

FARMLAND DEVELOPMENT RIGHTS EASEMENT

_____ Farm
_____ Township, Kent County, Michigan

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In accordance with Part 361, Farmland and Open Space Preservation, of the Natural Resources and Environmental Protection Act, 1994 PA 451 as amended, Sec. 36111b; Part 362 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, Sec. 36206; Part 21 of Conservation and Historic Preservation Easement of The Natural Resources and Environmental Protection Act, 1994 PA 451 as amended, Sec. 2140 et seq.; the County Zoning Act, 1943 P.A., 183 MCL 125.201, et seq; and the Kent County Farmland Developments Rights Ordinance No. 11-26-02-124 (hereafter "Ordinance") effective December 6, 2002.

BY THIS FARMLAND DEVELOPMENT RIGHTS EASEMENT, made this ____ day of _____, 2010, that _____, as Trustee of the _____ under agreement dated _____, (hereafter "Grantor"), whose address is _____, Michigan 49____, conveys and warrants to the **COUNTY OF KENT**, whose address is Administrator's Office, County Administration Building, 300 Monroe Avenue, N.E., Grand Rapids, Michigan 49503, (hereafter "Grantee") a Farmland Development Rights Easement (hereafter "Easement") on the following described premises situated in the Township of _____, County of Kent, State of Michigan:

PROPERTY DESCRIPTION:

_____ acres. Northeast ¼ of Section __, Town __ North, Range __ West, _____ Township, Kent County, Michigan. A detailed survey of the property (hereafter "Property") can be found in EXHIBIT "A" attached hereto.

AGRICULTURAL VALUES:

WHEREAS: The Property consists of primarily productive agricultural land, which is important to the people of the State of Michigan, County of Kent, and the United States. Approximately _____ percent (____%) of the soils have been classified as prime or unique farmland by the Natural Resources Conservation Service, U.S. Department of Agriculture, and

WHEREAS: The primary purpose of this Easement is to protect the agricultural soils, agricultural viability, and general productive capacity of the Property (hereafter "the Agricultural Values") in perpetuity, and

WHEREAS: Preservation of the Property will act as a good demonstration project for the area and will support existing farmland preservation efforts in the community, and

WHEREAS: The specific Agricultural Values of the Property are located in an inventory (“Baseline Documentation Report,” dated _____2010, on file at the office of the Grantee and incorporated herein by this reference and attached as EXHIBIT “B”) of relevant features of the Property, consisting of reports, maps, photographs, and other documentation that the parties agree provides an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement, and

WHEREAS: Grantor desires to grant a Farmland Development Rights Easement consistent with the Ordinance and section 36111b of Michigan’s Natural Resources and Environmental Protection Act, MCL 324.36111b; MSA 13A.36111b in order to preserve the Agricultural Values of the Property as established or defined by the Baseline Documentation Report, through a continuation of the land use patterns, including, without limitation, those existing at the time of the Easement, that do not significantly impair or interfere with those values, and

WHEREAS: WHEREAS: The Farm and Ranch Lands Protection Program’s (16 U.S.C. 3838h and 3838i) purpose is to provide partial funding for the purchase of conservation easements to protect prime, unique, and other productive soils from conversion to nonagricultural uses. Under the authority of the Farm and Ranch Lands Protection Program, the Natural Resources Conservation Service (hereinafter referred to as “NRCS” or “the United States”) has contributed _____ AND 00/100 (\$ _____) to purchase this Easement and thus entitles the United States to rights identified herein, and

WHEREAS: Grantee desires to acquire a Farmland Development Rights Easement with respect to the Property,

NOW, THEREFORE, for and in consideration of the sum of _____ 00/100 (\$ _____), and the mutual covenants recited below, Grantor hereby grants and conveys to Grantee a perpetual Farmland Development Rights Easement over, under, upon, and across the _____ and ___/10 (_____) acre Property described in EXHIBIT “A” (Survey), pursuant to section 36111b of Michigan’s Natural Resources and Environmental Protection Act, MCL 324.36111b; MSA 13A.36111b, subject to, and upon, the following terms and conditions:

PURPOSE: To perpetually preserve the Property’s agricultural use, including the protection of prime and unique soils, by preventing any use that would significantly impair or interfere with the Agricultural Values as established or defined by the Baseline Documentation Report.

