

**CONSERVATION EASEMENT  
FOR AGRICULTURAL LAND**

THIS Conservation Easement for Agricultural Land is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2018, by and between:

**SHINRIN YOKU, LLC**

(“Grantor”), a New York State Limited Liability Company, organized under the Limited Liability Company Law of New York State, with a mailing address of 3 Wythe Lane, Brooklyn, New York, 11249; and

**THE TOWN OF GARDINER**

(“Grantee”), a New York Municipal Corporation and one of the Towns of the County of Ulster, State of New York, with municipal offices located at 2340 Route 44/55, Post Office Box 1, Gardiner, New York, 12525.

**W I T N E S S E T H**

**WHEREAS:**

A. Grantor is the sole owner in fee simple of certain real property (“the Property”) consisting of \_\_\_\_\_ acres, in the Town of Gardiner, Ulster County, New York, more particularly described in “Exhibit A” attached hereto and shown on the map (the “Conservation Easement Map”) attached hereto as “Exhibit B”, and as further shown on the Map (the “Lot Line Revision Map”). Said Maps have been duly filed within the Offices of the Ulster County Clerk as Filed Map # \_\_\_\_\_, and Filed Map # \_\_\_\_\_, respectively.

B. The Property possesses the following attributes:

(i) \_\_\_\_\_ acres of farmland, as shown upon the Conservation Easement Map aforesaid;

(ii) Lands to be used for various buildings, structures, appurtenances, and real property improvements associated with agricultural uses and as determined by the Grantor.

C. Article 14 of the New York State Constitution states that “the policy of this state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products”;

**D. In Section 49-0301 of the New York Environmental Conservation Law, the Legislature of the State of New York found and declared that “in order to implement the state policy of conserving, preserving and protecting its environmental assets and natural**

**and man-made resources, the preservation of open spaces, and the preservation, development and improvement of agricultural and forest lands..., is fundamental to the maintenance, enhancement and improvement of...balanced economic growth and quality of life in all areas of the state;”**

**E. The Property is located within Ulster County’s Agricultural District # \_\_\_\_\_, created pursuant to Article 25AA of the New York State Agriculture and Markets Law (“the Agriculture and Markets Law”). In Section 300, it states: “It is hereby found and declared that many of the agricultural lands in New York State are in jeopardy of being lost for any agricultural purposes. When nonagricultural development extends into farm areas, competition for limited resources results...It is therefore the declared policy of the state to conserve, protect, and encourage the development and improvement of its agricultural land for production of food and other agricultural products...It is the purpose of this article to provide a locally-initiated mechanism for the protection and enhancement of New York State’s agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance;”**

**F. Article 25-AAA, Section 321 of the Agricultural and Markets Law states that “It is hereby found and declared that agricultural lands are irreplaceable state assets. In an effort to maintain the economic viability, and the environmental and landscape preservation values associated with agriculture...” the Commissioner is authorized to administer programs to assist counties in developing agricultural and farmland protection plans and to assist both county and municipal governments in the implementation of such plans. The Commissioner gives priority to projects that will preserve viable agricultural land, are located in areas facing significant development pressure and serve as a buffer for a significant natural public resource containing important ecosystems or habitat characteristics;**

G. The Property is located within the Town of Gardiner, which values the conservation of agricultural lands and continuing viability of agriculture therein.

H. Ulster County’s 1997 Farmland Protection Plan states that “Agriculture in Ulster County is currently a \$55 million dollar industry without factoring in the multiplier effects. Direct farm employment provides jobs and careers for over 2,000 people. Farms and agribusinesses purchase supplies and services from local businesses and support other industries as well... We need to keep agriculture a vital and integral part of Ulster County’s economy and rural lifestyle. This will require leadership and coordination of public investment policy with agriculture and farmland protection goals. A coordinated and comprehensive approach that incorporates and mirrors community values will benefit the entire county.”

