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Abstract

This conservation easement is a model that demonstrates the necessary elements of a conservation easement. There is an introductory commentary written by the Westchester Land Trust that explains some of the key provisions that are necessary in the terms of the agreement. There are also explanations of key elements and requirements particular to New York. This sample is discussed in the commentary *Conservation Easements & Land Trusts: Overview, Examples and their Role in the Development Process*, written by Sam Brown.

Resource

A MODEL CONSERVATION EASEMENT, WITH KEY PROVISIONS EXPLAINED

The Conservation Easement -- In General

A conservation easement is at heart a document in which a landowner agrees to restrict the use of his property for conservation purposes, and gives to someone else, such as a land trust, the right to make sure that the restrictions are abided by. Despite the simplicity of its purpose, a conservation easement is in fact a complex legal document which must comply with real property law, state law on conservation easements and federal tax laws and regulations. If a conservation easement donor is to get a tax deduction for the easement, it must provide a substantial public benefit, though not necessarily public access. The land trust -- as a public benefit corporation -- accepts the obligation to protect this public benefit in accepting the conservation easement. Exactly what attributes of ownership are foregone by the easement, and how the parties will share the resource in the future, needs to be spelled out in the easement in terms specific enough to make the relationships clear and avoid unnecessary future conflicts, yet general enough to cover circumstances that cannot be foreseen.

Some of the provisions of a conservation easement are essentially standard and will be found in almost all conservation easements. These include the provisions dealing with

the potential for amendment of the easement in the future, or requiring notice to the land trust when the property is sold. However, the sections dealing with the purpose of the easement, with what restrictions are to be placed on the property, what rights are reserved by the property owner, what obligations the land trust accepts and what rights or interests the landowner agrees to extend to the public, are terms that must reflect the specific agreement between the owner (the Grantor) and the land trust (the Grantee). While “model easement” provisions may be helpful in suggesting wording or in providing a checklist of issues that need to be considered, they cannot take the place of a careful articulation of the agreement based on an analysis of the conservation values of the property and the extent to which the landowner is willing to protect those values by foregoing the right to develop the property.

The Westchester Land Trust’s Model Conservation Easement has “model” sections and paragraphs that can be used or adapted for individual easements. While nothing should be included in an easement without consideration of its appropriateness for the particular situation, the language of the “boilerplate” sections below is pretty standard. However, the sections which spell out the purpose (Section 1), the restrictions (Section 4), the Grantor’s retained rights (Section 2) and rights granted to Grantee (Section 3), need to be drafted to reflect each specific easement, and are the subject of more extended discussion below.

Commentary on Specific Sections of the Model Easement

Conservation Purposes - Section 1

The conservation purpose(s) of the easement are set out in very general language in the “WHEREAS” sections, and again in the first numbered section after the “NOW THEREFORE”. The use of this legalistic format is, of course, not required to make an easement a valid legal document. However, it is customary, and provides a structure that lets the lawyers know where to find certain provisions.

The conservation purposes of a conservation easement should meet the requirements of New York law and of federal tax law if a charitable deduction is going to be taken. When the details are worked out, the restrictions and the Grantor’s and Grantee’s rights are set forth, one should step back and consider if the stated purpose and the more specific provisions of the easement are consistent. The easement restrictions should address all the conservation values described, and the purposes of the easement should clearly fit within at least one of the acceptable purposes set out in State and Federal laws. These are briefly described below.

New York statutory considerations

New York law allows special protection for conservation easements under Environmental Conservation Law, Article 49, Title 3, for easements that meet the purposes of Sec. 301. The governmental policy behind this legislation is to provide for conservation, preservation and protection of the State’s environmental resources including specifically:

“the preservation of open spaces, the preservation, development and improvement of agricultural and forest lands, the preservation of areas which are significant because of their scenic or natural beauty or wetland, shoreline, geological or ecological character, and preservation of areas which are significant because of their historical, archaeological, architectural or cultural amenities..” NYECL Sec. 301.

