

## DEED OF CONSERVATION EASEMENT

This Deed of Conservation Easement (hereafter referred to as the "Easement" or the "Conservation Easement") is granted on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by \_\_\_\_\_, ("Grantor"), residing at \_\_\_\_\_, to The Watershed Agricultural Council of the New York City Watersheds, Inc. ("Grantee"), a not-for-profit corporation organized under the New York State Not-For-Profit Law, having its principal office at 33195 State Highway 10, Walton, New York 13856, for the purpose of conserving the agricultural productivity, water quality benefits, and open space character of the subject property.

### Whereas:

- A. The Grantor is the sole Owner in fee simple of the farm property (hereafter referred to as the "Property") legally described in Exhibit A and shown on a certain map entitled, "The Watershed Agricultural Council of the New York City Watersheds, Inc., Conservation Easement Survey", in the matter of acquiring easements on Lands of \_\_\_\_\_, dated \_\_\_\_\_ and last revised \_\_\_\_\_ (hereafter referred to as the "Conservation Easement Survey"), which said maps are to be filed concurrently with the deed for the said conservation easement;
- B. The Property is primarily cropland, improved pasture, unimproved pasture and forest land whose soils are productive and are an important natural resource. The Property is located in the \_\_\_\_\_ Basin of the New York City watersheds. Furthermore, the Property also contains hydrologically active areas and other special natural features which are particularly important to the protection of the water quality of the New York City ("City") water supply;
- C. Article 14, Section 4 of the New York State Constitution states that "The policy of the state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products";
- D. Article 25-AA of the New York Agriculture and Markets Law authorizes the establishment of agricultural districts and states: "The socio-economic vitality of agriculture in this state is essential to the economic stability and growth of many local communities and the State as a whole. It is, therefore, the declared policy of the State to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products. It is also the declared policy of the State to conserve and protect agricultural lands as valued natural and ecological resources which provide needed open spaces for clean air sheds, as well as for aesthetic purposes.";

- E. The New York Environmental Conservation Law, Article 49, Title 3, authorizes conservation easements which are intended to: "implement the state policy of conserving, preserving and protecting environmental assets and natural and manmade resources, the preservation of open spaces, the preservation, development and improvement of agricultural and forest lands";
- F. The Ad Hoc Task Force of Agriculture and New York City Watershed Regulations Policy Group issued recommendations which resulted in the formation of the Watershed Agricultural Council ("WAC") and the development of the Whole Farm Planning / Best Management Practices Program designed to meet the watershed's water quality objectives and sustain and improve the economic viability of watershed farms;
- G. The Constitution and By-Laws of The Watershed Agricultural Council of the New York City Watersheds, Inc., as amended, includes among its objectives and guiding principles the protection of the New York City water supply, the maintenance of the economic viability of agricultural and forest enterprises and the acquisition of easements to protect sensitive lands, provide economic incentives to farmers for pollution prevention and allow for inter-generational transfer of farmlands and operations;
- H. The New York City Watershed Memorandum of Agreement dated January 21, 1997 authorizes an agricultural easement program and provides "funding for the acquisition of Watershed Agricultural Easements and for Watershed Conservation Easements on non-agricultural lands under common ownership with farms from Property owners who have Whole Farm Plans approved by WAC"; and
- I. The Grantee is a "qualified conservation organization," as defined by the Internal Revenue Code, and a "not-for-profit conservation organization," as defined by the New York Environmental Conservation Law and accepts the responsibility of stewarding and enforcing the terms of this Easement and upholding its conservation purposes.

Now, Therefore, for the reasons given above, and in consideration of \_\_\_\_\_ Dollars (\$# #) paid, the receipt and sufficiency of which is hereby acknowledged, the Grantor voluntarily grants and conveys to the Grantee, and the Grantee voluntarily accepts, a conservation easement as defined by Article 49, Title 3, of the Environmental Conservation Law consisting of the terms, covenants, rights, restrictions and obligations described herein.

#### 1. CONSERVATION PURPOSES.

This Conservation Easement is intended to protect the water quality of the New York City watersheds,

and to protect agricultural and forestry lands by limiting the form, location, and density of development and promoting good stewardship by the implementation of Whole Farm Plans.

