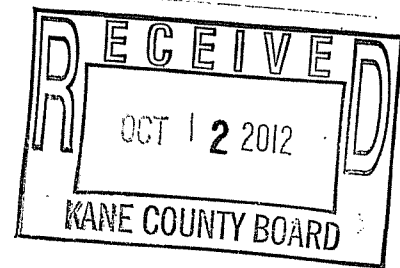


County of Kane  
Office of County Board  
Kane County Government Center



Karen McConnaughay  
Chairman  
630-232-5930



719 Batavia Avenue  
Geneva, Illinois 60134  
Fax 630-232-9188

**DOCUMENT VET SHEET**

for  
Karen McConnaughay  
Chairman, Kane County Board

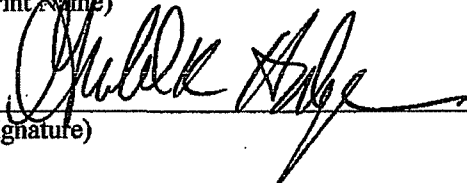
Name of Document: DEED OF AGRICULTURAL CONSERVATION EASEMENT BY AND  
BETWEEN PERCY MEREDITH AND CURTIS MEREDITH AS CO-  
EXECUTORS OF THE ESTATE OF ROBERT J. MEREDITH DECEASED  
AND THE COUNTY OF KANE AND UNITED STATES OF AMERICA

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

Date Submitted: OCTOBER 12, 2012

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

GERALD K. HODGE  
(Print Name)

  
(Signature)

10-12-12  
(Date)

Post on Web:

Yes \_\_\_\_\_

No X

Atty Initials GKA

Comments:

SIGNATURE & NOTARY

ASAP

Chairman Signed:

Yes ✓

No \_\_\_\_\_

Date:

OCTOBER 16, 2012

Document Returned To:

JANICE HILL

630.232.

3483

## DEED OF AGRICULTURAL CONSERVATION EASEMENT

THIS DEED OF AGRICULTURAL CONSERVATION EASEMENT (the "Easement") granted this \_\_\_\_ day of October, 2012, by **PERCY MEREDITH and CURTIS MEREDITH, as the co-executors of the Estate of ROBERT J. MEREDITH, deceased** (the "Grantor"), to the **COUNTY OF KANE**, a body politic, with its principal office located at 719 S. Batavia Avenue, Geneva, IL 60134 (the "Grantee"), and to the **UNITED STATES OF AMERICA** ("United States") acting by and through the United States Department of Agriculture, Natural Resources Conservation Service ("NRCS"), acting on behalf of the Commodity Credit Corporation, as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space.

### WITNESSETH:

WHEREAS, Grantor is the owner of certain agricultural real property in Kaneville Township, County of Kane, Illinois, comprising 160.93 acres, more or less, as more particularly described in Exhibit A attached hereto and incorporated herein, and involving property identified in whole or in part by parcel identification numbers: 10-32-300-004 and 10-32-300-009, but excluding therefrom any existing public roadway (the "Property"); and

WHEREAS, Exhibit B consists of a Plat of Agricultural Conservation Easement of the Property prepared by Shawn Van Kampen and dated September 29, 2010 and revised on August 25, 2011, a copy of which is attached hereto and incorporated herein; and

WHEREAS, Grantee is a "qualified organization" as such term is defined in Section 170 (h)(3) of the Internal Revenue Code, as amended, (the "Code") and is qualified to hold conservation easements under the laws of the State of Illinois; and

WHEREAS, Grantor wishes to convey to Grantee, for agricultural conservation purposes, a perpetual restriction on the use which may be made of the Property; and

WHEREAS, the Property consists primarily of productive agricultural land and the primary purpose of this Easement is to protect the agricultural soils, agricultural viability, and agricultural productivity of the Property in perpetuity; and

WHEREAS, the grant of this Easement will also serve the "conservation purpose", as such term is defined in Section 170(h)(4)(A) of the Code; and

