

## CONSERVATION EASEMENT

**THIS DECLARATION OF CONSERVATION EASEMENT**, is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ , by \_\_\_\_\_ (the “Grantor”), a New York \_\_\_\_\_ corporation with offices at \_\_\_\_\_, \_\_\_\_\_, New York, for the benefit of, but not the burden upon, \_\_\_\_\_ (the “Holder”), a New York not-for-profit corporation having its office at \_\_\_\_\_, \_\_\_\_\_, New York.

WHEREAS, Grantor is the owner in fee simple of real property located in the Town of \_\_\_\_\_, County of \_\_\_\_\_, and State of New York, which property is more fully described in Deed Libers of the \_\_\_\_\_ County Clerk, \_\_\_\_\_ (the “Permitted Property”), and

WHEREAS, Grantor seeks to develop the Permitted Property in a manner authorized by Department of the Army Permit number \_\_\_\_\_ issued on \_\_\_\_\_, 200\_\_ by the United States Army Corps of Engineers, New York District (“Corps”, to include any successor agency) in accordance with the Federal Clean Water Act, 33 U.S.C. Section 1344; and

WHEREAS, as compensatory mitigation for activity authorized by the Permit; in order to protect, restore and maintain the chemical, physical, and biological integrity of waters of the United States including wetlands through the control of discharges of dredged or fill material; in accordance with the common law and with the Conservation Easements provisions of New York Environmental Conservation Law (“ECL”) Article 49, Title 3; and in recognition of the continuing benefit to scenic and natural resources, the environment, and general property values; Grantor agrees to restrict ownership and use of the portion of the Permitted Property more particularly described in Schedule \_\_\_\_\_ annexed hereto (the “Protected Property”), in order that the Protected Property shall remain substantially in its natural condition in perpetuity; and

WHEREAS, Grantor desires to declare, create and convey to the Holder a Conservation Easement placing certain limitations and affirmative obligations on the Protected Property for the protection of wetlands, scenic, resource, environmental, and other values, and in order that the Protected Property shall remain substantially in its natural condition, in perpetuity; and

WHEREAS, the Holder is a New York public body or not-for-profit conservation organization qualified to hold a Conservation Easement in accordance with ECL Section 49-0305; and

WHEREAS, the purposes of this Conservation Easement include, without limitation, conservation and preservation of the Protected Property, with its scenic and other natural resource values and its aquatic resources, which resources include native flora and fauna, and the ecological processes that support them; diverse forest types and conditions; soil productivity; biological diversity; water quality; and wetland, riparian, and other aquatic habitats; and

WHEREAS, Grantor agrees, in accordance with ECL Section 49-0305.5, that rights of enforcement of the terms of this Conservation Easement shall be held by the Holder, and that

third-party rights of enforcement shall also be held by the Corps or other appropriate enforcement agencies of the United States and that these rights are in addition to, and do not limit, the rights of enforcement under the Permit; and

WHEREAS, the term “natural condition” shall mean the existing condition of the Protected Property, subject to the terms or conditions of the Permit as applicable, and subject thereafter to natural successional processes. The natural condition of the Protected Property is evidenced by a surveyed plat of the Protected Property dated \_\_\_\_\_, 200\_\_ and recorded at the Office of the \_\_\_\_\_ County Clerk, \_\_\_\_\_. The natural condition of the Protected Property has also been evidenced by Grantor’s providing to the Holder and the Corps a current, suitable aerial photograph of the Protected Property, and not less than six (6) current, suitable on-site photographs taken at appropriate locations on the Protected Property, to include photographs of major natural features and existing structures, if any. The photographs were provided to the Holder and the Corps no more than thirty (30) days prior to execution of this Conservation Easement, and the photographs were taken no more than thirty (30) days prior to their being provided.

NOW, THEREFORE, for the foregoing consideration, and in further consideration of the restrictions, rights, and agreements herein, Grantor hereby creates, gives, grants, bargains and conveys to the Holder a perpetual easement in, to, over and across, the Protected Property for the purposes of preservation, protection, maintenance and conservation of the Protected Property and the aquatic resources thereon.

#### **A. RESTRICTIONS**

These Restrictions on the Protected Property shall run with the Protected Property in perpetuity, and be binding on the Grantor, the Holder, and their respective successors, assigns, lessees, and other occupiers and users. These Restrictions are subject to Grantor’s Reserved Rights, which follow.

