

**DEED OF CONSERVATION EASEMENT**

THIS CONSERVATION EASEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007 by and between

**[name]**

(the "Grantor"); and

**THE SCENIC HUDSON LAND TRUST, INC.**

("Grantee"), a New York not-for-profit corporation having its principal place of business at One Civic Center Plaza, Suite 200, Poughkeepsie, New York 12601.

**WHEREAS:**

A. Grantor is the sole owner in fee simple of certain real property ("Property") consisting of \_\_\_\_\_ ± acres of land and improvements thereon located in the Town of \_\_\_\_\_, \_\_\_\_\_ County, New York, as more particularly described on the attached Exhibit A ("Legal Description and Survey of Property") and shown on the map attached as Exhibit B ("Conservation Easement Map").

B. The Property possesses the following conservation values:

- (i) approximately \_\_\_ acres of prime agricultural soils, as defined by the U.S. Department of Agriculture ("USDA");
- (ii) approximately \_\_\_ acres of agricultural soils of statewide importance, as defined by USDA;
- (iii) \_\_\_\_\_ ± feet of frontage on the \_\_\_\_\_, a Class \_\_\_ stream as designated by the New York State Department of Environmental Conservation; and
- (iv) [INSERT NUMBER OF ACRES] acres of [INSERT CLASS AND NAME OF WETLAND] wetland as designated by the New York State Department of Environmental Conservation;
- (v) \_\_\_\_\_ ± feet fronting on \_\_\_\_\_ Road, the Property being highly visible along this public roadway.

C. In Section 49-0301 of the New York State Environmental Conservation Law (the "Conservation Law"), the Legislature of the State of New York found and declared that "in order to implement the state policy of conserving, preserving and protecting its environmental assets and natural and manmade resources, the preservation of open spaces, and 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".

D. The Property is located within \_\_\_\_\_ County Agricultural District # \_\_\_, which was created in 1973 under the authority of Article 25AA of the New York State

Agriculture and Markets Law, which states that “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”.

- E. The Property is located within \_\_\_\_\_ County, which County legislative body passed in 1993 a “Local Law establishing Right-To-Farm Legislation” [or similar legislation articulating the public policy values of retaining farmland] based on findings... “that farming is important to \_\_\_\_\_ County because it is a livelihood and provides employment for agriservices; provides locally produced, fresh commodities; agricultural diversity; promotes economic stability; agriculture maintains open space and promotes environmental quality; and agricultural land does not increase the demand for services provided by local government”;
- F. The Property is located within the Town of \_\_\_\_\_, which states in its 20\_\_ updated Comprehensive Plan “\_\_\_\_\_ has been and remains a community strongly linked to agriculture. Indeed, agricultural lands still define much of the landscape and remain an important economic factor.” “The town continues to support... [The] preservation, support and enhancement of agricultural activities.” “The town also supports... [The] proactive support agricultural activities.”
- G. [if appropriate] The Property is listed on both the New York State and National Register of Historic Places
- H. The expanse of farmland found in the Town of \_\_\_\_\_, \_\_\_\_\_ County is important to the natural, ecological, cultural, scenic and historical values of the Hudson River Valley.
- I. Grantee is a New York not-for-profit corporation and a permissible grantee of a conservation easement within the meaning of Article 49, Title 3, of the Environmental Conservation Law of the State of New York (such statute, as amended, the regulations promulgated thereunder, as amended, and any successor to such statute and/or regulations, hereinafter "Conservation Law") and has the power to acquire conservation easements.
- J. Grantee is incorporated for the charitable purposes of, among other things, the preservation of the natural, ecological, cultural, scenic and historical values of the Hudson River and the Hudson River Valley.
- K. The expanse of farmland found in the Town of \_\_\_\_\_, \_\_\_\_\_ County is important to the natural, ecological, cultural, scenic and historical values of the Hudson River Valley.
- L. Grantee has determined that acquiring a conservation easement on the Property which protects the agricultural values of the Property will further its charitable purposes of

preserving the natural, ecological, cultural, scenic and historic values of the Hudson River and the Hudson River Valley.

- M. Grantor and Grantee desire to ensure that the agricultural characteristics of the Property will be protected for the benefit of future generations, and desire to do this by entering into this Conservation Easement pursuant to the provisions of Article 49, Title 3 of the Conservation Law.
- N. Grantor has received such independent legal and financial advice regarding this Conservation Easement that Grantor deemed necessary. Grantor freely and with full will signs this Conservation Easement in order to accomplish the purposes of this Conservation Easement as stated in Section 2 (“Purpose”) herein.

**NOW, THEREFORE,** Grantor, for and in consideration of ten dollars and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and as an absolute and unconditional conveyance, does hereby grant, convey and give unto Grantee a perpetual conservation easement over the Property as set forth below, and the parties further agree as follows:

**1. GRANT OF CONSERVATION EASEMENT.**

Grantor voluntarily grants to Grantee, and Grantee voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property as defined by the Conservation Law, over the Property for the benefit of the general public, which Conservation Easement shall run with and bind the Property in perpetuity. Grantor will neither perform, nor knowingly allow others to perform, any act on or affecting the property that is inconsistent with the covenants contained herein. Grantor acknowledges Grantee’s authority to enforce this Conservation Easement in the manner described below.

**2. PURPOSE.**

It is the primary purpose of this Conservation Easement to conserve and preserve productive agricultural lands by protecting in perpetuity its agricultural values, use and utility, including its prime, statewide important and unique agricultural soils; and prevent any use of the Property that would significantly impair or interfere with its long-term agricultural viability. It is the secondary purpose of this Conservation Easement to conserve and protect the Property’s natural and scenic resources, and their associated unique and special natural features.

