “Grantee” shall include all such successors and assigns.”

### **Maryland**

“Upon sale or transfer of any interest in the land, including, but not limited to a leasehold interest, life estate, term of years, or remainder interest, the Grantor, his personal representatives, successors and assigns shall notify the Grantee in writing of the name and address of the party receiving the interest in the land.”

### **Massachusetts**

“A. Grantee shall have an option to purchase the Premises at Fair Market Agricultural Value ("Option") in accordance with the provisions of this section. This Option has been granted as an integral part of this Restriction, the full consideration for which is set forth above. This Option constitutes a restriction that runs with the land and is binding in the event of a foreclosure of said Premises....

D. The Grantors may sell the Premises, to the third party purchaser who entered into the bona fide Purchase and Sale Agreement referred to in Paragraph A.1.a above, only in the event that Grantee:

1. declines in writing to exercise its rights under this Option within the specified time period; or
2. fails to waive its rights under the Option in writing within the specified time period; or
3. having elected to exercise its rights under the Option, fails to complete the purchase within the specified time period.

Said sale of the Premises must take place within one (1) year of the date of the Grantee’s receipt of Notice, and be only upon the same terms and conditions as contained in said bona fide Purchase and Sale Agreement.

E. The obligations of the Grantors under this Option shall not apply where the transfer of ownership of the Premises will be a result of:

1. a conveyance by deed to the Grantor’s 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. a devise of said Premises by will or intestacy of the Grantors;
3. a conveyance of an interest in the Premises to a co-owner.”

### **New Jersey**

“This Deed of Easement is binding upon the Grantor, the Grantor’s heirs, executors, administrators, personal or legal representatives, successors and assigns and the Grantee; it shall be construed as a restriction running with the land and shall be binding upon any person to whom title to the Premises is transferred as well as upon the heirs, executors, administrators, personal or legal representatives, successors, and assigns of all such persons.”

## **Ohio**

“Transfer of Protected Property- Unless this Easement is extinguished, as set forth below, the Grantor agrees that the terms, conditions, restrictions and purposes of this Easement will either be referenced or inserted by the Grantor in any subsequent deed or other legal instrument by which the Grantor divests himself of any interest in all or part of the Protected Property. The Grantor agrees to notify the Grantee, its successors and assigns, of any such conveyance in writing by certified mail within fifteen (15) days after closing.”

## **Pennsylvania**

“Grantor, his heirs, executors, administrators, successors or assigns, and any person, partnership, corporation, or other entity claiming title under or through Grantor, shall, within thirty (30) days of a change in ownership or within any lesser period prescribed in the county program, notify the county agricultural land preservation board and the Pennsylvania Department of Agriculture in writing of any conveyance or transfer of ownership of the subject land. Such notification shall set forth the name, address and telephone number of the Grantor and the party or parties to whom ownership of the subject land has been conveyed or transferred, and the price per acre or any portion thereof and a reference to the volume and page in which the transfer has been recorded by the County Recorder of Deeds.

This obligation shall apply to any change in ownership of the subject land. Whenever interest in the subject land is conveyed or transferred to another person, the deed conveying or transferring such land shall recite in verbatim the language of the easement as set forth in this deed.”

## **Vermont**

“In any deed or lease conveying an interest in all or part of the Protected Property, Grantor shall make reference to the conservation easement, restrictions, and obligations described herein and shall indicate that said easement and restrictions are binding upon all successors in interest in the Protected Property in perpetuity. Grantor shall also notify Grantees of the name(s) and address(es) of Grantor’s successor(s) in interest.”

## **Watershed Agricultural Council**

“In order to facilitate the stewardship of this Easement and to ensure adequate communication, Grantor agrees to notify Grantee of any conveyance, lease, subdivision or transfer of the Property or any portion thereof, such notices to be given in writing at least thirty days in advance of such conveyance, lease, subdivision or transfer. Any such conveyance, lease, subdivision or transfer shall expressly refer to this Deed of Conservation Easement and shall be made subject to the terms of this Easement.”

## **New York**

“Any subsequent conveyance, including, without limitation, transfer, lease or mortgage of the Property, shall be subject to this Easement, and any deed or other instrument evidencing or effecting such conveyance shall contain language substantially as follows: "This {conveyance, lease, mortgage, easement, etc.} is subject to a Conservation Easement which runs with the land and which was granted to \_\_\_\_\_ by instrument dated \_\_\_\_\_, and recorded in the office of the Clerk of \_\_\_\_\_ County at Liber [or] Cartridge \_\_\_\_\_ of Deeds at Page [or] Frame \_\_\_\_\_." Grantor shall notify Grantee and the New York State Department of Agriculture and Markets in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. The failure to notify Grantee or New York State Department of Agriculture and Markets or to include said language in any deed or instrument shall not, however, affect the validity or applicability of this Easement to the Property or limit its enforceability in any way.”