WHEREAS, County of Kane (also sometimes referred to as "Kane County") has established the Kane County Agricultural Conservation Easement and Farmland Protection Program pursuant to Ordinance No. 01-67 adopted April 10, 2001 in order to maintain and preserve the natural beauty of Kane County and to acquire conservation easements imposing limitations on the subject lands for the purpose of protecting viable farm operations and farmland to maintain the rural character of the County of Kane, permanently preserving scenic vistas and environmentally significant areas, including wetlands, lakes, streams and wood lots, creating and preserving "buffer zones" around significant environmental areas and agricultural areas, protecting Kane County from encroachment of neighboring cities and villages, restricting land divisions, retaining or protecting natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, and preserving the historical, architectural, archeological or cultural aspects of real property in Kane County; and

WHEREAS, the current use of the Property for agricultural production and its current improvements are consistent with the foregoing conservation purposes, and the agricultural, open space, scenic, natural habitat, and historic resources of the Property are collectively referred to herein as the "Conservation Values" of the Property; and

WHEREAS, Grantor intends that the agricultural and other Conservation Values of the Property be preserved and maintained, and Grantor intends to convey to Grantee hereby the right to preserve and protect the agricultural and other Conservation Values of the Property in perpetuity and to conduct agricultural operations on the Property in a manner consistent with a conservation plan prepared in consultation with the Natural Resources Conservation Service ("NRCS").

WHEREAS, 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 USC 3838H and 3838Hi)." Under the authority of the Farm and Ranch Lands Protection Program, the United States has provided or will be providing TWO HUNDRED FORTY-FIVE THOUSAND THREE HUNDRED FIVE AND 60/100 Dollars (\$245,305.60) (thirty percent (30%) of total cost of easement) to the Grantee for the acquisition of this conservation easement, entitling the United States to the rights identified herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, terms, conditions and restrictions contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **1. Statement of Purpose**

The primary purpose of this Easement is to protect the agricultural soils, agricultural viability, and agricultural productivity of the Property in perpetuity by limiting nonagricultural uses of the Protected Property. No activity which shall significantly impair the actual or potential use of the Property for agricultural production shall be permitted. To the extent that the preservation and protection of the Conservation Values of the Property referenced above is consistent with the primary purpose of protecting the agricultural soils, agricultural viability, and agricultural productivity of the Property in perpetuity, it is also the purpose of this

Easement to protect those Conservation Values of the Property, and to such extent, no activity which shall significantly impair those Conservation Values of the Property shall be permitted.

## **2. Rights and Responsibilities Retained by Grantor**

Notwithstanding any provisions of this Easement to the contrary, Grantor reserves all customary rights and privileges of ownership, including the rights to sell, lease, and devise the Property, as well as any other rights consistent with the Statement of Purpose set forth in Paragraph 1 above and not specifically prohibited or limited by this Easement. Unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any act of God or other event over which Grantor had no control. Nothing in this Easement relieves Grantor of any obligation with respect to the Property or restriction on the use of the Property imposed by law.

## **3. Right to Use Property for Customary Agricultural Purposes**

Grantor retains the right to use the Property, subject to the following Conservation Plan referenced in Paragraph 9 herein, for customary agricultural purposes, or to permit others to use the Property for customary agricultural purposes, such as, but not limited to, production, cultivation and growing of soil crops and the raising of livestock (including poultry, bees, fish and horses), and if one portable produce stand is erected, the products sold must be primarily produced on the Property.

Further, Concentrated Animal Feeding Operations ("CAFO") are so designated when there are more than the following and are expressly prohibited:

<u>Animal Type</u>	<u>Number of Animals Equal to 500 Animal Units</u>
Beef Cattle and Heifers	500
Veal Cattle	500
Dairy Cattle (mature milked or dry)	500
Swine (>55 lb)	1,250
Immature Swine (<55 lb)	5,000
Turkeys	27,500
Chickens	50,000
Horses	250
Sheep or lambs	5,000
Ducks	2,500

All other uses, including nurseries, sod farms, greenhouses, and residences are expressly prohibited, except as otherwise permitted in accordance with Paragraph 6 below. Finally, no use shall be made of the Property, and no activity thereon shall be permitted which, in the reasonable opinion of the Grantee, is or is likely to become inconsistent with the purposes of this Easement as stated above.

## **4. Public Access**

No public access is conveyed with this conservation easement.

