

RESOLUTION NO. 2016170

RE: AUTHORIZING EXECUTION OF GRANT AGREEMENT
TO PARTIALLY FUND THE PURCHASE OF A
CONSERVATION EASEMENT ON STEEL FARMLAND
PROPERTY IN THE TOWN OF MILAN, NEW YORK
AND REALLOCATING FUNDS THEREFORE

Legislators PULVER and SAGLIANO offer the following and move its adoption:

WHEREAS, Dutchess County is considering a recommendation of the Dutchess County Planning Board (Resolution No. 01/2016) for an award in an amount not to exceed \$115,750.00 in grant funds available through the Dutchess County Partnership for Manageable Growth Grant Program (the "Program") to partially fund the purchase of an agricultural conservation easement (the "Easement"), to be held by the Dutchess Land Conservancy (the "Conservancy"), on approximately 87.48 acres of Property, owned by Betti Steel and Laurence M. Steel, known as the Steel Farmland Property, ("Steel Farmland Property") (Tax Grid Number: 133600-6472-00-816858) located on Milan Hill Road in the Town of Milan, Dutchess County, New York, and

WHEREAS, as a result of the Conservancy's organizing efforts and an application to the Program, New York State Department of Agriculture and Markets shall contribute up to \$325,950, Dutchess County shall contribute up to \$115,750 and the balance of the funding \$39,440 shall be contributed by the Dutchess Land Conservancy and donation by the landowner, towards the purchase of the Easement on the Property, for a total contribution of up to \$481,140, and

WHEREAS, a real estate appraisal by McGrath & Company, Inc., which is on file with the Clerk to the Legislature supports the purchase price to be paid by the County as it values the Easement at \$5,500 per acre for a total of \$481,140, and

WHEREAS, the Easement shall provide, among other things, that it shall be held by the Conservancy, which shall assume primary responsibility to monitor and enforce the easement; that the County shall have third party enforcement rights and the right to share proportionately in the proceeds which become available, upon extinguishment, if ever, and

WHEREAS, the proposed Grant Agreement, is subject to various contingencies including approval and acceptance of the Easement and related closing documents (e.g. survey, title report and insurance) by the County, and receipt by the County of the NYS FPIG not to exceed \$325,950.00, and the contribution by the Conservancy as well as the donation by the landowner referenced above, and

WHEREAS, Resolution 208206, a Bond Resolution, authorized the issuance of \$1,600,000 serial bonds of the County for specific open space and farmland purposes, and Resolution 2014323, a subsequent Bond Resolution, authorized the issuance of \$1,000,000, serial bonds of the County for specific open space and farmland protection purposes/projects, and

WHEREAS, as a result of reductions in the scope and costs of those specific projects in Resolutions 208206 and 2014323, and the funds are available for reallocation to partially fund the purchase of an agricultural conservation easement on the Steel Farmland Property which is a farmland protection project in accord with the objectives of those Bond Resolutions and the Partnership for Manageable Growth Grant Program, and now therefore be it

RESOLVED, that the County Executive, or his designee, is hereby authorized to execute the Grant Agreement and the Monitoring Agreement attached hereto, and be it further

RESOLVED, the County Executive is authorized to take such actions as are necessary and in accord with the requirements of the Dutchess County Partnership for Manageable Growth Grant Program to complete the acquisition contemplated hereunder including changes to the documents as necessary, and be it further

RESOLVED, that the \$115,750 of the funds allocated by Resolutions 208206 and 2014323 to specific open space and farmland purposes, which due to reductions in the scope and costs of those projects are now available in Capital Projects H0400 and H0476, are reallocated to partially fund the purchase of an agricultural conservation easement on the Steel Farmland Property, and be it further

RESOLVED, to provide for expenses for the above referenced Project, the Commissioner of Finance, as appropriate, is hereby authorized, empowered and directed to amend the 2016 Adopted County Budget as follows:

APPROPRIATION

Increase

H0400.8020.3006.7010	Easement-Conservation Steel Farm	\$ 84,325
H0476.8020.3006.7010	Easement-Conservation Steel Farm	\$ 31,425
		<u>\$115,750</u>

Decrease

H0400.8020.3006	Easement-Conservation	\$ 84,325
H0475.8020.3006	Easement-Conservation	\$ 31,425
		<u>\$115,750</u>

CA-1010-16
 EW/AMS/kvh
 G-1665
 6/17/16
 Fiscal Impact: See attached statement

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 11th day of July 2016, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 11th day of July 2016.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

FISCAL IMPACT STATEMENT

NO FISCAL IMPACT PROJECTED

APPROPRIATION RESOLUTIONS

(To be completed by requesting department)

Total Current Year Cost \$ 115,750

Total Current Year Revenue \$ _____
and Source

Source of County Funds *(check one)*: Existing Appropriations, Contingency,
 Transfer of Existing Appropriations, Additional Appropriations, Other *(explain)*.

Identify Line Items(s):

H0400.8020.3006.7010 - Easement-Conservation Steel Farm
H0476.8020.3006.7010 - Easement-Conservation Steel Farm

Related Expenses: Amount \$ _____
Nature/Reason:

Anticipated Savings to County: _____

Net County Cost (this year): \$115,750
Over Five Years: \$115,750

Additional Comments/Explanation:

Authorizing execution of a grant agreement to fund the purchase of a conservation easement on the 87.48 acre Steel Farm in the Town of Milan, in partnership with the New York State Department of Agriculture and Markets.

The total cost of the Steel Farm acquisition is \$481,140. Primary funding of \$325,950 is to be provided by the New York State Department of Agriculture and Markets and constitutes 67% of total project cost. The County's PMG grant of \$115,750 will provide approximately 24% of the total acquisition cost. The balance of project costs will be provided via landowner donation and Dutchess Land Conservancy funds.

The source of County funds is Capital Account H0400 and H0476, bonds approved by Dutchess County Legislature Reso

Prepared by: Tiffanie Massey

Prepared On: 6/16/2016

GRANT AGREEMENT

FOR THE ACQUISITION OF CONSERVATION EASEMENT

THIS AGREEMENT, made this _____ day of _____, 2016, by and between BETTI STEEL and LAURENCE M. STEEL, wife and husband, with an address at 475-479 Milan Hill Road, Milan, New York, 12571, (the "Owners"); the COUNTY OF DUTCHESS, a municipal corporation with offices at 22 Market Street, Poughkeepsie, New York 12601 (the "County"); and DUTCHESS LAND CONSERVANCY, INC. with offices at 4289 Route 82, Millbrook, New York 12545 (the "Conservancy").

WITNESSETH:

WHEREAS, the Owners are the sole owner in fee simple of real property (the "Property") which consists of approximately 87.79 acres and desire to sell and convey to the Conservancy a conservation easement on an approximate 87.48 acre portion of the Property, more fully described in "Exhibit A" attached hereto and incorporated by reference, located on Milan Hill Road in the Town of Milan, Dutchess County, New York (Tax Grid Number 133600-6472-00-816858); and

WHEREAS, the Conservancy wishes to purchase such conservation easement provided that funds therefor are available through the New York State Department of Agriculture and Markets Farmland Protection Implementation Grant authorized by Contract C800822, and that needed matching funds are also available through the Dutchess County Partnership for Manageable Growth/Open Space and Farmland Protection Matching Grant Program authorized by the County pursuant to Resolutions _____ and _____, as well as from the Conservancy and from the Owners in the form of a bargain sale.

Now, therefore, the parties agree as follows:

1. **PURCHASE OF CONSERVATION EASEMENT.** The Owners agree to sell and convey to the Conservancy, and the Conservancy agrees to purchase from the Owners, a conservation easement (the "Conservation Easement") on the Property upon the terms and conditions hereinafter set forth. Among other terms under the Conservation Easement, the Conservancy shall hold the Conservation Easement and have enforcement rights pursuant to the terms of the Conservation Easement, and the County shall have third party enforcement rights pursuant to the terms of the Conservation Easement. The Conservancy and the County shall have the right to claim portions of the monetary value of the Conservation Easement in the event the Conservation Easement is extinguished pursuant to the terms of the Conservation Easement. The Conservation Easement shall be substantially in the form attached to this Agreement as "Exhibit B."

2. **PAYMENT.** The development rights for the Property, which consists of approximately 87.48 acres, are appraised at Four Hundred Eighty-One Thousand, One Hundred Forty Dollars (\$481,140), or (approximately) \$5,500 per acre. The bargain sale purchase price for the Conservation Easement for those development rights shall be Four Hundred Sixty-One

Thousand, Seven Hundred Dollars (\$461,700), payable in full at Closing in accordance with paragraph 3 below "4" and subject to the contingencies set forth in paragraph "4". The purchase price shall be raised from the following sources: NYS Contract No. C800822 (an amount not to exceed \$347,850); the Dutchess County Partnership For Manageable Growth/Open Space and Farmland Protection Matching Grant Program (an amount not to exceed \$115,750), and the funds and in-kind services of the Conservancy (an amount not to exceed \$32,500). See Exhibit C "Financial Worksheet" for more detail.

The Owners shall donate the remaining value of Nineteen Thousand, Four Hundred Forty Dollars (\$19,440) as a bargain-sale. The exact amount of total project costs, which are to be paid by the Conservancy, include the purchase price, survey, closing and administrative costs, and are to be determined at the closing. The Owners shall be responsible for all of their own costs and fees in relation to this agreement, including the New York State Transfer Tax.

The Property to be subject to the conservation Easement is shown on a survey map completed by Brian M. Houston, Licensed Land Surveyor, titled "Survey Map Prepared For Dutchess Land Conservancy, Inc." dated January 10, 2016 and last revised April 19, 2016, attached hereto as "Exhibit D". The survey map will be filed with Office of the Dutchess County Clerk prior to closing. The survey shall be certified to the Owners, New York State Department of Agriculture and Markets, the County, the Conservancy, and Stewart Title Insurance Company. Cost of the survey will be borne by the Conservancy, paid for with funding from New York State Contract C800822.

2. **APPRAISAL**. The Real Property Appraisal Report prepared by McGrath and Company, Inc., dated March 30, 2016, values the Conservation Easement Four Hundred Eighty-One Thousand, One Hundred Forty Dollars (\$481,140), or (approximately) \$5,500 per acre.

3. **CLOSING**. Closing shall take place at the offices of the Conservancy at 4289 Route 82, Millbrook, New York on or about July 20, 2016, or at such other time and place as the parties shall mutually agree, promptly after funds are made available therefore, pursuant to the New York State Department of Agriculture and Markets Farmland Protection Implementation Grant Program, Dutchess County Partnership for Manageable Growth/Open Space and Farmland Protection Matching Grant Program, and the Conservancy, as referenced above.

4. **CONTINGENCIES**. This Agreement, and the closing are subject to the following contingencies:

(a) Approval of the proposed Conservation Easement ("Exhibit B") by the Conservancy Board of Directors, which approval has been given, and New York State Department of Agriculture and Markets, and the County.

(b) Receipt by the Conservancy of the funds necessary to purchase the Conservation Easement and pay related closing and administrative costs, through a New York State Department of Agriculture and Markets Farmland Protection Implementation Grant for funds, NYS Contract No. C800822 (an amount not to exceed \$347,850); the Dutchess County

Partnership For Manageable Growth/Open Space and Farmland Protection Matching Grant Program (an amount not to exceed \$115,750), and the funds and in-kind services of the Conservancy (an amount not to exceed \$32,500).

(c) Conveyance of title satisfactory to the New York State Department of Agriculture and Markets, the County, and the Conservancy, subject only to utility company rights, licenses and/or easements to maintain pole, lines, wires and other installations presently servicing the property providing same do not, in the judgment of funding agencies, significantly impede the purposes of the Conservation Easement or significantly reduce its value.

(d) Any documentation, approvals or consents as may be required by the New York State Department of Agriculture and Markets, the County, or the Conservancy in order to comply with Program requirements.

(e) Conveyance, free of all mortgages and encumbrances of any nature whatsoever or, if any such mortgages or encumbrances exist, subordination of such mortgages or encumbrances to the Conservation Easement to the satisfaction of the New York State Department of Agriculture and Markets, the County, and the Conservancy.

5. **CANCELLATION**. If the contingencies set forth in Section 4 are not satisfied, the County or the Conservancy may cancel this Agreement on written notice to the Owners and no party will have any claim or cause of action against any other arising out of this Agreement. Notwithstanding the above, if the parties have not successfully closed this matter by July 20, 2017, the Owners may cancel this Agreement upon written notice to the Conservancy at their address as shown herein, attention Rebecca E. C. Thornton, President, and no party shall have any claim or cause of action for damages against any other party arising out of this Agreement.

6. **OWNER'S REPRESENTATIONS**. The Owners represent that they have, and will have at the closing, the power to sell, transfer and convey the Conservation Easement to the Conservancy subject only to the terms of this agreement; that the Owners are not aware of any actions or proceedings which affect the Owners' title to the Property; that there are no uncured notices which have been served upon the Owners by any governmental agency, notifying the Owners of any violations of law, ordinance or regulation which would affect the Property, or actual impending mechanics liens against the Property; and that the Owners have not entered into, nor does there exist any license, lease, option, right of first refusal or other agreement, which affects title of the Property or would affect its obligations hereunder.

The Owners have no knowledge of any condition at, on, under or related to the Property presently or potentially posing a significant hazard to human health or to the environment (whether or not such condition constitutes a violation of law that would result in liability to the Owners, County or Conservancy under any Federal, State or local environmental laws).

Should any of the above representations or warranties cease to be true at any time prior to the closing, the Owners shall immediately so advise the County and Conservancy in writing, except in so far as the Owners have advised the County and Conservancy to the contrary, each of

the above representations and warranties shall be deemed to have been made as of the closing and shall survive the closing.

7. **NO BROKERS COMMISSION**. Each of the parties represents no broker was used in connection with this Agreement or with any of the transactions contemplated herein.

8. **SEVERABILITY**. Each provision of this Agreement is severable from any and all other provisions of the Agreement. Should any provision of this Agreement be, for any reason, unenforceable, the parties shall negotiate an equitable adjustment in the provisions of this Agreement with a view to effecting the purpose of this Agreement and enforceability of the remaining provisions of this Agreement shall not be effected thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

LANDOWNERS

By: _____
Betti Steel

By: _____
Laurence M. Steel

DUTCHESS LAND CONSERVANCY, INC.