## **AMENDMENT OF EASEMENT**

### **California**

“This Easement may be amended only with the written consent of the Landowner, the Steward, and the Director of the Department of Conservation. Any such amendment shall be consistent with the Purpose of this Easement



and with the Steward’s easement amendment policies, and shall comply with all applicable laws, including Section 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section, and with Section 815 et seq. of the California Civil Code, and the California Farmland Conservancy Program Act as codified in Section 10200 et seq. of the California Public Resources Code, and any regulations promulgated thereunder. No amendment shall diminish or affect the perpetual duration or the Purpose of this Easement, nor the status or rights of the Steward under the terms of this Easement.

This Easement and any amendment to it shall be recorded in [County name] Count. Copies of any amendments to this Easement shall be provided to the Department of Conservation.”

**Delaware**

Not addressed in easement.

**Kentucky**

“If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, Grantor and Grantee States may by written agreement amend this Conservation Easement, provided that no amendment shall be made that will adversely affect the qualification of this Conservation Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the Commonwealth of Kentucky. Any such amendment shall be consistent with the protection of the conservation and preservation values of the Property and the purpose of this Conservation Easement; shall not affect its perpetual duration; shall not permit additional residential development on the Property other than the residential development permitted by this Conservation Easement on its effective date; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall agricultural and open space values protected by this Conservation Easement. Any such amendment shall be recorded in the land records of \_\_\_\_\_ County, Kentucky. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.”

**Maryland**

Not addressed in easement.

**Massachusetts**

Not addressed in easement.

**New Jersey**

Not addressed in easement.

**Ohio**

“Amendment of Easement- Grantee may amend this Easement only with the written consent of the Grantor and the United States. Any such amendment shall be consistent with the “Statement of Purpose” of this Easement and with the Grantee’s Easement amendment policies and shall comply with Section 170(h) of the U.S. Internal Revenue Code or any regulations promulgated in accordance with that Section. Any such amendment shall also be consistent with Section 5301.67 *et seq.*, of the Ohio Revised Code or any regulations promulgated pursuant to those laws. Any such amendment shall be duly recorded.”

**Pennsylvania**

Not addressed in easement.

**Vermont**

“Except where consent of the United States is specifically required by this Grant and when this conservation easement is being amended, Grantor and the United States acknowledge that Grantees are fully authorized to

amend this Grant and to grant, deny and condition approvals and waivers under this Grant without any consultation with, or action by, the United States.”

### **Watershed Agricultural Council**

“This Easement may not be materially amended without the written consent of the Grantee, Grantor and the Attorney General. Any other amendment, modification or waiver will require the written consent of the Grantee and Grantor. Any amendment, modification, or waiver shall be consistent with the purposes of this Easement and shall comply with Section 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with the Environmental Conservation Law or any regulations promulgated pursuant to that law.”

### **New York**

“This Easement may be amended only with the written consent of Grantee and current Grantor and with the approval of the New York State Department of Agriculture. Any such amendment shall be consistent with the Purpose of this Easement and shall comply with the Environmental Conservation Law or any regulations promulgated thereunder, and shall not unreasonably restrict or regulate farm operations in contravention of the purposes of Article 25-AA of the Agriculture and Markets Law. Any such amendment shall be duly recorded.”

## **EXTINGUISHMENT OF EASEMENT**

### **California**

“(NOTE: Landowners may waive the administrative termination provision defined in Public Resources Code sections 10270-77, in which case potential easement termination shall be governed solely by judicial termination proceedings. Under such cases, Section 21(a) shall be removed and Section 21(c) updated to remove the following language from the second sentence “at the time of a voluntary termination pursuant to Sections 10270-10277 of the Public Resources Code or...” The following paragraph should be added:

Waiver of Administrative Termination Rights. It is the intention of the parties that the conservation purposes of this Easement shall be carried out forever as provided in Section 10211 of the Public Resources Code and Section 815.2 et seq. of the Civil Code. Liberal construction is expressly required for purposes of effectuating this Easement in perpetuity, notwithstanding conditions or hardship of any kind that may provide a basis for termination of this Easement at law or in equity. Accordingly, Landowner hereby affirmatively waives on behalf of Landowner and Landowner’s successors and assigns all right to request a non-judicial termination of this Easement pursuant to the provisions set forth in the California Public Resources Code Sections 10270 through 10277, inclusive. If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction.

Landowner’s Initials: \_\_\_\_\_

(a) Termination of the Easement shall be governed by Sections 10270-10277 of the Public Resources Code of California. This Easement shall not be terminated unless it meets the criteria for termination of this Easement including, California Constitution, Article XIII, section 8; California Public Resources Code sections 10273 - 10275, Revenue and Taxation Code sections 421.5 and 422.5; and other applicable laws, rules and regulations. The Steward and the Department of Conservation shall be notified at least thirty (30) days prior to any initiation of any proceedings to terminate this Easement. No inaction or silence by the Steward shall be construed as abandonment of the Easement. The fact that the land is not in agricultural use is not reason for termination of this Easement.