## **5. Prohibition of Construction of Buildings and Other Improvements; Signage Limitations; Recreation and Education Activities Limitation**

Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited within the area of the Easement (the "Easement Area"). No residential, commercial, industrial or mining activity shall be permitted, and no building, appurtenant facility or improvement shall be constructed, created, installed, erected or moved onto the Property. Notwithstanding the foregoing, existing fences may be repaired and replaced and new fences may be built on the Property, for purposes of reasonable and customary management of livestock and wildlife. No portion of the Property shall be used in any manner to increase the density of development of any such lands not subject to this Easement, whether through the common ownership of such parcels, transfer of development rights or by any other means. It is the intent of this paragraph to require that the entire Property remain as a single, indivisible tract managed for the purposes of this Easement.

Further, the placement of advertising signs or billboards on the Property is expressly prohibited. The following types of signs may be placed subject to the prior approval of the Grantee: signs advertising the sale of the Property, signs advertising the availability for public sale of agricultural products grown on the Property, signs informing the public of a permitted home occupation, and signs which direct attention to and identify different varieties of seeds and plants used in the production of food for animal and human use or identifies special conservation practices, provided such signs must conform to Grantee's established setback provisions and the placement, number, size and design of any such signs do not significantly diminish the scenic character of the Property.

Further, recreational and educational activities on the Property shall be restricted to *de minimus* recreational and educational activity that is consistent with the purposes of this Easement, that does not adversely impact the soils and/or agricultural operations on the Property and that is not carried on in a commercial manner. No improvements shall be constructed to facilitate such activity, expressly including herein the prohibition on construction of athletic fields, golf courses or ranges, commercial airstrips or helicopter pads, motocross biking or any other such improvement or activity inconsistent with current or future agricultural production.

## **6. Maintenance and Improvements of Water Sources**

Grantor retains and reserves the right to use, maintain, establish, construct, and improve surface swales and ditches, subsurface drain tiles and storm sewers, streams, lakes, ponds and similar drainage features and facilities within the Property for the uses permitted by this Easement, provided that Grantor does not materially impair the natural course of the surface water drainage or runoff flowing over the Property, nor the established flow of water in drain tiles or storm sewers through the property.

Grantor may alter the natural flow of water over the Property, and the established flow of water in drain tiles or storm sewers through the Property, in order to improve drainage of agricultural soils, reduce soil erosion, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the conservation purposes of this Easement and is carried out in accordance with statutory and permitting requirements of all local, state and federal jurisdictions. The construction of ponds is prohibited, except for livestock watering and irrigation purposes. To the greatest extent practical, ponds will not be located on prime, unique, or important soils. Approval by the Grantee is required prior to any construction.

## **7. Water Rights**

Grantor retains and reserves the right to use any appurtenant water rights sufficient to maintain the current agricultural use of the Property. Grantor shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself without the approval of Grantee.

## **8. Subdivision; Installation of Utilities**

The Property is currently comprised of one legal parcel. Subdivision of the Property, recording of a subdivision plan, partition of the Property, or any other attempt to divide the Property into two or more legal parcels is prohibited.

Installation of new utilities is prohibited, except that the Grantor may install utilities necessary for permitted uses of the Property as long as such installation is not inconsistent with purposes of this Easement and is done in such a manner as to minimize to the greatest extent possible impact on soils. Existing utilities for use on the Property may be replaced or repaired at their current location.

## **9. Conservation Plan and Conservation Practices**

All agricultural operations on the Property shall be conducted in a manner consistent with the purposes of this Easement and the Property shall be managed in a manner consistent with generally accepted "Best Management Practices," as those practices may be identified from time to time by the State of Illinois Department of Agriculture, the Kane-DuPage Soil and Water Conservation District, and the United States Department of Agricultural Natural Resource Conservation Service, and in a manner not wasteful of soil resources or detrimental to water quality or conservation. All agricultural operations shall be conducted in accordance with applicable law.

Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts, a perpetual Agricultural Conservation Easement on the Property, which Easement is an immediately vested interest in real property of the nature and character described herein. Grantor will neither perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

As required by Section 1238I of the Food Security Act of 1985, as amended, the Grantor, their heirs, successors, or assigns shall conduct all agricultural operations on the Property in a manner consistent with a conservation plan prepared in consultation with NRCS and approved by the 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 the date hereof. However, the Grantor 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 Property, with advance notice to the Grantor, in order to monitor compliance with the conservation plan. NRCS shall have the right to enter upon the Property annually to monitor compliance with the conservation plan.