While New York law may impose less of a burden on the Grantor to establish the “significant public benefit” required for a federal tax deduction, it does require that an easement fall within these general purposes. Consequently, in drafting easements, the conservation values protected, and the relationship of those restrictions to the conservation values, should be clearly described.

Federal Tax Law considerations

Federal tax laws require that, in order for the Grantor of a conservation easement to take a tax deduction for the value of the easement, the easement must be a “qualified real property interest”, must be given to a “qualified organization,” and must be “exclusively for conservation purposes”, Internal Revenue Code 170 (h) (1) (A)-(C).

Some of the most pertinent requirements for easements (as opposed to outright donations) to be deductible under the “qualified real property” test are reflected in various provisions of the model easement. For instance, to be deductible the easement must be donated in perpetuity, and must prohibit the donee from transferring the easement for other than the original conservation purpose or to any organization other than another “qualified organization” (which would include another 501 (C)(3) conservation organization). Any power to modify the easement in the future must also protect the conservation values in perpetuity, allowing only modifications that result in no degradation of those values. Furthermore, the easement must provide that if the property is taken by eminent domain, or the easement is extinguished through “changed circumstances”, the donee (the land trust) will receive the proportion of any sale proceeds that correspond to the proportionate value of the easement at the time the easement was donated.

The “conservation purposes” that will qualify an easement for a charitable deduction fall into one of four categories discussed below, and clever drafting may not be enough to make an easement deductible if it does not meet these requirements. However, drafting the “conservation purpose” section of the easement with an eye to these four categories, and to ensuring the restrictions imposed address that purpose, is essential.

Conservation purposes from Treasury Regulations Sec. 1.170A-14 (d) include:

- i. The preservation of land areas for outdoor recreation by, or the education of, the general public. An easement in this category must provide for the substantial and regular use of the general public and thus must allow public access, with all the accompanying maintenance and liability issues.

ii. The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem. An easement in this category must protect a significant habitat. The land may have had a history of disturbance, as has most of Westchester County, as long as it has returned to a relatively natural state. Examples of significant habitat in the regulations include habitat for rare, endangered or threatened species, examples of high quality ecosystems, and buffers for parks or nature preserves. Careful documentation of the easement habitat and heightened restriction would be required for an easement to qualify under this section.

iii. The preservation of certain open space (including farmland and forest land). An easement in this category must meet the test of providing a “significant public benefit” and be either pursuant to a “clearly delineated Federal, state or local governmental conservation policy”, or provide for “the scenic enjoyment of the general public”. The regulations specify a list of factors to be considered when determining whether an easement will qualify under this section, and, again, careful documentation is required. These factors allow one to consider land in its context, and less space is required for public benefit in urban areas.

iv. The preservation of historically important land or a certified historic structure. An easement in this category must either be within or adjacent to an area listed in the National Register of Historic Places, or must meet the criteria of the Register.

Given the economic value of land in Westchester County, the Westchester Land Trust can expect that many prospective easement donations will be relatively small pieces of land that are set aside during the development process. Planning Boards sometimes require such set-asides as part of allowing density bonuses elsewhere on the property or providing developers the benefit of a quicker and less expensive approval because the set-aside is included. If the open space set aside is a condition of subdivision approval, the easement is unlikely to qualify as a charitable contribution for tax purposes, and a deduction is not likely.

The ecological value of several acres within a subdivision, especially if the natural character of the surrounding landscape is significantly altered by the development, may seem tenuous. However, such qualities as open space have to be seen in context. Five acres of woodland in suburbia may be significant open space, and provide an important public amenity, just as a pocket park would in an urban area. However if the open space is not open to the public, does not provide significant wildlife habitat or scenic views from publicly owned property, and primarily buffers private property, there may be very serious questions about whether the easement has a public benefit and is appropriate for a conservation easement.