**3. IMPLEMENTATION.**

This Conservation Easement shall be implemented by limiting and restricting the development, management and use of the Property in accordance with the terms of this Conservation Easement. The Property remains subject to all applicable local, state and federal laws and regulations.

**4. DEFINITIONS.**

As used in this Conservation Easement, the term “Grantor” includes the original Grantor, their heirs, successors and assigns, all future owners of any legal or equitable interest in all or any portion of the Property, and any party entitled to the possession or use of all or any part thereof; and the term “Grantee” includes the original Grantee and its successors and assigns. Where there is more than one Grantor, the term Grantor shall apply to each of the Grantors to the extent of their interest in the Property. Where a Grantor owns or has an interest in only a portion of the Property, the term “Property” shall mean, as to any Grantor, only the portion of the Property owned by that Grantor or in which that Grantor has an interest. With respect to any portion of the Property, the term Grantor shall be understood to mean each and all of the Grantors having an interest in that portion of the Property. A Grantor shall have no rights or obligations under this Conservation Easement with respect to any portion of the Property in which the Grantor has no interest.

The term “Sound Agricultural Practices” is defined as those practices necessary for on-farm production, preparation and marketing of agricultural commodities, provided such practices are legal, necessary, do not cause bodily harm or property damage off the farm, and achieve the intended results in a reasonable and supportable way. If necessary, to determine if a practice is “sound,” Grantees or Grantor may request the New York State Department of Agriculture and Markets to initiate a sound agricultural practice review pursuant to Section 308 of the New York State Agriculture and Markets Law, or any successor statute.

The term “Farm Labor Housing” means structures used to house seasonal and/or full-time employees where such residences are provided by the farm landowner and/or operator, the worker is an essential employee of the farm landowner 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 mobile or manufactured home used as the primary residence of a farm owner is not farm labor housing.

## **5. RESERVED RIGHTS.**

Subject to the restrictions and covenants set forth in this Conservation Easement, Grantor reserves for itself, and for any successors to its interest as owner of the Property, all rights with respect to the Property or any part thereof, including, without limitation, the right of exclusive use, possession and enjoyment of the Property or any part thereof and the right to sell, transfer, lease, mortgage or otherwise encumber the Property or any part thereof, as owner, as well as the right to exclude any member of the public from trespassing on the Property, subject to Section 7 herein (“Restrictions Applicable to the Property”). Nothing contained herein shall be construed as a grant to the general public of any right to enter upon any part of the Property. Nothing contained herein shall restrict an owner of the Property or any part thereof from imposing further restrictions upon conveyance or otherwise, provided such restrictions are not inconsistent with the terms of this Conservation Easement.

## **6. PERMITTED USES.**

The uses permitted hereunder are subject to the restrictions contained in this Conservation Easement, including without limitation, this Section and Section 7 (“Restrictions Applicable to

the Property”), and any permits or approvals required by local, state or federal law or regulation. Permitted uses of the Property are location-dependent and for purposes of this Conservation Easement, the Property is divided into the following three areas as depicted on the attached Conservation Easement Map, Exhibit B, and as further described herein:

- (i) a Farmstead Complex, described in Exhibit C (“Legal Description of Farmstead Complex”) attached hereto comprised of \_\_\_\_\_ acres [generally 3 to 5 acres, sometimes more];
- (ii) the Farm Area, which comprises the majority of the Property;
- (iii) the Resource Protection Area, comprised of the \_\_\_\_\_ Stream and a 100 foot buffer extending from either bank; and a 100 foot buffer extended from the limits of Wetland \_\_\_\_\_; [Note: we have done stream and wetland buffers of widths varying between 35 and 100 feet, depending on the topography and resources involved]; all of which are depicted on Exhibit B.

As used in this Conservation Easement, “existing” shall mean in existence as of the date of this Conservation Easement and as shown on Exhibit B.

**6.1. Permitted Uses and Activities Within the Farmstead Complex.** Subject to the restrictions contained in this Conservation Easement, including without limitation Section 7 (“Restrictions Applicable to the Property”), the following activities are permitted within the Farmstead Complex:

**6.1.A. Farming Practices.** The production of crops, livestock and livestock products and the conducting of farm operations as defined in New York State Agriculture and Markets Law (“Agriculture and Markets Law”) § 301 or any successor statute or such successor law as is later promulgated, which includes, but is not limited to, the right to establish, reestablish, maintain, and use cultivated fields, orchards, pastures and woodlands is permitted. Said farming practices shall be carried out in accordance with Sound Agricultural Practices as defined in Section 4 (“Definitions”) herein, together with the right to construct, maintain and repair unpaved access roads for these purposes.

**6.1.B. Agricultural Structures & Improvements.** Existing agricultural structures and improvements may be maintained, repaired, removed, enlarged and replaced at their current locations within the Farmstead Complex, which are shown on Exhibit B. New agricultural structures and improvements may be constructed or placed, including impervious improvements, asphalt and concrete roads, and parking areas within the Farmstead Complex to be used primarily for purposes related to a “Farm Operation,” as defined in New York State Agriculture and Markets Law § 301 or any successor statute and for such other agricultural purposes as

- (i) the production, storage or sale of farm products or by-products, or processing of farm products or by-products produced on-site,
- (ii) the storage of equipment used for agricultural production, and
- (iii) the keeping of livestock or other animals, in accordance with sound agricultural practices as defined in Section 4 (“Definitions”) herein.

Notwithstanding the provisions of this Section, said structures may be adaptively used for farm labor housing as defined in Section 6.1.E. (“Farm Labor Housing”) herein and/or for non-agricultural home occupations or cottage industries as defined in Section 6.1.G. (“Customary Home Occupations or Cottage Industries”) herein. The land on which these structures stand shall not be subdivided into separate or individual lots.

