

## **DEED OF CONSERVATION EASEMENT**

**THIS DEED OF CONSERVATION EASEMENT** (the "Easement") is made, agreed, and entered this \_\_\_ day of \_\_\_\_\_, 2013, by and between:

**LANDOWNER**, the Grantor, with an address at \_\_\_\_\_ (herein, the "Landowner"); and the

**TOWN OF DANBY**, the Grantee, an incorporated municipal subdivision of the State of New York with offices at 1830 Danby Road, Ithaca, New York, 14850 (herein, the "Town").

This Easement conveys in perpetuity all of the rights and privileges allowed under the New York State Environmental Conservation Law, Article 49, Title 3, for the purposes of preserving, protecting, or conserving land in its natural, open, scenic, educational, historical, agricultural, or forested condition. The Town is a qualified holder of such easement rights within the meaning of: (i) the Internal Revenue Code of 1986 §§ 501 (c) and 170(h); and (ii) Article 49, Title 3, of the Environmental Conservation Law of the State of New York (the "ECL").

**Article I:** Conservation Purposes and Property Description

**1.01** Property – The real property subject to this Easement is described in Schedule A. Schedule A is incorporated herein (the “Property”).

**1.02** Purposes - Consistent with the goals and objectives of the Town’s Comprehensive Plan, this Easement shall protect open and special natural spaces in the Town of Danby by, among other things, discouraging development in low-density zones, focusing development in high-density and commercial zones, and conserving and protecting land resources for sustainable uses. This Easement seeks to recognize the Conservation Values of the Property, including both the Natural Values and Extraordinary Values of the Property (as delineated below).

The purposes of this Easement are not to prevent all uses of the Property, but to limit activities to defined compatible activities and reasonable uses such as maintaining private residences, the pursuit of agriculture and forestry best practices, wildlife management activities, the pursuit of low-impact recreation, and similar activities that do not impair the Conservation Values of this Easement.

**1.03** Conservation Values - The Conservation Values are defined as those Property characteristics that the parties deem of value and seek to protect, including the specific Natural Values and Exceptional Values identified below:

A. Natural Values include (examples in italics):

1. *Approximately \_\_\_ feet of frontage upon the \_\_\_\_\_ streams or ponds;*
2. *The Property is within the \_\_\_\_\_ watershed(s); an important watershed for public water supplies and local surface waters. The Property also provides important filtration characteristics for such watershed(s) and thus helps recharge the aquifer, reduce sedimentation, and helps maintain natural fisheries, etc.;*
3. *The Property contains steep slopes adjacent to aquifers or surface waters that are susceptible to stormwater runoff and erosion that could harm water quality if trees or other vegetation are removed;*
4. *Important open spaces, including viewsheds, meadows, or brushlands that provide significant natural habitat for diverse wildlife adjusted to such spaces, or which provide open space and views identified as important to the public.*

B. Exceptional Values include (examples in italics):

1. *The documented presence of native flora and fauna of significant diversity, including rare, endangered, or threatened species, or including significant mapped natural communities;*
2. *Mature forest areas including a range of native species, tree stands of varying age classes, structural forest diversity, and a multi-story canopy;*
3. *Known and mapped wetlands and wetland-significant ecosystems, whether jurisdictional or non-jurisdictional wetlands of the New York State Department of Environmental Conservation or the United States Army Corps of Engineers (as mapped by and through the United States Fish And Wildlife Service National Wetlands Inventory), which wetlands serve important landscape and ecosystem functions such as flood prevention, the providing of important habitat for aquatic invertebrates, reptiles, amphibians, birds, mammals, and other wildlife, etc;*
4. *Unique geological, historical, architectural, agricultural, archeological features, etc.; or the Property contains important agricultural soils or is otherwise classified as prime agricultural areas, is used as Conservation Reserve Program (CRP) reserves and fields, is listed by the Natural Resource Conservation Service as prime agricultural land, or otherwise contains soils and agricultural characteristics recognized as being of statewide significance, etc.*
5. *Frontage upon, or scenic and publicly valuable views, of known parklands and scenic spaces, including \_\_\_\_\_;*
6. *The Property is located within a recognized conservation zone, unique natural area, or critical environmental area known as \_\_\_\_\_; or is contiguous or in close proximity to \_\_\_\_\_, a locally or regionally protected landscape or conservation area and is important to the conservation and preservation of, or serves as an important buffer to, the same;*

