

CONSERVATION EASEMENT

Between

DAVID JAY MARSHALL LIVING TRUST

as Grantor

and

DUTCHESS LAND CONSERVANCY, INC.,

as Grantee

Record and Return to:
Dutchess Land Conservancy
P.O. Box 138
Millbrook, NY 12545

CONSERVATION EASEMENT

This **CONSERVATION EASEMENT** is entered into this ____ day of _____, 2011, between **DAVID JAY MARSHALL LIVING TRUST** with an address of PO Box 9, 38 Russell Avenue, Rhinecliff, New York, 12574, as Grantor (the "Landowner"), and **DUTCHESS LAND CONSERVANCY, INC.**, a New York not-for-profit corporation with an office at 4289 Route 82, Millbrook, New York 12545, as Grantee (the "Conservancy").

Recitals

WHEREAS, the Landowner is the sole owner in fee of real property (the "Property") described in Exhibit A attached hereto and incorporated by reference:

WHEREAS, the Property consists of approximately 42.3 acres of unimproved land located on 555 Milan Hill Road in the Town of Milan, Dutchess County, New York.

WHEREAS, the Property is shown on the Conservation Easement Map attached hereto as Exhibit B and incorporated by reference, and on a survey map titled "Survey Map prepared for David J. Marshall," prepared by Kirk Horton, Licensed Land Surveyor, dated July 11, 2011 and also on a plan map titled "Conservation Easement Plan prepared for David Marshall," prepared by Mark R. Graminski, Licensed Land Surveyor, dated December 7, 2011.

WHEREAS, this Conservation Easement is established in perpetuity exclusively for conservation purposes consistent with the provisions of Article 49, Title 3, of the Environmental Conservation Law of the State of New York (the "Conservation Law"); and with Title 26, Sections 170(h)(1)-(6), 2031(c), 2055, and 2522, of the United States Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"); and under Treasury Regulations at Title 26, Section 1.170A-14 et seq., of the Code of Federal Regulations, as amended.

WHEREAS, the Conservancy is a not-for-profit conservation organization within the meaning of Article 49, Title 3, of the Conservation Law and is qualified to be the grantee of tax-deductible conservation easements pursuant to Section 170(h) of the Internal Revenue Code, to wit, a publicly funded, nonprofit 501(c)(3) organization with the authority to accept lands, easements and buildings for the purpose of preserving and protecting natural, scenic, agricultural, wooded/forested and open-space values of real property, and with the commitment to preserve the conservation purposes of this Conservation Easement.

WHEREAS, the parties recognize the following:

1. The Property is characterized by scenic views, forest lands, steep slopes and natural beauty, and is highly visible from Milan Hill Road, a public highway.
2. It is important to the conservation of the open, scenic and natural character and beauty of the area to maintain the Property's forest lands, and steep slopes while restricting development so that it is compatible with the natural surroundings.

3. The Property meets the Criteria for Acceptance of Conservation Easements of the Conservancy and is in close proximity to private land which is already permanently protected by the Conservancy.
4. The Town of Milan Comprehensive Plan (the “Comprehensive Plan”), adopted on February 3, 1986, reflects the goals of protecting and enhancing natural beauty, preserving the rural character and small town atmosphere, protecting and encouraging small farms in the town, and protecting environmentally-sensitive land. The Comprehensive Plan includes the Property within a proposed Agriculture/Residential Land Use category, which includes areas that are currently being actively farmed or have severe limitations for development. The Comprehensive Plan recommends that the agricultural/residential area support the presence of small farms and the retention of the town’s rural character. The Town of Milan Land Use Plan also encourages agricultural uses within the town and limits development on important agricultural soils as well as discourages development in environmentally sensitive areas such as steep slopes, wetlands, and floodplains.
5. The Dutchess County Legislature, in the County Master Plan, *Directions*, adopted by the Dutchess County Legislature in 1988, has identified the area in which the Property is located as an area in which agricultural lands, rural uses, open space, steep slopes, and streams and wetlands should be preserved. *Directions* emphasizes the preservation of prime agricultural soils, steep slopes, and wetlands and encourages open space land uses and the protection of scenic resources. Policy 5.16 supports measures to preserve the county’s prime and important agricultural soils. Policy 5.19 advocates the preservation of steep slopes and ridgelines. Policy 5.20 advocates the preservation of the county’s scenic resources and significant natural areas. Policy 5.22 encourages the use of forest management practices that are compatible with forest conservation and enhancement. Policy 5.23 encourages the protection and recognition of uncommon or especially-sensitive forest resources, such as hemlock groves, forests with particularly large trees, beech woods, and the woodland buffers around water bodies, wetlands and roadways. Policy 5.24 encourages the preservation of woodland “greenbelt” corridors through communities, especially along streams, floodplains, wetlands, and other sensitive areas, to provide recreational space, wildlife habitat, natural buffers and aquifer protection. Policy 7.11 encourages the provision of open space areas and greenbelt corridors as a fundamental land use that is carefully planned as part of the land use pattern. Policy 7.13 discourages the subdivision of prime and important agricultural soils and large forested tracts into lots which preclude the future use for agriculture and forestry. Policy 11.3 encourages the use of innovative development techniques, such as planned unit development, conservation easement and cluster subdivision, to provide recreational areas and facilities at minimal public cost. Policy 11.18 encourages the maintenance of open space as a technique for preserving unique ecological features, such as floodplains, wetlands, steep slopes and major aquifers. *Directions* recommends low density development to prevent degradation of the area's rural, natural and scenic characteristics through subdivision and development; Policy 11.21 supports the use of conservation easements to preserve open space in rural areas.

6. The Property contains approximately seven acres of prime farmland soils and approximately 29 acres of farmland soils of statewide importance, which are important for the production of food, feed, forage and fiber crops, as defined by the United States Department of Agriculture Natural Resources Conservation Service.
7. The Property is in the watershed of the Saw Kill, a tributary of the Hudson River.
8. The policy of New York State, as set forth in Title 5, Article 15 of the Conservation Law, is to preserve and protect the state's lakes, rivers, streams and ponds. The Property contains a perennial, unclassified stream (H-158-13-13) and an unclassified, intermittent stream (H-158-13-12-1).
9. The Property entire property consists of forest lands that are part of a relatively unbroken tract of woodlands/forest lands that extend for hundreds of acres and represents valuable habitat as a contiguous forest.
10. Subdivision and development pressure threaten the continued rural, scenic, ecological, forested, and open space character of the Property and the scenic view along Milan Hill Road.

WHEREAS, the Conservancy has determined that acquisition of a conservation easement on the Property will further its charitable purposes of protecting areas of rural, scenic and relatively natural character in Dutchess County.

WHEREAS, the Landowner shares the land conservation goals of the Conservancy and desires to ensure that the rural, scenic enjoyment and ecological characteristics of the Property will be preserved for the benefit of future generations.

