

AGRICULTURAL CONSERVATION EASEMENT

PDR # [example]

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BY THIS AGRICULTURAL CONSERVATION EASEMENT agreement, made this _____ day of _____, 2009, **[Insert Grantor Name]**, (Grantor), whose address is **[Insert Grantor Address]**, conveys and warrants to the **MICHIGAN DEPARTMENT OF AGRICULTURE, FOR AND ON BEHALF OF THE STATE OF MICHIGAN**, (Grantee), whose address is Environmental Stewardship Division, Michigan Department of Agriculture, P. O. Box 30449, Lansing, Michigan 48909, an Agricultural Conservation Easement (Easement) on the following described premises (Property) situated in the Township of **[Insert Township]**, County of **[Insert County]**, State of Michigan:

PROPERTY DESCRIPTION:

See Exhibit "A" Attached

CONSERVATION VALUES:

WHEREAS, The Property consists of prime, productive agricultural land. The majority of the soils are classified as prime farmland and farmland of local importance by the Natural Resources Conservation Service. The primary purpose of this Easement is to protect the agricultural soils, agricultural viability, and general productive capacity of the Property in perpetuity; and

WHEREAS, Preservation of the Property will create a buffer between parcels under development pressure and adjacent farmland and will, therefore, aid in protecting that farmland; and

WHEREAS, Preservation of the Property will act as a positive demonstration project for the area and will support existing farmland preservation efforts in the community; and

WHEREAS, The specific conservation values of the Property are located in an inventory (Baseline Documentation Report, dated **[Insert Date Baseline Completed]**, on file at the office of the Grantee, incorporated herein by reference and attached as Exhibit B) of relevant features of the Property, consisting of reports, maps, photographs, and other documentation that the parties agree provides an accurate representation of the Property at the time of this grant and is intended

to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, The Grantor desires to grant an Agricultural Conservation Easement in order to preserve the conservation values of the Property as established and defined by the Baseline Documentation Report through a continuation of the land use patterns including, without limitation, those existing at the time of the grant, that do not significantly impair or interfere with those values; and

WHEREAS, The Grantee desires to acquire a development rights easement with respect to the Property; and

NOW, THEREFORE, BE IT RESOLVED, that Grantee and Grantor freely sign this Easement in order to accomplish its conservation purposes.

WITNESSETH: For and in consideration of the sum of One Dollar, (\$1.00); and the mutual covenants recited herein, and pursuant to the laws of the State of Michigan, in particular Subpart 11, Conservation and Historic Preservation Easement of Part 21 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL Section 324.2140 *et seq.*, Grantor hereby grants and conveys to Grantee a perpetual development rights easement over, under, upon, and across the easement property, subject to and upon the following terms and conditions:

PURPOSE: To perpetually preserve the Property's agricultural use, including the protection of prime, unique or important soils, by preventing any use that would significantly impair or interfere with the conservation values as established or defined by the Baseline Documentation Report.

1. **RESTRICTIONS.** The Property shall be subject to easements, and building and use restrictions of record and further subject to the following conditions:
 - (a) Grantor shall not divide or subdivide the Property into parcels less than 40 acres in size. This Easement shall continue in force for any divisions creating parcels of 40 acres or more in size. The construction of residences for new owners of any division is prohibited by this Easement. Grantor shall provide notification to Grantee of possible divisions or subdivisions via registered mail as required in 3(b).
 - (b) Commercial or industrial activity that is inconsistent with agricultural use as defined in 2(a) is prohibited on the Property. Storage, retail or wholesale marketing or processing of agricultural products is a permitted use if more than 50% of the stored, processed, or merchandised products are produced by the farm operator on the Property for at least three (3) of the immediately preceding five (5) years.
 - (c) 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 the purposes of this Easement and is done in a manner that minimizes to the greatest extent possible, impact on prime, unique, and important soils. Under no

circumstance may the topography be altered permanently. All earth movement must occur within a specific time frame, as determined by the Grantee, and topography must be returned to pre-existing conditions in accordance with the baseline documentation. Future utility easements shall be subordinate to this Easement. Prior to any activity associated with a utility easement, Grantor shall notify Grantee and obtain approval for the proposed easement from the Grantee as required in 3(c).