(b) Other than pursuant to eminent domain or purchase in lieu of eminent domain, no other voluntary or involuntary sale, exchange, conversion, or conveyance of any kind of all or part of the Property, or of

any interest in it, shall limit or terminate the provisions of this Easement. Termination of the Easement through condemnation is subject to the requirements of Section 10261 of the Public Resources Code, the eminent domain laws of the State of California, federal law, and this Easement. The Property may not be taken by eminent domain or in lieu of eminent domain if the planned use is more than seven years in the future (California Code of Civil Procedure section 1240.220). Steward shall be paid by the condemnor the value of the Easement at the time of condemnation (Public Resources Code section 10261(a)(2)). Purchase in lieu of condemnation, or settlement of an eminent domain proceeding, shall occur pursuant to applicable laws and procedures, including but not limited to California Government Code sections 7267.1 and 7267.2, and shall require approval of Steward and the Director of the Department of Conservation. Steward shall have an opportunity to accompany the appraiser for the condemning agency when the appraiser goes on the Property with Landowner. Should this Easement be condemned or otherwise terminated on any portion of the Property, the balance of the Property shall remain subject to this Easement. In this event, all relevant related documents shall be updated and re-recorded by the Steward to reflect the modified easement area and encumbrances junior to this Easement shall remain subordinate to the Easement as amended.

(c) The grant of this Easement gives rise to a property right immediately vested in the Steward. For the purpose of determining the amount to be paid by the Landowner in a repurchase of the Easement at the time of a voluntary termination pursuant to Sections 10270-10277 of the Public Resources Code or pursuant to judicial proceedings, and for the purpose of allocating proceeds from a sale or other disposition of the Property at the time of termination, the Easement and the Steward's property right therein shall have a value equal to the difference between the current fair market value of the Property as if unencumbered by this Easement and the current fair market value of the Property encumbered by this Easement, each as determined on or about the date of termination. The values shall be determined by an appraisal performed by an appraiser jointly selected by the Landowner and the Steward. The Landowner shall pay the cost of the appraisal, and the appraisal is subject to approval by the Department. Nothing herein shall prevent the Landowner, the Steward, or the Department from having an appraisal prepared at its own expense.

Upon approval of termination of this Easement or any portion thereof, the Landowner shall reimburse the State of California, Department of Conservation California Farmland Conservancy Program Fund and [Other funders] the amount equal to the value of the Easement that is terminated pursuant to Section 10276 of the Public Resources Code. The amount required to be paid in connection with the Landowner's repurchase shall be distributed as follows: (i) to the State of California, Department of Conservation, California Farmland Conservancy Program Fund, [percentage] ( %); and (ii) to the [Other funder], [percentage] ( %), representing the proportion of easement value originally contributed by these agencies for the purchase of this Easement. This Easement shall not be deemed terminated until such payment is received by all parties. The Steward, in using any funds received from the termination of this Easement, shall use the funds in a manner consistent with the Purpose of this Easement.

(NOTE: Additional language IRS language may need to be used for landowners seeking IRS recognition of a charitable donation)

(d) If the Steward obtains payment on a claim under a title insurance policy insuring this Easement, payment shall be distributed as set forth in Section 21(c)."

#### **Delaware**

"This easement shall be deemed a covenant which runs with and binds the parcel permanently as set forth in 3 Del. C. §909(c), the terms and conditions of which shall be subject to specific performance and other action allowed under 3 Del. C. §920, and shall be subject to release only under 3 Del. C. §917."

## **Kentucky**

Termination: (1) A Grantor may terminate the Conservation Easement, in whole or in part, only by filing an action in the Franklin Circuit Court, and demonstrating by clear and convincing evidence that conditions on or surrounding the land subject to an agricultural conservation easement have changed so much that agriculture is no longer viable and it has become impossible to fulfill any of the Conservation Easement's conservation purposes. The Grantor shall name the Grantee defendants in the action. In the event that a finding is made by that Court that a portion of the land subject to the agricultural Conservation Easement is no longer suitable for agricultural purposes, the owners shall, at the owner's expense, provide a survey of the land area on which the agricultural Conservation Easement is to be terminated.

(2) Should the Easement terminate, the owner shall pay the PACE Corporation an amount equal in current dollars to the full cost of monitoring the Easement during its full duration, plus any reasonable interest as determined by the Court.

(3) The PACE Corporation shall place proceeds from the termination of the Conservation Easement in the agricultural enhancement fund and use the proceeds consistent with the purposes of KRS 262.900 to 262.920."

## **Maryland**

Not addressed in easement.

## **Massachusetts**

Not addressed in easement.

