

Deed of Conservation Easement

Date

Blue are items that need to be updated prior to closing

THIS CONSERVATION EASEMENT is granted this ___ day of _____, by **XXXXXXXXXXXXXXXXXX** (“**Grantor**”) to the **XXXXXXXXXXXXXXXXXX** (collectively the “**Grantee**”), a New York municipal corporation having offices at **XXXXXXXXXXXX** and **XXXXXXXXXXXX**, respectively.

WHEREAS:

- A. Grantor is the owner of certain real property (the “**Property**”) consisting of **XXXX** acres, on # parcel located on **XXXX** Road in the Town of **XXXXXX**, Tompkins County, New York, the metes and bounds of which are more fully described in the legal description of the Property, attached hereto as **Exhibit A** and shown on the Easement Survey Map, which is duly filed and referenced in an attachment known as **Exhibit B**; and

- B. Grantee is a municipal corporation having the authority pursuant to New York State General Municipal Law §247 and Article 49, Title 3 of the New York Environmental Conservation Law (the “**ECL**”) to acquire conservation easements; and

- C. **XXX** Creek is a tributary to **XXXX** Creek, which is the largest tributary to the southern basin of Cayuga Lake, a water body that is on the New York State Department of Environmental Conservation’s 303(d) list of impaired water bodies. Because of the steep topography of the banks of **XXX** Creek, disturbance to soils in this area due to development activity may significantly degrade water quality in the Creek and adversely affect Cayuga Lake; and

- D. Grantor has received independent legal and financial advice regarding this Easement to the extent that Grantor has deemed necessary. The Grantor freely signs this Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing, __zero__ Dollars (\$__0__) paid by Grantee to Grantor, and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, the parties agree as follows:

1. Grant of Conservation Easement

Grantor hereby grants and conveys to Grantee, a Conservation Easement over the Conservation Easement Area (the “**Easement**”). The Easement is an immediately vested interest in real property for the benefit of the general public. The Easement shall run with the land and bind the Property in perpetuity. Grantor will neither perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

2. Purpose

It is the primary purpose of this Easement (the “**Purpose**”) to establish a riparian corridor (the “**Conservation Easement Area**”) along XXX Creek (the “**Creek**”) for the following purposes (collectively, the “**Conservation Objectives**”): 1) to maintain and improve the quality of water resources associated with the Creek; 2) to perpetuate and foster the growth of healthy vegetation; 3) to preserve habitat for Native Species, as defined in Section 4, Definitions, dependent on water resources or forest resources; and 4) to ensure that activities and uses in the Conservation Easement Area, as defined in Section 4, Definitions, are sustainable, i.e., they neither diminish the biological integrity of the Conservation Easement Area nor deplete the soil, forest and other natural resources within the Conservation Easement Area over time.

3. Implementation

The Purpose of this Easement shall be implemented by limiting and restricting the development and use of the Property in accordance with the herein provisions. No use of the Property shall occur and no permanent or temporary structures or other buildings or improvements shall hereafter be constructed, placed or maintained on the Property, except as specifically provided herein. The Property shall remain subject to all applicable local, state and federal laws and regulations.

4. Definitions

Terms not defined herein shall have the customary dictionary meaning. As used in this Easement, the following additional definitions shall apply:

“**Additional Improvements**” means all buildings, structures, facilities and other improvements within the Conservation Easement Area other than Existing Improvements.

“**Applicable Law**” is defined as any federal, state or local laws, statutes, codes, ordinances, standards and regulations applicable to the Conservation Easement Area or this Conservation Easement as amended through the applicable date of reference.

“**Beneficiary or Beneficiaries**” means the Persons (if any) designated as a Beneficiary.

“**Conservation Easement Area**” is depicted on the Easement Survey Map attached hereto as Exhibit B. The Conservation Easement Area is # acres.

“**Construction**” means any demolition, construction, reconstruction, removal, expansion, exterior alteration, installation or erection of temporary or permanent Improvements; and, whether or not in connection with any of the foregoing, any excavation, dredging, mining, filling or removal of gravel, soil, rock, sand, coal, petroleum or other minerals.