Prohibited Uses and Restrictions - Section 2

Section 2 of the Westchester Land Trust’s model easement, titled “Prohibited Uses and Restrictions”, is where the parties specify the restrictions to which they have agreed. It

is important that a conservation easement impose restrictions that will make a substantial difference to the conservation values of the property, and that the Land Trust can monitor efficiently and intends to enforce. The conservation values of the property should be clearly articulated, and prohibited and permitted uses should be clearly set out, using examples where helpful, to clarify the intent of the easement.

It is also important to consider the needs of wise land management in drafting the restrictions of a conservation easement. Most easements are primarily focused on protecting the natural vegetation and habitat found on the land. However, blanket proscriptions against cutting live trees and dredging and filling that are found in some “boilerplate” provisions do not always provide the best management, particularly in a suburban area where land is continually exposed to invasive plants. For example, if wildlife habitat is a major conservation value, engineering the regeneration of certain species, and controlling the regrowth of forest land may be desirable since open meadow habitat is vanishing from the landscape. At any rate, removing dead trees is often worse for wildlife than cutting live ones, and leaving the invasive exotics that infest our woodlands may damage the regeneration of a natural system. Pesticides and herbicides are prohibited in many easements, but in some cases they are the most effective and least disruptive management tool available. Restoration of lost wetlands, or creation of new wetlands to replace them, may involve dredging dikes or filling ditches. A conservation easement needs to avoid imposing limits that interfere with good land management but at the same time are not unenforceably vague.

In areas where conservation easements are used to protect farmland and land in active forestry, easements may prohibit inconsistent residential, industrial or commercial use, and may also require that farming and logging be conducted in conformance to various Best Management Practices developed for their industry. While there may not be standards developed that are easily applicable to the kind of open space easements that we often find in Westchester County, an easement can allow for flexibility in the future by agreeing that the parties and their successors can agree to develop a management plan that will protect the resources on the property yet allow for good management when the need arises.

Commonly seen restrictions in conservation easements in our area include prohibitions on incursions into wetlands, on subdivision and on residential, industrial and commercial development or activities. Often the erection of any structures on the property is limited or prohibited and the maintenance of existing topography is required. An easement can merely restrict the property to open space, require preservation of natural habitat and prohibit any inconsistent use, but a recitation of sample inconsistent uses puts content into this sort of general provision while setting out a general principle that will allow future application. A number of sample restrictions are in the model easement as examples of the way these restrictions can be worded. In addition, all our easements have a provision prohibiting mining, a prohibition that may not seem to warrant such special treatment in Westchester County where mining has not been a major activity for many years. However, this provision is required by federal tax regulations, and is therefore a standard provision.

Grantee's Rights - Section 3

The Grantee's primary responsibility under a conservation easement is to monitor and enforce the terms of the easement, and Section 3 provides Grantee with the right to do so. In addition, the easement may provide the Grantee with certain rights to approve the way the property is maintained or to provide for public access depending on what Grantor wishes to allow. Whenever there is a provision for public access, the easement will also provide for the Land Trust to provide liability insurance to protect the landowner from potential liability.

Enforcement of the easement is provided for in a separate section, in this model, Section 6. Our enforcement section requires that we give the landowner notice if we feel there is a violation of the easement, and provide an opportunity to cure the violation before any litigation is commenced. All our easements have a provision that shifts the costs of enforcement to the landowner if a violation has occurred. Because we are a small not-for-profit without a big legal staff, we feel strongly that this is the only way we can insure we will be able to enforce the easement in the long run.

Grantor's Retained Rights - Section 4

Lawyers are taught to think of real property ownership as creating bundle of rights, which are too numerous to be listed, the details of which are the subject of many volumes of legal treatises. A conservation easement does not remove any rights from that bundle except the rights specified in the easement document. Therefore, whatever rights the donor doesn't agree to forego, he retains. There are, of course, many other restrictions on what a landowner can do which are derived from other sources, including federal, state and local statutes and regulations, such as environmental regulations and zoning. Other restrictions are based in our common law legal system. The easement supplements those regulations. In an area where local government is very involved in regulation of land use, such as in protecting wetlands, it may seem superfluous to add similar protection in an easement. However, local regulations can change or allow exceptions, and the conservation easement may in fact provide substantial protection. In addition, the conservation easement provides for the land trust to enforce these restrictions, as a supplement or alternative to local government enforcement.