## **New Jersey**

"That portion of the net proceeds, representing the value of the land only (and not the value of the improvements), of a condemnation award or other disposition of the Premises following termination of this Deed of Easement, as permitted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, shall be distributed among the Grantor and the Grantee in shares in proportion to the fair market value of their interests in the Premises on the date of execution of this Deed of Easement. For this purpose, the Grantee's allocable share of the proceeds shall be the net proceeds multiplied by a fraction, the numerator of which is the fair market value of the development easement as certified by the Grantee at the time of the initial acquisition and the denominator of which is the full fair market value of the unrestricted Premises as certified by the Grantee at the time of the initial acquisition, which is identified as (        /        ).

Furthermore, the Grantee's proceeds shall be distributed among the Grantee and the Committee in shares in proportion to their respective cost share grants on the date of execution of this Deed of Easement. The Grantee shall use its share of the proceeds in a manner consistent with the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32."

## **Ohio**

"Extinguishment of Easement: This Easement is intended to be in perpetuity. However, Ohio law allows for this Easement to be extinguished under the following situations:

15.1 At the request of Grantor and upon approval of the United States, Grantee may extinguish Easement if it is determined that an unexpected change in the conditions of or surrounding the land that is subject to the Easement makes impossible or impractical the continued use of the land for the purposes described in the Easement, as required by Section 901.22(A)(2)(a) of the Ohio Revised Code and Section 901-02-12 of the Ohio Administrative Code.

15.2 This Easement may be extinguished by judicial proceedings, as permitted by Section 901.22(A)(2)(a) of the Ohio Revised Code, and including extinguishment by eminent domain proceedings under applicable state or federal law, as permitted by section 901-02-12(J) of the Ohio Administrative Code. Due to its interest in the Protected Property, the United States must be notified of any proposed condemnation action.

15.3 At the joint request of the Grantor and Grantee and upon approval of the United States, a court with jurisdiction may extinguish this Easement if it determines that an unexpected change in the conditions of or surrounding the land that is subject to the Easement makes impossible or impractical the continued use of the land for the purposes described in the Easement, in accordance with Section 170(A)- 14(g)(6)(ii) of the Internal Revenue Code. The parties acknowledge that this agricultural easement is a real property interest that vests upon the recording of the Deed. Under Ohio law this easement constitutes an agricultural easement as defined and governed by Ohio Revised Code Sections 901.21 and 5301.67.

If this Easement is extinguished by the Grantee or by judicial proceeding, then upon the sale, exchange, or involuntary conversion of the land subject to the Easement, the Local Grantee shall be paid an amount of money that is at least equal to the proportionate value of the Easement compared to the total value of the land at the time this Easement was acquired, as required by Section 901.22(A)(2)(b) of the Ohio Revised Code and Section 901-01-13 of the Ohio Administrative Code. The United States will receive its proportional share of the easement, fifty (50)%. Upon receipt of the proportionate value proceeds, the Local Grantee must remit to the Director of the Ohio Department of Agriculture an amount of money equal to the percentage of the cost of purchasing this Easement, as required by Section 901.22(A)(2)(c) of the Ohio Revised Code and Section 901-02-13 of the Ohio Administrative Code. Moneys received by the Director shall be credited to the Agricultural Easement Purchase Fund. The Director will promptly remit to the United States its proportional share of the cost of purchasing the easement set forth above from the value of the proceeds.”

### **Pennsylvania**

Not addressed in easement.

### **Vermont**

“If this Grant is extinguished, terminated or condemned, in whole or in part, then VHCB and the United States are each entitled to a proportional share of the amount of sale proceeds or condemnation award received by VHCB pursuant to Section VII (5) of this Grant, provided that such amount is based on the fair market value of VHCB's interest in the Protected Property on the date of extinguishment or condemnation. The proportional share of the United States in the fair market value of VHCB's interest in this Grant is 50% so the proportional share applicable to the amount of sale proceeds or condemnation award received by VHCB shall be 50 % for VHCB and 50% for the United States.

Except as provided in Section V (1), the rights of the United States contained in this Section shall not terminate or otherwise alter Grantees’ interests in this Grant.”

And

“Due to the federal interest in this Grant, the Grant may not be extinguished by eminent domain without the advance approval of the United States. In the event the development rights or conservation restrictions conveyed to Grantees herein are extinguished by eminent domain or other legal proceedings, Grantees shall be entitled to any proceeds which pertain to the extinguishment of Grantees' rights and interests. Any proceeds from extinguishment shall be allocated between Grantor and Grantees in accordance with the value of their respective interests as determined by an appraisal commissioned by Grantees at the time of extinguishment; provided, however, that the allocation of proceeds to Grantees shall be no less than \_\_\_\_\_% of the full fair market value of the Protected Property exclusive of the value of improvements. *[The Percentage Figure is determined by the relative value of the conservation restrictions as compared to the “unrestricted value” of the Protected Property at the time the Rights are purchased]*. Grantees shall use any such proceeds to preserve undeveloped and open space land in order to protect the aesthetic, agricultural, educational, scientific, forestry and natural resources of the State through non-regulatory means. Since the United States contributed to the

purchase price of this Grant, Grantee VHCB shall share proceeds received by VHCB with the United States in accordance with Section V(5) of this Grant.”