## 2. DEFINITIONS.

- (2.a) **Accessory Buildings and Improvements** – A building or improvement, located within the same Acceptable Development Area(s) as the residential dwelling(s), the use of which is customarily incidental and subordinate to the residence(s). Accessory Buildings and Improvements may include: garages, tool sheds, pool and storage sheds, swimming pools, tennis courts, non-commercial greenhouses, decks, septic fields, wells, and other buildings and improvements customarily incidental to the residence(s).
- (2.b) **Agricultural Buildings and Improvements** – A building or improvement used for farm operations and on-farm production, preparation, storage, and marketing of agricultural commodities as defined under Section 301 of the New York State Agriculture and Markets Law, as amended.
- (2.c) **Baseline Documentation** – The document entitled “Baseline Documentation”, incorporated by this reference, that the Grantor and Grantee mutually agree, as depicted by photographs, maps, and supporting text, describes the general condition of the Property, including buildings and improvements, driveways, Acceptable Development Areas, Resource Protection Areas, and Farm Areas located on the Property as of the date of this Conservation Easement.
- (2.d) **Best Management Practices (BMPs)** – Practices that prevent or reduce the availability, release or transport of substances which adversely affect surface and ground waters. These management practices may have standards associated with their installation, operation or maintenance, but do not impose effluent limits for specific substances.
- (2.e) **Bluestone Extraction Plan** – A plan that provides for the identification and application of resource specific managerial and/or structural Best Management Practices designed to mitigate potential adverse environmental impacts of commercial bluestone mining.
- (2.f) **Commercial Forestry** – The felling of trees equal in volume to more than 5,000 board feet of timber or 15 standard cords during one calendar year on the Easement Property.
- (2.g) **Farm Support Housing** – Farm Support Housing shall consist of apartments, single or multi-family dwellings, or other buildings, including trailers or mobile homes, to be used to house farm

tenants, employees, seasonal employees, family members or others engaged in agricultural production on the Property.

- (2.h) **Forest Harvest Plan** - A plan that provides a statement of goals and objectives for a specific commercial timber harvest, including the identification and proposed application of water quality Best Management Practices associated with a specific commercial timber harvest. The plan shall describe the size and timing of a harvest and the management practices necessary to mitigate potential adverse environmental impacts.
- (2.i) **Forest Management Plan** – A written plan that establishes comprehensive and long-term goals for forest health, management of forest resources, and protection of water quality on the Easement Property, which Plan has been reviewed, updated, and approved by the Grantee at least every ten years.
- (2.j) **Grantee** – The term "Grantee" includes the original Grantee and its successor and assigns.
- (2.k) **Grantor** – The term "Grantor" includes the original Grantor(s), his/her heirs, successors and assigns, all future Owners of all or any portion of the Property.
- (2.l) **Incidental Agricultural Buildings and Improvements** – A building or improvement used for, and subordinate to, farm operations including, but not limited to, pump houses, sap storage structures, irrigation equipment, bridges, farm roads, stream crossings, and foot paths.
- (2.m) **Owner** – The term "Owner" includes the owner of any beneficial equity interest in the Property or any portion thereof.
- (2.n) **Recreational Buildings and Improvements** – A building or improvement used for recreational activities that does not include any permanent utilities, and/or septic systems.
- (2.o) **Sound Agricultural Practices** – As defined in Section 308 of the New York State Agriculture and Markets Law, as amended, Sound Agricultural Practices refer to those practices necessary for the on-farm production, preparation and marketing of agricultural commodities. Such practices shall be evaluated by the Commissioner of Agriculture and Markets, upon request, on a case-by-case basis.

- (2.p) **Third Party Enforcement Right** – As defined in Title 3 of Article 49 of the Environmental Conservation Law, the term "Third Party Enforcement Right" means a right which empowers a public body which is not a holder of the Easement to enforce any of the terms of the Easement.
- (2.q) **Rural Enterprises** – Rural Enterprises shall include, but not be limited to, farm stands, lawful home occupations, professional home offices, bed and breakfasts, farm machinery and auto repair, saw mills, firewood distribution, campgrounds, home schooling, day care and other educational programs. However, trailer parks, auto dealerships, and golf courses are expressly prohibited on the Property.
- (2.r) **Waste** – The term "Waste" includes trash, refuse, debris, domestic septic effluent, sewage, sewage sludge or liquid, garbage, discarded chemicals, radioactive materials, and hazardous or toxic substances as defined by Federal, State or Local law.
- (2.s) **Whole Farm Plan** – A Watershed Agricultural Council (WAC) Whole Farm Plan (WFP) is a document that identifies, addresses and mitigates environmental concerns to protect the water resources of the New York City watershed without negatively impacting the economic viability of the agriculture enterprise while integrating farm business objectives into the decision making process.
- The Whole Farm Planning Process - A WFP is developed by agricultural/conservation professionals and the participating landowner/producer following WAC policy, guidelines and standard operating procedures. The WFP gives specific consideration to aspects of the farm business that relate to water quality objectives and landowner/producer goals. The WFP addresses water quality issues identified through environmental assessments (Environmental Review/Problem Diagnosis (ERPD) and Agricultural Environmental Management (AEM). The mitigation of these water quality concerns is achieved through the implementation of Best Management Practices (BMPs) consistent with NRCS and/or WAC Standards. The landowner/producer agrees to implement BMPs according to the WFP schedule and shall maintain and operate BMPs for their designated life span. The plan may periodically be updated or otherwise revised and shall remain in effect for any period when WAC either funds or otherwise ensures that funding is secured for Grantor for construction of BMPs. Grantor must maintain such BMPs in accordance with the Whole Farm Plan and any related contractual obligations.
- Funding Restrictions - In the event that the Whole Farm Plan ceases to be funded and all contractual obligations the Grantor may have with respect to BMPs have expired, agricultural

uses and activities on the Property shall be consistent with the New York State Environmental Conservation Law (ECL) including, but not limited to, requirements applicable to Concentrated Animal Feeding Operations (CAFOs) under ECL Article 17, Title 7, and with the federal Clean Water Act, 33 U.S.C. § 1251 et seq.