1. **General.** There shall be no future filling, flooding, excavating, mining or drilling; no removal of natural materials; no dumping of materials; and, no alteration of the topography which would materially affect the Protected Property in any manner, except as authorized by the Permit.

2. **Waters and Wetlands.** In addition to the general restrictions above, within the Protected Property there shall be no draining, dredging, damming or impounding; no changing the grade or elevation, impairing the flow or circulation of waters, or reducing the reach of waters; and, no other discharges or activity requiring a permit under applicable water pollution control laws and regulations, except as authorized by the Permit or by current New York State Department of Environmental Conservation permits, or any amendments thereof.

3. **Trees/Vegetation.** On the Protected Property there shall be no clearing, burning, cutting or destroying of trees or vegetation, except as may be necessary to protect public health or safety or as authorized by the Permit; there shall be no planting or introduction of non-native or exotic species of trees or vegetation.

4. **Uses.** No agricultural, animal husbandry, industrial, mining, logging or commercial activity shall be undertaken or allowed on the Protected Property.

5. **Structures.** There shall be no construction, erection, or placement of buildings, billboards, or any other structures, to include trailers, mobile homes or recreational vehicles, or additions to existing structures, on the Protected Property.

6. **New Roads.** There shall be no construction of new roads, trails or walkways on the Protected Property without the prior written approval (including approval of the manner of construction) of the Holder and the Corps.

7. **Utilities.** There shall be no construction or placement of utilities or related facilities (including telecommunications towers and antennas) on the Protected Property without the prior written approval (including approval of the manner of construction) of the Holder and the Corps.

8. **Pest Control.** There shall be no application of pesticides or biological controls, including controls of problem vegetation, on the Protected Property without prior written approval (including approval of the manner of application) of the Holder and the Corps.

9. **Vehicular Use.** There shall be no use of any motorized vehicle or motorized equipment, and no use of any non-motorized bicycle anywhere on the Protected Property, except in the case of emergency, for the purpose of enforcement of applicable laws and regulations or for the purpose of monitoring compliance with the purposes of this Conservation Easement.

10. **Subdivision.** There shall be no subdivision of the Protected Property into parcels or lots, so as to create new parcels, lots or sites with or without access.

11. **Marking.** The Grantor shall mark the limits of the Protected Property in a manner approved by the Holder and the Corps, and shall maintain the marking in place so as to notify the public that the Protected Property is an area preserved for conservation purposes.

12. **Other Prohibitions.** Any other use of, or activity on, the Protected Property which is or may become inconsistent with the purposes of this Conservation Easement, the preservation of the Protected Property substantially in its natural condition, or the protection of its environmental systems, is prohibited.

## **B. RESERVED RIGHTS OF GRANTOR**

Grantor reserves the right to engage in all acts or uses not prohibited by the Restrictions, which are not inconsistent with the conservation purposes of this grant, the preservation of the Protected Property substantially in its natural condition, and the protection of its environmental systems, and which do not interfere with Grantor's obligations under the Permit. Nothing herein shall be deemed to modify or amend any other or additional agreements between or among the Grantor, the Holder and the Corps. In the event any of the Grantor's acts or uses, whether on the Protected Property or on the Permitted Property, are subject to review under the New York State

Environmental Quality Review Act (SEQRA), the Holder shall be designated as an interested party and notified of the review process.

### **C. GENERAL PROVISIONS**

The following General Provisions shall be binding upon the Grantor and the Grantor's heirs, successors, grantees, transferees, administrators, assigns, lessees, licensees and agents, and shall inure to the benefit of the Holder and the Corps, and the heirs, successors, grantees, transferees, administrators, assigns, lessees, licensees and agents of the Holder and the Corps:

1. **Rights of Access and Entry.** The Holder and the Corps shall have the right to enter and go upon the Protected Property for purposes of monitoring and inspection, and to take actions necessary to verify compliance with the Restrictions. The Holder shall also have rights of visual access and view, and the right to enter and go upon the Protected Property for purposes of making scientific or educational observations and studies, and taking samples, in such a manner as will not disturb the quiet enjoyment of the Protected Property by Grantor. No right of access or entry by the general public to any portion of the Protected Property is conveyed by this Conservation Easement.