I. Grantee The Town of Gardiner is a New York Municipal Corporation within the meaning of Article 49, Title 3 of the Environmental Conservation Law of the State of New York

(together with any successor statute, the "Conservation Law") and has the power to acquire conservation easements;

J. The expanse of farmland contained upon the lands of the Grantor is important to the natural, ecological, cultural, scenic, and historical values of the Town of Gardiner;

K. Grantee has determined that acquiring a conservation easement on the Property which protects the agricultural values of the Property, and which promotes the use of sound agricultural practices will further its purposes of preserving the agricultural, natural, ecological, cultural, and scenic values of the Town of Gardiner;

L. Grantor and Grantees desire to ensure that the agricultural characteristics of the Property will be protected for the benefit of future generations, and desire to do this by entering into this Conservation Easement pursuant to the provisions of Article 49, Title 3 of the Conservation Law;

N. This Conservation Easement is part of a lodging facility known as Heartwood, which project obtained Approvals from the Town of Gardiner Planning Board as follows:

- i.) Lot Line Revision: \_\_\_\_\_, 2018.
- ii.) Special Use Permit: \_\_\_\_\_, 2018.
- iii.) Site Plan: \_\_\_\_\_, 2018.

O. Grantor has received such independent legal and financial advice regarding this Conservation Easement that Grantor deemed necessary. Grantor freely and with full will signs this Conservation Easement in order to accomplish the purposes of this Conservation Easement as stated in Section 2 herein.

NOW, THEREFORE, in consideration of the sum of ONE (\$1.00) DOLLAR, all of the foregoing, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **1. GRANT OF CONSERVATION EASEMENT.**

Grantor voluntarily grants to Grantee, and Grantee voluntarily accepts, a perpetual conservation easement (the "Conservation Easement") over the Property for the benefit of the Grantor and the Grantee, which Conservation Easement shall touch, concern and run with, and bind the Property in perpetuity.

The general public shall not have the authority, right or ability to enforce any of the terms, covenants or conditions of this Conservation Easement. Nor shall the general public have any right to utilize the easement areas herein described for any purposes whatsoever. The Grantee shall not have the right to grant permission to any persons, entities, or others to utilize the

easement areas herein described, except as herein stated.

## **2. PURPOSE.**

The primary Purpose of this Conservation Easement is to conserve productive agricultural lands for the benefit of the public and future generations. The secondary purpose of this Conservation Easement is to conserve the scenic character of the Property for the benefit of the public and for future generations as long as such conservation does not conflict with the primary purpose as stated above. Grantor and Grantee share the common desire to conserve these resources by the conveyance of this Conservation Easement, in order to prevent the use or development of the Property for any purpose or in any manner which would conflict with the maintenance of these agricultural and resource values.

## **3. IMPLEMENTATION.**

This Conservation Easement shall be implemented by limiting and restricting the development, management and use of the Property in accordance with the provisions of this Conservation Easement. The terms of this Conservation Easement are subject to all applicable laws and regulations.

## **4. DEFINITIONS.**

As used in this Conservation Easement, the term "owner" includes the owner(s) of record title and/or the owner of any beneficial equity interest in the Property or any portion thereof; the term "Grantor" includes the original Grantor, their heirs, successors and assigns, all future owners of all or any portion of the Property, and any party entitled to possession or use thereof; and the term "Grantee" includes the original Grantees and its successors and assigns.

**The term "Sound Agricultural Practices" refer to those practices necessary for the on-farm production, preparation and marketing of agricultural commodities, provided such practices are legal, necessary, do not cause bodily harm or property damages off the farm, and achieve the intended results in a reasonable and supportable way. In the event that properly commenced questions, by persons possessing standing, are raised regarding the soundness of a particular agricultural practice on the Property, Grantee shall defer to the Commissioner of Agriculture and Markets as to whether the practice is sound, in accordance with Section 308 of the New York State Agricultural and Markets Law ("the Agriculture and Markets Law").**

**The term "Farm Labor Housing" means structures used to house seasonal and/or full-time employees where such residences are provided by the farm landowner and/or operator, the worker is an essential employee of the farm landowner and/or operator employed in the operation of the farm and the farm worker is not a partner or owner of the farm operation.**

## **5. RESERVED RIGHTS.**

Subject to the restrictions and covenants set forth in this Conservation Easement, Grantor reserves for themselves and their successors in interest with respect to the Property, all rights at law and in equity with respect to the Property, including, without limitation, the right of exclusive use, possession and enjoyment of the Property, and the right to sell, transfer, lease, mortgage or otherwise encumber the Property, as owner, as well as the right to exclude any member of the public from trespassing on the Property. Nothing contained herein shall be construed as a grant to the general public of any right to enter upon any part of the Property. However, the Grantor reserves the right to have the general public enter onto the property as invitees and/or licensees for purposes consistent with the Conservation Easement.