In the event of noncompliance with the conservation plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve (12) months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform Grantee of the Grantor's noncompliance. The 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 Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights 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 Grantor to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farmland Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

#### **10. Application of Waste Materials**

The land application, storage and placement on the Property of domestic septic effluent sewage sludge or liquid generated from such sources for agricultural purposes may be undertaken only if in accordance with applicable law if any, or if no state or local regulations regarding this practice exists, then only with the prior permission of Grantee, and only if a qualified professional environmental consultant certifies in writing that the application of said materials will not substantially diminish the viability and productivity of the agricultural soils on the Property.

#### **11. Removal of Existing Trees**

The cutting or removal of trees, including clearing land for cultivation or use of livestock may be undertaken only if consistent with generally accepted "Best Management Practices," as those practices may be identified from time to time by the State of Illinois Department of Agriculture and other appropriate governmental or educational institutions, and in a manner not wasteful of soil resources or detrimental to water quality or conservation. Trees may be removed, cut and otherwise managed to control insects and disease, to prevent personal injury and property damage, and for construction of permitted improvements and fences on the Property.

#### **12. Mining and On-Site Extractive Activity**

Exploration for, or development and extraction of, minerals and hydrocarbons on or from the Property by any method is prohibited, except as otherwise provided herein. Grantor may remove sand and gravel from the Property for use on the Property, provided said removal is: (a) limited and localized in impact, affecting no more than one acres of the Property in the aggregate; (b) not irretrievably destructive of significant conservation interests; (c) reasonably necessary for, and incidental to, carrying out the agricultural production uses permitted on the Property by this Easement; and (d) the area is returned to its natural topography, not to exceed 12 months from the start date of the activity.

#### **13. Paving and Road Construction**

Other than roads indicated on Exhibit B, if any, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, without the permission of Grantee. Construction and maintenance of unpaved farm roads that may be reasonably necessary and incidental to carrying out the agricultural operations of the Protected Property and uses permitted on the Property by this

Easement are permitted provided they are to the greatest extent practicable, not located on prime, unique or important soils.

#### **14. Dumping and Trash**

No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, waste, or radioactive or hazardous waste, shall be placed, stored, dumped, buried or permitted to remain on the Property, except that the storage of agricultural products for use on the Property and by-products generated on the Property is permitted hereby, in accordance with all applicable laws and regulations.

#### **15. Ongoing Responsibilities of Grantor and Grantee**

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any obligations of Grantor as owner of the Property, including, but not limited to, the following:

(a) Taxes – Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same.

(b) Upkeep and Maintenance – Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

(c) Liability and Indemnification – Grantor shall indemnify Grantee and the United States against, and hold Grantee and the United States harmless from, any and all loss, cost, claim, liability, or expense (including reasonable attorneys' fees) arising from or with respect to the Property, unless due to the gross negligence or willful misconduct of Grantee. Grantor shall keep the Property insured with comprehensive general liability insurance against claims for personal injury, death and property damage, cause Grantee to be named as an additional insured party on all such insurance policies, and provide evidence of such insurance to Grantee promptly upon request.

#### **16. Extinguishment of Development Rights**

Except as otherwise reserved to Grantor in this Easement, all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

#### **17. Baseline Documentation**

The Grantor and Grantee agree that the natural characteristics, ecological features, physical and man-made conditions of the Property at the time of this grant.

The Conservation Values of the Property and its current use and state of improvement are described in the Staff Report dated March 30, 2007 (the "Baseline Documentation Report") and identified as Exhibit C, a copy of which is attached hereto and incorporated herein, prepared by the Kane County Development



Department and includes the Grantor's application to participate in Grantee's Farmland Protection Program, reports, maps, aerial photos of the Property, other documentation and related information. Grantor and Grantee have copies of the Baseline Documentation Report, and acknowledge that the Baseline Documentation Report is accurate as of the date of this Easement. The Baseline Documentation Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

## **18. Enforcement**

Grantee shall have the right to enter upon the Property upon reasonable advance notice to Grantor for the purpose of inspecting compliance with the terms of this Easement. If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation.

Notwithstanding the foregoing, where Grantee in Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the Conservation Values of the Property, Grantee may bring an action to enjoin the violation, *ex parte* if necessary, through temporary or permanent injunction.