- (d) The construction or placement of buildings, camping accommodations, mobile homes, or any other structures is prohibited, except as noted in this subsection. Structures may be built for uses consistent with farm operations, if the total impervious surface area does not exceed two percent of the Property. Grantor shall notify Grantee and obtain approval for any construction or placement of a structure as required in 3(d). No notice is required for the construction of fences and seasonal structures such as duck or deer blinds.
 - (e) Existing roads, as identified in the baseline documentation report, may be maintained and repaired in their current state. No new roads may be constructed, except for unpaved roads necessary for agricultural operations on the Property if the impact to prime, unique, and important soils is minimized.
 - (f) Grantor shall not engage in or permit any filling, excavating, dredging, mining, removal of topsoil, sand, gravel, rock, minerals or other materials, building of roads, or changes in the topography of the land in any manner. This paragraph shall not prohibit Grantor from maintaining existing farm lanes, from utilizing topsoil, sand and gravel for the farming operation, or from making landscape alterations consistent with existing agricultural practices. Grantor shall notify Grantee and obtain approval for any land modification in excess of one (1) acre as required in 3(e). Grantee may not approve a land modification in excess of one (1) acre that is inconsistent with the preservation of the Property for agricultural uses.
 - (g) Grantor may explore for and extract natural gas and oil, upon review and approval by Grantee. Exploration and extraction activities shall be limited to one (1) acre in size for the entire Property and the impact to all soils shall be minimized. The land area shall be returned to pre-exploration and extraction conditions within one (1) year from the date of discontinuance of the exploration and extraction operation. Any future leases associated with the exploration and extraction of oil and gas shall be subordinate to the terms and conditions of this Easement. Grantor shall notify Grantee and obtain approval for any exploration and extraction activity, as required in 3(f).
 - (h) Grantor shall not dump or accumulate waste or other unsightly or offensive material on the Property. This shall not be construed to preclude typical agricultural activities, such as the disposal or use of plant and animal waste that is produced on the Property, so long as such activity is in accordance with all applicable federal, state, and local laws.
2. **PERMITTED USES.** Grantor retains all ownership and possession rights, which are not expressly restricted by this Easement. In particular, the following rights are reserved:
- (a) **Agricultural Use.** Grantor retains the right to continue agricultural use on the Property. For purposes of this Easement agricultural use means use of substantially undeveloped land devoted to the production of plants and animals of value to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including cattle for breeding and grazing, swine,

captive cervidae, equines and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. The management and harvesting of a woodlot is not considered to be an agricultural use but is a permitted activity under this Easement.

- (b) **Right to Convey.** Grantor retains the right to sell, mortgage, bequeath, assign, lease, or donate the Property. Any document of conveyance shall indicate the existence of this Easement, and incorporate within it, the terms of the Easement. Any subsequent owner or beneficiary of an interest in the Property will be bound by all obligations in the Easement. Grantor will notify Grantee of the conveyance of any interest in the Property, at least 30 days before the conveyance, by first class mail.
- (c) **Right to Maintain and Replace New Structures.** Grantor retains the right to build, add on to, maintain, renovate or replace structures consistent with paragraph 1(d), provided that the construction, repair and replacement of such new and existing buildings and impervious access roads does not exceed two percent of the total acreage of the Property. Any expansion, replacement or addition of a non-residential structure may not substantially alter the conservation values of the Property. Grantor also retains, reserves, and shall continue to enjoy and use the Property, for any and all purposes that are not inconsistent with the purposes of this Easement.
- (d) **Forestry.** Grantor retains the right to conduct forestry activities for domestic and commercial purposes. Domestic forestry includes the cutting of firewood, blowdowns, and dead and diseased trees; the removal of trees and hedge rows to improve the farming operation; and the removal of trees that pose threats to persons or property.
- (e) **Commercial Forestry.** Activities shall be in accordance with a Forest Management Plan prepared by or in consultation with a registered professional forester. The goals of such commercial timbering practices or plans shall include the preservation of the scenic characteristics of the woodlands and wetlands and the maintenance of a healthy forest, and shall assure sustainable forest productivity in a manner consistent with the purposes of this Easement. No practice or plan shall include provisions allowing clear cutting or even-aged management. For the purposes of this subparagraph, “commercial timbering” shall mean any cutting of trees for sale or use off the property other than by Grantor for Grantor’s personal, non-commercial use. Permissible activities shall not materially impair the conservation values of the Property.
- (f) **Recreational and Educational Activity.** De minimus and undeveloped recreational and educational activity is permitted only if it is consistent with the purposes of this Easement and does not adversely impact the soils and/or agricultural operations on the Property.
- (g) **Additional Rights.** Grantor retains the right to engage in all acts and uses that are not expressly prohibited herein and are not inconsistent with the purposes of this Easement.

3. **NOTICE OF INTENTION TO UNDERTAKE CERTAIN PERMITTED ACTIONS.**

The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided in paragraphs 1(a), 1(c), 1(d), 1(f) and 1(g) is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purposes of this Easement.

