

Conservation Easement Draft Template July , 2020

This Easement, made the ____ day of _____, 20____ between

[Insert owner’s name and address], the GRANTOR

and

TOWN OF GARDINER, a municipal corporation with its offices at ____ Main Street, Gardiner, New York 12525, the GRANTEE. (Together, the Grantor and Grantee are the “Parties”).

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of all that real property and improvements of a certain plot, piece (s) and/or parcel(s) of land, situated, lying and being within the County of Ulster in the Town of Gardiner, New York, identified on the County Tax Map as Section ____, Block __, Lot ____, and being more particularly described in a deed recorded on _____ at the Ulster County Clerk’s Office, in Liber ____ of Deeds at page ____, a copy of which is attached hereto and made a part hereof as **Schedule A** [this schedule to be inserted at Closing] (“Grantor’s Property” or “Property”); and

WHEREAS, Grantor intends to convey and Grantee intends to accept a Conservation Easement (“Easement”) in and on _____ acres of Grantor’s Property, being more particularly described in **Schedule B** attached hereto and made a part hereof (the portion of Grantor’s Property under easement is referred to as the “Easement Property”);

WHEREAS, attached as **Schedule C** is a survey or other graphic depiction of the Property, showing, among other details, the location of the Easement Property;

WHEREAS, the Town Board of the Town of Gardiner has determined that this Easement will aid in preserving and protecting the Town’s scenic, open, historic, archaeological, architectural, or the natural condition, character, significance or amenities of the Grantor’s Property in a manner consistent with public policy and purpose as set forth in section 49-0301 of the New York State Environmental Conservation Law (“ECL”) and will prevent activities that otherwise may interfere with those objectives; and

WHEREAS, the State of New York has enacted Article 49, Title 3 of the ECL to provide for the limitation and restriction of development, management and use of real property by conservation easement; and

WHEREAS, the Town of Gardiner is a qualified holder of conservation easements as defined in Article 49, Title 3 of the ECL; and

WHEREAS, the Town of Gardiner is a qualified organization within the meaning of Section 170(h)(3) of the Internal Revenue Code (the “Code”);

WHEREAS, the Conservation Values, clearly delineated governmental policies and significant public benefit include the following [*list all the conservation values and aspects of the property that the parties are intending to protect*]:

NOW THEREFORE, in consideration of \$ _____ [the total purchase price, if any] and other good and valuable consideration, the receipt from the Town and legal sufficiency of which are hereby acknowledged, and pursuant to Article 49, Title 3 of the ECL, Grantor hereby conveys in perpetuity to the Grantee a Conservation Easement consisting of the terms, covenants, rights, restrictions and obligations described herein.

ARTICLE ONE
INTRODUCTION AND CONSERVATION PURPOSE

1.1 Conservation Purpose (*this Section needs to be amended so that it is specific to the conservation values of the property to be preserved. This language is presented as just a suggestion, and amendments will be necessary*):

The resource-specific and area-specific purposes of the Conservation Easement (collectively, the “Conservation Objectives”) are as follows:
(a) Resource-Specific (1) Water Resources. To maintain and improve the quality of water resources, both surface and groundwater, within, around, and downstream of the Property.
- (2) Biological Resources. To protect and improve the quality of natural habitat for animals, plants, fungi, and other organisms, particularly Native Species. (3) Soil Resources. To prevent the loss and depletion of soil on the Property. (4) Scenic Resources. To protect scenic views of the Property visible from public rights-of-way and other public access points outside the Property. (5) Ecosystem Services. To absorb within the Property rainwater that otherwise might cause erosion and flooding downstream of the Property; to sequester carbon in plants and soil to mitigate rising atmospheric carbon levels; and to support other healthy ecosystem processes.

The parties recognize the Conservation Values of the Property and have the common purpose of preserving these Conservation Values in perpetuity. This instrument is intended to convey a Conservation Easement encumbering the Property by Grantor to Grantee, exclusively for the Conservation Purpose of preserving its Conservation Values in perpetuity by preventing the use or development of the Property for any purpose or in any manner contrary to the provisions hereof, in furtherance of federal, New York State, and local town and county conservation policies. Pursuant to Treasury Regulation Section 1.170A-14(e), Grantor shall not establish any use or engage in any other activity on the Property except those uses and activities that are: (i) not inconsistent with this Conservation Easement; and (ii) compliant with applicable provisions of the Code and the Conservation Law.

1.02 Government Regulation

New York State has recognized the importance of private efforts to preserve rural private lands in a scenic, natural, and open condition through conservation restrictions by enactment of the

ECL and General Municipal Law Section 247. Similar recognition by the Federal government includes Section 170(h) of the Code and other Federal statutes.

1.03 Grantee's Warranty

Grantee warrants and represents that it possesses the intent and ability to enforce the terms of this Conservation Easement on the Property and that the Property satisfies the criteria adopted by Grantee relating to the quality and characteristics of open land that should be protected and maintained as open land.

