

Note: This document is designed for use when local and state monies only are used to purchase the easement.

AGRICULTURAL CONSERVATION EASEMENT

Pursuant to the Barry County Farmland Preservation Ordinance, adopted December 2002 pursuant to Part 361.

BY THIS AGRICULTURAL CONSERVATION EASEMENT, made this _____ day of _____, 2003, [**Landowner's Name**], (hereafter collectively referred to as "Grantor"), whose address is [**Landowner's Address**], conveys and warrants to the County of Barry (hereafter "First Grantee") whose address is 220 W. State Street, Hastings, MI 49058, and to the Michigan Department of Agriculture for and on behalf of the State of Michigan, (hereafter "Second Grantee", First Grantee and Second Grantee hereafter collectively referred to as Grantees), whose address is Environmental Stewardship Division, Michigan Department of Agriculture, P. O. Box 30449, Lansing, Michigan 48909, an Agricultural Conservation Easement (hereafter "Easement") on the following described premises situated in the Township of [**Applicants Township**], County of Barry, State of Michigan:

PROPERTY DESCRIPTION: [Insert property description here]

(Hereafter referred to as the "Property")

See Exhibit "A" Attached Hereto

AGRICULTURAL VALUES:

WHEREAS: The majority of the Property possesses soil types that are suited for and are in production of feed, food and/or fiber, and

WHEREAS: The preservation of this Property for agricultural purposes is an important public purpose to the County of Barry and to the people of the State of Michigan, and

WHEREAS: The preservation of this Property for agricultural purposes is consistent with the goals and objectives of the Township/County master plan, and

WHEREAS: The specific conservation values of the Property are located in an inventory ("Baseline Document," dated _____, 2002, on file at the office of the First and Second Grantees and incorporated herein by this reference) 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 grant, and

WHEREAS: Grantor desires to grant an agricultural conservation easement pursuant to Part 362 of the Natural Resources and Environmental Protection Act, MCL 324.36201 et eq., in order to preserve the agricultural values of the Property as established or defined by the Baseline Report, through a continuation of the agricultural use and land use patterns, including, without limitation, those existing at the time of the grant, that do not significantly impair or interfere with those values, and

WHEREAS: Grantees desire to acquire an agricultural conservation easement with respect to the easement Property,

WITNESSETH: For and in consideration of the sum of **[insert easement amount]**/100 DOLLARS, (\$@.@); and the mutual covenants recited below, and other good and valuable consideration, which will be paid in accordance with the Purchase Agreement signed by the Grantor and First Grantee, Grantor hereby grants and conveys to the Grantees a perpetual agricultural conservation easement over, under, upon, and across the Property pursuant to Part 362 of the Natural Resources and Environmental Protection Act, MCL 324.36201 et eq., subject to, and upon, the following terms and conditions:

PURPOSE: To perpetually preserve the Property's agricultural use by preventing any use that would significantly impair or interfere with the agricultural value as established or defined by the Baseline Report.

1. **RESTRICTIONS:** The Property shall be subject to easements, building and use restrictions of record and further subject to the following conditions:
 - (a.) Grantor shall not divide or subdivide the Property into parcels less than 40 acres in size. This agricultural conservation easement shall continue in force for any divisions creating parcels of 40 acres or more in size. The construction of residences for new owners of any divisions are prohibited by this Easement. The Grantor shall provide notification to the First Grantee of possible divisions and subdivisions via registered mail.
 - (b.) Commercial or industrial activity that is inconsistent with a typical farming operation is prohibited on the Property. 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 for at least three (3) of the immediately preceding five (5) years.
 - (c.) Grantor may grant an easement for access or public utilities, such as sanitary sewer, water, drains, telephone lines, cellular towers and radio towers, as long as the easement does not substantially impact the agricultural value of the Property and is reviewed by the County Agricultural Preservation Board and the local township, and approved by the First Grantee. Grantor shall provide notification to First Grantee of proposed easements via registered mail.
 - (d.) Except as agreed to by the County Agricultural Preservation Board and the First Grantee, the construction or placement of buildings, camping accommodations, mobile homes, or any other structures is prohibited, except as herein noted: Structures may be built for uses consistent with farm operations, as long as they do not significantly impair or interfere with the agricultural values of the Property. Structures which may be built by the Grantor with prior approval by the First Grantee include one residence for an individual essential to the operation of the farm. 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 1 or more of the following: (1) has a financial interest equal to or greater than 1/2 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. Structures built must be in conformance with all applicable federal, state, and local laws, ordinances and regulations. Grantor shall provide notification to First Grantee of proposed buildings via registered mail. No notice is required for the construction of fences and seasonal structures such as duck or deer blinds.