**1.04 Baseline Documentation** – The parties have gathered sufficient documentation to assess and establish the current condition and uses of the Property and to inventory its human and natural features, a summary of which is contained within the Baseline Documentation report, which report is incorporated herein. The parties acknowledge that the current and proposed allowed future conditions and uses of the Property are compatible and do not conflict with the purposes, terms, conditions and restrictions within this Easement. The parties thus acknowledge that the Baseline Documentation presents an accurate representation of the condition and features of the Property as of date hereof, and that the Baseline Documentation:

1. verifies the existence of the Conservation Values
2. serves as a primary resource for the Town to recognize changes taking place on the Property
3. serves as a guide for monitoring the activities on, and conditions of, the Property
4. serves as a means for determining compliance with the terms and provisions of this Easement

Accordingly, the parties acknowledge and agree that should any controversy arise regarding the nature and extent of Landowner's activities upon or uses of the Property, the impairment of any Conservation Values, or the physical condition of the Property upon the date hereof, the Baseline Documentation is and shall be deemed relevant to the resolution of any such controversy.

**1.05 Use Zones** - To more easily describe permitted and restricted activities and land uses that the parties agree are allowed or appropriate in any given area of the Property, this Easement will divide the Property into one or more of the following Use Zones:

1. Residential and Active Use Zone
2. Agricultural and Forest Management Zone
3. Environmental Protection Zone

## **Article II Allowed and Prohibited Uses and Rules for Use Zones**

**2.01 General Use Zone Rules** - The following rules apply to the Property and all Use Zones:

A. Subdivisions and Boundary Changes – no existing lots or lot lines may be amended, changed, or subdivided by any lease, sale, deed, gift, or other document or agreement unless:

- ⊖ the ownership of the Property does not change
- ⊖ such proposed change is agreed to by the Town, which consent may not be unreasonably withheld if such change does not impair the Conservation Values of the Property.

B. Conveyances and Encumbrances – Landowner may freely sell, transfer, lease, or convey the whole of the Property at any time. Landowner may also mortgage or encumber all or any portion of the Property at any time, so long as the covenants of such mortgage or encumbrance do not unreasonably interfere with the enforcement of this Easement or the Conservation Values of the Property.

C. General Uses – Landowner shall retain all customary rights of ownership in the Property not otherwise limited by this Easement, including the right to exclusive possession of the Property. Nothing contained in this Easement grants any right to the public to enter upon or use the Property at will. This Easement allows for activities and uses of the Property considered compatible with the purpose of this Easement, including activities and uses that don't diminish, harm, or threaten the Conservation Values.

D. Prohibited Uses – The Property may not be used for activities and land uses that the Town reasonably determines are inconsistent with the purposes of this Easement, that impair or potentially impair the Conservation Values, or that may have a material adverse effect upon the protected Conservation Values as construed under 26 CFR §1.170A-14.

No subsurface mineral, oil, solution, or gas mining, extraction, or support activities are permitted upon the Property; nor may the Property be used to support any such activities occurring off-site or under the Property. This restriction does not impair the Landowner's right to excavate stone, sand, gravel, rock, sod, and similar surface and near-surface materials by traditional mechanical excavation processes when such activities occur:

- ⊖ outside an Environmental Protection Zone only for use onsite and in accord with BMPs (as defined below); and
- ⊖ with the written permission of the Town, which permission shall not be unreasonably withheld.

E. Motor Vehicles – Motor vehicles may only be used upon the Property for access, emergencies, repairs and improvements, and in support of allowed activities; except that the use of motor vehicles is prohibited in any Environmental Protection Zone unless upon the written consent of the Town or for an emergency. The Town

may permit, in its sole discretion without recourse, the Landowner to build motor vehicle ways or trails upon the Property (including within an Environmental Protection Zone) with natural permeable surfaces to augment the ability to view, monitor, study, and use the Property principally for the purposes of providing access to remote areas or places imbued with significant value to the public.

F. Structures and Improvements – The construction or emplacement of new buildings or permanent improvements upon the Property are prohibited, except as follows:

1. For residentially-related structures, and so long as such improvement or emplacement is subservient to the principle residential use, not located in an Environmental Protection Zone, and does not impair any Conservation Values:

- ⊖ improvement of the primary residence where the total footprint does not at any time increase by more than 50% of the now current size;
- ⊖ improvement or emplacement of garages and sheds where total square footage does not increase by more than 100% of the current square footage of the sum of such structures;
- ⊖ other residentially-related improvements, such as gazebos, swimming pools, school bus shelters, gates, driveways, culverts, ditches, bridges, and fencing.