Basic attributes of ownership, such as the right to sell or transfer the property are often listed as among the rights reserved by the Grantor in Section 2. While these rights technically need not be listed to be reserved, listing them helps make the nature of the transaction clear. Other specific reservations of Grantor's rights reflect the limit of the restrictions set out in Section 4. While there is some redundancy in restating the limits of the restrictions as reserved rights, the practice may help ensure the document reflects the real intent of the parties. It is, of course, important to be sure that the provisions are consistent. For instance, the prohibition of any commercial or industrial use of property might be inserted in the "prohibited uses" section, yet a landowner might want a reserved right to continue a maple sugaring operation. The issue of whether the maple sugaring

operation is a commercial activity is best clarified in the easement to ensure that it reflects the real intent of the parties.

MODEL CONSERVATION EASEMENT

This conservation easement agreement is made this ___day of _____, 2003, between Grantor's name having an office Grantor's address, hereinafter called the "Grantor", and the Westchester Land Trust, Inc., a New York not-for-profit corporation with its offices located at 31 Main Street, Bedford Hills, New York 10507, hereinafter called the "Grantee".

WHEREAS the Grantor, owner in fee of real property located in the Town of _____, Westchester County, New York known and designated on the tax map of the Town of _____ insert tax map information if possible or at least the street location, comprising approximately # acres, and more particularly described in Exhibit A attached hereto and incorporated herein by reference, hereinafter known as the "Property"; and;

Attach the legal description of the property subject to the easement. If the easement is on only a part of a parcel of land which is not subdivided into encumbered and unencumbered portions, a legal description may need to be created by a survey.

WHEREAS the Grantee is a publicly supported tax exempt nonprofit organization, and a qualified organization under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, and is a New York not-for-profit corporation within the meaning of Article 49, Title 3, of the Environmental Conservation Law of the State of New York, organized for the purpose, among others, of conserving real property, and is thereby qualified to be the grantee of conservation easements; and

WHEREAS the Property consists of ...f or example wetlands, woodlands and other important natural habitat and serves as a buffer to a protected natural area, etc. This paragraph includes a list of the conservation values of the property, which should reflect the characteristics and values the Land Trust seeks to protect; and

WHEREAS specific conservation values of note may be set out in separate paragraphs, for example, "Whereas the property consists of 10 acres of wetland adjacent to the Reservoir River which flows directly into New York Reservoir, a surface drinking water source for 12 million people, and provides an important buffer between the adjacent residential land and the reservoir." or "Whereas the Property provides habitat for and is a known breeding area for spotted turtles, a species of concern in Westchester County."

WHEREAS the conservation values of the property are documented in a Baseline Data Report dated _____ which is on file in the office of the Westchester Land Trust, and is incorporated herein by reference, and which includes an inventory of the relevant conservation values, maps, photographs, reports and other documents that the parties agree provide an accurate representation of the Property at the time of the

execution of this conservation easement, and which is intended to provide objective baseline information for purposes of future monitoring and enforcement; and

WHEREAS conservation of the Property, subject to the terms of this easement, will yield significant benefits to the public by ... Describe the public benefit, such as open space, a scenic vista, wetland in an important watershed; consider how the easement fits into the statutory purposes for conservation easements and within the IRS regulations. if the intent is for the donor to take a charitable deduction; and

WHEREAS the Grantor desires to donate... Describe what the grantor is giving up such as development rights, public access to a trail to convey to Grantee the right to preserve and protect the conservation values described herein by encumbering the Property with a conservation easement pursuant to the provisions of New York Conservation Law, Article 49, Title 3; and

WHEREAS the Grantee agrees to accept this conservation easement and to honor the intentions of the Grantee as stated herein and to preserve and protect the Property in perpetuity according to the terms of this easement for the benefit of this and future generations.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants terms, conditions, and restrictions contained herein, the Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent set forth herein.