**6.1.C. Fences.** Existing fences may be repaired, removed and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife and to prevent trespassing on the Property.

**6.1.D. Single-family Residential Dwellings.** Single-family residential dwellings, together with customary appurtenances and non-habitable accessory structures may be constructed anywhere in the Farmstead Complex, and may be repaired, enlarged, or replaced within the Farmstead Complex. Under no circumstances shall the land on which these single-family dwellings stand be subdivided into separate or individual lots. Customary home occupations or cottage industries may be established and carried out within said permitted residential dwellings, provided said activities are compatible with the rural character and agricultural use of the Property and subordinate to the agricultural and residential use.

**6.1.E. Farm Labor Housing.** Existing dwellings or structures used for Farm Labor Housing within the Farmstead Complex may be repaired, enlarged and replaced at their current locations as shown on Exhibit B. New single- or multi-family dwellings to be used solely for farm labor housing may be constructed or placed within Farmstead Complex. Non-habitable structures may be adaptively reused to create farm labor housing, subject to applicable laws. Under no circumstances shall the land on which these structures stand be subdivided into separate or individual lots.

**6.1.F. Agriculture-related Commercial Activities.** Agriculture-related commercial activities may be established and carried out within the Farmstead Complex and structures necessary for the same may be built or installed within the Farmstead Complex. Such activities include, but are not limited to, the storage and sale of farm produce and related products, processing and packaging of farm produce, farm machinery repair, and saw mills. Under no circumstances shall the land on which these structures stand be subdivided into separate or individual lots.

**6.1.G. Customary Home Occupations or Cottage Industries.** Customary home occupations or cottage industries may be established and carried out within the Farmstead Complex, provided said activities are compatible with the rural character and agricultural use of the Property and subordinate to the agricultural and residential use. Examples of customary home occupations or cottage industries are, without limitation, professional offices within the home, bed and breakfasts, crafts production, and firewood distribution. Enterprises which market

petroleum or chemical products are prohibited. Under no circumstances shall the land on which these structures stand be subdivided into separate or individual lots.

**6.1.H. Recreational and Educational Uses.** New non-habitable recreational and educational structures and improvements may be located within the Farmstead Complex. The uses that may occur in the aforesaid structures and improvements include, but are not limited to, cross-country skiing, horseback riding, camping, hunting, home schooling, day care, farm tours, agricultural classes, nature interpretation, and other educational programs. Under no circumstances shall the land on which these structures and improvements stand be subdivided into separate or individual lots. Under no circumstances shall athletic fields, golf courses or driving ranges, commercial airstrips, commercial helicopter pads or any other similar recreational improvements that interfere with the Purpose of this Conservation Easement, significantly disturb the farm soils, or otherwise adversely affect agricultural uses on a continuing basis be allowed on the Property.

**6.1.I. Water Resources.** Water sources, water courses and water bodies may be utilized, maintained, established, constructed, or otherwise improved, including the construction of ponds or reservoirs, within the Farmstead Complex for uses expressly permitted herein, provided that said use does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. The natural flow of water over the Property may be altered in order to improve drainage of agricultural soils, reduce soil erosion, provide irrigation for the Property or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with Sound Agricultural Practices, the Purpose of this Conservation Easement and is carried out in accordance with applicable local, state, and federal laws and regulations.

**6.1.J. Utilities, Driveways, Roadways.** The installation and repair of utilities and the construction of roadways and driveways necessary to provide access to, and parking for, permitted structures or to conduct other activities allowed by this Conservation Easement are permitted, provided, to the greatest extent practicable, both impact to prime and statewide soils and the number of roadways and driveways is minimized. No other portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material.

**6.2. Permitted Uses and Activities Within the Farm Area.** Subject to the restrictions contained in this Conservation Easement, including without limitation Section 7 (“Restrictions Applicable to the Property”), the following activities are permitted within the Farm Area:

**6.2.A. Farming Practices.** The production of crops, livestock and livestock products and the conducting of farm operations as defined in New York State Agriculture and Markets Law (“Agriculture and Markets Law”) § 301 or any successor statute or such successor law as is later promulgated, which includes,

but is not limited to, the right to establish, reestablish, maintain, and use cultivated fields, orchards, pastures and woodlands is permitted. Said farming practices shall be carried out in accordance with Sound Agricultural Practices as defined in Section 4 (“Definitions”) herein, together with the right to construct, maintain and repair unpaved access roads for these purposes.

**6.2.B. Forestry Management.** Forested areas may be cleared for the immediate conversion to farmland. Trees for on-farm use including heating or construction of buildings and improvements may be harvested. Trees that are diseased, infected by pests or insects, jeopardize health and safety, or hinder the operation of farm equipment along field boundaries may be removed or trimmed. Invasive plant species as listed by The Nature Conservancy, the United States Department of Agriculture, New York State Department of Environmental Conservation, or The New York State Office of Parks, Recreation and Historic Preservation may be removed or trimmed. All such action must be consistent with Sound Agricultural Practices the Purpose of this Conservation Easement and is carried out in accordance with applicable local, state, and federal laws and regulations.

Timber and other wood products may be commercially harvested and the construction, maintenance, removal, and repair of unpaved access roads and “staging areas” (those areas where logs are temporarily stored for transport) necessary for such activities, in accordance with generally-accepted forest best management practices (as outlined in a forest management and harvest plan) that shall not result in significant degradation of soil and water resources is permitted. Such commercial timber cutting shall be carried out only in accordance with a forest management plan and harvest plan prepared by a forester who is certified by the Society of American Foresters or such successor organization as is later created, or a Cooperating Consulting Forester with the New York State Department of Environmental Conservation, or a Forester employed by the New York State Department of Environmental Conservation as such. In order to facilitate the monitoring and stewardship of this Conservation Easement and to ensure continuing communication between parties, written notice thereof to the Grantee shall be made not less than forty-five (45) days prior to the anticipated commencement of any commercial timber harvest. Such written notice shall include submission of the current forest management plan and harvest plan.