2. For agricultural and forest-related structures and improvements and so long as no animal housing or sheltering facilities or manure storage or containment systems are located within any Environmental Protection Zone or installed or located in any area or in such a manner as could foreseeably or adversely affect any identified Exceptional Value:

- ⊖ existing agricultural structures may be maintained, remodeled, replaced, enlarged, moved, or removed;
- ⊖ and all traditionally recognized sound agricultural uses and practices are permitted. Examples of agricultural structures include:

animal housing	grain bins	silos
barns and equipment sheds	greenhouses	storage tanks
crop processing buildings	irrigation distribution systems	troughs, feeding and watering
driveways and farm access	manure containment structures	accessories and delivery
lanes,	milk houses	systems
garages	product marketing or sales	water wells
fences	buildings	
garbage bins	roadside farm stands	
gates	sap houses	

3. The Landowner or the Town may also, pursuant to a forest management or conservation plan created or approved by a qualified professional, construct, emplace, maintain, repair, and periodically improve recreational trails, pathways, and vehicular passageways, together with related recreational structures, such as but not limited to:

bat boxes	blinds	picnic tables
benches	footbridges	playhouses
bird houses	pavilions	tree-stands

and other small nonhabitable structures made of wood or other materials that blend with their surroundings.

G. Storage and Disposal - The storage and disposal of objects and substances produced on the Property shall occur only within the Residential and Active Use Zone, which storage and disposal includes the:

1. routine and temporary storage of containerized trash or wastes generated by the customary use of the residence(s) upon the Property until the same can be removed from the Property for proper disposal
2. use and maintenance of a properly functioning and properly permitted individual household sewage treatment system (septic system) or a municipal sewage control system serving the permitted residence(s)
3. routine but temporary storage of reasonable amounts of chemicals and hazardous or flammable compounds customarily used and stored in residential structures (such as ant control substances, bee spray, bleach, detergents, etc.
4. storage of vehicles, boats, trailers, machinery, equipment, and other personal property, whether operable or inoperable.

The above items 1 through 4 are not permitted in any other Use Zone unless expressly stated otherwise herein or unless pursuant to generally recognized best farming and forestry practices, as such terms are used and construed under the New York State Agriculture and Markets Law (“A&M Law”), Articles 25-AA through 25-AAAA.

Landowner shall also not allow or cause any dumping, burying, or burning of trash, garbage, vehicles, trailers, boats, household appliances, agricultural or other equipment, construction materials, oil, chemicals, hazardous materials, or other debris or substances anywhere on the Property;

H. Compliance with Law - All land uses and structures shall be constructed, developed, used, maintained, and pursued only in accord with law, including the local laws and ordinances of the Town.

**2.02 Residential and Active Use Zone** - Despite any limitations as to the expansion or enlargement of residential and other building footprints and square footage, in the event the Landowner can demonstrate a reasonable unforeseen change of circumstances or a reasonable hardship, the Town may agree to waive or relax such improvement or expansion limitations. Without defining what could be an unforeseen circumstance or hardship, examples might include the need of a parent or relative to have a “Mother-in-Law” apartment or cottage space due to the death of a spouse or medical need, an increase in family size, or a need for more usable space due to obsolescence or damage by wind or fire.

**2.03 Agricultural and Forest Management Zone** - If any portion of the Property is designated as an Agricultural and Forest Use Zone, then only agricultural and forestry activities and land uses customarily associated with sustainable agriculture are permitted. “Sustainable agriculture” shall be defined and construed as:

A. Planting, raising, harvesting, and producing agricultural, forest, and woodland products at a level that does not exceed the reasonable carrying capacity of the Property under circumstances where a limited and reasonable amount of pesticides, herbicides, and fertilizers (and similar chemicals and compounds) are used;

B. Planting, mowing, and plowing to minimize runoff and erosion of soils, and using pastures and field areas in a manner so as to restrict any negative effects upon the Conservation Values, including by maintaining, building, cutting, trimming, and managing fields and hedgerows so as to create habitat diversity and protect soils from wind and water erosion;

C. Promoting self-sustaining wild flora and fauna and planting such crops upon such schedules as will promote and maintain tilth, nutrient, organic matter, and moisture levels in the soils, including by composting and the recycling of vegetative materials cut or grubbed from the Property, collected from any animals housed or pastured upon the Property (including so-called “humanure”), or from other like sources;

D. Applying nonorganic fertilizers, fungicides, pesticides, herbicides, lime, and other chemical compounds only in accordance with state and federal regulations and only to the minimum extent necessary to promote crop growth or to protect harvestable goods;

E. Clear-cutting and commercial timber harvesting shall be prohibited unless reasonably necessary to maintain a farming or forestry area, promote wildlife or ecosystem diversity, or where the Town agrees that the same may occur upon the Property.

