



Wisconsin Dept. of Agriculture, Trade and Consumer Protection
Agricultural Resource Management Division
PO Box 8911
Madison, WI 53708-8911
(608)-224-4634

AGRICULTURAL CONSERVATION EASEMENT AGREEMENT

This AGREEMENT creates an agricultural conservation EASEMENT in accordance with ss. 93.73 and 700.40, Wis. Stats. (2009).

A. COVERED LAND

The EASEMENT applies to all of the land that is described in attached Exhibit A (COVERED LAND) and mapped in attached Exhibit B. The COVERED LAND includes an agricultural area and a farmstead area. If there is any discrepancy between the description in Exhibit A and the map in Exhibit B, the description in Exhibit A controls.

B. PERPETUAL EASEMENT RUNS WITH THE LAND

The EASEMENT runs with all of the COVERED LAND in perpetuity, regardless of any changes in land ownership or control. The EASEMENT is binding on all owners, occupiers and users of the COVERED LAND as well as those with a mortgage, lien or other interest in the COVERED LAND. If an owner grants another person the right to occupy or use the COVERED LAND, the owner and the other person are jointly and severally responsible for complying with the EASEMENT.

C. EASEMENT GRANTORS

The EASEMENT is granted by the following persons (GRANTORS), who are owners of the COVERED LAND:

[Enter correct legal names and addresses of all the owners of the covered land, including all fee simple owners as well as those with a lesser ownership interest (such as a life estate). If an owner is married, the owner's spouse must also be identified. If an owner is a legal entity other than an individual, verify the correct legal name of that entity.]

D. EASEMENT HOLDERS

The GRANTORS grant the EASEMENT to the following parties (HOLDERS):

- (1) The STATE OF WISCONSIN, by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) or its successor state agency. DATCP or its successor state agency may act through its Secretary, Deputy Secretary, state agency head or lawful designee.
(2) (COOPERATING ENTITY), or its successor in interest. The COOPERATING ENTITY is [Choose one: [a Wisconsin political subdivision as defined in s. 93.73(1m)(f), Wis. Stats. (2009)] or [a nonprofit conservation organization as defined in s. 93.73(1m)(e), Wis. Stats. (2009)].

E. EASEMENT GRANTED

For good and valuable consideration, the receipt and sufficiency of which are acknowledged by the GRANTORS, the GRANTORS hereby grant and convey to the HOLDERS a perpetual EASEMENT in the COVERED LAND as provided in this EASEMENT AGREEMENT. The EASEMENT takes effect when this EASEMENT AGREEMENT is accepted, and signed by the HOLDERS, and recorded with the county Register of Deeds in the county where the COVERED LAND is located.

This space is reserved for recording data

Return to:

Parcel Identification Number/Tax Key Number

F. PURPOSE

The purpose of this Easement is to preserve the availability of the *COVERED LAND* for agricultural use by preventing uses or activities on the land that will impair or interfere with the *COVERED LAND*'s agricultural viability and productive capacity.

G. DEFINITIONS

In this *EASEMENT AGREEMENT*:

- (1) “*Accessory use*” means any of the following land uses, other than a building, structure, impervious surface or improvement, that is consistent with the purpose of the *EASEMENT*:
 - (a) An activity or business operation that is an integral part of, or incidental to, an *agricultural use* of the *COVERED LAND*.
 - (b) A business, activity or enterprise, whether or not associated with an *agricultural use*, if all of the following apply:
 - (i) It is conducted by a person who resides on and owns or farms the *COVERED LAND*, or by a member of that person’s immediate family.
 - (ii) It requires no new buildings, structures or impervious surfaces.
 - (iii) It employs no more than 4 full-time employees annually.
 - (iv) It does not impair or limit current or future *agricultural uses* of the *COVERED LAND* or other protected farmland.
- (2) “*Agricultural area*” means that portion of the *COVERED LAND* that is described as *agricultural area* in attached Exhibit A and mapped as *agricultural area* in attached Exhibit B, regardless of whether the area is in agricultural use. If there is any discrepancy between the description in Exhibit A and the map in Exhibit B, the description in Exhibit A controls.
- (3) “*Agricultural use*” means any of the following:
 - (a) Any of the following activities conducted for the purpose of producing an income or livelihood:
 - (i) Crop or forage production.
 - (ii) Keeping livestock.
 - (iii) Beekeeping.
 - (iv) Nursery, sod, or Christmas tree production.
 - (v) Floriculture.
 - (vi) Aquaculture.
 - (vii) Fur farming.
 - (viii) Forest management.
 - (ix) Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program
 - (b) Any other use that *DATCP* or its successor state agency identifies by rule as an *agricultural use*.
- (4) “*Alteration*” means the act of causing the change to or disturbance of a surface.
- (5) “*Environmental law*” means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, or codes of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, hazardous communication, 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.
- (6) “*Farmstead area*” means that portion of the *COVERED LAND* that is described as *farmstead area* in attached Exhibit A and mapped as *farmstead area* in attached Exhibit B. If there is any discrepancy between the description in Exhibit A and the map in Exhibit B, the description in Exhibit A controls.
- (7) “*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.
- (8) “*Impervious surface*” means an installed material that prevents rain from falling directly onto the land surface or surface vegetation, or that prevents rain water from percolating directly into the soil. *Impervious surface* includes roofs, containers, pavement and macadam.
- (9) “*Livestock*” means bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised game birds, camelids, ratites, and farm-raised fish.

- (10) “*Open space or natural resource use*” means a use, other than an agricultural use or an accessory use, that includes no buildings or permanent structures, other than limited structures such as fences or government-approved natural resource conservation practices that do not convert the land to other uses.
- (11) “*Pre-existing structure*” means a building or structure that existed on the date of this *EASEMENT AGREEMENT*, as identified in Section H and shown on the map attached as Exhibit C.
- (12) “*Pre-existing use*” means a land use, other than an agricultural use, an accessory use, or an open space or natural resource use, that existed on the date of this *EASEMENT AGREEMENT*, as identified in Section H and shown on the map attached as Exhibit C
- (13) “*Protected farmland*” means land that is legally protected from nonagricultural development.

H. USE OF THE COVERED LAND

The *EASEMENT* limits use of the *COVERED LAND* as follows:

- (1) **Land uses in the agricultural area.** Land uses in the *agricultural area* are limited to the following:
- (a) *Pre-existing uses and structures.* The following *pre-existing uses and structures* that have no material adverse impact on *agricultural use* of the *COVERED LAND* (identify allowed *pre-existing uses and structures*, if any): [REDACTED] These *pre-existing uses and structures* may be repaired and maintained without approval from the *HOLDERS*. However, these *pre-existing uses and structures* may not be materially expanded or altered, or be renewed after being discontinued, without the prior written approval of the *HOLDERS* under section I.
 - (b) *Agricultural uses* not requiring the installation of impervious surface or gravel.
 - (c) *Accessory uses* not requiring the installation of impervious surface or gravel.
 - (d) *Undeveloped open space and natural resource uses.*
 - (e) Uses for which the *HOLDERS* give prior written approval under section I.
 - (f) Fencing.
 - (g) Natural resource conservation practices implemented in compliance with a state or federal conservation standard.
- (2) **Land uses in the farmstead area.** This Easement does not limit land uses in the *farmstead area*. However, any use within the farmstead area must comply with all applicable regulations, ordinances, and codes.
- (3) **Land division.** The *COVERED LAND* may not be divided, nor may the farmstead area be detached and sold separately from the *agricultural area*, for purposes of sale of less than the entire *COVERED LAND*, except with the prior written approval of the *HOLDERS* under section I. The *HOLDERS* may not approve a division or detachment that is inconsistent with the purpose of the *EASEMENT*. No portion of the *COVERED LAND* may be used in any manner to increase the density of development of any lands not subject to this *EASEMENT AGREEMENT*.
- (4) **Conservation compliance.** All land uses on the *COVERED LAND* shall comply with applicable state laws related to soil and water conservation, nonpoint source pollution and nutrient management, regardless of whether the landowner or land user receives any cost-share payment for compliance. All highly erodible land on the *COVERED LAND* shall be subject to a conservation plan prepared in consultation with the local county land conservation committee. Timber harvested for sale shall be harvested according to a forest management plan prepared or approved by a qualified forester that maintains the productivity of the forest resource and is consistent with the purpose of this *EASEMENT AGREEMENT*. A landowner may receive cost-share payments to achieve compliance with environmental laws, including conservation compliance obligations.
- (5) **Land surface alteration.** Any alteration to the surface of the *agricultural area* including excavation, removal or filling of the land surface shall be consistent with the purpose of the *EASEMENT*. Permitted alteration under this subsection is limited to any of the following:
- (a) An alteration that is minimal in scope and impact and does not by itself or in combination with other alterations exceed (1) acre in size. Any alteration shall be repaired to the maximum extent feasible to restore the land’s potential for agricultural use.
 - (b) An alteration authorized under paragraph H (1) (b) to (g).

