

RESOLUTION NO. 2012347

RE: AUTHORIZING EXECUTION OF GRANT AGREEMENT
TO PARTIALLY FUND THE PURCHASE OF A
CONSERVATION EASEMENT ON THE
GREIG FAMILY FARM IN THE TOWN OF RED HOOK,
DUTCHESS COUNTY, NEW YORK AND REALLOCATING
FUNDS THEREFORE.

Legislators TRAUDT, BORCHERT, BOLNER, HUTCHINGS, and MICCIO
offer the following and move its adoption:

WHEREAS, Dutchess County is considering a recommendation of the Dutchess County Planning Board (Resolution No. 01/2012) for an award in the amount not to exceed \$220,000.00 in grant funds available through the Dutchess County Partnership for Manageable Growth/Open Space And Farmland Protection Matching Grant Program to partially fund the purchase of an agricultural conservation easement to be held by the Dutchess Land Conservancy (“the Conservancy”) on approximately 159.92 acres of Property known as the Greig Family Farm (Grid No. 6374-00-677518, 854567, 760494 and 640370) located at Rockefeller Lane in the Town of Red Hook, Dutchess County, New York, and

WHEREAS, a real estate appraisal by James S. Waterhouse, ARA, of First Pioneer Farm Credit Appraisal Service which is on file with the Clerk to the Legislature values the easement at \$6,069.00 per acre for a total of \$970,554.00, and

WHEREAS, as a result of the organizing efforts and an application of the Scenic Hudson Land Trust (“Scenic Hudson”) and the Conservancy, the USDA Farm and Ranchland Protection Program (FRPP) will contribute \$485,277.00, towards the purchase of the agricultural conservation easement on the Property, the Town of Red Hook \$242,639.00, Dutchess County up to \$220,000.00 and Scenic Hudson and the Conservancy additional funds and in-kind services in the approximate amount of \$55,397.00 for a total contribution of \$1,003,312.00 which is the purchase price for the Property and project related acquisition costs; 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, and 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, a Grant Agreement which 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, the Town, Scenic Hudson and the Conservancy and a Monitoring Agreement, are attached, and

WHEREAS, Resolution 206246, a Bond Resolution, authorized the issuance of \$1,000,000 serial bonds of the County for generic open space and farmland purposes, and Resolution 208206, a subsequent Bond Resolution, authorized the issuance of \$1,600,000 serial bonds of the County for specific open space and farmland protection purposes/projects and reallocated funds authorized by Resolution 206246, for generic open space and farmland purposes to specific projects, and

WHEREAS, as a result of reductions in the scope and costs of those specific projects, funds are available for reallocation to partially fund the purchase of an agricultural conservation easement on the Greig Family Farm which is a farmland protection project in accord with the objectives of those Bond Resolutions and the Manageable Growth/Open Space And Farmland Protection Matching Grant Program, and now therefore be it

RESOLVED, that the County Executive is hereby authorized to execute the attached Grant and Monitoring Agreements, 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/Open Space Farmland Protection Matching Grant Program to complete the acquisition contemplated hereunder including changes, within appropriations, to the documents as necessary; and be it further

RESOLVED, that \$220,000 of the funds allocated by Resolution 208206 to specific open space and farmland purposes, which due to reductions in the scope and costs of those projects are now available in Capital Project H0371, are reallocated to partially fund the purchase of an agricultural conservation easement on the Greig Family Farm.

CA-240-12
ADR/kvh/R-0909
Greig Farm
12/4/12

Fiscal Impact: See attached statement

STATE OF NEW YORK
COUNTY OF DUTCHESS

ss:

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 6th day of December 2012, 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 6th day of December 2012.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

GRANT AGREEMENT

THIS AGREEMENT, made this ___ day of _____, 2012, by and between the **COUNTY OF DUTCHESS**, a municipal corporation with offices at 22 Market Street, Poughkeepsie, New York 12601 (hereinafter referred to as the “County”), the **TOWN OF RED HOOK**, a municipal corporation with offices at 7340 South Broadway, Red Hook, New York 12571 (the “Town”), and **SCENIC HUDSON LAND TRUST, INC.**, a not-for-profit corporation, with offices at One Civic Center Plaza, Suite 200, Poughkeepsie, New York 12601, 7015 Route 9, Rhinebeck, Dutchess County, New York 12571 (hereinafter referred to as the “Scenic Hudson”); and **DUTCHESS LAND CONSERVANCY, INC.**, a not-for-profit corporation, with offices at 2908 Route 44, Millbrook, New York 12545 (hereinafter referred to as the “Conservancy”).