1. Purpose. It is the purpose of this easement to... Describe the particular conservation values of the property that the easement is intended to protect. This should be consistent with other provisions of the easement, in particular the restrictions imposed. Some examples include: to protect the scenic view of the Property from Road; to ensure the open and natural character of the property; to protect the wetlands on the property from development; to provide an opportunity for passive recreation for the public; etc. This easement shall prevent any use of the property that will impair or interfere with the conservation values of the property by restricting use of the property as provided herein.

2. Prohibited Uses and Restrictions. Any activity on or use of the property inconsistent with the purpose of this conservation easement is prohibited. Without limiting the generality of the foregoing provision, the following restrictions specifically apply to the property;

a. No quarry, gravel pit, surface or subsurface mining or drilling, or other mining or drilling activities prohibited under applicable provisions of Section 170(h) of the Internal Revenue Code shall be permitted on or under the Property.

b. No dumping or storage of ashes, non-composted organic waste, sewage, garbage, or any toxic or offensive materials shall be allowed on the Property.

c. No more than *de minimus* commercial recreational activities may be conducted on the Property.

d. Notwithstanding any other restriction contained herein, the owner of the Property (or any relevant part thereof) or the Grantee may take such actions with respect to the Property as are necessary to protect the health and safety of the public and the persons using the Property; provided that if any such action is contrary to a restriction contained herein, the action shall be limited to the minimum variation necessary to afford the required protection.

The above restrictions are fairly common in a conservation easement, and are included as examples of fairly standard provisions. Numbers a, b, and c, are specifically required by IRS regulations for easements that will result in charitable deductions from income taxes. For more in depth discussion, see the introduction to this model easement.

3. Rights Conveyed to Grantee. To accomplish the purposes of this easement, the following rights are conveyed to the Grantee by this easement.

The following provision can be added to this paragraph if the easement allows the Grantee to provide public access.

If Grantee elects to exercise any right to enter upon the property other than to monitor for compliance with the terms of this easement, or to authorize other persons to enter upon the property, it shall be obligated to obtain appropriate liability insurance against injury and damage to third parties and shall name the then owner of the Property as additional insureds under that policy.

The following three paragraphs are standard provisions which need to be included for any easement that is to be tax deductible.

a. The right to preserve and protect the conservation values of the Property.

b. The right to enter upon the Property at reasonable times in order to monitor compliance and otherwise enforce the terms of this easement. Grantee shall provide Grantor or Grantor's successors, reasonable notice of such entry unless Grantee determines that immediate entry is required to prevent, terminate or mitigate violation of this easement.

c. The right to prevent any activity on, incursion into, or use of the property that is inconsistent with the purposes of this easement, and to require the restoration of such areas or features of the property that are damaged by any inconsistent activity or use pursuant to the remedies set forth in section 6 herein.

There may be other rights that are granted to the Grantee by the terms of the easement that will be listed here. Two possible provisions are given below as

examples, but might be much more specifically drafted to describe the terms under which the Grantee could exercise these functions.

d. The right, but not the obligation, to construct and maintain hiking trails on the Property, to cut, remove and plant trees and to maintain and/or improve the wetlands and other natural habitat on the Property.

e. The right to permit members of the public to have access to the Property, but solely for passive recreational purposes.

Unless the easement specifies that public access is to be allowed, the right of a property owner to exclude the public is not disturbed. However it may be advisable to make it a specific provision if only to make it clear to the Grantor that nothing is being given away unintentionally.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights accruing from its ownership of the Property, including, without limitation, the right to sell or transfer the Property, as owner, subject to the restrictions and covenants set forth in this easement; and the right to engage in, or permit others to engage in, all uses of the property that are not expressly prohibited herein and are not inconsistent with In addition, any other provision of this easement to the contrary notwithstanding, Grantor specifically reserves for itself and its successors in interest with respect to the Property, and they shall enjoy, the following rights with respect to the Property:

This provision will usually be applicable to a conservation easement. It merely notes that the Grantor is not giving up anything except what the easement says.