WHEREAS, the parties desire to preserve the character of the Property in perpetuity by entering into this Conservation Easement pursuant to the provisions of Article 49, Title 3, of the Conservation Law.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein by reference, and for the benefit of the general public, the Landowner and Conservancy have established this Conservation Easement on, over and across the Property consisting of the foregoing recitals and the following purposes, terms, mutual covenants, restrictions and affirmative rights granted to the Conservancy, which shall run with and bind the Property in perpetuity, and the parties agree as follows:

1. Grant of Conservation Easement. The Landowner grants to the Conservancy a perpetual conservation easement on, over and across the Property on the terms contained in this Conservation Easement. The Conservation Easement shall encumber the Property.

2. Purpose. The conservation purposes of the Conservation Easement granted hereby are to conserve the scenic, open, forested and natural character of the Property and to protect the quality of its steep slopes, forest lands, prime and important farmland soils, streams and habitat,

and scenic quality by restricting development and use of the Property, especially the areas defined in this Conservation Easement as Preservation Areas. The Landowner and the Conservancy intend that this Conservation Easement will confine the use of the Property to activities that are consistent with the purposes of this Conservation Easement and will prohibit and prevent any use of the Property that will materially impair or interfere with the conservation purposes of this Conservation Easement.

3. Implementation. This Conservation Easement shall be implemented by limiting and restricting the development and use of the Property in accordance with its provisions. The Property remains subject to all applicable federal, state and local laws and regulations. However, if the Conservation Easement is more restrictive than federal, state and local laws and regulations, the Conservation Easement restrictions shall govern with respect to the development and use of the Property.

4. Reserved Rights. The Landowner reserves for itself and its successors in interest all rights with respect to the Property or any part thereof, including, without limitation, the right of exclusive possession and enjoyment of the Property or any part thereof and the right to sell, transfer, lease, mortgage or otherwise encumber the Property or any part thereof, as owner, subject to the restrictions and covenants set forth in this Conservation Easement. This Conservation Easement does not grant the general public any right to enter upon any part of the Property. This Conservation Easement does not restrict an owner of the Property or part thereof in imposing further restrictions upon conveyance or otherwise.

5. Definitions. When used in this Conservation Easement, the following terms shall be defined as set forth below. Defined terms used in this Conservation Easement are generally capitalized as a convenience to the reader. All other terms not herein defined shall be interpreted according to their customary meaning.

Agricultural Uses - Agricultural Uses shall include, but are not limited to, the planting, raising, harvesting, and production of field crops, fruits, vegetables, horticultural specialties, livestock and livestock products, poultry and other fowl, maple sap, Christmas trees, aquaculture, wood biomass, apiary products; establishing, reestablishing, maintaining, and using cultivated fields, orchards, pastures and woodlands; equestrian activities such as the selling, raising, training and boarding of horses and horseback riding instruction; agri-tourism; and the primary processing, storage and sale of crops and agricultural products including Direct Farm Markets.

Commercial Uses - Commercial Uses shall include, but are not limited to, the agricultural and forestry uses permitted herein, and, any use or activity undertaken for business purposes, excluding activities such as hobbies, in which obtaining a financial benefit is incidental to the purpose of the activity. Membership Clubs as defined herein shall not be considered Commercial Uses.

Direct Farm Markets - Direct Farm Markets shall be defined as roadside stands, farm markets, farm stands, pick your own operations, and other similar agricultural operations that market and sell crops and agricultural products, a substantial portion of which are harvested and produced on the Property or other properties owned by or leased by the Landowner. *See Section 6.4.*

Footprint Area - The Footprint Area of a Structure or Improvement shall be defined as the area of the Structure at the horizontal ground plane measured along the exterior walls of a Structure. In the case of a Structure or Improvement that is not enclosed by walls, the Footprint Area shall be the total area covered by impervious surfaces.

Forestry Uses - Forestry Uses shall include, but are not limited to, gathering, cultivating, maintaining, harvesting or managing forests, woodlands, or tree plantations for timber, firewood or other useful products or for water quality, wildlife habitat and other conservation purposes. *See Section 6.15.*

Height - The Height of a Structure or Improvement shall be defined as the measurement from the natural mean grade (prior to construction or grade alteration) to the top of the Structure or Improvement. In the case of a Structure or Improvement with a roof, the top of the Structure or Improvement, including any decorative Improvement, shall be considered the top of the roof line and measured accordingly.

Improvement - Improvement shall be defined as anything, temporary or permanent, that is constructed, installed or placed on, over, under or across the Property (including a Structure as defined herein), and shall include, but is not limited to, driveways, farm roads and woods roads, trails, bridges, parking areas, ponds, wells, septic systems, drainage ways, and utility lines.

Industrial Uses - Industrial Uses are Commercial Uses that involve the manufacture, assembly, treatment, processing, or packaging of products. Industrial Uses shall not include Agricultural Uses or Forestry Uses as permitted by this Conservation Easement.

Membership Club – A Membership Club shall be defined as a facility catering exclusively to members and their guests, which may be conducted outdoors and/or within permitted Structures for social and recreational purposes.

Recreational Uses - Recreational Uses shall include, but are not limited to the use of land for hiking, camping, horseback riding, snowshoeing, cross country skiing, conducting field trials, hunting, fishing, trapping, shooting with or without dogs, mounted foxhunting with hounds, and outdoor recreational activities that are not Commercial Uses. Recreational Uses shall not include commercial or non-commercial golf courses.

Renewable Energy Facilities – Renewable Energy Facilities shall be defined as Structures or Improvements for the generation of energy from renewable resources, including, but not limited to, wind, solar, hydroelectric, methane, wood, biomass and alcohol. *See Section 6.5.*

Structure - Structure shall be defined as any building or object, temporary or permanent, with or without anchors or foundations, constructed, installed or placed on, over, under or across the Property and shall include but is not limited to a barn, garage, shed, Renewable Energy Facility, porch, deck, recreational court and swimming pool.

6. Restrictions Applicable to the Property. By this Conservation Easement, the Landowner agrees to restrictions that apply to the entire Property as set forth in this Section 6. The Landowner may take certain actions relating to the Property only after giving the Conservancy prior notice and/or obtaining the Conservancy's prior consent, as set forth in Section 7. The procedure for giving such notice and seeking such consent, and the standards governing the Conservancy's decision whether to grant or withhold such consent, are set forth in Section 7. No Structures or Improvements shall be built, expanded or replaced anywhere on the Property except in compliance with this Section 6. All existing and new Structures and Improvements allowed by this Conservation Easement may be expanded or replaced consistent with the restrictions set forth in this Conservation Easement and may be reconstructed if damaged, razed or destroyed. If the Landowner removes or razes any Structure or Improvement, and does not build a new Structure or Improvement in the same location, the Landowner shall restore the site to a relatively natural condition with suitable landscaping and re-vegetation and grading that matches the natural contours of the land, unless the Conservancy otherwise consents pursuant to Sections 7.2 and 7.3.