“**Existing Agreements**” is defined as easements and other servitudes affecting the Conservation Easement Area as defined on the Easement Survey Map or as identified in the Baseline Documentation Report and running to the benefit of utility service providers and other Persons that constitute legally binding servitudes prior in right to this Conservation Easement.

“**Existing Improvements**” means Improvements located on, above or under the Conservation Easement Area as identified in the Baseline Documentation Report.

“**Grantor**” or “**owners**” include the original Grantor, his or her heirs, successors and assigns, all future owners of any legal or equitable interest in all or any portion of the Property, and any party entitled to the possession or use of all or any part thereof; and the term “**Grantee**” includes the original Grantee and its successors and assigns.

“**Improvements**” is defined as any additions or modifications to the property. They include construction, erection, installation, removal or placement of buildings, structures, habitat improvements, pedestrian trails, stream stabilization, utilities, signs, fences, walls and gates.

“**Indemnified Parties**” is defined as the Holder, each Beneficiary (if any) and their respective members, directors, officers, employees and agents and the heirs, personal representatives, successors and assigns of each of them.

“**Invasive Species**” is defined as a plant species that is (a) non-native to the ecosystem under consideration; and (b) whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

“**Lien**” means any mortgage, lien or other encumbrance securing the payment of money.

“**Litigation Expense**” means any court filing fee, court cost, arbitration fee or cost, witness fee and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Conservation Easement including in each case, attorneys’ fees, other professionals’ fees and disbursements.

“**Losses**” is defined as any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge other than a Litigation Expense.

“**Native Species**” is defined as a plant indigenous to the locality under consideration.

“**Person**” is referred to as an individual, organization, trust or other entity.

“**Review**” means review and approval of Grantee under the procedure described in Section 15.

“**Review Requirements**” means collectively, any plans, specifications or information required for approval of an activity, use or Construction under Applicable Law (if any) plus (a) the information required under the Review Requirements incorporated into this Conservation Easement either as an exhibit or as part of the Baseline Documentation Report or (b) if the information described in clause (a) is inapplicable, unavailable or insufficient under the circumstances, the guidelines for Review of submissions established by Holder as of the applicable date of reference.

“**Top of the Bank**” means the ordinary high water level for a water basin or wetland, and the break in slope for a watercourse.

5. Reserved Rights Retained by Grantor

Notwithstanding any provisions of this Easement to the contrary, Grantor reserves all customary rights and privileges of ownership, including the right of exclusive use, possession and enjoyment of the Property, the rights to sell, lease, and devise the Property, as well as any other rights consistent with the Purpose set forth in Section 2, Purpose, and not specifically prohibited or limited by this Easement. Unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any Act of God. Nothing in this Easement relieves Grantor of any obligation with respect to the Property or restriction on the use of the Property imposed by law.

6. Access

Nothing contained in this 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 Easement.

7. Right to Use the Property for Recreational Purposes

Grantor retains the right to use the Property for otherwise lawful recreational uses, including, but not limited to, hunting, fishing, cross-country skiing and snowmobiling providing no motorized trails are established in the Conservation Easement Area. All uses are subject to the limitations set forth in this Easement, including Section 8, Improvements.

8. Improvements

Permitted uses of the Property vary depending on where on the Property the use occurs. The Property is divided into two principal areas, which are depicted on the Easement Survey Map attached hereto as Exhibit A and which include: 1) the Conservation Easement Area; and 2) the Area of Development. This easement will only outline permitted uses within the Conservation Easement Area.

Grantor may undertake construction, erection, installation, removal or placement of buildings, structures, or other improvements within the Conservation Easement Area only as provided in this Easement and set forth below. Any permission requested or granted shall be in accordance with Section 15, Permission of Grantee.

8(a) Existing Agreements

A) Without permission of Grantee, Grantor may construct Improvements that they are required to allow under Existing Agreements, as defined in Section 4, Definitions.

8(b) Other Additional Improvements

A) Without permission of Grantee, Grantor may repair, remove, enlarge and replace existing fences.