F. Pursuing a plan to seek the promotion and recruitment of native species, the limitation of exotic species, and the elimination of invasive species;

G. Using Best Management Practices (BMPs) to the greatest extent practicable to protect and safeguard the soils, surface and subsurface waters, and identified Conservation Values. BMPs are understood as methods, procedures, devices, guidelines, or minimum standards designed and used to prevent or lessen erosion, runoff, pollution, habitat destruction, pathogen generation and dispersal, noise, or other negative environmental impacts that can accompany activities that disturb soil or other natural resources;

H. Activities that alter topography or affect existing drainage patterns (including stormwater drainage for typical and 25-, 50-, and 100-year storm events) shall be avoided to the extent practicable, and where such activities shall nonetheless occur the Landowner shall follow and ensure:

- ☞ that BMPs, especially those that avoid or lessen erosion (or potential erosion) and other negative environmental impacts are implemented; and
- ☞ that all such changes are made and implemented consistently with sound agricultural practices and in accord with applicable laws and regulation.

I. Notwithstanding the foregoing:

- ⊖ if the Town reasonably requires an Agriculture, Forest, or Woodland Management Plan due to the documentable violations of the above guidelines or the degradation of Conservation Values, then the Landowner shall produce such a plan within 6 months of request and such plan shall be subject to the reasonable approval of the Town. Landowners should consult with professional farm, woodland, and forest practitioners for the development of such plans; and
- ⊖ nothing hereinabove shall restrict the use of agricultural and woodland products for purely personal use, as long as harvest levels do not impair any Conservation Values.

**2.03 Environmental Protection Zone** - This zone is most restrictive and any part of the Property thus designated shall demonstrate:

- ⊖ conservation or ecological conditions that are imbued with a significant and documentable public interest; or
- ⊖ the existence of Exceptional Values. The purpose of this zone is preservation and conservation, and the following rules thus apply:

A. Landowner shall engage in no activities as might reasonably impair or degrade any identified Exceptional Value.

B. The Town and the Landowner may pursue plans and activities to protect, improve, or restore Conservation Values, including by:

1. not altering the topography or hydrology unless in compliance with engineered plans to manage stormwater or institute BMPs to protect the Exceptional Values;
2. creating and restoring wetlands (whether jurisdictional or of local importance);
3. preserving, stabilizing, or restoring riparian and littoral corridors;
4. protecting steep slopes and other highly erodible sites;
5. promoting significant natural communities and rare, threatened, or endangered species;
6. promoting the expansion and preservation of Exceptional Values through education, site management, and BMPs;
7. enhancing the recruitment of native species; and
8. other like acts that promote or support natural processes to the greatest extent practicable.

Landowner and the Town shall jointly agree upon any such plan or action, but if the Landowner shall delay or refuse any proposed and reasonably necessary action to prevent the loss or degradation of any Exceptional Values, then and in such event the Town may proceed to remediate or implement any such plan whenever:

1. such loss or degradation of any Exceptional Values has been reasonably documented;
2. such plan has been developed or reviewed and approved by a qualified professional; and
3. such plan or action constitutes the minimally intrusive act that may reasonably be expected to preserve or protect such Exceptional Values.

### **Article III Legal Effect and Import**

**3.01 Grant in Perpetuity** - By the signing and recording of this Easement, the parties intend to be legally bound and the Landowner acknowledges that this Easement conveys to the Town a conservation servitude over the Property to protect and maintain Conservation Values in perpetuity. This Easement shall run with the land, be binding upon Landowner and Landowner's heirs, administrators, successors and assigns, and shall inure to the benefit of the Town and its successors and assigns.

**3.02 Superior to All Liens** - Landowner warrants to the Town that as of the date hereof the Property is owned in fee simple absolute by the Landowner and that any existing liens, mortgages, or encumbrances have been subordinated to this Easement. The Town reserves the right to verify such subordination prior to the recordation of this Easement, and Landowner will provide proof of same to the Town upon request.

**3.03 Enforcement and Inspection** – Landowner hereby also grants and conveys to the Town the right to protect and maintain the Conservation Values on the Property by administering and enforcing the purposes, terms, restrictions, limitations, and provisions set forth in this Easement, including, but not limited to, rights to:

1. enter the Property to inspect and monitor the condition and uses of the Property, and to effect repairs thereupon;
2. investigate any suspected, alleged, or threatened violations of the Easement; and
3. require Landowner to restore, at Landowner's expense, any damage to the Property or the Conservation Values resulting from any violation of this Easement.