- (a) **Actions not Requiring Notice or Approval.** Actions not requiring notice or approval include construction of fences and seasonal structures as noted in 1(d), land modifications

as noted in 1(f), and typical agricultural activities such as disposal or use of plant and animal waste as noted in 1(h), and removal of trees and hedge rows as noted in 2(d). All actions not requiring notice or approval shall be subject to the limitations as set forth for the particular activity in the applicable subsection.

- (b) **Notice and Approval Required Regarding Granting of Land Divisions.** Grantor may divide land in accordance with the provisions of 1(a). Grantee shall be notified by first class mail, within ninety (90) days prior to when any easement is granted. Grantee shall grant or withhold its approval in writing within ninety (90) days of receipt of Grantor's written request thereof. Grantee's approval may be withheld upon a determination by Grantee that the action as proposed would be inconsistent with the provisions of 1(a).
 - (c) **Notice and Approval Required Regarding Granting of Utility Easements.** Grantor may convey an easement in accordance with the provisions of 1(c). Grantee shall be notified by first class mail, 90 days prior to conveyance. Grantee shall grant or withhold its approval in writing within 60 days of receipt of Grantor's written notification. Grantee approval may be withheld only upon a reasonable determination that the action as proposed would be inconsistent with the provisions of 1(c) or any applicable law.
 - (d) **Notice and Approval Required For Construction and Placement of Structures.** Grantor may build structures in accordance with the provisions of 1(d) and 2(c). Grantee shall be notified by first class mail, 90 days prior to construction. Grantee shall grant or withhold its approval in writing within 60 days of receipt of Grantor's written notification. Grantee approval may be withheld only upon a reasonable determination that the action as proposed would be inconsistent with the provisions of 1(d), 2(c), or any applicable law.
 - (e) **Notice and Approval Required Regarding Land Modification.** Grantor may modify the land in accordance with the provisions of 1(f). Grantee shall be notified by first class mail, 90 days prior to the modification of the land. Grantee shall grant or withhold its approval in writing within 60 days of receipt of Grantor's written notification. Grantee approval may be withheld only upon a reasonable determination that the action as proposed would be inconsistent with the provisions of 1(f), the purposes of this Easement, or any applicable law.
 - (f) **Notice and Approval Required Regarding Exploration and Extraction of Oil and Natural Gas.** Grantor may explore and extract oil and natural gas in accordance with the provisions of 1(g). Grantee shall be notified by first class mail, 90 days prior to the commencement of exploration or extraction. Grantee shall grant or withhold its approval in writing within 60 days of receipt of Grantor's written notification. Grantee approval may be withheld only upon a reasonable determination that the action as proposed would be inconsistent with the protection of the conservation values of the Property, or any applicable law.
4. **RIGHT TO ENTER.** Grantee shall have the right to enter upon the property with 48 hours advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. Inspection shall be conducted between the hours of 9:00 a.m. and 6:00 p.m. on a weekday that is not a legal holiday recognized by the State of Michigan or on a date and time agreeable to the Grantee and Grantor. In the instance of a violation or suspected violation of the terms of this Easement, which has caused or threatens to cause irreparable harm to any of

the agricultural or other resources that this Easement is designed to protect, no advance notice is required. Grantee may not, however, unreasonably interfere with Grantor's use and quiet enjoyment of the Property. Grantee has no right to permit others to enter the Property for purposes unrelated to this Easement. The general public is not granted access to the Property under this Easement.