B) Without permission of Grantee, Grantor may install signs along the perimeter of the

buffer not exceeding one square foot each.

C) Without permission of Grantee, Grantor may install habitat improvement devices such as birdhouses and bat houses.

D) Without permission of Grantee, Grantor may develop trails of highly porous surface including footbridges for non-motorized use.

E) Permission is required by Grantee for construction or placement of fish passage structures, fish habitat improvements, and stream bank stabilization measures.

F) Permission is required by Grantee for construction or placement of utility lines. Such permission shall be granted only if there is no other reasonably feasible means to provide utility services to the Property except via the Conservation Easement Area.

9. Subdivision

The Property is currently comprised of one tax parcel owned by the Grantor. Any subdivision, recording of a subdivision plan, partition, or any other attempt to internally or externally divide any individual parcel or the Property into two or more parcels is prohibited. Mortgages, or other non-possessory interests in land do not constitute subdivisions for the purpose herein.

10. Forest Management

No timber harvesting will be allowed in the Conservation Easement Area unless timber removal is necessary to protect the property or maintain and/or enhance the ecosystem and related habitat. Such harvesting must be done with approval from the Grantee.

11. Mining and On-Site Extractive Activity

New surface exploration for, or development, storage and extraction of, minerals and hydrocarbons in the Conservation Easement Area by any method are prohibited. Any surface mining or extractive activity that is not expressly authorized in this section or any reclamation deemed unacceptable as described herein shall be considered a violation of this Easement and the Grantee may seek any of the remedies as described in Section 19.

12. Road Construction

The construction of roadways, driveways, parking lots, public roads and all impervious surface coverings is prohibited in the Conservation Easement Area.

13. Dumping and Trash

The dumping, land filling, burial, application, injection, or accumulation of any kind of garbage, trash or debris in the Conservation Easement Area is prohibited, including:

- A) Storage of hazardous substances
- B) Above or below ground petroleum storage facilities
- C) Drain fields from on-site sewage disposal and treatment system
- D) Raised septic systems
- E) Solid waste landfills, junkyards or any type of fill

14. Other Activities and Uses

Except as provided in the preceding sections; Improvements, activities and uses within the Conservation

Easement Area are limited to those permitted below and provided in any case that the intensity or frequency of the activity or use does not have the potential to materially and adversely impair maintenance or attainment of Conservation Objectives.

A) Activities, Uses and Disturbance of Resources

1. Without permission of Grantee, Grantor may remove Invasive Species, or otherwise disturb the soil and non-tree vegetation in the Conservation Easement Area, as long as the actions are clearly necessary to further the Conservation Objectives outlined in Section 2, Purpose. If it is unclear whether or not such actions are clearly necessary, the Grantor shall consult with Grantee prior to taking such actions.
2. Without permission of Grantee, Grantor may plant Native Species, as long as it is not planted as a monoculture.
3. Permission is required by Grantee for stream bank stabilization, dam removal and other habitat improvement activities, as long as Improvements necessary to allow such use are also permitted, as described in the Easement.
4. Permission is required by Grantee for removal and disturbance of soil, rock and vegetative resources to the extent reasonably necessary to accommodate Construction of and maintain access to Improvements within the Conservation Easement Area with restoration as soon as reasonably feasible by replanting with Native Species.
5. Without permission of Grantee, Grantor may use vehicles in connection with an activity permitted or otherwise in the case of emergency.

15. Permission of Grantee

Where Grantor is required to obtain Grantee's permission for a proposed action hereunder, said permission shall be requested in writing. Grantor's written request for permission shall include any information or documentation that is relevant to the request and where applicable shall include building plans identifying the use, footprint and total square footage of any proposed structures, and related survey information if survey information is available. A request that does not include all pertinent information or documentation that is relevant to the request shall not be considered a complete written request and the Grantee are under no obligation to respond within 45 days, as described below. Grantee shall, however, be required to respond to Grantor's incomplete written request with a request for additional information within twenty (20) days of receipt of an incomplete written request.

Grantee shall grant permission unless it determines that such action would violate the Purpose of this Easement.