By: _____
Rebecca E. C. Thornton
President

EXHIBIT "A"
LEGAL DESCRIPTION

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situated, lying and being in the Town of Milan, Dutchess County, New York, more particularly described as follows:

CONSERVATION EASEMENT BOUNDARY

BEGINNING at a point at the westerly highway taking line of Milan Hill Road, also known as C.R. No. 54, said point being the northeasterly corner of the herein described parcel and being located S 46deg 37' 54" W 4.72 feet from the northeasterly corner of lands of Larry Steel and Betti Steel described in Document 02-2004-10690; thence along the westerly highway taking line and partly along the assumed road line of Milan Hill Road, S 46deg 37' 54" W 126.38 feet, S 29deg 55' 29" W 101.12 feet, S 38deg 27' 20" W 300.00 feet, S 25deg 50' 31" W 180.89 feet, S 35deg 45' 50" W 367.09 feet, S 29deg 19' 40" W 102.08 feet, S 12deg 24' 30" W 102.39 feet, S 06deg 29' 40" W 129.78 feet, S 13deg 14' 45" W 129.90 feet to a concrete monument found, S 26deg 34' 32" W 187.80 feet and S 25deg 24' 36" W 406.61 feet to a point marking the southeasterly corner of the herein described parcel; thence along lands of Robert W. Williamson and Eleanor M. Brushwood described in Liber 1654 of Deeds at page 554, N 19deg 51' 40" W 56.64 feet, following the range of stone wall and stone wall, N 17deg 38' 40" W 523.94 feet, N 80deg 57' 10" W 406.73 feet, following on a line of no physical bounds and the remains of stone wall, N 81deg 23' 10" W 339.59 feet to a steel pin found in an intersection of stone walls, following stone wall, N 27deg 28' 50" E 337.87 feet, N 27 deg 14' 00" E 257.99 feet, N 14deg 07' 00" E 26.12 feet to a stone wall corner, following wire fence, N 02deg 33' 30" E 64.32 feet to a steel pin found, and following stone wall, N 84 deg 37' 10" W 308.65 feet to a cherry tree stump found; thence along lands of Nicholas C. Bornozis and Marie S. Konstance described in Document 02-2002-3026, following stone wall, N 86deg 34' 10" W 250.49 feet, S 87deg 21' 00" W 266.05 feet, continuing along stone wall and the range thereof, S 84deg 24' 00" W 171.03 feet to a point; thence northerly along lands of Robert W. Williamson and Eleanor M. Brushwood described in Liber 1654 of Deeds at page 554, on a line of no physical bounds and along stone wall, N 23deg 52' 30" E 322.92 feet, N 34deg 02' 40" E 31.85 feet, N 13deg 54' 40" E 27.62 feet, N 09deg 51' 10" E 34.48 feet, N 18deg 52' 40" E 60.30 feet, N 25deg 12' 20" E 139.41 feet, N 25deg 14' 00" E 175.93 feet to a spike in a 30" oak tree found, N 27deg 26' 00" E 94.51 feet, N 12deg 04' 00" E 81.51 feet, N 07deg 59' 20" E 166.20 feet, N 03deg 37' 40" E 121.19 feet, N 06deg 06' 10" W 28.03 feet, N 12deg 28' 10" W 29.64 feet and N 23deg 53' 10" W 117.72 feet to a spike found in a 6" hickory tree; thence along lands of Paul J. Hughes Jr. described in Document 02-2009- 3768 and along lands of John Sore described in Liber 1907 of Deeds at page 5, following remains of wire fence and no physical bounds, N 11deg 55' 10" E 419.75 feet to a point marking the northwest corner of the herein described parcel; thence through lands of Larry Steel and Betti Steel described in Document 02-2004-10690, on lines of no physical bounds, S 83deg E 129.46 feet, S 84deg 50' E 502.00 feet, S 75deg 19' E 35.00 feet, S 89deg 07' E 68.00 feet, S 84deg 28' E 453.00 feet, S 83deg 34' E 113.00 feet, S 15deg 51' W 74.00 feet, S 00deg 09' W 44.83 feet, S 14deg 17' E 64.00 feet, S 07deg 56' E 188.00

feet, S 04deg 03' E 181.00 feet, S 00deg 55' W 66.00 feet, S 14deg 31' W 110.00 feet, S 20deg 56' W 133.00 feet, S 31deg 15' E 35.00 feet, S 60deg 39' E 95.00 feet, S 48deg 44' E 42.00 feet, S 57deg 58' E 41.00 feet, S 79 deg 50' E 102.00 feet, S 84deg 17' E 76.00 feet, N 85deg 37' E 89.00 feet, S 69deg 30' E 114.00 feet, S 82deg 46' E 91.00 feet, N 82deg 36' E 68.00 feet, S 83deg E 45.00 feet and S 78deg 40' E 197.98 feet to the point or place of beginning.
CONTAINING: 87.48 acres.

SUBJECT to Covenants, Easements, Restrictions, Conditions and Agreements of record.

BEING and intended to be a portion of all that certain tract or parcel of land conveyed from Michael Louis Goldman and Donna Goldman and Marilyn Hey to Larry Steel and Betti Steel by Deed dated September 20, 2004 recorded at the Dutchess County Clerk's Office in Document 02-2004-10690.

FARMSTEAD AREA BOUNDARY

BEGINNING at a point marked by a steel pin set in a stone heap at the westerly highway taking line of Milan Hill Road, also known as C.R. No. 54, said point being the northeasterly corner of the herein described parcel and being located S 46deg 37' 54" E 60.06 feet from the northeasterly corner of lands of Larry Steel and Betti Steel described in Document 02-2004-10690; thence along the westerly highway taking line and partly along the assumed road line of Milan Hill Road, S 46deg 37' 54" W 71.04 feet, S 29deg 55' 29" W 101.12 feet, S 38deg 27' 20" W 300.00 feet, S 25deg 50' 31" W 180.89 feet, S 35deg 45' 50" W 367.09 feet, S 29deg 19' 40" W 102.08 feet, S 12deg 24' 30" W 102.39 feet and S 06deg 29' 40" W 19.62 feet to a steel pin set marking the southeast corner of the herein described parcel; thence through lands of Steel, N 79deg 32' 00" W 340.00 feet to a steel pin set marking the southwest corner of the herein described parcel, N 24deg 29' 00" E 520.00 feet to a steel pin set, N 32deg 03' 11" E 678.88 feet to a steel pin set in a stone heap marking the northwest corner of the herein described parcel and S 80deg 26' 11" E 420.67 feet to the point or place of beginning.
CONTAINING: 9.57 acres of land.

SUBJECT to Covenants, Easements, Restrictions, Conditions and Agreements of record.

BEING and intended to be a portion of all that certain tract or parcel of land conveyed from Michael Louis Goldman and Donna Goldman and Marilyn Hey to Larry Steel and Betti Steel by Deed dated September 20, 2004 recorded at the Dutchess County Clerk's Office in Document 02-2004-10690.

EXHIBIT "B"
CONSERVATION EASEMENT

EXHIBIT "C"
FINANCIAL WORKSHEET

EXHIBIT "D"
SURVEY MAP

CONSERVATION EASEMENT

Between

BETTI STEEL AND LAURENCE M. STEEL

as Grantors

and

DUTCHESS LAND CONSERVANCY, INC.,

as Grantee

Version 4

June 9, 2016

Version 2: The conservation easement was approved by the Department of Agriculture and Markets on December 29, 2015.

Version 3: Updates the purchase price of the conservation easement, and adds language regarding the inclusion of Dutchess County as a funding partner and holding Third Party Rights of Enforcement.

Version 4: Removes language (Section 27 in version 3) and signature blocks regarding mortgage subordination; and updates Section cross-references.

Deed of Conservation Easement

THIS CONSERVATION EASEMENT ("Easement") is made and entered into this _____ day of _____ 2016, by and between **BETTI STEEL** and **LAURENCE M. STEEL** (the "Grantors"), having a mailing address at 475-479 Milan Hill Road, Milan, New York, 12571 and **DUTCHESS LAND CONSERVANCY, INC.**, a New York not-for-profit corporation having an office at 4289 Route 82, Millbrook, New York 12545.

WHEREAS:

- A. Grantors are the sole owners in fee simple of certain real property (the "Property") consisting of approximately 87.79 acres, in one (1) tax map parcel located on Milan Hill Road in the Town of Milan, Dutchess County, New York, more fully described in the legal survey description of the property ("Exhibit A") and shown on the Easement Map ("Exhibit B"), both attached hereto as Exhibit B, and on a survey map titled "Survey Map Prepared for Dutchess Land Conservancy, Inc.", prepared by Brian Houston, Licensed Land Surveyor, dated January 10, 2016 and revised on February 26, 2016, and filed in the Dutchess County Clerk's Office on _____ as Filed Map No. _____.
- B. Grantee, a New York not-for-profit conservation organization within the meaning of Article 49, Title 3 of the Environmental Conservation Law of the State of New York (together with any successor statute, the "ECL"), is organized for, among other purposes, conserving real property, is a tax exempt and qualified organization within the meaning of Sections 501(c)(3), 509(a) and 170(b)(1)(A)(vi) of the Internal Revenue Code (the "Code"), and is a "qualified organization" to accept, purchase, and hold conservation easements under Section 170(h) of the Code and Treasury Regulation Section 1.170A-14(c).
- C. The Property meets the Criteria for Acceptance of Easements of the Grantee and is in close proximity to, and shares a common boundary with, private land which is already permanently protected by the Grantee.
- D. Article 14, Section 4 of the New York State Constitution states: "The policy of this state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products;"
- E. Section 49-0301 of the ECL states: "The legislature hereby finds and declares that in order to implement the state policy of conserving, preserving and protecting its environmental assets and natural and man-made resources, the preservation of open spaces, the preservation, development and improvement of agricultural and forest lands, ..., is fundamental to the maintenance, enhancement and improvement of ... balanced economic growth and the quality of life in all areas of the state;"
- F. The Property is located within Dutchess County's Agricultural District # 20, created pursuant to Article 25-AA of the New York State Agriculture and Markets Law (the

“AML”). Section 300 states: “It is hereby found and declared that many of the agricultural lands in New York State are in jeopardy of being lost for any agricultural purposes. When nonagricultural development extends into farm areas, competition for limited resources results. . . . It is, therefore, the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products. . . . It is the purpose of this article to provide a locally-initiated mechanism for the protection and enhancement of New York State’s agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance;”

- G. Article 25-AAA, Section 321 of the AML states: “It is hereby found and declared that agricultural lands are irreplaceable state assets. In an effort to maintain the economic viability, and environmental and landscape preservation values associated with agriculture,” the Commissioner is authorized to administer programs to assist counties in developing agricultural and farmland protection plans and to assist both county and municipal governments in the implementation of such plans. The Commissioner gives priority to projects that will preserve viable agricultural land, are located in areas facing significant development pressure and serve as a buffer for a significant natural public resource containing important ecosystem or habitat characteristics.
- H. The Property is actively farmed. The 2009 New York State Open Space Conservation Plan prepared by the Department of Environmental Conservation, the Office of Parks, Recreation and Historic Preservation, and the Department of State (the "NYS Plan") identifies farmland protection as a critical component of the State’s overall efforts to conserve open space, stating, “This land provides fresh produce, scenic open land, vital wildlife habitat, and the economic backbone to many communities.”
- I. The Property is located in an area identified as the Hudson River Estuary Area of Biological Concern in *Wildlife and Habitat Conservation Framework: An Approach for Conserving Biodiversity in the Hudson River Estuary Corridor*, (the “Conservation Framework”) produced in 2006 by New York Cooperative Fish and Wildlife Research Unit at Cornell University, and New York State Department of Environmental Conservation, Hudson River Estuary Program. Located within the Hudson River Valley, the Hudson River Estuary Area is an area of high biological and geological diversity, and significant within the context of biodiversity in New York State and the New England and Mid-Atlantic portions of the United States. The Hudson River Estuary Area faces conservation threats such as habitat loss and fragmentation, and the Conservation Framework recommends protecting large, contiguous, unaltered tracts of land, including preservation of farmland through the use of conservation easements, as a means to protect the biodiversity of the Hudson River Estuary Area.
- J. The Property is located within Dutchess County, which adopted an Agricultural and Farmland Protection Plan in March, 2015. The Plan recommends that Dutchess County and its partners “Continue to purchase the development rights on key farm properties – through multiple funding partners including federal, state, and local government, and local land trusts.” It also recommends identifying “opportunities to create and/or build

upon existing core areas of preserved farmland in each of the County's farming communities." The Plan also emphasizes the strong farmland conversion pressure that exists in Dutchess County, which can result in "a loss of farm production, open space, and loss of agricultural jobs..." The Property is located within an Agricultural Priority Area in the Plan.. The Agricultural Priority Areas contain farmland identified as being important for preservation.

- K. Dutchess County is a municipal corporation with an address at 22 Market Street, Poughkeepsie, New York (the "County"), The County has authorized a grant through the Dutchess County Partnership For Manageable Growth/Open Space and Farmland Protection Matching Grant Program to partially fund the purchase of this Conservation Easement. The grant is in the amount of \$115,570.00 and as a condition to the County's participation, the County is granted a third- party enforcement right in this Conservation Easement and a right to a claim a portion of the monetary value of this Conservation Easement in the event that it is extinguished.
- L. The Dutchess County Legislature, in the County Master Plan, *Directions*, adopted by the Dutchess County Legislature in 1988, has identified the area in which the Property is located as an area in which agricultural lands and open space should be preserved. *Directions* emphasizes the preservation of prime agricultural soils, steep slopes, and wetlands and encourages open space land uses and the protection of scenic resources. Policy 4.4 supports efforts to maintain the vitality, and increase the diversity of agricultural enterprises in the county. Policy 4.5 supports local land use management techniques that serve to protect agricultural lands, especially within the agricultural districts. Policy 5.14 advocates the protection of wetlands and their buffers from development activities. Policy 5.16 supports measures to preserve the county's prime and important agricultural soils. Policy 5.19 advocates the preservation of steep slopes and ridgelines. Policy 5.20 advocates the preservation of the county's scenic resources and significant natural areas. Policy 5.22 encourages the use of forest management practices that are compatible with forest conservation and enhancement. Policy 5.23 encourages the protection and recognition of uncommon or especially-sensitive forest resources, such as hemlock groves, forests with particularly large trees, beech woods, and the woodland buffers around water bodies, wetlands and roadways. Policy 5.24 encourages the preservation of woodland "greenbelt" corridors through communities, especially along streams, floodplains, wetlands, and other sensitive areas, to provide recreational space, wildlife habitat, natural buffers and aquifer protection. Policy 7.11 encourages the provision of open space areas and greenbelt corridors as a fundamental land use that is carefully planned as part of the land use pattern. Policy 7.13 discourages the subdivision of prime and important agricultural soils and large forested tracts into lots which preclude the future use for agriculture and forestry. Policy 11.3 encourages the use of innovative development techniques, such as planned unit development, conservation easement and cluster subdivision, to provide recreational areas and facilities at minimal public cost. Policy 11.18 encourages the maintenance of open space as a technique for preserving unique ecological features, such as floodplains, wetlands, steep slopes and major aquifers. *Directions* recommends low density development to prevent degradation of the area's rural, natural and scenic characteristics through subdivision and

development; Policy 11.21 supports the use of conservation easements to preserve open space in rural areas.