I. HOLDERS’ APPROVAL REQUIRED

- (1) An owner of the *COVERED LAND* may not do any of the following without the *HOLDERS* approval:
- (a) Cover any part of the *agricultural area* with additional impervious surface or gravel. Approval of the *HOLDERS* is not required if the action is permitted under paragraph H (5) (a) or H (1) (g).
 - (b) Subdivide the *COVERED LAND*.

- (c) Detach and sell separately the agricultural area or the farmstead area.
 - (d) Alter the land surface in the agricultural area in excess of one (1) acre. Approval of the *HOLDERS* is not required if the action is permitted under paragraph H (5) (a) or H (1) (g).
 - (e) Materially expand or alter any *pre-existing use or structure* in the *agricultural area*. Approval of the *HOLDERS* is not required if the action is permitted under paragraph H (5) (a) or H (1) (g).
- (2) A request for approval shall be in writing and shall clearly and accurately describe the proposed action. The description shall include the nature, size, scope, location, design and other material features of the proposed action, and any other information reasonably required by the *HOLDERS*.
- (3) The *HOLDERS* may approve a proposed action in response to a written request under sub. (1) if all of the following apply:
- (a) The proposed action and subsequent land use is consistent with the purpose of the *EASEMENT*.
 - (b) The proposed action and subsequent land use will not violate section H.
 - (c) The proposed use will not unnecessarily convert prime farmland or cropland, will not convert the primary use of the *COVERED LAND* to a use other than agricultural use, and will not materially impair or limit any surrounding agricultural uses.
- (4) The *HOLDERS* will grant or deny a written request under sub. (1) within 90 days after receiving a complete written request. The *HOLDERS* may deny a request in their sole discretion, and are not required to justify any denial. The *HOLDERS* may grant approval subject to conditions specified in the approval. Conditions may include deadlines for the beginning or completion of a proposed action.
- (5) An approval under sub. (3) is not effective unless given by all of the *HOLDERS*.

J. LANDOWNER RIGHTS RESERVED

- (1) Except as provided in this *EASEMENT AGREEMENT*, all rights enjoyed by current or future owners of the *COVERED LAND* are reserved to those owners.
- (2) This *EASEMENT* does not limit any owner's right to use, improve, transfer, bequeath, lease, restrict access to, grant a mortgage or other interest in, encumber or convey the *COVERED LAND*, except as provided in this *EASEMENT AGREEMENT*.
- (3) The terms, conditions, restrictions and purpose of this *EASEMENT* shall be referenced in any subsequent deed or other legal instrument by which the owners divest themselves of any interest in the *COVERED LAND*.
- (4) The *HOLDERS* shall be notified in writing of the name(s) and address(es) of any party to whom an interest in the *COVERED LAND* is granted, conveyed or otherwise transferred, at or prior to the time said transfer is executed.
- (5) No provision of this *EASEMENT* shall be construed as impairing the ability of the owners to use the premises as collateral for any subsequent loan, provided that any mortgage or lien arising from such a transaction must not be inconsistent with the terms of this *EASEMENT*, and must be subordinate to this *EASEMENT*.

K. EASEMENT DOES NOT CREATE PUBLIC ACCESS RIGHT

This *EASEMENT AGREEMENT* does not give the general public any right of access to any portion of the *COVERED LAND*, nor does it limit any right of public access that otherwise exists.

