

Town of Warwick Farmland and Open Space Preservation Program
132 Kings Highway
Warwick, NY 10990

Phone: (845) 986-1120 x 241 e-mail: supervisor@townofwarwick.org

Dear Landowner,

Thank you for expressing interest in the Town of Warwick's Farmland and Open Space Preservation program. Under our Community Preservation Chapter, your property must be listed in the Community Preservation Project Plan, which can be viewed online at www.townofwarwick.org under Resident, Community Preservation and Sustainability, to be eligible for funding. Please fill out the attached information sheet as completely as you can. In addition, please provide whatever appraisal and survey information you may have. This information will be provided to the Community Preservation Advisory Board for ranking during the next round of funding evaluations.

Sincerely,

Jesse Dwyer
Supervisor

JD/ma

Town of Warwick Farmland and Open Space Preservation Program

The Town of Warwick's decision to commit funds to the acquisition of development rights may only be made by the Town Board. This decision is based upon the Community Preservation Project Plan objectives and an advisory opinion from the Community Preservation Advisory Board (CPAB) which is made up of citizens representing all geographic areas of our Town. The basic process is as follows:

- 1) All applications are reviewed by the CPAB and recommendations are submitted to the Town Board.
- 2) Outside funding to support the acquisition are sought. This may take time and involve participation by the applicant.
- 3) Once funds are committed by the Town to an application, both parties will progress the application to conclusion in a timely manner.
- 4) Upon closing of the development rights acquisition, annual monitoring of the Town's as well as its partners easement will be conducted.

Attached is the ranking criteria used by the CPAB for your consideration. It should be stressed that you can significantly raise the ranking of your farm/property by expressing a willingness to accept a partial or complete time payment in the form of a municipal bond backed by the full faith and credit of the Town of Warwick. It is advisable to discuss this option with your financial advisor.

TOWN OF WARWICK

FARMLAND PRESERVATION PROGRAM

APPLICATION AND OFFER TO SELL A DEVELOPMENT EASEMENT

Note: If the space provided for you to answer a question is insufficient, attach additional sheet(s). Please answer all questions fully.

Applicant(s) Name(s): _____

Social Security #: _____

Date: _____

Eligible Farms: Only those farms which are presently designated in an Orange Co. Agricultural District are eligible to apply for any of the available Farmland Preservation Programs.

Once the easement is sold, the owner agrees to a deed restriction that permanently prohibits residential, commercial or industrial subdivision. He still owns the land, and he may farm it, rent it, sell it or use it any other way that is legal. The intent of the program is to sustain and encourage agricultural use of farmland. This is defined as the use of land for farming, including, but not limited to: crop 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.

PLEASE COMPLETE THE REMAINDER OF THE APPLICATION BY PROVIDING THE FOLLOWING REQUESTED INFORMATION.

1. LANDOWNER INFORMATION:

A. Name, mailing address, and phone number of all landowners who have an ownership interest:

Name	Address	Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. Business type: (check one)

Sole proprietor (husband and wife)

Corporation

Partnership

Estate

Trust

C. State the street address for each parcel (if more than one):

D. State when the current owners acquired title to the property

E. State the name, address and telephone numbers of the person who should be contacted concerning this application:

Name:

Address:

Telephone: Day: Night:

2. PROPERTY INFORMATION

A. Name the property from which the development easement is to be sold (list each lot separately):

<u>Town/Village</u>	<u>Section</u>	<u>Block</u>	<u>Lot</u>	<u>Acres</u>

B. What is the total acreage of the premises? _____ acres

C. State the source of the acreage number:
_____ survey _____ tax map _____ deed _____ tax bill

D. Will any portion of the above tax lots be excepted from the Easement Purchase application:
_____ Yes _____ No

If yes, identify the location, approximate shape and the acreage of the excepted area(s) on the tax map: _____

E. What is the net acreage of the premises to be considered for easement purchase (total acreage minus the excepted acreage)? _____ acres

F. State the date(s) of any previous application(s) made to sell the development rights to this property: _____

G. Has the property been appraised within the year preceding the date of this application?
_____ Yes _____ No

If yes, state the reason the property was appraised: _____

H. State how the property is zoned: _____

I. Is the property assessed as farmland? _____ Yes _____ No

3. PHYSICAL DESCRIPTION AND AGRICULTURAL USE OF PROPERTY

A. Identify the acreage use of the land to be considered for easement purchase. Refer to tax bill or farmland assessment forms. Total should equal acres listed on bill. Please include a copy of your most recent Farmland Assessment form or tax bill with this application.

<u>USE</u>	<u># ACRES</u>	<u>USE</u>	<u># ACRES</u>
Field Crops	_____	Nursery	_____
Pasture	_____	Woodland	_____
Orchard	_____	Vegetable	_____
Dairy	_____	Number of Head	_____
Equine	_____	Number of Horses:	_____
Cattle (Beef)	_____	Number of Cattle:	_____
Buildings	_____	Number of Sheep, Hogs or Goats	_____
Wet (non-tillable)	_____		

Other (describe): _____

B. List in order of importance (#1 being the most important) the types of agricultural enterprises on your premises. (i.e. dairy, hay, Christmas trees, field crops, etc.).

(1) _____ (2) _____
 (3) _____ (4) _____

C. If you intend to use the property differently from how it has been used over the last year, describe what changes you intend to make: _____

D. Name all roads on which this property has frontage: _____

How many feet on each: _____

E. Describe all bodies of water which are on or adjacent to the property. For any water body on the property, describe its approximate size, depth, location on the property and use (if any).

F. Describe all non-residential improvements which assist in or support agricultural use on the property (i.e. barns, sheds, drainage systems, irrigation systems, etc.)

<u>IMPROVEMENT</u>	<u>SIZE (Sq. ft. or acres served)</u>	<u>USE</u>	<u>DATE OF IMPROVEMENT</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

G. Does the farm have a current U.S.D.A. Farm Conservation Plan?

_____ No _____ Yes If yes, provide a copy of the plan with this application.

H. Is this farm within an Agricultural District?

_____ No _____ Yes: Date of Creation _____ District # _____

I. Describe any improvements (whether or not for agricultural use) which you plan to make to the property and when you plan to make them. _____

J. Is the property managed or farmed by any person(s) other than the owners? If so, state their names and addresses below.

K. Identify anything special about the property (e.g. historical significance, uniqueness of the agricultural operation, etc.).

L. Liens/Easements/Rights-of-Way - please list any liens, easements, or rights-of way that exist on the premises: (Note: the applicant should receive preliminary approval from current lien, easement and right-of-way holders granting the applicant permission to proceed with negotiations involving the sale of a development easement. Regarding public utility easements, the applicant shall note if any exist. The TOWN will determine if the easement holder should be notified or if a waiver should be granted.

M. Is farm located within 1.0 mile of Black Dirt region? _____

If you are not eligible for an RDSO or prefer not to utilize that method, your alternative for excluding a portion of the property from the application would be to request an exception. An exception* is a portion of the applicant's land holdings not to be encumbered by the deed restrictions. The area of the exception should not exceed 5% of the gross land area of the premises. The location of the exception should not negatively impact the agricultural operations. The TOWN will require Right to Farm language on the exception.

If you wish to request an exception from the subject property, state the number of acres you want to exclude and submit with this application form a copy of the tax map on which you have indicated its location, approximate size and shape.

Number of acres (if any) you wish to exclude: _____
Map included: _____ Yes _____ No (map is required)

After all applications are ranked and approved by the Town Ag. Advisory Board and the Town Board, and they are submitted to the Dept. of Ag. and Markets, an independent appraisal must be done for any/all farms that are selected for PDR. The Town of Warwick, and NYS Dept. of Ag. and Markets request that the applicant fill in the blank in the following paragraph so that the Board will know whether the land owner is in the "ball-park" of current fair market values.