1.04 Documentation

Grantee acknowledges by acceptance of this Conservation Easement that the present uses of the Property are compatible with the Conservation Purpose and Conservation Values. The Grantor has made available to Grantee sufficient documentation to establish the condition of the Property at the time of the gift of this Conservation Easement. In order to aid in identifying and documenting the present condition of the Property and the Conservation Values, to assist Grantee with monitoring the uses and activities on the Property and ensure compliance with the terms hereof, Grantee has prepared, with the Grantor's cooperation and at Grantor's expense, an inventory of the Property's Conservation Values, relevant features and conditions (the "Baseline Documentation"). This Baseline Documentation includes, but need not be limited to, a Survey of the Property, photographs of the Property, a description of the existing land uses, features, and structures, tracking and observation sheets and an acknowledgement page signed by Grantor and Grantee which verifies that the Baseline Documentation accurately represents the condition of the Property as of the Effective Date. Grantor and Grantee acknowledge and agree that in the event a controversy arises with respect to the nature and extent of Grantor's uses of the Property or its physical condition as of the Effective Date, the parties shall not be foreclosed from utilizing any other relevant or material documents, surveys, reports, photographs, or other evidence to assist in the resolution of the controversy.

1.05 Recitation

In consideration of the previously recited facts, mutual promises, undertakings and forbearances contained in this Conservation Easement, the parties agree to its provisions, intending to be bound thereby.

ARTICLE TWO **THE CONSERVATION EASEMENT**

2.01 Type

This instrument conveys a Conservation Easement. This Easement shall consist of the covenants, restrictions, rights, terms, and conditions recited herein. Reference to this "Easement" or its "provisions" shall include any and all of those covenants, restrictions, rights, terms, and conditions.

2.02 Duration

This Easement shall be a burden upon and run with the Property in perpetuity.

2.03 Effect

This Easement shall run with the Property as an incorporeal interest in the Property, and shall extend to and be binding upon Grantor, Grantor’s agents, tenants, occupants, heirs, personal representatives, successors, and assigns and all other relevant individuals and entities. The word “Grantor” when used herein shall include all those persons or entities. Any rights, obligations, and interests herein granted to Grantee shall also be deemed granted to each and every one of its subsequent agents, successors, and assigns, and the word “Grantee” when used herein shall include all of those persons or entities.

ARTICLE THREE
GIFT CONVEYANCE IN PERPETUITY

GRANTOR, as an absolute gift, hereby grants, releases, and conveys to Grantee, this Easement, in perpetuity, together with all rights to enforce it. Grantee hereby accepts this Easement in perpetuity and undertakes to enforce it against Grantor and/or any third parties.

ARTICLE FOUR
PROHIBITED ACTS

From and after the Effective Date of this Easement, the following acts, uses, and practices shall be prohibited forever upon or within the Property:

4.01 Buildings, Structures and Improvements

The construction or placement of buildings, structures, or improvements of any kind or nature (including but not limited to mobile homes), permanent or temporary, on, over, or under the Easement Property shall be prohibited, unless a building, structure or improvement is specifically permitted and provided for in this Easement, and then only in compliance with the terms of such provision.

Buildings, structures and improvements include, without limitation, anything constructed, installed, erected, placed or maintained upon the ground whether temporarily or permanently, residential units, garages, sheds, observation towers, moveable buildings, tents, arbors, pergolas, gazebos, driveways, roads, parking areas, gardens, ponds, utilities (e.g., wells, septic systems, drainage ways, utility lines, solar panels), fences, stone walls, trails, walkways, signs, benches, kiosks and the like.

4.02 Excavation and Removal of Materials - Mining

The excavating or filling of the Easement Property, except as may be necessary to construct and maintain permitted buildings, structures or improvements on the Property, shall be prohibited, without prior written notice to and prior written approval of the Grantee. In compliance with Section 170(h)(5)(B) of the Internal Revenue Code, mineral exploitation, and extraction by any method, for any purpose, surface or subsurface, is prohibited.

The removal of topsoil, sand, and other materials shall not take place, nor shall the topography of the Easement Property be changed except that upon prior written notice to Grantee, Grantor may remove topsoil, sand and other materials: (i) to construct and maintain the permitted buildings, structures and improvements on the Property as provided in this Easement; (ii) for

purposes of erosion control and soil management; and (iii) for archaeological and/or historical research. The removal of shale or rock materials from anywhere on the Property is prohibited.

4.03 Subdivision and Minor Lot Line Revisions

There shall be no subdivision of the Easement Property. Minor lot line revisions with contiguous properties are allowed with prior written notice to and prior written approval of the Grantee. For any such lot line adjustment, the deed(s) of conveyance shall contain a metes and bounds description of the areas subject to the lot line revision prepared by a licensed professional land surveyor at Grantor's sole cost, which description shall be provided to the Grantee prior to the finalization of the revision and recording of any documents. The area subject to the lot line revision to be added to the contiguous property shall remain subject to the terms of this Easement and the deeds of conveyance and any filed map, plat or survey shall include the language provided in Section ____.