WITNESSETH:

WHEREAS, Scenic Hudson has or will shortly enter into a contract to purchase an agricultural conservation easement of approximately 159.92± acres on the Greig Family Farm, located at Rockefeller Lane in the Town of Red Hook, Dutchess County, New York, Tax Map Grid Numbers 6374-00-677518, 854567, 760494, and 640370, and

WHEREAS, the County will contribute, as a matching share grant, an amount not to exceed \$220,000.00, the Town shall contribute \$242,639.00, the USDA Farm and Ranchland Protection Program (FRPP) shall contribute \$485,277.00, and the Scenic Hudson Land Trust and Dutchess land Conservancy additional funds and “in-kind” services in the approximate amount of \$55,396.00 towards the purchase of the Agricultural Conservation Easement on the Greig Family Farm, and

WHEREAS, as part of the grant award process, Scenic Hudson shall cause an Agricultural Conservation Easement to be conveyed to the Conservancy, and the Conservancy shall accept the conveyance of said Agricultural Conservation Easement, and

WHEREAS, that conservation easement shall provide, among other things, that the FRPP, County and Town shall have third party enforcement rights and the County shall share proportionately in the proceeds available, in the event the Agricultural Conservation Easement is ever extinguished, and

WHEREAS, the Conservancy in its role as a conservation organization has agreed to hold the conservation easement on the Property in conjunction with United States of America acting by and through the United States Department of Agriculture (“USDA”), Natural Resources Conservation Services (“NRCS”) on behalf of the Commodity Credit corporation as its interest appears, and will monitor and enforce it to preserve the agricultural values on the Property as necessary, and

WHEREAS, the Town of Red Hook is a municipal corporation within the meaning of Article 49, Title 3, of the Environmental Conservation Law of the State of New York, and is qualified to acquire Conservation Easements, and to acquire third party enforcements rights for this Conservation Easement, and wants to contribute grant funds towards acquisition of this Conservation Easement, and

WHEREAS, the Conservancy is a not-for-profit conservation organization within the meaning of Article 49, Title 3, of the Environmental Conservation Law of the State of New York, and is qualified to acquire this Conservation Easement, and wants to acquire this Conservation Easement, providing grant funds are available, now, therefore, the parties agree as follows:

1. **CONTRACT FOR PROPERTY:** Scenic Hudson has or will promptly, after the execution of this agreement, enter into a contract with the present Owners of Greig Family Farm located at Rockefeller Lane in the Town of Red Hook, Dutchess County, New York, Tax Map Grid Numbers 6374-00-677518, 854567, 760494, and 640370, to purchase an Agricultural Conservation Easement, consisting of approximately 159.92± acres. The purchase price for the Conservation Easement, including eligible acquisition costs, shall be approximately \$1,003,312.00. The Conservation Easement shall be conveyed to the Conservancy.

2. **ACQUISITION OF CONSERVATION EASEMENT.** The Conservancy shall accept a conveyance from the Owners of a conservation easement for the Property, substantially as set forth on **Exhibit "A"** attached hereto; provided, however, the Conservation easement shall be revised to include a third party enforcement right for the County and the right to share in its proportionate share of the proceeds which become available upon extinguishment of the easement if ever. The Conservancy shall obtain title insurance for that Agricultural Conservation Easement, which shall provide coverage for its interests and for those of the County and Town, as they may appear in that easement, at no cost to the County or Town except as provided in *Section 3*. The Conservancy shall have an obligation to monitor and enforce the Agricultural Conservation Easement. The Property to be subject to the conservation easement is shown on a survey completed by ____, Licensed Land Surveyor dated ____.

3. **PAYMENTS.** The development rights for the Property, which consists of approximately 159.92 acres, are appraised at \$970,554.00 or approximately \$6,069.00 per acre. The purchase price for the Conservation Easement for those development rights shall be \$970,554.00. The exact amount to be determined at closing. At the closing, subject to the contingencies set forth in Section "5" below, the parties anticipate the USDA shall pay the Owner \$485,277.00, the County shall pay the Owner up to \$220,000.00, the Town of Red Hook shall pay to the Owner \$242,639.00, and Scenic Hudson shall pay the Owner \$22,638.00. Related closing and administrative costs shall be paid by the Town, Scenic Hudson and the Conservancy.