6.1 Use of Property. Except as provided specifically herein, the Property shall be used solely for recreational, Agricultural and Forestry Uses. Commercial Uses of the Property shall be limited to commercial Agricultural Use and commercial Forestry Use that are consistent with the purposes of this Conservation Easement. The use of the Property as a Membership Club is permitted with the prior consent of the Conservancy pursuant to Sections 7.2 and 7.3. No Industrial Use of the Property is permitted and no institutional use of the Property is permitted, except with the prior consent of the Conservancy pursuant to Sections 7.2 and 7.3.

6.2 Footprint Area Coverage Limitations. No more than an aggregate Footprint Area of 2,000 square feet of the entire Property shall be covered by roofed Structures.

6.3 Structures. Roofed, non-residential Structures less than 800 square feet in Footprint Area per Structure, including but not limited to run-in sheds and other animal shelters, tree houses, and gazebos, may be built on the Property, and their Height shall not exceed 25 feet, unless the Conservancy otherwise consents pursuant to Sections 7.2 and 7.3.

6.4 Direct Farm Markets. All Direct Farm Markets shall be located as roadside stands with a display area no greater than 500 square feet or otherwise with the prior consent of the Conservancy pursuant to Section 7.2 and 7.3.

6.5 Renewable Energy Facilities. Facilities for the generation of energy from renewable resources for non-Commercial Use principally on the Property, may be built, provided that the design, location, size, Height and output of any such facilities shall require the prior consent of the Conservancy pursuant to Sections 7.2 and 7.3, and further provided that such Structures conform with federal, state and local laws. Excess energy generated above that required for use on the Property, may be sold to an electrical supplier in compliance with federal, state and local laws.

6.6 Signs. No signs shall be permitted except to state the name and/or address of the Property and/or the names of persons using the Property, to advertise an on-site activity

permitted by this Conservation Easement, to advertise the Property for sale or rent, to mark roadways, to announce that the Property is subject to a conservation easement and/or identify the holder of the conservation easement, and/or to post the Property to control unauthorized entry or use. Such signs shall be of professional quality and their size, placement, number and design shall not significantly diminish the scenic and rural character of the Property.

6.7 Fences. Customary fences such as wire, board or post and rail, and other fencing that does not impair the views of the Property, may be erected, repaired or replaced. Additional types of fencing shall require the prior consent of the Conservancy pursuant to Sections 7.2 and 7.3.

6.8 Driveways, Farm Roads and Woods Roads, Trails, and Parking Areas. Driveways, farm roads and woods roads, trails, and parking areas may be located on the Property provided that they are constructed and located in a manner which is compatible with agricultural or forested use of the Property and which minimizes erosion and adverse effect on scenic landscape quality. Paving driveways, farm roads and woods roads, parking areas or trails, shall require the prior consent of the Conservancy pursuant to Sections 7.2 and 7.3 upon showing that paving is necessary to correct, control or prevent erosion.

6.9 Utilities, Septic Disposal Systems and Drainage Ways. Utilities, septic disposal systems and drainage ways may be located on the Property provided that they are constructed and located in a manner which is compatible with agricultural and forested use of the Property and which minimizes erosion and adverse effects on scenic landscape quality. Utility lines serving permitted Structures shall be installed underground where feasible. Any on-site septic disposal systems shall be maintained in good repair and proper operating condition.

6.10 Lighting. Outdoor lighting shall not result in glare visible from public vantage points or which is inconsistent with the rural character or the natural environment. Lighting inappropriate for a rural setting such as post lights along a drive shall not be permitted.

6.11 Exterior Appearance. No construction, improvement, repair or replacement of a structure or other alteration of the Property shall be constructed or performed in a manner inconsistent with the scenic preservation and conservation purposes of this Conservation Easement.

6.12 Landscape and Screening. Changes to the landscape and existing site features shall minimize disturbance of mature trees, rock outcroppings, watercourses, and other significant natural features. The Landowner shall site Structures and Improvements off steep slopes or ridgelines and shall preserve and maintain sufficient topography, vegetation and terrain to screen the Structures and Improvements from public vantage points. Any substantial alteration to the topography or landscape features of the Property shall require the prior consent of the Conservancy pursuant to Sections 7.2 and 7.3.

6.13 Chemicals. No pesticide, herbicide or other chemical treatment for land, vegetation or animals shall be used on the Property unless its use is legal and in accordance with all applicable laws and regulations and the manufacturer's directions.

6.14 Dumping of Waste. No dumping, disposal, storage or release of non-composted organic waste, sewage, garbage, scrap materials, sediment discharge, oil and its by-products, leached compounds, toxic fumes or other unsightly or offensive materials shall be allowed on the Property, except that which is generated by activities permitted by this Conservation Easement and then only in accordance with applicable law and in a manner that is consistent with the conservation purposes of this Conservation Easement.

6.15 Clearing of Trees and Vegetation. All clearing of trees and vegetation shall be conducted in conformity with sound land and forest management practices to minimize erosion and adverse impacts on natural resources and there shall be no removal, destruction or cutting of mature live trees on the Property with a trunk diameter at breast height of eight inches or more, except as follows:

6.15(a) Permitted Removal of Trees. Trees may be removed which endanger public safety, are diseased, damaged or fallen, need to be cleared to ensure the health of other trees, or in connection with the construction of permitted Structures and Improvements subject to the restrictions set forth in this Section 6. New clearings in connection with the construction of permitted Structures or other Improvements shall not exceed three acres in the aggregate for the Property. Clearing of trees that exceeds three acres in the aggregate for the Property shall require the prior consent of the Conservancy pursuant to Sections 7.2 and 7.3.

6.15(b) Clearing with Prior Consent. New open spaces for agriculture and views may be created with the prior consent of the Conservancy pursuant to Sections 7.2 and 7.3.

6.15(c) Commercial Forestry. Commercial Forestry Uses may be conducted if in conformity with accepted silvicultural practices and sound land and forest management practices to minimize erosion and adverse effects on natural resources with the prior consent of the Conservancy pursuant to Sections 7.2 and 7.3. All commercial forestry shall be conducted in accordance with a forestry management plan approved by the Conservancy. Such management plan shall conform to: (1) accepted New York State Department of Environmental Conservation sustainable forestry guidelines; (2) any applicable guidelines of the Natural Resource Conservation Service of the United States Department of Agriculture (or successor governmental departments or agencies), and (if applicable); (3) logging guidelines set forth in Section 480-a of the New York State Real Property Tax Law (or other applicable state forestry tax programs).