1. RESTRICTIONS: The Property is subject to the following conditions:

- a. **Subdivision.** The Easement area shall not be divided or subdivided.
- b. **Commercial Activity.** Commercial or industrial activity is prohibited on the Property, except for agriculture use and other consistent uses specifically permitted below. Storage, retail or wholesale marketing or processing of agricultural products

is a permitted use if more than fifty percent (50%) of the stored, processed, or merchandised products are produced by the farm operator on the Property.

- c. **Utilities.** Installation of new utilities is prohibited except as necessary to serve the structures and uses permitted on the Property.
- d. **Topography.** Ditching, trenching, draining, diking, filling, excavating, removal of topsoil, sand, gravel, rock or other materials (including the removal of substratum from streambeds), or any change in the topography of the land in any manner is prohibited, except that Grantor may extract soil, sand, and gravel solely for a permitted use on the Property in a manner consistent with the conservation purposes of this deed and that is minimal in scope and impact, and does not exceed one (1) acre in size. Any such alteration must be returned to its pre-existing condition within one (1) year, in accordance with the Baseline Documentation Report.
- e. **Structures.** The construction or placement of buildings, camping accommodations, mobile homes, cell phone towers, windmills, or any other structure is prohibited, except for the following structures set forth herein. Agricultural structures necessary to carry-out the permitted farm operations may be constructed or placed and maintained on the Property, so long as they are built within the designated two (2) acre Farmstead Complex identified in the Baseline Documentation Report. A small number of duck blinds and deer stands are permitted on the Property for non-commercial, recreational hunting as long as such use is carried out consistent with the protection of the Agricultural Values of the Property. Fences customary to agricultural operations may also be erected on the Property. In addition, one residence for an individual essential to the operation of the farm may be constructed, but only within the Farmstead Complex and such residence shall not exceed 3,500 square feet in size. An individual essential to the farming operation means a co-owner, partner, shareholder, farm manager, or family member, who, to a material extent, cultivates, operates, or manages farmland under this act. An individual is considered involved to a material extent if that individual does one or more of the following: 1) has a financial interest in the cost of producing the crops, livestock, or products, and inspects and advises and consults with the owner on production activities, and 2) works 1,040 hours or more annually in activities connected with production of the farming operation. The construction of residential structures for individuals not essential to the operation of the farm is prohibited. Structures built must be in conformance with all applicable Federal, State and local laws, ordinances and regulations. Grantor shall provide notification to Grantee of proposed buildings via registered mail as required in 3(c). No notice is required for the construction of fences and seasonal structures such as duck or deer blinds.
- f. **Impervious Surface Limitation.** The total impervious surface area for all structures and paved roads shall not exceed two (2) percent of the Property acreage. Impervious surfaces include any structures with and without flooring and paved areas on the Property.