4.04 Dumping

The dumping, burying, storage or accumulation of waste, sewage, vehicles or appliances or unsightly or offensive materials including, but not limited to trash, garbage, petroleum or chemical waste on the Easement Property shall be prohibited except: (i) appropriate routine storage of garbage and wastes from permitted uses of the Easement Property pending transport for proper disposal; (ii) garbage and wastes which flow into proper septic or other appropriate waste disposal systems including composting systems for organic biodegradable wastes produced on the Easement Property; and (iii) biodegradable materials (including but not limited to sawdust, ashes, and organic compost) generated and utilized on the Easement Property to further the permitted uses of the Easement Property while maintaining the Conservation Purpose described herein.

4.05 Signs

The display of signs, billboards or advertisements shall be prohibited, except signs whose placement, number and design do not diminish the scenic character of the Easement Property and only for any of the following purposes: (a) to state the name of the Easement Property and information about its ownership and management; (b) to announce the Grantee's Easement, the right to which is hereby granted by Grantor; (c) signs stating "No trespassing" and similar boundary posted signs to control unauthorized entry or use; (d) signs for education and interpretive aspects of the Easement Property; and (d) as required by federal, state or local codes, regulations and laws. Signs shall not exceed four (4) square feet in size and shall be non-illuminated.

4.06 Vegetation Management

Vegetation Management includes any mowing, pruning, cutting, clear-cutting of standing trees or timber, removal, harvesting and thinning of plants, shrubs, timber, trees and any plant or woody material.

Prohibited:

Commercial timber harvesting is prohibited.

Permitted with prior written notice and approval of Grantee:

A. Clear-cutting is prohibited unless conducted for a permitted Vegetation Management purpose identified in this Section 4.06, and only with prior written notice to and prior written approval of Grantee, which approval is at the sole and absolute discretion of Grantee. In addition to the requirements of prior notice specified in Section 6.01, Grantor shall provide to Grantee a forest management plan prepared by a qualified forester for the proposed clear-cutting, which forest management plan shall include a plan for: (i) revegetating the proposed clear-cut area with non-invasive plant species; (ii) managing the long-term forest health; and (iii) conserving the Property's Conservation Values, in addition to any other standard forest management plan provisions. Clear-cutting is defined as the clear-felling or clear-cut logging forestry practice in which the majority of standing trees in a forest area are harvested in one or multiple operations and includes, without limitation, a clear-cut with reserves, strip clear-cutting, continuous clear-cutting, small patch clear-cutting and large patch clear-cutting.

B. Vegetation Management is prohibited except for the following purposes: without prior written notice or prior written approval, to clear and restore Vegetation that has been damaged or disturbed by forces of nature, by insects or by disease; upon prior written notice to and prior written approval of Grantee, to prune and selectively thin Vegetation in accordance with the New York State Department of Environmental Conservation's ("NYS DEC") New York State Forestry Best Management Practices for Water Quality Field Guide 2011, as amended from time to time ("NYS DEC Best Management Practices"); upon prior written notice to and prior written approval of Grantee, to allow for construction and maintenance of permitted septic Improvements; upon prior written notice to and prior written approval of Grantee, to allow for construction and maintenance of permitted road, driveways, right of way and trail Improvements; without prior written notice or prior written approval, to provide firewood from downed Vegetation for Grantor's home heating needs; without prior written notice or prior written approval to remove and/or eradicate invasive plant species listed by The Nature Conservancy, the United States Department of Agriculture, the NYS DEC, or the New York State Office of Parks, Recreation and Historic Preservation; without prior written notice or prior written approval, to control poison ivy and similar vegetation; without prior written notice or prior written approval, to avoid damage to persons or property; and without prior written notice or prior written approval, to remove Vegetation that is fallen, dead, diseased or poses a threat to persons or property.

4.07 Soil and Water Resources

Water Resources include, without limitation, surface and subsurface water sources including aquifers, wetlands, natural wet areas, ponds, streams, tributaries, rivers, seeps (a seep is defined as a collection of water at an emergence site whether from groundwater or from upland sources) and the like. Except for the permitted activities set forth in this Easement, any use or activity that causes or is likely to cause soil degradation or erosion or pollution of any Water Resource is prohibited.

No Water Resource and no land within one hundred (100) feet of a Water Resource may be disturbed or filled except in compliance with federal, state and local laws, regulations and permits and only upon prior written notice to and prior written approval of Grantee.

There shall be no soil removal except as specifically permitted herein. No Water Resources may be disturbed or filled in except as specifically permitted herein.

4.08 Utility and Other Improvements

The creation or placement of Utility and other Improvements, including without limitation transmission lines, utility poles, wires, pipes, wells, drainage and septic systems, shall be prohibited except as permitted in ARTICLE FIVE to support existing and/or future permitted Buildings, Structures and Improvements. Notwithstanding the foregoing, existing Utility Improvements, including transmission lines, utility poles, wires, pipes, wells, drainage and septic systems may be maintained, repaired and/or replaced without prior written notice to and without prior written approval of Grantee. Existing Utility Improvements shall not be expanded or relocated without prior written notice to and prior written approval of Grantee.