In addition to injunctive relief, Grantee shall be entitled to seek the following remedies in the event of a violation:

(a) Money damages, including damages for the loss of the Conservation Values protected by this Easement; and

(b) restoration of the Property to its condition existing prior to such violation, including the removal of offending structures.

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in preventing, stopping and correcting the violation, including, but not limited to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

## **19. Transfer of Easement**

Upon prior written consent of the United States, Grantee shall have the right to transfer this Easement to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under Section 170(h) of the Code and provided the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. If Grantee ever ceases to exist or no longer qualifies under Section 170(h) of the Code, or applicable state law, a court of competent jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibilities imposed by this Easement.

## **20. Transfer of Property**

Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which it transfers or divests itself of any interest, including, without limitation, a leasehold interest, in all or a portion of the Property. Grantor shall notify Grantee in writing at least (30) days before conveying the Property, or any part thereof or interest therein, to any third party. Failure of Grantor to do so shall not impair the validity of this Easement or limit its enforceability in any way.

## **21. Amendment of Easement**

This Easement may be amended only if in the sole and exclusive judgment of the Grantee such amendment furthers or is not inconsistent with the purposes of this Conservation Easement. Any such amendment must be mutually agreed upon by the Grantee and Grantor, signed and duly recorded by the parties and comply with all applicable laws and regulations. Grantee must provide to NRCS timely notice in written of the amendment. NRCS can also require that the Grantee and Grantor obtain NRCS approval prior to recording any amendment to the deed.

## **22. Extinguishment**

This Easement may be terminated or extinguished by a court of competent jurisdiction upon agreement to terminate made by Grantor, Grantee and the United States and after a finding by the court that the conditions or circumstances on or surrounding the Property have changed to such a degree that it has become impossible to fulfill the conservation purpose of the easement. If this Easement is extinguished by judicial proceeding, subject to Paragraph 24 hereof, Grantee shall be entitled to a portion of the gross proceeds from any subsequent sale or other disposition of the Property, calculated in accordance with Paragraph 23 below. Grantee shall use its portion of said gross proceeds in a manner consistent with the Statement of Purpose of this Easement. Due to the Federal interest in this Conservation Easement, the United States must be a party to any such proceedings.

## **23. Proceeds**

Subject to Paragraph 24 hereof, the grant of this Easement gives rise to a property right, immediately vested in Grantee, which, for purposes of calculating proceeds from a sale or other disposition of the Property as contemplated under Paragraph 22 above, shall have a value equal to a percentage (the "Proportionate Share") of the value of the Property unencumbered by this Easement. The Proportionate Share shall be determined by dividing the value of this Easement, EIGHT HUNDRED FOUR THOUSAND SIX HUNDRED FIFTY AND NO/100 DOLLARS (\$804,650.00), calculated as of the date hereof, by the unencumbered value of the Property, (\$1,448,370.00 or \$9,000.00 per acre)), also calculated as of the date hereof, which is equal to Fifty-five and 56/100ths percent (55.56%). The Proportionate Share shall remain constant.

Unless state law provides otherwise, if this Easement is terminated and the Property is subsequently sold, exchanged, or taken by exercise of the power of eminent domain then, as required by Treas. Reg. Sec. 1.270A-14(g)(6), Grantee shall be entitled to a portion of the gross proceeds from such sale, exchange or condemnation equal to the Proportionate Share

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

## **24. Procedure in the Event of Taking by Eminent Domain/Condemnation**

If this Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law and Grantor and Grantee, upon receipt of notice of any such exercise, agree to immediately notify United States. **For all purposes, it is hereby acknowledged that the consent of the U.S. Federal government shall be required to acquire an interest in the Property by eminent domain/condemnation proceeding. Any party seeking to acquire an interest in the Property by eminent domain/condemnation shall give United States advance notification of its intent to so acquire the interest, the extent and nature of the interest being acquired and a request for approval of such acquisition and the terms, limitation and subordination of such interest to the rights of the United States under this Easement, expressly including the contingent right specified under Paragraph 38 hereof. If the U.S. federal government consent to the acquisition by eminent domain/condemnation, then the proceeds from the action shall be due and owing first to the USDA as provided below.**

Proceeds for Extinguished or Condemnation. If the Easement is extinguished, terminated or condemned, in whole or in part, then Grantee and the USDA are entitled to their proportional share of seventy percent (70%) and thirty percent (30%), respectively, of gross sale proceeds or condemnation award representing an amount equal to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Property as these values are determined on the date of this Deed. The proportional shares of the Grantee and the USDA are seventy percent (70%) and thirty percent (30%), respectively, representing the proportion each party contributed to the purchase price of the Easement.