As landowner(s) of the premises described above. I/we are willing to make an offer to sell a conservation easement to the Board in the amount of \$ _____ per acre). I/we realize that this figure is non-binding and the final per acre will be determined after an independent appraisal is done on the subject property. (Please note: The amount which an independent appraiser arrives at will be the development value less the agricultural value per acre for the entire property, which will then become the easement value. **The value which you state, should be your close estimate of the development value.**

Please disclose whether any owner or family member serves in a position of public trust, i.e. Town, Village or County official capacity, voluntary or paid. Also, officer in Cornell Ag. Exten. or similar post:

NAME _____	ORGANIZATION _____	POSITION _____
NAME _____	ORGANIZATION _____	POSITION _____

The purpose of this is to avoid any appearance of conflict of interest that might hamper the investigation.

ACKNOWLEDGMENTS AND AUTHORIZATIONS:

A. All persons signing this application certify that the information provided in this form is true. Applicants understand that this application may be disqualified in the event that it is found that the applicant has willfully provided false information.

B. All persons signing this application agree to cooperate in the review of this application and to provide such additional information which the TOWN deems necessary.

C. Because the purpose of this program is to permanently deed restrict your property against residential, commercial or industrial subdivision, it is recommended that you consult with an attorney and/or financial advisor with respect to how this restriction could affect you.

D. Applicant(s)'s signature(s) below shall authorize the Town of Warwick and its agent and employees in the evaluation of this application. All current owners of the property must sign below.

_____	Date _____
_____	Date _____
_____	Date _____

(Landowners' signatures - follow with printed ones)

TOWN OF WARWICK COMMUNITY PRESERVATION FUND PROGRAM
Application Procedures 2010
Attachment B: TOW Community Preservation Plan: Guide for Project Evaluation

Identify the items addressed in the application, and give a number score to each item that applies. Remember this is to assess the open space values and determine the range of resources for each project.

Public Water supply/Aquifer Protection	25 points	_____
<u>Eligible Areas to consider</u>		
Public water supply watershed properties	10 points	_____
Wellhead protection lands too to 1500 ft radius	10 points	_____
New water supply properties	10 points	_____
Properties adjacent to DEC priority water body's list	10 points	_____
Participates in water quality stewardship pgm(e.g. CREP, etc)	10 points	_____
 Agricultural Lands	25 points	_____
<u>Eligible Areas to consider</u>		
Prime agricultural soils	15 points	_____
Other agricultural soils	10 points	_____
Active agriculture	10 points	_____
Well-maintained buildings and accessories	10 points	_____
Adjacent to other active/preserved farms	10 points	_____
 Village/Hamlet Greens, Parks, Recreation & Open space	20 points	_____
<u>Eligible Areas to consider</u>		
Trail corridors and linkages	10 points	_____
Municipal parks	10 points	_____
Buffers to existing parks	10 points	_____
Public access to stream/lake shoreline	10 points	_____
Nature Preserves	10 points	_____
Management includes public access	10 points	_____
 Historic Places and Landmarks	20 points	_____
<u>Eligible Areas to consider</u>		
Scenic byway corridors	10 points	_____
Lands supporting National/State Historic sites or Districts	10 points	_____
Scenic area of County Significance	10 points	_____
Other official historic or cultural recognition	10 points	_____
 Freshwater Wetlands & Bio Diversity Conservation Areas	20 points	_____
<u>Eligible Areas to consider</u>		
Presence of Federal endangered species	10 points	_____
Presence of State listed endangered species	10 points	_____
Presence of valuable habitats	10 points	_____
Bordering priority aquatic systems	10 points	_____
Participates in forest management or biological stewardship program	10 points	_____
 Supplemental Criteria		
Includes outside funding - 5 pts per 10% funding	10 points	_____
Property is adjacent to presently protected open space land	10 points	_____
TDR banking in support of the Town's TDR laws	10 points	_____
High development potential and/or imminent land use conversion	20 points	_____
Fund request includes full/partial installment payment - 5 pts per 10% funding	10 points	_____
Economic value to the community and region	10 points	_____
Located in a Priority Growth Area	10 points	_____
Total possible points	445 points*	_____

* can be higher depending on outside funding percentage

TOWN OF WARWICK

AGRICULTURAL LANDS CRITERIA

EVALUATION AND RANKING SYSTEM

Name of Site: _____ Date: _____

Prepared By: _____

AGRICULTURAL SITE EVALUATION FACTORS

Point Values & Explanations

Factor 1. Land in agriculture or a compatible land use within 0.5 miles of site boundary.

	<u>Point Value</u>
75% or more	20
50% to 74%	16
25% to 49%	10
Under 25%	6

Explanation: This factor gives a higher value to agricultural parcels that are surrounded by other agricultural land or other compatible land uses. Farmland adjacent to agricultural land is less pressured than farmland surrounded by non-agricultural land uses. Compatible land uses include woodland, open land, certain types of wetlands and other land beneficial to agricultural land.

Factor 2. Percentage of land in agriculture or compatible land use adjacent to site.

	<u>Point Value</u>
66% to 100%	20
33% to 65%	16
0% to 32%	4

Explanation: This factor gives a higher point value to those parcels of land that have land in agriculture or a compatible land use adjacent to the site. "Adjacent to the site" means the percent of adjacent property boundary lines (in linear feet) that is shared by the site and another land use.

Factor 3. Percentage of site in cropland (hay, row crops, managed pasture).

	<u>Point Value</u>
75% to 100%	20
50% to 74%	14
25% to 49%	8
Under 25%	4

Explanation: This factor gives a higher point value to those parcels that have a high percent of ready-to-farm land as opposed to woods or lands that would require greater investment to prepare for farming.

Factor 4. Number of farm operations within 0.5 miles of site boundary.

	<u>Point Value</u>
5 or more	20
4	16
3	12
2	8
1	4
0	0

Explanation: A “cluster” of operating farms provides a setting that may be more likely to support agricultural land use on a long-term basis - for support services, retailing, agri-tourism, etc. This factor complements factors 2 and 3 - surrounding land may be a “compatible” land use, but the existence of active farms should further elevate the parcel’s ranking. A farm operation means a separate independently managed farm entity. Farms related to another would not be considered an additional farm operation.

Factor 5. Does the farm containing the site have a substantial number of on-farm investments, such as barns, other storage buildings, fruit trees, irrigation, tile drainage, waterways, or other soil and water conservation measures?

	<u>Point Value</u>
High level of on-farm investments	20
Average level of on-farm investments	10
Low level of on-farm investments	6

Explanation: This factor assumes that a parcel with agricultural operation investments will be easier to keep in agriculture than a parcel where substantial investments would be needed to start an agricultural operation.

Factor 6. Size of the site economically feasible for farming.

	<u>Point Value</u>
20 acres plus	20
5 to 20 acres	10
Under 5 acres	4

Explanation: Future agriculture may be on smaller tracts involving high value specialty crops. There may also be more part-time farmers who will not rely on farming as the major portion of their income. Thus 5 to 20 acre parcels will be important and are feasible and profitable to farm.

Factor 7. Size of site as a viable "farmland black" in acres.

	<u>Point Value</u>
Over 300	20
201 - 300	15
101 - 200	10
51 - 100	5
0 - 50	0

Explanation: This factor gives a higher point value to large parcels simply because the larger the block of land being preserved, the more options there will be for maintaining viable commercial agriculture activities in the future. This factor is meant to be compatible with #6. Smaller parcels may be viably farmed with higher-value crops and, as such, receive a ranking in this context. The larger the parcel, though, the more points are received. The two factors could almost be combined, but keeping them separate helps to clarify the two criteria being considered - viability for a small, high value project farm vs. a large block with its associated large-scale ag potential and open space values.