L. EASEMENT DOES NOT LIMIT LANDOWNER RESPONSIBILITIES

Except as specifically provided in this *EASEMENT AGREEMENT*:

- (1) This *EASEMENT AGREEMENT* does not relieve the *GRANTORS*, or any subsequent owners, occupiers or users of the *COVERED LAND*, from any responsibility or liability which they currently have or may subsequently incur in connection with the *COVERED LAND*.
- (2) The *HOLDERS* assume no responsibility for the use, management, control, operation, upkeep or maintenance of the *COVERED LAND*, and assume no liability for any action or omission related to the use, management, control, operation, upkeep or maintenance of the *COVERED LAND*.

M. ENFORCING THE EASEMENT

- (1) Either or both of the *HOLDERS*, or their authorized agents, may do any of the following:
 - (a) Upon reasonable prior notice and at reasonable times, enter onto the *COVERED LAND* to monitor compliance and collect evidence of noncompliance.

- (b) Issue notice of apparent *EASEMENT* violations to an alleged violator. The notice may include a demand for timely corrective action. A notice under this subsection is not a prerequisite to court action under sub. (c).
 - (c) Initiate action in court to enjoin an apparent violation of the *EASEMENT*. The action may include a request for an ex parte restraining order or temporary injunction, as circumstances may warrant. The court may enjoin the violation, require appropriate corrective action, award costs, and grant any other relief to which the *HOLDERS* may be entitled.
- (2) No failure on the part of either *HOLDER* to enforce any term of this *EASEMENT* shall discharge or invalidate the term or any other provision of the *EASEMENT* or affect the rights of the *HOLDERS* to enforce the *EASEMENT* in the event of a subsequent breach or default.

N. AMENDING THE EASEMENT

- (1) The terms of the *EASEMENT* may be amended with the written consent of all of the *HOLDERS* and all of the persons who own the *COVERED LAND* at the time of the amendment. An amendment under this subsection does not include an amendment that extinguishes the *EASEMENT*.
- (2) The *HOLDERS* may give their consent under sub. (1) only if the amendment is consistent with the purpose of the *EASEMENT*, does not affect the perpetual duration of the Easement and does not materially weaken the *EASEMENT* to the detriment of the *HOLDERS*.
- (3) The *HOLDERS* may withhold their consent under sub. (1) in their sole discretion, and are not required to justify any withholding of consent.
- (4) An amendment under sub. (1) is not effective unless it is in writing, and signed by all of the persons who are required to give their consent under sub. (1). A signed written amendment takes effect when signed by all parties.

O. COOPERATING ENTITY; TRANSFER OF INTEREST

- (1) A *COOPERATING ENTITY* may, following prior written approval from *DATCP* or its successor state agency, transfer its interest as a *HOLDER* of the *EASEMENT* to *DATCP* or another entity that is a qualified to be a *HOLDER* under ss. 93.73 and 700.40(1)(b), Wis. Stats. (2009).
- (2) The transfer of a *COOPERATING ENTITY'S* interest in the *EASEMENT* terminates that entity's rights and obligations under the *EASEMENT*. Any acts or omissions occurring prior to the transfer of an interest in the land or in the *EASEMENT* will survive the transfer.
- (3) The transfer or relinquishment of a *COOPERATING ENTITY'S* interest under this section does not affect the *STATE OF WISCONSIN'S* interest or status as a *HOLDER* of the *EASEMENT*.

P. TERMINATING THE EASEMENT

The *EASEMENT* may be terminated at any time by court order if all of the following apply:

- (1) The purpose of the *EASEMENT* can no longer be achieved because of a material change in circumstances, or because of a lawful application of eminent domain authority. A change in the value of the *COVERED LAND*, or in an owner's intended use of the *COVERED LAND*, does not constitute a material change in circumstances under this subsection.
- (2) All of the *HOLDERS* are fully and fairly compensated for the loss of the *EASEMENT*. Compensation shall include the *EASEMENT* purchase cost and transaction expenses incurred by the *HOLDERS*, plus a proportionate share of any increase in the appraised value of the *COVERED LAND* between the date of this *EASEMENT AGREEMENT* and the date on which the *EASEMENT* is terminated. That proportionate share shall be calculated as the increase in appraised value, multiplied by the ratio of the *EASEMENT* purchase cost to the total appraised value of the *COVERED LAND* on the date of this *EASEMENT AGREEMENT*. A reduction in appraised value does not affect the compensation required under this subsection.