## **6. ACCESS**

**Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or to use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Conservation Easement.**

## **7. RESTRICTED USES.**

The restrictions imposed upon the Property are as follows:

**7.1. Use and Building Prohibitions.** No residential, commercial, industrial or mining activities shall be permitted, and no building, structure, appurtenant facility or improvement shall be constructed, created, installed, erected or moved onto the Property, except as expressly permitted by this Conservation Easement.

**7.2. Improvement Restrictions.** Except for residential driveways, barnyards, farm roads, or other improvements necessary to provide access to permitted buildings or improvements, or to conduct other activities permitted by this Conservation Easement without permission of the Grantees, no driveways, roads, or utility lines shall be constructed, developed or maintained into, on, over, under, or across the Property, without the prior written permission of the Grantees.

**7.3. Signage Restrictions.** No internally-lit signs, neon signs, or commercial billboards not directly related to the agricultural operations being conducted on the Property, shall be erected or displayed on the Property.

**7.4. Waste Management.** The dumping, collection, recycling of trash, human waste, refuse or debris on the Property from off property sources shall not be permitted. However, farmers shall be allowed to store and collect such wastes if these are used for or generated from agricultural production purposes on the Property and they are managed in

an environmentally and agronomically sound manner. This prohibition shall not apply to the construction and maintenance of septic or other sanitary systems for human wastes generated from dwellings and other structures upon the Property, which structures are otherwise permitted by this Conservation Easement, without the permission of the Grantees, for the storage and spreading of manure, lime, or other lawful fertilizer or soil conditioner for agricultural practices and purposes, the temporary storage of trash in receptacles for periodic off-site disposal, and the storage or placement of organic material generated by agricultural uses of the Property, all of which are hereby permitted provided that any such activity shall be in accordance with sound agricultural practices as defined in Section 4 herein, and consistent with both federal and state laws. Any organic material generated by non-agricultural uses, or originating from off the Property, must be incidental to, and in support of, otherwise permitted agricultural uses of the Property.

**7.5. Chemicals.** The Grantor shall not maintain any hazardous waste or toxic substances whatsoever on the Property. Notwithstanding this restriction, the following federally and state registered substances are hereby permitted by this Conservation Easement: a) pesticides, herbicides, fertilizers, or other chemical treatment of the Property for agricultural and household purposes; and b) chemical treatment of livestock maintained on Property. In both cases, any such material shall be used in accordance with applicable laws and with sound agricultural practices as defined in Section 4 herein. Said materials shall not be deemed hazardous waste or toxic substances if utilized in accordance with law at the time applied.

**7.6. Mining Prohibitions.** There shall be no excavation, removal of topsoil, sand, gravel, rocks or minerals, in any manner, except as may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Conservation Easement. No commercial quarry, gravel pit, mining or drilling, or other mining or drilling activities prohibited under applicable provisions of Section 170(h) of the Internal Revenue Code are permitted on or under the Property. This paragraph shall not prevent the construction of structures or the installation of local and residential utility lines, wells, septic systems or other utilities as reasonably necessary to serve the property as permitted herein, or the construction of ponds or driveways and associated appurtenances as permitted herein.

## **8. PERMITTED USES.**

Permitted uses of the Property include all lawful agricultural uses as follows:

### **8.1. Within the Conservation Easement Area:**

**8.1.A. Farming Practices.** Without permission of the Grantee, but pursuant to all lawful Approvals, Grantor has the right to produce crops, livestock and livestock

products and conduct farm operations as defined under Section 301 of the Agriculture and Markets Law, or such successor law as is later promulgated, which includes but is not limited to the right to establish, reestablish, maintain, and use cultivated fields, orchards, and pastures. Said farming practices shall be carried out in accordance with sound agricultural practices as defined in Section 4 herein, together with the right to construct, maintain and repair access roads for these purposes.

**8.1.B. Agricultural Structures & Improvements.** Without permission of the Grantee, Grantor may construct new buildings and other structures and improvements within the Conservation Easement Area but pursuant to all lawful Approvals, and maintain, repair, replace and enlarge existing structures, to be used primarily for purposes related to a “Farm Operation,” as defined in Section 301 of the New York State Agriculture and Markets Law, or any successor statute, and for such other agricultural purposes as (i) the production, storage or sale of farm products or by-products, or processing of farm products or by-products produced on-site, (ii) the storage of equipment used for agricultural production, (iii) the keeping of livestock or other animals and (iv) farm labor housing. Notwithstanding the provisions of this Section, said structures may be used for farm labor housing, as defined in Section 7.1.E herein, and/or for non-agricultural home occupations or agricultural cottage industries as defined in Section 7.1.G herein. The land on which these structures stand shall not be subdivided into separate or individual lots.