A WFP document can include the following documents, but not limited to:

- Environmental Assessment using the Environmental Review/Problem Diagnosis (ERPD) or Agricultural Environmental Management (AEM)
- RUSLE2 Soil Erosion Assessment, WINPST Pesticide Leaching and Run-off Assessment and other NRCS assessments as required
- Plan narrative and photo documentation (pre and post planning and implementation)
- Nutrient Management Plan
- WFP Summary (Farm Mission, Vision and goals)
- WFP-2 Funding and Scheduling Agreement
- All WAC BMP procurement documentation, i.e. BMP Funding Agreement (WFP-1)
- BMP Operations and Maintenance Agreements (O&M)
- Record of communication with the Landowner/Participant
- BMP designs and completed “as built”
- Annual Status Reviews
- Any contractual obligations that will affect the development and implementation of new and/or revised WFP, i.e. federal programs, easements.

### 3. USE AREAS.

All uses of the Property shall be consistent with the Conservation Purposes of this Easement.

Permitted uses of the Property vary depending on location. The Property is divided into two general easement areas (Agricultural Conservation Easement Area and the Forestry Conservation Easement Area) and three principal use areas (Acceptable Development Area, and Resource Protection Area, and the Farm Area) described below. The general easement areas and the principal use areas are shown on the Conservation Easement Survey, and in the Baseline Documentation. Agricultural uses and activities on the Property shall be consistent with a current Whole Farm Plan. In the event that the Whole Farm Plan ceases to be funded and Grantor's contractual obligations with respect to BMPs have expired, use of the Property shall be consistent with the applicable requirements of State and federal law as set forth in with Paragraph (2.s).

**(3.a) Agricultural Conservation Easement Area (ACEA)** – Within the area identified as ACEA on the Conservation Easement Survey, Grantor has the right to produce crops, livestock and livestock

products, to clear land for cultivation or pasture and conduct farm operations as defined under Section 301 of the New York State Agriculture and Markets Law, as amended, which shall be consistent with a Whole Farm Plan, as well as the right to engage in all other uses permitted by this Easement.

- (3.b) **Forest Conservation Easement Area (FCEA)** – Within the area identified as FCEA on the Conservation Easement Survey, Grantor has the right to produce timber and other related forest products, including, but not limited to, firewood, maple syrup, Christmas trees, ginseng, and mushrooms as well as the right to engage in all other uses permitted by this Easement. The confinement or pasturing of livestock, the production of orchards, field crops of any kind or forage for livestock is prohibited within the FCEA. No buildings, except Incidental Agricultural Buildings and Improvements, and Recreational Buildings and Improvements pursuant to Section 4, may be constructed in the FCEA.
- (3.c) **Acceptable Development Area (ADA)** – The area(s) identified on the Conservation Easement Survey, in which single family dwelling(s) and associated Accessory Buildings and Improvements, Farm Support Housing, and buildings and improvements for Rural Enterprises may be constructed. Agricultural Buildings and Improvements, farm operations, and farming practices are permitted within the ADA pursuant to Sections 3.a and 3.b above and the terms of this Conservation Easement. However, no more than 10 commercial campsites shall be allowed in an ADA.
- (3.d) **Future Acceptable Development Area (FADA)** – An area consisting of three acres, the specific location and configuration which shall be determined, prior to any permitted construction, only with prior written approval of the Grantee. The FADA is the area, in which single family dwellings and associated Accessory Buildings and Improvements, Farm Support Housing, and buildings and improvements for Rural Enterprises may be constructed. Agricultural Buildings and Improvements, farm operations, and farming practices are permitted within the FADA pursuant to Section 2.b and the terms of this Conservation Easement. However, no more than 10 commercial campsites shall be allowed in a FADA.
- (3.e) **Farm Area (FA)** – The residual area of the Property that is within the Agricultural Conservation Easement Area, excluding the Acceptable Development Area(s) and the Resource Protection Area(s), identified on the Conservation Easement Survey, in which Agricultural Buildings and Improvements, farm operations and farming practices are permitted pursuant to Section 3.a above, Section 4.b, and the terms of this Conservation Easement.

(3.f) **Resource Protection Area (RPA)** – The area identified on the Conservation Easement Survey, which contains unique or special natural features such as streams, wetlands or slopes and supporting buffer lands in which no permanent buildings or improvements, except for Incidental Agricultural Buildings and Improvements may be built. Fences are allowed anywhere within the RPA. Grazing and cultivation is permitted subject to Section 3.a above within those portions of an RPA which lie in the Agricultural Conservation Easement Area. However, the portion of the RPA within twenty-five (25) feet of the top of the bank of a watercourse shall not be plowed, cultivated, or tilled except to reestablish naturally disturbed vegetation. Trees and shrubs along streams and waterways on the Property shall be maintained so far as practicable to assist in achieving long-term water quality standards through nutrient absorption, sedimentation control from runoff and stream channel and bank stability.