**3.04 Consents and Approvals** – Whenever consent, review, or approval (a “Review”) is herein required or permitted, the reviewing party shall have at least 60 days from the date the necessary documents (such as an Agricultural Management Plan or Forest Management Plan) are delivered for review. Within such 60 days the Review shall be completed and the reviewing party shall either:

1. issue an approval or consent;
2. issue an approval or consent with reasonable conditions;
3. issue a conditional denial or a conditional refusal to grant consent or approval, together with a written summary of the reasons for denial and what modifications or changes may be required to achieve a consent or approval; or
4. issue a denial or refusal, together with a written statement plainly stating the bases of such denial.

**3.05 Violations and Remedies** - If the Town determines that this Easement is being or has been violated, or that a violation is threatened or imminent, then the following provisions shall apply:

A. Notice – Town must notify Landowner of the violation, specifying:

1. the nature and locations of any violations;
2. recommendations as to measures Landowner could take to remedy the violation or restore the Property; and
3. the date by which compliance must be achieved, which date shall allow a minimum corrective period of 30 days to Landowner.

B. Extension of Corrective Timeframe – Upon request the Town may extend the corrective period whenever reasonable and necessary, but only so long as:

1. Landowner ceases the activity constituting the violation promptly upon receipt of the Town’s notice;
2. Landowner and Town agree, within the 30-day period, upon the measures Landowner will take to correct the violation; and
3. Landowner commences corrective measures within the 30-day period and thereafter continues to use best efforts and reasonable diligence to complete the process. *Note: was “to complete the cure”*

C. Imminent Harm – Notwithstanding the foregoing, no notice or corrective timeframe is required if immediate action is necessary to prevent or mitigate irreparable harm or alteration to any Conservation Values.

D. Remedies – If the violation persists upon the expiration of any applicable corrective period (including if extended), the Town may bring an action at law or in equity to enforce the terms of this Easement, stop or prohibit present or future violations, or require the restoration of the Property to the condition that existed prior to any such violation. The Town also may exercise the right of self-help and enter the Property to prevent or mitigate further damage to the Conservation Values. The Town’s remedies described in this Section shall be cumulative and in addition to any other remedies now or hereafter existing at law or in equity.

E. Special Recoveries and Damages – In the event the Town files or commences any claim or proceeding and the Landowner (or any other person) is found to be in material violation of this Easement, or if this Easement is sought to be terminated by the Landowner (or such other person) and the Easement survives such claim, then the Town shall be entitled to seek and collect:

1. compensatory damages, including consequential, incidental, and exemplary damages in an amount fixed by the court or applicable tribunal; plus
2. damages equal to the fair market value of the loss or partial loss or impairment of any Conservation Values (which amount shall be, at a minimum, equal to two times the base value of the real estate upon which the Conservation Value is located); plus
3. restitution damages calculated to reimburse the Town for the costs of obtaining and recording this Easement, the cost of all monitoring and reporting undertaken to ensure the vitality of the Conservation Values, the cost of any improvements made to the Property, including pathways, trails, structures and the like, and the sum costs of any other amount invested in the Property for the public’s benefit; plus
4. all costs and expenses incurred or to be incurred for the restoration of the Property or any Conservation Values; plus
5. reimbursement of the Town’s attorneys’, consultants’, engineering, and expert fees incurred in relation to the Property or any such claims or proceedings (all herein individually and severally, the “Special Recoveries”).

F. No Fault of Landowner and Limitation on Recoveries – The Town may waive or partially waive its right to seek or be reimbursed for Special Recoveries from the Landowner if the Town, in its sole discretion without

recourse, is reasonably satisfied that the violation was not the Landowner's fault, was inadvertent or minor, or could not have been anticipated or prevented by reasonable means.

In addition, Town may not bring action against Landowner for violations resulting from causes beyond Landowner's reasonable control including, without limitation, fire, flood, storm, and earth movement, or from prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to persons, property, or to the Property.

G. Continuing Liability - If any land subject to this Easement is conveyed the Landowner remains liable and responsible for any existing or discovered violations jointly and severally with the new Landowner or party in interest. This provision does not apply if Town has issued a certificate of compliance evidencing "no violations" within 30 days of the date of conveyance.

H. Qualifications and Alternate Enforcement - If Town ceases to be an organization qualified to hold conservation easements then the rights and duties of Town under this Easement may be transferred by the Town or by a court of competent jurisdiction only to another "qualified organization" as defined by 26 CFR 1.170A-14. The Attorney General of the State of New York, the New York Department of Environmental Conservation, and the State of New York shall also have the right to enforce this Easement if Town fails to do so.