4.09 Uses

The use of the Easement Property for any use inconsistent with the Conservation Purpose and Conservation Values, including but not limited to agricultural, commercial and industrial uses, is prohibited.

4.10 Development Rights

Grantor hereby grants to Grantee all existing development rights (and any further development rights that may be created through a rezoning of the Easement Property) on the Easement Property. The Parties agree that such rights not reserved to Grantor hereunder and not required to carry out permitted uses and activities of the Easement Property, shall be terminated and extinguished.

4.11 Roads, Driveways, Trails and Rights of Way

No roads, driveways or rights of way may be established on the Easement Property except: (i) as necessary to construct and maintain existing or permitted new Buildings, Structures and Improvements; and (ii) for safety and security of the Easement Property and the public. Foot trails and foot bridge crossings consisting of natural materials no wider than four (4) feet are permitted on the Easement Property as detailed in Section 5.06.

4.12 Use of Easement Property by Motorized Vehicles

Motorized vehicles of any type are prohibited on the Easement Property except: (i) for the use of vehicles necessary for reasons of safety and security; (ii) for construction and maintenance of permitted Buildings, Structures and Improvements; (iii) access current and future permitted Buildings, Structures and Improvements; (iv) as required to provide access to persons with handicapping conditions.

ARTICLE FIVE **GRANTOR'S RESERVED RIGHTS**

5.01 Ownership

Subject to the provisions of this Easement, Grantor reserves all other customary rights of ownership in the Easement Property, some of which are more particularly described in this Article Five.

5.02 Possession

Grantor shall continue to have the right of exclusive possession of the Easement Property except for obligations set forth in ARTICLE SIX.

5.03 Use

Commercial farming and agricultural activities of any kind are prohibited. Grantor shall have the right to use the Easement Property for any other purpose consistent with and not limited or prohibited by this Easement or applicable local, New York State, or federal law.

5.04 Subdivision and Subsequent Conveyances

[Amend as necessary]. The Easement Property consists of one tax lot, owned by Grantor pursuant to a single deed at the time of the conveyance of Easement. Upon any future conveyance, the Easement Property shall remain subject to the terms and conditions set forth in the Easement;

No subdivision, partitioning or other legal or de facto creation of lots of or within the Conservation Easement is permitted; provided that minor lot line revisions in compliance with Section ___ are permitted.

Grantor agrees to notify Grantee in writing thirty (30) days in advance of any proposed conveyance of the Easement Property, including the names and addresses of the purchaser. The deeds of conveyance shall include the language provided in Section 5.08.

5.05 Buildings, Structures and Improvements

[If there is an area designated as a "building envelope," consider limiting building to that specific area]. No buildings, structures or improvements shall be constructed on, under, or above the Easement Property *[if there is a residence on the Conservation Easement property, add: except Grantor reserves the right to maintain, enlarge, or replace the existing single-family residence; provided that the square foot footprint of the existing single-family residence may be increased but in no event shall the entire footprint of the single-family residence exceed a footprint of _____ square feet, including all attached structures such as unenclosed porches and decks, garages and the like.]*

[Optional: Residential-related accessory detached appurtenances, such as a garage, shed, swimming pool, tennis court, and the like, as well as structures for the generation of renewable or alternative electrical energy, such as solar panels, wind turbines and similar structures servicing only the existing single-family residence, may be built with the cumulative footprint of these residential-related detached accessory appurtenances together with structures for the generation of renewable or alternative electrical energy not to exceed _____ square feet.]

Any impervious surfaces used for structures for the generation of renewable or alternative electrical energy, such as non-permeable solar panels, shall be measured by the area of ground beneath such structure and shall apply toward the cumulative footprint limit of _____ square feet.

Grantor may sell to or exchange with third parties any surplus electricity that is generated by such renewable or alternative electrical generation structures in excess of that needed for the existing single-family residence, provided that commercial-scale alternative electrical generation is prohibited.

No building, structure or improvement may exceed thirty-five (35) feet in height anywhere on the Easement Property. The permitted single-family residences and permitted residential accessory appurtenances shall be earth tone in color. Earth tones are defined as dull greys, browns, beiges, greens, naturally occurring fall foliage colors and traditional barn red.

Grantor shall obtain any necessary governmental approvals prior to constructing permitted buildings, structures and improvements. All construction must be approved in writing by the Grantee prior to the commencement of work.

Fencing installation and maintenance is allowed, as long as it is consistent with the conservation purpose and complies with Town of Gardiner zoning law. Grantor shall obtain prior written approval of the location and type of construction of any proposed fencing from Grantee.

5.06 Roads, Driveways, Trails and Rights of Way

No roads, driveways or rights of way may be established on the Easement Property except: (i) as necessary to construct, maintain and provide access to existing or new Buildings, Structures and Improvements permitted in Section 5.05; and (ii) for safety and security of the Easement Property and the public.