## **25. Interpretation**

This Easement shall be interpreted under the laws of the State of Illinois. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to effect the Statement of Purpose of this Easement. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the Statement of Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

## **26. Successors**

Every provision of this Easement that applies to Grantor or Grantee shall be binding on and inure to the benefit of the parties and their respective agents, heirs, executors, administrators, assigns, and other successors in interest, and shall continue as a servitude running in perpetuity with the Property.

## **27. Severability**

Invalidity of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

## **28. Notices**

Any notices required by this Easement shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, to Grantor and Grantee respectively at the following addresses, or to such other addresses as the parties may designate by notice:

To Grantor: Percy Meredith, Co-executor  
44W249 Rowe Road  
Elburn, Illinois 60119

Curtis Meredith, Co-executor  
1S105 Donny Hill Road  
Elburn, Illinois 60119

With Copy to: Attorney Ronald Klein  
Klein, Stoddard, Buck,  
Waller & Lewis, P.C.  
2045 Aberdeen Court  
Sycamore, Illinois 60178  
Facsimile: 815/748-4030

To Grantee: County of Kane  
Karen McConnaughay, Chairman  
719 S. Batavia Avenue  
Geneva, IL 60134

With Copies to: Attorney Gerald K Hodge  
Kinnally, Flaherty, Krentz & Loran, P.C.  
2114 Deerpath Road  
Aurora, IL 60506  
Facsimile: 630/907-0913

and Attorney M. Katherine Moran  
Kane County States Attorney's Office  
100 S. Third Street, 4<sup>th</sup> Floor  
Geneva, IL 60134

and Ivan Dozier  
USDA National Resources Conservation Service  
2118 W. Park Court  
Champaign, IL 61821

## **29. Grantor's Title Warranty**

Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances except those set forth in Exhibit D which have agreed to subordinate to the interest of the Grantee hereunder,, and hereby promises to defend Grantee against all claims that may be made against it. Grantor represents and warrants that it has the right to convey this Easement. All holders of liens of other encumbrances arising from borrowing have agreed to subordinate their interests in the Property to this Easement, as indicated in Exhibit E and in accordance with Paragraph 37 below.

**General Indemnifications:** "Grantor must indemnify and hold harmless Grantees, their employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and cost of actions, sanctions asserted by or on behalf of any person or government 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) to which Grantee may be subject or incur

relating to the Protected Property, which may arise from, but are not limited to Grantor's negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws".

### **30. Subsequent Liens on Property**

No provisions of this Easement shall be construed as impairing the ability of Grantor to use this Property as collateral for future indebtedness. Any mortgage or lien arising after the date of this Conservation Easement shall be subordinated to the terms of this Easement.

### **31. Subsequent Encumbrances**

The grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Property or otherwise diminish or impair the Statement of Purpose of this Easement is prohibited, except with the permission of Grantee.

### **32. Grantor's Environmental Warranty**

**"Environmental Warranty.** Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any government authority of any violation or alleged violation of, noncompliance or alleged noncompliance with or any liability under any Environmental Law relating to the operation or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials; as such substances and waste are defined by applicable Federal and State law.

Moreover, Grantor hereby promises to hold harmless and indemnify the United States and the Grantee 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 Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorization provided by the Grantee or the United States to the Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that the Grantee is responsible for any Hazardous Materials contributed after this date to the Protected Property by the Grantee.

The terms "Environmental Law" and Environmental Laws" mean 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 communications, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, and building and land use as may now or at any time hereafter be in effect.

The term "Hazardous Materials" means any petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous waste, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment."

Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or management control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) or any corresponding state and local statute or ordinance.

If at any time after the effective date of this Easement there occurs a release in, on, or about the property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps that may be required under federal, state, or local law necessary to assure its containment and remediation, including any cleanup.