- (e.) Grantors shall not engage in or permit any filling, excavating, dredging, mining, removal of topsoil, sand, gravel, rock, minerals or other materials, building of roads or changes in the topography of the land in any manner that significantly impairs or interferes with the agricultural values of the Property without prior written approval of County Agricultural Preservation Board and First Grantee. This paragraph shall not prohibit Grantor from maintaining existing farmlands, farm roads, waterways or drainage, or from making landscape alterations consistent with existing agricultural and conservation practices.
- (f.) Grantor may explore and extract natural gas and oil, upon review and approval by First Grantee. Grantor shall provide notification to First Grantee of possible exploration and extraction activity via registered mail.
- (g.) Grantor shall not dump 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.
- (h.) For purposes of this Easement, "Agricultural Use" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy products; poultry and poultry products; livestock, including the breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruit; vegetables; aquaculture, Christmas trees; and other similar uses and activities. The management and harvesting of a wood lot is a permitted activity under this Easement.

2. PERMITTED USES. Grantor retains all ownership and possession rights which are not expressly restricted by this Easement. In particular, the following rights are reserved:

- (a.) **Agricultural Use.** Grantor retains the right to continue agricultural use as defined in paragraph 1(h).
- (b.) **Right to Convey.** Grantor retains the right to sell, mortgage, bequeath or donate the Property. Any conveyance shall indicate the existence of this easement and that the Property will remain subject to terms of this Easement and the subsequent owner will be bound by all obligations in this Easement. First Grantee shall be notified by first class mail, within ninety (90) days, when any conveyance of the Property occurs.
- (c.) **Right to Maintain and Replace New Structures.** Grantor retains the right to build, add on to, maintain, renovate or replace structures consistent with paragraph 1(d). Any expansion, replacement or addition of a non-residential structure may not substantially alter the unique agricultural value of the Property. Grantor also retains, reserves and shall continue to enjoy the use of the Property for any and all purposes, which are not inconsistent with this Easement.

3. RIGHTS AND OBLIGATIONS OF THE GRANTEES. Grantor confers the following rights and obligations upon Grantees to perpetually maintain the agricultural values of the Property:

- (a.) **Right and obligation to Enter.** Grantees have the right to enter the Property at reasonable times to monitor or to enforce compliance with this Easement by Grantor, Grantor's successors, heirs or assigns. Grantees may not, however, unreasonably interfere with the Grantor's use and quiet enjoyment of the Property. Grantees have 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.** Grantees have the right to enforce by proceedings at law or in equity the above covenants, 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.

4. GRANTEE REMEDIES. This section addresses cumulative remedies of the Grantees and limitations on these remedies.

- (a.) **[First/Second] Grantee's Discretion.** [First/Second] 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 [First/Second] 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.** Grantor shall not be responsible for changes to the Property that are caused solely by weather, natural earth movement, or other similar acts that are completely beyond Grantor's control.
- (c.) **Notice and Demand.** If [First/Second] Grantee determines that Grantor is in violation of this Easement, or that a violation is threatened, [First/Second] 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.
- (d.) **Failure to Act.** If, for a twenty-eight (28) day period after written notice, Grantor continues violating this Easement, or if Grantor does not abate the violation and implement corrective measures requested by [First/Second] Grantee, [First/Second] Grantee may bring an action in law or in equity to enforce the terms of this easement. [First/Second] 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 reasonable costs and attorney fees incurred by Grantee.
- (e.) **Grantor's Absence.** If [First/Second] Grantee determines that this Easement is, or is expected to be, violated, [First/Second] Grantee will make good faith efforts to notify Grantor. If, through reasonable efforts, Grantor cannot be notified, and if [First/Second] Grantee determines that circumstances justify prompt action to mitigate or prevent impairment of the agricultural values, then [First/Second] 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 [First/Second] Grantee are cumulative. Any or all of the remedies may be invoked by one or both Grantees if there is an actual or threatened violation of this Easement.

5. NOTICE OF INTENTION TO UNDERTAKE CERTAIN PERMITTED ACTIONS. The purpose of requiring the Grantor to notify the First Grantee prior to undertaking certain permitted activities, as provided in paragraphs 1(a), 1(c), 1(d), 1(e) and 1(f) is to afford Grantees an

opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required, Grantor shall notify First Grantee in writing not less than 90 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantees to make an informed judgment as to its consistency with the purpose of this Easement. Where First Grantee's approval is required, as set forth in paragraphs 1(a), 1(c), 1(d), 1(e) and 1(f), First Grantee shall grant or withhold its approval in writing within ninety (90) days of receipt of Grantor's written request thereof. First Grantee's approval may be withheld only upon a reasonable determination by First Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