- M. The Property is located within the Hudson Valley EcoRegion. As described in *Chapter 6, Biological Resources and Biodiversity of Dutchess County*, written by Mary Ann Cunningham, Neil Curri, and Robert Wills for the *Natural Resource Inventory of Dutchess County* (the "Dutchess NRI"), a 2010 collaborative project of Cornell Cooperative Extension Dutchess County (CCEDC) Environment and Energy Program, Cary Institute of Ecosystem Studies, Dutchess County Department of Planning and Development, Dutchess County Environmental Management Council (EMC) and Vassar College Environmental Research Institute, the Hudson Valley EcoRegion extends along the entire western boundary of Dutchess County, consisting of plains broken by hills and terraces, in which common land uses include pasture and cropland.

Priority habitats identified in the Hudson Valley EcoRegion include streams, wetlands, contiguous forest and open grasslands; all habitats that exist on the Property. The Dutchess NRI recommends the use of conservation easements as a component of a habitat conservation strategy.

- N. The Property is located within the Town of Milan, which adopted a Master Plan in February of 1986. The Plan reflects the Town goals of protecting and enhancing natural beauty, preserving rural character and small town atmosphere, protecting and encouraging small farms in the Town, and protecting environmentally-sensitive land. The Master Plan includes the Steel property within a proposed Agriculture/Residential Land Use category, which includes areas that are currently being actively farmed. The Town of Milan Land Use Plan also encourages agricultural uses within the town and limits development on important agricultural soils while discouraging development in environmentally sensitive areas such as wetlands.
- O. The property consists primarily of productive agricultural land. The Property contains approximately 20 acres of prime soils, and approximately 43 acres of soils of statewide importance as defined by the U.S. Department of Agriculture Natural Resources Conservation Service.
- P. The Property is in the watershed of the Saw Kill, a subbasin within an area of direct drainage to the Hudson River. The Saw Kill drainage basin is approximately 21 square miles and contained entirely within Dutchess County, as described in the *Natural Resource Inventory of Dutchess County* referenced earlier.
- Q. The Property contains approximately four acres of wetlands designated on the National Wetlands Inventory by the United States Department of the Interior.
- R. The Policy of New York State, as set forth in Title 5, Article 15 of the ECL is to preserve and protect the state's lakes, rivers, streams and ponds. The Property contains segments of three streams regulated by New York State Department of Environmental Conservation. Approximately 610 feet of frontage along one Class C Stream (H-158-13),

a tributary to the Saw Kill. The Property also contains two Class C intermittent stream segments (H-158-13-12 and H-158-13-12-1) which are subtributaries to the Saw Kill. All have been classified by the New York State Department of Environmental Conservation according to their best use for fish propagation and fishing. This classification helps to meet the goals of the Federal Clean Water Act and encourages continuous protection to keep the stream clean for the future.

- S. The Property contains approximately 52 acres of woodlands that are part of a relatively unbroken tract of forest lands that extend for hundreds of acres and represents valuable habitat as a contiguous forest.
- T. Grantors have received independent legal and financial advice regarding this Easement to the extent that Grantor has deemed necessary. Grantors freely sign this Easement in order to accomplish its conservation purposes.
- U. The Grantors have agreed to a bargain sale of the conservation easement by donating a portion of its value.

NOW, THEREFORE, in consideration of the foregoing, Four Hundred Sixty-One Thousand, Seven Hundred Dollars (\$461,700) and the mutual covenants, terms, conditions and restrictions contained herein, the parties agree as follows:

1. Grant of Conservation Easement.

Grantors hereby grant and convey to Grantee a perpetual conservation easement (the "Easement"), an immediately vested interest in real property defined by Article 49 of Title 3 of the ECL of the nature and character described herein, for the benefit of the general public, which Easement shall run with and bind the Property in perpetuity. Grantors will neither perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantors authorize Grantee to enforce these covenants in the manner described below.

2. Purpose.

- A. The Primary Purpose of this Easement is to conserve Viable Agricultural Land by preventing the conversion of the Property to non-farm uses, except those allowed herein. In achieving such prevention, the Property shall be forever reserved for continued Agricultural Use. All other purposes listed below shall be secondary and none shall conflict with or significantly diminish the Primary Purpose of this Easement.
- B. The Secondary Purposes of this Easement include: conserving the scenic, open, wooded, and natural character of the Property and to protect the quality of its steep slopes, woodlands, prime and important farmland soils, streams and wetlands, habitat, and scenic quality by restricting development and use of the Property.
- C. The Grantors and the Grantee intend that this Easement will confine the use of the Property to activities that are consistent with the purposes of this Easement and will prohibit and prevent any use of the Property that will materially impair or interfere with the conservation purposes of

this Easement.

D. The word "Purpose" as used herein shall refer to all purposes listed in Paragraphs A and B above.

3. Implementation.

This Easement shall be implemented by limiting and restricting the non-agricultural development and non-farm use of the Property in accordance with its provisions. The Property remains subject to all applicable local, state and federal laws and regulations. This Easement and the administration of its provisions shall not unreasonably restrict or regulate Farm Operations in contravention of the purposes of Article 25-AA of the AML.

4. Definitions.

- 4(a). "Accessory Residence" shall be defined as a Residential Dwelling that is detached and separate from the Principal Residence and Farm Labor Housing, that is subordinate and secondary to the Principal Residence and located on the same lot, and that is typically used to house farm operator/manager, tenants, or guests of the Owner.
- 4(b) "Agricultural Use" shall be defined as those activities necessary to:
- (i.) produce "Crops, Livestock and Livestock Products"; or
 - (ii.) use the Property as a "Farm Operation" to the extent permitted by this Easement; or
 - (iii.) be actively enrolled in any federal or state or local program whose intent is to temporarily suspend (for a specified period of one or more years or crop seasons) the production of Crops, Livestock and Livestock Products for the stipulated purpose of soil and water conservation, wildlife habitat, or similar conservation purpose; or
 - (iv.) manage the Property or a portion thereof in a fallow or otherwise idled manner provided such management is described in a Conservation Plan.
- 4(c). "Conservation Plan" shall be defined as an Agricultural Environmental Management (AEM) Conservation Plan (Tier 3 or higher), or such equivalent document that has been prepared by the local Soil and Water Conservation District, or other qualified conservation professional, in cooperation with the Grantors.
- 4(d). "Commercial Uses" Commercial Uses shall include, but are not limited to, to the agricultural and forestry uses permitted herein, and, any use or activity undertaken for business purposes, excluding activities in which obtaining a financial benefit is incidental to the purpose of the activity such as hobbies. Membership Clubs as defined herein shall not be considered Commercial Uses.
- 4(e). "Crops, Livestock and Livestock Products" shall be defined pursuant to Article

25-AA of the AML, or such successor law as enacted or amended. In the event that this definition or all of Article 25-AA (and all such successor laws) shall be repealed, then the definition existing at the time of repeal shall serve thereafter.

- 4(f). **“Farm Labor Housing”** means dwellings or structures, together with accessory improvements used to house seasonal and/or full-time employees where such residences are provided by the farm owner and/or operator, the worker is an essential employee of the farm owner and/or operator employed in the operation of the farm, and the farm worker is not a partner or owner of the Farm Operation. For instance, a structure used as the primary residence of a farm owner and/or operator is not “Farm Labor Housing”.
- 4(g). **“Farm Operation”** shall be defined pursuant to Article 25-AA of the AML, or such successor law as enacted or amended. In the event that this definition or all of Article 25-AA (and all such successor laws) shall be repealed, then the definition existing at the time of repeal shall serve thereafter.
- 4(e). **“Footprint Area”** The Footprint Area of a Structure or Improvement shall be defined as the area of the Structure at the horizontal ground plane measured along the exterior walls of a Structure. In the case of a Structure or Improvement that is not enclosed by walls, the Footprint Area shall be the total area covered by impervious surfaces.
- 4(f). **“Forestry Uses”** Forestry Uses shall include, but are not limited to, gathering, cultivating, maintaining, harvesting or managing forests, woodlands, or tree plantations for timber, firewood or other useful products or for water quality, wildlife habitat and other conservation purposes. *See Section 6.16.*
- 4(h). **“Grantors”** include the original Grantors and their heirs, successors and assigns.
- 4(i). **“Grantee”** includes the original Grantee and its successors and assigns.
- 4(j). **“Height”** The Height of a Structure or Improvement shall be defined as the measurement from the natural mean grade (prior to construction or grade alteration) to the top of the Structure or Improvement. Natural mean grade shall be calculated by averaging the natural grade at the highest and lowest points of the building's proposed footprint. In the case of a Structure or Improvement with a roof, the top of the Structure or Improvement, including any decorative Improvement but exclusive of chimneys, shall be considered the top of the roof line and measured accordingly.
- 4(k). **“Impervious Surfaces”** are defined as structures or improvements that permanently cover soil resources. Impervious Surfaces do not include permeable surfaces such as gravel roads and parking areas; structures whose principal purpose is to protect soil and water resources, such as manure storage areas; and structures and improvements lacking permanent foundations. As used herein, “permanent foundations” are

defined to be any continuous hardened surface (e.g., concrete, asphalt, or other similar stabilizing material) that is attached to, placed on or inserted in the ground and that underlies such building, structure or improvement.

- 4(l). **“Improvement”** Improvement shall be defined as anything, temporary or permanent, that is constructed, installed or placed on, over, under or across the Property (including a Structure as defined herein), and shall include, but is not limited to, driveways, farm roads and woods roads, trails, bridges, parking areas, ponds, wells, septic systems, drainage ways, and utility lines.
- 4(m). **“Industrial Uses”** Industrial Uses are Commercial Uses that involve the manufacture, assembly, treatment, processing, or packaging of products. Industrial Uses shall not include Agricultural Uses, Forestry Uses, or Customary Home Occupations as permitted by this Easement.
- 4(n). **“Membership Club”** A Membership Club shall be defined as a facility catering exclusively to members and their guests, which may be conducted outdoors and/or within permitted Structures for social and recreational purposes.
- 4(o). **“Owner”** is defined as any individual or entity, including any heir, successor or assign, of any legal or equitable interest in all or any portion of the Property, and any party entitled to the possession or use of all or any part thereof.
- 4(p). **“Principal Residence”** is defined as the primary or main Residential Dwelling on the Property, typically occupied by the Owner or farm operator and family when the Owner is in residence on the Property.
- 4(q). **“Recreational Uses”** are defined as lawful personal or commercial activities including, but not limited to, hiking and horseback riding trails, swimming in ponds and lakes, non-motorized boating in ponds and lakes, hunting, fishing, cross-country skiing, camping, horseback riding and snowmobiling. Recreational Uses shall not include golf courses and ranges.
- 4(r). **“Renewable Energy Facilities”** Renewable Energy Facilities shall be defined as Structures or Improvements for the generation of energy from renewable resources, including, but not limited to, wind, solar, hydroelectric, methane, wood, biomass and alcohol. *See Section 6.7.*
- 4(s). **“Residential Dwelling”** means dwellings or structures, together with accessory improvements that comprise single-family dwellings, Accessory Residences, multi-family, apartments, “in-law” apartments or houses, tenant/guest apartments or houses, and Farm Labor Housing, whether or not the structure(s) are used as the primary residence of a farm owner and/or operator.
- 4(t). **“Rural Enterprises”** are defined as commercial activities conducted on the Property, which are clearly incidental, secondary, and subordinate to the

Agricultural Use of the Property, and are owned by, and primarily operated by, the Grantors and other residents of the Property, with limited outside employees, including, but not limited to, professional office, home office of salesperson, artist's studio, arts instruction, bed and breakfast, crafts production and sales, computer repair, small engine repair, firewood distribution, and beauty salon.

4(u). **"Structure"** Structure shall be defined as any building or object, temporary or permanent, with or without anchors or foundations, constructed, installed or placed on, over, under or across the Property and shall include but is not limited to a Residential Structure, barn, garage, shed, Renewable Energy Facility, porch, deck, recreational court and swimming pool.

4(v). The following **"Use Areas"** are defined for the Easement:

"Farmstead Area" is defined as an area depicted on Exhibit B, that centers on existing farm structures or future planned structures.

"Farm Area" is defined as the remaining area of the Property, as depicted on Exhibit B, which Exhibit may be revised from time to time pursuant to Section 27 ("Amendment of Easement") of this Easement. The Farm Area contains those resources most worthy of protection, including but not limited to, prime and statewide important farmland soils, streams and wetlands, woodlands/forest lands, habitat, scenic views and steep slopes. The protection of these areas promotes the conservation purposes of this Easement.

4(w). **"Viable Agricultural Land"** is defined as land highly suitable for a Farm Operation.

5. **Reserved Rights Retained by Grantors.**

Grantors reserve all customary rights and privileges of ownership, including the right of exclusive use, possession and enjoyment of the Property, the rights to sell, lease, mortgage and devise the Property. In addition, Grantors reserve other rights compatible with the Purpose set forth in Section 2 ("Purpose") that are not specifically prohibited or limited by this Easement and which do not unreasonably restrict or regulate Farm Operations in contravention of the purposes of Article 25-AA of the AML.

Nothing in this Easement relieves Grantors of any obligation with respect to the Property or restriction on the use of the Property imposed by law, and nothing in this Easement shall require Grantors to take any action to restore the condition of the Property from damage or change that could not be reasonably anticipated by Grantors or that is beyond Grantors' reasonable control and occurring without Grantors' fault or negligence, including but not limited to natural disasters such as earthquakes, hurricanes or floods or to political or social upheavals such as wars or riots.