2. **Enforcement.** Grantor acknowledges and agrees that the Holder's and the Corps' remedies at law for any violation of this Conservation Easement are inadequate. In the event of a breach of any of the Restrictions set forth above, the Holder or the Corps must notify the Grantor in writing of the breach. The Grantor shall have thirty (30) days after receipt of such notice to undertake actions that are reasonably calculated to promptly correct the conditions constituting the breach. If the Grantor fails to commence such corrective action within thirty (30) days, or fails to complete the necessary corrective action, the Holder or the Corps may undertake such actions, including legal proceedings, as are necessary to effect such corrective action. Among other relief, the Holder or the Corps shall be entitled to specific performance of the terms of this Conservation Easement and to a complete restoration of the Protected Property, correcting damage caused by any breach of the Restrictions. Breaches of the General Provisions of this Conservation Easement shall be actionable without notice. The costs of a breach, correction or restoration, including reasonable Holder or Corps expenses, expert or consultant expenses, court costs and attorneys' fees, shall be paid by the Grantor. Enforcement shall be at the discretion of the Holder or the Corps. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel or waiver. The Holder's and the Corps' enforcement rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, or under any applicable permit or certification.

3. **Events Beyond Grantor's Control.** Nothing herein shall be construed to authorize the Holder or the Corps to institute any proceedings against Grantor for any changes to the Protected Property caused by acts of God or circumstances beyond the Grantor's control such as earthquake, fire, flood, storm, war, civil disturbance, strike or similar causes.

4. **Obligations of Ownership.** Grantor is responsible for payment of all real estate taxes, assessments, fees, or charges levied upon the Protected Property, and Grantor will provide copies of receipts evidencing payment of any such charges upon request of the Holder or the

Corps. Any liens, mortgages or other encumbrances affecting the Protected Property shall be subject to the terms of this Conservation Easement. The Holder or the Corps shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Protected Property, except as expressly provided herein. Nothing herein shall relieve the Grantor of the obligation to comply with federal, state or local laws, regulations and permits that may apply to the exercise of ownership, or rights under this Conservation Easement, by Grantor.

5. **Recording.** The Grantor shall have this Conservation Easement duly recorded and indexed as such in the Office of the County Clerk of \_\_\_\_\_ County, New York, as described in ECL Section 49-0305.4. Upon recording, the Grantor shall forward a copy of this Conservation Easement to the New York Department of Environmental Conservation, as described in ECL Section 49-0305.4. The Grantor's recording and transmission to the Department of Environmental Conservation shall take place prior to Grantor's commencing work as authorized by the Permit.

6. **Extinguishment.** In the event that changed conditions render impossible the continued use of the Protected Property for conservation purposes, this Conservation Easement may only be extinguished, in whole or in part, by judicial proceeding under authority of ECL Section 49-0307.

7. **Eminent Domain.** If all or part of the Protected Property is taken in the exercise of eminent domain so as to substantially abrogate the Restrictions imposed by this Conservation Easement, the Grantor and the Holder shall promptly notify the Corps and shall join in appropriate actions at the time of such taking to recover the full value of the taking, and all incidental and direct damages due to the taking.

8. **Proceeds of Taking.** This Conservation Easement constitutes a real property interest immediately vested in the Holder. In the event that all or a portion of this Protected Property is sold, exchanged, or involuntarily converted following an extinguishment or the exercise of eminent domain, the Holder shall be entitled to the fair market value of this Conservation Easement. The parties stipulate that the fair market value of this Conservation Easement shall be determined by multiplying the fair market value of the Permitted Property unencumbered by this Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of this Conservation Easement at the time of this grant to the value of the Protected Property (without deduction for the value of this Conservation Easement) at the time of this grant. The values at the time of this grant shall be the values used, or which would have been used, to calculate a deduction for federal income tax purposes, pursuant to Section 170(h) of the Internal Revenue Code (whether the grant is eligible or ineligible for such a deduction). The Holder shall use its share of the proceeds in a manner consistent with the purposes of this Conservation Easement.