Once Grantor have provided Grantee with a complete written request, Grantee shall respond in writing granting or denying permission within forty-five (45) days of receipt of such request.

Grantee shall not be held liable for any losses incurred by Grantor due to Grantee's failure to act within any of the above time periods. Grantee shall not be liable for damages for any failure to grant permission to Grantor. All requests and letters shall be transmitted in accordance with Section 28, Notices.

16. Ongoing Responsibilities of Grantor and Grantee

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any obligations of Grantor as owner of the Property, including, but not limited to, the following:

16(a) Taxes

Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantor becomes delinquent in payment of taxes the Grantee, at its option, shall have the right to take such actions as may be necessary to protect the Grantee's interest in the Property and to assure the continued enforceability of this instrument and to recover from Grantor all of its costs including reasonable attorney's fees and costs. If, as a result of such actions, Grantee pays any taxes or assessments on Grantor's interest in the Property, Grantor will reimburse Grantee within forty-five (45) days for the same.

16(b) Upkeep and Maintenance

Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law and this Easement. Grantee shall have no obligation for the upkeep or maintenance of the Property.

16(c) Liability and Indemnification

Grantor agrees to indemnify and hold harmless Grantee from any and all costs, claims or liability, including but not limited to reasonable attorneys fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due to the negligence or intentional acts of Grantee or its agents, in which case liability shall be apportioned accordingly.

17. Baseline Documentation

By its execution of this Easement, Grantee acknowledges that the present uses of the Property are permitted by this Easement. In order to document the present condition of the Property (including both natural and man-made features) so as to facilitate future monitoring and enforcement of this Easement, a Baseline Documentation Report, including maps and photographs, describing such condition at the date hereof, has been prepared and subscribed by both parties, and a copy thereof has been delivered to Grantor and a copy will be kept on file with Grantee. The Baseline Documentation Report shall remain on record and is available for inspection at the **OFFICE OF GRANTOR**. The Report may be used by Grantee or the Grantor to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee or the Grantor of other evidence to establish the condition of the Property as of the date of this Easement.

18. Right of Inspection

Grantee shall have the right to enter upon the Property upon forty-eight (48) hours advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. Such inspection shall be conducted between the hours of 9 a.m. and 7 p.m. on a weekday that is not a legal holiday recognized by the State of New York or at a date and time agreeable to the Grantee and Grantor. In

the instance of a violation or suspected violation of the terms of this Easement which has caused or threatens to cause irreparable harm to any of the agricultural or other resources this Easement is designed to protect, no such advance notice is required.

19. Enforcement

If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation. Notwithstanding the foregoing, where Grantee in Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the Purpose of this Easement, Grantee may bring an action to enjoin the violation, *ex parte* if necessary, through temporary or permanent injunction.

In addition to injunctive relief, Grantee shall be entitled to seek the following remedies in the event of a violation:

(a) money damages, including damages for the loss of the resources protected under the Purpose of this Easement; and

(b) restoration of the Property to its condition existing prior to such violation.

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limited to, reasonable attorney's fees and costs. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

20. Transfer of Easement

Both Grantee, acting together, or any sole remaining Grantee which has acquired the rights of another Grantee, shall have the right to transfer this Easement to any remaining co-grantee or any private non-governmental organization or public agency that, at the time of transfer is a "qualified organization" under Section 170(h) of the Internal Revenue Code, provided the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. If Grantee ever ceases to exist or qualify under Section 170(h) of the Internal Revenue Code, or applicable state law, a court of competent jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the Grantee's responsibilities imposed by this Easement. Grantor will be notified in writing in advance of such transfer.

21. Transfer of Property

Any subsequent conveyance, including, without limitation, transfer, lease or mortgage of the Property, shall be subject to this 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 Tompkins County by instrument dated _____, and recorded in the office of the Clerk of Tompkins County on _____ as Instrument Number _____." Grantor shall notify Grantee in writing at least thirty (30) days before conveying the

Property, or any part thereof or interest therein, to any third party. The failure to notify Grantee or to include said language in any deed or instrument shall not, however, affect the validity or applicability of this Easement to the Property or limit its enforceability in any way.