5(a). **Right to Use Property for Agricultural Uses.**

Grantors have the right to engage in Agricultural Use of the Property and to use the Property as a Farm Operation provided that any processing, marketing or

retailing of any Crops, Livestock and Livestock Products and that any similar activities involving any processed product associated with crops or livestock are not permitted on the Farm Area. As used in this Section 5(a), "processing" shall not include activities such as (i) boiling maple sap or (ii) grinding and mixing of any materials that result in feed for the livestock kept on the Property or on other properties owned or operated by the Grantor, provided that any such "processing" shall be conducted on a de minimus portion of the Farm Area. Said farming practices shall be carried out consistent with the Conservation Plan and in accordance with sound agricultural practices, which are practices necessary for on-farm production, preparation and marketing of agricultural commodities, provided such practices are legal, necessary, and do not cause bodily harm or property damage off the farm, and achieve the intended results in a reasonable and supportable way.

5(b). Right to Use Property for Rural Enterprises.

Grantors have the right to operate otherwise lawful Rural Enterprises, subject to the limitations set forth in this Easement, including Section 8 ("Construction of Buildings and Other Improvements"). In all cases, such Rural Enterprises must be compatible with the Purpose of this Easement and subordinate to the Agricultural Use of the Property.

5(c). Right to Use Property for Recreational Uses.

Grantors retain the right to use the Property for Recreational Uses, subject to the limitations set forth in this Easement, including Section 8 ("Construction of Buildings and Other Improvements"). In all cases, Recreational Uses must be compatible with the Purpose of this Easement and subordinate and de minimis in relation to the Agricultural Use of the Property.

6. Conservation Plan.

Grantors and Grantee recognize that changes in economic and environmental conditions, in agricultural technologies, in accepted farm management practices and in the Farm Operations of Grantors may result in changes in the Agricultural Uses of the Property. It is the intention of this Easement to maintain Grantors' discretion to employ its choices of farm uses and management practices so long as those uses and practices are conducted in accordance with sound agricultural practices (as described in Section 5(a)) and in a manner consistent with a Conservation Plan prepared by a qualified conservation professional or by the local Soil and Water Conservation District in cooperation with the Grantors. Further, all farm uses and farming practices identified in the Conservation Plan shall be consistent with the Purpose of this Easement and shall be only those not otherwise specifically prohibited by this Easement. The Conservation Plan shall identify potential adverse environmental impacts of agricultural activities, as well as enhance the agricultural productivity and economic viability of the Property. The Conservation Plan shall be updated periodically and whenever the Farm Operation changes substantially. Upon request, Grantors shall provide a copy of the most current Conservation Plan to Grantee.

7. Access.

Nothing contained in this Easement shall give or grant to the public a right to enter upon or to use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Easement.

8. Construction of Buildings and Other Improvements.

The Property consists of two (2) Use Areas as further described in the Baseline Documentation Report (referenced in Section 20 herein) and identified on the Easement Map attached hereto as Exhibit B: 1) the Farmstead Area; and 2) the Farm Area. Grantors may undertake construction, erection, installation, removal or placement of buildings, structures, or other improvement to the Property within these areas only as provided in this Easement and set forth below.

8(a). Impervious Surfaces.

It is the intention of this Easement to limit the extent of construction or placement of Impervious Surfaces on the Property. Subject to the limitations set forth below, Impervious Surfaces may be constructed or placed on up to a maximum of ten percent (10%) of the Farm Area, and without limitation within the designated Farmstead Area.

8(b). Fences.

Customary fences such as wire, board or post and rail, and other fencing that does not impair the views of the Property, may be erected, repaired and replaced anywhere on the Property for purposes of reasonable and customary management of livestock and wildlife, safety and general management and to prevent trespassing on the Property. Additional types of fencing shall require permission of the Grantee pursuant to Section 16 ("Permission of Grantee").

8(c). Agricultural Structures and Improvements.

Agricultural structures and improvements are those Structures and Improvements in which any Agricultural Use is conducted therein. Such Structures and Improvements may be placed or constructed on the Property in accordance with the provisions of this Section 8(c) and may be repaired, removed, enlarged and replaced at their respective location, subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces").

Farmstead Area: Without permission of Grantee, agricultural Structures and other Improvements, including accessory roads and parking areas are permitted within a designated Farmstead Area.

Farm Area: Subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces"), Grantors may place or construct agricultural structures and Improvements on up to two percent (2%) of the Farm Area without permission of Grantee. However, no building, structure or improvements on the Farm Area shall be used in any manner that is associated with the processing, marketing or retailing of any Crops, Livestock and Livestock Products and no similar activities involving any processed product associated with crops or livestock shall be permitted on the Farm Area. As used in this Section 8(c), "processing" shall not include activities such as (i) boiling maple sap or (ii) grinding and mixing of any materials that result in feed for the livestock kept on the Property or on other properties owned or operated by the

Grantor, provided that any such "processing" shall be conducted on a de minimus portion of the Farm Area. With prior permission of Grantee pursuant to Section 16 ("Permission of Grantee"), Grantors may place or construct agricultural Structures and Improvements related to the Farm Operation that would cover up to an additional eight percent (8%) of the Farm Area. In the construction or placement of any Impervious Surfaces within the Farm Area, the Grantors shall use all practical means to minimize the extent of coverage over or associated impacts to prime soils and soils of statewide importance.

8(d). Residential Dwellings .

Residential Dwellings may be placed or constructed on the Property in accordance with the provisions of this Section 8(d). Each such Residential Dwelling may be repaired, removed, enlarged and replaced at its respective location. Residential uses shall be compatible with the Purpose of this Easement and shall not interfere with the Agricultural Uses of the Property.

Farmstead Area:

Residential Dwellings. Without permission of Grantee, Residential Dwellings, together with accessory Structures and Improvements, are permitted within a designated Farmstead Area, subject to any applicable local, state or federal laws and regulations.

Principal Residence. No more than one (1) single family Principal Residence shall be permitted on the Property. As of the date of this Easement one (1) such Principal Residence exists on the Property. No additional Principal Residence may be constructed unless the existing Principal Residence is removed or converted to another permitted use under this easement. No new, existing or replacement detached Principal Residence shall be built or expanded to exceed a Footprint Area of 4,000 square feet

Accessory Residence. No more than two (2) detached Accessory Residences shall be permitted on the Property. As of the date of this Easement, no such residences exist on the Property. Two (2) Accessory Residences may be built, and at no time shall there be more than two (2) Accessory Residences on the Property. No new, existing or replacement detached Accessory Residence shall be built or expanded to exceed a Footprint Area of 4,000 square feet No Accessory Residence may be sold separately from the Principal Residence.

Accessory Apartments. Accessory Apartments may be located within any permitted Structure, and if located within a Residential Dwelling shall not exceed the combined Footprint Area of the Accessory Apartment and Residential Dwelling limits described in Section 8 herein. As of the date of this Easement, one (1) such Accessory Apartment exists on the Property. No Accessory Apartment may be sold separately from the Principal Residence.

Farm Labor Housing. Farm Labor Housing as defined in Section 4, is permitted as detached Residential Dwellings and Accessory Apartments, subject to limitations as described in this Section 8(d) hereof. No Farm Labor Housing unit may be sold separately from the Principal Residence.

Farm Area: Subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), With permission of Grantee pursuant to Section 16 (“Permission of Grantee”), Grantors may construct or place Residential Dwellings or structures and improvements exclusively for Farm Labor Housing on up to one percent (1%) of the Farm Area, as proven necessary to conduct current Farm Operations. No new, existing or replacement detached Farm Labor Housing Unit shall be built or expanded to exceed a Footprint Area of 2,500 square feet. The land on which these dwellings, structures and improvements stand shall not be subdivided, except as permitted in Section 11 (“Subdivision”).

8(e). Rural Enterprises.

Rural Enterprises may only be established and carried out within the designated Farmstead Area. In all cases, such uses and any necessary structures or improvements, shall be compatible with the Purpose of this Easement and subordinate to the Agricultural Use of the Property. Prohibited enterprises include, but are not limited to those that market non-agricultural petroleum or chemical products. Rural Enterprises shall not include the operation of a junk yard, gas station or any similar enterprise. The land on which these Structures and Improvements stand shall not be subdivided, except as permitted in Section 11 (“Subdivision”).

8(f). Structures and Improvements associated with Recreational Uses.

Structures and improvements associated with Recreational Uses are permitted on the Property in accordance with the provisions of this Section 8(f) below so long as such improvements and structures are compatible with the Purpose of this Easement and subordinate to the Agricultural Use of the Property. No Structures or Improvements associated with Recreational Uses shall impair in any way the Agricultural Use of the Farm Area. Structures and improvements may be repaired, removed, enlarged and replaced at their respective locations subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”).

Farmstead Area: Without permission of Grantee, Structures and Improvements associated with Recreational Uses are permitted within a designated Farmstead Area.

Farm Area: Subject to the Impervious Surface coverage limitations set forth in Section 8(a) (“Impervious Surfaces”), with permission of Grantee pursuant to Section 16 (“Permission of Grantee”), Grantors may enlarge existing or construct or place new permanent, recreational Structures or Improvements in the Farm Area up to an aggregate of two thousand (2,000) square feet in Footprint Area, and shall include docks in ponds and lakes. All recreational structures and improvements shall be located in a manner that minimizes the impact to prime soils or soils of statewide importance.

8(g). Utility Services and Septic Systems.

Wires, lines, pipes, cables, tanks, or other facilities providing electrical, gas, water, sewer, sanitary sewer, septic, communications, or other like services to or from the improvements permitted in this Easement may be installed, maintained, repaired,

removed, relocated and replaced for such purposes. All such services and systems shall be compatible with the Purpose of this Easement, subordinate to the Agricultural Use of the Property and located in a manner that minimizes the impact to prime soils or soils of statewide importance.

8(h). Renewable Energy Facilities. With permission from the Grantee pursuant to Section 16 ("Permission of Grantee"), facilities for the generation of energy from renewable resources for non-Commercial Use principally on the Property may be built. Grantor and its assigns, agents, and lessees shall comply with any applicable New York State Agriculture and Markets guidelines regarding agricultural impact avoidance, mitigation and remediation. Grantors shall provide to Grantee the design, location, size, Height and output of any such facilities. Such facilities shall conform with federal, state and local laws. Excess energy generated above that required for use on the Property, may be sold to an electrical supplier in compliance with federal, state and local laws.

9. Maintenance and Improvement of Water Sources.

Grantors may use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement. Grantors may alter the natural flow of water over the Property in order to improve drainage of agricultural soils, reduce soil erosion and/or flooding, provide irrigation for the Property or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the Conservation Plan is in accordance with sound agricultural practices (as described in Section 5(a)), is compatible with the Purpose of this Easement, and is carried out in accordance with applicable local, state and federal laws and regulations. No change to any existing ponds, streams or wetlands, and no construction or alteration of any Structure or Improvement (including septic disposal systems) for non-Agricultural Uses shall be permitted within 100 feet of any existing pond, stream, or wetland, except with permission of the Grantee pursuant to Section 16 ("Permission of Grantee").

10. Water Rights.

Grantors may use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property in accordance with applicable local, state and federal laws and regulations. Grantors shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

11. Subdivision.

There shall be no subdivision of the Property into parcels or lots for the purpose of conveyance into separate ownership except as provided for in this Section 11. Lot line adjustments to permit the transfer of farmland to adjoining Farm Operations, and which do not create additional building lots may be permitted with the prior permission of the Grantee pursuant to Section 16 ("Permission of Grantee"). No such lot line adjustment shall affect the use of the Property permitted by this Easement or the calculation of the number, square footage or character of Structures permitted by this Easement. Land that has been restricted by this Easement shall not be included in the calculation of the lot size or density of any other parcel if such calculation would increase the permissible lot yield or density of such parcel.

Property dividing lines shall be located to avoid fragmentation of prime and important agricultural soils, unless the Grantee otherwise provides permission pursuant to Section 16.

12. Clearing of Trees and Vegetation.

All clearing of trees and vegetation shall be conducted in conformity with sound land and forest management practices to minimize erosion and adverse impacts on natural resources and there shall be no removal, destruction or cutting of mature live trees on the Property with a trunk diameter at breast height of eight inches or more, except as follows:

12(a) Permitted Removal of Trees. Trees may be removed which endanger public safety, are diseased, damaged or fallen, need to be cleared to ensure the health of other trees, or in connection with the construction of permitted Structures and Improvements subject to the restrictions set forth in this Section 6. New clearings in connection with the construction of permitted Structures or other Improvements shall not exceed three acres in the aggregate for the Property. Clearing of trees in the Farm Area in connection with the construction of permitted Structures and Improvements shall require permission of the Grantee pursuant to Section 16 ("Permission of Grantee").

12(b) Clearing with Prior Consent. New open spaces for agriculture may be created with permission of the Grantee pursuant to Section 16 ("Permission of Grantee").

12(c) Commercial Forestry. Commercial Forestry Uses may be conducted if in conformity with accepted silvicultural practices and sound land and forest management practices to minimize erosion and adverse effects on natural resources with the permission of the Grantee pursuant to Section 16 ("Permission of Grantee"). All commercial forestry shall be conducted in accordance with a forestry management plan approved by the Grantee. Such management plan shall conform to: (1) accepted New York State Department of Environmental Conservation sustainable forestry guidelines; (2) any applicable guidelines of the Natural Resource Conservation Service of the United States Department of Agriculture (or successor governmental departments or agencies), and (if applicable); (3) logging guidelines set forth in Section 480-a of the New York State Real Property Tax Law (or other applicable state forestry tax programs).

13. Mining, Transmission Lines, Pipelines and Landfills.

There shall be no surface or subsurface mining or quarrying on the Property. In compliance with Section 170(h)(5) of the Internal Revenue Code and Section 1.170A-14(g)(4) of the Treasury Regulations, as amended, the Grantors may utilize sand and gravel on the Property solely for use on the Property providing the use has limited, localized impact on the Property and provided the use is not irretrievably destructive of significant conservation interests. No wireless telecommunications towers or associated antennas may be placed on the Property except with the permission of the Grantee pursuant to Section 16 ("Permission of Grantee"). There shall be no placement of high-voltage transmission lines, pipelines, landfills or other land uses detrimental to the scenic character or ecosystems of the Property. The preceding sentence shall not prevent the installation and maintenance of local utility distribution lines which provide service to the Structures and Improvements allowed by this Easement.

14. Road Construction.

Subject to the Impervious Surface coverage limitations set forth in Section 8(a) ("Impervious Surfaces"), Grantors may construct, maintain and repair roads for residential driveways, barnyards, farm markets or other improvements necessary to provide access to, and parking for, permitted buildings or improvements, or to conduct other activities permitted by this Easement. Roads constructed in the Farm Area shall be located in a manner that minimizes impacts to prime soils and soils of statewide importance.