Factor 8. PDR applied for in previous year:

1 year ago:	4 points
2 years ago	6 points
3 years ago	8 points
4 years ago	10 points

Explanation: This factor rewards somewhat, in cases of close scores, the patience and forward attitude exercised by early applicants.

Factor 9. Farmland adjacent to or proximate (within 0.5 mile) of other farms already approved and protected by an agricultural conservation easement.

Number of owners: One – 5 points

Two – 10 points

Three – 15 points

Four – 20points

Explanation: This factor is aimed at building a critical mass or community of neighboring farmland owners, and reduces the potential of nuisance claims by non-farm neighbors.

Factor 10. Evaluation Committee “Discretionary Points”

This factor recognizes the collective knowledge of the Evaluation Committee and the inability of any land ranking system to include all relevant factors.

This page, and the ones following, *to be completed by the Evaluation Committee.* They are included in this package for your information, and your assistance may be needed in completing this section before, during or after the farm site visit by the Evaluation Committee.

AGRICULTURAL LANDS EVALUATION AND RANKING SYSTEM

II Agricultural Site Evaluation Factors

	<u>Assigned Points</u>
1. % of area in agriculture or compatible land use within 1.0 mile of site boundary.	_____
2. % of agriculture or compatible land use adjacent to site.	_____
3. % of site in cropland (hay, row-crops, managed pasture, Veg. Crops)	_____
4. Number of farm operations within 0.5 mile of site boundary	_____
5. Level of on-farm investments (within 5 yrs. past)	_____
6. Size of site for economically feasible farm	_____
7. Size of site as a viable "farmland block"	_____
8. Applied in a previous year for PDR	_____
9. Land adjacent to or proximate to (within 0.5 mile) of other farm(s) already approved or protected by a conservation easement .	_____
10. Evaluation Committee "discretionary" points (see next page for explanation)	_____
 TOTAL ASSIGNED POINTS	 _____

DISCRETIONARY POINTS

(Item #10 explained)

It allows the Board, through discussion and consensus, to assign a value based on consideration of the information provided in the “Application and offer to Sell a Development Easement.”

This factor assigned a maximum total of 50 points.

Suggested criteria are as follows:

- | | | |
|----------|-------|---|
| 0-4 pts. | _____ | A. Are useable buildings such that could be used in an array of agricultural businesses on the premises? |
| 0-4 pts | _____ | B. Are there local streams, ponds, a lake, or a river on this farm? |
| 0-4 pts | _____ | C. Is the quality of these waters in a state to which they support wildlife? (In other words, <u>clean</u> water) |
| 0-4 pts | _____ | D. Are there wood lots, and do they support wildlife, or are they a portion of a wildlife corridor? |
| 0-8 pts | _____ | E. Is this farm part of a remarkable scenic view-shed? |
| 0-8 pts | _____ | F. Is this farm located on a scenic road? |
| 0-10 pts | _____ | G. Because of the current ownership, or the operating set-up (such as a farm operator that is now renting, but willing to purchase), does it appear that this farm will be operated by the next generation into the future (the next 20 to 30 years). |
| 0-8 pts. | _____ | H. Because of this farm's soils, natural resources, and location, does This farm exhibit economic viability into the future regardless of the type of farming carried on? |

TOTAL DISCRETIONARY POINTS

A. Average relative soils valued (from Orange County and soil and water) _____

B. Total assigned site evaluation points (from Part II) _____

C. COMBINED VALUE _____

TOTAL COMBINED VALUE _____

CONSERVATION EASEMENT

This Conservation Easement is made and entered into this ____ day of _____, 20__ between:

_____, Warwick, NY 10990 (the "Grantors"), and

THE TOWN OF WARWICK a municipal corporation having an office at 132 Kings Highway, Warwick, New York 10990, (the "Local Grantee") and

WHEREAS:

- A. Grantors are the sole owners in fee simple of certain real property (the "Protected Property") consisting of _____ acres, located in the Town of Warwick, Orange County, New York, more particularly described in "Exhibit A" attached hereto and identified as a portion of Town of Warwick tax map parcels:
- B. The Protected Property consists primarily of productive agricultural land and possesses the following attributes:
 - i. _____ acres of farmland of prime and statewide importance, as defined by USDA;
 - ii. _____ acres federal wetland.
 - iii. Approximately _____ feet of frontage on the _____ Road and _____ feet of frontage on the _____ side of _____ Road, the Protected Property being highly visible from this public roadway.
- C. The Federal Farm and Ranch Lands Protection Program's purpose is to purchase conservation easements on land with prime, unique, or other productive soil for the purpose of protecting topsoil from conversion to nonagricultural uses (16 U.S.C. 3838h and 3838i). Under the authority of the Farm and Ranch Lands Protection Program, the United States Department of Agriculture Natural Resources Conservation Service, on behalf of the Commodity Credit Corporation, (hereinafter the "United States") has provided \$ _____ to the Local Grantee for the acquisition of this Conservation Easement, entitling the United States to the rights identified herein.
- D. Article 14 of the New York State Constitution states that "the policy of this state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products."
- E. In Section 49-0301 of the New York State Environmental Conservation Law (the "Conservation Law"), the Legislature of the State of New York found and declared that "in order to implement the state policy of conserving, preserving and protecting its environmental assets and natural and manmade resources, the preservation of open spaces, and the preservation, development and improvement of agricultural and forest lands..., is

fundamental to the maintenance, enhancement and improvement of...balanced economic growth and the quality of life in all areas of the state;”

- F. The Protected Property is located within Orange County Agricultural District #2, created pursuant to Article 25AA of the New York State Agriculture and Markets Law. In Section 300, it states: “It is hereby found and declared that many of the agricultural lands in New York State are in jeopardy of being lost for any agricultural purposes. When nonagricultural development extends into farm areas, competition for limited resources results...It is therefore the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products...It is the purpose of this article to provide a locally-initiated mechanism for the protection and enhancement of New York State’s agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance;”
- G. The Protected Property is located within the Town of Warwick, whose Comprehensive Plan recommends preservation of agriculture in the Town of Warwick.
- H. The Protected Property is located within Orange County, which has a Farmland Protection Plan as approved by the State of New York Department of Agriculture and Markets that recommends preservation of agriculture in the Town of Warwick.
- I. Local Grantee, the Town of Warwick, is a municipal corporation within the meaning of Section 247 of the General Municipal Law and Article 49, Title 3 of the Environmental Conservation Law of the State of New York (together with any successor statute, the “Conservation Law”) and has the authority to acquire conservation easements.
- J. The expanse of farmland found in the Town of Warwick is important to the agricultural, economic, ecological, cultural, scenic and historical values of the Town of Warwick and the County of Orange.
- K. Local Grantee has determined that acquiring a conservation easement on the Protected Property which protects the agricultural values of the Protected Property, and which promotes the use of sound agricultural practices will further its purposes of preserving the economic, ecological, cultural and scenic values of the Town of Warwick and the County of Orange.
- L. Grantors and Grantees desire to ensure that the agricultural characteristics of the Protected Property, including its prime, statewide important and unique agricultural soils will be protected for the benefit of future generations, and desire to do this by entering into this Conservation Easement pursuant to the provisions of Article 49, Title 3 of the Conservation Law and Section 247 of the General Municipal Law.
- M. Grantors have received such independent legal and financial advice regarding this Conservation Easement that Grantors deemed necessary. Grantors freely and with full will

sign this Conservation Easement in order to accomplish the Purposes of this Conservation Easement as stated in Section 2 herein.

NOW, THEREFORE, in consideration of \$ _____ and the foregoing mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. GRANT OF CONSERVATION EASEMENT.