Existing and permitted new roads, driveways and rights of way may be moved as necessary due to changes in drainage upon prior written notice to and prior written approval of Grantee. Grantor is responsible for obtaining approval from the party benefited by any access easement.

Roads, driveways and rights of way must be of a permeable surface, provided that with prior written notice to and prior written approval of the Grantee, said roads, driveways and rights of way, or portions thereof may be made of an impervious surface if required to provide access for people with handicapping conditions.

Foot trails and foot bridges are permitted to be constructed anywhere on the Easement Property upon prior written notice to and prior written approval of Grantee. Foot trails may not be wider than four (4) feet in width and are not permitted for any other use other than pedestrian use. Foot trails must be constructed and maintained with a permeable surface.

5.07 Alienability

Grantor shall have the right to convey, mortgage, or lease all of its remaining interest in the Easement Property but only subject to this Easement. Grantor shall promptly notify Grantee of any conveyance of any interest in the Easement Property, including the full name and mailing address of any grantee of such conveyance, and the individual principals thereof, under any such

conveyance. The instrument of any such conveyance shall specifically set forth that the interest thereby conveyed is subject to this Easement, without modification or amendment of the terms of this Easement, and shall incorporate this Easement by reference, specifically setting forth the date, office, liber and page of the recording hereof. The failure of any such instrument to comply with the provisions hereof shall not affect the validity of this Easement or any of Grantee's rights hereunder.

5.08 Termination of Rights and Obligations

This Easement is of perpetual duration and does not terminate upon the transfer of Grantor or Grantee's interest in the Easement or the Property. Either party's (Grantor or Grantee) rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions prior to transfer shall survive transfer. Upon transfer of Grantor's or Grantee's interest in the Easement or the Property, said party's rights and obligations shall be assumed by the party's heirs, successors or assigns.

Notwithstanding the foregoing, upon written request by Grantor, the Grantee shall within thirty (30) days execute and deliver to the Grantor an Estoppel Certificate which certifies as to the Grantor's compliance with the obligations of the Grantor contained in this Easement and otherwise evidences the status of this Easement as may reasonably be requested by the Grantor. Such Certificate may be certified to another party designated by Grantor, including a buyer that is under contract to purchase the Property. The rights of the Grantee to seek action to cure any violation against the Grantor will be limited only to any violations disclosed in the Estoppel Certificate or to violations that arise from the date of such Certificate to the date of the closing. Any violations arising after closing shall be the sole liability of the new Owner/ new Grantor.

5.09 Existing Easements

Existing easements and other burdens to the Easement Property permitted by deed recorded prior to the Effective Date may be maintained, repaired and/or replaced. Grantor shall notify Grantee upon receipt of notice of the intent to exercise any right under this paragraph.

ARTICLE SIX GRANTORS' OBLIGATIONS

6.01 Prior Written Notice and Prior Written Approval

Unless prior written notice to and / or prior written approval of Grantee is specifically not required under the terms of this Easement, Grantor shall notify Grantee, in writing, before taking any action or before exercising any reserved right with respect to the Easement Property which could adversely affect the Conservation Values which are the subject of this Easement. This includes but is not limited to clear-cutting and other Vegetation Management, and the construction of any buildings, structures or improvements. Grantor shall provide Grantee with complete documentation including information on the need and/or desire for: (i) clear-cutting and other Vegetation Management; and/or (ii) use of such Buildings, Structures and Improvements, as well as a detailed map of the planned clear-cut or Vegetation Management area and/or a sketch of all planned Buildings, Structures and Improvements.

Except for prior written approval requested under Section 5.07 where thirty (30) days' written notice is required, Grantee's approval, disapproval, or comments shall be given to Grantor within sixty (60) days after all necessary documentation and information is submitted in writing to Grantee. If after sixty (60) days, Grantor has not received a written response from Grantee to such submission, then Grantor shall notify Grantee in writing that they have not received a written response to such submission.

Grantee shall grant approval to Grantor only where Grantee, acting in Grantee's reasonable discretion, determines that the proposed action is permitted herein and will not substantially diminish or impair the Purpose of this Easement. Grantee shall not be liable for any failure to grant approval to Grantor hereunder. Approval shall be deemed given by Grantee only upon written approval by Grantee.

Grantor is solely responsible for obtaining any required governmental approvals for the action.

6.02 Taxes and Assessments

Grantor shall continue to pay all taxes, levies, and assessments and other governmental or municipal charges that may become a lien on the Property, including any taxes or levies imposed to make those payments.

6.03 Indemnification

Grantor acknowledges that Grantee has neither possessory rights in the Easement Property nor any responsibility or right to maintain, or keep up the Easement Property and that Grantor has and shall retain all responsibilities and shall bear all costs and liabilities of any nature related to the ownership, operation, upkeep, improvement, and maintenance of the Easement Property. Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and Grantee's members, directors, officers, employees, legal representatives, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively, including Grantee, the "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) 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 Easement Property, regardless of cause, unless due solely to the negligence or willful misconduct of an Indemnified Party; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement by any person, other than Grantee, in any way affecting, involving, or relating to the Easement Property; (3) any obligations of Grantor under Article 6 of this Easement; but in no event shall the foregoing indemnification limit the right of Grantor, under applicable law, to make any claim for indemnification or contribution against any prior owner; (4) tax benefits or consequences of any kind which result or do not result from entering into this Easement; (5) the presence or release, discharge, remediation or removal of Hazardous Materials (as defined below) on, under, from or about the Easement Property; and /or (6) any other obligation, requirement or liability related to or arising from the presence of Hazardous Materials on the Easement Property.