**6.2.C. Agricultural Structures & Improvements.** Existing agricultural structures and improvements may be maintained, repaired, removed, enlarged and replaced at their current locations within the Farm Area, which are shown on Exhibit B. With the advance written permission of Grantee, pursuant to Section 10.6 (“Approvals in Writing”) herein, new buildings, structures and impervious improvements to be used primarily for purposes related to a “Farm Operation,” as defined in New York State Agriculture and Markets Law § 301 or any successor statute and for such other agricultural purposes (except for the processing and packaging of farm products) as

- (i) the storage of farm products or by-products;

- (ii) the storage of equipment used for agricultural production; and
- (iii) the keeping of livestock or other animals may be constructed or placed within the Farm Area.

Such buildings and structures may include but are not limited to pole barns and run-in sheds, and said buildings and structures shall not include excavated foundations. Grantee shall give written permission within 30 days of receipt of a request for such permission, provided Grantor has supplied sufficient information to make such a determination, unless Grantee determines that the proposed building or structure could otherwise be located within the Farmstead Complex. Said approved structures may be maintained and repaired without Grantee's permission. Under no circumstances shall the land on which these structures stand be subdivided into separate or individual lots.

**6.2.D. Fences.** Existing fences may be repaired, removed and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife and to prevent trespassing on the Property.

**6.2.E. Farm Labor Housing.** With the advance written permission of Grantee, pursuant to Section 10.6 ("Approvals in Writing") herein, the Grantor may construct or place new single- or multi-family dwellings to be used solely for farm labor housing within the Farm Area. Grantee shall give written permission within 30 days of receipt of a request for such permission, provided the Grantor has supplied sufficient information to make such a determination, unless Grantee determines that the proposed building or structure could otherwise be located within the Farmstead Complex. Said structures may be maintained and repaired without Grantee's permission. Said structures shall not exceed 1,000 square feet in size, and must be constructed on a concrete slab or footings, with no excavated foundations. Non-habitable structures may be adaptively reused to create farm labor housing, subject to applicable laws. Under no circumstances shall the land on which these structures stand be subdivided into separate or individual lots.

**6.2.F. Single-family Residential Dwellings.** No single-family residential dwellings may be constructed within the Farm Area, except as specified in Section 6.2.E.

**6.2.G. Recreational and Educational Uses.** With the advance written permission of Grantee, pursuant to Section 10.6 ("Approvals in Writing") herein, new temporary non-habitable recreational and educational structures and improvements may be constructed or placed within the Farm Area. The uses that may occur in the aforesaid structures and improvements include, but are not limited to, cross-country skiing, horseback riding, camping, hunting, home schooling, day care, farm tours, agricultural classes, nature interpretation, and other educational programs. Under no circumstances shall the land on which these structures and improvements stand be subdivided into separate or individual lots. Under no circumstances shall athletic fields, golf courses or ranges, off-road recreational vehicle race tracks or parks, commercial airstrips, commercial helicopter pads or any

other similar recreational improvements that interfere with the Purpose of this Conservation Easement, significantly disturb the farm soils, or otherwise adversely affect agricultural uses on a continuing basis be allowed on the Property.

**6.2.I. Water Resources.** Water sources, water courses and water bodies may be utilized, maintained, established, constructed, or otherwise improved, including the construction of ponds or reservoirs, within Farm Area for uses expressly permitted herein, provided that said use does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. The natural flow of water over the Property may be altered in order to improve drainage of agricultural soils, reduce soil erosion, provide irrigation for the Property or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with Sound Agricultural Practices, the Purpose of this Conservation Easement and is carried out in accordance with applicable local, state, and federal laws and regulations.

**6.2.J. Utilities, Driveways, Roadways.** The installation and repair of utilities and the construction of roadways and driveways necessary to provide access to permitted structures or to conduct other activities allowed by this Conservation Easement are permitted, provided, to the greatest extent practicable, both impact to prime and statewide soils and the number of roadways and driveways is minimized. Said driveways and roadways within the Farm Area shall not be paved or otherwise covered with concrete, asphalt, or any other impervious paving material.

**6.3. Permitted Uses and Activities Within the Resource Protection Area.** Subject to the restrictions contained in this Conservation Easement, including without limitation Section 7 (“Restrictions Applicable to the Property”), the following activities are permitted within the Resource Protection Area:

**6.3.A. Fences.** Existing fences may be repaired, removed and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife and to prevent trespassing on the Property.

**6.3.B. Mowing.** Existing open areas within the Resource Protection Area may be mowed.

**6.3.C. Stream crossings.** With the advance written permission of Grantees, pursuant to Section 10.6 (“Approvals in Writing”) herein, a bridge, culvert or other means of crossing the \_\_\_\_\_ or its tributary may be constructed subject to obtaining necessary permits from the New York State Department of Environmental Conservation, or such other governmental authorities as is appropriate. Grantees shall respond within 30 days of receipt of a request for such permission, and shall grant permission if Grantor demonstrates to Grantees’ reasonable satisfaction that adequate safeguards are established to

prevent construction-related sedimentation or other degradation of the watercourse downstream from the crossing.

**6.3.D. Other Structures and Improvements.** With the advance written permission of Grantees, pursuant to Section 10.6 (“Approvals in Writing”) herein, small structures or improvements for passive recreation and wildlife observation by the public may be constructed within the Resource Protection Area. With the advance written permission of Grantees, pursuant to Section 10.6 (“Approvals in Writing”) herein, and at the Grantees’ sole discretion, improvements designed to enhance the habitat and ecological diversity of the Property and the surrounding landscape may be permitted.