- g. Roads and Trails.** Existing roads, as identified in the Baseline Documentation Report, may be maintained and repaired in their current state. No new roads may be constructed. Unpaved roads necessary for agricultural operations on the property may be constructed provided the impact to prime, unique, and important soils is minimized.
 - h. Mining.** Mining or extraction of oil, natural gas or other minerals is prohibited, except, mining or extraction may be conducted from other lands through pooling, unitization, directional drilling or other means as long as such activities will not impact the surface estate of the Property.
 - i. Other uses.** The use of the Property as a golf course, campground, livestock auction yard, athletic field, airstrip, or vehicle raceway is prohibited.
 - j. Waste.** Grantor shall not nor shall Grantor allow any other person to dump, dispose, spill, or release or accumulate waste or other unsightly or offensive material. This shall not be construed to preclude typical agricultural activities, such as the disposal or use of plant and animal waste that is produced on the Property or biosolids from wastewater treatment systems, so long as such activity is in accordance with all applicable Federal, State, and local laws, regulations, rules and orders.
 - k. Future Encumbrances.** Future easements or other encumbrances shall be subordinate to this Easement and shall not impair or diminish the conservation purposes of this Easement. Prior to granting such an easement, Grantor shall notify and obtain approval from the Grantee of proposed easements via registered mail as required in section 3.
- 2. PERMITTED USES:** Grantor retains all ownership and possession rights, which are not expressly restricted by this Easement or inconsistent with its conservation purpose. In particular, the following rights are reserved:
- a. Agricultural Use.** Grantor retains the right to continue agricultural use. For purposes of this Easement, “agricultural use” means substantially undeveloped land devoted to the production of plants and animals useful to humans, including forages, grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including the breeding and grazing of cattle, swine, captive cervidae, equines and similar animals; berries; herbs; flowers; seeds, grasses; fruits; vegetables; aquaculture, Christmas trees; and other similar uses and activities. The management and harvesting of a woodlot is not considered an agricultural use but is a permitted activity under this Easement. Grantor may lease the land for agricultural production purposes or for hunting. Biosolids from water treatment facilities may be land applied to the Property as fertilizer and a soil amendment. Grantor may also install drainage tiling on the Property in accordance to USDA policies and the RML conservation plan.

- b. **Right to Convey.** Grantor retains the right to sell, lease, mortgage, bequeath or donate the Property. Any conveyance shall indicate the existence of, and will remain subject to, the terms of this Easement, and the subsequent owner will be bound by all obligations in this Easement. Grantor will notify Grantee by registered mail, within ninety (90) days, when any conveyance of the Property occurs.

 - c. **Right to Maintain and Replace Existing Structures.** Grantor retains the right to build, add on to, maintain, renovate, or replace structures as permitted in paragraph 1, provided the construction, repair, and replacement of such buildings and impervious access roads does not exceed two (2) percent of the total easement acreage. Impervious surfaces include residential buildings, agricultural buildings (with and without flooring) and paved areas both within and outside this Easement's building envelope(s). Any expansion, replacement or addition of a non-residential structure may not substantially alter the unique Agricultural Values of the Property.

 - d. **Forestry.** Grantor retains the right to conduct forestry activities for domestic and commercial purposes. Domestic forestry includes the cutting of firewood (only for heating of residences and other structures on the property as commercial sale of firewood is prohibited). The removal of blow downs, dead, and diseased or potentially diseased trees (e.g. White Ash), the removal of trees and hedge rows to improve the farming operation, and trees that pose threats to persons or property. Sale of up to sixty (60) cords of wood/year to local residents is not considered commercial forestry. Firewood will be cut from tops of previously harvested trees, fence lines, and ditches that need cleaning and clearing, and from trees that are blow downs, dead, and diseased. Commercial timbering activities shall be in accordance with a Forest Management Plan prepared by or in consultation with a registered professional forester. The goals of such commercial timbering practices or plans shall include the preservation of the conservation and scenic characteristics of the woodlands, and wetlands, and the maintenance of a healthy forest, and shall assure sustainable forest productivity in a manner not inconsistent with the purpose of this Easement. No practice or plan shall include provisions allowing clear cutting or even-aged management. Forestry activities shall not materially impair the Agricultural Values of the Property.

 - e. **Recreational & Educational Activity.** *De minimus* and undeveloped recreational and educational activity is permitted as long as such activity is consistent with the purposes of this Easement and does not adversely impact the soils and/or agricultural operations on the Property.
3. **NOTICE OF INTENTION TO UNDERTAKE CERTAIN PERMITTED ACTIONS:** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided in paragraph 1 is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement.