Grantors hereby grant and convey to Grantees, a Conservation Easement, an immediately vested interest in real property defined by Article 49, Title 3 of the Conservation Law of the nature and character described herein, for the benefit of the general public, which Conservation Easement shall run with and bind the Protected Property in perpetuity. Grantors will neither perform, nor knowingly allow others to perform, any act on or affecting the Protected Property that is inconsistent with the covenants contained herein. Grantors authorize Local Grantee to enforce these covenants in the manner described below.

2. PURPOSES.

It is the primary purpose (the "Primary Purpose", or collectively with the "Secondary Purpose", the "Purposes") of this Conservation Easement to: a) enable the Protected Property to remain in agricultural or forestry use for current and future production of food and fiber, and livestock and livestock products, by protecting in perpetuity its agricultural and forestry values, use and utility, including its prime, statewide important and unique agricultural soils; and b) prevent any use of the Protected Property that would significantly impair or interfere with its long-term agricultural and forestry viability. It is the Secondary Purpose of this Conservation Easement to conserve and protect the Protected Property's open space resources, and their associated unique and special natural features to the extent that such protection does not conflict with the Primary Purpose of this Conservation Easement.

3. IMPLEMENTATION.

This Conservation Easement shall be implemented by limiting and restricting the development and use of the Protected Property in accordance with the provisions of this Conservation Easement. The terms of this Conservation Easement are subject to all applicable laws and regulations. This Conservation Easement shall not unreasonably restrict or regulate farm operations in contravention of the purposes of Article 25-AA of the Agriculture and Markets Law.

4. DEFINITIONS.

As used in this Conservation Easement, the term "Owners" includes the owners of record title and/or the Owners of any beneficial equity interest in the Protected Property or any portion thereof; the term "Grantors" includes the original Grantors, their heirs, successors and assigns, all future Owners of all or any portion of the Protected Property, and any party entitled to

possession or use thereof; and the term " Local Grantee" includes the original Local Grantee and its successors and assigns.

The term "Sound Agricultural Practices" means practices necessary for the on-farm production, preparation and marketing of agricultural commodities. A practice is considered to be sound if it is legal, necessary, does not cause bodily harm or property damage off the farm, and achieves the intended results in a reasonable and supportable way.

The term "Farm Labor Housing" means structures 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.

5. RESERVED RIGHTS RETAINED BY GRANTORS.

Subject to the restrictions and covenants set forth in this Conservation Easement, Grantors reserve for themselves and their successors in interest with respect to the Protected Property, all rights with respect to the Protected Property, including, without limitation, the right of exclusive use, possession and enjoyment of the Protected Property, and the right to sell, transfer, lease, mortgage or otherwise encumber the Protected Property, as owner, subject to Section 8.6. herein, as well as the right to exclude any member of the public from trespassing on the Protected Property. Nothing contained herein shall be construed as a grant to the general public of any right to enter upon any part of the Protected Property. Unless otherwise specified below, nothing in this Conservation Easement shall require Grantors to take any action to restore the condition of the Protected Property after any Act of God. Nothing in this Conservation Easement relieves Grantors of any obligation with respect to the Protected Property or restriction on the use of the Protected Property imposed by law.

6. PERMITTED USES.

Permitted uses ("Permitted Uses") of the Protected Property vary depending on where on the Protected Property the use occurs. The Protected Property is divided into two principal areas, 1) one Farmstead Complex, described in Exhibit A attached hereto containing _____ acres, and 2) one farm areas described in Exhibit A attached hereto containing _____ which comprises the majority of the Protected Property. Grantors may undertake construction, erection, installation, removal or placement of buildings, structures, or other improvement to the Protected Property within these areas only as provided in this Conservation Easement and set forth below. The uses permitted hereunder are subject to any permits or approvals required by local, state or federal law, ordinance or regulation to the extent any such local law, ordinance or regulation is consistent with applicable state law and are subject to Local Grantee approval only to the extent specifically provided herein.

6.1 WITHIN THE "FARMSTEAD COMPLEX":

6.1.A. FARMING PRACTICES. Grantors have the right to produce crops, livestock and livestock products and conduct farm operations as defined under Section 301 of the New York

State Agriculture and Markets Law ("the Agriculture and Markets Law"), or such successor law as is later promulgated, 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 the Conservation Plan and with Sound Agricultural Practices as defined in Section 8.15 and 4 herein respectively, together with the right to construct, maintain and repair roads for these purposes, provided to the greatest extent practicable, impact to the prime and statewide important soils is minimized.

6.1.B. AGRICULTURAL STRUCTURES & IMPROVEMENTS. Without permission from Local Grantee, Grantors may place or construct new buildings and other structures and impervious improvements within the Farmstead Complex, and remove, maintain, repair, or enlarge such existing structures, to be used primarily for purposes related to a "Farm Operation," as defined in the Agriculture and Markets Law or any successor statute and for such other agricultural purposes as (i) the production, storage or sale of farm products or by-products, or processing of farm products or by-products, including composting, produced on-site, (ii) the storage of equipment used for agricultural production, (iii) the keeping of livestock or other animals and (iv) Farm Labor Housing. The land on which these structures stand shall not be subdivided from its respective Farmstead Complex.

6.1.C. FENCES. Existing fences and stone walls may be repaired, removed, and replaced, and new fences and stone walls may be constructed or installed anywhere in the Farmstead Complexes for purposes of reasonable and customary management of livestock and wildlife, and to prevent trespassing on the Protected Property.

6.1.D. SINGLE-FAMILY RESIDENTIAL DWELLINGS. Without permission from Local Grantee, Grantors have the right to build one new single-family residential dwelling, (together with customary appurtenances and accessory structures) to be used as a personal residence by the farm operator or any Grantor and the immediate family of that Grantor within the Farmstead Complex. Immediate members of a Grantors family shall include spouses, children (natural and adopted), parents and their descendants and spouses. The Local Grantee specifically acknowledges that construction of such a single-family residential dwelling is consistent with the Zoning Code as being incidental to the commercial agricultural operation which this Conservation Easement seeks to promote. Excavated basements are permitted.

Without permission from Local Grantee, Grantors may repair, enlarge or replace the single-family residential dwelling (regardless of the condition or habitability) at it's current location, which is shown on Exhibit A, that exist at the time that this Conservation Easement was originally conveyed. The total floor area of the existing dwelling may not be increased beyond its current size by more than thirty – three (33) percent without the prior permission of the Local Grantees as per paragraph 8.5 herein. For new construction, such dwelling shall not exceed 4,500 square feet of total floor area, which shall include any enclosed porches, but shall not include basements and structures such as decks that are attached to the house but not enclosed.

Grantors have the right to establish and carry out home occupations or cottage industries as defined in Section 6.1.G. within said permitted residential dwellings provided said activities are compatible with the rural character of the Protected Property and subordinate to the residential

use. The land on which said single-family residential dwellings stand shall not be subdivided from the Farmstead Complex or into separate or individual lots.

6.1.E. FARM LABOR HOUSING. Without permission from Local Grantee, Grantors have the right to remove, repair, enlarge or replace any dwellings or structures used for Farm Labor Housing within the Farmstead Complexes, subject to applicable laws. New single- or multi-family dwellings to be used solely to house employees or others engaged in agricultural production on the Protected Property may be placed or constructed within the Farmstead Complex. Existing non-habitable structures may be adaptively reused to create Farm Labor Housing, subject to applicable laws. The land on which these structures stand shall not be subdivided from the Farmstead Complex or into separate or individual lots.