**3.06 Condemnation** - If this Easement is taken in whole or in part by exercise of the power of eminent domain, the Town is entitled to compensation for the value of this Easement or the Conservation Values lost or impaired. Compensation shall be calculated in accordance with generally accepted appraisal standards and state and federal law and regulations—but in no event less than the Proportionate Value, as defined below.

**3.07 Termination** - If future circumstances render this Easement impossible to accomplish it may be terminated or extinguished in whole or in part only by judicial proceedings. In such circumstances, or if any decree terminates this Easement whole or in any part, then (and regardless of fault) the Town is entitled to receive compensation for such loss or termination equal to the greater of:

- ⊖ the value of this Easement or the Conservation Values lost or impaired, calculated in accordance with generally accepted appraisal standards and state and federal law and regulations; or
- ⊖ the difference in value of the Property after the removal of this Easement as compared to its value as encumbered, calculated in accordance with generally accepted appraisal standards and state and federal law and regulations.

In all such cases:

- ⊖ the compensation to the Town shall not be less than the Proportionate Value, as defined below; and
- ⊖ the Town may recover any Special Recoveries whenever partial or whole termination is caused in whole or in part by willful, intentional, reckless, or affirmative acts of or actions by the Landowner.

#### **Article IV Federal and State Tax Items**

**4.01 Qualified Conservation Contribution** - The rights hereby granted to the Town have been donated in whole or in part by Landowner. This Easement is intended to qualify as a charitable donation of a partial interest in real estate as defined under §170(f)(3)(B)(iii) of the Internal Revenue Code (the "Code") to a qualified organization as defined in §1.170(A-14(c)(1) of the IRS regulations.

**4.02 Public Benefit** - The parties have entered into this Easement to provide a significant public benefit as defined in Code §1.170A-14(d)(2)(i) and §49-0301 of the Environmental Conservation Law of the State of New York (the "ECL").

**4.03 Mineral Interests** - No person or party has retained a qualified mineral right or interest in the Property of a nature that would disqualify this Easement under Code §1.170A-14(g)(4). From and after the date hereof, the grant or severance of any such right or interest is prohibited and Town has the right to prohibit the exercise of any such right or interest when in violation of this Easement or the Code.

**4.04 Notice Required Under Regulations** – Per Code §1.170A-14(g)(5)(ii), and in addition to any other notice or approval requirements set forth in this Easement, Landowner agrees to notify Town before exercising any right that could have any potential adverse impact on the Conservation Values.

**4.05 Property Right** - In accordance with Code §1.170A-14(g)(6), Landowner agrees that the grant of this Easement gives rise to a property right immediately vested in Town that entitles the Town to compensation upon extinguishment of the Easement. The fair market value of the property right is to be determined in

accordance with the Code and New York Law, but it shall never be an amount lesser than the proportionate value that this Easement bears upon the date hereof to the value of the Property as a whole (the "Proportionate Value").

If the Proportionate Value exceeds the compensation otherwise calculable herein as payable to the Town, the Town is entitled to payment of the Proportionate Value. The Town must use any funds received on account of the Proportionate Value only for conservation purposes (as that phrase is defined in the Code).

**4.06 No Representation of Tax Benefits** - Landowner represents, warrants, and covenants to Town that:

1. Landowner has not relied upon any information or analyses furnished by Town with respect to the availability, amount, or effect of any deduction, credit, or other benefit to Landowner under the Code and regulations, any other applicable law, or with respect to the monetary value of this Easement or the Property;
2. Landowner has relied solely upon Landowner's own judgment and professional advice furnished to Landowner by consultants and professionals of Landowner's own choice. If any person or party providing services in connection with this Easement or the Property was referred or recommended by the Town, Landowner acknowledges that Town is not responsible in any way for the performance of services by these persons or parties; and
3. the donation of this Easement is not conditioned upon the availability or amount of any deduction, credit, or other benefit under the Code or other applicable law or regulation.

**4.07 Savings and Additional Clauses; Substantial Economic Effect** – If any requirement of applicable law or regulation is required to make this Easement comply with the requirements thereof or to demonstrate that the donation of this Easement is a transaction with substantial economic effect, then the Landowner and Town agree that this Easement shall be read, interpreted, and construed as if such terms or clauses are or were incorporated within this Easement.

As soon as practically possible, the Landowner and the Town shall formally incorporate any such terms or clauses by formal amendment to this Easement, and each agrees to cooperate with the other to effect such amendments so as to assure compliance with the requirements of law pertaining to conservations easements.

Any action by the Town relative to enforcement or any declaration of rights, remedies, or violations hereof shall be subject to the Landowner's (or other violators) rights of due process and equal protection, including the rights to notice and a fair hearing, whenever required by law or the Federal or New York State Constitutions.