- a. **Notice and Approval Required Regarding Granting of Easements.** No easements may be granted by Grantor without advance, written permission of the Grantee. Grantee and the United States shall be notified by first class mail, ninety (90) days prior to taking action. Grantee shall grant or withhold its approval in writing within ninety (90) days of receipt of Grantor's written request thereof. Grantee's approval may be withheld upon a determination by Grantee that the action as proposed would be inconsistent with the purposes of this Easement.
 - b. **Notice and Approval Required Regarding Construction and Placement of Buildings.** Grantor may construct buildings in accordance with the provisions of 1(e) and 2(c). Grantee shall be notified by first class mail, (90) days prior taking action on the construction of buildings. Grantee shall grant or withhold its approval in writing within ninety (90) days of receipt of Grantor's written request thereof. Grantee's approval may be withheld upon a determination by Grantee that the action as proposed would be inconsistent with the provisions of 1(e) and 2(c).
 - c. **Notice and Approval Required Regarding Land Modification.** Grantor may modify the land in accordance with the provisions of 1(d) and 1(g). Grantee shall be notified by first class mail, ninety (90) days prior taking action to to modify the land. Grantee shall grant or withhold its approval in writing within ninety (90) days of receipt of Grantor's written request thereof. Grantee's approval may be withheld upon a determination by Grantee that the action as proposed would be inconsistent with the provisions of 1(d), 1(g) and the purpose of this Easement.
4. **RIGHTS OF THE GRANTEE:** Grantor confers the following rights upon Grantee to perpetually maintain the Agricultural Values of the Property:
- a. **Right to Enter.** Grantee has the right to enter the Property to monitor or to enforce compliance with this Easement by Grantor, Grantor's successors, heirs or assigns. Grantee may not, however, interfere with Grantor's use and quiet enjoyment of the Property. Grantee has no right to permit others to enter the Property for purposes unrelated to this Easement. The general public is not granted access to the Property under this Easement.
 - b. **Right to Enforce.** Grantee has the right to enforce by proceedings at law or in equity the above covenants and restrictions, including but not limited to, the right to require restoration of the Property to the condition at the time of the grant of this Easement.
5. **GRANTEE'S REMEDIES:** This section addresses cumulative remedies of Grantee and limitations on these remedies.
- a. **Grantee's Discretion.** Grantee has discretion to enforce, forbear or delay to exercise its rights under this Easement. A delay in enforcement shall not be construed as a waiver of Grantee's right to eventually enforce the terms of this

Easement, nor can such delay be used by Grantor, Grantor's successors, heirs or assigns as an equitable defense in estoppel or laches.

- b. Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, acts of trespassers or the unauthorized wrongful acts of third persons, fire, flood, storm, earth movement, and major tree disease, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the property resulting from such causes. Notwithstanding the foregoing, nothing herein shall preclude Grantor's and Grantee's rights to pursue any third party for damages to the Property from vandalism, trespass, or any other violation of the terms of this Easement.
 - c. Notice and Demand.** If Grantee determines that Grantor is in violation of Easement, or that a violation is threatened, Grantee will provide written notice, via registered mail, to Grantor. The written notice will identify the violation and request corrective action to cure the violation or to restore the Property. If Grantee determines that the violation constitutes immediate and irreparable harm, no notice is required before Grantee pursues legal remedies.
 - d. Failure to Act.** If, for a twenty-eight (28) calendar day period after written notice, Grantor continues violating this Easement, or if Grantor does not abate the violation and implement corrective measures requested by Grantee, Grantee may bring an action in law or in equity to enforce the terms of this Easement. Grantee shall be entitled to enjoin the violation through injunctive relief, or to seek specific performance, declaratory relief, restitution, reimbursement of expenses, or an order compelling restoration of the Property. If the court determines that Grantor has failed to comply with this Easement, then Grantor also agrees to reimburse all costs and attorney fees incurred by Grantee.
 - e. Grantor's Absence.** If Grantee determines that this Easement is, or is expected to be, violated, Grantee will make good faith efforts to notify Grantor. If, through reasonable efforts, Grantor cannot be notified, and if Grantee determines that circumstances justify prompt action to mitigate or prevent impairment of the Agricultural Values, then Grantee may pursue its lawful remedies without prior notice and without awaiting Grantor's opportunity to cure. Grantor agrees to reimburse all costs associated with this effort.
 - f. Cumulative Remedies.** The preceding remedies of Grantee are cumulative. Any or all, of the remedies may be evoked by Grantee if there is an actual or threatened violation of this Easement.
- 6. RIGHTS OF THE UNITED STATES OF AMERICA:** Under this Easement, the United States is granted the right of enforcement in order to protect the public investment. The