**8.1.C. Fences.** Without permission of the Grantee, but pursuant to all lawful Approvals, existing fences may be repaired and replaced, and new fences may be constructed or installed anywhere in the Conservation Easement Area for all lawful purposes and for the purposes of reasonable and customary management of livestock and wildlife, and to prevent trespassing on the Property.

**8.1.D. Single-family Residential Dwellings.** Without the permission of the Grantee, but pursuant to all lawful Approvals, a maximum of two (2) single-family residential dwellings, together with customary appurtenances and non-habitable accessory structures may be constructed, and may be repaired, enlarged, or replaced. Under no circumstances shall the land on which these single-family dwellings and/or structures stand be subdivided into separate or individual lots.

**8.1.E. Farm Labor Housing.** Without permission of the Grantees, but pursuant to all lawful Approvals, the Grantor has the right to repair, enlarge or replace any or all dwellings or structures used to house farm employees. New single- or multi-family dwellings to be used solely to house employees or others engaged in agricultural production on the Property may be constructed within the Conservation Easement Area. Non-habitable structures may be used to create

farm labor housing, subject to applicable laws. The land on which any of the structures described in this Section stand shall not be subdivided into separate or individual lots.

**8.1.F. Agriculture-related Commercial Activities.** Without permission of the Grantees, but pursuant to all lawful Approvals, the Grantor has the right to establish and carry out agriculture-related commercial activities, including but not limited to pick-your-own agriculturally related activities, and build or install structures necessary for the same within the Conservation Easement Area. Such activities include, but are not limited to, the storage and sale of farm produce and related products, processing and packaging of farm produce, farm machinery repair, agri-tourism related structures and sales, and retail farm market sales. The land on which these structures stand shall not be subdivided into separate or individual lots.

**8.1.G. Customary Home Occupations or Cottage Industries.** Without permission of the Grantees, but pursuant to all lawful Approvals, the Grantor has the right to establish and carry out agricultural cottage industries within the Conservation Easement Area, provided said activities do not interfere with the agricultural use of the Property. Examples of customary agricultural cottage industries are, without limitation, crafts production, pies/baking production and live/work experiences. The land on which these structures stand shall not be subdivided into separate or individual lots.

**8.1.H. Recreational and Educational Uses.** Without permission of the Grantees, but pursuant to all lawful Approvals, the Grantor has the right to construct, maintain and repair structures for customary rural recreational and educational and business uses upon the Conservation Easement Area. These uses may include, but are not limited to, cross-country skiing, horseback riding, , farm tours, agricultural classes, nature interpretation, and other educational programs. The land on which these structures stand shall not be subdivided into separate or individual lots.

**8.1.I. Water Resources.** Without permission of the Grantees, but pursuant to all lawful Approvals, the Grantor has the right to utilize, maintain, establish, construct, or otherwise improve water sources, courses, and bodies, including the construction of ponds upon the Conservation Easement Area for uses expressly permitted herein.

**8.1.J. Utilities, Driveways, Roadways.** Without permission of the Grantees, but pursuant to all lawful Approvals, the Grantor has the right to construct, maintain and repair utilities, driveways and/or roadways necessary to serve any permitted uses in the Conservation Easement Area, as listed herein. Such utilities include water lines, sewer lines, electric lines, wells and septic systems.

**8.2. Procedures for Granting Permission.** In order to take any action under this Section 7 for which permission of Grantee is required and requested, Grantor must demonstrate to the Grantee's reasonable satisfaction that:

- a) the proposed action is consistent with the Purpose of this Conservation Easement as established in Section 2 herein;
- b) would not be unnecessarily located on the Conservation Easement Area;

Grantee, shall not unreasonably withhold said permission and said Grantee shall give written notification of its decision within 30 days of receipt of a request for such permission, provided that Grantor has supplied sufficient information to make such a determination.