### **Watershed Agricultural Council**

“If it determines that conditions on or surrounding the Property change so much that it becomes impracticable to fulfill its Conservation Purposes, a court with jurisdiction may, at the joint request of Grantee, Grantor, the Attorney General and the City, terminate the Easement created by this Deed. If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill any of the Conservation Purposes, the Easement may be terminated through condemnation proceedings with notice to Grantee, Grantor, the Attorney General, and the City. If the Easement is terminated and the Property is sold or taken for public use, then as required by Internal Revenue Service regulations, the Grantee shall be entitled to XX percent (%) of the gross sale proceeds or condemnation award which is equal to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Property, as this ratio is determined on the date of this Easement. The Grantee shall use the proceeds consistent with the Conservation Purposes of this Easement.”

### **New York**

“At the mutual request of Grantor, Grantee, New York State Department of Agriculture and Markets a court with jurisdiction may, if it determines that conditions surrounding the Property have changed so much that it becomes impossible to fulfill the Purpose of this Easement described in Section 2 (“Purpose”), extinguish or modify this Easement in accordance with applicable law. In that case, the mere cessation of farming on the Property shall not be construed to be grounds for extinguishment of this Easement.

Notwithstanding the foregoing, if condemnation by exercise of the power of eminent domain makes impossible the continued use of the Property for Purpose of this Easement as described in Section 2 (“Purpose”) herein, the restrictions may be extinguished by judicial proceeding. In either case, upon any subsequent sale, exchange or involuntary conversion by the Grantor, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, or title insurance proceeds, in accordance with Section 28 (“Proceeds”) herein.

In the event that grantor retains the Property subsequent to any such extinguishment or partial extinguishment, Grantee shall be entitled to receive from Grantor an amount equal to the fair market value of the Property or a portion of the Property as to which the extinguishment applies times the percentage determined under Section 28.”

## **GRANTOR’S ENVIRONMENTAL WARRANTY**

### **California**

“ (a) Nothing in this Easement shall be construed as giving rise to any right or ability in the Steward or the Department of Conservation to exercise physical or management control over the day-to-day operations of the Property, or any of the Landowner’s activities on the Property, or otherwise to become an “owner” or “operator” with respect to the Property as those words are defined and uses in environmental laws, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended or any corresponding state and local statute or ordinance.

(b) The Landowner warrants that it has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath, or from the Property. Moreover the Landowner hereby promises to defend and indemnify the Steward and the Department of Conservation 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 Property, or arising from or connected with a violation of any Environmental Laws. The Landowner’s indemnification obligation shall not be affected by any authorizations provided by the Steward to the Landowner with respect to the Property or any restoration

activities carried out by the Steward at the Property; provided however, that the Steward shall be responsible for any Hazardous Materials contributed after this date to the Property by the Steward.

(c) The Landowner warrants that it shall remain in compliance with, all applicable Environmental Laws. The Landowner 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 Property.”

### **Delaware**

Not addressed in easement.

### **Kentucky**

“Grantor hereby agrees to pay, protect, indemnify, and hold harmless at its own cost and expense, Grantee, their agents, directors and employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses and expenditures (including reasonable attorney’s fees and disbursements hereafter incurred) arising from, or, or in connection with ...the presence or release in, on, or about the property at any time, of any substance now or hereafter defined, listed or otherwise classified pursuant to any law, ordinance or regulation as hazardous, toxic, polluting, or contaminating substance.”

### **Maryland**

Not addressed in easement.

### **Massachusetts**

Not addressed in easement.

### **New Jersey**

Not addressed in easement.

### **Ohio**

“Hazardous Waste- The Grantor warrants that he has no actual knowledge of a release of a hazardous substance or toxic waste on the Protected Property as such substances or wastes are defined by applicable local, state and federal laws and regulations, and hereby promises to indemnify and defend the Grantee and the United States against, and hold the Grantee and the United States harmless from, any and all loss, cost, claim, liability or expense (including reasonable attorneys’ fees) arising from or with respect to any release of hazardous waste or violation of environmental laws and regulations.”

### **Pennsylvania**

“...Grantor acknowledges that Grantee has no knowledge or notice of any hazardous waste stored on or under the subject land. Grantee’s exercise or failure to exercise any right conferred by the agricultural conservation easement shall not be deemed to be management or control of activities on the subject land for purposes of enforcement of the Act of October 18, 1988, (P.L. 756, No. 108), known as the Hazardous Sites Cleanup Act.

Grantor, his heirs, executors, administrators, successors and assigns agree to hold harmless, indemnify and defend Grantee, its successors or assigns from and against all liabilities and expenses arising from or in any way connected with all claims, damages, losses, costs or expenses, including reasonable attorneys fees, resulting from a violation or alleged violation of any State or Federal environmental statute or regulation including, but not limited to, statutes or regulations concerning the storage or disposal of hazardous or toxic chemicals or materials.”