Secretary of the United States Department of Agriculture (the Secretary), on behalf of the United States, will exercise these rights under the following circumstances; In the event that the County of Kent fails to enforce any of the terms of this Easement, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States' rights to enforce the terms of this Easement through any and all authorities available under Federal or State law.

- 7. OWNERSHIP COSTS AND LIABILITIES:** Grantor or Grantor's successors, heirs or assigns retain ownership with full rights to control and manage the Property and shall bear all costs and liabilities of any kind related to property ownership, operation, maintenance, and taxes, including maintaining adequate comprehensive general liability insurance. This paragraph is intended to ensure that none of the liabilities attendant on land ownership are inadvertently transferred to Grantee or the United States under this Easement as Grantee or the United States will have no management responsibilities and will exercise no direct control over any potential hazards on the Property. Grantor's liabilities under this paragraph transfer to a new owner upon transfer of Grantor's interest in the Property.
- 8. SUCCESSORS:** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, Grantor's and Grantee's respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property regardless of whether future conveyances of the Property expressly refer to this Easement.
- 9. TRANSFER BY GRANTOR:** Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which Grantor transfers any interest in all or a portion of the Property, including without limitation a leasehold interest for a term greater than one (1) year. Grantor further agrees to give written notice to Grantee of the transfer of any such interest prior to, at, or at least twenty (20) days following the date of such transfer via first class mail. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.
- 10. MICHIGAN LAW:** This Easement will be construed in accordance with Michigan Law and applicable laws of the United States. This Easement shall be enforceable against any subsequent owner of the Easement premises despite a lack of privity of estate or contract.
- 11. BASELINE DOCUMENTATION:** The Grantor and Grantee agree that the natural characteristics, ecological features, physical, and man-made conditions of the Property at the time of this grant are documented in a Baseline Documentation Report, prepared by the Grantee and signed and acknowledged by Grantor and a representative of Grantee, establishing the condition of the Property at the time this Easement is recorded and including reports, maps, photographs, and other documentation. Grantee may use the Baseline Documentation Report in enforcing provisions of this Easement, but is not limited to the use of the baseline documentation to show a change of conditions.
- 12. CONSERVATION PLAN:** As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor shall conduct all agricultural operations on the Property in a manner

consistent with a 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 _____ . 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 conservation plan.

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 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 Land Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

- 13. SUBORDINATION:** Any mortgages, easements, or liens arising after the date of this Easement shall be subordinated to the terms of this Easement.
- 14. AMENDMENT:** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor, Grantee, and the United States may by mutual written agreement jointly amend this Easement; provided that no amendment shall be made that will adversely affect the qualification of this 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 State of Michigan. Any such amendment shall be consistent with the purpose of this Easement, shall not affect its perpetual duration, shall not permit residences to be constructed on the Property, and shall not permit any impairment of the significant Agricultural Values of the Property. Any such amendment shall be executed by Grantee or by Grantee's successor in title to the benefits of this Easement and shall be filed in the office of the Register of Deeds for Kent County, Michigan. Nothing in this paragraph shall require Grantor, Grantee or the United States to agree to any amendment or to consult or negotiate regarding any amendment.
- 15. TITLE WARRANTY:** Grantor warrants that Grantor has good title to the property; that the Grantor has the right to convey this Easement; and that the Property is free and clear of any

encumbrances. Grantor agrees not to place or to permit any third party to place any additional liens, easements, restrictions, claims, or encumbrances against the Property following the Effective Date of this Easement that would adversely affect the rights granted under this Easement.