5. **MAINTENANCE.** Should the property cease to be used for agricultural purposes for more than three (3) years, the agricultural fields will be mowed at least biannually, or otherwise maintained in a condition that prevents the growth of woody vegetation interfering with drainage systems, or the reversion of significant portions of the Property to regulated wetland status. Similarly, during prolonged periods of non-use for agricultural purposes, artificial and natural drainage systems must be maintained in a functional state by the Grantor. If Grantor does not comply with this provision, Grantee shall have the right to mow or maintain such fields at Grantor's expense.
6. **GRANTEE REMEDIES.**
 - (a) **Grantee's Discretion.** Grantee has discretion to enforce, forbear or delay the exercise of its rights under this Easement. A delay in enforcement shall not be construed as a waiver of Grantee's right to enforce the terms of this Easement, nor can such delay be used as an equitable defense in estoppel or laches.
 - (b) **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, acts of trespassers or the unauthorized wrongful acts of third persons, fire, flood, storm, earth movement, and major tree disease, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the property resulting from such causes.
 - (c) **Notice and Demand.** If Grantee determines that Grantor is in violation of the Easement, or that a violation is threatened, Grantee will provide written notice, return receipt requested, to Grantor. The written notice will identify the violation and request corrective action to cure the violation or to restore the Property.
 - (d) **Failure to Act.** If, for a 28-day period after written notice, Grantor continues violating this Easement, or if Grantor does not abate the violation and implement corrective measures requested by Grantee, Grantee may bring an action in law or in equity to enforce the terms of this Easement. Grantee shall be entitled to enjoin the violation through injunctive relief, or to seek specific performance, declaratory relief, restitution, reimbursement of expenses, or an order compelling restoration of the Property to the condition prior to the claimed violation. If the court determines that Grantor has failed to comply with this Easement, then Grantor also agrees to reimburse all reasonable costs and attorney fees incurred by Grantee.
 - (e) **Grantor's Absence.** If Grantee determines that the Easement is, or is expected to be, violated, Grantee will make good faith efforts to notify Grantor. If, through reasonable efforts, Grantor cannot be notified, and if Grantee determines that circumstances justify prompt action to mitigate or prevent impairment of the conservation values, then Grantee

may pursue its lawful remedies without prior notice and without awaiting Grantor's opportunity to cure. Grantor agrees to reimburse all costs associated with this effort.

- (f) **Cumulative Remedies.** The preceding remedies of Grantee are cumulative. Any or all of the remedies may be used by Grantee if there is an actual or threatened violation of this Easement.
7. **OWNERSHIP COSTS AND LIABILITIES.** Grantor retains ownership with full rights to control and manage the Property and shall bear all costs and liabilities of any kind related to property ownership, operation, maintenance, and taxes, including maintaining adequate liability insurance.
8. **SUCCESSORS.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, Grantor's and Grantee's heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property regardless of whether future conveyances of the Property expressly refer to this Easement.
9. **ASSIGNMENT.** Grantee shall have the right to assign this Easement to an organization or entity that is (i) a "qualified organization" as that term is defined in Section 170(h)(3) of the Internal Revenue Code (IRC) and is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the IRC and (ii) is a "not-for-profit" or "public body" entitled to hold this Easement in accordance with Michigan Compiled Laws 324.2140 *et seq.* (and any comparable successor sections of the IRC and Michigan law). Any assignee of the Easement, and its successors or assigns, shall have the same right to assign this Easement as herein provided to Grantee.
10. **MICHIGAN LAW.** This Easement will be construed in accordance with Michigan law, and shall be enforceable against any subsequent owner of the Easement premises despite a lack of privity of estate or contract.
11. **BASELINE DOCUMENTATION REPORT.** 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 are documented in a Baseline Documentation Report prepared by the Grantee and signed and acknowledged by Grantor and a representative of Grantee, establishing the condition of the Property at the time this Easement is recorded. The report may include maps, photographs and other documentation. Grantee may use the baseline documentation for enforcement purposes, but is not limited to the use of the baseline documentation to show a change of conditions.
12. **SUBORDINATION.** Any mortgage or lien arising after the date of this Easement shall be subordinated to the terms of this Easement.
13. **LIMITATIONS ON AMENDMENT.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement amend this Easement; provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of Grantee

under any applicable laws, including Sections 170(h) and 501(c)(3) of the IRC and the laws of the State of Michigan. Any such amendment shall be consistent with the purposes of this Easement, shall not affect its perpetual duration, shall not permit residences to be constructed on the Property, and shall not permit any impairment of the significant conservation values of the Property. Any amendment shall be in writing and shall be filed in the office of the Register of Deeds for the County in which the property is located. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