### **Vermont**

“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 further warrants that Grantor has no actual knowledge of a release or threatened release of hazardous materials, as such substances and wastes are defined by applicable federal and state law.

Grantor hereby promises to hold harmless and indemnify Grantees and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the Protected Property, including but not limited to, ones arising from or connected to 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 the actions or inactions of Grantor as owner or operator of the premises, or those of Grantor's agents. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantees to Grantor with respect to the Protected Property or any restoration activities carried out by Grantees or the United States at the Protected Property."

### **Watershed Agricultural Council**

Not addressed in easement.

### **New York**

"Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee and New York States Department of Agriculture and Markets against, and hold Grantee and New York State Department of Agriculture and Markets harmless from, any and all loss, cost, claim (without regard to its merit), liability or expense (including reasonable attorneys' fees) arising from or with respect to any release of hazardous waste or violation of environmental laws.

If at any time after the effective date of this Easement there occurs a release in, on, or about the property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps that may be required under federal, state, or local law necessary to assure its containment and remediation, including any cleanup.

Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee, or the New York State Department of Agriculture and Markets to exercise physical or management control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator or arranger with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") or any corresponding state and local statute or ordinance."

### **RIGHT OF FIRST REFUSAL**

#### **California**

Not addressed in easement.

#### **Delaware**

Not addressed in easement.

#### **Kentucky**

Not addressed in easement.

#### **Maryland**

Not addressed in easement.





*ii.* an amount equal to the FMALV of the Premises as determined by the appraisal relied upon for the acquisition of this APR (“Governing Appraisal”) which sum shall then 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, Boston, All Items (1982-1984 equals 100) published by the Bureau of Labor Statistics, United States Department of Labor, or successor index published by the United States government appropriately correlated to the prior index by a published conversion factor, where indicated, from date of Governing Appraisal for this Restriction to the date of execution of the bona fide Purchase and Sale Agreement.

2. In the event that the sale price as set forth in the bona fide Purchase and Sale Agreement is less than the FMAV determined by the procedures set forth in either *a.i* or *a.ii* above, Grantee shall have the right to purchase the Premises from Grantors, or assign its right to purchase the Premises from Grantors, for this lesser amount.

3. In the event of a subdivision, recording of a subdivision plan, partition, or any other division of the Premises, or any portion thereof, into two or more parcels, as approved by Grantee, the FMAV shall be determined pursuant to paragraph *a.i* above.

B. Upon executing a bona fide Purchase and Sale Agreement for the sale of Premises with a third party purchaser the following procedures shall be followed:

1. The Grantors shall provide, at a minimum, to the Grantee:

- a. written notice stating Grantor’s intent to sell the Premises (“Notice”);
- b. a true, correct, complete and fully executed copy of the bona fide Purchase and Sale Agreement including any offer executed from a third party to purchase the Premises;
- c. a copy of the current deed;
- d. the FMAV and any appraisals related thereto; or
- e. FMALV as determined pursuant to A.1.a.ii above.

2. Upon receipt of this Notice, the Grantee shall have one hundred twenty (120) days to notify the Grantors of its election to purchase the Premises at FMAV (or any lesser sale price set forth in the Purchase and Sale Agreement) or waive its rights under the Option. The Grantors shall be notified of Grantee’s election by written notice (“Notice of Election”).

C. In the event that the Grantee elects to exercise this Option to purchase the Premises, the deed shall be delivered and the consideration paid at the County Registry of Deeds before 4 o'clock p.m. on or before the one-hundred-twentieth (120) day after the date of mailing by the Grantee of the Notice of Election or, if a Saturday, Sunday or holiday, on the next business day thereafter, and the deed shall convey a good and clear record and merchantable title to the Premises free of all encumbrances, and the Premises shall be in the same condition as at the time of the Notice of Election, reasonable wear and tear and use thereof excepted. The date and time of the transfer may be amended by written mutual agreement of the parties.

D. The Grantors may sell the Premises, to the third party purchaser who entered into the bona fide Purchase and Sale Agreement referred to in Paragraph A.1.a above, only in the event that Grantee:

1. declines in writing to exercise its rights under this Option within the specified time period; or
2. fails to waive its rights under the Option in writing within the specified time period; or
3. having elected to exercise its rights under the Option, fails to complete the purchase within the specified time period.

Said sale of the Premises must take place within one (1) year of the date of the Grantee’s receipt of Notice, and be only upon the same terms and conditions as contained in said bona fide Purchase and Sale Agreement.

E. The obligations of the Grantors under this Option shall not apply where the transfer of ownership of the Premises will be a result of:

1. a conveyance by deed to the Grantor's 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. a devise of said Premises by will or intestacy of the Grantors;
3. a conveyance of an interest in the Premises to a co-owner.

F. Any notices required by this Option shall be in writing and shall be deemed delivered if delivered in hand or mailed, postage prepaid by certified mail return receipt requested, addressed in the case of the Grantors to such address as may be specified in the Notice or if none, then to the Premises, and in the case of the Grantee, to the Commissioner of the Department of Agricultural Resources, 251 Causeway Street, Suite 500, Boston, MA 02114-2151.