#### 4. CONSTRUCTION OF BUILDINGS AND IMPROVEMENTS.

No permanent or temporary buildings or other improvements shall hereafter be placed or maintained on the Property except as provided in accordance with this Section. Existing buildings and improvements are shown in the Baseline Documentation. Trailer parks, auto dealerships, and golf courses are expressly prohibited on the Property.

(4.a) **Fences** – Existing fences may be removed, repaired and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock and wildlife without further approval of the Grantee.

(4.b) **Agricultural Buildings and Improvements** – Grantor may remove, repair, enlarge, construct, or reconstruct Agricultural Buildings and Improvements within the ADA consistent with the Whole Farm Plan. New Agricultural Buildings, or the enlargement of existing Agricultural Buildings, within the Farm Area are permitted with prior notice to the Grantee to ensure such buildings' construction is not located within the RPA and does not exceed an aggregate total of 5,000 square feet. Grantor may enlarge or construct Agricultural Buildings in the Farm Area greater than the aggregate 5,000 square foot threshold specified above only with prior approval from the Grantee. Prior to commencing any proposed action where Grantor is required to obtain Grantee's approval hereunder, Grantor shall request such approval in writing and shall provide Grantee with information and plans as may be reasonably necessary for Grantee to evaluate such request. Grantee shall give such approval within 45 days of receipt of Grantor's written request, unless it determines that the proposed Agricultural Buildings and Improvements would be unnecessarily located on productive soils, or would otherwise substantially diminish or impair



the agricultural productivity or water quality benefits of the Property. Approval shall be deemed given if no written decision is provided by Grantee within 45 days of receipt of Grantor's written request.

- (4.c) **Residential Dwellings** – Existing residential structures and associated Accessory Buildings and Improvements may be removed, repaired, replaced and enlarged within the ADA. With prior notice to the Grantee, no more than \_\_\_\_\_ (#) new residential structures and their Accessory Buildings and Improvements may be constructed, provided that such structures and improvements are located within the ADA. Construction of residential structures outside of the ADA is prohibited.
- (4.d) **Farm Support Housing** – Existing Farm Support Housing and associated Accessory Buildings and Improvements may be removed, repaired, replaced and enlarged within the ADA. New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing is permitted within the ADA only with the prior written approval of the Grantee. If the Farm Support Housing is no longer needed for that purpose, the buildings may continue in residential use. Construction of Farm Support Housing outside of the ADA is prohibited.
- (4.e) **Rural Enterprises** – Existing Rural Enterprise buildings and improvements may be removed, repaired, replaced and enlarged within the ADA. New Rural Enterprise buildings and improvements and the renovation of existing non-habitable buildings to create Rural Enterprise buildings is permitted within the ADA only with the prior written approval of the Grantee. Construction of Rural Enterprise buildings outside of the ADA is prohibited.
- (4.f) **Recreational Uses** – Use of the Property for rural recreational uses is permitted anywhere on the Property. These uses may include, but are not limited to, hunting, fishing, trapping, skiing, snowmobiling, horseback riding, hiking, and non-commercial camping. Golf courses, commercial recreational uses involving motorized vehicles, and commercial camping outside the ADA(s) is prohibited on the Property. The construction of buildings and improvements for recreational uses are allowed anywhere on the Property, with the exception of the RPA, and shall not be improved by permanent utilities. An aggregate 1,000 square feet of recreational buildings is permitted, with prior notice to Grantee. Construction or conversion of buildings over the 1,000 square foot aggregate, up to a maximum 5,000 square foot aggregate, is permitted only with advance written approval of the Grantee.

- (4.g) Towers and Communication Devices – Communication towers or devices, wind turbines, satellite or television antennae or such similar equipment may be placed on the Property, subject to applicable governmental approval, but only in a manner consistent with the Conservation Purposes of this Easement and with prior written approval of Grantee if such devices or equipment is located outside of the ADA.

5. SUBDIVISION.

Subdivision of the Property and conveyance of any such subdivided parcel is prohibited except as set forth below.

In order to facilitate effective easement stewardship, no more than \_\_\_\_\_ (#) additional tax parcels may be created by subdivision of the Property. Such subdivided parcels may be conveyed only with prior written approval of the Grantee, upon compliance with the following conditions:

(5.a) Grantor has demonstrated that the proposed subdivision is consistent with the Conservation Purposes of this Easement and will not substantially diminish or impair the agricultural, forestry or water quality values of the Property.

(5.b) Such subdivided parcels shall remain subject to the terms and conditions set forth in this Easement. The size (square foot) limitations for structures, and the number of subdivisions set forth in this Easement shall be reallocated at the time of the proposed subdivision or conveyance, in a manner to be reviewed and approved by Grantee and set forth in the Deed of each new subdivided parcel. At the discretion of the Grantee, a functionally and materially equivalent Deed of Conservation Easement may be recorded at the time of conveyance.