Some reserved rights may be specifically listed to make it clear that the Grantor is not giving them up, and this section may be used to ensure that the Grantor and Grantee have the same understanding of the activities to be allowed on the Property. For instance, are hiking trails a compatible use in an easement to protect a fragile ecosystem? Is the construction of a tennis court or a swimming pool allowed in an easement that prohibits all further development? If the easement protects residential property from further development, some consideration should be given to the options to be available if the current buildings are destroyed, or if a new owner wishes to replace them. Several examples are given below.

a. Grantor reserves the right to construct a swimming pool and a tennis court on the property for the personal use of Grantor and his invitees. Any such facilities shall be sited, constructed and landscaped so as to be compatible with the surroundings.

b. Grantor specifically reserves the right to control access to the property except that specifically granted to Grantee for purposes of monitoring compliance with this easement, and no right of access to the general public to any portion of the Property is conveyed by this easement.

This provision, obviously, is only included when no public access is provided for in the easement.

5. Extinguishment of Development Rights. By this Conservation Easement, Grantor grants and donates to Grantee all remaining development rights that are now or hereafter may be allocated to, implied, reserved or inherent in the Property, and all parties agree that all such development rights are terminated and extinguished as a result of such grant and donation.

If development rights are to be extinguished, this provision should be included. If they are only partially extinguished, or limited, this section should so state. For instance, a provision could donate all development rights except right to construct one additional residence on the property. The specific provisions of the reserved right to either add on to an existing building or build others would be part of the section on Grantor's reserved rights. In the alternative, it could be drafted as part of the section on prohibited uses. Such provisions may specify the location by creating a building envelope, may limit the square footage of any additional buildings or additions to existing buildings, or may provide for architectural review in appropriate situations.

6. Enforcement.

a. Notice. If Grantee determines that a violation of this easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand that corrective action sufficient to cure the violation be taken. Where the violation involves injury to the property resulting from any use inconsistent with the terms or the purpose of this conservation easement, Grantee shall demand that Grantor restore the Property to its prior condition in accordance with a plan approved by the Grantee.

b. Injunctive Relief. If Grantor fails to cure the violation within 30 days after receipt of notice of a violation from Grantee, or, where the violation cannot reasonably be cured within a 30 day period, Grantor fails to begin curing such violation within a 30 day period, or Grantor fails to diligently continue to cure such violation until it is cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this easement, to enjoin the violation by temporary or permanent injunction, and to require the restoration of the property to the condition that existed prior to any such injury.

c. Damages. Grantee shall be entitled to recover damages for a violation of the terms of this easement or for injury to any of the conservation values protected by this easement, including, without limitation, damages for loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefore, Grantee may, in its sole discretion, apply any damages recovered to the costs of undertaking any corrective action on the Property.

The easement should, at a minimum, provide for the right to sue for restoration, and to sue for the cost of restoration if the Grantee expends funds on restoring the property as a result of Grantor's violation of the terms of the easement.

d. Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under Section 6 without prior notice to Grantors or without waiting for the period for cure to expire.

e. Costs of Enforcement. All reasonable costs of enforcing the terms of this easement against Grantor, including but not limited to the costs and expenses of legal action, reasonable attorney's fees, and any costs involved in the restoration of the Property resulting from Grantor's violation of the terms of this easement, shall be borne by Grantor unless Grantor ultimately prevails in judicial enforcement, in which case each party shall bear its own costs.

f. Forbearance. Forbearance or delay by Grantee in the exercise of any of its rights to enforce this easement or to exercise any right granted to it under this easement shall not be deemed a waiver of such rights or of any of the terms of the easement. Grantors hereby waive any defense of laches, estoppel or prescription.

g. Acts Beyond Grantor's Control. Grantee shall have no cause of action under this easement against Grantor for injury or damage to the property which is beyond Grantor's control, including, without limitation, flood, fire, wind, storms, or earth movement, or from any prudent action taken by Grantor, under emergency conditions, to prevent, abate, or mitigate significant injury to the Property or adjacent properties from such causes.