- 6. 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 Grantees under this Easement, as Grantees 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.
- 7. SUCCESSORS.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, Grantor's and Grantees 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.
- 8. TRANSFER OF THE PROPERTY.** Upon transfer of the Property, or interest in the Property, from one landowner to another, the conveyance document shall expressly refer to this easement and be subject to its terms.
- 9. MICHIGAN LAW.** This Easement will be construed in accordance with Michigan Law. This Easement shall be enforceable against any subsequent owner of the Easement premises despite a lack of privity of estate or contract
- 10. BASELINE DOCUMENTATION.** The Grantor and Grantees 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 Grantees and signed and acknowledged by Grantor and a representative of Grantees, establishing the condition of the Property at the time of this grant and including reports, maps, photographs and other documentation. Grantees may use the baseline documentation in enforcing provisions of this easement, but is not limited to the use of the baseline documentation to show a change of conditions.
- 11. SUBORDINATION:** Any mortgage or lien arising after the date of this Easement shall be subordinated to the terms of this Easement.
- 12. AMENDMENT OF EASEMENT.** This easement may be amended only with the written consent of the Grantees and Grantor. Any such amendment shall be consistent with the Purpose of this

Easement and with Grantee's easement amendment policies, and shall comply with the Barry County Farmland Preservation Ordinance, adopted December 2002, or any regulations promulgated in accordance with that ordinance. Any such amendment shall be duly recorded.

- 13. TITLE AND ENVIRONMENTAL WARRANTIES:** 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 also warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property.
- 14. LIABILITY & INDEMNIFICATION:** Grantor shall indemnify, defend, and hold harmless Grantees from any liability resulting from Grantor's negligent acts, including, but not limited to, the release, use or deposit of any hazardous substance on the Property.
- 15. TRANSFER OF EASEMENT:** Grantees 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.
- 16. DURATION OF THE EASEMENT.** The agricultural conservation easement shall be permanent and run with the land, regardless of transfers in property ownership. It is the intent of the Barry County Farmland Preservation Ordinance to preserve valuable farmland through the establishment of permanent conservation easements. Development rights acquired pursuant to the Ordinance shall be held by the County in perpetuity and the development rights may be repurchased by the landowner only when a court of competent jurisdiction has determined through eminent domain that the use of those development rights is necessary for a specific public interest, need or purpose.

Upon a court's determination in eminent domain proceedings that the repurchase of the development rights from the County is necessary for a specific public interest, need or purpose, the party acquiring the property through eminent domain or the landowner shall pay to the County the fair market value of those development rights at the time of the repurchase, as determined by a State Certified Appraiser, or utilizing the points-based appraisal, before the termination of the agricultural conservation easement. The value of the development rights shall be determined as the difference between the fair market value of the property with all development rights intact and the value of the property for agricultural use with an agricultural conservation easement in place.

The County will deposit the proceeds from any repurchases into the farmland preservation fund and the proceeds shall be used to purchase additional development rights and agricultural conservation easements on additional farmland within the county.

IN WITNESS WHEREOF, the Grantor has signed this agreement on this _____ day of _____, 2002.

GRANTORS:

[Landowner's Name]

[Second Landowner's Name]

STATE OF MICHIGAN, COUNTY OF BARRY

On this _____ day of _____, _____, before me, a Notary Public, personally appeared _____ to me known to be the same persons who executed the foregoing easement and acknowledged the same to be _____ own free act and deed.

Notary Public

My Commission Expires: _____, Barry County, Michigan

FIRST GRANTEE ACCEPTANCE

The following signature acknowledges the acceptance by the First Grantee of the terms and conditions of this Easement.

**STATE OF MICHIGAN, COUNTY OF BARRY
FIRST GRANTEE**

(X) _____

STATE OF MICHIGAN, COUNTY OF BARRY

On this _____ day of _____, _____, before me, a Notary Public, personally appeared _____ to me known to be the same persons who executed the foregoing easement and acknowledged the same to be _____ own free act and deed.

Notary Public

My Commission Expires: _____, Barry County, Michigan

SECOND GRANTEE ACCEPTANCE

The following signature acknowledges the acceptance by the Second Grantee of the terms and conditions of this Easement.

**MICHIGAN DEPARTMENT OF AGRICULTURE FOR AND ON BEHALF OF STATE
OF MICHIGAN
SECOND GRANTEE**

(X) _____

STATE OF MICHIGAN, COUNTY OF BARRY

On this _____ day of _____, _____, before me, a Notary Public, personally appeared _____ to me known to be the same persons who executed the foregoing easement and acknowledged the same to be _____ own free act and deed.

Notary Public

My Commission Expires: _____, Barry County, Michigan