22. Amendment of Easement

This Easement may be amended only with the written consent of Grantee and Grantor. Any such amendment shall be consistent with the Purpose of this Easement. Any such amendment shall be duly recorded.

24. Interpretation

This Easement shall be interpreted under the laws of the State of New York, or federal law, as appropriate. Notwithstanding any general rule of construction to the contrary, this Easement shall be liberally construed to effectuate the Purpose of this Easement. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render the provision invalid.

25. Successors

Every provision of this Easement that applies to Grantor or Grantee shall also apply to their respective agents, heirs, survivors, executors, administrators, assigns, and other successors in interest, and shall continue as a servitude running in perpetuity with the Property.

26. Severability

Invalidity of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

27. Notices

Any notice required or desired to be given under this Easement shall be in writing and shall be sent by (i) personal delivery, (ii) via U.S. registered or certified mail, return receipt requested, or (iii) via Federal Express or other private courier of national reputation providing written evidence of delivery. Notice shall be deemed given upon receipt in the case of personal delivery, and upon delivery by the U.S. Postal Service or private courier. All notices shall be properly addressed as follows: (a) if to Grantee: **XXXXXXX**; (b) if to Grantor: **xxxxxxx**; (c) if to any subsequent owner, at the address of the Property; Any party can change the address to which notices are to be sent to him, her or it by duly giving notice pursuant to this Section.

28. Title

The Grantor covenants that the Grantor has good right to grant and convey the aforesaid Easement; that the Property is free and clear of any and all mortgages not subordinated to this Easement, and that the Grantee shall have the use of and enjoyment of the benefits derived from and existing out of the aforesaid Easement.

29. Subsequent Liens on Property

No provisions of this Easement should be construed as impairing the ability of Grantor to use this

Property, or a portion thereof encompassing entire separately deeded parcels, as collateral for a subsequent borrowing.

30. Subsequent Encumbrances

The grant of any easements or use restrictions is prohibited, except with the permission of Grantee.

31. Grantor's Environmental Warranty

Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or management control over the day-to-day operations of the Property, or any of Grantor's activities on the Property.

Grantor warrants that he or she has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee, and hold Grantee harmless from, any and all loss, cost, claim (without regard to its merit), liability or expense (including reasonable attorneys' fees) arising from or with respect to any release of hazardous waste or violation of environmental laws.

If at any time after the effective date of this Easement there occurs a release in, on, or about the property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agree to take all steps that may be required under federal, state, or local law necessary to assure its containment and remediation, including any cleanup.

32. Duration of Easement

Except as expressly otherwise provided herein, 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, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

33. Entire Agreement

This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings and agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 22, Amendment of Easement.

34. Waiver

No waiver by Grantee of any default, or breach hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default or breach hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No waiver shall be binding unless executed in writing by Grantee.

35. Binding Effect

The provisions of this 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 owners with respect to such Property for purposes of this Easement and shall, with respect to the Property transferred, have no further responsibility, rights 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 their ownership or conduct.

36. Captions

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

IN WITNESS WHEREOF, Grantor and Grantee, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

Grantor: _____
XXXXXXXX

Grantee: XXXXXXXX

By: _____
XXXXXXXXXXXXXXXXXX

State of New York)
County of), ss:

On the ____ day of _____ in the year 200__ before me, the undersigned, personally appeared XXXXXXX, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature/office of individual taking acknowledgement

State of New York)
County of), ss:

On the _____ day of _____ in the year 200__ before me, the undersigned, personally appeared **XXXXXXXXXX**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature/office of individual taking acknowledgement

Exhibit A

Legal Description of Property

Exhibit B

Easement Survey Map

The Easement Survey Map, dated **X**, and revised **Y**, and bearing the seal of **NAME**, Licensed Land Surveyor working for **SURVEYING COMPANY, COMPANY ADDRESS**, is to be filed with the Tompkins County Clerk's Office at 320 North Tioga Street, concurrently with the recording of this easement.