**6.3.E. Tree cutting.** The cutting of trees is prohibited except to remove or prune of trees that are fallen, dead, diseased, infected by pests or insects, jeopardize health and safety, or hinder the operation of farm equipment along field boundaries. With the advance written permission of Grantee, pursuant to Section 10.6 (“Approvals in Writing”) herein, invasive plant species as listed by The Nature Conservancy, the United States Department of Agriculture, New York State Department of Environmental Conservation, or The New York State Office of Parks, Recreation and Historic Preservation may be removed or trimmed. All such action must be consistent with Sound Agricultural Practices the Purpose of this Conservation Easement and is carried out in accordance with applicable local, state, and federal laws and regulations.

## **7. RESTRICTIONS APPLICABLE TO THE PROPERTY.**

**7.1. Activities.** No residential, commercial, or industrial activities are permitted on the Property except as they either exist on the date of this Conservation Easement or are expressly permitted herein.

**7.2. Chemicals.** All pesticides, herbicides, fertilizers, or other chemical treatments shall be used in accordance with applicable laws and with Sound Agricultural Practices as defined in Section 4 (“Definitions”) herein.

**7.3. Mining Prohibitions.** Exploration for, or development, storage and extraction of, minerals and hydrocarbons on or from the Property by any method is prohibited, except as otherwise provided herein. The removal of stone, sand and gravel on the Property is permitted, provided said removal:

- (i) is limited and localized in impact, affecting no more than two acres of the Property at one time;
- (ii) does not conflict with the Purpose of this Conservation Easement;
- (iii) does not breach the water table;
- (iv) is reasonably necessary for, and incidental to, carrying out the improvements and agricultural production uses permitted on the Property by this Conservation Easement; and

(v) impact to the prime, statewide important and unique soils is minimized. All practical means to mitigate any adverse effect on the agricultural and other conservation values of the Property shall be used in carrying out any permitted extractive activities, and upon completion of said permitted extractive activities, Grantor shall promptly restore any portion of the Property affected thereby as nearly as possible to its condition existing prior to commencement thereof.

**7.4. Signage Restrictions.** No internally-lit or neon signs shall be erected or displayed on the Property. No billboards shall be erected or displayed on the Property, which are defined for the purposes of this Conservation Easement as signs larger in size than 32 square feet.

**7.5. Structures and Improvements.** No permanent or temporary structures or improvements, including, but not limited to, buildings, appurtenant facilities, shelters, fences, driveways, roads, utility lines, utility structures, golf courses, driving ranges, putting greens and athletic fields may be constructed, created, installed, erected or moved onto, over, under, or across the Property except as they either exist on the date of this Conservation Easement or are expressly permitted herein.

**7.6. Waste Management.** 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 in accordance with Sound Agricultural Practices and any applicable local, state, and federal laws and regulations. However, this shall not prevent the storage of agricultural products and byproducts, the storage of old farm equipment used for parts, temporary storage of trash or household waste in receptacles for periodic off-site disposal, and composting or re-use of biodegradable materials as permitted in Section 6 (“Permitted Uses”), generated off the Property for use on the Property or commercial use so long as they are used and stored in accordance with Sound Agricultural Practices. Notwithstanding the foregoing, the storage and treatment of sewage associated with buildings permitted on the Property, is permitted by this Conservation Easement.

**7.8. Reaffirmation.** No use shall be made of the Property, and no activity thereon shall be permitted which, in the reasonable opinion of Grantee, is or is likely to become inconsistent with the purposes of this Conservation Easement as stated in Section 2 (“Purpose”) herein.

## **8. ADDITIONAL RESTRICTIONS APPLICABLE TO THE RESOURCE PROTECTION AREA.**

**8.1. Access roads and skid trails.** Creating access roads, skid trails or the like within the Resource Protection Area is prohibited.

**8.2. Improvements.** Except as expressly permitted in Section 6.3 (“Permitted Uses and Activities within the Resource Protection Area”) herein, no structures,

improvements, excavation, filling, paving or other surface cover are permitted within the Resource Protection Area.

**8.3. Livestock Grazing.** Pasture and grazing of livestock within the Resource Protection Area is prohibited.

**8.4. Soil Cultivation.** Cultivation of the soil within the Resource Protection Area is prohibited.

**8.5. Tree Cutting.** Except for the removal or trimming of trees that are diseased, infected by pests or insects, jeopardize health and safety, or hinder the operation of farm equipment along field boundaries, the cutting of trees within the Resource Protection Area is prohibited.

## **9. SUBDIVISION.**

**9.1. For farming purposes.** The Property may be further partitioned or subdivided only with the prior written permission of Grantee, provided that all parcels of land thereby created will remain viable for agricultural production either individually or as part of an established farming operation. Such subdivision shall not include the right to construct any new habitable or commercial structures except as permitted herein. Any subdivided parcels shall be subject to the terms of this Conservation Easement. In addition, the Farmstead Complex may only be subdivided from the Property as part of a parcel which consists of the entire Farmstead Complex, as it then exists, along with the Homesite and a minimum of 50 contiguous acres of the Farm Area, and then only upon a showing by Grantor herein that there is a credible intent to farm the land and that all remaining parcels remain viable for agricultural production either individually or as part of an established farming operation. Any partition or subdivision must comply with all applicable land use and subdivision regulations. Mortgages or other non-possessory interests in land do not constitute subdivisions for the purposes herein, provided such interests encompass the whole Property.

**9.2. For residential lots.** Subdivision to create parcels for residential, commercial or industrial use is prohibited.

