

Dane County Department of Planning & Development  
 Room 116, 201 Martin Luther King, Jr. Blvd.  
 Madison, WI 53703  
 (608) 266-4266

**TDR AGRICULTURAL CONSERVATION  
 EASEMENT AGREEMENT**

KRISTI CHLEBOWSKI  
 DANE COUNTY  
 REGISTER OF DEEDS

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 KENNEDY HILLS, LLC  
 306 W. QUARRY ST.  
 DEERFIELD, WI 53531

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Parcel Identification Number/Tax Key Number  
 0711-364-8500-3

This *AGREEMENT* creates an agricultural conservation *EASEMENT* in accordance with ss. 93.73, 700.40, Wis. Stats. (2009) and s.10.01(75m), Dane County Code.

**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*. 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*:

*SEE ATTACHED EXHIBIT "A"*

**D. EASEMENT HOLDERS AND THIRD PARTY BENEFICIARY**

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

- (1) *COUNTY OF DANE (COUNTY)*, or its successor in interest. The *COUNTY* is a Wisconsin political subdivision as defined in s. 93.73(1m)(f), Wis. Stats. (2009).
- (2) *TOWN OF COTTAGE GROVE, DANE COUNTY, WISCONSIN*, or its successor in interest. The *TOWN* is a Wisconsin political subdivision as defined in s. 93.73(1m)(f), 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.

9

## 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, 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 an *agricultural area* in attached Exhibit A and mapped as an *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) "*Forester*" means a licensed professional forester, a person who has received a bachelor's or higher degree in forestry from a school of forestry with a curriculum accredited by the Society of American Foresters, or other qualified person as determined by the HOLDERS.
- (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 may be 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.
- (14) *"Third-party enforcement right"* means a right provided in a conservation easement empowering a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder, to enforce any term of the easement.

#### 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*, if present and documented in Section H and on Exhibit C, that have no material adverse impact on *agricultural use* of the *COVERED LAND*: Silo(s), grain bins, or any other agricultural accessory building(s). These *pre-existing uses and structures* may be repaired and maintained without approval from the *HOLDERS*.
  - (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 division.** The *COVERED LAND* may not be divided, 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 that is inconsistent with the purpose of the *EASEMENT*.
- (3) **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.

(4) **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 one (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)

(5) **Residential use:** No residential use is permitted on the *COVERED LAND*.

#### **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 (1) (g).

(b) Subdivide the *COVERED LAND*.

(c) Separate and sell the *agricultural 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 (1) (b) to (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 (1) (g).

(f) Petition the county and town boards to rezone the property to another zoning district.

(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 under paragraph I (2). 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) Any or all 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 any *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.
- (3) The *GRANTORS* and *HOLDERS* acknowledge and agree that the *COVERED LAND* is in agricultural and open space use as of the recording of this *EASEMENT AGREEMENT*. *GRANTORS* and *HOLDERS* further acknowledge and agree that the condition and use of the *COVERED LAND* is documented in various publicly available records and maps, including the 2010 Dane County Land Use Inventory and 2014 Dane County Orthophotography.

**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 and recorded with the county Register of Deeds in the county where the *COVERED LAND* is located.

**O. TERMINATING THE EASEMENT**

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

- (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.

ACCEPTANCE OF EASEMENT BY COOPERATING ENTITY

Scott McDonell as Clerk of County of Dane  
(Print Name) (Title) (Cooperating Entity)

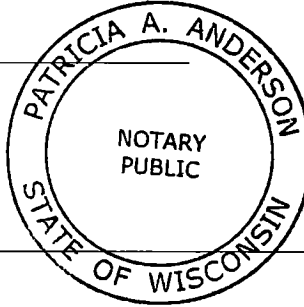
does hereby accept the EASEMENT described herein.

By: [Signature] (Signature of Authorized Representative)  
Scott McDonell Clerk (Print Name, Title)

State of Wisconsin )  
County of Dane ) ss

This instrument was acknowledged before me on the 22nd day of June 2020, by Scott McDonell  
as County Clerk of County of Dane (Name)  
(Title) Patricia A. Anderson (Cooperating Entity)

[Signature] (Signature of Notary)  
Patricia A. Anderson (Print Name)



Notary Public, State of Wisconsin  
My commission expires (is permanent) 10-4-2023

ACCEPTANCE OF EASEMENT BY COOPERATING ENTITY

Kim Banigan as Clerk of Town of Cottage Grove  
(Print Name) (Title) (Cooperating Entity)

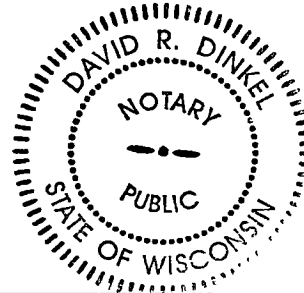
does hereby accept the EASEMENT described herein:

By: [Signature] (Signature of Authorized Representative)  
Kim Banigan, Clerk (Print Name, Title)

State of Wisconsin )  
County of DANE ) ss

This instrument was acknowledged before me on the 7th day of July 2020, by Kim Banigan  
as Clerk of Town of Cottage Grove (Name)  
(Title) David R. Dinkel (Cooperating Entity)

[Signature] (Signature of Notary)  
David R. Dinkel (Print Name)



Notary Public, State of WISCONSIN  
My commission expires (is permanent) 12/5/2021

GRANT OF EASEMENT BY LANDOWNERS

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

Duane L. Skaar and Dorothy J. Skaar Joint Revocable Living Trust

Handwritten signature of Duane L. Skaar, date 7/7/20. Signature and Date lines.