6.16 Mining, Transmission Lines, Pipelines and Landfills. There shall be no surface or subsurface mining or quarrying on the Property. In compliance with Section 170(h)(5) of the Internal Revenue Code and Section 1.170A(g)(4) of the Treasury Regulations, as amended, the Landowner may utilize sand and gravel on the Property solely for use on the Property providing the use has limited, localized impact on the Property and provided the use is not irremediably destructive of significant conservation interests. No wireless telecommunications towers or associated antennas may be placed on the Property, except with the prior consent of the Conservancy pursuant to Sections 7.2 and 7.3. There shall be no placement of high-voltage

transmission lines, pipelines, landfills or other land uses detrimental to the scenic character or ecosystems of the Property. The preceding sentence shall not prevent the installation and maintenance of local utility distribution lines which provide service to the Structures and Improvements allowed by this Conservation Easement.

6.17 Waterways. No waterways on the Property shall be polluted by sedimentation, siltation, agricultural run-off or otherwise by action of the Landowner. This does not preclude sound agricultural practices. No change to any existing ponds, streams or wetlands, and no construction or alteration of any Structure or Improvement within 100 feet of any existing pond, stream, or wetland, shall be permitted, except with the prior consent of the Conservancy pursuant to Sections 7.2 and 7.3. Construction of new ponds or lakes shall require the prior consent of the Conservancy pursuant to Sections 7.2 and 7.3.

6.18 Subdivision. There shall be no subdivision of the Property into parcels or lots for the purpose of conveyance into separate ownership except with the prior consent of the Conservancy pursuant to Section 7.2 and 7.3. Lot line adjustments which do not create building lots are permitted with the prior consent of the Conservancy pursuant to Sections 7.2 and 7.3. No such subdivision or lot line adjustment shall affect the use of the Property permitted by this Conservation Easement or the calculation of the number, square footage or character of Structures permitted by this Conservation Easement. Land that has been restricted by this Conservation Easement shall not be included in the calculation of the lot size or density of any other parcel if such calculation would increase the permissible lot yield or density of such parcel. Property dividing lines shall be located to avoid fragmentation of prime and important agricultural soils or other notable resources unless the Conservancy otherwise consents pursuant to Sections 7.2 and 7.3.

7. Notice to Conservancy and Required Prior Consent.

7.1 Notice. In order to facilitate the monitoring of this Conservation Easement, the Landowner shall give the Conservancy at least 35 days' prior written notice before commencement of site preparation, construction, expansion, excavation, replacement, relocation or removal of any Structure, Improvement or any significant landscape alteration. Prior to any activity described herein, the Landowner shall submit sufficient information to enable the Conservancy to make an informed determination as to whether such Structures or Improvements are permitted by and consistent with the purposes and restrictions of this Conservation Easement. Such information may include, but is not limited to, survey information, site plans, and/or physically marking the boundaries of the proposed Structure or Improvement.

7.2 Required Prior Consent and Procedure for Requesting Consent. In addition to the notice requirements of Section 7.1, the prior written consent of the Conservancy is required for actions as specifically set forth in this Conservation Easement. To request the written consent of the Conservancy, the Landowner shall submit plans and/or a description of its proposal. Such submission shall contain sufficient information to enable the Conservancy to make an informed determination as to whether the proposal is permitted by and consistent with the purposes and restrictions of this Conservation Easement. The Landowner shall reimburse the Conservancy for reasonable costs incurred in connection with review of any proposals. The

Conservancy may waive review of and consent to any Structure, Improvement or alteration, which it deems to be insubstantial.

7.3 Standards and Timetable for the Conservancy's Decision. Where the Conservancy's written consent is required, the Conservancy shall grant or withhold its consent in writing within 35 days of receipt of the Landowner's request for consent accompanied by plans and other materials the Conservancy deems sufficient for its review. The Conservancy may withhold consent only upon a reasonable determination by the Conservancy that the Landowner's proposal would be inconsistent with the purposes or specific provisions of this Conservation Easement. The Conservancy may grant its consent subject to reasonable conditions which must be satisfied. If the Conservancy fails to act within 35 days of receipt of plans and materials it deems sufficient for its review, consent shall be deemed granted unless the Landowner consents to a longer period of time for review and discussion with the Conservancy. The actual clearing of land and the completed Structure, Improvement or alteration shall conform in all material respects to the proposal that receives the consent of the Conservancy.

8. Conservancy's Remedies for Violation of Conservation Easement.

8.1 Notice of Violation; Corrective Action. If the Conservancy determines that a violation of the terms of this Conservation Easement has occurred or is threatened, the Conservancy shall give written notice to the Landowner of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purposes of this Conservation Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by the Conservancy.

8.2 Injunctive Relief. If the Landowner fails to cure the violation within 30 days after receipt of notice thereof from the Conservancy, or under circumstances where the violation cannot reasonably be cured within the 30 day period, fails to begin curing such violation within the 30 day period, or fails to continue diligently to cure such violation until finally cured, the Conservancy may bring an action at law or suit in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to such an injury.

8.3 Damages. The Conservancy shall be entitled to recover damages for violation of the terms of this Conservation Easement or injury to any conservation purposes protected by this Conservation Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting the Landowner's liability therefor, the Conservancy, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

8.4 Emergency Enforcement. If the Conservancy, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation purposes of the Property, the Conservancy may pursue its remedies under this

Section 8 without prior notice to the Landowner or without waiting for the period provided for cure to expire.

8.5 Scope of Relief. The Conservancy's rights under this Section 8 apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. The Landowner agrees that the Conservancy's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the Conservancy shall be entitled to the injunctive relief described in Section 8.2, both prohibitive and mandatory, in addition to such other relief to which the Conservancy shall be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Conservancy's remedies described in this Section 8 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity or pursuant to the provisions of Article 49, Title 3 of the Conservation Law.

8.6 Costs of Enforcement. All reasonable costs incurred by the Conservancy in enforcing the terms of this Conservation Easement against the Landowner, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by the Landowner's violation of the terms of this Conservation Easement, shall be borne by the Landowner; provided, however, that if the Landowner ultimately prevails in a judicial enforcement action, each party shall bear its own costs.

8.7 Forbearance. Forbearance by the Conservancy to exercise its rights under this Conservation Easement in the event of any breach of any term by the Landowner shall not be deemed or construed to be a waiver by the Conservancy of such term or of any of the Conservancy's rights under this Conservation Easement or at law or in equity. No delay or omission by the Conservancy in the exercise of any right or remedy upon a breach by the Landowner shall impair such right or remedy or be construed as a waiver.

8.8 Waiver of Certain Defenses. The Landowner hereby waives any defense of laches, estoppel or prescription.

8.9 Effect of Lot Line Adjustment or Subdivision. After any lot line adjustment or subdivision of the Property permitted by Section 6.21 into parcels having differing ownership, references in this Section 8 to the Landowner shall mean any or all of the owners of the parcel that is the subject of the violation, but the Conservancy shall use reasonable efforts to give notice of the violation to the owners of all of the parcels comprising the Property.