G. The Grantee may assign its right to purchase under this Option after providing the Grantors with a Notice of Election exercising its right to purchase, provided that the right to purchase may only be assigned to a party that, in the Grantee's opinion, will use or facilitate the use of the Premises for commercial agriculture. Any assignment shall only be effective when made in writing, signed by the Commissioner, and duly recorded with the appropriate registry of deeds.

H. Any waiver of the Grantee's rights under this Option shall be in writing, signed by the Commissioner, and in a form and format suitable for recording in the appropriate registry of deeds. This waiver shall serve to satisfy the Grantors' obligations to the Grantee under this Option with regard to the third party purchaser who entered into the bona fide Purchase and Sale Agreement referred to in Paragraph A.1.a, above.

I. The rights and obligations of the Grantors hereunder shall inure to and be binding upon the Grantors and all Successors in Title.”

### **Vermont**

“Grantees shall have an option to purchase the Protected Property at its agricultural value in accordance with the terms and provisions of this Section VI (“this Option”). This Option is an integral part of this Grant and constitutes a restriction and a right and interest in real property that runs with the land. This Option shall be perpetual in duration and is given on the following terms and conditions.

1. Option Trigger. Grantor shall not sell, transfer or convey the Protected Property, in whole or in part, without first offering the Protected Property for sale to Grantees pursuant to this Section VI; provided, however, that the following described transactions shall not trigger Grantees' rights under this Option:
  - a) Any mortgage, pledge, or other assignment of the Protected Property to a lender as security for indebtedness, provided the Grantees' interest under this Option is treated as an interest in real estate such that in the event of foreclosure Grantees are deemed necessary parties defendant in such foreclosure case and have the right to redeem the Protected Property from the foreclosure action; and
  - b) Any conveyance by the Grantor to Grantor's family, as the latter term is defined in Section VII below, by gift, inheritance, sale or other transfer; and
  - c) Any conveyance of the Protected Property to a person who presently earns at least one-half of his or her annual gross income from the “business of farming,” as that term is defined in Regulation 1.175-3 issued under the Internal Revenue Code of 1986 and who, in connection with the farming operations on the Protected Property, will continue to earn at least one-half of his or her annual gross income from the “business of farming” (“a Qualified Farmer”); and
  - d) Any lease to a Qualified Farmer or a lease having a term of 15 years or less, including renewal rights; provided, however, that any such lease shall expressly provide that, unless otherwise agreed by Grantees, the lease shall terminate and possession shall be delivered free and clear of

any rights of the tenant upon a closing of the sale of the Protected Property following exercise of this Option.

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

2. Notice of Intent to Sell. Whenever Grantor receives an offer from a person or persons (“Buyer”) to purchase or lease for a term in excess of fifteen (15) years, including renewal rights, all or any part of the Protected Property including an offer involving property other than the Protected Property (“the Offer”), and Grantor accepts the Offer subject to this Option, Grantor shall deliver to Grantees at their principal places of business by certified mail, return receipt requested a Notice of Intent to Sell, which notice shall include:

- a) A complete duplicate of the Offer, together with such other instruments as may be required to show the bona fides of the Offer; and
- b) A written description of the Buyer’s training and experience as an agricultural producer and an agricultural business plan for the Protected Property, including a description of the agricultural activities to be conducted or facilitated by Buyer, proposed improvements to the Protected Property, and a statement of anticipated agricultural income and expenses for the three-year period following Buyer’s acquisition of the Protected Property or, if Buyer has no such training and experience or intention of operating an agricultural business on the Protected Property, a written statement to that effect; and
- c) If the Buyer is purported to be a Qualified Farmer or family member, the documents necessary to establish the Buyer as such, including the Buyer’s most recent federal income tax filing, if applicable; and
- d) The Grantor’s current mailing address.

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

3. Exercise of Option. This Option may be exercised by Grantees as follows:

- a) A Grantee shall give written Notice of Intent to Exercise not more than thirty (30) days following receipt of the Notice of Intent to Sell described in Section VI(2); failure by a Grantee to provide such notice shall constitute a waiver of its rights under this Option; and
- b) Thereafter, Grantor and Grantee shall fix the purchase price for the Protected Property by establishing a Price Agreement in the manner described in Section VI(4), below.
- c) A Grantee shall exercise this Option by giving written Notice of Intent to Purchase not more than thirty (30) days following Grantor’s and Grantee’s establishment of the Price Agreement.

Notices required by this Section VI(3) shall be delivered to Grantor either personally or by certified mail, return receipt requested to the address provided by Grantor in the Notice of Intent to Sell described in Section VI(2), above. In the event that more than one Grantee exercises this Option, the Vermont Land Trust, Inc. shall have first priority, the Vermont Housing and Conservation Board second priority, and the Vermont Agency of Agriculture, Food and Markets third priority. The Grantee with highest priority which exercises this Option is hereafter referred to in Sections VI(4), (5) and (6) as “Grantee.”