6.1.F. AGRICULTURE-RELATED COMMERCIAL ACTIVITIES. Grantors have the right to establish and carry out agriculture-related commercial activities and build or install structures necessary for the same within the Farmstead Complex. Such activities include, but are not limited to, the storage and sale of farm produce and related products, processing and packaging of farm produce, farm machinery repair, farm markets and saw mills for products derived primarily from the Protected Property. The land on which these structures stand shall not be subdivided from the Farmstead Complex or into separate or individual lots.

6.1.G. CUSTOMARY HOME OCCUPATIONS OR COTTAGE INDUSTRIES. Grantors have the right to establish and carry out home occupations or cottage industries within the Farmstead Complex, provided said activities are compatible with the rural character of the Protected Property, the Purposes of this Conservation Easement and the agricultural or forestry uses of the Protected Property. Examples of customary home occupations or cottage industries are, without limitation, professional offices within the home, bed and breakfasts, crafts production, and firewood distribution. The land on which these structures stand shall not be subdivided from the Farmstead Complex or into separate or individual lots.

6.1.H. RECREATIONAL USES. Grantors may use the Protected Property for recreational uses including, but not limited to, cross-country skiing, seasonal hunting, horseback riding, non-commercial camping limited to that conducted by the Grantors or immediate family of the Grantors, and other similar types of uses. With permission from Local Grantee, Grantors may construct new, or adapt any existing buildings and improvements for said recreational uses within the Farmstead Complex. The land on which these structures stand shall not be subdivided from the Farmstead Complex or into separate or individual lots. Swimming pools, tennis courts, and similar recreational improvements must be located within the Farmstead Complex. Notwithstanding the foregoing, golf courses, polo arenas, motor-cross courses, commercial airstrips, commercial helicopter pads or any other similar recreational uses or improvements that: impair or interfere with the Purposes of this Conservation Easement; significantly disturb the soil profile; or adversely affect agricultural and forestry uses on a continuing basis, are prohibited.

6.1.I. WATER RESOURCES. Grantors have the right to utilize, maintain, establish, construct, or otherwise improve water sources, water courses, and water bodies, including the construction of ponds or reservoirs, within the Farmstead Complex for uses expressly permitted by this

Conservation Easement and in accordance with the Conservation Plan, Sound Agricultural Practices, and all applicable laws.

6.1.J. UTILITIES, DRIVEWAYS, ROADWAYS. Grantors have the right to construct and repair utilities, driveways and/or roadways necessary to serve any Permitted Uses in the Farmstead Complexes, as listed herein. Such utilities include but are not limited to water lines, sewer lines, electric lines, wells and septic systems. Grantors may grant easements over and under the Protected Property for such Permitted Uses on the Protected Property. Utilities and roadways installed outside of the Farmstead Complexes shall be located to minimize impact to the prime and statewide important soils on the Protected Property. The location of easements for utilities and roadways shall have the written concurrence of the Local Grantee.

6.1.K. ANCILLARY IMPROVEMENTS. Without permission from Local Grantee, other improvements, including, but not limited to facilities for the generation and transmission of alternative energy and electrical power, windmills, or detached solar arrays may be built within the Farmstead Complexes to serve any Permitted Uses on the Protected Property.

6.2. WITHIN THE "FARM AREA":

6.2.A. FARMING PRACTICES. Grantors have the right to produce crops, livestock and livestock products and conduct farm operations as defined under Section 301 of the Agriculture and Markets Law, or such successor law as is later promulgated, which includes but is not limited to the right to establish, reestablish, maintain, and use cultivated fields, orchards, pastures, and woodlands. Grantors have the right to construct, maintain and repair gravel, shale, and or dirt farm access roads for those Permitted Uses, provided to the greatest extent practicable, impact to the prime and statewide important soils is minimized. Said farming practices shall be carried out in accordance with the Conservation Plan as defined in Section 8.15 and with Sound Agricultural Practices as defined in Section 4 herein. The location of new roads shall have the written concurrence of the Local Grantee.

6.2.B. FORESTRY MANAGEMENT. Without permission from Local Grantee, Grantors may clear forested areas for conversion to farmland, may harvest wood for on-farm use including heating or construction of buildings and improvements, and may remove or trim trees that are diseased, infected by pests or insects, jeopardize health and safety, or hinder the operation of farm equipment along field boundaries, so long as it is consistent with Sound Agricultural Practices and the Conservation Plan.

Without permission from Local Grantee, Grantors may harvest timber and other wood products 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, in accordance with the Conservation Plan and generally-accepted forest best management practices (as outlined in a forest management plan and harvest plan) that shall not result in significant soil degradation or erosion. Timber cutting 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, or a Cooperating Consulting Forester with the New York State Department of Environmental Conservation.

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

6.2.C. AGRICULTURAL STRUCTURES & IMPROVEMENTS. Without permission from Local Grantee, Grantors may place or construct new buildings and other structures and impervious improvements on up to 2% of the Farm Area to be used primarily for purposes related to a "Farm Operation," as defined in Agriculture and Markets Law or any successor statute and for such other agricultural purposes as (i) the production, storage or sale of farm products or by-products, (ii) the storage of equipment used for agricultural production, (iii) the keeping of livestock or other animals and (iv) farm labor housing. Notwithstanding the foregoing, such structures may not be used for the processing of farm products. Such coverage limitations do not apply to permeable surfaces such as gravel roads and parking areas, structures that protect soil and water resources, such as manure storage and compost areas, and structures and improvements lacking permanent foundations where the land underneath is not covered by impervious surfaces. The land on which these structures stand shall not be subdivided into separate or individual lots, except as permitted in Section 8.1.A. Permission is required by Local Grantee for the construction of such buildings, structures and improvements that would cover up to an additional 4% of the Farm Area.

6.2.D. FENCES. Existing fences and stone walls may be repaired, removed, and replaced, and new fences and stone walls may be constructed or installed anywhere in the Farm Area for purposes of reasonable and customary management of livestock and wildlife, and to prevent trespassing on the Protected Property.

6.2.E. FARM LABOR HOUSING. Without permission from Local Grantee, Grantors have the right to maintain or replace any existing single- or multi-family dwellings or structures or to place or construct new single- or multi-family dwellings, together with agricultural structures and impervious improvements, on up to 2% of the Farm Area, provided that any such dwelling or structure is solely for the purpose of Farm Labor Housing as defined in Section 4 herein. Said dwelling structures shall not exceed a total ground floor footprint of 2,500 square feet in size and shall not have excavated basements. With advance written permission from the Local Grantee, pursuant to Section 6.4 herein, Grantors have the right to place or construct such Farm Labor Housing together with all other permitted impervious improvements on up to an additional 4% of the Farm Area. The land on which these structures stand shall not be subdivided into separate or individual lots.

6.2.F. SINGLE-FAMILY RESIDENTIAL DWELLINGS. No single-family residential dwellings may be constructed within the Farm Area, except as specified in Section 6.2.E.

6.2.G. RECREATIONAL USES. Grantors may use the Protected Property for recreational uses including, but not limited to, cross-country skiing, seasonal hunting, horseback riding, non-commercial camping limited to that conducted by the Grantors and their guests, invitees and licensees, and other similar types of uses. With the prior written permission from Local Grantee, pursuant to Section 6.4 herein, Grantors may construct new, or adapt any existing building and

improvements for said recreational uses within the Farm Area. Swimming pools, tennis courts, and similar recreational improvements shall not be located within the Farm Area.

Notwithstanding the foregoing, golf courses, polo arenas, motor-cross courses, commercial airstrips, commercial helicopter pads or any other similar recreational uses or improvements that: impair or interfere with the purpose of this Conservation Easement; significantly disturb the soil profile; or adversely affect agricultural and forestry uses on a continuing basis, are prohibited.