(5.c) The deed(s) of conveyance of all such subdivided parcels shall contain a metes and bounds description of the subdivided parcel(s) prepared by a licensed professional land surveyor at Grantor's sole cost, which description shall have been reviewed and approved by Grantee prior to conveyance of the subdivided parcel(s).

(5.d) All costs resulting from the subdivision of the Property and conveyance of subdivided parcels, including but not limited to reasonable Grantee and associated staff time, including but not limited to time expended on legal review of documents and updating of baseline documentation, are to be borne by Grantor.

Any further subdivision of the Property and/or conveyance of newly subdivided parcels, beyond that provided for above, may be permitted at the sole discretion of the Grantee in compliance with its current subdivision approval policies and with the Conservation Purposes of this Easement.

**6. DEVELOPMENT RIGHTS.**

The development rights hereby conveyed to Grantee shall include all development rights except those specifically reserved by Grantor herein and those reasonably required to carry out the Conservation Purposes of this Easement. Grantee shall transfer such development rights only to a qualified organization in compliance with the laws of the State of New York and the regulations established by the Internal Revenue Service governing such transfers.

**7. CONSERVATION AND FARMING PRACTICES.**

Grantor and Grantee recognize that changes in economic conditions, in agricultural technologies, in accepted farm and ranch management practices, and in the operations of Grantor may result in an evolution of agricultural uses of the Property. Grantor shall retain the discretion to employ any farm uses and management practices provided all agricultural activities are considered Sound Agricultural Practices pursuant to Section 308 of the New York State Agriculture and Markets Law ("Section 308"), as amended, and are consistent with a current Whole Farm Plan as described herein in Section 2.s for the Property or its equivalent, and comply with the terms of this Easement. Any activity which is deemed by Grantee not to comply with either Section 308, the Whole Farm Plan, or this easement, shall be immediately discontinued unless and until approved by Grantee as part of the Whole Farm Plan.

**8. FOREST MANAGEMENT.**

Trees may be cut to control insects, disease and invasive species, to enhance wildlife habitat, to prevent personal injury and property damage, and for other domestic uses, including firewood and construction of permitted buildings and fences on the Property. The application of pesticide and fertilizer shall be prohibited unless: (i) such use is necessary for forest management; and (ii) such use is in compliance with an approved Forest Management Plan for the Property; and (iii) Grantee has approved such use; and (iv) such use is consistent with the terms of this Easement. Any and all Commercial Forestry activities shall require a Forest Management Plan and a Forest Harvest Plan, approved by WAC or its successor pursuant to Section 14 of this Easement, submitted at Grantor's sole cost, and consistent with the New York City Department of Environmental Protection's *"Water Quality Guidelines for Timber Harvesting"* or such successor standard approved by Grantee. In the event that Grantor submits a Forest Management Plan and/or a Forest Harvest Plan to Grantee for

approval, and Grantee (or its successor pursuant to Section 14 of this Easement) notifies the Grantor in writing that it has no program to approve such a Plan or Plans, Grantor may undertake Commercial Forestry activities so long as the activities are conducted consistent with the NYSDEC Forest Management Stewardship Plans and in accordance with the technical standards set forth in the New York State Department of Environmental Conservation's "Best Management Practices for Water Quality" field guide or such successor standards.

#### 9. MINING.

Except as may be reasonably necessary to carry out the uses permitted on the Property under the terms of this Easement, the exploration for, or development and extraction of, soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance by any surface mining method or any other method is prohibited with the exception of bluestone extraction undertaken with written approval of the Grantee.

Prior to commencing any commercial bluestone mining, Grantor, at their sole cost, shall submit a Bluestone Extraction Plan following the guidelines described in the City's "*Water Quality Protection Guidelines for Bluestone Quarrying*" or such successor standard approved by Grantee. Prior to commencing any commercial bluestone mining, such plan shall be reviewed and approved by Grantee.

#### 10. WATER RESOURCES.

Grantor may use, maintain, establish, and construct, water sources, water courses, and water bodies, including ponds, on the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. Grantor may alter the non-channelized, natural flow of water over the Property in order to improve drainage of agricultural or forest soils, reduce soil erosion, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the purposes of this Easement and is carried out consistent with the Whole Farm Plan.

Any stream work, including but not limited to, gravel removal, streambank or bed disturbance or stabilization, or bridge and culvert construction, shall only be undertaken with prior approval of the Grantee, except for emergency work resulting from natural events beyond the control of the Grantor, such as the need to restore transportation routes, maintain farm operations, and to protect health, safety, and property.

#### 11. IMPERVIOUS SURFACES AND ROAD CONSTRUCTION.

Except for roads, driveways, barnyards, lanes or other improvements constructed within the ADA or consistent with the provisions of a current Whole Farm Plan, no portion of the Property shall be paved

or otherwise be covered with concrete, asphalt, or any other impervious paving material. Logging roads are allowed so long as they are consistent with a Forest Harvest Plan. The location and construction of impervious surfaces and roads shall be implemented, in so far as practicable, to avoid substantially diminishing or impairing the agricultural productivity or water quality benefits of the Property.