## **10. CONSERVATION EASEMENT MANAGEMENT, ADMINISTRATION AND CONTINUITY.**

**10.1. Existing Conditions; Baseline Documentation Report.** By its execution of this Conservation Easement, Grantee acknowledges that the present uses of the Property are permitted by this Conservation Easement. In order to evidence the present condition of the Property (including both natural and man-made features) so as to facilitate future monitoring and enforcement of this Conservation Easement, a baseline documentation report, including photographs and a maps, describing such condition at the date hereof,

has been prepared and subscribed by both parties, and a copy thereof is on file with Grantee and Grantor.

**10.2. Inspection and Monitoring.** Grantee and its duly authorized representatives shall have the right to enter the Property at convenient times, in a reasonable manner, and, where practicable, after giving a minimum of forty-eight (48) hours prior notice to inspect for compliance with this Conservation Easement. In the instance of a violation or suspected violation of this Conservation Easement, which has caused or threatens to cause irreparable harm to any of the resource values this Conservation Easement is designed to protect, no such advance notice is required. Said inspections shall be carried out by air or on the ground, or both, at Grantee's sole discretion to assure compliance with this Conservation Easement, at least annually; however, the failure to conduct such inspection and monitoring shall in no way be deemed a waiver of any right or remedy of Grantee under this Conservation Easement. An annual report of the results of such monitoring, including advice of compliance or any apparent violations of this Conservation Easement, shall be provided to the Grantor (or Grantor's successor in interest if Grantor no longer owns the Property).

**10.3 Enforcement.** Grantee may enforce this Conservation Easement at law or in equity pursuant to the Conservation Law, or as otherwise permitted, against any or all owners of the Property or any part thereof. If there is a violation, or threatened violation, of this Conservation Easement, the Grantee shall notify the party in violation or threatening the violation, who shall promptly cure the violation by: (a) ceasing the activity; and (b) stabilizing and restoring the Property to the condition before the violation; or in the case of a threatened violation, (c) refraining from the activity that would cause the violation. If the violation or threatened violation continues for more than thirty (30) days after notice is given without cure, or at any time if the violation or the threatened violation threatens immediate and irreparable harm to the conservation values of the Property that this Conservation Easement is intended to protect, Grantee may seek immediate injunctive relief and shall have the right, but not the obligation, to cure it by pursuing all available remedies at law or in equity, or by direct action. In any case where a court finds that a violation has occurred the Grantor(s) shall reimburse Grantee for all reasonable expenses, including, but not limited to attorney's fees, incurred to enforce this Conservation Easement and cure the violation. Failure to enforce any restriction or covenant herein contained shall in no event be deemed a waiver of a right to do so thereafter as to the same violation, or as to one occurring prior to or subsequent thereto. In any case where a court finds no violation has occurred, each party shall bear its own costs.

**10.4. Amendment.** This Conservation Easement may be amended with respect to all or any portion of the property only upon the written agreement of Grantee and Grantor, in Grantee's sole and absolute discretion, and further only if such amendment:

- (i) has a neutral or positive effect on the conservation values that are protected by this Conservation Easement;
- (ii) is consistent with the purposes of this Conservation Easement as established in Section 1 herein;

- (iii) does not affect the perpetual nature of this Conservation Easement;
- (iv) complies with the Conservation Law and, where applicable, Section 170(h) of the Internal Revenue Code;
- (v) does not have a negative impact on the fair market value of the restrictions contained in this Conservation Easement; and
- (vi) is recorded in the office of the clerk of the county in which the Property is located.

Any such amendment that does not comply with the Conservation Law or, where applicable, Section 170(h) of the Internal Revenue Code shall be void and of no force or effect. The party requesting an amendment shall be responsible for all costs related to the evaluation of said request and the amendment's execution, including staff costs incurred by the non-requesting party.

Where the entirety of the Property is not under common ownership and different portions of the Property are owned by different Grantors, the Grantee and a Grantor (or Grantors) may amend this Conservation Easement with respect to the portion of the Property owned by that Grantor (or Grantors) without the agreement or consent of Grantors who have no interest in such portion; provided that the amendment clearly identifies the portion of the Property affected by the amendment. All Grantors having an interest in the affected portion of the Property must, however, be a party to the amending agreement.

***10.4.A. Amendment of the Farmstead Complex.*** During a one-year period, beginning on the 20<sup>th</sup> anniversary of the date of execution of this Conservation Easement, and during identical one-year periods following subsequent twenty year intervals which commence with the anniversary date of execution, in perpetuity, Grantee and Grantor shall review the boundaries and/or location of the Farmstead Complex and determine if adjustments should be made, based on changes in the nature of agriculture occurring on the Property which take place during the twenty year time period. In such a case, if Grantor demonstrates to Grantee that the Farmstead Complex should be reconfigured, expanded or relocated in order to allow agriculture to remain a viable use and activity on the Property, then the parties shall amend this Conservation Easement accordingly, at Grantor's sole expense, provided that such a change shall not be allowed if it will significantly diminish the agricultural production capacity of the Property, or if it is not consistent with the purposes of this Conservation Easement as established in Section 2 herein, or if it does not comply with Article 49, Title 3, of the Conservation Law, and, where applicable, Section 170(h) of the Internal Revenue Code. Any such amendment that does not comply with the foregoing requirements shall be void and of no force or effect.

**10.5 Continuity.** Grantee agrees that it will assign this Conservation Easement only to an assignee that:

- (i) is a qualified organization as defined in the Conservation Law and Section 170(h) of the Internal Revenue Code; and
- (ii) agrees to continue to carry out the conservation purposes of this Conservation Easement.