Grantor and Grantee may want to consider a provision requiring mediation of any disputes prior to litigation in addition to the above enforcement procedures. Such a provision could be inserted in this document at this point.

7. Notices and Approvals. Grantor agrees to give Grantee written notice before exercising any reserved right, the exercise of which may have an adverse impact on the conservation interests of this conservation easement. Grantor further agrees to notify Grantee of any conveyance, lease or transfer of the Property, such notice to be given in writing at least twenty (20) days in advance of such conveyance, lease or transfer. The failure to give such notice shall not, however, invalidate the conveyance, lease or transfer. When Grantee's or Grantor's approval is required for any action or activity allowed by this easement to be taken only with approval, such approval shall be in writing and signed by both parties to this easement agreement or their successors. Any notice required by this easement shall be deemed given when received or three days after being mailed by certified or registered mail, return receipt requested, postage prepaid, properly addressed as follows: (a) if to Grantee, at address set forth above; (b) if to Grantor, at the address set forth above; (c) if to any subsequent owner, at the address provided by notice to Grantee of

transfer of the property as required by this paragraph. Any party may change the address to which notices are to be sent to him, her or it by duly giving notice pursuant to this paragraph.

8. Costs and Liabilities. Grantors shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Grantor shall remain solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this easement, and all such construction and other such activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of all liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

Some easements provide for the Grantee to have a very active role in managing the property, such as allowing the Grantee to provide for public access and develop trails and other recreation facilities on the Property. In that case, a provision would be drafted partitioning the responsibilities described above in an appropriate fashion.

9. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority, including any taxes imposed upon, or incurred as a result of, this easement, and shall furnish Grantee with evidence of such payment upon request.

10. Representations and Warranties. Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

a. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, or polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed or, deposited, abandoned, or transported in, on, from, or across the Property;

b. There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;

c. Grantors and the Property are in compliance with all federal, state, and local laws, regulations and requirements applicable to the Property and its use;

d. There is no threatened or pending litigation in any way affecting, involving, or related to the Property;

e. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that the Grantors might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders; and

f. If at any time there occurs, or has occurred, 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 to the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by the Grantee, in which case the Grantee shall be responsible therefore.

Grantee should seriously consider requesting a "Phase I" environmental audit as part of the baseline data report. The importance placed on this depends on the characteristics of the property which is to be subject to the easement.

11. Amendment. This conservation easement may be amended upon the written consent of Grantee and Grantor; provided that no amendment may alter the restrictions on use or permitted structures, nor shall it allow subdivision that is inconsistent with the purposes of this conservation easement, nor shall it in any way limit the perpetual duration of this easement. Any such amendment, variance or waiver shall be consistent with the basic purposes of this conservation easement and shall comply with Article 49, Title 3, of the Environmental Conservation Law, and Section 170(h) of the Internal Revenue Code. Any such amendment, variance or waiver that does not comply with Article 49 or Section 170(h) shall be void and of no force or effect. Any amendment shall be in writing and shall be recorded in the official records of the County of Westchester, State of New York.

12. Recordation. Grantee shall record this instrument in a timely fashion in the official records of Westchester County, New York State, and may re-record it at any time as may be required to preserve its rights in this easement.

13. Assignment. Grantee's rights and obligations under this conservation easement may be assigned only to an organization that is a qualified organization under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable) and is a not-for-profit conservation corporation or other entity authorized to take title to a conservation easement under New York Environmental Conservation Law, Article 49, Title 3, and which agrees to continue to carry out the conservation purposes of this conservation easement. Any assignee other than a governmental unit must be an entity able to enforce this conservation easement, having purposes similar to those of Grantee and which encompass those of this conservation easement. Grantee agrees to provide Grantor notice of any assignment pursuant to paragraph 7 herein, 20 days prior to any assignment.