## **9. ADDITIONAL COVENANTS AND PROVISIONS.**

### **9.1. Subdivision.**

**9.1.A. For farming purposes.** Except as otherwise specifically set forth herein, the Property may be partitioned or subdivided only with the prior written permission of Grantee, which permission shall be granted only if all parcels of land thereby created will remain viable for agricultural production either individually, or as part of an established farming operation. Such subdivision shall not include the right to construct any new habitable or commercial structures, except as would otherwise be permitted by this Conservation Easement or lawful amendment thereto. Any partition or subdivision must comply with all applicable land use and subdivision regulations. Mortgages, or other non-possessory interests in land do not constitute subdivisions for the purposes herein. Any subdivided parcels shall be subject to the terms of this Conservation Easement.

**9.1.B. For residential lots.** Except as otherwise specifically set forth herein, subdivision to create parcels for residential, commercial or industrial use is prohibited, unless otherwise agreed to by the Grantor and Grantee by lawful amendment of this Conservation Easement.

**9.2. Enforcement.** Grantee may enforce this Conservation Easement at law or in equity, including, without limitation, pursuant to the provisions of Article 49, Title 3 of the Conservation Law, against any or all of the owners of the Property or any part thereof. If there is a violation, or threatened violation, of this Conservation Easement, Grantee shall notify the party in violation or threatening the violation, who shall, in the case of an existing violation, promptly cure the violation by (a) ceasing the same or (b) restoring the Property to the condition before such violation, or (c) both, or, in the case of a threatened violation, refrain from the activity that would result in the violation. If a violation continues for more than 30 days after notice is given without Grantee taking steps to cure

the same, or at any time if the violation or a threatened violation threatens immediate and irreparable harm to the resource values of the Property that this Conservation Easement is intended to protect, Grantee may seek immediate injunctive relief and shall have the right, but not the obligation, to correct it by pursuing all available remedies at law or in equity. Failure to enforce any restriction or covenant herein contained shall in no event be deemed a waiver of a right to do so thereafter as to the same violation or breach or as to one occurring prior or subsequent thereto. The Grantor reserves and is hereby granted all rights at law and in equity to challenge, defend and otherwise prosecute all affirmative defenses, objections in point of law and the interposition of all claims and counterclaims with respect to any and all enforcement actions of the Grantee.

### **9.3. Amendment.**

**9.4.A. General.** This Conservation Easement may be amended only upon the written consent of Grantees and Grantor, and only if such amendment has a neutral or positive effect on the conservation values that are protected by this Conservation Easement. Any such amendment shall be consistent with the Purpose of this Conservation Easement as established in Section 2 herein, and shall comply with Article 49, Title 3, of the Conservation Law, and, where applicable, Section 170(h) of the Internal Revenue Code. Any such amendment that does not comply with Article 49 or, where applicable, Section 170(h) shall be void and of no force or effect. The party or parties requesting an amendment shall be responsible for all reasonable costs relating to evaluation of said request and the amendment's execution, including survey costs (if any), reasonable attorney fees and staff costs.

**9.4. Approvals In Writing.** Any approval, waiver, or other form of consent or permission required or permitted to be given by Grantee under this Conservation Easement shall only be effective if in writing and duly executed on behalf of Grantee.

**9.5. Encumbrance by Conservation Easement.** Any subsequent conveyance, including, without limitation, transfer, lease or mortgage of the Property, 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 The Town of Gardiner, by instrument dated \_\_\_\_\_, 2018 and recorded in the office of the Clerk of Ulster County at Liber \_\_\_\_\_ of Deeds at Page \_\_\_\_\_." The failure to include such language in any deed or instrument shall not, however, affect the validity or applicability of this Conservation Easement to the Property. Nothing in this Conservation Easement shall be construed as limiting the rights of the holder of such conveyance or mortgage from foreclosing or otherwise enforcing its rights thereunder, provided that any such foreclosure or enforcement of a subsequent or otherwise subordinated or junior mortgage, or other

property interest, or other action shall not extinguish this Conservation Easement and Grantees' rights hereunder. Grantor shall provide 30 days' notice to Grantees prior to any such action occurring, but Grantor's failure to provide such notice shall not adversely affect the rights of any holder of any mortgage or other security instruments. Grantee agrees to execute any documentation reasonably required to subordinate this Conservation Easement with respect to all of the foregoing instances, provided the Grantee does not incur any costs therefor.