9. Amendment and Waiver.

9.1 Amendment. This Conservation Easement may be amended by a recorded instrument signed by the then owner of the Property (or of the parcel of the Property affected by such amendment) and by the Conservancy. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Article 49, Title 3 of the Conservation Law, Section 170(h) of the Internal Revenue Code, as amended, and any regulations promulgated pursuant thereto. The Conservancy shall have no right or power to

agree to any amendment that would result in this Conservation Easement failing to qualify as a valid conservation easement under Article 49, Title 3 of the Conservation Law. The Landowner shall reimburse the Conservancy for reasonable costs incurred with respect to Landowner requests to amend this Conservation Easement. Such reasonable costs shall be set from time to time by the Conservancy's Board of Directors in accordance with the Conservancy's Conservation Easement Amendment Policy.

9.2 Waiver. The Conservancy may on a case-by-case basis waive any provision of this Conservation Easement that it deems not to be essential in fulfilling this Conservation Easement's conservation purposes. Such waivers may not be granted with respect to the number of residences that may be built. Any such waiver must be supported by a written finding in the minutes of the meeting of the Conservancy at which it was approved. Such finding shall state the rationale for allowing the waiver and shall indicate: why such a waiver will not compromise the conservation purposes of this Conservation Easement and any impacts to landscape features or scenic panoramas as seen from public vantage points (if a waiver to size or location restrictions). Such individual waivers will not affect the future applicability of any waived provision as applied to other situations, and the provision waived in an individual case shall continue in full force and effect for other cases. Any such waiver shall comply with Article 49, Title 3 of the Conservation Law and Section 170(h) of the Internal Revenue Code (or any successor provisions of applicable law), and any regulations promulgated pursuant thereto. Copies of resolutions of the Conservancy's Board of Directors approving such waivers shall be kept in the Conservancy's permanent file with this Conservation Easement. The Conservancy shall, if requested by an owner of the Property, issue a certificate of compliance indicating that an alteration of the Property or other action undertaken pursuant to this Section was undertaken pursuant to an approved waiver of this Conservation Easement.

10. Costs, Liabilities, Taxes and Environmental Compliance.

10.1 Owner to Pay Taxes and Assessments. Each owner of the Property or any part thereof shall pay all taxes and assessments lawfully assessed against the Property or part thereof owned by such owner, who shall provide receipted tax bills or other evidence of payment to the Conservancy upon request, and each owner shall avoid the imposition of any liens that may affect the Conservancy's rights hereunder. The Conservancy may, at its discretion, pay any outstanding taxes or assessments against the Property and shall then be entitled to reimbursement by the Landowner.

10.2 Representations and Warranties. The Landowner represents and warrants that:

10.2(a) Legal and Financial Advice. The Landowner has received independent legal and financial advice regarding this Conservation Easement to the extent that the Landowner has deemed necessary. The Landowner freely signs this Conservation Easement in order to accomplish its conservation purposes.

10.2(b) Title. The Landowner is the sole owner and is seized of the Property in fee simple and has good right to grant and convey this Conservation Easement; that the Property is free and clear of any and all mortgages not subordinated to this Conservation

Easement, and that the Conservancy shall have the use of and enjoyment of the benefits derived from and existing out of the aforesaid Conservation Easement.

10.2(c) Hazardous, etc., Materials. Except as disclosed in that certain Phase I Environmental Site Assessment prepared by Ecosystems Strategies, Inc. and dated June 27, 2011, which is attached to the Baseline Documentation referred to in Section 13.8 of the Conservation Easement, to the best of the Landowner's knowledge, any handling, transportation, storage, treatment or use of any substance 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, that has occurred on the Property prior to the date of this Conservation Easement has been in compliance with all applicable federal, state and local laws. No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the Property, which is free of all such contamination.

10.2(d) Compliance. The Landowner and the Property are in compliance with all federal, state and local laws, regulations and requirements applicable to the Property and its use.

10.2(e) Litigation. There is no pending or threatened litigation in any way affecting, involving or relating to the Property.

10.2(f) Proceedings or Investigations. No civil or criminal proceedings or investigations have been initiated at any time or are now pending, and no notices, demands, claims or orders have been received, arising out of any violation or alleged violation of any federal, state or local law, regulation or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that the Landowner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

10.3 Control. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in the Conservancy to exercise physical or managerial control over the day-to-day operations of the Property, or any of the Landowner's activities on the Property, within the meaning of Title 42, Section 9601, et seq., of the United States Code (the Comprehensive Environmental Response, Compensation and Liability Act of 1980) as amended or other applicable law. The Landowner is solely responsible, and the Conservancy has no responsibility whatsoever, for the operation of the Property or the monitoring of hazardous and other conditions thereon. Notwithstanding any other provision of this Conservation Easement to the contrary, the parties do not intend, and this Conservation Easement shall not be construed, such that: (1) it creates in the Conservancy the obligations or liabilities of an "owner" or "operator" as those words are defined and used in the environmental laws, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act or any successor or related law or (2) it creates in the Conservancy obligations or liabilities of a person described in Title 42, Section 9607(a)(3) of the United States Code, or any successor or related law.

10.4 Hold Harmless. The Landowner shall hold harmless, indemnify and defend the Conservancy and its directors, officers, employees, agents and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively, "Indemnified Parties") from and against all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Property, regardless of cause, except to the extent caused by the negligence of any of the Indemnified Parties, (b) the violation or alleged violation of, or other failure to comply with, any federal, state, or local law, regulation, or requirement, including, without limitation, environmental laws, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (c) claims arising out of or in any way related to the existence or administration, performed in good faith, of this Conservation Easement, and (d) the presence or release in, on, from, or about the Property, at any time, 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 the air, water or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties. In the event any claim is asserted which may give rise to liability under the foregoing indemnity, (a) the Conservancy shall give the Landowner prompt notice thereof, (b) the Landowner may defend the same with counsel selected by the Landowner, subject to the Conservancy's reasonable approval, (c) the Conservancy shall cooperate with the Landowner in the defense thereof, and (d) the Conservancy shall not settle any such claim without having received the Landowner's prior written consent therefor. The term "environmental laws" includes, without limitation, any federal, state, local, or administrative agency statute, regulation, rule, ordinance, order, or requirement relating to environmental conditions or hazardous substances. Notwithstanding anything contained herein to the contrary, the Conservancy accepts this Conservation Easement subject to the information contained in that certain Phase I Environmental Site Assessment prepared by Ecosystems Strategies, Inc., and dated June 27, 2011 which is attached to the Baseline Documentation referred to in Section 13.8 of this Conservation Easement, and hereby waives any and all indemnification from Landowner arising out of claims related thereto.