#### 12. DUMPING, STORAGE AND APPLICATION OF WASTE.

Except as permitted herein, the dumping, storage, application, land filling, or accumulation of any kind of Waste in, on or upon the Property is prohibited.

The routine containerized storage of household trash and garbage is permitted only if stored for purposes of eventual transport off site for proper disposal. The storage and treatment of sewage by an individual subsurface sewage treatment system servicing residential dwellings, Farm Support Housing and other buildings used for rural enterprises allowed under this Easement is permitted only within the ADA, or with prior written approval of Grantee if located outside of the ADA.

The routine storage or accumulation of farm related building debris and other farm related refuse or equipment generated or used on the property, that does not substantially diminish or impair the agricultural or forest productivity or water quality of the Property, is permitted only within the ADA and/or the FADA, or with prior written approval of Grantee if located outside of the ADA and/or the FADA.

The application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production purposes is prohibited without the prior written approval of Grantee. Any approved application shall be undertaken only if compliant with applicable law and consistent with the Whole Farm Plan.

#### 13. RIGHTS-OF-WAY

No rights-of-way, easements of ingress or egress or utility easements shall be granted or developed, on, over, under or across the Property without prior written approval of Grantee.

#### 14. APPROVAL OF GRANTEE.

This Section shall not apply to approvals required under Section 4.b Agricultural Buildings and Improvements.

Prior to commencing any proposed action, including Commercial Forestry, where Grantor is required to obtain Grantee's approval hereunder, Grantor shall request such approval in writing and shall provide

Grantee with information and plans as may be necessary for Grantee to evaluate such request, Grantee reserves the right to request additional information as may be required for the evaluation. Grantor's request shall be deemed approved if no written response is provided by Grantee within 45 days of the receipt of the request for approval. Written response from the Grantee may include, but is not limited to, a requirement that Grantor submits to Grantee additional information to evaluate the request. Grantee may approve the request, approve with conditions, or deny the request. Grantee's approval shall be conditioned so that the approval is consistent with the Conservation Purposes of this Easement and will not substantially diminish or impair the agricultural, forestry, or the water quality values of the Property.

#### 15. RIGHTS RETAINED BY GRANTOR.

As Owner of the Property, Grantor retains the right to perform any act not specifically prohibited or limited by this Easement and that is consistent with its Conservation Purposes. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property and the right to sell or otherwise transfer the Property, subject to the Easement, to anyone they choose.

#### 16. INDEMNIFICATION.

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantor as Owner of the Property.

However, if Grantee is ever required by a court to pay damages resulting from personal injury or property damage that occurs on the Property, the Grantor shall indemnify and reimburse the Grantee for these payments, as well as for reasonable attorneys fees and other expenses of defending itself, unless due in whole or in part to the negligence of the Grantee or its agents, in which case liability shall be apportioned accordingly.

#### 17. REAL PROPERTY TAXES.

(17.a) Grantor agrees, pursuant to Article 25-AA of the New York State Agriculture and Markets Law, to apply annually for an agricultural assessment on any lands subject to this Easement which are eligible for and have received in any year an agricultural assessment. Grantor agrees to timely file the appropriate application with each assessing unit on forms proscribed by the State Board of Real Property Services and shall furnish the tax assessor such information as the State Board of Real Property Services shall require. Copies of such applications and of any confirmation of the approval of the application for an agricultural assessment shall be provided to the Grantee upon request.

(17.b) Notwithstanding the preceding paragraph, Grantor shall not be required to file an application for an agricultural assessment on any lands subject to this Easement provided that Grantor demonstrates that an agricultural assessment made on such lands pursuant to Article 25-AA would be higher than the assessment made on such lands pursuant to the New York State Real Property Tax Law. Grantor agrees to make such a demonstration to Grantee, upon request.

#### 18. BASELINE DOCUMENTATION.

The conservation values, various use areas and the current use, size, location and condition of improvements of the Property are described in a Baseline Documentation Report (the "Report"). Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but the report shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

#### 19. MONITORING.

Upon reasonable notice to Grantor, Grantee shall have the right to enter the Property, exclusive of residential dwellings, for the purpose of monitoring the Property. This may include maintaining Farm Easement (All Use Areas) boundary lines, determining whether the provisions of this Easement are being observed, and/or enforcing provisions of this Easement. If Grantee identifies activities or practices that it believes may cause or contribute to violations of State water quality standards during an inspection of the Property, Grantee shall notify the State Department of Environmental Conservation of such activities or practices. Grantee shall also have the right to monitor the Property, exclusive of residential dwellings, at any time, without prior notice, if Grantee has reasonable cause to believe the provisions of this Easement have been or are being materially violated. However, under all circumstances, Grantee will make its best efforts to notify the Grantor in advance.