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

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

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

Grantor 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 Grantor hereby promises to defend and indemnify the United States against all litigation, claims, demands, penalties, and damages, including reasonable attorneys’ fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath, or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantor’s indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantor with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

17. LIABILITY & INDEMNIFICATION: Grantor agrees to indemnify and hold Grantee harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys' fees arising from any personal injury, accidents, negligence or damage relating to the Property, unless due to the negligence of Grantee or its agents, in which case liability shall be apportioned accordingly.

- 18. REMEDIATION OF HAZARDOUS CONDITIONS:** Grantor Covenants and agrees to remediate any releases, spills or discharges of any hazardous substance, material, chemical or waste on the property that is prohibited by any federal, state, or local law, code, regulation or ordinance.
- 19. TRANSFER OF EASEMENT:** Upon prior written consent from the United States, the County of Kent may transfer this Easement to a public agency or non-profit organization, which, at the time of transfer, is a qualified organization under Section 170(h) or successor provision of the Internal Revenue Code.
- 20. LIMITATIONS ON ASSIGNMENT BY GRANTEE:** The benefits of this Easement shall not be assignable by Grantee, except (a) if as a condition of any assignment, Grantee requires that the purpose of this Easement continues to be carried out, (b) if the assignee, at the time of assignment, qualifies under Section 170(h) of the Code and the laws of the State of Michigan as an eligible donee to receive this Easement directly; and (c) Grantor consents in writing to such assignment, such consent not to be unreasonably withheld or delayed. Grantee agrees to notify Grantor in writing at least sixty (60) days prior to any contemplated assignment of this Easement. Any attempted assignment by Grantee of the benefits of this Easement contrary to the terms hereof shall be invalid but shall not operate to extinguish this Easement.
- 21. LIMITATIONS ON EXTINGUISHMENT:** This Easement may only be terminated or extinguished by a court of competent jurisdiction upon a request as mutually agreed to by the Grantor, the County of Kent, and the United States and after a finding by the court that the conditions or circumstances on or surrounding the Property have changed to such a degree that it has become impossible to fulfill the conservation purposes of this Easement. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or any other property received in connection with an exchange or involuntary conversion of the Property) after such termination or extinguishment, and net of any costs or expenses associated with such sale, the United States and the County of Kent shall divide the proceeds from such sale (minus any amount attributable to the value of improvements made by Grantor after the effective date of this Easement, which amount is reserved to Grantor) in accordance with their respective percentage interests in the fair market value of the Property, as such percentage interests are determined under the provisions of paragraph 24, adjusted, if necessary, to reflect a partial termination or extinguishment of this Easement. All such proceeds received by the County of Kent shall be used by the County of Kent in a manner consistent with the County of Kent's conservation purposes.
- 22. CONDEMNATION:** If all or any part of the Property is taken by exercise of the power of eminent domain, by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of the interests in the Property subject to the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by the parties to this Easement in connection with such taking shall be paid out of the recovered proceeds. The United States and the County of Kent shall be respectively entitled to compensation from the balance of the recovered proceeds in

conformity with the provisions of paragraph 23. The respective rights of Grantor and Grantee set forth in this paragraph shall be in addition to, and not in limitation of, any rights they may have at common law. Due to the Federal interest in this Easement, condemnation may only occur upon prior written consent from the United States.

23. PROCEEDS FOR EXTINGUISHMENT OR CONDEMNATION: For purposes of this paragraph, the parties stipulate that as of the effective date of this grant the Easement and the restricted fee interest in the Property each represent a percentage interest in the fair market value of the Property. The parties agree that the value of Easement is _____ eight percent (___%) of the fair market value based on the Summary Report appraisal dated _____ 2010 of the fee unencumbered by this Easement as of the date this grant. If the Easement is extinguished/terminated or condemned, in whole or in part, then the County of Kent and the United States are entitled to their proportional share of gross sale proceeds or condemnation award representing an amount equal to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Property as these values are determined on the date the Easement is extinguished or condemned. The proportional shares of the Grantee and the United States, are: _____ percent (___%) from County of Kent and _____ percent (___%) from the United States, representing the proportion each party contributed to the purchase price of this Easement.