14. **LIMITATIONS ON EXTINGUISHMENT.** If circumstances arise in the future that render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether with respect to all or part of the Protected Property, by judicial proceedings in a local court of competent jurisdiction. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Protected Property (or any other property received in connection with an exchange or involuntary conversion of the Protected Property) after such termination or extinguishment, and net of any costs or expenses associated with such sale, Grantor and Grantee shall divide the proceeds from such sale (minus any amount attributable to the value of improvements made by Grantor after the effective date of this Conservation Easement, which amount is reserved to Grantor) in accordance with their respective percentage interests in the fair market value of the Protected Property, as such percentage interests are determined under the provisions of paragraph 15, adjusted, if necessary, to reflect a partial termination or extinguishment of this Conservation Easement. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with Grantee's conservation purposes.
15. **PERCENTAGE INTERESTS.** For purposes of this paragraph, the parties hereto stipulate that as of the effective date of this grant the Conservation Easement and the restricted fee interest in the Protected Property each represent a percentage interest in the fair market value of the Protected Property. Said percentage interests shall be determined by the ratio of the value of the Conservation Easement on the effective date of this grant to the value of the Protected Property, without deduction for the value of the Conservation Easement, on the effective date of this grant. The values on the effective date of this grant shall be those values used to calculate the deduction for federal estate tax purposes allowable by reason of this grant, pursuant to Section 2055(f) of the Code, which allows a deduction against the federal estate tax in respect of any transfer of a qualified real property interest which meets the requirements of Section 170(h). The parties shall include the ratio of those values with the Baseline Documentation Report of the Protected Property (on file at Grantee's offices) and shall amend such values, if necessary, to reflect any final determination thereof by the Internal Revenue Service or court of competent jurisdiction. For purposes of this paragraph, the ratio of the value of the Conservation Easement to the value of the Protected Property unencumbered by the Conservation Easement shall remain constant, and the percentage interests of Grantor and Grantee in the fair market value of the Protected Property thereby determinable shall remain constant.

16. **CONDEMNATION.** If all or any part of the Protected Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of the interests in the Protected Property subject to the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by the parties to this Conservation Easement in connection with such taking shall be paid out of the recovered proceeds. Grantor and Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of paragraphs 14 and 15 (with respect to the allocation of proceeds). The respective rights of Grantor and Grantee set forth in this paragraph 16 shall be in addition to, and not in limitation of, any rights they may have at common law.
17. **TITLE AND ENVIRONMENTAL WARRANTIES.** Grantor warrants that Grantor has good title to the property; that Grantor has the right to convey this Easement; and that all encumbrances on the Property have been disclosed to Grantee and subordinated in accordance with paragraph 12, or as requested by Grantee. Grantor also warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property.
18. **LIABILITY AND INDEMNIFICATION.** Grantor shall indemnify, defend, and hold harmless Grantee from any liability resulting from Grantor's negligent acts or those of Grantor's agents, employees, lessees and invitees, including, but not limited to, the release, use or deposit of any hazardous substance on the Property.
19. **LIBERAL CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Easement shall be construed in favor of the grant to effectuate the purposes of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
20. **SEVERABILITY.** If any provision of this Easement or the application of any provision to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and their application to other persons and circumstances shall not be affected.
21. **NO MERGER.** Should Grantee ever obtain fee title to the Property, Grantee shall first transfer the Easement to a qualified entity as defined by state and federal law cited in paragraph 9.
22. **EFFECTIVE DATE.** Grantor and Grantee intend that the terms of this Conservation Easement are effective on the date this instrument is recorded in the applicable office of the Register of Deeds, after all required signatures have been affixed hereto. Grantee may re-record this instrument at any time as may be required to preserve its rights in this Easement.

23. **NOTICES.** Any notices required or desired to be given to the parties, shall be in writing to the following address.

Farmland and Open Space Preservation
Environmental Stewardship Division
Michigan Department of Agriculture
P.O. Box 30449
Lansing, Michigan 48909

IN WITNESS WHEREOF, the Grantor has signed this Agricultural Conservation Easement agreement on this _____ day of _____, 2009.

GRANTOR
[Insert Grantor Name]

[Grantor Name]

STATE OF MICHIGAN }
 }ss.
COUNTY OF _____ }

On this _____ day of _____, 2009, before me, a Notary Public, personally appeared [Grantor Name], to me known to be the same person who executed the foregoing Agricultural Conservation Easement and acknowledged the same to be her own free act and deed.

Notary Public
_____ County, Michigan
My Commission Expires: _____

IN WITNESS WHEREOF, the Grantee has signed this Agricultural Conservation Easement agreement on this _____ day of _____, 2009.

**GRANTEE
MICHIGAN DEPARTMENT OF
AGRICULTURE**

By: Richard A. Harlow, Program Manager
Farmland and Open Space Preservation
Environmental Stewardship Division

STATE OF MICHIGAN }
 }ss.
COUNTY OF INGHAM }

On this ___ day of _____ 2009, before me, a Notary Public, personally appeared **Richard A. Harlow**, to me known to be the Program Manager, Farmland and Open Space Preservation, Environmental Stewardship Division, Michigan Department of Agriculture, and acknowledged the same to be his own free act and deed.

Notary Public
_____ County, Michigan
My Commission Expires: _____

Prepared By and Return To:

Richard Harlow, Program Manager
Farmland and Open Space Preservation
Environmental Stewardship Division
Michigan Department of Agriculture
P.O. Box 30449
Lansing, Michigan 48909

Part of Tax Parcel #[Example]