#### 20. BINDING DISPUTE RESOLUTION.

If a dispute arises between the Grantor and Grantee concerning the consistency of any proposed use or activity with the purposes of this Easement or any of the specific provisions contained herein, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may request a meeting between the parties, or refer the dispute to binding arbitration by requesting in writing that NYSDEC appoint an Administrative Law Judge ("ALJ") to act as an Arbitrator to conduct the arbitration and issue a binding determination. The ALJ shall conduct the arbitration under the version of the AAA Commercial Dispute Resolution Procedures Expedited Procedure Rules then in effect. The party seeking arbitration shall provide simultaneous notice to the other party by overnight

mail and fax of such request. The request shall state with particularity the nature of the issue in question. Each party will bear its own costs, including half of any costs assessed by NYSDEC for the ALJ's time and expenses. The parties agree that the decision of the ALJ is binding upon the parties.

## **21. ENFORCEMENT.**

In the event a violation or imminent violation of this Easement occurs, Grantee shall immediately notify the Grantor to request that the activity cease and arrange a site visit to mutually resolve the situation to the satisfaction of both parties.

If the Grantor ceases the activity in violation, but is unwilling or unable to cure any violation within ten (10) calendar days after the Grantee's initial site visit, Grantee shall send Grantor a written notice of non-compliance, which shall notify Grantor of the violation and the measures reasonably calculated to cure such violation or imminent violation. Grantor shall have twenty (20) calendar days from the date the Grantor receives such notice, or such other period Grantee may deem appropriate, to cure the conditions constituting the violation. In the event the Grantor fails to cure the violation within the aforementioned twenty (20) calendar days or period designated by Grantee, Grantee shall seek to enforce such other legal and/or equitable remedies as Grantee deems necessary to ensure compliance with the terms and purposes of this Easement.

In the event that the Grantor refuses to cease such activity or agree to a site visit, or when Grantee determines that a violation or imminent violation could substantially impair the purposes of this Easement, or that an imminent or immediate threat to the City's drinking water supply exists, Grantee may seek an injunction to stop it, temporarily or permanently. If a court with jurisdiction determines that a violation may exist or has occurred, the court may also issue an order requiring the Grantor to restore the Property to its condition prior to the violation.

In any case where a court finds that a violation has occurred, the Grantor shall reimburse the Grantee for all its expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorney's fees. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time.

## **22. THIRD PARTY ENFORCEMENT.**

The City of New York, the New York State Attorney General and their successors shall have the right to enforce a material breach of this Easement subject to the following provisions:



(22.a) Prior to commencing an enforcement action in a court of competent jurisdiction, the City of New York, or the New York State Attorney General must first notify Grantee and Grantor, give Grantee sixty (60) days to take appropriate action, including commencing an enforcement action, and give Grantor sixty (60) days from the receipt of such notice to cure the breach.

(22.b) If Grantee is diligently prosecuting an enforcement action, in either an administrative or judicial proceeding, the City of New York, or the New York State Attorney General shall not have a right to prosecute an action for the same breach of this Easement.

(22.c) Nothing contained herein shall be construed as providing the New York State Attorney General with the right to physically inspect or otherwise enter the Property.

(22.d) The City and its duly authorized agents, employees and representatives shall have joint access to the Property in order to monitor and/or maintain boundaries, to determine compliance with and/or enforce the terms of this Easement in the following instances: (i) the City shall have the right to jointly inspect the Property with Grantee, during any of Grantee's inspections; (ii) notwithstanding the above, the City shall have the right to inspect the Property subject to the Easement without Grantee, when the City determines that an imminent or immediate threat to the City's drinking water supply exists, or where a Grantor may be violating this Easement through gross or willful negligence and the City has been unable, after good faith efforts, to provide notice to Grantee of such threat or violation, or in the event that Grantee is unable or unwilling to inspect the Property.

### 23. ACTS BEYOND GRANTOR'S CONTROL.

This Easement shall not be construed to entitle Grantee to bring any legal action against Grantor for any injury to or change in the Property resulting from natural events beyond the control of the Grantor.

Such natural events include fire, flood, storm, war, judicial intervention, strike, insurrection, radioactive fallout, earthquake, landslide or Acts of God, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

### 24. TRANSFER OF EASEMENT.

(24.a) Grantee agrees to notify Grantor in writing at least thirty (30) days in advance of the transfer of this Easement to another conservation organization as further described in this Section.

Grantee and the Grantor agree that this Easement may be transferred by Grantee to a

"Qualified Organization" under Section 170(h) of the U.S. Internal Revenue Code, and under the New York State Environmental Conservation Law, and only if the agency or Organization expressly agrees to assume the responsibilities imposed on the Grantee by this Easement and only with prior written approval from the City.

(24.b) If, at any time, Grantee becomes incapable of ensuring, or unwilling to ensure, compliance with the terms of this Easement, or if Grantee shall cease to exist as an entity qualified to hold conservation easements, then its rights and responsibilities shall become vested in and devolve upon a Qualified Organization, provided such Organization shall accept in writing this Easement, and provided such Organization enters into a written agreement with the City pursuant to which such Organization assumes and ensures all duties of Grantee described herein, are performed. If no Qualified Organization can be identified that meets the above criteria, the Grantee's rights and responsibilities shall become vested in and devolve upon the City. In selecting the Qualified Organization to which this Easement may be transferred under this Section, preference shall be given to, and a reasonable effort will be made to assign this easement to a local Organization.