15. Dumping and Trash.

The dumping, land filling, burial, application, injection, or accumulation of any kind of garbage, trash or debris on the Property is prohibited, other than agriculturally-related waste or biodegradable material as described below. Without permission of Grantee, Grantors may (i) store, compost, apply or inject agriculturally-related waste or biodegradable material; (ii) store old farm equipment to be used for parts; (iii) temporarily store trash or household waste in receptacles for periodic off-site disposal and (iv) compost or re-use biodegradable materials generated off the Property for use on the Property or commercial use or sale. All such activities shall be conducted in accordance with sound agricultural practices (as described in Section 5(a)) and in a manner consistent with the Conservation Plan and all applicable local, state or federal laws and regulations. Notwithstanding the foregoing, the storage and treatment of sewage associated with buildings permitted on the Property is permitted by this Easement.

16. Permission of Grantee.

The prior written permission of the Grantee is required for actions as specifically set forth in this Easement. To request the written permission of the Grantee, the Grantors shall submit plans and/or a description of their proposal. Such submission shall contain sufficient information to enable the Grantee to make an informed determination as to whether the proposal is permitted by and consistent with the purposes and restrictions of this Easement. The Grantors shall reimburse the Grantee for reasonable costs incurred in connection with review of any proposals. The Grantee may waive review of and consent to any Structure, Improvement or alteration, which it deems to be insubstantial.

16 (a). Standards and Timetable for the Grantee's Decision.

Where the Grantee's written consent is required, the Grantee shall grant or withhold its consent in writing within 35 days of receipt of the Grantors' request for consent accompanied by plans and other materials the Grantee deems sufficient for its review. The Grantee may withhold consent only upon a reasonable determination by the Grantee that the Grantors' proposal would be inconsistent with the purposes or specific provisions of this Easement. The Grantee may grant its consent subject to reasonable conditions which must be satisfied. If the Grantee fails to act within 35 days of receipt of plans and materials it deems sufficient for its review, consent shall be deemed granted unless the Grantors consent to a longer period of time for review and discussion with the Grantee. The actual clearing of land and the completed Structure, Improvement or alteration shall conform in all material respects to the proposal that receives the consent of the Grantee.

17. Ongoing Responsibilities of Grantor and Grantee.

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

17(a). Taxes.

Grantors shall be solely responsible for payment of all taxes and assessments levied against the Property.

17(b). Upkeep and Maintenance.

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

17(c). Liability and Indemnification.

Grantors agree to indemnify and hold Grantee and the State of New York, Department of Agriculture and Markets harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due to the negligence of Grantee or its agents, in which case liability shall be apportioned accordingly.

18. State as Intervenor and Mediator Regarding Interpretation of Selected Definitions and Terms and Selected Implementation of Provisions.

Consistent with the policy of this state as contained in Section 4 of Article 14 of the New York State Constitution and as (i) articulated in Section 300 of Article 25-AA of the AML, and (ii) demonstrated by the New York State share of the consideration paid for this Easement as authorized by Section 325 of Article 25-AAA of the AML, the New York State Department of Agriculture and Markets shall perpetually retain the right to intervene on any of the matters listed below provided any such intervention or mediation shall also be specifically limited as set forth below:

- (i.) advise the Grantors and Grantee of the State's interpretation of the following specific terms and definitions contained in and as used throughout this Easement -
 - a. Agricultural Use,
 - b. Conservation Plan,
 - c. Crops, Livestock and Livestock Products,
 - d. Farm Labor Housing,
 - e. Farm Operation,
 - f. sound agricultural practices (as described in Section 5(a)), and
 - g. Viable Agricultural Land;
- (ii.) advise the Grantors and Grantee of the State's interpretation of the Purpose of this Easement; and
- (iii.) advise the Grantors and Grantee of the State's interpretation of the Grantee's proposed or demonstrated administration of the provisions of this Easement that the Department would deem as unreasonably restrictive on the Farm Operation on this Property so as to be in contravention of the purposes of Article 25-AA of the AML.

Any such intervention by the Department shall be offered and intended to serve as non-

binding advice to the Grantors and Grantee in an effort to avoid potential violations of this Easement that would have arisen from either party's misinterpretation of any specific item noted above.

Furthermore, if a dispute arises between the Grantors and the Grantee concerning the consistency of any proposed use or activity with the Purpose(s) of this Easement or any of the specific provisions contained herein, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may request a meeting between the parties and the New York State Department of Agriculture and Markets for mediation. Within ten (10) days of such request, Grantors and Grantee shall schedule a meeting with the New York State Department of Agriculture and Markets, which will recommend potential resolutions of the dispute.

Notwithstanding anything in Section 3 ("Implementation"), nothing in this clause shall preempt or prohibit the Grantors or the Grantee from requesting mediation pursuant to Section 24 ("Dispute Resolution") or to otherwise diminish Grantee's rights under Section 22 ("Enforcement").

19. Extinguishment of Development Rights.

Except as otherwise reserved to the Grantors in this Easement, all non-agricultural development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

20. Baseline Documentation.

By its execution of this Easement, Grantee acknowledges that the present uses of, and related structures and improvements on the Property are permitted by this Easement. In order to evidence the present condition of the Property so as to facilitate future monitoring and enforcement of this Easement, a Baseline Documentation Report (the "Report"), including relevant maps and photographs, describing such condition at the date hereof, has been prepared and subscribed by both parties, and a copy thereof has been delivered to Grantors and a copy will be kept on file with Grantee. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

21. Right of Inspection.

Grantee shall have the right to enter upon the Property with forty-eight (48) hours advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. Such inspection shall be conducted between the hours of 9 a.m. and 7 p.m. on a weekday that is not a legal holiday recognized by the State of New York or at a date and time that is mutually agreeable to the Grantee and Grantor. In the instance of a violation or suspected violation of the terms of this Easement which has caused or threatens to cause irreparable harm to any of the agricultural or other resources this Easement is designed to protect, no such advance notice is required. Representatives of the New York State Department of

Agriculture and Markets and of the County shall have the same right of inspection.

22. Enforcement.

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

Grantee shall also be entitled to seek the following remedies in the event of a violation: 1) money damages, including damages for the loss of the resources protected under the Purpose of this Easement; and 2) restoration of the Property to its condition existing prior to such violation.

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

Nothing in this Easement relieves Grantor of any obligation with respect to the Property or restriction on the use of the Property imposed by law, and nothing in this Easement shall require Grantor to take any action to restore the condition of the Property from damage or change that could not be reasonably anticipated by Grantor or that is beyond Grantor's reasonable control and occurring without Grantor's fault or negligence, including but not limited to natural disasters such as earthquakes, hurricanes or floods or to political or social upheavals such as wars or riots.

23. Third Party Enforcement Rights.

The County of Dutchess (the "County"), a New York municipal corporation having an office and a mailing address at 22 Market Street, Poughkeepsie, New York, 12601, and its successor agency shall have the right to enforce a material violation of this Easement subject to the following provisions.

23.(a). Prior to commencing an enforcement action, the County must first notify Grantee and Grantors, give Grantee thirty (30) days to take appropriate action, including commencing an enforcement action, and give Grantors thirty (30) days from the receipt of such notice to cure the violation.

23.(b). If the County determines that Grantors are diligently proceeding to cure the violation or, if not, that Grantee is taking appropriate action and/or diligently prosecuting an enforcement action in good faith, it shall not have a right to take legal action for the same violation of this Easement unless pursuant to a written request by Grantee.

23.(c). In any case, where a court finds that a violation has occurred, Grantor shall reimburse the County for all its expenses incurred in stopping and correcting the violation, including, but not limited to, reasonable attorneys' fees. In any case where a court finds no violation has occurred, each party shall bear its own costs.

Nothing in this clause shall diminish the Grantee's rights under Section 22 ("Enforcement") or this Section 23 ("Third Party Enforcement Rights").

24. Dispute Resolution.

If a dispute arises between the Grantors and the Grantee concerning the consistency of any proposed use or activity with the Purpose of this Easement or any of the specific provisions contained herein, and Grantors agree not to proceed with the use or activity pending resolution of the dispute. Either party may request a meeting between the parties or refer the dispute to mediation by written request. Within twenty (20) days of such request, Grantee shall schedule a meeting or the parties shall select a single trained and impartial mediator knowledgeable about production agriculture to recommend potential resolutions of the dispute. The actual total cost of the mediator and any reimbursable expenses of the mediator shall be divided equally between the Grantor and Grantee. For all other associated expenses (such as legal fees and witness costs), each party shall pay its own costs.

As an alternative to the mediation described above or as an initial step prior to initiating the mediation described above, either party may request mediation pursuant to Section 18 ("State as Intervenor and Mediator Regarding Interpretation of Selected Definitions and Implementation of Provisions"). However, any mediation conducted subject to Section 18 shall not preempt or prohibit the mediation allowed under this Section 24. Furthermore, nothing in this clause shall diminish Grantee's rights under Section 22 ("Enforcement").

25. Transfer of Easement.

Grantee shall have the right to transfer this Easement to any private non-governmental organization or public agency that, at the time of transfer is a "public body" or a "not-for-profit conservation organization" as defined by Article 49 of the ECL and is a "qualified organization" under Section 170(h) of the Code, provided the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. The transferee may be a soil and water conservation district board under Section 9 (4-a) of the Soil and Water Conservation Districts Law if such board meets the criteria in the preceding sentence. If Grantee ceases to exist or qualify under Article 49 of the ECL and Section 170(h) of the Code, a court of competent jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibilities imposed by this Easement. Grantors and the New York State Department of Agriculture and Markets must be notified in writing in advance of any such transfer. The Department of Agriculture and Markets must approve the choice of any new non-governmental organization or public agency designated as "Grantee".

26. Sale, Transfer and Subdivision of the Property.

26(a). Required Language in Future Deeds, Mortgages and Leases. Any subsequent conveyance of any interest in the Property, including, without limitation, any transfer, lease or mortgage of the Property or any parcel thereof, shall be subject to this Easement,

possession or use thereof. As used in this Section, the term "owner" shall include the owner of any beneficial equity interest in the Property, but this sentence shall not impose personal liability on any such beneficial owner except to the extent such beneficial owner has personal liability with respect to the Property under the instrument creating such equity interest and under applicable law.

26(f). Discharge of Owner Upon Transfer. In the event any owner transfers fee ownership of all or any portion of the Property, such owner shall be discharged from all obligations and liabilities under this Easement with respect to such portion transferred, except for acts or omissions which occurred during such owner's period of ownership.

27. Amendment of Easement.

This Easement may be amended only with the written consent of Grantee and the then current Owner of the Property and with the approval of the New York State Department of Agriculture and Markets. Any such amendment shall be compatible with the Purpose of this Easement and shall comply with the ECL or any regulations promulgated thereunder, and shall not unreasonably restrict or regulate Farm Operations in contravention of the purposes of Article 25-AA of the AML or such successor law as enacted or amended. Any such amendment to this Easement shall be duly recorded.

28. Extinguishment of Easement.

At the mutual request of Grantors, Grantee, and the New York State Department of Agriculture and Markets, a court with jurisdiction may, if it determines that conditions surrounding the Property have changed so much that it becomes impossible to fulfill the Purpose of this Easement described in Section 2 ("Purpose"), extinguish or modify this Easement in accordance with applicable law. The mere cessation of farming on the Property shall not be construed to be grounds for extinguishment of this Easement.

Notwithstanding the foregoing, if condemnation by exercise of the power of eminent domain makes it impossible to continue use of all or such portion of the Property for the Purpose of this Easement as described in Section 2 ("Purpose") herein, the restrictions may be extinguished as to any such portion so condemned by judicial proceeding. Upon any subsequent sale, exchange or involuntary conversion (pursuant to this Section) by the Grantors, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, or title insurance proceeds, in accordance with Section 29 ("Proceeds") herein.

In the event that Grantors retain the Property subsequent to any such extinguishment or partial extinguishment, Grantee shall be entitled to receive from Grantors an amount equal to the fair market value of the Property or a portion of the Property as to which the extinguishment applies times the percentage determined under Section 29.

29. Proceeds.

The grant of this Easement gives rise to a property right, immediately vested in Grantee, which property right has a monetary value in the event of an extinguishment or partial extinguishment or proceeds from a sale or other disposition of the Property as contemplated in Section 28

("Extinguishment of Easement"). That monetary value is determined as follows: multiply (a) times (b), where –

(a) = the Grantee's Proportionate Share, and

(b) = the value of that portion of the Property no longer encumbered by this Easement as the result of the extinguishment.

Grantee's Proportionate Share shall be determined by dividing the appraised value of this Easement, calculated as of the date hereof, by the appraised unencumbered value of the Property, also calculated as of the date hereof. For purposes of this Easement, the Grantee's Proportionate Share is thirty-five percent (35%), and shall remain constant, subject only to reasonable adjustment to the extent permissible under Section 170(h) of the Code for any improvements which may hereafter be made on the Property).

With regard to the portion of such Proportionate Share equal to that paid using New York State Farmland Protection Program Grant funds, Grantee agrees to use such portion in a manner compatible with the Primary Purpose of this Easement. The Grantee's share includes New York State's contribution toward the purchase price for acquiring this Easement. Prior to such re-use, Grantee must provide written notification to the New York State Department of Agriculture and Markets and to the Dutchess County Agricultural and Farmland Protection Board. Grantee shall be entitled to 72% of the Proportionate Share referenced above. Because the County contributed funds toward the purchase price of this Easement, it shall be entitled to 24% of the Proportionate Share referenced above.

30. Interpretation.

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

If a dispute arises between the Grantor and the Grantee concerning the interpretation of any clause of this Easement such that there is a conflict between the clauses required by the New York State Department of Agriculture and Markets ("Department"), listed in the attached Appendix A, and the remaining clauses of the Easement, an interpretation consistent with the Department clauses that would render the Department clauses valid shall be favored over any interpretation that would render such clauses invalid.

31. Recitals and Exhibits Incorporated Herein.

Any and all recitals in this Easement are agreed by the parties to be accurate, are incorporated into this Easement by this reference, and shall constitute integral terms and conditions of this Easement. Any and all exhibits and addenda attached to and referred to in this Easement are hereby incorporated into this Easement as if fully set out in their entirety herein.

32. Successors.

Every provision of this Easement that applies to Grantors or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and other successors in interest, and

shall continue as a servitude running in perpetuity with the Property.