Grantor's obligations to hold harmless, indemnify and defend Grantee as specified in this Easement shall survive indefinitely and shall not be abrogated if Grantee transfers this Easement to another party. Grantee shall have no liability to Grantor or any other owner for Grantee's acts, taken in good faith, in connection with the administration of this Easement.

Grantor's Environmental Warranty and Indemnity. Grantor represents and warrants that it has no actual knowledge of a release or threatened release of any Hazardous Materials (as defined below) on the Easement Property and hereby promises to hold harmless, defend and indemnify the Indemnified Parties from and against all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or connected with the presence and/or any release of Hazardous Materials or violation of federal, state or local Environmental Laws (as defined below) on, under, or from the Easement Property.

This Easement is not intended to and shall not create environmental liability in Grantee. Notwithstanding any other provision herein to the contrary, the parties do not intend this Easement be construed such that it imposes on, creates in, or gives Grantee:

- (a) the obligations or liability of an "owner" or "operator" as those words are defined and used in Environmental Laws, including, without limitation, CERCLA;
- (b) the obligations or liability of a person described in 42 U.S.C. Section 9607(a)(3) or (4);
- (c) the obligations of a responsible person under any Environmental Laws;
- (d) the right or duty to investigate and remediate any Hazardous Materials, associated with the Easement Property; or
- (e) any control over Grantor's ability to investigate, remove, remediate, or otherwise clean up any Hazardous Materials associated with the Easement Property.

The term "Hazardous Materials" includes, but is not limited to, (i) material that is flammable, reactive, ignitable, corrosive, toxic, explosive, or radioactive; (ii) petroleum products; and (iii) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials, including but not limited to those defined in CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), the New York Environmental Conservation Law (NY ECL 27-0901), or any other Environmental Law, and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state, or local laws, ordinances, rules, or regulations now in effect or enacted after the Effective Date of this Easement.

The term "Environmental Laws" includes, but is not limited to, any federal, state or local or administrative agency statute, regulation, rule, ordinance, order or requirement now in effect or enacted after the Effective Date of this Easement relating to pollution, protection of human health, the environment, or Hazardous Materials.

6.04 Third Party Claims

Grantee has no obligations for the maintenance of the Easement Property. Grantor shall indemnify and hold Grantee harmless from any and all claims or liability, costs, attorneys' fees, judgments, or expenses to Grantee or any of its directors, officers, employees, agents, or

independent contractors arising or resulting: (a) from injury to persons or damages to property arising from any activity on the Easement Property, except those due in whole or in part to the acts of the Grantee, its directors, officers, employees, agents, or independent contractors; and (b) from actions or claims of any nature by third parties arising out of the entering into or exercise of rights under this Easement, excepting any of those matters arising strictly from the acts of the Grantee, its directors, officers, employees, agents, or independent contractors.

In the event of injury to persons or property arising out of the acts or omissions of the Grantee, its directors, officers, employees, agents, or independent contractors, the Grantee shall defend, indemnify and hold harmless the Grantor and the Grantor's heirs, successors or assignees, from any and all actions, claims, damages or judgments whatsoever alleging property damage, personal injury, wrongful death or seeking any other damages or relief.

ARTICLE SEVEN **GRANTEE'S RIGHTS**

7.01 Entry and Inspection

Grantee, its employees, designees, and/or authorized representatives have the right to enter the Easement Property at reasonable times, in a reasonable manner, and where practicable, and no less frequently than once annually, after giving reasonable advance notice to Grantor (48 hours): (i) to inspect for compliance with the provisions of this Easement; (ii) as necessary in connection with conducting an investigation pursuant to a request for approval received from Grantor; and/or (iii) to investigate the need to pursue or oversee legal remedies. Grantee, its directors, officers, agents, employees, independent contractors, and/or authorized representatives also have the right to enter and inspect the Easement Property at any time, without prior notice to Grantor if Grantee has cause to believe that the provisions of this Easement are threatened to be, have been, or are being violated or that an emergency requires entry upon and inspection of the Easement Property.

7.02 Restoration

Grantee shall have the right to require the Grantor to restore the Easement Property to the condition required by this Easement and to enforce this right by any action or proceeding that Grantee may reasonably deem necessary. However, Grantor shall not be liable for any changes to the Easement Property resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to persons or to the Easement Property resulting from such causes.

