

## Conservation Easement Purchase Option Agreement

*{Italics text in brackets is informational to the drafter;  
please delete when preparing first red-lined draft of this document}*

{[Text in [brackets] is optional language for this Easement depending upon the project];  
*please delete all unused optional text when preparing first red-lined draft of this document}*

**THIS AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_  
between \_\_\_\_\_ [and \_\_\_\_\_] having an address of  
\_\_\_\_\_ (the “Owner”) to \_\_\_\_\_, a New York {[municipal {**OR**}  
not-for-profit] corporation] {**OR**} [soil and water conservation district]} having an address of  
\_\_\_\_\_ (the “Option Holder”).

### **THE PARTIES HEREBY AGREE AS FOLLOWS:**

The Owner grants to the Option Holder the Option to Purchase (“Purchase Option”) the Property Interest described below affecting all or a portion of the property (the “Property”) described in the “Property Description” (attached hereto as Exhibit A), and more specifically described on the “Site Plan” (attached hereto as Exhibit B).

#### **1. Property Interest**

The real estate interest that is the subject of this Purchase Option (the “Property Interest”) is a perpetual conservation easement further defined in Article 49, Title 3, of the Environmental Conservation Law of the State of New York. The document granting the conservation easement is attached hereto as Exhibit C, which shall be materially equivalent to the most recent version of the *New York State Department of Agriculture and Markets Model Agricultural Conservation Easement*.

#### **2. Option Exercise Date**

This Option may be exercised on or before three (3) years from the date of this Agreement.

#### **3. Exercise of Option**

The Purchase Option must be exercised, if at all, by written notice to the Owner delivered to the address of said Owner as set forth above on or before the Option Exercise Date identified above.

If Option Holder exercises the Purchase Option, the transaction is to be governed by the terms of the Purchase and Sale Agreement for the Property (“Purchase and Sale Agreement”). A materially equivalent sample of the Purchase and Sale Agreement is attached to and incorporated into this Agreement as Exhibit D. The terms of this Agreement shall be incorporated into the Purchase and Sale Agreement.

If the Option Holder exercises the Purchase Option, the Purchase and Sale Agreement must be fully executed on or before three (3) years from the date of this Agreement unless this Agreement has been extended pursuant to Section 6 of this Agreement.

#### **4. Purchase Price for Property Interest**

The consideration to be paid for the Property Interest at Closing of the acquisition of the Property Interest (“Closing”) is \$ \_\_\_\_\_ (\_\_\_\_\_ Dollars) (the “Purchase Price”), which shall be the purchase price included in the Purchase and Sale Agreement, established by an appraisal prepared by a New York State Certified General Real Estate Appraiser certified by the New York State Department of State Division of Licensing Services in accordance with (1) Uniform Standards of Professional Appraisal Practice and (2) New York State Department of Agriculture and Markets (the “Department”) guidance on the appraisal of conservation easements (“Appraisals for Conservation Easements,” or any materially equivalent subsequent or supplemental written guidance documents provided by the Department).

#### **5. Option Consideration**

In consideration of the grant of this Purchase Option, Owner acknowledges receipt of the sum of \$ \_\_\_\_\_ (\_\_\_\_\_ Dollars) as consideration of the grant of this Purchase Option and any extension(s) of the Purchase Option which may be mutually agreed to between the Owner and the Option Holder.

#### **6. Extension of Purchase Option**

The Option Exercise Date may be extended in writing by mutual agreement of the Owner and Option Holder. Any extension shall occur without additional consideration paid to the Owner and shall be governed by the same terms and conditions included in this Agreement.

#### **7. Transactional Costs and Expenses**

##### *7.1 Owner’s Obligations.*

At Closing, Owner must pay (or otherwise remove as a prior encumbrance on the Property Interest) all mortgages, liens and encumbrances securing the payment of money and any real estate taxes that remain unpaid as of the Closing , and deliver title acceptable to the Department and which conforms to the Department’s title guidance (“Conservation Easements – Title Curative Letter,” or any materially equivalent subsequent or supplemental written guidance documents provided by the Department). Whether or not Closing occurs, Owner is responsible for the costs and expenses of any attorney or other advisors engaged by Owner.

### *7.2 Option Holder's Obligations.*

Whether or not Closing occurs, Option Holder is responsible for the costs of title, survey, environmental and other inspections, applications for funding, any governmental approvals required as a condition of Closing, and preparation of Closing documents.

### *7.3 Additional Obligations of the Parties*

The Purchase and Sale Agreement attached hereto may set forth additional obligations of the parties.