6.2.H. WATER RESOURCES. Grantors have the right to utilize, maintain, establish, construct, or otherwise improve water sources, water courses, water bodies, including the construction of ponds or reservoirs and irrigation systems in the Farm Area for uses expressly permitted by this Conservation Easement and in accordance with the Conservation Plan, Sound Agricultural Practices, and all applicable laws. The construction of ponds or reservoirs shall be permitted only upon the prior written approval of Local Grantee pursuant to Section 6.4 herein.

6.3. ANCILLARY USES. Reserved

6.4. Grantors may construct new, or adapt any existing building and improvements for said recreational uses within the Farm Area. Swimming pools, tennis courts, and similar recreational improvements shall not be located within the Farm Area. Notwithstanding the foregoing, golf courses, polo arenas, motor-cross courses, commercial airstrips, commercial helicopter pads or any other similar recreational uses or improvements that: impair or interfere with the purposes of this Conservation Easement; significantly disturb the soil profile; or adversely affect agricultural and forestry uses on a continuing basis, are prohibited.

6.5. PROCEDURES FOR GRANTING PERMISSION. Where Grantors are required to obtain Local Grantee's permission for a proposed action hereunder, said permission shall be requested in writing. Grantors must demonstrate to Local Grantee's reasonable satisfaction that the proposed action:

- a) is consistent with the Purposes of this Conservation Easement;
- b) would not be unnecessarily located on prime soils and/or soils of statewide importance; and
- c) would not otherwise diminish the long-term agricultural viability of the Protected Property.

- d) Furthermore, Grantors must demonstrate that:
buildings or structures proposed for locations outside of a Farmstead Complex cannot otherwise be located within a Farmstead Complex.

Local Grantee shall give written notification pursuant to Section 8.5 herein, of its decision within 30 days of receipt of a request for such permission, provided that Grantors have supplied sufficient information to make such a determination. Permission shall be deemed granted if Grantors receive no response from Local Grantee within 30 days of the written request, pursuant to the terms of Section 9.2 herein.

7. RESTRICTED USES.

The restrictions imposed upon the Protected Property are as follows:

7.1. **USE AND BUILDING PROHIBITIONS.** No residential, commercial, industrial or mining activities shall be permitted, and no building, structure, appurtenant facility or improvement shall be constructed, created, installed, erected or moved onto the Protected Property, except as expressly permitted by this Conservation Easement.

7.2. **SIGNAGE RESTRICTIONS.** Consistent with the Purposes of this Conservation Easement, Grantors may erect and maintain signs indicating the name of the Protected Property, memorial plaques, temporary signs, including those indicating that the Protected Property is for sale or lease, and signs informing the public that any agricultural or timber products are for sale or are being grown on the premises. Notwithstanding the foregoing, there shall be no other non-agricultural signs, billboards, or other outdoor advertising not directly related to uses allowed under this Conservation Easement, except as permitted by Local Grantee. No signs erected on the Protected Property shall be internally lit or neon.

7.3. **DUMPING AND TRASH (WASTE MANAGEMENT).** The dumping, land filling, burial, application, injection, or accumulation of any kind of garbage, trash or debris on the Protected Property is prohibited, other than agriculturally-related waste or biodegradable material in accordance with Sound Agricultural Practices, the Conservation Plan and any applicable State or federal law or regulation. However, this shall not prevent (i) the storage of agricultural products and byproducts, (ii) the storage of old farm equipment used for parts, (iii) the temporary storage of trash or household waste in receptacles for periodic off-site disposal, and (iv) the composting or re-use of biodegradable materials that have been generated on or off the Protected Property for use on the Protected Property or commercial use of such biodegradable materials so long as they are used and stored in accordance with Sound Agricultural Practices and the Conservation Plan. Notwithstanding the foregoing, the storage and treatment of sewage associated with buildings permitted on the Protected Property, is permitted by this Conservation Easement.

7.4. **CHEMICALS.** All pesticides, herbicides, fertilizers, or other chemical treatment of the Protected Property shall be used in accordance with the directions on the chemical labels and/or applicable federal, state or local laws and with Sound Agricultural Practices as defined in Section 4 herein .

7.5. **MINING PROHIBITIONS.** *Exploration for, or development, storage and extraction of, minerals and hydrocarbons on or from the Protected Property by any method is prohibited, except as otherwise provided herein. Grantors may remove sand and gravel from the Protected Property, provided said removal: (a) is limited and localized in impact, affecting no more than two acres of the Protected Property at one time; (b) does not conflict with the Purposes of this Conservation Easement; (c) does not breach the water table; (d) is reasonably necessary for, and incidental to, carrying out the improvements and agricultural production uses permitted on the Protected Property by this Conservation Easement; and (e) minimizes the impact to the prime, statewide important and unique soils.* Grantors shall use all practical means to mitigate any adverse effect on the agricultural and other conservation values of the Protected Property in carrying out any permitted extractive activities, and upon completion of said permitted extractive activities, Grantors shall promptly restore any portion of the Protected Property affected thereby

as nearly as possible to its condition existing prior to commencement thereof in accordance with the Conservation Plan.

7.6 REAFFIRMATION. No use shall be made of the Protected Property, and no activity thereon shall be permitted which, in the reasonable opinion of Local Grantee, is or is likely to become inconsistent with the Purposes of this Conservation Easement as stated in Section 2 herein.

8. ADDITIONAL COVENANTS AND PROVISIONS.

8.1. SUBDIVISION.

Subdivision to create parcels for residential, commercial agricultural, industrial or any other use is prohibited.

8.2. EXISTING CONDITIONS; BASELINE DATA REPORT. By its execution of this Conservation Easement, Local Grantee acknowledges that the present uses of the Protected Property are permitted by this Conservation Easement. In order to evidence the present condition of the Protected Property (including both natural and man-made features) so as to facilitate future monitoring and enforcement of this Conservation Easement, a Baseline Data Report, including photographs, describing such condition at the date hereof, has been prepared and subscribed by both parties, and a copy thereof is on file with the Local Grantee and Grantors.

8.3. ENFORCEMENT. Local Grantee may enforce this Conservation Easement at law or in equity, including, without limitation, pursuant to the provisions of Article 49, Title 3 of the Conservation Law, against any or all of the Owners/Grantors or anyone occupying the Protected Property or any part thereof. If there is a violation, or threatened violation, of this Conservation Easement, Local Grantee shall notify the party in violation or threatening the violation, who shall, in the case of an existing violation, promptly cure the violation by (a) ceasing the same, or (b) restoring the Protected Property to the condition before such violation, or (c) both, or, in the case of a threatened violation, refrain from the activity that would result in the violation. If a violation continues for more than 30 days after notice is given without Grantors taking steps to cure the same, or at any time if the violation or a threatened violation threatens immediate and irreparable harm to the resource values of the Protected Property that this Conservation Easement is intended to protect, Local Grantee may seek immediate injunctive relief and shall have the right, but not the obligation, to correct it, as well as to pursue all available legal remedies. If a violation is determined to have occurred, the Owners/Grantors shall reimburse Local Grantee for all expenses, including reasonable attorneys fees, incurred in enforcing this Conservation Easement and curing the violation. Failure to enforce any restriction or covenant herein contained shall in no event be deemed a waiver of a right to do so thereafter as to the same violation or breach or as to one occurring prior or subsequent thereto.

8.4. AMENDMENT. This Conservation Easement may be amended only upon the written consent of Local Grantee and the Secretary of the U.S. Department of Agriculture. Any such amendment shall be consistent with the Purposes of this Conservation Easement as established in Section 2 herein and shall comply with Article 49, Title 3, of the Conservation Law, Section

170(h) of the Internal Revenue Code, 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 that does not comply with Article 49 or Section 170(h) shall be void and of no force or effect. The party or parties requesting an amendment shall be responsible for all costs relating to the evaluation of said request and the amendment's execution, including staff costs incurred by Local Grantee if said request is made by Grantors.