4. **APPRAISAL.** The Real Estate Appraisal Report prepared by James S. Waterhouse, ARA, dated August 7, 2012, values the conservation easement at \$970,554.48, or \$6,069.00 per acre. The intended user of the Appraisal Report is Scenic Hudson, however the County shall be added as an intended user of the Report.

5. **CLOSING.** The closing of the Agricultural Conservation Easement shall take place at the Dutchess County Office Building, County Attorney's Office, 22 Market Street, 5th Floor, Poughkeepsie, New York 12601, or such other place as the parties otherwise agree at such time as the parties mutually agree, promptly after funds are made available or otherwise confirmed therefore from the Dutchess County Partnership for Manageable Growth/Open Space and Farmland Protection matching Grant Program, the USDA, the County, the Town, Scenic Hudson and the Conservancy.

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

a. Approval of the proposed Agricultural Conservation Easement (Exhibit “A”) and related closing documents by the Dutchess County Partnership For Manageable Growth/Open Space and Farmland Protection Matching Grant Program.

b. Conveyance of title for the conservation easement, satisfactory to the Dutchess County Partnership For Manageable Growth/Open Space and Farmland Protection Matching Grant Program subject only to incidental licenses and/or easements and utility company rights, licenses and/or easements to maintain poles, lines, wires and other installations presently servicing the Property, providing none of the above, in the judgment of any of the parties hereto, significantly impede the purposes of the Agricultural Conservation Easement or significantly reduce its value.

c. The Property shall be conveyed, free of all mortgages and monetary liens or encumbrances of any nature whatsoever, or they will be subordinated to the Agricultural Conservation Easement to the satisfaction of the Dutchess County Partnership For Manageable Growth/Open Space and Farmland Protection Matching Grant Program, the Town, Scenic Hudson and the Conservancy.

d. Receipt of a survey of the entire Property, (approximately 159.92 acres) certified to the Town, the County, Scenic Hudson and the Conservancy, and paid for by the Town, Scenic Hudson and the Conservancy at no cost to the County except as provided in Section 3.

e. Nothing set forth above shall be deemed to compel the Town, Scenic Hudson or the Conservancy to close on this Conservation Easement if in their judgment the proposed title is unsatisfactory.

f. Conditions precedent to the obligation of the County and Town to provide grants funds are:

i. The Farmland and Ranchland Protection Program executes a grant by and between Scenic Hudson and the USADA NRCS/FRPP by which the USDA FRPP agrees to provide \$485,277.00 towards acquisition costs for the conservation easement which permits conveyance of the conservation easement (Exhibit “A”) to the Conservancy; and

ii. Payment of the \$485,277.00 by USDA FRPP to the Owner or as directed by the Owner for conveyance of the conservation easement (Exhibit “A” – Section 2); and

iii. Payment by both the County (up to \$220,000.00) and Town (\$242,639.00) of their grants.

7. **CANCELLATION.** If the contingencies set forth in Section 5 above are not satisfied, any of the parties may cancel this Agreement on written notice to the others, and no party will have any claim or cause of action against the other parties arising out of this Agreement.

8. **OWNERS’ REPRESENTATIONS.** The option to purchase between Scenic Hudson and the Owner shall contain the representations set forth below:

a. The Owner represents that it has, and will have at the closing, the power, and if applicable, corporate authorization to convey the Agricultural Conservation Easement to the Conservancy and with third party enforcement rights to the County and Town with the right of the Town and County to share proportionately in the proceeds available in the event the Agricultural

Conservation Easement is ever extinguished, and that the Owner is not aware of any actions or proceedings which affect the Owners' title to the Property and that there are not any uncured notices which have been served upon the Owner by any governmental agency, notifying the Owner of any violations of laws, ordinances or regulations which would affect the Property, or actual impending mechanics liens against the Property.

- b. The Owner has not entered into, nor does there exist any, license, lease, option, right of first refusal or other agreement, which affects title to the Property.
- c. The Owner has 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 Owner or the County under any Federal, State or local environmental laws).
- d. Should any of the above representations or warranties cease to be true at any time prior to the closing, the Owner shall immediately so advise the Town and the County, in writing. Except as so far as the Owner has advised the parties 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.