11. Sale, Transfer and Subdivision of the Property.

11.1 Required Language in Future Deeds, Mortgages and Leases. Any subsequent conveyance of any interest in the Property, including, without limitation, any transfer, lease or mortgage of the Property or any parcel thereof, shall be subject to this Conservation Easement, and any deed or other instrument evidencing or effecting such conveyance shall contain language substantially as follows: "This [conveyance, lease, mortgage, easement, etc.] is subject to a Conservation Easement which runs with the land and which was granted to Dutchess Land Conservancy, Inc. by Conservation Easement dated 20__ and recorded in the Dutchess County Clerk's Office on _____, 20__ at Document # _____." The failure to include such language shall not affect the validity or applicability of this Conservation Easement.

11.2 Transfer Fee. At such time as all or any portion of the title to the Property is conveyed and before title is passed, the buyer shall be required to pay a transfer fee to the Conservancy in an amount as shall be determined from time to time by the Conservancy's Board of Directors but which shall not exceed an amount equal to one hundred dollars (\$100.00) increased (to allow for inflation) at a compound rate of 3% per annum for the years elapsed since the date of this Conservation Easement. This fee is in recognition of the Conservancy's continuing obligation to monitor and enforce this Conservation Easement, to perform its responsibilities under the Conservation Easement and to otherwise further the Conservancy's mission, all of which are believed to benefit the Property and its owners. The Landowner agrees to incorporate this requirement in the terms of any agreement of sale for all or any portion of the Property and to familiarize the buyer with such terms prior to the sale.

11.3 Conservation Easement Binding on Future Owners and Others. The provisions of this Conservation Easement shall run with the land and shall be binding on each owner and any party entitled to possession or use of the Property while such party is entitled to possession or use thereof. As used in this Section, the term "owner" shall include the owner of any beneficial equity interest in the Property, but this sentence shall not impose personal liability on any such beneficial owner except to the extent such beneficial owner has personal liability with respect to the Property under the instrument creating such equity interest and under applicable law.

11.4 Discharge of Owner Upon Transfer. In the event any owner transfers fee ownership of all or any portion of the Property, such owner shall be discharged from all obligations and liabilities under this Conservation Easement with respect to such portion transferred, except for acts or omissions which occurred during such owner's period of ownership.

11.5 Notice and Effect of Lot Line Adjustment or Subdivision. Prior to any lot line adjustment or subdivision of the Property (permitted by the terms of this Conservation Easement) into two or more parcels of land having differing ownership, the conveying owner or owners shall give notice of such conveyance to the Conservancy. After any such subdivision or lot line adjustment, this Conservation Easement shall be deemed to create separate conservation easements on each such parcel, references in this Conservation Easement to the Property shall be deemed to refer to each such parcel, references to the owner or owners of the Property shall, as to each such parcel, be deemed to refer to the owner or owners of such parcel, and no owner of any parcel shall have any responsibility or liability to the Conservancy for any violation of this Conservation Easement which may occur on any other parcel of the Property.

11.6 Allocation of Permitted Structures. In any deed of conveyance of a portion of the Property, the Landowner thereof shall, if appropriate, allocate to the portion being conveyed the right to build a specified number or square footage of Structures or Improvements whose total number or square footage is limited by this Conservation Easement. If such deed fails to so allocate, then no right to build shall be allocated to the portion conveyed. In no event shall there be allocated to the portion being conveyed a greater number or square footage of Structures or Improvements than that allowed on the portion of the Property owned by such Landowner immediately prior to such conveyance.

12. Miscellaneous Provisions.

12.1 Assignment by Conservancy to Another Organization. This Conservation Easement may be assigned by the Conservancy by a written instrument duly executed by the Conservancy and recorded in the Dutchess County Clerk's Office, provided, however, that an assignment may be made only after at least 20 days' prior written notice to the owner or owners of the Property and only to a not-for-profit conservation organization (or, with the consent of the Landowner, a public body) within the meaning of Article 49, Title 3 of the Conservation Law that is qualified to be the grantee of tax-deductible conservation easements pursuant to Section 170(h) of the Internal Revenue Code, and as a condition of transfer, agrees to uphold the conservation purposes of this Conservation Easement.

12.2 Acts Beyond the Landowner's Control. The Landowner and the Conservancy shall not be under any duty to prevent, and shall not be liable for, any violations of this Conservation Easement caused by natural processes, by disasters, by force majeure, including, without limitation, fire, flood, storm and earth movement, or by any prudent action taken by the Landowner under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes, or by third parties whose presence on the Property has not been authorized by the Landowner or the Conservancy. The Conservancy may enter the Property to remedy any third-party violation that has not been remedied by the Landowner and may pursue all available legal and equitable remedies against such third-party violator, with reasonable prior notice to the Landowner and at the Conservancy's sole cost and expense.

12.3 Extinguishment of Development Rights. The parties agree that all development rights that are prohibited by or inconsistent with this Conservation Easement are extinguished and cannot be used to transfer development rights to other land, or to permit increased development density or increased natural resource use or extraction on other land, or to achieve other regulatory mitigation credits for fiber, discharge of pollutants, or other similar accommodation on land not subject to this Conservation Easement, or to calculate permissible density or lot yield for any other land not subject to this Conservation Easement.

12.4 Estoppel Certificates. Within 30 days after any request by the Landowner, the Conservancy shall execute and deliver to the Landowner any document, including an estoppel certificate, that may be requested by the Landowner which certifies, to the best of the Conservancy's knowledge, as to Landowner's compliance with any obligation of the Landowner contained in this Conservation Easement or otherwise evidence the status of this Conservation Easement. The Conservancy shall conduct a site inspection within 20 days of receipt of the Landowner's request for an estoppel certificate and the Landowner shall reimburse the Conservancy for reasonable costs incurred in connection with the execution and delivery of an estoppel certificate or similar certification.

12.5 Communications. Any communication, notice, demand, request, consent, or approval that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, private courier (or by such other means as the parties may agree), addressed as set forth in the first paragraph of this Conservation Easement, or to such other address as either party may from time to time designate by written notice to the other. Notice shall be deemed given upon proof of receipt in the case of personal delivery and upon delivery in the case of first class mail, private courier or other means as agreed upon by the parties.

12.6 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effectuate the purposes of this Conservation Easement and the policy and purpose of Article 49, Title 3 of the Conservation Law. If any provision of this Conservation Easement is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement shall be favored over any interpretation that would render it invalid.

12.7 Severability. Invalidation of any provision of this Conservation Easement, by court judgment or order, statute or otherwise, shall not affect the validity of any other provisions, which shall be and remain in full force and effect.

12.8 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement, all of which are merged herein. Nothing contained herein will result in a forfeiture of this Conservation Easement or reversion to the Landowner of any rights conveyed hereby.

12.9 Joint Obligations. The obligations imposed by this Conservation Easement upon multiple Landowners of the Property shall be joint and several.