24. LIBERAL CONSTRUCTION: Any general rule of construction to the contrary notwithstanding, this Easement shall be construed in favor of the Easement to affect the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

25. SEVERABILITY: If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and their application to other persons and circumstances shall not be affected thereby.

26. NO MERGER: Prior to Grantee obtaining fee title to the Property, upon prior approval by the United States, the County of Kent shall transfer the Easement to a qualified State or local government agency or non-profit organization, which at the time of transfer, is a qualified organization under Section 170(h) or successor provision of the Internal Revenue Code.

27. EFFECTIVE DATE: Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this FARMLAND DEVELOPMENT RIGHTS EASEMENT is recorded in the office of the Register of Deeds for Kent County, Michigan, after all required signatures have been affixed hereto. Grantee may re-record this instrument at any time as may be required to preserve its rights in this Easement.

28. STEWARDSHIP RESPONSIBILITIES OF THE GRANTEE: To facilitate the fulfillment of their responsibilities under this Easement, the County of Kent shall be responsible for the following (which shall include, but not be limited to): Maintain baseline information and annual monitoring of the Property in accordance with applicable policies

and guidelines, such as the Standards and Practices of the Land Trust Alliance and those required by the United States of America in the Cooperative Agreement by and between the United States of America and the County of Kent dated July 16, 2009 Agreement No. 73-5D21-9-52. And; Responding to Grantor requests for approvals required under this Easement; and; Investigating potential Easement violations and/or encroachments and responding accordingly and; Providing an annual monitoring report to NRCS or its successor agency, indicating compliance with the terms of this Easement and/or actions necessary for compliance.

29. NOTICES: Any notices which the Grantor, the County of Kent, or United States may desire or be required to give to the other party shall be in writing. The following addresses indicate where such notices shall be addressed:

COUNTY OF KENT Address
Administrator's Office
County Administration Building
300 Monroe Avenue, N.W.
Grand Rapids, Michigan 49503

UNITED STATES Address
Natural Resources Conservation Service
3001 Coolidge Road, Suite 250
East Lansing, Michigan 48823

GRANTOR Address
_____, Trustee
_____ u/d/a _____
Address
Address

TO HAVE AND TO HOLD unto the County of Kent, its successors and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantors have executed this instrument this _____ day of _____, 2010

GRANTORS

Name

STATE OF MICHIGAN)
)ss.
COUNTY OF KENT)

Acknowledged before me on this _____ day of _____, 2010, by Name, a married man/woman.

, Notary Public
Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: _____

(signatures continued on following pages)

COUNTY OF KENT, a Michigan municipal corporation

By: _____
Mary Swanson

Its: Assistant County Administrator

STATE OF MICHIGAN)
)ss.
COUNTY OF KENT)

Acknowledged before me on this ____ day of _____, 2010, by
_____, the Assistant Administrator of the County of Kent, a Michigan
municipal corporation, on behalf of said corporation.

_____, Notary Public
Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: _____

(signatures continued on following page)

ACCEPTANCE OF PROPERTY INTEREST BY THE UNITED STATES OF AMERICA

The United States of America, acting by and through the United States Department of Agriculture, Natural Resources Conservation Service, on behalf of the Commodity Credit Corporation, hereby accepts and approves the foregoing Conservation Easement Deed and the rights conveyed therein.

GARRY LEE
State Conservationist

State of Michigan
County of Kent

On this ___ day of _____, 2010, before me, the undersigned, a Notary Public in and for the State, personally appeared _____ known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that s/he is the _____ (title) of the Natural Resources Conservation Service, United States Department of Agriculture, is authorized to sign on behalf of the agency, and acknowledged and accepted the rights conveyed by the Conservation Easement Deed to be her/his voluntary act and deed.

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

Notary Public for the State of _____
_____ County, _____
Acting in _____ County
My Commission Expires _____

Prepared By and Return To:
Kendra Wills
Kent/MSU Extension
775 Ball Avenue NE
Grand Rapids, Michigan 49503