4. Purchase Price. The Purchase Price shall be determined by mutual agreement of Grantor and Grantee; provided that if no such agreement can be reached, the purchase price of the land only shall be the greater of:

- a-1) \$\_\_\_\_\_ plus an inflation adjustment determined by multiplying the foregoing value by 1 (one) plus the fractional increase calculated from the date hereof in the Consumer Price Index for all Urban Consumers, Northeast, All Items published by the Bureau of Labor Statistics, U.S. Department of Labor, or a successor index published by the United States government to the date of the Offer; or
- a-2) The full fair market value of all Protected Property land subject to the Offer (including the site of any structures) assuming its highest and best use is commercial agricultural production commonly occurring within the market area where the Protected Property is located on the date of the Offer, as determined by a mutually approved disinterested appraiser selected by Grantor and Grantee, with the expense of such appraisal divided equally between Grantor and Grantee. Permanently installed land improvements, such as in-ground irrigation systems, farm roads, and drainage tiling shall be considered part of the land. This appraisal shall take into consideration the permitted and restricted uses set forth in, and the impact on value caused by the Grant.

With respect to any agricultural, forestry or minor incidental structures and improvements in existence as of the date of the Offer, then in addition to the foregoing land value, the Purchase Price shall also include:

- b) The value of all such structures and improvements on the Protected Property as of the date of the Offer excluding all land (which is included in the Section VI(4)(a) valuation, above). The value of the structures and improvements shall be determined using the replacement cost approach to valuation (i.e., the cost to replace the structures and improvements with those of comparable size and utility, less depreciation and functional obsolescence) by a mutually approved disinterested appraiser selected by Grantor and Grantee, with the expense of such appraisal divided equally between Grantor and Grantee.

[DRAFTER NOTE: Delete this section if there is no house or house right on the Protected Property.]

With respect to any residence(s) in existence as of the date of the Offer, then in addition to the foregoing land value, the Purchase Price shall also include:

- c) The value of the residence and its appurtenant structures and improvements as of the date of the Offer excluding the value of the land upon which these structures sit (which is included in the Section VI(4)(a) valuation, above). The value of the residence and appurtenant structures and improvements shall be determined using the replacement cost approach to valuation (i.e., the cost to replace the residence, structures and improvements with those of comparable size and utility, less depreciation and functional obsolescence) by a mutually approved disinterested appraiser selected by Grantor and Grantee, with the expense of such appraisal divided equally between Grantor and Grantee.

Grantor and Grantee shall establish the Purchase Price by either entering into a written agreement fixing the Purchase Price as provided in this Section VI(4), within ten working days of reaching mutual agreement or, if no such agreement is reached, the Purchase Price shall be based upon the appraised values which shall be the Purchase Price unless another Purchase Price is mutually agreed upon in writing by the parties within ten working days after the last party's receipt of the appraisals. The passage of said ten working days shall constitute the effective date of establishing the Purchase Price ("Price Agreement")."

## **RESOURCE PROTECTION AREAS**

### **California**

Not addressed in easement.

**Delaware**

Not addressed in easement.

**Kentucky**

Not addressed in easement.

**Maryland**

Not addressed in easement.

**Massachusetts**

Not addressed in easement.

**New Jersey**

Not addressed in easement.

**Ohio**

Not addressed in easement.

**Pennsylvania**

Not addressed in easement.

**Vermont**

Not addressed in easement.

**Watershed Agricultural Council**

“The area identified on the Conservation Easement Survey, which contains unique or special natural features such as streams, wetlands or slopes and supporting buffer lands in which no permanent buildings or improvements, except for Incidental Agricultural Buildings and Improvements may be built. Fences are allowed anywhere within the RPA. Grazing and cultivation is permitted subject to Section 3a above within those portions of an RPA which lie in the Agricultural Conservation Easement Area. However, the portion of the RPA within twenty-five (25) feet of the top of the bank of a watercourse shall not be plowed, cultivated, or tilled except to reestablish naturally disturbed vegetation. Trees and shrubs along streams and waterways on the Property shall be maintained so far as practicable to assist in achieving long-term water quality standards through nutrient absorption, sedimentation control from runoff and stream channel and bank stability.”

**New York**

“Resource Protection Area” is defined as the area depicted in Exhibit B, which contains unique or important natural resources. *[optional if an RPA is designated]*

The Property is divided into two [*three*] principal areas as further described in the Baseline Documentation Report, Section 18 (“Baseline Documentation”) and identified in the Easement Map attached hereto as Exhibit B: 1) the Farmstead Area[s]; and 2) the Farm Area [*; 3) the Resource Protection Area*].”

---

This document is intended for informational purposes only. It was compiled in 2007 and updated and expanded in 2011 using available template easements. Easement documents frequently change. For the most current information, check with the appropriate farmland protection program.