### **33. Perpetuation of Easement**

Except as expressly otherwise provided herein, this Easement shall be of perpetual duration, and no merger of title, estate or interest shall be deemed effective by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

### **34. Waiver**

No waiver by Grantee of any default, or breach hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default or breach hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No waiver shall be binding unless executed in writing by the party making the waiver.

### **35. Subordination of Mortgages**

Grantor and Grantee agree that all mortgages and rights in the Property of all mortgagees and holders of other liens and encumbrances (collectively "lienholders") are subject and subordinate at all times to the rights of the Grantee to enforce the purposes of this Easement. Grantor represents and warrants that it has provided a copy of this instrument to all lienholders as of the date hereof, and the agreement of each lienholder to subordinate its mortgage to the Easement is indicated in Exhibit E attached hereto and incorporated herein.

### **36. Entire Agreement**

This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

### **37. Acceptance**

The County of Kane, by a resolution of its County Board adopted at a duly convened meeting on May 4, 2009, hereby accepts the Grantor's interest in this Deed of Agricultural Conservation Easement.

### 38. Contingent Right

**Rights of the United States:** "Right of Enforcement. Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary), on behalf of the United States, will exercise these rights under the following circumstances: In the event that the Grantee 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,"

Further, in the event that the Grantor attempts to terminate, transfer or otherwise divest itself of rights, title or interest in this Easement or extinguish the Easement without prior consent of the Secretary and payment of consideration as provided herein, then at the option of the Secretary, all right, title or interest in this Easement shall become vested in the United States of America.

[SIGNATURE PAGES FOLLOW]

TO HAVE AND TO HOLD this Deed of Agricultural Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

**GRANTOR:**

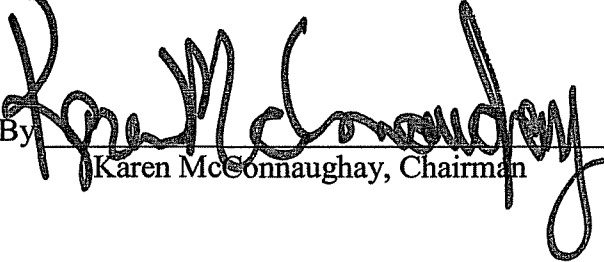
ESTATE OF ROBERT J. MEREDITH,  
DECEASED

By: \_\_\_\_\_  
Percy Meredith, Co-executor

By: \_\_\_\_\_  
Curtis Meredith, Co-executor

**GRANTEE:**

COUNTY OF KANE

By:  \_\_\_\_\_  
Karen McConaughay, Chairman

Witness: \_\_\_\_\_

\_\_\_\_\_  
John Cunningham



The foregoing Deed of Agricultural Conservation Easement is approved this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

NATURAL RESOURCES CONSERVATION SERVICE

By: \_\_\_\_\_  
Ivan Dozier, State Conservationist

**NOTE:** Each signature on the foregoing is notarized by a notary public on a separate notary page attached hereto, which notary provisions are expressly incorporated herein by this reference.

**THIS DOCUMENT DRAFTED  
BY AND RETURN TO:**

Attorney Gerald K. Hodge  
2114 Deerpath Road  
Aurora, Illinois 60506

STATE OF ILLINOIS        )  
                                  ) SS  
COUNTY OF KANE        )

I the undersigned, a Notary Public in, and for said County and State aforesaid, DO HEREBY CERTIFY that PERCY MEREDITH, personally known to me to be a co-executor of the Estate of Robert J. Meredith, deceased, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes set forth.

GIVEN under my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_

STATE OF ILLINOIS        )  
                                  ) SS  
COUNTY OF KANE        )

I the undersigned, a Notary Public in, and for said County and State aforesaid, DO HEREBY CERTIFY that CURTIS MEREDITH, personally known to me to be a co-executor of the Estate of Robert J. Meredith, deceased, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes set forth.

GIVEN under my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_

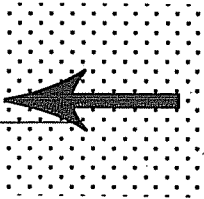
STATE OF ILLINOIS       )  
                                  ) SS  
COUNTY OF KANE       )

I the undersigned, a Notary Public in, and for said County and State aforesaid, DO HEREBY CERTIFY that **KAREN MCCONNAUGHAY**, personally known to me to be Chairman of the Kane County Board, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes set forth.