8.5. APPROVALS IN WRITING. Any approval, waiver, or other form of consent or permission required or permitted to be given by Local Grantee under this Conservation Easement shall only be effective if in writing and duly executed on behalf of Local Grantee, except in such cases where permission is, pursuant to this Conservation Easement, expressly deemed granted if no response is given by Local Grantee within a specific time period. Copies of any such written permissions or approvals shall be provided to the Secretary of the United States Department of Agriculture, and shall in all cases be obtained by Grantors prior to Grantors' taking the proposed action. Local Grantee shall grant permission or approval to Grantors only where Local Grantee, acting in its sole but reasonable discretion and in good faith, determines that the proposed action is in compliance with the terms of this Conservation Easement.

8.6. ENCUMBRANCE BY CONSERVATION EASEMENT. Any subsequent conveyance, including, without limitation, transfer, lease or mortgage of the Protected Property, shall be subject to this Conservation 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 The Local Grantee and the United States by instrument dated, _____, and recorded in the office of the Clerk of Orange County at Liber _____ of Deeds at Page _____ as well as certain enforcement rights granted to the County of Orange by such instrument". The failure to include such language in any deed or instrument shall not, however, affect the validity or applicability of this Conservation Easement to the Protected Property. Nothing in this Conservation Easement shall be construed as limiting the rights of the holder of such conveyance or mortgage from foreclosing or otherwise enforcing its rights thereunder, provided, that any such foreclosure or enforcement of a subsequent or otherwise subordinated or junior mortgage, or other property interest, or other action shall not extinguish this Conservation Easement and Local Grantee's rights hereunder. Grantors shall provide 30 days notice to Local Grantee prior to any such action occurring, but Grantors' failure to provide such notice shall not adversely affect the rights of any holder or any mortgage or other security instruments.

8.7. TAXES AND ASSESSMENTS. Each Owner/Grantor of the Protected Property shall pay all taxes and assessments lawfully assessed against the Protected Property or portion thereof owned by such Owner/Grantor, who shall provide receipted tax bills to Local Grantee upon request.

8.8. SEVERABILITY. Invalidation of any provision of this Conservation Easement by court judgment, order, statute or otherwise shall not affect any other provisions, which shall be and remain in force and effect.

8.9. **BINDING EFFECT.** The provisions of this Conservation Easement Deed shall run with the Protected Property in perpetuity and shall bind and be enforceable against the Grantors and all future Owners and any party entitled to possess or use the Protected Property or any portion thereof while such party is the Owner or entitled to possession or use thereof. Notwithstanding the foregoing, upon any transfer of title, the transferors shall, with respect to the Protected Property transferred, cease being Grantors or Owners with respect to such Protected Property for purposes of this Conservation Easement and shall, with respect to the Protected Property transferred, have no further responsibility or liability hereunder for acts done or conditions arising thereafter on or with respect to such Protected Property, but the transferors shall remain liable for earlier acts and conditions done or occurring during the period of their ownership or conduct. Likewise, this Conservation Easement confers no liability to any Owner for monetary damages relating to acts which said Owner clearly establishes were done by prior Owners, but this sentence shall not be construed as limiting the right of Local Grantee to seek action against the current Owner to cure any violation arising before said Owner came into title to the Protected Property. Notwithstanding the foregoing, upon written request by the Grantors, the Local Grantee shall within forty-five (45) days execute and deliver to the Grantors an estoppel certificate which certifies as to the Grantors' compliance with the obligations of the Grantors contained in this Conservation Easement and otherwise evidences the status of this Conservation Easement as may reasonably be requested by the Grantors. Such certificate may be certified to another party designated by Grantors, including a buyer which is under contract to purchase the Protected Property. In this case, the rights of the Local Grantee to seek action to cure any violation as described above by such purchaser when the Protected Property is conveyed to the same will be limited only to any violations that occurred from date of such certificate to date of closing.

8. 10. **LIABILITY, INDEMNIFICATION.** The Local Grantee shall bear no liability whatsoever, express or implied, relating to the use, maintenance or operation of the Protected Property. The Local Grantee's exercise of, or failure to exercise, any right conferred by this Conservation Easement shall not be deemed to be management or control of the activities on the Protected Property. Local Grantee shall not be liable to Grantors for injuries or death to persons or damage to property or any other harm in connection with Local Grantee's administration and/or enforcement of this Conservation Easement, unless such harm is due to the negligence of Local Grantee or its agents. Grantors agree to indemnify and hold harmless Local Grantee, and the United States of America 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 Protected Property, or any claim thereof, unless due to the negligence of Local Grantee, or its agents. Grantors further agree to indemnify and hold harmless Local Grantee and the United States of America from and against any and all claims, costs, expenses, fines, penalties, assessments, citations, personal injury or death, and the like arising from or out of the existence (actual or alleged) of any and all environmentally hazardous or toxic substances or materials whatsoever on or under the Protected Property. Local Grantee shall have no liability to Grantors or any other Owner for acts of the Local Grantee taken in good faith, in connection with the administration of this Conservation Easement.

8.11. **FURTHER ACTS.** Each party shall perform any further acts and execute and deliver any documents, including amendments to this Conservation Easement, which may be reasonably

necessary to carry out the provisions of this Conservation Easement or which are necessary to qualify this instrument as a conservation easement under Article 49, Title 3, of the Conservation Law or any regulations promulgated pursuant thereto.

8.12. NO FORFEITURE. Nothing herein contained will result in a forfeiture of Grantors' title in any respect.

8.13. CONTROLLING LAW. The interpretation and performance of this Conservation Easement shall be governed by the Laws of the State of New York.

8.14. ADMINISTRATION AND ENFORCEMENT. The administration and enforcement of this Conservation Easement by Local Grantee shall be governed by this Conservation Easement. The Monitoring Plan is on file with the Grantors and Local Grantee.

8.15. CONSERVATION PLAN.

All agricultural operations on the Protected Property shall be conducted in a manner consistent with a resource management system (RMS) Conservation Plan (the "Conservation Plan") prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service utilizing the standards and specifications of the NRCS Field Office Technical Guide and approved by the Orange County Soil and Water Conservation District. All lands enrolled in the Farm and Ranch Lands Protection Program will be subject to the Conservation Plan. Grantors shall give Local Grantee copies of the Conservation Plan upon request and advise Local Grantee of amendments thereto so as to enable Local Grantee to keep its records current.

8.16. CONSERVATION COMPLIANCE PROVISIONS OF THE CONSERVATION PLAN.

As required by section 1238I of the Food Security Act of 1985, as amended, the Grantors, their 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 NRCS and approved by the Orange County Soil and Water 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 Grantors 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 Protected Property, with advance notice to the Grantors, in order to monitor compliance with the Conservation Plan.

In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantors to explore methods of compliance and give the Grantors a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantors do not comply with the Conservation Plan, NRCS will inform Local Grantee of the Grantors' noncompliance. The Local 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 Grantors to correct

such noncompliance, and (c) Grantors have exhausted their appeal right 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 Grantors 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 Grantors may be or become subject.