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

10. **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 affecting the purpose of this Agreement and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

11. **TERMINATION.** If the parties have not successfully closed this matter by December, 2013, this Agreement shall be deemed terminated and no party shall have any claim or cause of action for damages against the other parties arising out of the 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

TOWN OF RED HOOK

By: _____
Sue T. Crane, Supervisor

SCENIC HUDSON LAND TRUST, INC.
INC.

DUTCHESS LAND CONSERVANCY,

By: _____

By: _____

STATE OF NEW YORK)
) SS:
COUNTY OF DUTCHESS)

On this day of , 20__ , before me, the undersigned, a Notary Public in and for said State, personally appeared Marcus J. Molinaro, 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/her capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) SS:
COUNTY OF DUTCHESS)

On this day of , 20__ before me, the undersigned, a Notary Public in and for said State, personally appeared **Sue T. Crane** 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/her capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT "A" TO GRANT AGREEMENT
CONSERVATION EASEMENT DEED

EXHIBIT "A"

**DEED OF CONSERVATION EASEMENT
(INCLUDING RIGHT OF FIRST REFUSAL)**

THIS CONSERVATION EASEMENT is made and entered into this **[INSERT DAY]** day of **[INSERT MONTH]**, 2012 by and between

JAMES A. GREIG and CORINA GREIG

(“Grantor”), with an address of 4705 Redding Ln, Bowie, MD 20715; and

DUTCHESS LAND CONSERVANCY, INC.

(“Grantee”), a New York not-for-profit corporation having its principal place of business at 4289 Route 82, Millbrook, New York 12545;

and the **UNITED STATES OF AMERICA** (“United States”), acting by and through the United States Department of Agriculture (“USDA”), Natural Resources Conservation Service (“NRCS”) on behalf of the Commodity Credit Corporation as its interest appears herein for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space.

The Grantee and the Grantor are hereinafter referred to as the “Parties.”

WHEREAS:

- A. Grantor is the sole owner in fee simple of certain real property ("Property") consisting of 159.92± acres of land, and improvements thereon located in the Town of Red Hook, Dutchess County, New York, as more particularly described on the attached Exhibit A (“Legal Description of Property”) and shown on the map attached as Exhibit B (“Conservation Easement Map”).
- B. The Property possesses the following conservation values and public benefits:
- (i) Approximately 145 acres of prime farmland, as defined by the U.S. Department of Agriculture ("USDA") and five (5) acres of prime farmland if drained, as defined by the USDA;
 - (ii) Approximately 2,000 feet of frontage on the Saw Kill (H-158), tributary to the Hudson River and a Class B stream as classified by the New York State Department of Environmental Conservation according to its best use for swimming; 10 ± acres of PUBHh; 9 ± acres of PFO1E and 1 ± acre of PEM1E wetlands as designated by the National Wetland Inventory; and
 - (iii) Approximately 2,700 feet fronting the south side of Rockefeller Lane, the Property being visible along this public roadway.
- C. Whereas, under the authority of the Farm and Ranch Lands Protection Program, (16 U.S.C. Sections 3838h and 3838i) the United States Department of Agriculture’s Natural Resources Conservation Service (hereinafter the “United States”) has provided on behalf of the Commodity Credit Corporation \$**[INSERT AMOUNT OF FRPP CONTRIBUTION]** to the Local Grantee for the acquisition of the Conservation Easement, entitling the United States to the rights identified herein.

- D. Article 14 of the New York State Constitution states that “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. 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”.
- F. The Property is located within Dutchess County Agricultural District # 20, 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”.
- G. 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 rural uses 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 5.15 encourages municipalities to preserve their 100-year floodplains by prohibiting uses that either interfere with the flood-carrying functions of the floodplain, create safety hazards, or increase the risk of property damage. Policy 5.16 supports measures to preserve the county’s prime and important agricultural soils. Policy 5.20 advocates the preservation of the county’s scenic resources and significant natural areas. 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.
- H. The Town of Red Hook, Villages of Red Hook and Tivoli Open Space Plan (the “Plan”) dated November 9, 2000, states that the “[p]rotection of farmland and other ecological, recreational, and scenic resources assures continuance of community character.” The Plan also states that “[c]onservation easements are a flexible tool that can protect open space and provide a stable and affordable land base for farming. The Plan proposes specific acreage amounts of farmland and other ecological resources that should be protected in the Town. The Conservation Easement on the Protected Property will further the goals set forth in the Plan.