**9.6. Taxes and Assessments.** Grantor shall pay all taxes and assessments lawfully assessed against the Property or portion thereof owned by such Grantor.

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

**9.8. Binding Effect.** The provisions of this Conservation Easement shall run with the Property in perpetuity and shall bind and be enforceable against the Grantor and all future owners and any party entitled to possess or use the Property or any portion thereof while such party is the owner or entitled to possession or use thereof. Notwithstanding the foregoing, upon any transfer of title, the transferor shall, with respect to the Property transferred cease being a Grantor or owner with respect to such Property for purposes of this Conservation Easement and shall, with respect to the Property transferred, have no further responsibility or liability hereunder for acts done or conditions arising thereafter on or with respect to such Property, but the transferor shall remain liable for earlier acts and conditions done or occurring during the period of his or her ownership or conduct. Likewise, this Conservation Easement confers no liability to any owner for monetary damages relating to acts which said owner clearly establishes were done by a prior owner.

## **10. MONITORING THE EASEMENT.**

The Grantee may further elect to select a bona fide conservation organization to monitor the Property in order to confirm that the conservation easement area is being maintained consistently with this Declaration. Said conservation organization shall be permitted to access the Conservation Easement lands once per year for up to a maximum eight (8) hour period and upon written notice given to any affected Property owner a minimum of 48 hours in advance by way of certified mail, return receipt requested. In the alternative, the Grantor hereby sets forth the date of October 1<sup>st</sup> in any given year as being the date on which such monitoring shall occur and notice for such monitoring shall not be required to be given in advance thereof. In all instances whereby said conservation organization is monitoring the Property, said conservation organization shall be required to show that it possesses general liability insurance, naming the Declarant and Declarant's successors and/or assigns as additional insureds in minimum amounts of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate prior to accessing the Property. Notwithstanding any other recital set forth herein, in the instance of a violation or suspected

violation of this Conservation Easement, which has caused or threatens to cause irreparable harm to any of the conservation values this Instrument is designed to protect, no such advance notice is required to be given by the Grantee or said bona fide conservation organization.

#### **11. LIMITATION OF LIABILITY.**

Grantor and any successive owners of the Property, or any portion thereof, shall have no liability for the observance or performance of the terms of this Declaration after such party has transferred his or her interest in the Property, but shall remain liable and responsible for any acts done or conditions that occurred during the period of the transferor's ownership of the premises provided that transferor received written notice of such violation prior to the date of such conveyance and provided that such violation has, in fact, occurred.

The Grantee shall not be liable for any claims arising in connection with the ownership and use of the premises. Nothing in this Agreement creates any affirmative obligation relating to the maintenance of property or any express or implied obligation that requires the Grantee to be responsible for any liability pursuant to the provisions of this Declaration.

#### **12. INDEMNIFICATION.**

The Grantee or bona fide conservation organization has no affirmative obligations whatsoever, express or implied, relating to the maintenance, management or operation of the Conservation Easement and exercise of, or failure to exercise, any right conferred by this Conservation Easement shall not be deemed to be management or control of the activities on the conservation easement lands by the Grantee or bona fide conservation organization. The Grantee or bona fide conservation organization shall not be responsible for injury, damage or death to persons or property in connection with enforcement of this Conservation Easement or otherwise with respect to the condition of the Property, provided that the foregoing shall not absolve the Grantee or any bona fide conservation organization of any liability it might otherwise have, for wrongfully, without the participation or consent of the owner, causing any dangerous and/or negligent condition to arise on the subject premises. Except in the last described instance, Grantor agrees to indemnify and hold the Grantee and/or any bona fide conservation organization, their officers, employees agents or independent contractors harmless from any and all costs, claims or liability, including reasonable attorney's fees arising from any negligence which causes personal injury, accidents or damage relating to the Grantee and/or the bona fide conservation organization, their officers, employees agents or independent contractors harmless from and against any and all claims, costs, expenses, fines, penalties, assessments, citations, personal injury or death. Notwithstanding anything herein to the contrary, the Grantee, and/or a bona fide conservation organization shall not be responsible for indemnifying the Grantor for any acts by third parties not within their control including but not limited to members of the general public that may access the Property from other lands. Without limiting the foregoing, the cost and expense of curing or attempting to cure any breach, default or violation of this Conservation Easement shall be borne by the responsible party. This paragraph does not limit any

responsibility the Grantor may have to cure a violation of this Conservation Easement caused by a third party.