33. Severability.

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

34. Notices.

Any notice required or desired to be given under this Easement shall be in writing and shall be sent (i) by personal delivery, (ii) via registered or certified mail, return receipt requested, or (iii) via Federal Express or other private courier of national reputation providing written evidence of delivery. Notice shall be deemed given upon receipt in the case of personal delivery, and upon delivery by the U.S. Postal Service or private courier. All notices shall be properly addressed as follows: 1) if to Grantee, at the address set forth above; 2) if to Grantors, at the address set forth above; 3) if to any subsequent owner, at the address of the Property; or 4) if to New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235. Any party can change the address to which notices are to be sent to him, her or it by duly giving notice pursuant to this Section 34.

35. Title.

The Grantors covenant and represent that the Grantors are the sole owner and are seized of the Property in fee simple and have good right to grant and convey the aforesaid Easement; that the Property is free and clear of any and all mortgages not subordinated to this Easement, and that the Grantee shall have the use of and enjoyment of the benefits derived from and existing out of the aforesaid Easement.

36. Subsequent Liens on Property.

No provisions of this Easement should be construed as impairing the ability of Grantors to use this Property, or a portion thereof encompassing entire separately deeded parcels, as collateral for a subsequent borrowing. Any subsequent liens on the Property must be subordinate to this Easement.

37. Subsequent Encumbrances.

The grant of any easements or use restrictions is prohibited, except with the permission of Grantee pursuant to Section 16 ("Permission of Grantee"). Any future encumbrances shall be consistent with the primary Purpose of this Easement and shall not unreasonably restrict or regulate farm operations in contravention of the purposes of Article 25-AA of the Agriculture and Markets Law.

38. Grantor's Environmental Warranty.

Grantors warrant that they have no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to hold harmless, defend, and indemnify Grantee and New York State Department of Agriculture and Markets against and from, any and all loss, cost, claim (without regard to its merit), liability or expense (including reasonable attorneys' fees) arising from or with respect to any release of hazardous waste or violation of environmental

laws.

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

Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee, or the New York State Department of Agriculture and Markets to exercise physical or management control over the day-to-day operations of the Property, or any of Grantors' activities on the Property, or otherwise to become an operator or arranger with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") or any corresponding state and local statute or ordinance.

39. Duration of Easement.

Except as expressly otherwise provided herein, this Easement shall be of perpetual duration, and no merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

40. Entire Agreement.

This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings and agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 27 ("Amendment of Easement").

41. Waiver.

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

42. Binding Effect.

The provisions of this Easement shall run with the Property in perpetuity and shall bind and be enforceable against the Grantors and all future owners and any party entitled to possess or use the Property or any portion thereof while such party is the owner or entitled to possession or use thereof. Notwithstanding the foregoing, upon any transfer of title, the transferor shall, with respect to the Property transferred, cease being the Grantors or Owners with respect to such Property for purposes of this Easement and shall have no further responsibility, rights or

liability hereunder for acts done or conditions arising thereafter on or with respect to such Property, but the transferor shall remain liable for earlier acts and conditions done or occurring during the period of his or her ownership or conduct.

43. Lien Law.

This conveyance is made subject to the trust fund provisions of Section Thirteen of the New York Lien Law.

44. Captions.

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

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

LANDOWNERS

Grantor: _____
Betti Steel

Grantor: _____
Laurence M. Steel

DUTCHESS LAND CONSERVANCY, INC.

Grantee: _____
Rebecca E. C. Thornton
President

State of New York)
County of Dutchess), ss:

On the ____ day of _____ in the year 2016 before me, the undersigned, personally appeared **Betti Steel**, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature/office of individual taking acknowledgement

State of New York)
County of Dutchess), ss:

On the ____ day of _____ in the year 2016 before me, the undersigned, personally appeared **Laurence M. Steel**, 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.

Signature/office of individual taking acknowledgement

State of New York)
County of Dutchess), ss:

On the ____ day of _____ in the year 2016 before me, the undersigned, personally appeared **Rebecca E. C. Thornton**, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature/office of individual taking acknowledgement

**APPENDIX A
DEPARTMENT CLAUSES**

- required “WHEREAS” provisions (“D,” “E,” “F,” “G,” “J,” “M,” and “N”)
- “Purpose”
- “Implementation”
- “Definitions”: “Agricultural Use,” “Conservation Plan,” “Crops, Livestock and Livestock Products,” “Farm Labor Housing,” “Farm Operation,” and “Viable Agricultural Land.”
- “State as Intervenor and Mediator Regarding Interpretation of Selected Definitions and Terms and Selected Implementation of Provisions”
- Other miscellaneous policies: “Impervious Surfaces,” “Land Disturbances Associated with Non-Agricultural Activities,” “sound agricultural practices,” “Proceeds” and “Interpretation”

EXHIBIT A
Description of the Property

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situated, lying and being in the Town of Milan, Dutchess County, New York, more particularly described as follows:

CONSERVATION EASEMENT BOUNDARY

BEGINNING at a point at the westerly highway taking line of Milan Hill Road, also known as C.R. No. 54, said point being the northeasterly corner of the herein described parcel and being located S 46deg 37' 54" W 4.72 feet from the northeasterly corner of lands of Larry Steel and Betti Steel described in Document 02-2004-10690; thence along the westerly highway taking line and partly along the assumed road line of Milan Hill Road, S 46deg 37' 54" W 126.38 feet, S 29deg 55' 29" W 101.12 feet, S 38deg 27' 20" W 300.00 feet, S 25deg 50' 31" W 180.89 feet, S 35deg 45' 50" W 367.09 feet, S 29deg 19' 40" W 102.08 feet, S 12deg 24' 30" W 102.39 feet, S 06deg 29' 40" W 129.78 feet, S 13deg 14' 45" W 129.90 feet to a concrete monument found, S 26deg 34' 32" W 187.80 feet and S 25deg 24' 36" W 406.61 feet to a point marking the southeasterly corner of the herein described parcel; thence along lands of Robert W. Williamson and Eleanor M. Brushwood described in Liber 1654 of Deeds at page 554, N 19deg 51' 40" W 56.64 feet, following the range of stone wall and stone wall, N 17deg 38' 40" W 523.94 feet, N 80deg 57' 10" W 406.73 feet, following on a line of no physical bounds and the remains of stone wall, N 81deg 23' 10" W 339.59 feet to a steel pin found in an intersection of stone walls, following stone wall, N 27deg 28' 50" E 337.87 feet, N 27 deg 14' 00" E 257.99 feet, N 14deg 07' 00" E 26.12 feet to a stone wall corner, following wire fence, N 02deg 33' 30" E 64.32 feet to a steel pin found, and following stone wall, N 84deg 37' 10" W 308.65 feet to a cherry tree stump found; thence along lands of Nicholas C. Bornozis and Marie S. Konstance described in Document 02-2002-3026, following stone wall, N 86deg 34' 10" W 250.49 feet, S 87deg 21' 00" W 266.05 feet, continuing along stone wall and the range thereof, S 84deg 24' 00" W 171.03 feet to a point; thence northerly along lands of Robert W. Williamson and Eleanor M. Brushwood described in Liber 1654 of Deeds at page 554, on a line of no physical bounds and along stone wall, N 23deg 52' 30" E 322.92 feet, N 34deg 02' 40" E 31.85 feet, N 13deg 54' 40" E 27.62 feet, N 09deg 51' 10" E 34.48 feet, N 18deg 52' 40" E 60.30 feet, N 25deg 12' 20" E 139.41 feet, N 25deg 14' 00" E 175.93 feet to a spike in a 30" oak tree found, N 27deg 26' 00" E 94.51 feet, N 12deg 04' 00" E 81.51 feet, N 07deg 59' 20" E 166.20 feet, N 03deg 37' 40" E 121.19 feet, N 06deg 06' 10" W 28.03 feet, N 12deg 28' 10" W 29.64 feet and N 23deg 53' 10" W 117.72 feet to a spike found in a 6" hickory tree; thence along lands of Paul J. Hughes Jr. described in Document 02-2009- 3768 and along lands of John Sore described in Liber 1907 of Deeds at page 5, following remains of wire fence and no physical bounds, N 11deg 55' 10" E 419.75 feet to a point marking the northwest corner of the herein described parcel; thence through lands of Larry Steel and Betti Steel described in Document 02-2004-10690, on lines of no physical bounds, S 83deg E 129.46 feet, S 84deg 50' E 502.00 feet, S 75deg 19' E 35.00 feet, S 89deg 07' E 68.00 feet, S 84deg 28' E 453.00 feet, S 83deg 34' E 113.00 feet, S 15deg 51' W 74.00 feet, S 00deg 09' W 44.83 feet, S 14deg 17' E 64.00 feet, S 07deg 56' E 188.00 feet, S 04deg 03' E 181.00 feet, S 00deg 55' W 66.00 feet, S 14deg 31' W 110.00 feet, S 20deg 56' W 133.00 feet, S 31deg 15' E 35.00 feet,

S 60deg 39' E 95.00 feet, S 48deg 44' E 42.00 feet, S 57deg 58' E 41.00 feet, S 79deg 50' E 102.00 feet, S 84deg 17' E 76.00 feet, N 85deg 37' E 89.00 feet, S 69deg 30' E 114.00 feet, S 82deg 46' E 91.00 feet, N 82deg 36' E 68.00 feet, S 83deg E 45.00 feet and S 78deg 40' E 197.98 feet to the point or place of beginning.

CONTAINING: 87.48 acres.

SUBJECT to Covenants, Easements, Restrictions, Conditions and Agreements of record. BEING and intended to be a portion of all that certain tract or parcel of land conveyed from Michael Louis Goldman and Donna Goldman and Marilyn Hey to Larry Steel and Betti Steel by Deed dated September 20, 2004 recorded at the Dutchess County Clerk's Office in Document 02-2004-10690.

FARMSTEAD AREA BOUNDARY

BEGINNING at a point marked by a steel pin set in a stone heap at the westerly highway taking line of Milan Hill Road, also known as C.R. No. 54, said point being the northeasterly corner of the herein described parcel and being located S 46deg 37' 54" E 60.06 feet from the northeasterly corner of lands of Larry Steel and Betti Steel described in Document 02-2004-10690; thence along the westerly highway taking line and partly along the assumed road line of Milan Hill Road, S 46deg 37' 54" W 71.04 feet, S 29deg 55' 29" W 101.12 feet, S 38deg 27' 20" W 300.00 feet, S 25deg 50' 31" W 180.89 feet, S 35deg 45' 50" W 367.09 feet, S 29deg 19' 40" W 102.08 feet, S 12deg 24' 30" W 102.39 feet and S 06deg 29' 40" W 19.62 feet to a steel pin set marking the southeast corner of the herein described parcel; thence through lands of Steel, N 79deg 32' 00" W 340.00 feet to a steel pin set marking the southwest corner of the herein described parcel, N 24deg 29' 00" E 520.00 feet to a steel pin set, N 32deg 03' 11" E 678.88 feet to a steel pin set in a stone heap marking the northwest corner of the herein described parcel and S 80deg 26' 11" E 420.67 feet to the point or place of beginning.

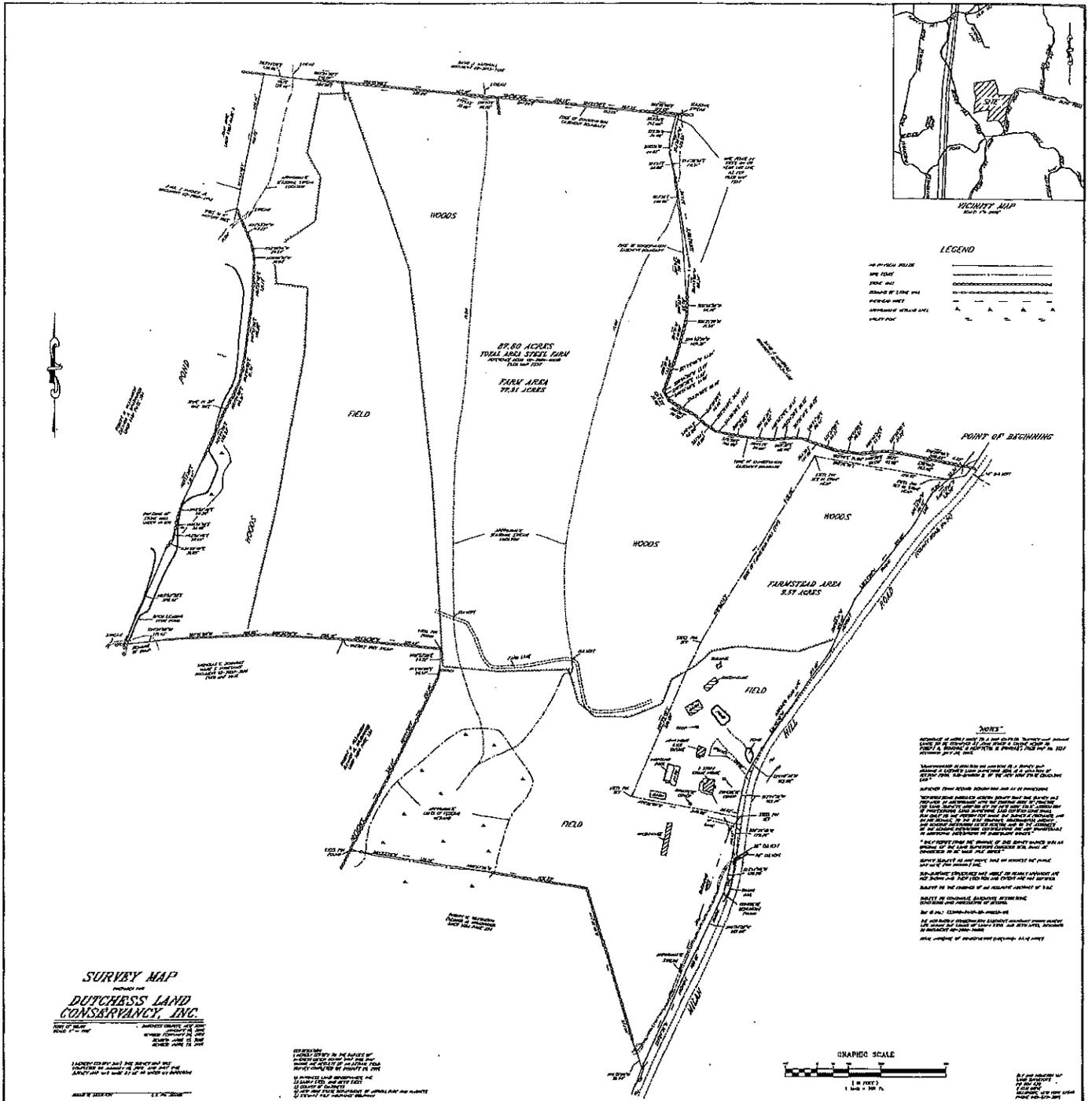
CONTAINING: 9.57 acres of land.