The Report of the Town of Red Hook Master Plan Committee, October 1990 (the "Master Plan"), includes in its statement of land use and development policy the following goals and objectives: the maintenance and protection of the rural character and the scenic resources of the community; the conservation of the community's natural environment, including the protection of its unique natural features and the wise use of its land resources; the continuation and diversification of agricultural activities; and, the provision of adequate long-term supplies of clean water and the environmentally sound disposal of sanitary wastes. The Master Plan includes the Protected Property within a "Conservation/Rural Development" land use category and notes that the long-term preservation of agriculture in this area is of fundamental concern and that continued agricultural use should be encouraged due to its contribution to the Town's economy and rural character.

The Town of Red Hook Community Preservation Project Plan: Parcels Identified for Protection, (the "Preservation Plan"), adopted May 26, 2011, ranks parcels comprising the Property as first and second highest on a scale of six in terms of Agriculture and Water Protection Scores.

- I. The Town of Red Hook is a municipal corporation with an address at 7340 South Broadway, Red Hook, New York (the "Town of Red Hook" or "Town") and has the authority pursuant to Section 247 of the New York State General Municipal Law ("GML") and Article 49, Title 3 of the New York State Environmental Conservation Law ("ECL") to acquire conservation easements and to purchase an interest in real property for the purpose of preservation of open space, and is a "qualified organization" within the meanings of Sections 170(b)(1)(A)(v) and 170(h) of the Internal Revenue Code and Treasury Regulation Section 1.170A-14(c). The Town has determined that providing funds for the acquisition of a third party enforcement right in a conservation easement limiting the development rights on the Property is in the best interests of the Town and furthers its desire to preserve open space, protect agricultural lands and water resource areas, and to preserve the rural character of the community. As a condition to the Town of Red Hook's participation, the Town is granted a third-party enforcement right in this Conservation Easement and a right to claim a portion of the monetary value of this Conservation Easement in the event that it is extinguished.
- J. Dutchess County is a municipal corporation with an address at 22 Market St. Poughkeepsie, New York ("Dutchess County" or the "County") and has the authority pursuant to Section 247 of the New York State General Municipal Law ("GML") and Article 49, Title 3 of the New York State Environmental Conservation Law ("ECL") to acquire conservation easements and to purchase an interest in real property for the purpose of preservation of open space, and is a "qualified organization" within the meanings of Sections 170(b)(1)(A)(v) and 170(h) of the Internal Revenue Code and Treasury Regulation Section 1.170A-14(c). Dutchess 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 \$220,000 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 claim a portion of the monetary value of this Conservation Easement in the event that it is extinguished.
;
- K. The 2006 New York State Open Space Conservation Plan states "Farmland protection is a critical component of the State's overall efforts to conserve open space. This land provides fresh produce, scenic open space, vital wildlife habitat, and the economic backbone to many rural communities. ...the preservation of farmland, in the face of rapid development pressures, is critical to the future of the State. ...any reasonably viable

farmland under consideration should be protected, whenever possible, by the purchase of an easement ...to enhance future use of the land for agriculture. The Plan has long recognized the importance of agriculture and how it contributes to the protection of open space in New York State.”

- L. The expanse of farmland found in the Town of Red Hook, within Dutchess County is important to the natural, ecological, cultural, scenic and historical values of the Hudson River Valley.
- M. 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.
- N. 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.
- O. 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.
- P. Grantor and Grantee desire to ensure that the agricultural characteristics of the Property will be protected for the benefit of the public and 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.
- Q. 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.
- R. Funding to purchase a Conservation Easement on the Protected Property has been provided by the NRCS on behalf of the United States, Dutchess County, the Town of Red Hook, and The Scenic Hudson Land Trust, Inc. (“SHLT”). In the event of extinguishment of this Conservation Easement, the funding partners shall share in the proceeds as divided by their acquisition shares as set forth in paragraph 10.8.
- S.