### **13. FURTHER ACTS.**

The Grantor shall perform any further acts and execute and deliver any documents to the Grantee, including amendments to this Conservation Easement, which may be reasonably necessary to carry out the provisions of this Conservation Easement or which are necessary to qualify this instrument as a conservation easement under Article 49, Title 3, of the Conservation Law or any regulations promulgated pursuant thereto.

### **14. CONTROLLING LAW.**

The interpretation and performance of this Conservation Easement shall be governed by the Laws of the State of New York. Venue for any action or proceeding arising out of this Agreement shall be at the Supreme Court, State of New York, County of Ulster.

### **15. TOWN OF GARDINER INSPECTION.**

The Grantee and its duly authorized representatives shall have the right to enter onto the Property at reasonable times, in a reasonable manner, and, where practicable, after giving a minimum of 48 hours prior notice, to inspect the Property and the activities thereon for compliance with the terms of this Conservation Easement. In the instance of a violation of the terms of this Conservation Easement, which has caused or threatens to cause irreparable harm to any of the Property and the activities thereon values this Conservation Easement is designed to protect, no such advance notice is required. This paragraph is intended to be read together with and in addition to the paragraph recitals herein which is entitled "Monitoring the Easement"; said recitals are in addition to the standard Town of Gardiner Inspection language which is customarily employed within Conservation Easement Instruments.

### **16. INTERPRETATION.**

This Instrument is intended to create a "qualified real property interest" for "conservation purposes," as defined in Section 170(h) of the Internal Revenue Code, and the Grantor may be entitled to qualify the interest hereby granted as such a "qualified real property interest" for "conservation purposes." This Agreement shall be construed as a negative easement running with the Property for a perpetual duration and said Agreement shall be subordinate to any mortgages, security agreements or other financing instruments of record.

### **17. LIABILITY; INDEMNIFICATION.**

a.) Upon conveyance of lots by deed, the Grantor shall have no obligations whatsoever, express or implied, relating to the use, maintenance or operation of said lot and the fee owner of

said lots shall be responsible for compliance with the terms, covenants and conditions of this Agreement. Grantors' exercise of, or failure to exercise, any right conferred by this Conservation Easement shall not be deemed to be management or control of the activities on the Property.

b.) The Grantor shall obtain general comprehensive liability insurance upon the Property in such amounts as the Grantor shall deem sufficient and Grantor shall name the Grantee as additional insured thereunder and provide proof that said insurance is maintained, renewed and in effect on the property. In no event shall said insurance be in minimum amounts less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.

c.) The cost and expense of curing or attempting to cure any breach, default or violation of this Conservation Easement and of restoring any portion of the property affected thereby, whether such cure is affected by Grantor or Grantee, shall be borne solely by the party responsible for the breach, default, or violation.

#### **18. TAXES AND ASSESSMENTS.**

The Grantor and its successors and/or assigns, while fee owners of the Property, shall pay all taxes and assessments lawfully assessed against the Property or portion thereof.

#### **19. NO FORFEITURE.**

Nothing herein contained will result in a forfeiture of Grantor's title in any respect.

#### **20. QUALIFIED CONSERVATION CONTRIBUTION COVENANTS.**

a.) Continuity. This grant of Conservation Easement is limited solely to the Town of Gardiner as Grantee. The Grantee agrees that it will not assign this Conservation Easement without the written consent of the Grantor and Grantor's heirs, executors, successors and/or assigns. Any assignee, other than a governmental unit, must also be an entity able to enforce this Conservation Easement, having purposes similar to those of the Grantee which encompass those of this Conservation Easement. If the Grantee ever ceases to exist or no longer qualifies under Section 170 (h) of the Internal Revenue Code, or applicable state law, a court with jurisdiction shall transfer this easement to another qualified organization having similar purposes that agrees to assume the responsibility. Said Grantee shall give the Grantor thirty (30) day notice of any assignment of this Conservation Easement in accordance with the procedures set forth herein.

b.) The Instrument of any assignment shall be interpreted to provide that in the event this Conservation Easement is determined by a court of competent jurisdiction to be invalid in the hands of the assignee under such instrument, or if such assignee is determined not to be a "qualified organization", such instrument of assignment shall be void and of no force or effect and the purported assignment pursuant thereto deemed void ab initio, and this Conservation Easement shall remain in full force and effect in the hands of the assignor thereunder.