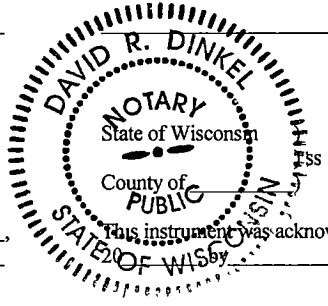
Duane L. Skaar, Trustee

Handwritten signature of Dorothy J. Skaar, date 7/7/20. Signature and Date lines.

Dorothy J. Skaar, Trustee. Print Name lines.

State of Wisconsin )
County of Dane ) ss

This instrument was acknowledged before me on the 7th day of June, 2020, by Duane L Skaar and Dorothy L Skaar



This instrument was acknowledged before me on the \_\_\_ day of \_\_\_, 2020, by \_\_\_

Signature of Notary: David R. Dinkel. Print Name: David R. Dinkel

Signature of Notary and Print Name lines.

Notary Public, State of Wisconsin. My commission expires (is permanent) 12/5/2021

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

GRANT OF EASEMENT BY COOPERATING ENTITY (IF ANY)

Kim Banigan as Clerk of Town of Cottage Grove does hereby accept the EASEMENT described herein

By. Signature of Authorized Representative. Print Name, Title

State of Wisconsin )
County of \_\_\_\_\_ ) ss

This instrument was acknowledged before me on the \_\_\_ day of June, 2020, by \_\_\_ as \_\_\_ of \_\_\_

Signature of Notary. Print Name

Notary Public, State of Wisconsin. My commission expires (is permanent) \_\_\_\_\_



**ATTACHMENTS**

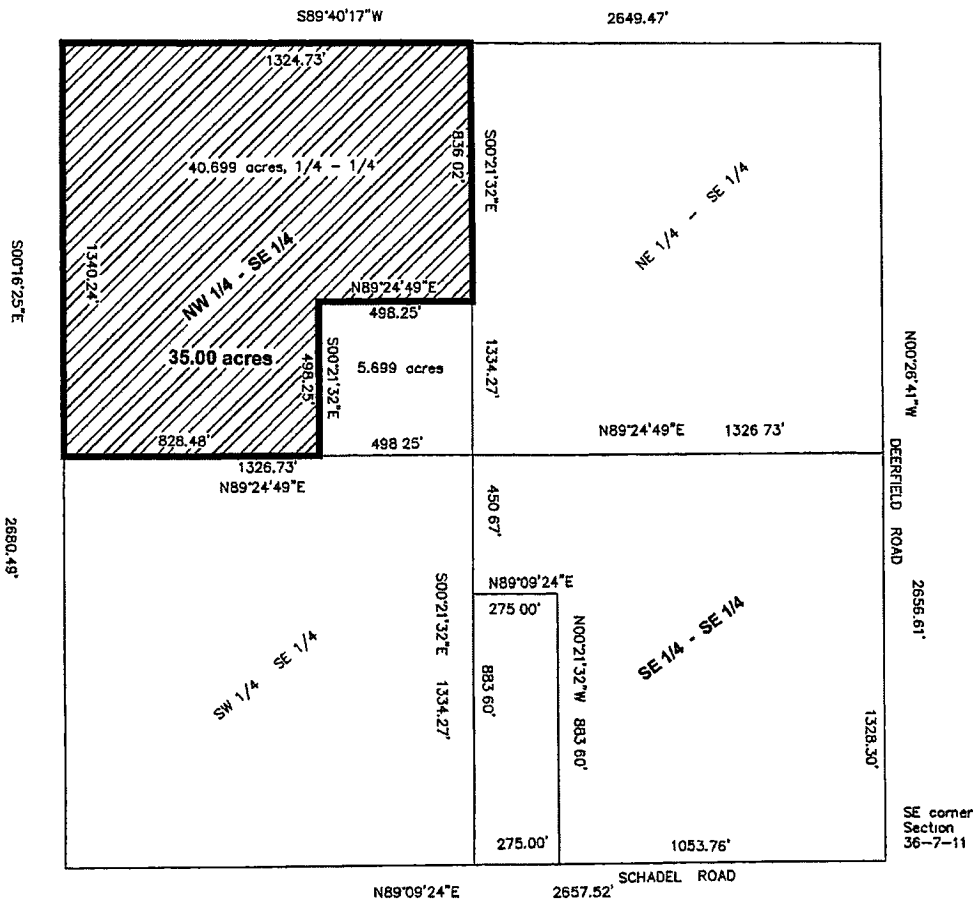
**Exhibit A. LEGAL DESCRIPTION OF THE COVERED LAND:**

SENDING UNIT: Duane L. Skaar and Dorothy J. Skaar Joint Revocable Living Trust is the present owner.  
 (Parcel Number 018/0711-364-8500-3)

Part of the NW ¼ of the SE ¼ of Section 36, Town 7 North, Range 11 East, Town of Cottage Grove, Dane County, Wisconsin, described as follows:

Beginning at the Northwest corner of the NW ¼ of the SE ¼; thence N89°40'17"E, 1324.73 feet to the Northeast corner of said ¼ - ¼; thence S00°21'32"E along the East line of said ¼ - ¼, 836.02 feet; thence S89°24'49"W, 498.25 feet; thence S00°21'32"E, 498.25 feet to the South line of said ¼ - ¼; thence S89°24'49"W, 828.48 feet to the Southwest corner of said ¼ - ¼; thence N00°16'25"W, 1340.24 feet to the point of beginning. Containing 35.00 acres.

**EXHIBIT B**



**Section 36, Township 7 North, Range 11 East, Town of Cottage Grove, Dane County, Wisconsin**