9. QUALIFIED CONSERVATION CONTRIBUTION COVENANTS

9.1. TRANSFER OF CONSERVATION EASEMENT. Local Grantee, shall have the right, subject to the provisions of the Contingent Right in the United States of America herein, to transfer this Conservation Easement to any private non-governmental organization or public agency that is qualified to hold this Conservation Easement under applicable state law, provided the transferees expressly agree to assume the responsibility imposed on Local Grantee by this Conservation Easement, or to any other qualified organization as defined in Section 170(h) of the Internal Revenue Code which agrees to assume the responsibility imposed on Local Grantee by this Conservation Easement, and continue to carry out the conservation purposes of this Conservation Easement as defined under Section 170(h) and the regulations thereunder. Any assignee other than a government unit must also be an entity able to enforce this Conservation Easement, having purposes similar to those of Local Grantee which encompass those of this Conservation Easement. If Local Grantee ever ceases to exist, or no longer qualifies as an organization as defined in Section 170(h) of the Internal Revenue Code, a court of competent jurisdiction may transfer this Conservation Easement to another public agency that agrees to assume the responsibilities imposed by this Conservation Easement. Local Grantee agrees to notify Grantors of any transfer of this Conservation Easement.

No assignment in whole or in part shall be made of any right or obligation under this Conservation Easement without the approval in advance of the United States. The NRCS State Office must approve the choice of any new non-governmental organization.

9.2. NOTICE. Any notice required or desired to be given under this Conservation Easement shall be in writing and shall be deemed given when received or three days after mailing, by public or private delivery service which provides receipt of delivery, properly addressed as follows: (a) if to Local Grantee, at the address set forth above; (b) if to Grantors, at the addresses set forth above; (c) if to any subsequent Owner, at the address of the Protected Property and; (d) ; (e) if to the United States Department of Agriculture:

United States Department of Agriculture, Natural Resources Conservation Service

State Conservationist
The Galleries of Syracuse
441 S. Salina Street, Suite 354
Syracuse, NY 13202-2450;

Any party can change the address to which notices are to be sent to him, her or it by duly giving notice pursuant to this paragraph.

9.3. **INSPECTION.** The Local Grantee, and the United States, and their duly authorized representatives shall have the right to enter onto the Protected Property at reasonable times, in a reasonable manner, and, where practicable, after giving a minimum of 48 hours prior notice, to inspect for compliance with the terms of this Conservation Easement. In the instance of a violation or suspected violation of the terms of this Conservation Easement which has caused or threatens to cause irreparable harm to any of the resource values this Conservation Easement is designed to protect, no such advance notice is required.

9.4. **EXTINGUISHMENT OF CONSERVATION EASEMENT.** If a subsequent unexpected change in the conditions on or surrounding the Protected Property, including but not limited to condemnation by exercise of the power of eminent domain, make impossible or impractical the continued use of the Protected Property for the Primary and Secondary Purposes of this Conservation Easement as described in Section 2 ("Purposes"), and if the restrictions are extinguished by judicial proceeding and upon approval by the United States, then, upon any subsequent sale, exchange or involuntary conversion by the Grantors, Local Grantee, and the United States shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Protected Property, or title insurance proceeds, in accordance with Section 9.5 ("Proceeds"). Notwithstanding the foregoing, the mere cessation of farming on the Protected Property shall not be construed to be grounds for extinguishment of this Conservation Easement.

9.5. **PROCEEDS.** The grant of this Conservation Easement gives rise to a property right, immediately vested in Local Grantee and the United States, which, for purposes of calculating proceeds from a sale or other disposition of the Protected Property as contemplated under Section 9.4 ("Extinguishment"), this Conservation Easement shall have a value equal to a percentage of the value of the Protected Property unencumbered by this Conservation Easement (the "Proportionate Share"). For purposes of calculating proceeds from a sale or other disposition of the Protected Property as contemplated under this paragraph, this Conservation Easement shall have a value equal to a percentage (the Proportionate Share) of the value of the Protected Property unencumbered by this Conservation Easement. The Proportionate Share has been determined by dividing the value of this Conservation Easement, calculated as of the date hereof, by the unencumbered value of the Protected Property, also calculated as of the date hereof. The Proportionate Share is 63.33%. The Proportionate Share shall remain constant (subject to reasonable adjustment to the extent permissible under Section 170(h) of the Internal Revenue Code for any improvements which may be made on the Protected Property).

If any part or all of this Conservation Easement is terminated pursuant to Section 9.4 ("Extinguishment"), Grantors shall pay over to the to (a) the United States, 50.00%, and (b) the Town of Warwick, 50.00%, of the Proportionate Share of such proceeds received.

All expenses related to the termination of this Conservation Easement shall be paid out of any recovered proceeds prior to distribution of the net proceeds as provided above.

9.6. INTERPRETATION. This Conservation Easement is intended to create a "qualified real property interest" for "conservation purposes," as defined in Section 170(h) of the Internal Revenue Code, and shall be interpreted consistently with such intention. This Conservation Easement shall be interpreted under the laws of the State of New York, or federal law, as appropriate. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed to affect the Purposes of this Conservation Easement. If any provision in this Conservation Easement is found to be ambiguous, an interpretation consistent with the Purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

9.7. EXTINGUISHMENT OF DEVELOPMENT RIGHTS. Except as otherwise reserved to the Grantors in this Conservation Easement, all development rights appurtenant to the Protected Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Protected Property as it now or hereafter may be bounded or described, or used for the purpose of calculating permissible lot yield of the Protected Property. No development rights in and to the Protected Property shall be transferred to any location outside the Protected Property, whether pursuant to a cluster development plan or any other agreement or plan for transferable development rights, or used for the purpose of calculating permissible lot yield.

9.8. RIGHTS OF THE UNITED STATES OF AMERICA. Under this Conservation Easement, the same rights are granted to the United States that are granted to the Town of Warwick. However, the Secretary of the United States Department of Agriculture (the Secretary), on behalf of the United States, will only exercise these rights under the following circumstances: In the event that the Town of Warwick fails to enforce any of the terms of this Conservation 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 Conservation Easement through any and all authorities available under Federal or State law. In the event that the Town of Warwick attempts to terminate, transfer or otherwise divest itself of any rights, title, or interests in this Conservation Easement without the prior consent of the Secretary and, if applicable, payment of consideration to the United States, then, at the option of the Secretary, all right, title, and interest in this Conservation Easement shall become vested solely in the United States of America.

9.9. TITLE. The Grantors covenant and represent that the Grantors are the sole Owners and are seized of the Protected Property in fee simple and have good right to grant and convey the aforesaid Conservation Easement; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Conservation Easement, and that the Local Grantee and the United States shall have the use of and enjoyment of the benefits derived from and existing out of the aforesaid Conservation Easement.

9.10. "GRANTORS ENVIRONMENTAL WARRANTY". "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.

Grantors warrant that they are in compliance with and shall remain in compliance with, all applicable Environmental Laws. Grantors warrant 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.

Grantors warrant that they have no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property. Moreover Grantors hereby promise to defend and indemnify the Local Grantee and 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 Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantors or any other prior owner of the Protected Property. Grantors’ indemnification obligation shall not be affected by any authorizations provided by Local Grantee to Grantors with respect to the Protected Property or any restoration activities carried out by Local Grantee at the Protected Property; provided, however, that Local Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Local Grantee.

TO HAVE AND TO HOLD the said Conservation Easement hereonto the said Town of Warwick and the United States of America, and their successors and assigns forever.

IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year first above written.

Grantors:

Local Grantee:
Town of Warwick

By: _____

By: _____
Jesse Dwyer, Supervisor

STATE OF New York)
) ss:
COUNTY OF Orange)

On the _____ day of _____, 20____ before me, the undersigned, a Notary Public in and for said State, personally appeared, _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss:
COUNTY OF ORANGE)

On the _____ day of _____, 20____ before me, the undersigned, a Notary Public in and for said State, personally appeared, **Jesse Dwyer**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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 and the rights conveyed therein

STATE OF NEW YORK

)

)ss.:

COUNTY OF ONONDAGA

)

Notary Public

EXHIBIT A

DESCRIPTION OF PROTECTED PROPERTY

(legal metes-and-bounds description and survey)