Any assignee must also be an entity able to enforce this Conservation Easement, and if a non-governmental entity, having purposes similar to those of Grantee which encompass the purpose of this Conservation Easement. If Grantee ever ceases to exist or no longer qualifies under the Conservation Law, or Section 170(h) of the Internal Revenue Code, a court with jurisdiction shall transfer this Conservation Easement to a qualified governmental unit or another qualified organization having similar purposes and that agrees to assume such responsibility.

**10.6 Approvals In Writing.** Whenever action is made dependent upon the consent or approval of Grantee, such consent shall be in Grantee's sole but reasonable discretion and will be valid only if in writing and duly executed on behalf of Grantee, unless expressly provided otherwise herein. Grantee shall give written notification of its decision within thirty (30) days of receipt of a written request for approval, provided that Grantor has supplied sufficient information upon which Grantee may base a decision. A request must show that: the proposed action is consistent with the purpose of this Conservation Easement; would not be unnecessarily located on prime agricultural soils and/or agricultural soils of state-wide importance; and would not otherwise diminish the agricultural production capacity of the Property. Approval shall be deemed granted if Grantor receives no response from Grantee within thirty (30) days of a written request made pursuant to Section 10.7 ("Notices and Requests for Approval") herein. Any approval, waiver, variance or other form of consent or approval required or permitted to be given by Grantee or Grantor under this Conservation Easement shall only be effective if in writing and duly executed on behalf of the party giving such approval, waiver, variance or other form of consent or approval.

**10.7 Notices and Requests for Approval.** Grantor agrees to notify Grantee of any conveyance, lease or transfer of all or any of the Property, such notice to be given in writing at least thirty (30) days in advance of such conveyance, lease or transfer. Any notice or request for approval required or desired to be given under this Conservation Easement shall be in writing and shall be sent:

- (i) via U.S. Postal Service registered or certified mail, return receipt requested; or
- (ii) via Federal Express or other private courier of national reputation providing written evidence of delivery.

Notices and requests for approval shall be deemed given three (3) days after delivery to the U.S. Postal Service or private courier. All notices and requests for approval shall be properly addressed as follows:

- (i) if to Grantee, to its Conservation Easement Manager at the address set forth above;
- (ii) if to Grantor, at the address set forth above; or
- (iii) if to any subsequent Grantor, at the address of the Property.

Any party can change the address to which notices and requests for approval are to be sent to by duly giving notice pursuant to this Section.

**10.8 Extinguishment.** If a subsequent unexpected change in the conditions surrounding the Property make impossible the continued use of the Property for the conservation purposes provided for in this Conservation Easement, and if the restrictions

are extinguished by judicial proceeding, then, upon any subsequent sale, exchange or involuntary conversion by the Grantor, the Grantee shall be entitled to a portion of the proceeds, equal to the proportionate value of the conservation restrictions as provided immediately below. For such purposes only, Grantor and Grantee agree that Grantee is hereby granted a property right immediately vested in Grantee with a fair market value that is equal to the proportionate value that the conservation restrictions hereby created at the date hereof bears to the value of the Property as a whole on the date hereof (subject to reasonable adjustment to the extent permissible under the Conservation Law and Section 170(h) of the Internal Revenue Code for any improvements which may hereafter be made on the Property), which proportionate value is 69% of the fair market value of the Property. In the event of extinguishment, the provisions of this paragraph shall survive extinguishment and shall constitute a lien on the Property.

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

**10.10 No Transfer of Development Rights.** No development rights in and to the Property, or any part thereof, which may remain or which have been encumbered or extinguished by this Conservation Easement shall be transferred to any location outside the Property, whether pursuant to a cluster development plan or any other agreement or plan for transferable development rights.

## 11. ADDITIONAL PROVISIONS.

**11.1. Further Acts.** Each party shall perform any further acts and execute and deliver any documents, including amendments to this Conservation Easement, which may be reasonably necessary to carry out the provisions of this Conservation Easement or which are necessary to qualify this instrument as a conservation easement under the Conservation Law or Section 170(h) of the Internal Revenue Code.

**11.2. Encumbrance by Conservation Easement.** Any subsequent conveyance including, without limitation, the transfer, lease or mortgage of the Property or any part thereof, shall be subject to this Conservation Easement. Any deed or other instrument evidencing or affecting such conveyance shall contain language substantially as follows:

“This {conveyance, lease, mortgage, easement, etc.} is subject to a conservation easement which runs with the land and which was granted to The Scenic Hudson Land Trust, Inc., by instrument dated \_\_\_\_\_, 2007 and recorded \_\_\_\_\_, 2007 in the office of the Clerk of \_\_\_\_\_ County at Liber \_\_\_\_\_ of Deeds at Page \_\_\_\_\_.”

The failure to include such language shall not affect the validity or applicability of this Conservation Easement to the Property. Nothing in this Conservation Easement shall be construed as limiting the rights of the holder of such conveyance or mortgage from foreclosing or otherwise enforcing its rights thereunder, provided that any such foreclosure or enforcement of a subsequent or otherwise subordinated or junior mortgage, or other property interest, or other action shall not extinguish this Conservation Easement and Grantee's rights hereunder. Grantor shall provide 30 days notice to Grantee prior to any such action occurring, but Grantor's failure to provide such notice shall not adversely affect the rights of any holder of any mortgage or other security instruments.

**11.3. Taxes and Assessments.** The owner of the Property shall pay all taxes and assessments lawfully assessed against the Property or part thereof owned by such owner, who shall provide receipted tax bills to Grantee upon request.

**11.4. Severability.** Invalidation of any provision of this Conservation Easement by court judgment, order, statute or otherwise shall not affect any other provisions, which shall be and remain in force and effect.