c.) If Grantee or any successor or assign ceases or fails (i) to enforce this Conservation Easement, or (ii) to exist, and upon the occurrence of such event fails to assign all its rights and interest in the property, and delegate all its responsibilities under this Conservation Easement, to such a "qualified organization", then the rights and interest of Grantee under this Conservation Easement shall be vested in another "qualified organization" in accordance with a cy pres proceeding of a court of competent jurisdiction.

d.) Extinguishment. If a subsequent unexpected change in the conditions surrounding the Property, including condemnation of the Property, make impossible or impractical the continued use of the property for the purposes set forth herein, and if the restrictions are extinguished by judicial proceeding, then, upon any subsequent sale, exchange or involuntary conversion by the Grantor, unless State law provides that the Grantor is entitled to the full proceeds therefrom without regard to the terms of the conservation restrictions, Grantee shall be entitled to that portion of the proceeds equal to the proportionate value of the conservation restrictions as provided immediately below. For such purposes only, Grantor agrees that the conveyance of this Conservation Easement to Grantee gives rise to an incorporeal property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that the conservation restrictions hereby created at the date hereof bears to the value of the Property as a whole at the date hereof (subject to reasonable adjustment to the extent permissible under Section 170(h) of the Internal Revenue Code for any improvements which may hereafter be made on the Property). Grantee agrees to use their share of such proceeds in a manner consistent with the Purposes of this Conservation Easement as stated herein. The cessation of any particular permitted activities on the Property shall not be construed to be grounds for extinguishment of this Conservation Easement.

## **21. TAX DOCUMENTATION.**

a.) This instrument is intended to create a "Qualified real property interest for conservation purposes" as defined in Section 170(h) of the Internal Revenue Code and shall, if qualifying, be interpreted consistently with said intention.

b.) The Grantee agrees to execute any documents and provide any information as reasonably requested by the Grantor to be provided to the Internal Revenue Service and/or the New York State Department of Taxation and Finance or other taxing authority, so long as the Grantee incurs no costs therefor.

c.) In the event that such a request is made to the Grantee, the Grantee shall not be obliged to sign such documents unless the Grantor pays the Grantee's reasonable attorney's fees for the cost of reviewing same before execution of the document.

**22. AMENDMENT.**

This Conservation Easement may be amended only upon the written agreement of Grantor and the Grantee (or Grantor’s successor in interest if Grantor no longer owns the Property), which agreement may be withheld in Grantor’s or Grantee’s sole and absolute discretion. Any and all amendments shall: (a) have a neutral or positive effect on the conservation values that are protected by this Conservation Easement; (b) be consistent with the purposes of this Conservation Easement as established herein; (c) not affect the term of this Conservation Easement; (d) comply with applicable law; and (e) not have a negative impact on the fair market value of the restrictions contained in this Conservation Easement. Any such amendment that does not comply with the Conservation Law shall be void and of no force or effect. The party requesting an amendment shall be responsible for all costs related to the evaluation of said request and the amendment’s execution, including staff costs incurred by the non-requesting part. This Agreement is fully integrated and shall not be changed, altered, abrogated or nullified orally.

**23. FURTHER ACTS.**

The Grantor shall perform any further acts and execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Conservation Easement Agreement in the future, as may be determined by the Grantee, a bona fide conservation organization and/or any other governmental entity.

IN WITNESS WHEREOF, the parties have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2018.

Grantor: SHINRIN YOKU LLC

Grantee: TOWN OF GARDINER

By \_\_\_\_\_  
PHILLIP RAPOPORT, Managing Member

By: \_\_\_\_\_  
MARYBETH MAJESTIC, Supervisor

STATE OF NEW YORK )  
COUNTY OF ULSTER ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_, in the year 2018 before me, the undersigned, personally appeared, PHILLIP RAPOPORT, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

STATE OF NEW YORK )  
COUNTY OF ULSTER ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_, in the year 2018, before me, the undersigned, personally appeared MARYBETH MAJESTIC, 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 the person upon behalf of which the individual acted, executed the instrument.

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

RECORD & RETURN TO:  
RISELEY AND MORIELLO, PLLC  
MICHAEL A. MORIELLO, ESQ.  
PO Box 4465  
Kingston, New York 12402