12.10 Successors. The covenants, terms, conditions and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs and assigns. All references to the Landowner shall include the above-named Landowner and its personal representatives, heirs, successors and assigns. All references to the Conservancy include the above-named Conservancy and its successors and assigns.

12.11 Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

12.12 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

12.13 Subordination of Prior Mortgage. At the time of conveyance of this Conservation Easement, the Property is subject to the mortgage, October 19, 2011 in the

Dutchess County Clerk's Office at Document # 01-2011-9056 (the "Mortgage") to secure a loan payable to Ellen & Girls Holdings, LLC (the "Lender"). The Lender joins in the execution of this Conservation Easement in order to ensure that this Conservation Easement will qualify as a "qualified conservation contribution" under the Internal Revenue Code and all applicable Treasury Regulations thereunder. The Lender consents to the terms and intent of this Conservation Easement, and agrees that the lien represented by its mortgage is held subject to this Conservation Easement. The Lender agrees, for itself and its successors and assigns, to be bound by the restrictions in this Conservation Easement to the same extent as would occur if the mortgage had been recorded after the execution of this Conservation Easement and further agrees that its rights in the Property shall be subordinate to this Conservation Easement to the extent necessary to permit the Conservancy and its successors and assigns to enforce the purpose and restrictions in this Conservation Easement in perpetuity. The exercise of any rights of the Lender, including foreclosure or deed in lieu of foreclosure, shall not modify or extinguish this Conservation Easement. This Section shall not affect the priority of the related mortgage with respect to the proceeds of any sale, condemnation proceedings, insurance or to the leases, rents and profits of the Property, provided that if this Conservation Easement is extinguished pursuant to Section 13.5 below, the Conservancy shall receive its proportionate share of the proceeds resulting from any subsequent sale, exchange, or involuntary conversion as provided in Section 13.5, including any condemnation or insurance proceeds. Any lien that may be created by the exercise by the Conservancy (or by its permitted successors and assigns) of any of its rights under this Conservation Easement shall be junior to the Mortgage, except as provided in the preceding sentence. Upon request, the Conservancy agrees to subordinate its rights under this Conservation Easement to the proceeds, leases, rents and profits described above and likewise to subordinate its rights under any lien and to execute any documents required with respect to such subordination, except to the extent that the Conservancy is entitled to its proportionate share of proceeds as provided above. The priority of the exercise of any of the Conservancy's rights under this Conservation Easement prior to the creation of a mortgage shall not be affected thereby, nor shall this Conservation Easement be subordinated in any other respect. This provision shall survive extinguishment of the Conservation Easement.

13. Qualified Conservation Contribution Covenants.

13.1 Continuity. The Conservancy agrees that it will assign this Conservation Easement only to an assignee which agrees to continue to carry out the conservation purposes of this Conservation Easement. This Conservation Easement may only be assigned to an assignee which is a qualified organization as defined in Section 170(h) of the Internal Revenue Code, or any successor provisions then in effect, and the regulations thereunder. Any assignee other than a governmental unit must be an entity authorized to acquire and hold conservation easements under New York law, able to enforce this Conservation Easement, having purposes similar to those of the Conservancy which encompass those of this Conservation Easement.

13.2 Notice of Exercise of Certain Rights. The Landowner agrees to give the Conservancy written notice before exercising any right reserved hereby, the exercise of which may have an adverse impact on the conservation interests of this Conservation Easement.

13.3 Inspection. The Conservancy, by its duly authorized representatives, shall have the right to enter the Property at reasonable times, in a reasonable manner, when practicable, after giving notice, to inspect for compliance with the terms of this Conservation Easement.

13.4 Economic Hardship. In making this grant, the Landowner has considered the possibility that uses prohibited by the terms of this Conservation Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both the Landowner and the Conservancy that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Conservation Easement pursuant to Section 13.5. In addition, the inability of the Landowner, or its heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Conservation Easement, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment.

13.5 Extinguishment.

13.5(a) Donation and Valuation of Vested Interest. The Landowner and the Conservancy acknowledge that the granting of this Conservation Easement constitutes the donation to the Conservancy of a fully vested interest in the Property. The Landowner and the Conservancy agree that the value of the Conservancy's vested interest on the date of delivery of this Conservation Easement equals the amount by which the fair market value of the Property immediately prior to the delivery of this Conservation Easement is reduced by the restrictions imposed by this Conservation Easement. To establish this value, Landowner shall, if claiming a tax deduction under Section 170(h) of the Internal Revenue Code, provide to the Conservancy, with the Baseline Documentation, a copy of the qualified appraisal used by the Landowner to substantiate the value of the interest donated, as required under Section 170(h) of the Internal Revenue Code, and the parties shall amend that value, if necessary, to reflect any final determination thereof by the Internal Revenue Service or a court of competent jurisdiction. For purposes of this Section the ratio of value of the restrictions to the value of the Property unencumbered by the restrictions shall remain constant, and the percentage interest of the Conservancy in the fair market value of the Property determined thereby shall remain constant.

13.5(b) Involuntary Extinguishment. If and when the restrictions contained in this Conservation Easement are involuntarily extinguished by eminent domain taking or otherwise, the Landowner and the Conservancy agree to divide the proceeds, if any, in proportion to the fair market values of their interests in the Property as of the date of delivery of this Conservation Easement as provided in Section 13.5(a) above, unless the laws of New York provide that a greater amount shall be paid to the Conservancy. The division of proceeds shall be adjusted as appropriate by the value of Structures and Improvements made by the Landowner after the effective date of this Conservation Easement and the costs associated with the sale, exchange, or involuntary conversion. The Conservancy agrees to devote the proceeds it receives in a manner consistent with the conservation purposes inherent in this Conservation Easement.

13.5(c) Judicial Extinguishment Initiated by Landowner. If this Conservation Easement is extinguished pursuant to a judicial proceeding initiated by the Landowner or [his/her/its] successors, the Landowner shall pay to the Conservancy the greater of the amount specified in Section 13.5(b) and the fair market value of the Conservation Easement on the date of judicial extinguishment, as determined by independent appraisal.

The cost of such appraisal shall be divided equally between the Landowner and the Conservancy. The Conservancy may, in its sole discretion, waive the provisions of this Section 13.5(c) and value its proportionate share under Section 13.5(b).

13.5(d) Recovery of Compensation for Vested Interest. If the Conservancy does not receive the entirety of its percentage interest from the proceeds of a post-extinguishment sale, exchange, or involuntary conversion pursuant to Sections 13.5(b) or 13.5(c) above, the Conservancy shall be entitled to recover such deficiency from the owner of the Property in whom title is held at the time of such post-extinguishment sale, exchange, or involuntary conversion, including from a mortgagee who has foreclosed and taken title.

13.5(e) Post-Extinguishment Effect of this Section. In the event that this Conservation Easement is extinguished as provided in this Section 13.5, the provisions of this Section shall survive such extinguishment.