## **Article V      General Terms and Miscellany**

**5.01 Notices** - All notices, approval or consent requests and responses, or plans and other things and documents required to be exchanged in accordance with this Easement, and other official correspondence between the parties related to the Easement, must be in writing and delivered by hand or by first class mail through the United States Post Service ("USPS") to the addresses set forth above. Documents may also be sent by facsimile, email, or other means only if agreed to by both Parties.

Any notice or other document shall be deemed received on the date of personal delivery, one day after delivery by facsimile or email, or 5 business days after delivered to the care of the USPS properly addressed with proper postage affixed.

**5.02 Amendment** - Any amendment, modification, or supplement to this Easement must be in writing and signed and notarized by the Landowner and the Town in a manner as would permit filing as an official public record respecting land titles.

**5.03 Alternative Dispute Resolution (ADR)**– In the event the parties disagree as to the interpretation, implementation, application, or enforcement of this Easement, or as to whether any issue or proposal should be approved or accepted, or whether any default or violation exists or has been corrected, the parties may, without limiting the rights of the Town otherwise herein provided, submit the dispute or question to a neutral third-party mediator jointly selected by the parties.

If the parties cannot agree upon a mediator, then such mediator shall be selected by the then Executive Director or Chairperson of the Board of Directors of the Community Dispute Resolution Center, Ithaca, New York. Such mediation shall be nonbinding unless the parties agree otherwise, and the costs of mediation shall be equally shared unless the mediator dictates otherwise.

**5.04 No Waiver** – The Town’s failure to exercise any right or remedy when available shall not be interpreted as a waiver of noncompliance, nor as a waiver of the Town’s right to exercise any rights or remedies provided for herein at any time.

**5.05 Governing Law** - The laws of the State of New York govern this Easement without regard to, or the application of, its conflicts of laws provisions. The Landowner is responsible for complying with any and all applicable laws, statutes, codes, ordinances, standards, regulations, regulatory approvals, and permit requirements that apply to any activities or land uses that Landowner might engage in upon the Property. All claims and proceedings arising in relation hereto shall be brought only in a court with territorial jurisdiction over Tompkins County, New York.

**5.07 Assignment and Transfer** – The Town may assign this Easement only to a qualified organization in accordance with 26 CFR §1.170A-14, Section 170(h)(3) of the Code, and otherwise in accord with law.

**5.08 Binding Agreement** - Subject to the restrictions on assignment and transfer set forth herein, this Easement binds and benefits Landowner and Town and their respective agents, personal representatives, successors, and assigns.

**5.09 No Other Beneficiaries** – This Easement does not confer any enforcement rights or remedies upon any parties other than Landowner and Town (and other governmental agencies as herein specified). The Landowners of land near to or adjoining the Property are not beneficiaries of this Easement, have no rights of approval or enforcement, and may not join in any action, dispute, or proceeding between the parties hereto.

**5.10 Severability** - If any provision of this Easement is determined to be invalid, illegal, or unenforceable, the remaining provisions of the Easement shall remain valid, binding, and enforceable and such invalidity, illegality, or unenforceability shall be confined in its operation only to the persons and circumstances then in issue and not to any other persons or circumstances. To the extent permitted by applicable law the Parties waive any provision of law that renders any provision of this Easement invalid, illegal, or unenforceable in any respect.

**5.11 Counterparts** - This Easement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.

**5.12 Indemnity** - Landowner shall indemnify, hold harmless, and defend Town, and its successors and assigns (the “Indemnified Parties”) against all claims, causes of action, liabilities, damages, losses, penalties, judgments and expenses (including reasonable attorneys’ fees) of any kind whatsoever, arising out of or relating to:

- ⊖ any alleged or actual breach or violation of this Easement or applicable law; and
- ⊖ damage to property or personal injury (including death) occurring on or about the Property except to the extent (if any) caused by the negligent or wrongful acts or omissions of an Indemnified Party.

Should the Town undertake to perform any work or improvements upon the Property, the Town shall indemnify, hold harmless, and defend the Landowner and the heirs, personal representatives, successors, and assigns of the Landowner against all claims, causes of action, liabilities, damages, losses, penalties, judgments and expenses (including reasonable attorneys’ fees) of any kind whatsoever, relating to injuries to persons (including death) arising from or in connection with such work.

These indemnity clauses shall be interpreted and applied only to the maximum extent permitted by law in relation to the circumstances and facts which give rise to any such indemnity obligation.