Failure to provide such notice prior to assignment shall not affect the validity of the assignment, nor shall it impair the validity of this easement or limit its enforceability in any way.

The Grantor may want to specify assignment to a specific third party in the event that the Grantee ceases to exist or is unable to continue to carry out its responsibilities under this easement. In that case, the easement should be signed by the 3rd party, and that organization should be provided with a copy of the baseline data file, and the land trust may want to consider providing regular status report.

14. Subsequent transfers. Any subsequent conveyance of any interest in the Property, including, without limitation, transfer, lease or mortgage, shall be subject to this conservation easement, and any deed, lease, mortgage or other instrument evidencing or effecting such conveyance shall contain language substantially as follows: "This [conveyance, lease, mortgage, easement, etc.] is subject to a Conservation Easement which runs with the land and which was granted to the Westchester Land Trust, Inc., by instrument dated _____, 1996, and recorded in the office of the Clerk of Westchester County at Liber __ of Deeds at Page ___." The failure to include such language in any deed or instrument shall not affect the validity or enforceability of this conservation easement.

The baseline data on the property should include a title report which will include information about any encumbrances on the Property as of the time the easement is executed. If there is an existing mortgage, it must be subordinated to the easement if the easement is to be deductible.

15. Binding Effect. The provisions of this conservation easement shall run with the Property in perpetuity and shall bind and be enforceable against the Grantor and all future owners and any party entitled to possession or use of the Property or any portion thereof while such party is the owner or entitled to possession or use thereof. As used in this conservation easement, the term "owner" includes the owner of any beneficial equitable interest in the Property or any portion thereof; the term "Grantor" includes the original Grantor, his, her or their heirs, successors and assigns, all future owners of all or any portion of the Property, and any party entitled to possession or use thereof; and the term "Grantee" includes the original Grantee and its successors and assigns. Notwithstanding the foregoing, upon any transfer of title, the transferor shall cease being a Grantor or owner for purposes of this conservation easement and shall have no further responsibility or liability hereunder for acts done or conditions arising thereafter, but the transferor shall remain liable for earlier acts and conditions. The obligations imposed on Grantor by this agreement shall be joint and several.

16. Extinguishment. If circumstances arise in the future that make the purpose of this easement impossible to accomplish, and if this Easement or any of its restrictions are extinguished by judicial proceeding, then, upon any subsequent sale, exchange or involuntary conversion by the Grantor, the Grantee shall be entitled to that portion of the proceeds equal to the proportionate value of the conservation restrictions as provided immediately below. For such purposes only, Grantor agrees that the donation/conveyance

of this Conservation Easement to Grantee gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that the conservation restrictions hereby created at the date hereof bears to the value of the Property as a whole at the date hereof (subject to reasonable adjustment to the extent permissible under Section 170(h) of the Internal Revenue Code for any improvements which may hereafter be made on the Property). Grantee agrees to use its share of such proceeds in a manner consistent with the conservation purposes of this conservation easement.

17. Condemnation. If all or any part of the property is taken by the exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors or Grantees in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in paragraph 16.

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

19. Severability. Invalidation of any provision of this conservation easement by court judgment, order, statute or otherwise shall not affect any other provisions, which shall be and remain in force and effect.

20. Interpretation. This instrument is intended to create a "qualified real property interest" for "conservation purposes," as defined in Section 170(h) of the Internal Revenue Code, and shall be interpreted consistently with such intention. In the event any provision has been omitted from this instrument which is necessary to qualify the interest hereby granted as such a "qualified real property interest" for "conservation purposes", such provision shall be deemed incorporated herein to the extent necessary to cause the interest hereby granted to be so qualified.

IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year written above.

GRANTOR: _____

If signed by an individual for a partnership or corporation, the persons name and title. Make sure the person signing has the authority to encumber the property.

GRANTEE: The Westchester Land Trust, by _____

Signatures need to be acknowledged and notarized.