## **8. Right of Entry**

Option Holder and its agents shall have the right to enter the Property prior to the date of the Option Exercise Date, from time to time and during regular business hours, with 48 hours advance notice by telephone or other method, as appropriate, to conduct inspections, surveys, and/or to obtain such other information as Option Holder shall deem necessary to ensure that the Owner maintains the condition of the Property as described in Section 9 of this Agreement and to prepare for the Closing as provided for in the Purchase and Sale Agreement attached hereto .

## **9. Condition of Property**

Owner must maintain the Property in a predominantly Agricultural Use and as a Farm Operation (as each term is defined below) through the Closing or the expiration of the Purchase Option. Owner shall not conduct any other use(s) of the Property prior to Closing or the expiration of the Purchase Option without the prior written approval of the Option Holder; any such allowed use shall conform to the Site Plan as depicted on Exhibit B of this Agreement. No additional structures or improvements shall be constructed or placed on the Property without the prior written approval of the Option Holder.

As used in this Agreement, the following terms shall be defined as follows:

“Agricultural Use” shall be defined as those activities necessary to:

- i. produce “Crops, Livestock and Livestock Products”; or
- ii. use the Property as a “Farm Operation” to the extent permitted by this Easement; or
- iii. be actively enrolled in any federal or state or local program whose intent is to temporarily suspend (for a specified period of one or more years or crop seasons) the production of Crops, Livestock and Livestock Products for the stipulated purpose of soil and water conservation, wildlife habitat, or similar conservation purpose; or
- iv. manage the Property or a portion thereof in a fallow or otherwise idled manner provided such management is described in a Conservation Plan.

“Farm Operation” shall be defined pursuant to Article 25-AA of the AML, or such successor law as enacted or amended. In the event that this definition or all of Article 25-AA (and all such successor laws) shall be repealed, then the definition existing at the time of repeal shall serve thereafter.

“Crops, Livestock and Livestock Products” shall be defined pursuant to Article 25-AA of the AML, or such successor law as enacted or amended. In the event that this definition or all of Article 25-AA (and all such successor laws) shall be repealed, then the definition existing at the time of repeal shall serve thereafter.

“Conservation Plan” shall be defined as an Agricultural Environmental Management (AEM) Conservation Plan (Tier 3 or higher), or such equivalent document that has been prepared by the local Soil and Water Conservation District, or other qualified conservation professional, in cooperation with the Owner.

#### **10. Owner’s Inability to Convey Property Interest and Limitations on Liability.**

If Owner is unable or unwilling to convey the Property Interest in accordance with the terms and provisions of this Agreement, Option Holder hereby reserves its right to rescind the Agreement whereupon the Owner shall refund the Option Consideration payment paid by the Option Holder in accordance with Section 5 of this Agreement and reimburse Option Holder’s documented costs and expenses, reasonably incurred, in accordance with Section 7.2 of this Agreement.

Option Holder may enforce the terms of this Section 10 in accordance with the laws of the State of New York. If, within ninety (90) days after a written demand by the Option Holder, the Option Holder and the Owner cannot voluntarily agree on the refund of the Option Consideration and Option Holder’s costs and expenses; or the Owner refuses to pay any amounts agreed to, Owner agrees to sign an affidavit providing a Judgment by Confession to the Option Holder, pursuant to New York Civil Practice Law and Rules §3218, for the full amount demanded by the Option Holder. The resulting judgment lien obtained may be filed against the Property. With regard to the portion of such judgment lien equal to that paid using State grant funds, Option Holder agrees to use such portion in a manner compatible with the acquisition of a perpetual agricultural conservation easement. Prior to such re-use, Grantee must provide written notification to the New York State Department of Agriculture and Markets and to the \_\_\_\_\_ County Agricultural and Farmland Protection Board.

All the terms of this Agreement which may be necessary for the Option Holder to enforce the terms of this Section 10 shall continue to be in force and effect after the expiration of the Option Exercise Date.

#### **11. Attachments**

The following attachments referred to in this Grant of Purchase Option are incorporated into the document by this reference:

- Exhibit A: Property Description
- Exhibit B: Site Plan
- Exhibit C: Conservation Easement

Exhibit D: Purchase and Sale Agreement

**12. Recording**

This Purchase Option shall be recorded in the County Clerk's Office in the county in which the Property is located. If Option Holder fails to exercise the Purchase Option, or fails to complete Closing once the Purchase Option is exercised, Option Holder must execute, at the request of Owner, a release of this Grant of Purchase Option for recording in the Public Records.

**IN WITNESS WHEREOF**, Grantor and Grantee have hereunto set their hands on the date first above written.

**Owner:** \_\_\_\_\_

**Option Holder:**

By: \_\_\_\_\_

*State of New York* )

*County of* ), ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_

Signature/office of individual taking acknowledgement

*State of New York* )

*County of* ), ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_

Signature/office of individual taking acknowledgement