SUBJECT to Covenants, Easements, Restrictions, Conditions and Agreements of record.

BEING and intended to be a portion of all that certain tract or parcel of land conveyed from Michael Louis Goldman and Donna Goldman and Marilyn Hey to Larry Steel and Betti Steel by Deed dated September 20, 2004 recorded at the Dutchess County Clerk's Office in Document 02-2004-10690.

EXHIBIT B
Conservation Easement Map

EXHIBIT B Conservation Easement Map



If any term of the Scope of Services (Exhibit B) contradicts or creates an ambiguity with any term of this Agreement, this Agreement shall govern.

2. **TERM OF AGREEMENT.** This Agreement shall become effective upon the conveyance of a Conservation Easement of approximately 87.48 acres by Betti Steel and Laurence M. Steel, on the Property (a portion of Dutchess County Tax Map Number 133600-6472-00-816858) to the Conservancy and shall remain in effect as long as the Conservancy holds the Conservation Easement.

3. **PAYMENT.** The Conservancy has undertaken its responsibilities hereunder because the Conservation Easement to be acquired protects the agricultural values and natural resources of the Property and promotes the use of sound agricultural practices, which will further its charitable purposes of preserving the natural, ecological, cultural and scenic values of Dutchess County. In recognition of the costs the Conservancy may incur in monitoring compliance with the Conservation Easement, the Conservancy has requested a stewardship fee of \$10,000.00 from the New York State Department of Agriculture and Markets to defray the costs of monitoring and administering the above referenced Conservation Easement. After approval of the Final Report, which is to be provided to the Department of Agriculture and Markets after closing, the sum of \$10,000.00 shall be paid over to the Conservancy by the New York State Department of Agriculture and Markets and deposited into an appropriate account.

4. **INDEPENDENT CONTRACTOR'S STATUS.** The Conservancy agrees that it is an independent contractor and that it shall not hold itself out to be an employee or office of the County, and that therefore, neither federal, state nor local income tax nor payroll tax of any kind shall be withheld or paid by the County on behalf of the Conservancy or its employees; that the Conservancy shall not be eligible for, and shall not be entitled to participate in, any employee pension, health, retirement or other fringe benefit plan of the County; that the Conservancy shall have no workers' compensation or disability coverage through the County for the Conservancy or its employees, and that the Conservancy shall not be entitled to make any claim against the County for these or any other rights or privileges of an officer or employee of the County.

5. **INDEMNIFICATION BY THE CONSERVANCY.** The Conservancy shall hold the County harmless from any and all claims or causes of action for damages arising directly or indirectly out of its negligence in the discharge of its responsibilities pursuant to this Agreement.

6. **INDEMNIFICATION BY THE COUNTY.** The County shall hold the Conservancy harmless from any and all claims or causes of action for damages arising directly or indirectly out of its negligence in the discharge of its responsibilities pursuant to this Agreement.

7. **INSURANCE REQUIREMENTS.** At all times during the term of this Agreement, the Conservancy shall maintain at its own cost the following insurance and shall provide proof thereof to the County, in the form of a Certificate of Insurance, prior to commencing work under this Agreement:

- (a) Statutory Worker's Compensation coverage in compliance with the Compensation Law of the State of New York.
- (b) General Liability Insurance coverage in the comprehensive or commercial general liability form including blanket contractual coverage for the operation

of the program under this Agreement in the amount of \$1,000,000.00. This insurance shall include coverage for bodily injury and property damage and shall be on an occurrence form with a waiver of subrogation. The County must be listed as an additional named insured.

Prior to cancellation or material change in any policy, a thirty (30) day notice shall be given to the County Attorney at the address listed below:

Dutchess County Attorney
County Office Building
22 Market Street
Poughkeepsie, New York 12601

On receipt of such notice, the County shall have the option to cancel this Agreement without further expense or liability to the County, or to require the Conservancy to replace any cancelled insurance policy, or rectify any material change in the policy, so that the insurance coverage required by this paragraph is maintained continuously throughout the term of this Agreement in form and substance acceptable to the County. Failure of the Conservancy to take out or maintain, or the taking out or the maintenance of any required insurance, shall not relieve the Conservancy from any liability under this Agreement.

All Certificates of Insurance shall be approved by the County Director of Risk Management prior to commencement of any work under this Agreement.

All policies of insurance referred to above shall be underwritten by companies authorized to do business in the State of New York and acceptable to the County. In addition, every policy required above shall be primary insurance and any insurance carried by the County, their officers, or its employees shall be excess and not contributory insurance to that provided by the Conservancy. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Conservancy shall be solely responsible for any deductible losses under each of the policies required above. Proof of additional insured coverage shall be evidenced through an additional insured endorsement provided by the insurance carrier.

In the event that claims in excess of these amounts are filed in connection with this Agreement, the excess amount or any portion thereof may be withheld from payment due or to become due the Conservancy until the Conservancy furnishes such additional security, as is determined necessary by the County.

9. USE OF PRIVATE AUTOMOBILES. The Conservancy represents that it does not own any automobiles and its employees use their own private automobiles when an automobile is necessary for Conservancy business. The Conservancy will ensure all of its employees and any others, discharging responsibilities pursuant to this Agreement, shall be licensed to drive in New York State and shall have, at least, the statutory insurance coverage required by New York State Law.

10. QUALIFICATIONS OF CONSERVANCY. The Conservancy represents it 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 (together with any successor statute, the "ECL"), is

organized for, among other purposes, conserving real property, is a tax-exempt and qualified organization within the meaning of Sections 501(c)(3), 509(a)(1) and 170(b)(1)(A)(iv) of the Internal Revenue Code, and is a "qualified organization" to accept, purchase, and hold Conservation Easements under Section 170(h) of the Internal Revenue Code and Treasury Regulation Section 1.170A-14(c); and the Conservancy covenants that it will take all actions necessary to maintain such status at all times during the term of this agreement.

The Conservancy specifically represents that it, and its members, officers, employees, agents, servants, consultants and sub-contractors, have the experience, knowledge, and character necessary to perform their particular duties under this Agreement.

11. NON-DISCRIMINATION. No services to be rendered pursuant to, or in connection with, this Agreement may be refused to any person because of age, race, color, creed, sex, national origin, disability or marital status.

The Conservancy shall take all affirmative steps necessary to ensure equal employment opportunities without discrimination because of age, race, creed, color, sex, national origin, disability or marital status and to comply with all federal, state and local civil rights laws including, but not limited to, the Americans with Disabilities Act.

12. RETENTION OF RECORDS. The Conservancy agrees to maintain and have available for audit such records as may be required by the County, New York State or United States governmental agencies related to this Agreement and the Conservation Easement. These records shall be available for inspection by properly identified personnel of the above governmental agencies upon reasonable notice. The Baseline Documentation Report and the monitoring records shall be permanently maintained in an Archival Storage Facility. All correspondence pertaining to the Conservation Easement shall be maintained in perpetuity. Other records shall be maintained for a period of six (6) years on an ongoing basis unless the County requires otherwise. In such event, the County shall, upon request of the Conservancy, provide an Archival Storage Facility for such other records.

In the event that the Conservancy were to cease to exist, cease to be a qualified organization under Section 170(h) of the Internal Revenue Code, or cease to be qualified to acquire and hold conservation easements under Article 49, Title 3, of the Conservation Law, the Conservancy agrees to transfer all records associated with this Agreement and the Conservation Easement to the County or to such private non-governmental organization or public agency, which has agreed to assume the responsibility of holding the Conservation Easement.

13. NON-ASSIGNMENT. This Agreement may not be assigned by the Conservancy or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous written consent of the County.

14. EXECUTORY. This Agreement shall be deemed executory only to the extent of moneys appropriated and available to the County for the purpose of this Agreement, as specified in the County's adopted Budget, and no liability on account thereof shall be incurred by the County beyond the amount of such moneys. It is understood and agreed that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate, or make available moneys for the purpose of this Agreement.

15. **NOTICE.** Except as otherwise provided in this Agreement, notice required to be given pursuant to this Agreement shall be made in writing and addressed to the following or such other person as the parties may designate:

If to the County: any notices necessary or convenient hereunder shall be directed in writing to the Dutchess County Attorney and the Dutchess County Commissioner of Planning and Development, or their successors at their official addresses, which at present are:

Dutchess County Attorney
22 Market Street
Poughkeepsie, New York 12601
Attn: Carol A. Bogle, Chief Assistant County Attorney

Dutchess County Commissioner of Planning and Development
27 High Street
Poughkeepsie, New York 12601
Attn: Eoin Wrafter, Commissioner

If to the Conservancy: any notices necessary or convenient hereunder shall be directed in writing to the President, or her successor at her official address, which at present is:

Dutchess Land Conservancy, Inc.
PO Box 138
Millbrook, New York 12545
Attn: Rebecca E. C. Thornton, President

16. **NON-WAIVER.** Failure of any party to exercise any rights under this Agreement for a breach thereof shall not be deemed a waiver thereof or a waiver of any subsequent breach.

17. **SEVERABILITY.** If any provision of this Agreement shall be held unenforceable, the rest of the Agreement shall nevertheless remain in full force and effect.

18. **CHOICE OF LAW, VENUE.** Any dispute arising directly or indirectly out of this Agreement shall be determined pursuant to the laws of the State of New York. The parties hereby choose the New York State Supreme Court, Dutchess County as the forum for any such dispute.

19. **NO ARBITRATION.** Disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration but must instead be heard in accordance with the paragraph above entitled "Choice of Law, Venue."

20. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the New York State Civil Practice Law & Rules ("CPLR"), the Conservancy hereby consents to service of process on it by registered or certified mail, return receipt requested or by facsimile (fax) transmission. Service hereunder shall be complete when deposited in the United States mail, duly addressed and with proper postage or when the fax has connected. The Conservancy must promptly notify the County, in writing, of each and every change of address to which service of process can be made. Service by the County to the last known addresses shall be sufficient. The Conservancy will have thirty (30) calendar days after service is complete in which to respond.

21. **CAPTIONS.** The captions are inserted only as a matter of convenience and reference, and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect the terms hereof.

22. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be an original and shall constitute the same Agreement.

23. **GENDER.** Words of the masculine or feminine gender in this Agreement, unless the meaning of the sentence indicates otherwise, shall be deemed to refer to either male or female persons.

24. **ENTIRE AGREEMENT.** The terms of this Agreement, including its attachments and exhibits, represent the final intent of the parties. Any modification, rescission or waiver of the terms of this Agreement must be in writing and executed and acknowledged by the parties with the same formalities accorded this basic Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

APPROVED AS TO FORM:

County Attorney's Office

ACCEPTED: COUNTY OF DUTCHESS

By: _____
Marcus J. Molinaro, County Executive

APPROVED AS TO CONTENT:

Commissioner of Planning & Development

ACCEPTED: Dutchess Land Conservancy, Inc

By: _____
Rebecca E. C. Thornton, President

EXHIBIT "A"
CONSERVATION EASEMENT

EXHIBIT B SCOPE OF SERVICES

The parties recognize that this Scope of Service outlines the monitoring techniques presently contemplated. As these techniques change over time, the general intent of this Scope of Services will be maintained.

A. **General Approach**

- In-person site visit and/or fly over property by aerial over flight by Conservancy staff to ensure compliance with the Conservation Easement.

B. **Minimum Frequency for Monitoring Visits**

- Aerial monitoring to occur annually, typically in the late fall to early spring when the foliage is off vegetation. Ground monitoring of the property to occur approximately once every three years. Monitoring during hunting season will be avoided.

C. **Procedure**

- Verify property ownership before monitoring to detect any changes.
- Contact landowner by letter well in advance of visit. Site visits can be done with landowner present, although it is not necessary for the landowner to be present during the visit.
- Review baseline file including:
 - (1) Conservation Easement or Conservation Easement Summary
 - (2) Baseline documentation maps and photographs
 - (3) Existing Conditions Report
 - (4) Previous monitoring records

D. **Ground Monitoring**

- Visit property, bringing:
 - (1) easement summary
 - (2) copy of easement
 - (3) camera, back up camera
 - (4) survey plan (or other detailed map)
 - (5) baseline documentation map showing site features (or topographic map with property boundaries drawn in)
 - (6) easement inspection form/monitoring log (attached hereto)
 - (7) compass, measuring tape, measuring wheel or string, fluorescent flagging, bug repellent (in season), sturdy clothing, boots, blaze orange/red hat and/or vest/jacket, whistle, compass, pens/pencils, field notebook, scale, Swiss army knife, water bottle, etc.
 - (8) photo location map/baseline photos
 - (9) copy of baseline map to make notes on
- Meet with landowner (upon request), review easement terms, answer any questions
- Inspect property:
 - (1) find and walk boundaries
 - (2) check any likely trouble spots
 - (3) check special conservation features, e.g. location of rare plants
 - (4) note any significant changes, natural or manmade

- (5) photograph changes or trouble area and map photo locations on baseline copy
- (6) fill out inspection form (this can be done back at the office using notes taken in the field)
- (7) identify problems that need follow-up

E. Aerial Monitoring

- Aerial monitoring to be performed by Conservancy staff who know the property and can interpret the property from the air
- Prepare flight plan
 - (1) Easement summary
 - (2) Camera, back up camera
 - (3) Baseline documentation map showing features (or topographic map of aerial photograph with property boundaries drawn in)
 - (4) Notebook, pens/pencils
- Note any changes/questionable areas and take photographs
- Follow up questionable areas with on-the-ground inspection

F. Post-Inspection Record Keeping

- Fill out inspection form, sign and date it
- Key new photos to map using field notes and map; label and file photographs in baseline file
- Send landowner letter summarizing findings
- Send County letter summarizing findings
- Store monitoring records safely together. Archive originals with original Baseline Documentation Report and keep one copy in the office for reference.