7.03 Enforcement Rights of Grantee

In the event any breach, default or violation of any term, provision, covenant or obligation on Grantor's part pursuant to this Easement is not cured by Grantor within fifteen (15) days' notice thereof by Grantee (which notice requirement is expressly waived by Grantor with respect to any such breach, default or violation which, in the Grantee's reasonable judgment, requires

immediate action to preserve and protect any of the Conservation Values or otherwise to further the Purpose of this Easement), Grantee shall have the right at Grantee's election,

- (a) To institute a suit to enjoin or cure such breach, default or violation by temporary and/or permanent injunction;
- (b) To enter upon the Property and exercise reasonable efforts to terminate or cure such breach, default or violation and/or to cause the restoration of that portion of the Easement Property affected by such breach, default or violation to the condition that existed prior thereto; or
- (c) To seek or enforce such other legal and/or equitable relief or remedies as Grantee deems necessary or desirable to ensure compliance with the terms, conditions, covenants, obligations and Purpose of this Easement; provided, however, that any failure, delay or election to so act by Grantee shall not be deemed to be a waiver or forfeiture of any right or available remedy on Grantee's part with respect to such breach, default, or violation or with respect to any other breach, default, or violation of any term, condition, covenant, or obligation under this Easement.

If a court of competent jurisdiction renders an Order in Grantee's favor in a judicial enforcement action, Grantee shall be entitled to reimbursement to Grantor of all reasonable attorneys' fees, court costs and other expenses incurred by Grantee in connection with any proceedings under this Section.

7.04 No Waiver

Grantee's exercise of one remedy or relief under this ARTICLE SEVEN shall not have the effect of waiving or limiting any other remedy or relief and the failure to exercise or delay in exercising any remedy shall not have the effect of waiving or limiting the use of any other remedy or relief or the use of such remedy or relief at any other time.

7.05 Assignability

Grantee shall have the right to assign any and all of its rights and responsibilities under this Easement and any and all of its rights, title, and interest in and to this Easement only to a "Qualified Assignee" (herein also referred to as the "Assignee").

As used herein; the term Qualified Assignee means: (i) a not-for-profit conservation organization or a public body, as those terms are defined by the Conservation Law and which is qualified to receive such interests pursuant to the Conservation Law; and (ii) which is a qualified organization within the meaning of Section 170(h) of the Code and which is organized and operated primarily or substantially for one of the conservation purposes specified in the Code. Any assignment by the Grantee or a successor Grantee must require the Assignee and Assignee's successors to carry out the Purpose of this Easement. The Assignee and its successors and assigns shall have the same right of assignment, subject to compliance with the provisions of this Section 7.05.

7.06 Easement Percentage Interest; Extinguishment; Condemnation.

Notwithstanding that this Conservation Easement is an obligation, and not a financial asset, should it be extinguished or should any interest in the Easement Property be taken by the

exercise of the power of eminent domain or acquired by purchase in lieu of condemnation subject to the prior written consent of Grantee, Grantee is entitled to a share of the proceeds of any subsequent sale, exchange or involuntary conversion of the Easement Property formerly subject to this Conservation Easement according to Grantee's proportional interest in the Easement Property, as determined and as required under Treasury Regulation Section 1.170.A-14(g)(6)(ii).

Grantee and Grantor agree that the donation of this perpetual Conservation Easement gives rise to a property right, immediately vested in Grantee. The value of Grantee's property right is at all times at least equal to a percentage of the fair market value that the rights conveyed bear to the value of the Easement Property as a whole (the "Easement Percentage Interest"). The Easement Percentage Interest remains constant, established as of the time of the gift, equal to the fair market value of the Conservation Easement at the time of the gift (numerator), over the fair market value of the Easement Property as a whole at the time of the gift (denominator) as set forth in Treas. Reg. § 1.170A-14(g)(6)(ii) or any successor regulation. In the event of extinguishment of this Conservation Easement, Grantee is entitled to its share of the proceeds of any subsequent sale, exchange or involuntary conversion of the Easement Property formerly subject to this Conservation Easement, according to Grantee's Easement Percentage Interest in the Easement Property as a whole, as determined and as required under Treas. Reg. § 1.170A-14(g)(6)(ii). When Grantor pays such proceeds to Grantee, the payment shall not be later than the subsequent sale, exchange or involuntary conversion of the Easement Property, whichever occurs first. Grantee must use the proceeds of the Easement Percentage Interest in a manner consistent with the Conservation Purposes of as set forth in I.R.C. §170(h)(4)(A).

ARTICLE EIGHT **MISCELLANEOUS**

8.01 Entire Understanding

This Easement contains the entire understanding between its parties concerning its subject matter. Any prior agreement between the parties concerning its subject matter shall be merged into this Easement and superseded by it.

8.02 Amendment

This Easement can be terminated or modified in accordance with the Conservation Law and the terms contained in this Easement. Grantee and Grantor shall mutually have the right to agree to amendments to this Easement that are not inconsistent with the Purpose of this Easement; provided, however:

- (a) Grantee's and Grantor's agreement shall be at each party's sole and absolute discretion;
- (b) Grantee shall have no right or power to agree to any amendments hereto that would result in the Easement failing to qualify as a: (i) valid conservation easement under the Conservation Law; and (ii) a "qualified conservation contribution" under Section 170(h) of the Code.