13.6 Merger. The Landowner and the Conservancy agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

13.7 Availability of Amount of Tax Benefits. The Conservancy makes no warranty, representation or other assurance regarding the availability, amount or effect of any deduction, credit or other benefit to the Landowner or any other person or entity under United States or any state, local or other tax law to be derived from the donation of this Conservation Easement or other transaction associated with the donation of this Conservation Easement. This donation is not conditioned upon the availability or amount of any such deduction, credit or other benefit. The Conservancy makes no warranty, representation or other assurance regarding the value of this Conservation Easement. As to all of the foregoing, the Landowner is relying upon the Landowner's own legal counsel, accountant, financial advisor, appraiser or other consultant and not upon the Conservancy or any legal counsel, accountant, financial advisor, appraiser or other consultant of the Conservancy. In the event of any audit or other inquiry of a governmental authority into the effect of this donation upon the taxation or financial affairs involving the Landowner or the Landowner's heirs, successors, or assigns or other similar matter, then the Conservancy shall be reimbursed and indemnified for any cost or expense of any kind or nature whatsoever incurred by the Conservancy in responding or replying thereto.

13.8 Existing Conditions. This Conservation Easement is granted subject to any existing conditions shown on the Conservation Easement Map or on photographs or other materials agreed upon in writing. In order to establish the present condition of the Property and its conservation purposes protected by this Conservation Easement so as to be able to monitor future uses of the Property and assure compliance with the terms hereof, the Conservancy has prepared, and Landowner has subscribed to, an inventory of the Property's relevant features and

conditions (the "Baseline Documentation"). The Landowner and the Conservancy have certified the same as an accurate representation of the condition of the Property as of the date of this Conservation Easement, as required under Treasury Regulations at Title 26, Section 1.170A-14 of the Code of Federal Regulations. The Baseline Documentation may be used by the Conservancy to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by the Conservancy of other evidence to establish the condition of the Property as of the date of this Conservation Easement. The Baseline Documentation is incorporated herein by reference.

IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year first above written.

**LANDOWNER
DAVID JAY MARSHALL LIVING TRUST**

By _____
David J. Marshall
Trustee

DUTCHESS LAND CONSERVANCY, INC.

By _____
Rebecca E. C. Thornton
President

[The undersigned Lender joins in the execution of this instrument to evidence its agreement as provided in Section 12.13 of this instrument

Ellen & Girls Holdings, LLC

By _____]
Ellen deJonge-Ozeri
General Manager

STATE OF NEW YORK)
SS.:
DUTCHESS COUNTY)

On the ___ day of _____, in the year 2011 before me, the undersigned, personally appeared **David J. Marshall**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual or person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
SS.:
DUTCHESS COUNTY)

On the ___ day of _____, in the year 2011 before me, the undersigned, personally appeared **Rebecca E. C. Thornton**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
SS.:
DUTCHESS COUNTY)

On the ___ day of _____, in the year 2011 before me, the undersigned, personally appeared **Ellen deJonge-Ozeri**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual or person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT A
Description of the Property

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situated, lying and being in the Town of Milan, Dutchess County, New York, more particularly described as follows:

Beginning at a point on the Westerly side of County Route 54, a.k.a. Milan Hill Road, said point marking the Southerly line of the herein described easement, the Southerly line of lands of David Marshall (tax parcel 6473-00-914119) and the Northerly line of lands now or formerly Steel (tax parcel 6473-00-816858).

Thence running the following twenty one (21) courses and distances along the Southerly and Westerly line of said Marshall and along the Northerly and Easterly line of said Steel:

1. N 89-56-08 W 66.83 feet to a point,
2. S 87-05-14 W 132.88 feet to a point,
3. S 83-52-04 W 46.26 feet to a point,
4. S 68-39-48 W 69.10 feet to a point,
5. S 84-32-06 W 89.57 feet to a point,
6. N 83-30-55 W 114.66 feet to a point,
7. S 72-28-35 W 88.56 feet to a point,
8. S 81-32-00 W 79.69 feet to a point,
9. S 86-48-38 W 97.56 feet to a point,
10. N 71-38-01 W 41.45 feet to a point,
11. N 60-16-13 W 35.64 feet to a point,
12. N 72-57-08 W 100.40 feet to a point,
13. N 48-18-23 W 20.05 feet to a point,
14. N 24-05-29 W 15.68 feet to a point,
15. N 09-23-01 E 66.15 feet to a point,
16. N 05-20-38 E 58.79 feet to a point,
17. N 02-06-12 E 76.75 feet to a point,
18. N 02-41-09 W 31.20 feet to a point,
19. N 11-47-18 W 70.94 feet to a point,
20. N 17-03-31 W 180.12 feet to a point,
21. N 21-43-44 W 295.28 feet to a point marking the Northwest corner of the herein described easement

Thence running through lands of David Marshall (tax parcel 6473-00-914119) and running along the Northerly and Easterly line of the herein described easement the following sixteen (16) courses and distances:

1. S 86-05-04 E 457.60 feet to a point,
2. N 77-24-26 E 256.25 feet to a point,
3. N 48-43-32 E 193.53 feet to a point,
4. N 46-59-08 E 120.44 feet to a point,
5. N 13-52-58 E 143.16 feet to a point,
6. N 06-17-09 W 731.45 feet to a point,
7. N 18-17-10 W 217.89 feet to a point,
8. N 87-06-28 E 236.97 feet to a point,
9. S 50-41-20 E 260.76 feet to a point,
10. S 26-34-26 E 184.48 feet to a point,
11. S 09-07-41 E 318.41 feet to a point,
12. S 70-02-22 E 193.59 feet to a point,
13. S 18-49-55 E 318.63 feet to a point,
14. S 39-35-54 E 136.02 feet to a point,
15. S 01-35-06 W 367.78 feet to a point,
16. S 09-44-31 W 195.12 feet to a point marking the Southeast corner of the herein described easement and the Northerly highway boundary line of the aforementioned Milan Hill Road.

Thence running along said Milan Hill Road the following six (6) courses and distances:

1. N 89-30-50 W 188.23 feet to a point,
2. S 72-28-00 W 122.38 feet to a point,
3. S 54-59-58 W 99.24 feet to a point,
4. S 44-30-31 W 100.02 feet to a point,
5. S 35-14-22 W 110.25 feet to a point,
6. S 30-01-15 W 170.95 feet to the point or place of beginning.

The above described easement contains 42.3 acres of land more or less.

The above described parcel is known as Conservation Easement No. 1 and being a portion of lands of David Marshall, tax parcel 6473-00-914119 as found on a map prepared by Mark R. Graminski P.E. & L.S., 13 Elm Street, Red Hook, NY 12571, entitled "Conservation Easement Plan Prepared for David Marshall" dated 12/12/2011.

EXHIBIT B
Conservation Easement Map