(24.c) With respect to paragraphs (a) and (b) of this § 24, in no event shall the City approve or enter into an agreement with such a Qualified Organization to serve as a successor grantee unless such Organization has agreed, with respect to the administration, management and stewardship of this Easement, to adopt a transparency policy identical in substance to the most recently adopted WAC transparency policy in effect at the time of such transfer to a successor grantee, unless such organization expressly agrees that it is subject to or shall voluntarily comply with the requirements of the New York State Public Officers law, including but not limited to the Open Meetings Law (Pub. Off. Law §§ 100-111) and the Freedom of Information Law (Pub. Off. Law §§ 84-90).

## 25. TRANSFER OF PROPERTY.

In order to facilitate the stewardship of this Easement and to ensure adequate communication, Grantor agrees to notify Grantee of any conveyance, lease, subdivision or transfer of the Property or any portion thereof, such notice to be given in writing at least thirty (30) days in advance of such conveyance, lease, subdivision or transfer. Any such conveyance, lease, subdivision or transfer shall expressly refer to this Deed of Conservation Easement and shall be made subject to the terms of this Easement.

**26. WAIVER OR AMENDMENT.**

This Easement may not be materially amended without the written consent of the Grantee, Grantor, and the Attorney General. Any other amendment, modification or waiver will require the written consent of the Grantee and Grantor. Any amendment, modification, or waiver shall be consistent with the purposes of this Easement and shall comply with Section 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with the Environmental Conservation Law or any regulations promulgated pursuant to that law.

**27. TERMINATION OF EASEMENT.**

If it determines that conditions on or surrounding the Property change so much that it becomes impracticable to fulfill its Conservation Purposes, a court with jurisdiction may, at the joint request of Grantee, Grantor, the Attorney General and the City, terminate the Easement created by this Deed. If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill all of the Conservation Purposes, the Easement may be terminated through condemnation proceedings with notice from the public authority to Grantee, Grantor, the Attorney General, and the City. If the Easement is terminated and the Property is sold or taken for public use, then, as required by Internal Revenue Service regulations, the Grantee shall be entitled to *number* percent (*##%*) of the gross sale proceeds or condemnation award which is equal to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Property, as this ratio is determined on the date of this Easement. The Grantee shall use the proceeds consistent with the Conservation Purposes of this Easement.

**28. OTHER LAWS AND REGULATIONS IN EFFECT.**

This Easement does not relieve the Grantor from any obligation to comply with any applicable ordinances, laws, regulations and/or permit requirements of any competent governmental or regulatory body, including but not limited to the City of New York, its successors or assigns. This Easement shall not be construed to limit or modify the regulatory authority of the City. In addition to any restrictions or requirements set forth in this Easement, Grantor must apply for and conform to any and all permits in the manner set forth in any applicable law or regulation.

**29. FILTRATION NOT TO DEFEAT PURPOSE OF EASEMENT.**

Filtration or other treatment of all or any portion of the water supply this Easement seeks to protect, now or in the future, shall not be deemed to defeat the purpose, terms or enforcement of this Easement.

**30. INTERPRETATION.**

This Deed shall be interpreted under the laws of New York, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Conservation Purposes.

**31. DURATION AND BINDING EFFECT.**

The Easement created by this Deed shall be a servitude running with the land and shall bind and be enforceable against the Grantor and all future Owners. Every provision of this Easement that applies to the Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

**32. FURTHER COVENANTS.**

In the event the execution and delivery by Grantors of any additional document or instrument is necessary or desirable to qualify or perfect this Easement as a conservation easement authorized under Title 3, Article 49, of the Environmental Conservation Law, Grantors shall promptly execute and deliver to Grantee such instrument or other documents as the Grantee may reasonably request.

**33. NOTICES.**

Any notices required by this Easement shall be in writing and shall be personally delivered or sent by certified mail, to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address:

To Grantor:

[Legal Address]

To Grantee:

Watershed Agricultural Council  
33195 State Highway 10  
Walton, New York 13856-9751  
Attn: Easement Program Manager

**34. SUBSEQUENT LIENS ON PROPERTY.**

No provisions of this Deed of Conservation Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinated to this Deed of Conservation Easement.

**35. ESTOPPEL CERTIFICATES.**

Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies, to the best of the Grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement or otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request therefore.

**36. SEVERABILITY.**

If any portion of this Easement is found invalid, the remainder of the provisions of this Easement shall not be affected.

**37. ACCEPTANCE.**

As attested by the signature of the Chair of The Watershed Agricultural Council of the New York City Watersheds, Inc., the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Deed of Conservation Easement.

To Have and To Hold, this Deed of Conservation Easement unto the Grantee, its successors and

assigns.

In Witness Whereof, the Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

Grantor

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Landowner Name

Grantee

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Frederick W. Huneke, Chair

The Watershed Agricultural Council of the New York City Watersheds, Inc.

ACKNOWLEDGMENTS

State of New York )

County of \_\_\_\_\_), ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared, Landowner Name, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

State of New York )

County of \_\_\_\_\_), ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, a Notary Public in and for 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

Exhibit A  
Legal Description