8.03 Severability

Any provision of this Easement restricting Grantor's activities, which is determined to be invalid or unenforceable by a court, shall not be invalidated. Instead, that provision shall be reduced or limited to whatever extent the court determines will make it enforceable and effective. Any other provision of this Easement that is determined to be invalid or unenforceable by a court shall be severed from the other provisions, which shall remain enforceable and effective.

8.04 Notice

All notices required by this Easement must be written. Notices shall be delivered by hand, e-mail, registered mail or by certified mail, return receipt requested, with sufficient prepaid postage affixed and with return receipt requested or by an overnight service such as Federal Express. Mailed notice to Grantor shall be addressed to Grantor's address as recited herein or to such other address as Grantor may designate in accordance with this Section 8.04. Mailed notice to Grantee shall be addressed to the mailing address recited herein, marked for the attention of the Executive Director, or to such other address as Grantee may designate by notice in accordance with this Section 8.04.

Notice shall be deemed given when actually received. E-mail notice to Grantee shall be sent to the Town Supervisor's business e-mail address or to such other address as Grantee may designate.

8.05 Governing Law

The Property remains subject to all applicable local, state and federal laws and regulations, including those of the Town of Gardiner. This Easement shall be governed by and construed in accordance with the laws of the State of New York.

8.06 Interpretation

This instrument is intended to create a "conservation easement" as defined in the Conservation Law and a "qualified conservation contribution" as defined in Section 170(h) of the Code and shall be interpreted consistently with such intention. If any provision has been omitted from this Easement necessary to qualify the interest hereby granted as such a conservation easement or a qualified conservation contribution, such provision shall be deemed incorporated herein to the extent necessary to be so qualified. If any provision of this Easement is deemed contrary to the requirements of the Conservation Law or Section 170(h) of the Code, such provision shall be modified or excluded to the extent necessary to cause the interest hereby granted to be so qualified.

Regardless of any contrary rule of construction, no provision of this Easement shall be construed in favor of one of the parties because it was drafted by the other party's attorney. No alleged ambiguity in this Easement shall be construed against the party whose attorney drafted it. If any provision of this Easement is ambiguous or shall be subject to two or more interpretations, one of which would render that provision invalid, then that provision shall be given such interpretation as would render it valid and consistent with the Purpose of this Easement. Any rule of strict construction designed to limit the breadth of the restrictions on use of the Property shall not apply in the construction or interpretation of this Easement, and this Easement shall be interpreted broadly to serve the Purpose of this Easement as intended by the parties. The parties

intend that this Easement, which is by nature and character primarily negative in that Grantors restricted and limited their rights to use the Property, except as otherwise recited herein, be construed at all times and by all parties to effectuate its Purpose.

8.07 Warranties

The warranties and representations made by the parties in this Easement shall survive its execution.

8.08 Recording and Filing

Grantee shall record this Easement in the land records of the Office of the Clerk of the County of Ulster, State of New York. A copy of this Easement shall be filed with the New York State Department of Environmental Conservation.

8.09 Headings

The headings, titles, and subtitles herein have been inserted solely for convenient reference and shall be ignored in the construction of this Easement.

8.10 Further Acts

Each party shall perform further acts and execute and deliver any documents, including amendments to this Easement, which may be reasonably necessary to: (a) carry out the provisions of this Easement; and (b) qualify this Easement as a conservation easement under the Conservation Law and as a qualified real property interest conveyed to a qualified organization exclusively for conservation purposes pursuant to Section 170(h) of the Code.

8.11 Perpetuation of Easement

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

8.12 Exhibits, Recitals and Baseline Documentation

All Exhibits, Recitals and the Baseline Documentation are incorporated herein by this reference.

8.13 No Goods or Services

Grantor and Grantee acknowledge that no goods or services or other consideration have been provided by Grantee to Grantor as consideration for this Easement. Grantee will provide Grantor with a separate letter so stating, pursuant to the requirements of Section 170(f)(8) of the Code. Grantor acknowledges that Grantee may decline to sign IRS Form 8283 at its sole and absolute discretion.

8.14 Town Board Acceptance of Easement

The Town Board has accepted this Easement by Resolution dated _____.

IN WITNESS WHEREOF, Grantors have executed and delivered this Deed of Conservation Easement as of the Effective Date.

Date: _____

FOR GRANTOR:

FOR GRANTEE:

ACKNOWLEDGMENTS

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

On the _____ day of _____ in the year 20____, before me, the undersigned, a Notary Public in and for the said State, personally appeared(insert), personally known to me or proved to me on the basis of satisfactory evidence to be the _____, Town Supervisor of Gardiner, a municipal corporation of the State of New York, 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 whom the individual acted, executed the instrument.

NOTARY PUBLIC

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

On the _____ day of _____ in the year 20____, before me, the undersigned, a Notary Public in and for the said State, personally appeared _____, 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/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

NOTARY PUBLIC