NOW, THEREFORE, Grantor, for and in consideration of \$970,554.00 [INSERT AMOUNT OF CONSIDERATION] 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, including the right to view the Property in its scenic state from the public roadways, as that state exists on the date of this grant or as it may

exist in the future as a result of natural processes and uses consistent with the rights reserved herein by Grantor, which Conservation Easement shall run with and bind the Property in perpetuity. This grant includes a right of first refusal under the terms of Section 12 (“Right of First Refusal”) of this Conservation Easement which assures the continued protection of the Property’s conservation values hereinafter described. 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. PURPOSES.

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 farmland; 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 terms

“Agricultural Structures and Improvements” shall mean normal and customary structures or improvements used for Farm Operations and on-farm production, preparation, and storage for personal, non-commercial purposes or for commercial purposes as defined under Section 301 of the New York State Agriculture and Markets Law, as amended, or any successor statute. Agricultural Structures and Improvements include, but are not limited to, barns, garden sheds, greenhouses, animal run-in or loafing sheds (defined as a building or covered structure that houses, shelters or otherwise confines animals or livestock in a specific location for any period of time), unenclosed feed storage areas, sap-boiling houses, bunker silos, grain drying facilities, pole barns, riding rings, equestrian facilities, and other similar agricultural facilities.

“Environmental Law” or **“Environmental Laws”** means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

“Existing” shall mean in existence as of the date of this Conservation Easement and as shown on Exhibit B;

“Farm Labor Housing” means structures used to house seasonal and/or full-time employees and their family members 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. A

mobile or manufactured home used as the primary residence of a farm owner is not Farm Labor Housing;

“Farm Operation” shall be defined as in the New York State Agriculture and Markets Law § 301 or any successor statute, whether or not such activities are for commercial enterprise, and shall include the storage of materials, such as gasoline and diesel fuel for use in vehicles and equipment which serve the permitted uses of the Property and are properly stored, and the storage of agricultural products and byproducts;

“Farmstead Complex” means the location within the Conservation Easement as described in Exhibit C wherein the Grantor may construct and maintain, repair and replace (a) Residential Dwellings as more fully described in paragraph 6.1.D, (b) Agricultural Structures as defined in paragraph 6.1.B, (c) Fences as more fully described in paragraph 6.1.C, (d) Farm Labor Housing as more fully described in paragraph 6.1.E, (e) Agricultural-related Commercial Activities as more fully described in paragraph 6.1.F.

“Footprint” of a structure shall be that measurement encompassing the enclosed ground floor area, as measured from the exterior, at the point of contact with, or extending/cantilevering above, the ground;

“Grantee” includes the original Grantee and its successors and assigns;

“Grantor” includes the original Grantor, its 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. 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;

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

“Impervious Improvements” are defined as Agricultural Structures and Improvements that do not allow the passage of water to the soil located immediately below. Impervious Improvements do not include permeable surfaces such as gravel roads and parking areas, temporary greenhouses and high tunnels that are open to the soil and are covered for only a portion of the year, or structures whose principal purpose is to responsibly manage manure and manure storage for the Farm Operation;

“Invasive Plant Species” are those 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;

“Residential Dwelling” means dwellings or structures, together with accessory improvements that comprise single-family, two-family, apartments, “in-law” apartments, and guest houses, whether or not the structures are used as the primary residence of a farm owner.

“**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,” Grantee 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, and any guidelines or guidance documents issued by the New York State Department of Agriculture and Markets or any successor agency.

“**Temporary Mass Gathering**” shall be a Large Assembly defined as in the Town of Red Hook General Legislation § 44-2 (“Public Assemblies”) or any successor statute. As of **[INSERT CLOSING DATE]** Large Assembly is defined as “Any assemblage or gathering of more than 1,000 persons on any parcel or parcels of property within the Town, or any assemblage or gathering of more than 500 persons on any parcel or parcels of property within the Town which continues or can be reasonably expected to continue for more than eight consecutive hours. A large assembly does not include an assembly of persons at a location with permanent facilities designed for that specific assembly.”

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 Sections 6 (“Permitted Uses and Activities”), 7 (“Restrictions Applicable to the Property”), and 8 (“Additional Restrictions Applicable to the Resource Protection Area”) herein. 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 AND ACTIVITIES.