G. Landowner Relationships

- Landowner Contact – a good working relationship with the landowner is fundamental to a successful stewardship program
 - (1) Build a spirit of cooperation, beginning before easements are signed
 - (2) Explain monitoring program, easement holder's role in enforcement, what the landowner can expect
 - (3) Personally contact a new landowner any time land changes hands, even within the same family
 - (4) Make sure new owner understands the purposes and terms of the easement and the monitoring program
 - (5) Maintain personal contact with all landowners periodically, even if aerial monitoring

H. Handling Violations

- In the event of a violation of, or non-compliance with, the terms of the Conservation Easement, the Conservancy will notify the County in writing within 48 hours or two business days of the discover.
- The Conservancy, as lead monitor, will then notify the landowner about the violation.
- The Conservancy shall try to resolve the problem through negotiation:
 - (1) Establish plan for restoration and set a deadline for compliance
 - (2) Follow up all contacts in writing, via certified mail
 - (3) Inspect restoration work and document compliance

- Consult County Attorney's office if violation activity continues or if landowner refuses to cooperate with restoration plan.

Environment

RESOLUTION NO. 208206

BOND RESOLUTION DATED JULY 14, 2008.

A RESOLUTION AUTHORIZING THE ISSUANCE OF \$1,600,000 SERIAL BONDS OF THE COUNTY OF DUTCHESS, NEW YORK, TO PAY THE COST OF THE ACQUISITION OF PARCELS OF LAND, OR RIGHTS OR INTERESTS IN SUCH LAND, FOR ACTIVE AND/OR PASSIVE PARK PURPOSES AND THE PRESERVATION OF OPEN SPACE AND FARMLAND IN AND FOR SAID COUNTY.

WHEREAS, continuing development within the County of Dutchess, New York (the "County") has demonstrated a compelling need to continue to acquire, preserve, protect and maintain passive and active park land and existing open space and farmland to enhance the general quality of life and the environment of the County, including protection of drinking water sources, the quality of rivers and streams, wild life habitat and natural areas, and thereby benefit the residents and taxpayers of the County; and

WHEREAS, General Municipal Law Section 247 recognizes the value of open space areas and the need to preserve such land in such state and, specifically empowers municipalities with the authority to acquire real property or interests therein to preserve land as open space; and

WHEREAS, if existing open space areas are to be preserved, protected and maintained, the County must develop the additional capacity to purchase land, easements or other real property interests quickly and efficiently as the need arises and opportunities are identified; and

WHEREAS, this County Legislature recognizes the value of passive and active park land, open spaces and farmlands, and wishes to provide for the acquisition of real property and interests in real property therefor, and hereby finds and determines it to be in the public interest and a proper

public purpose of the County to do so in accordance with the provisions of Section 247 of the General Municipal Law; and

WHEREAS, all conditions precedent to the financing of the capital project hereinafter described, including compliance with the provisions of the State Environmental Quality Review Act ("SEQRA"), have been performed, and site-specific compliance with SEQRA has been or will be performed as such need arises and all documentation relating to SEQRA may be examined at the office of the Clerk of the County Legislature during normal business hours; and

WHEREAS, it is now desired to provide for the financing of the acquisition of such real property and interest therein for said purpose; NOW, THEREFORE,

BE IT RESOLVED, by the affirmative vote of not less than two-thirds of the total voting strength of the County Legislature of the County of Dutchess, New York, as follows:

Section 1. The acquisition of various [specific] parcels of land, or rights or interests in such land, for passive and active park purposes and the preservation of open space and farmland [known as Bos Haven, Sunset Ridge, Mead II, Simmons/Wil Hi, Locust Grove, Hiddenbrooke, and MacIntosh Farm,] throughout, and in and for the County of Dutchess, New York, to implement the State authorized programs and policies provided in Section 247 of the General Municipal Law, as such acquisitions may be authorized from time to time by the County Legislature of the County of Dutchess, New York, after due notice and a public hearing as provided thereunder, including incidental expenses in connection therewith, is hereby authorized in and for said County of Dutchess at a maximum estimated cost of \$1,600,000.

Section 2. It is hereby determined that the maximum estimated cost of the aforesaid [specific] class of objects or purpose is \$1,600,000, and that the plan for the financing thereof shall

be by the issuance of \$1,600,000 serial bonds of said County hereby authorized to be issued pursuant to the provisions of the Local Finance Law.

Section 3. It is hereby determined that the period of probable usefulness of the aforesaid [~~specific~~] class of objects or purpose is thirty years, pursuant to subdivision 21(a) of paragraph a of Section 11.00 of the Local Finance Law. It is hereby further determined that the maximum maturity of the bonds herein authorized will exceed five years.

Section 4. Subject to the provisions of the Local Finance Law, the power to authorize the issuance of and to sell bond anticipation notes in anticipation of the issuance and sale of the bonds herein authorized, including renewals of such notes, is hereby delegated to the Commissioner of Finance, the chief fiscal officer. Such notes shall be of such terms, form and contents, and shall be sold in such manner, as may be prescribed by said Commissioner of Finance, consistent with the provisions of the Local Finance Law.

Section 5. The faith and credit of said County of Dutchess, New York, are hereby irrevocable pledged for the payment of the principal of and interest on such bonds as the same respectively become due and payable. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on such bonds becoming due and payable in such year. To the extent not paid from other sources, there shall annually be levied on all the taxable real property of said County, a tax sufficient to pay the principal of and interest on such bonds as the same become due and payable.

Section 6. Such bonds shall be in fully registered form and shall be signed in the name of the County of Dutchess, New York, by the manual or facsimile signature of the Commissioner of Finance and a facsimile of its corporate seal shall be imprinted or impressed thereon and may be attested by the manual or facsimile signature of the County Clerk.

Section 7. The powers and duties of advertising such bonds for sale, conducting the sale and awarding the bonds, are hereby delegated to the Commissioner of Finance, who shall advertise such bonds for sale, conduct the sale, and award the bonds in such manner as she shall deem best for the interests of the County; provided, however, that in the exercise of these delegated powers, she shall comply fully with the provisions of the Local Finance Law and any order or rule of the State Comptroller applicable to the sale of municipal bonds. The receipt of the Commissioner of Finance shall be a full acquittance to the purchaser of such bonds, who shall not be obliged to see to the application of the purchase money.

Section 8. All other matters, except as provided herein relating to such bonds including determining whether to issue such bonds having substantially level or declining annual debt service and all matters related thereto, prescribing whether manual or facsimile signatures shall appear on said bonds, prescribing the method for the recording of ownership of said bonds, appointing the fiscal agent or agents for said bonds, providing for the printing and delivery of said bonds (and if said bonds are to be executed in the name of the County by the facsimile signature of the Commissioner of Finance, providing for the manual countersignature of a fiscal agent or of a designated official of the County), the date, denominations, maturities and interest payment dates, place or places of payment, and also including the consolidation with other issues, shall be determined by the Commissioner of Finance. It is hereby determined that it is to the financial advantage of the County not to impose and collect from registered owners of such serial bonds any charges for mailing, shipping and insuring bonds transferred or exchanged by the fiscal agent, and, accordingly, pursuant to paragraph c of Section 70.00 of the Local Finance Law, no such charges shall be so collected by the fiscal agent. Such bonds shall contain substantially the recital of validity clause provided for in section 52.00 of the Local Finance Law and shall otherwise be in

such form and contain such recitals in addition to those required by section 52.00 of the Local Finance Law, as the Commissioner of Finance shall determine.

Section 9. This resolution shall constitute a statement of official intent for purposes of Treasury Regulations Section 1.150-2. Other than as specified in this resolution, no monies are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside with respect to the permanent funding of the object or purpose described herein.

Section 10. The validity of such bonds and bond anticipation notes may be contested only if:

- 1) Such obligations are authorized for an object or purpose for which said County is not authorized to expend money, or
- 2) The provisions of law which should be complied with at the date of publication of this resolution are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

- 3) Such obligations are authorized in violation of the provisions of the Constitution.

Section 11. This resolution, which takes effect immediately, shall be published in full in *The Poughkeepsie Journal* and *The Weekly Beat*, the official newspapers of said County, together with a notice of the Clerk of the County Legislature in substantially the form provided in Section 81.00 of the Local Finance Law.

* * * * *

RESOLUTION NO. 2014323

BOND RESOLUTION DATED DECEMBER 15, 2014.

A RESOLUTION AUTHORIZING THE ISSUANCE OF \$1,000,000 SERIAL BONDS OF THE COUNTY OF DUTCHESS, NEW YORK, FOR THE DUTCHESS COUNTY PARTNERSHIP FOR MANAGEABLE GROWTH PROGRAM.

WHEREAS, continuing development within the County of Dutchess, New York (the "County") has demonstrated a compelling need to continue to acquire, preserve, protect and maintain passive and active park land and existing open space and farmland to enhance the general quality of life and the environment of the County, including protection of drinking water sources, the quality of rivers and streams, wild life habitat and natural areas, and thereby benefit the residents and taxpayers of the County; and

WHEREAS, General Municipal Law Section 247 recognizes the value of open space areas and the need to preserve such land in such state and, specifically empowers municipalities with the authority to acquire real property or interests therein to preserve land as open space; and

WHEREAS, if existing open space areas are to be preserved, protected and maintained, the County must develop the capacity to purchase land, easements or other real property interests quickly and efficiently as the need arises and opportunities are identified; and

WHEREAS, this County Legislature recognizes the value of passive and active park land, open spaces and farmlands, and wishes to provide for the acquisition of real property and interests in real property therefor, and hereby finds and determines it to be in the public interest and a proper

public purpose of the County to do so in accordance with the provisions of Section 247 of the General Municipal Law; and

WHEREAS, all conditions precedent to the financing of the capital project hereinafter described, including compliance with the provisions of the State Environmental Quality Review Act ("SEQRA"), have been performed, and site-specific compliance with SEQRA has been or will be performed as such need arises and all documentation relating to SEQRA may be examined at the office of the Clerk of the County Legislature during normal business hours; and

WHEREAS, it is now desired to provide for the financing of the acquisition of such real property and interest therein for said purpose; NOW, THEREFORE,

BE IT RESOLVED, by the affirmative vote of not less than two-thirds of the total voting strength of the County Legislature of the County of Dutchess, New York, as follows:

Section 1. The acquisition of parcels of land, or rights or interests in such land, for passive and active park purposes and the preservation of open space and farmland, throughout, and in and for the County of Dutchess, New York, to implement the State authorized programs and policies provided in Section 247 of the General Municipal Law, as such acquisitions may be authorized from time to time by the County Legislature of the County of Dutchess, New York, after due notice and a public hearing as provided thereunder, including incidental expenses in connection therewith, is hereby authorized in and for said County of Dutchess at a maximum estimated cost of \$1,000,000.

Section 2. It is hereby determined that the maximum estimated cost of the aforesaid class of objects or purposes is \$1,000,000, and that the plan for the financing thereof shall be by the issuance of \$1,000,000 serial bonds of said County hereby authorized to be issued pursuant to the provisions of the Local Finance Law.

Section 3. It is hereby determined that the period of probable usefulness of the aforesaid class of objects or purposes is thirty years, pursuant to subdivision 21(a) of paragraph a of Section 11.00 of the Local Finance Law. It is hereby further determined that the maximum maturity of the bonds herein authorized will exceed five years.

Section 4. Subject to the provisions of the Local Finance Law, the power to authorize the issuance of and to sell bond anticipation notes in anticipation of the issuance and sale of the bonds herein authorized, including renewals of such notes, is hereby delegated to the Commissioner of Finance, the chief fiscal officer. Such notes shall be of such terms, form and contents, and shall be sold in such manner, as may be prescribed by said Commissioner of Finance, consistent with the provisions of the Local Finance Law.

Section 5. The faith and credit of said County of Dutchess, New York, are hereby irrevocable pledged for the payment of the principal of and interest on such bonds as the same respectively become due and payable. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on such bonds becoming due and payable in such year. To the extent not paid from other sources, there shall annually be levied on all the taxable real property of said County, a tax sufficient to pay the principal of and interest on such bonds as the same become due and payable.

Section 6. Such bonds shall be in fully registered form and shall be signed in the name of the County of Dutchess, New York, by the manual or facsimile signature of the Commissioner of Finance and a facsimile of its corporate seal shall be imprinted or impressed thereon and may be attested by the manual or facsimile signature of the County Clerk.

Section 7. The powers and duties of advertising such bonds for sale, conducting the sale and awarding the bonds, are hereby delegated to the Commissioner of Finance, who shall advertise such bonds for sale, conduct the sale, and award the bonds in such manner as she shall deem best for the interests of the County; provided, however, that in the exercise of these delegated powers, she shall comply fully with the provisions of the Local Finance Law and any order or rule of the State Comptroller applicable to the sale of municipal bonds. The receipt of the Commissioner of Finance shall be a full acquittance to the purchaser of such bonds, who shall not be obliged to see to the application of the purchase money.

Section 8. All other matters, except as provided herein relating to such bonds including determining whether to issue such bonds having substantially level or declining annual debt service and all matters related thereto, prescribing whether manual or facsimile signatures shall appear on said bonds, prescribing the method for the recording of ownership of said bonds, appointing the fiscal agent or agents for said bonds, providing for the printing and delivery of said bonds (and if said bonds are to be executed in the name of the County by the facsimile signature of the Commissioner of Finance, providing for the manual countersignature of a fiscal agent or of a designated official of the County), the date, denominations, maturities and interest payment dates, place or places of payment, and also including the consolidation with other issues, shall be determined by the Commissioner of Finance. It is hereby determined that it is to the financial advantage of the County not to impose and collect from registered owners of such serial bonds any charges for mailing, shipping and insuring bonds transferred or exchanged by the fiscal agent, and, accordingly, pursuant to paragraph c of Section 70.00 of the Local Finance Law, no such charges shall be so collected by the fiscal agent. Such bonds shall contain substantially the recital of validity clause provided for in section 52.00 of the Local Finance Law and shall otherwise be in

such form and contain such recitals in addition to those required by section 52.00 of the Local Finance Law, as the Commissioner of Finance shall determine.

Section 9. This resolution shall constitute a statement of official intent for purposes of Treasury Regulations Section 1.150-2. Other than as specified in this resolution, no monies are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside with respect to the permanent funding of the object or purpose described herein.

Section 10. The validity of such bonds and bond anticipation notes may be contested only if:

- 1) Such obligations are authorized for an object or purpose for which said County is not authorized to expend money, or
- 2) The provisions of law which should be complied with at the date of publication of this resolution are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

- 3) Such obligations are authorized in violation of the provisions of the Constitution.

Section 11. This resolution, which takes effect immediately, shall be published in full in *The Poughkeepsie Journal* and *The Southern Dutchess News*, the official newspapers of said County, together with a notice of the Clerk of the County Legislature in substantially the form provided in Section 81.00 of the Local Finance Law.

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