9. **Notification.** Any notice, request for approval, or other communication required under this Conservation Agreement shall be sent by registered or certified mail, postage prepaid, to the following addresses (or such address as may be hereafter specified by notice pursuant to this paragraph):

To Grantor:  
(Address and contact information)

To Holder:  
(Address and contact information)

To Corps:  
U.S. Army Corps of Engineers, New York District  
ATTN: Regulatory Branch  
Room 1937, 26 Federal Plaza  
New York, NY 10278-0090

10. **Assignment.** This Conservation Easement is transferable, but only to a holder qualified under ECL Section 49-0305.3, and approved in writing by the Corps before transfer. As a condition of such transfer, the transferee shall agree to all of the restrictions, rights, and provisions herein, and to continue to carry out the purposes of this Conservation Easement. Assignments shall be accomplished by amendment of this Conservation Easement in accordance with paragraph 14.

11. **Failure of Holder.** If at any time the Holder is unable or fails to enforce this Conservation Easement, or if the Holder ceases to be a holder qualified under ECL Section 49-0305, and if within a reasonable period of time after the occurrence of one of these events the Holder fails to make an assignment pursuant to paragraph 10, then the Holder's interest shall become vested in another holder qualified in accordance with an appropriate (*e.g., cy pres*) proceeding, to be brought by the Grantor in a court of competent jurisdiction.

12. **Subsequent Transfer.** This Conservation Easement shall be perpetual and run with the land and shall be binding upon all future owners of any interest in the Protected Property. The conveyance of any portion of or any interest in the Protected Property, by sale, exchange, devise or gift, shall be made by an instrument which expressly provides that the interest thereby conveyed is subject to this Conservation Easement, without modification or amendment of the terms of this Easement, and such instrument shall expressly incorporate this Conservation Easement by reference, specifically setting forth the date, office, liber and page of the recording thereof. The failure of any such instrument to comply with the provisions hereof shall not affect the validity or enforceability of this Conservation Easement, nor shall such failure affect the Holder's or the Corps' rights hereunder. No less than thirty (30) days prior to conveyance of any interest in the Protected Property, Grantor (to include any successor Grantor) shall notify the Holder and the Corps of such intended conveyance, providing the full names and mailing addresses of all Grantees, and the individual principals thereof, under any such conveyance.

13. **No Merger of Interests.** In the event the same person or entity ever simultaneously holds an interest in the Protected Property under this Conservation Easement, and holds the underlying title in fee, the parties intend that the separate interests shall not merge.

14. **Amendment.** This Conservation Easement may be amended in accordance with

ECL Section 49-0307, but only in a writing signed by the Grantor and the Holder, or their successors or assigns, and approved in writing by the Corps, its successors or assigns; provided such amendment does not affect the qualification of this Conservation Easement or the status of the Holder under ECL Section 49-0305 or any other applicable law; and provided such amendment is consistent with the conservation purposes of this grant and its perpetual duration. Any amendment to this Conservation Easement shall be recorded and provided to the New York State Department of Environmental Conservation, in the manner set forth in paragraph C-5 above.

15. **Severability.** Should a court of competent jurisdiction find any separate part of this Conservation Easement void or unenforceable, the remainder shall continue in full force and effect.

16. **Warranty.** Grantor warrants that it owns the Protected Property in fee simple, and that Grantor owns all interests in the Protected Property that may be impaired by the granting of this Conservation Easement. Grantor warrants that there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Protected Property that have not been expressly subordinated to this Conservation Easement. Grantor further warrants that the Holder shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement.

17. **Subordination.** \_\_\_\_\_, the holder of that certain mortgage which encumbers some or all of the Protected Property and is recorded in the Office of the Clerk of \_\_\_\_\_ County at \_\_\_\_\_ (the "Mortgagee"), has executed this Conservation Easement for the sole purpose of subordinating the Mortgage to the terms of this Conservation Easement.

18. **No Gift or Dedication.** Nothing contained in this Conservation Easement shall be deemed to be a gift for dedication of all or any part of either the Permitted Property or the Protected Property to the public, or for public use.

IN WITNESS WHEREOF, Grantor, Holder and Mortgagee have executed this Conservation Easement, as of the date written above.

**Execution by Grantor**

\_\_\_\_\_

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

Name:

Title:

**Approval and Acceptance by Holder**

\_\_\_\_\_

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

Name:



On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_\_ before me, the undersigned, a notary public in and for said state, personally appeared the Mortgagee \_\_\_\_\_ 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 this instrument.

Notary Public