**5.13 Limitation on Town Liability** – Notwithstanding anything to the contrary contained in this Easement, the Town shall not, under any circumstances, be liable to Landowner or any third party for consequential, incidental, indirect, special, punitive, or exemplary damages arising out of or related to this Easement, including for entry onto private property or the taking of, or omission to engage in, any action, improvements, or transactions contemplated or authorized in this Easement.

This includes but is not limited to losses of profits, losses of the benefits of use, or business losses, even if the Town is apprised of the likelihood of such damages and even if such loss or damage was foreseeable. It is expressly understood and agreed that each and every provision of this Easement that provides for a limitation of liability or an exclusion of damages with respect to the Town is intended by the parties to be severable from any other provision and to be a separate and independent element of risk allocation, intended to be enforced as such.

Further, any claims brought against the Town, whether sounding in law, equity, or admiralty, shall be brought within one year of the date of accrual of such claim(s), unless a shorter statute of limitations applies under applicable law, and this provision shall not be deemed or construed to waive any notice of claim requirements or procedures. Landowner, except as to any expressed written obligation of the Town to provide indemnity for personal injuries, expressly waives any right or ability to recover attorneys' fees (and other expert or consultant fees) against the Town, whether recoverable under any statute or by common law, including so-called 1983 claims, or otherwise, unless it is proven by clear and convincing evidence that the acts of the Town were willful and without color of good faith. Landowner also hereby waives all rights of subrogation against the Town.

**5.14 Agency** – The Town and the Landowner are independent entities and neither party is, or may act as, an agent for the other party.

**5.15 Guides to Interpretation; Captions** - The descriptive headings and titles of the clauses of this Easement are for reference and organizational purposes only and shall be ignored in its construction. No rule of construction that construes any ambiguity against the author of such provision shall be used to interpret this Easement. Whenever the context requires or admits, gendered pronouns and terms shall conform to the gender of the referenced person, and terms in the singular or plural may be interpreted in the singular or plural.

Whenever a question of whether a land use or proposal is allowed or permitted as of right arises due to such issue or matter not being specifically addressed or delimited herein, there shall arise rebuttable presumptions as follows:

1. that reasonable and customary residential uses are permitted in Residential and Active Use Zones;
2. that reasonable and customary sound agricultural and forestry practices are permitted in Agricultural and Forest Management Zones pursuant to BMPs; and
3. that no use is permitted in Environmental Protection Zones.

In each such case:

- ☞ such presumption may be rebutted and overcome by showing any actual or potential adverse effect upon any defined Conservation Values herein sought to be conserved, preserved, or protected; and
- ☞ such use, presumption, permission, or consent shall remain subject to the other conditions and requirements herein stated for each such proposed use, each such Use Zone, and each protected Conservation Value.

Whenever the Town is required to act or consider a matter “reasonably,” it shall be held to be reasonable to withhold consents or approvals (and the like) whenever any Conservation Value may be negatively impacted.

No clause or requirement herein stated shall be interpreted in a manner as to make that clause or requirement unenforceable, and nothing herein is intended to be interpreted or construed in a manner as to unlawfully interfere with Constitutionally protected property rights, rights of travel, rights in commerce, and rights to engage in sound agricultural practices per A&M Law, Articles 25-AA through 25-AAAA. Whenever the term “Town” is used, such term shall include all public officers, elected officials, officers, department heads, managers, employees, and agents of the Town, unless the context thereof requires otherwise.

**5.16 Entire Agreement** - This Easement constitutes the entire understanding of the parties, revokes and supersedes all prior discussions, negotiations, and agreements between the parties, and is intended as a final expression of their agreement. This Easement shall take precedence over any other documents that may be in conflict herewith and the parties shall not be bound by any representation, promise, agreement, condition, requirement, or inducement not set forth in this Easement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Easement.

Acceptance of or acquiescence in a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Easement, even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understandings, or agreements have been made or relied upon in the making of this Easement other than those specifically set forth herein.

**TO HAVE AND TO HOLD** unto Grantee (the Town), its successors, and assigns forever.

**IN WITNESS WHEREOF**, Grantor and Grantee (Landowner and Town) have set their hands on the day and year first above written.

\_\_\_\_\_  
**LANDOWNER** Town of Danby

\_\_\_\_\_  
**LANDOWNER** **BY: \_\_\_\_\_ SUPERVISOR, TOWN OF DANBY**

\_\_\_\_\_  
**LANDOWNER**

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

On the \_\_\_\_ day of \_in the year 20\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared **Landowners**

\_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

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

On the \_\_\_\_ day of \_in the year 20\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, Supervisor, Town of Danby, 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