GIVEN under my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_



STATE OF ILLINOIS        )  
                                      ) SS  
COUNTY OF KANE        )

I the undersigned, a Notary Public in, and for said County and State aforesaid, DO HEREBY CERTIFY that **JOHN CUNNINGHAM**, personally known to me to be the Clerk of Kane County, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes set forth.

GIVEN under my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Commission Expires: \_\_\_\_\_  
Notary Public \_\_\_\_\_

STATE OF )  
 ) SS  
COUNTY OF )

I the undersigned, a Notary Public in, and for said County and State aforesaid, DO HEREBY CERTIFY that **IVAN DOZIER**, personally known to me to be the State Conservationist of the NATURAL RESOURCES CONSERVATION SERVICE, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes set forth.

GIVEN under my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_

## **EXHIBIT A – LEGAL DESCRIPTION**

THE SOUTHWEST QUARTER AND THE SOUTH 13.913 RODS (229.56 FEET) OF THE EAST 115 RODS (1897.5 FEET) OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 39 NORTH, RANGE 6 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF KANEVILLE, KANE COUNTY, ILLINOIS, EXCEPTING THEREFROM THE FOLLOWING: THE SOUTH 245 FEET OF THE EAST 640 FEET OF THE NORTHWEST QUARTER AND THE NORTH 170.0 FEET OF THE EAST 640.0 FEET OF THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 39 NORTH, RANGE 6 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF KANEVILLE, KANE COUNTY, ILLINOIS (EXCEPTING THEREFROM THAT PORTION OF SAID SOUTHWEST QUARTER LYING WITH IN THE RIGHT-OF-WAY OF SWAN ROAD AND LASHER ROAD).

PIN(s):        10-32-300-004 and 10-32-300-009

EXHIBIT B – PLAT OF AGRICULTURAL CONSERVATION EASEMENT

EXHIBIT C – STAFF REPORT

Kane County Farmland Protection Program  
Staff Report

TO: Members of the Farmland Protection Commission

FROM: Janice Hill, Executive Planner  
Kane County Development Department

RE: Farmland Protection Commission

Case Number: FPP-09-02

Property Name: The Robert Meredith Farm

Property Owners: The Robert Meredith estate

Location of Property: Kaneville Township

Parcel Numbers: 10-32-100-009  
10-32-300-004

Total Acres: approximately 164 acres

Existing Land Use: Agriculture

Zoning: F - Farming

2030 Land Use Designation: Agriculture

Surrounding Land Use: Agriculture

Surrounding Zoning: F - Farming

Surrounding Land Use Designation: Agriculture

Staff Analysis:



The subject property is located in Kaneville Township. The property is not within the jurisdiction of any municipality or Facility Planning Area of any sanitary district. The property is within the county's Agricultural Corridor as the land use designated by the 2030 Land Resource Management Plan.

This property is a candidate for the Farmland Protection Program in that it is in the county's agricultural corridor and within the same township as other farms in agricultural easement.

Attachments:

1. Application

Report dated: March 30, 2007

## EXHIBIT D – TITLE

EXHIBIT E – SUBORDINATION OF LIENS

CONSENT AND SUBORDINATION  
TO  
DEED OF AGRICULTURAL CONSERVATION EASEMENT

The undersigned mortgagee, being the holder of mortgage lien interests in and to the real estate which is the subject of the Deed of Agricultural Conservation Easement to which this Consent and Subordination is attached, does hereby consent to the granting of the Agricultural Conservation Easement by the owners of said real estate and does hereby further acknowledge and agree that its interests in and to the real estate shall be subordinate and inferior to the rights of the County of Kane and the Natural Resources Conservation Services under the Deed of Agricultural Conservation Easement. By consenting to the Agricultural Conservation Easement and the subordination of its mortgage interests to same, the undersigned does not waive any rights of enforcement under the mortgages, the indebtedness secured thereby or any other collateral interest secured for its benefit, rather this acknowledgment is limited to the binding imposition of the terms of the Agricultural Conservation Easement upon the real estate and upon any successor in interest to such real estate by or through the undersigned mortgagee.

[BANK NAME]

Dated: \_\_\_\_\_

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

Its \_\_\_\_\_

**NOT APPLICABLE – NO MORTGAGE**