Q. ADDITIONAL REQUIREMENTS

- (1) **General Indemnification.** *GRANTORS* shall indemnify and hold harmless the *HOLDERS* employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) relating to the *COVERED LAND*, which may arise from, but are not limited to, *GRANTORS'* negligent acts or omissions or *GRANTORS'* breach of any representation, warranty, covenant, agreements contained in this *EASEMENT AGREEMENT*, or violations of any Federal, State, or local laws, including all *environmental laws*.
- (2) **Environmental Warranty.** *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 noncompliance or alleged non-compliance with or any liability under any *environmental law* relating to the operations or conditions of the *COVERED LAND*. *GRANTORS* further warrant that they have no actual knowledge of a release or threatened release of *hazardous materials*, as such substances and wastes are defined by applicable federal and state law. Moreover, *GRANTORS* hereby promise to hold harmless and indemnify *HOLDERS* 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 *COVERED LAND*, or arising from or connected with a violation

of *environmental laws* by *GRANTORS* or any other prior owner of the *COVERED LAND*. *GRANTORS*' indemnification obligation shall not be affected by any authorizations provided by *HOLDERS* to *GRANTORS* with respect to the *COVERED LAND* or any restoration activities carried out by *HOLDERS* on the *COVERED LAND*; provided, however, that *HOLDERS* shall be responsible for any *hazardous materials* contributed after this date to the *COVERED LAND* by *HOLDERS*.

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GRANT OF EASEMENT BY LANDOWNERS

The following *GRANTORS* hereby sign this *EASEMENT AGREEMENT* and grant the *EASEMENT* described herein:

(Signature) (Date)

(Print Name)

(Signature) (Date)

(Print Name)

State of Wisconsin)
) ss
County of _____)

This instrument was acknowledged before me on the ____ day of _____,
20____, by _____.
(Name of Grantor)

(Signature of Notary)

(Print Name)

Notary Public, State of _____
My commission expires (is permanent) _____.

(Signature) (Date)

(Print Name)

(Signature) (Date)

(Print Name)

State of Wisconsin)
) ss
County of _____)

This instrument was acknowledged before me on the ____ day of _____,
20____, by _____.
(Name of Grantor)

(Signature of Notary)

(Print Name)

Notary Public, State of _____
My commission expires (is permanent) _____.

CONSENT TO EASEMENT BY MORTGAGE HOLDER/LIEN HOLDER

(Signature of Authorized Individual) of _____
(Name of Institution holding mortgage/lien)

being the owner and holder of certain _____, recorded _____, _____ in _____
(Mortgage/lien) (Date of recording) (Recording data)

against said premises, does hereby join in and consent to said conveyance of an easement free of said lien.

State of Wisconsin)
) ss
County of _____)

This instrument was acknowledged before me on the ____ day of _____, 20____, by _____ as _____
of _____.

(Signature of Notary)

(Print Name)

Notary Public, State of _____
My commission expires (is permanent) _____.

ACCEPTANCE OF EASEMENT BY COOPERATING ENTITY

_____ as _____ of _____
(Print Name) (Title) (Cooperating Entity)
does hereby accept the EASEMENT described herein:

By: _____
(Signature of Authorized Representative)

(Print Name, Title)

State of Wisconsin)
) ss
County of _____)

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____
(Name)
as _____ of _____.
(Title) (Cooperating Entity)

(Signature of Notary)

(Print Name)

Notary Public, State of _____.
My commission expires (is permanent)_____.

ACCEPTANCE OF EASEMENT BY THE STATE OF WISCONSIN

_____ as _____ of the State of Wisconsin, Department of Agriculture, Trade and Consumer
(Print Name) (Title)
Protection does hereby accept the EASEMENT described herein:

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
BY: _____
(Signature)

(Print Name, Title)

State of Wisconsin)
) ss
County of _____)

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____
(Name)
as _____ of the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection.

(Signature of Notary)

(Print Name of Notary)

Notary Public, State of _____.
My commission expires (is permanent)_____.

This instrument was drafted by the Wisconsin Department of Agriculture, Trade and Consumer Protection

ATTACHMENTS

Exhibit A: LEGAL DESCRIPTION

Exhibit B: MAP OF COVERED LAND

Exhibit C: MAP OF PRE-EXISTING USES AND STRUCTURES

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