The uses and activities 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 Section 8 (“Additional Restrictions Applicable to the Resource Protection Area”), 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 five (5) acres;
- (ii) the Farm Area, which comprises the majority of the Property; and
- (iii) the Resource Protection Area, comprised of the Saw Kill and a 100 horizontal foot buffer extending from each bank of the Saw Kill, portions of a wetland as designated in the National Wetlands Inventory and a 50 horizontal foot buffer, the current location of which is depicted on Exhibit B. If the location or shape of Saw Kill or wetland changes, the buffer will likewise change location or shape in accordance with the description set forth above.

As a condition of receiving funding from the FRPP, and as required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, Grantor's heirs, successors or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a Conservation Plan for highly erodible lands (HEL) in consultation with NRCS and the Grantee and approved by the Conservation District. This Conservation Plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on the date of this Easement. However, the Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS and the Grantee shall each have the right to enter upon the Protected Property, with advance notice to the Grantor, in order to monitor compliance with the Conservation Plan.

In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply, NRCS will inform Grantee of the Grantor's noncompliance. Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, may take appropriate legal action) to secure compliance with the Conservation Plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the Conservation Plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for HEL are revised after the date of this Easement based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

The aggregate Footprint of said Agricultural Structures and Improvements and other Impervious Improvements on the Property (including those located within and outside of the Farmstead Complex) shall not exceed 5% [UPDATE WITH PERCENTAGE APPROVED BY NRCS] of the Property. For purposes of this Easement, 5% [UPDATE WITH PERCENTAGE APPROVED BY NRCS] of the Property is 7.825 acres [UPDATE UPON RECEIPT OF PERCENTAGE APPROVED BY NRCS] (340,857 square feet [UPDATE UPON RECEIPT OF PERCENTAGE APPROVED BY NRCS]) which shall remain constant without regard to the later alterations that may affect the acreage. Such Agricultural Structures and Improvements shall not include excavated foundations.

6.1. Permitted Uses and Activities Within the FARMSTEAD COMPLEX.

Any new structures, including agricultural, residential dwellings and farm labor housing, improvements, enlargements and/or replacements that increase or change the aggregate Footprint of Impervious surface coverage shall require prior notice to the Grantee pursuant to Section 10.11 ("Notices and Requests for Approval") solely to confirm that any proposed new structures, enlargements and/or replacements are located within the boundaries of the Farmstead Complex and that the aggregate footprint area combined with all other existing impervious surface areas do not exceed the allowed total impervious surface limit as specified in Section 6 above ("Permitted Uses and Activities"). 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. Farm Operations, the production of crops, livestock and livestock products, 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. New Agricultural Structures and Improvements may be constructed or placed, within the Farmstead Complex to be used primarily for purposes related to a Farm Operation and for such other agricultural purposes, in accordance with Sound Agricultural Practices, 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. 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. Any such improvements shall be subject to the 5% [UPDATE WITH PERCENTAGE APPROVED BY NRCS] impervious surface limit as specified in Section 6 above (“Permitted Uses and Activities”).

6.1.C. Fences. Existing fences may be repaired, removed and replaced, and new fences may be built in the Farmstead Complex for purposes of safety, reasonable and customary management of livestock and wildlife and to prevent trespassing on the Property and as may be otherwise required by law.

6.1.D. Residential Dwellings. Residential Dwellings, together with appurtenances and non-habitable accessory structures that are usual and customary to permitted residential use on a farm may be constructed [anywhere in the Farmstead Complex](#), and may be repaired, enlarged, removed or replaced within the Farmstead Complex. 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. Appropriately-scaled photovoltaic panels may be installed anywhere in 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. Any such improvements shall be subject to the 5% [UPDATE WITH PERCENTAGE APPROVED BY NRCS] impervious surface limit as specified in Section 6 above (“Permitted Uses and Activities”).

6.1.E. Farm Labor Housing. 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 within the Farmstead Complex, subject to applicable laws. Any such improvements shall be subject to the 5% [UPDATE WITH PERCENTAGE APPROVED BY NRCS] impervious surface limit as specified in Section 6 above (“Permitted Uses and Activities”).

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. Any such improvements shall be subject to the 5% [UPDATE WITH APPROVED % BY NRCS]

impervious surface limit as specified in Section 6 above (“Permitted Uses and Activities”).