**11.5. Binding Effect.** The provisions of this Conservation Easement shall run with the land in perpetuity and shall be binding on each owner and any party entitled to possession or use of the Property while such party is the owner or entitled to possession and use thereof. As used in this Section, the term "owner" shall include the owner of any beneficial equity interest in the Property. Notwithstanding the foregoing, upon any transfer of title, the transferor shall, with respect to the Property transferred cease being Grantor or owners with respect to such Property for purposes of this Conservation Easement and shall, with respect to the Property transferred, have no further responsibility 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. Likewise, this Conservation Easement confers no liability to any owner for monetary damages relating to acts which said owner clearly establishes were done by a prior owner, but this sentence shall not be construed as limiting the right of Grantee to seek direct action by the current owner to cure any violation arising before said owner came into title to the Property.

**11.6. Perpetual Duration and No Merger.** Except as expressly otherwise provided herein, this Conservation 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 Conservation Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

**11.7. Liability; Indemnification.** Grantee has no affirmative obligations whatsoever, express or implied, relating to the use, maintenance, management or operation of the

Property. Grantee's exercise of, or failure to exercise, any right conferred by this Conservation Easement shall not be deemed to be management or control of the activities on the Property. Grantee shall not be responsible for injury, damage, or death to persons or property or other harm in connection with Grantee's administration and/or enforcement of this Conservation Easement or otherwise with respect to the condition of the Property, provided that the foregoing shall not absolve Grantee of any liability it might otherwise have, independently of this Conservation Easement, for wrongfully and directly, without the participation or consent of the Grantor, causing any dangerous condition to arise on the Property. Except in the last described instance, Grantor agrees to indemnify and hold Grantee 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 claims thereof, unless, due to the negligence of Grantee, or its agents, in which case liability shall be apportioned accordingly. Grantor further agrees to indemnify and hold Grantee harmless from and against any and all claims, costs, expenses, fines, penalties, assessments, citations, personal injury or death, and the like arising from or out of the existence (actual or alleged) of any and all environmentally hazardous or toxic substances or materials whatsoever on or under the Property. Grantee shall have no liability to Grantor or any other owner for Grantee's acts, taken in good faith in connection with the administration of this Conservation Easement.

**11.8. Controlling Law.** The interpretation, performance, and enforcement of this Conservation Easement shall be governed by the Laws of the State of New York.

## **12. RIGHT OF FIRST REFUSAL**

In order to afford Grantee the opportunity to ensure that the Property remains in agricultural use in perpetuity, Grantor hereby gives to Grantee a Right of First Refusal to purchase the Property or a portion of the Property, which Right shall be of perpetual duration. In the event that the Grantee acquires fee title to the property, this Conservation Easement shall not be merged into the fee and shall not be extinguished by virtue of such purchase.

**12.1. Applicability.** This Right of First Refusal shall not apply to any gift or bequest without consideration, nor to any sale or conveyance of the Property to members of Grantor's families or to an entity, to include but not limited to, partnerships, corporations, or limited liability companies, which are controlled by Grantor or members of Grantor's families or to the equitable owners of a Grantor which is a corporation, partnership, LLC or other entity. Members of the families shall include Grantor's spouse, children (natural and adopted), parents and their descendants. This Right of First Refusal also shall not apply to sales made pursuant to any judicial sale of all or any portion of the Property (including but not limited to a sale made in connection with mortgage foreclosure), to the conveyance to a mortgage holder by deed in lieu of foreclosure, nor to a subsequent conveyance by any mortgagee who acquires title by virtue of foreclosure sale or deed in lieu of foreclosure. This Right of First Refusal also shall not apply to any sale of the Property to a responsible person or persons who, in the reasonable judgment of Grantee, demonstrate(s) an intent to conduct farming on the Property, which is the

production of crops, livestock and livestock products as defined under Section 301 of the Agricultural and Markets Law, or such successor law as is later promulgated. The Right of First Refusal shall apply to all other sales and conveyances of the Property (including any conveyance by, or of any interest in, a corporation, partnership, LLC or other entity to non-family members of the equitable owners of the Grantor).

**12.2. Procedure.** The conditions of this Right of First Refusal shall be such that whenever Grantor receives a written offer from a responsible person or persons, subject to Section 8.16.A. herein, Grantor shall deliver to a true copy of the written offer, together with such other instruments as may be reasonably required to show the bonafides of the offer. Grantee may elect to purchase the Property or portion of the Property at the offered price and subject to such other terms and conditions not less favorable to Grantor than those contained in the offer by giving to Grantor written notice of such election within thirty (30) days after delivery of the offer to Grantee. If Grantee does not elect to meet such offer within the thirty-day period, or grant a limited waiver of this Right of First Refusal, Grantor may accept the offer as written.

### **13. COUNTERPARTS**

This Conservation Easement may be signed in counterparts or counterpart signature pages and acknowledgements.

IN WITNESS WHEREOF, the parties have executed this Conservation Easement this \_\_\_\_ day of \_\_\_\_\_, 2007.

**GRANTOR**

\_\_\_\_\_

**GRANTEE**

THE SCENIC HUDSON LAND TRUST, INC.

By:

\_\_\_\_\_  
Steve Rosenberg  
Executive Director, The Scenic Hudson Land Trust, Inc.

By:

\_\_\_\_\_  
Seth McKee  
Land Conservation Director

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2007 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature/office of individual taking acknowledgement

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2007 before me, the undersigned, personally appeared Steve Rosenberg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature/office of individual taking acknowledgement

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2007 before me, the undersigned, personally appeared Seth McKee, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature/office of individual taking acknowledgement

**Exhibit A. Legal Description and Survey of Property**

**Exhibit B. Conservation Easement Map**

**Exhibit C. Legal Description of Farmstead Complex**