6.1.G. Customary Home Occupations, Cottage Industries, Other De Minimis Commercial Activities, and Non-commercial Activities. Customary home occupations, cottage industries, other de minimis commercial activities and non-commercial activities may be established and carried out within the Farmstead Complex, provided such activities are compatible with the agricultural use of the Property and the rural character of the Property and subordinate to the agricultural and residential use of the Property and otherwise compatible with the purpose and intent of this Conservation Easement. Examples of customary home occupations, cottage industries, other de minimis commercial activities and non-commercial activities include, without limitation, professional offices within a Residential Dwelling, bed and breakfasts, crafts production, tag sales, photo shoots, fundraising events, firewood distribution, cross-country skiing, horseback riding, camping, hunting, home schooling, day care, farm tours, agricultural classes, nature interpretation, and other educational programs. Enterprises which market petroleum or chemical products are prohibited. 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 commercial recreational improvements that interfere with the purposes of this Conservation Easement, significantly disturb the farm soils, or otherwise adversely affect agricultural uses on a continuing basis be allowed on the Property. Existing structures and improvements used for customary home occupations, cottage industries and de minimus commercial activities and non-commercial activities, as indicated in Exhibit B, may be repaired or replaced within the Farmstead Complex. New non-habitable structures and improvements for such may be located within the Farmstead Complex. Any such improvements shall be subject to the 5% **[UPDATE WITH PERCENTAGE APPROVED BY NRCS]** impervious surface limit as specified in Section 6 above (“Permitted Uses and Activities”).

6.1.H. 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.I. Tree cutting. 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 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.

6.1.J. Utilities, Driveways, Roadways. The construction and repair of utilities and roads for residential driveways, barnyards, farm markets, farm roads, or other improvements necessary to provide access to, and parking for, permitted Agricultural Structures and Improvements, or to conduct other activities permitted by this Conservation Easement are permitted, provided to the greatest extent practicable, impact to the prime and statewide important farmland is minimized. No other portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material. Any such improvements shall be subject to the 5% **[UPDATE WITH PERCENTAGE APPROVED BY NRCS]** impervious surface limit as specified in Section 6 above (“Permitted Uses and Activities”).

6.1.K. Subdivision. With the exception of minor lot line adjustments to correct surveying deficiencies or inaccuracies, under no circumstances shall the land within the Farm Area including the Farmstead Complex be subdivided into separate parcels.

For all such minor lot line adjustments to correct surveying deficiencies or inaccuracies Grantor shall give Grantee thirty (30) days advance notice prior to recording said lot line adjustment pursuant to Section 10.11 (“Notices and Requests for Approval”).

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. Farm Operations, the production of crops, livestock and livestock products, which includes, but is not limited to, the right to establish, reestablish, maintain, and use cultivated fields, orchards, pastures and woodlands, are 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 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, Grantor shall deliver written notice to the Grantee 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. With the advance, written approval of the Grantee, pursuant to Section 10.2 (“Approvals in Writing”) herein, new Agricultural Structures and Improvements and other Impervious Improvements to be used primarily for purposes related to the Farm Operation (except for the processing and packaging of farm products) for (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. Any such improvements shall be subject to the 5% [UPDATE WITH PERCENTAGE APPROVED BY NRCS] impervious surface limit as specified in Section 6 above (“Permitted Uses and Activities”).

Grantee shall give written approval for such permission, provided Grantor has supplied sufficient information for Grantee to make such a determination unless Grantee determines that the proposed building or structure could otherwise be located within the Farmstead Complex or would significantly disturb the farm soils or otherwise adversely affect agricultural uses on a continuing basis on the Property. Said approved structures may be maintained and repaired without Grantee’s written approval.

High tunnels (temporary structures which are movable, don’t disturb the soil profile, and do not have floors or foundations of any kind), are permitted in the Farm Area without permission of the Grantee. Said high tunnels shall not be subject to the 5% [UPDATE WITH PERCENTAGE APPROVED BY NRCS] impervious surface limit as specified in above but shall not exceed 20% coverage of the total area of the Property.

6.2.D. Fences. Existing fences may be repaired, removed and replaced, and new fences may be built in the Farm Area for purposes of safety, reasonable and customary management of livestock and wildlife and to prevent trespassing on the Property and as may be otherwise required by law.

6.2.E. Farm Labor Housing. With the prior written approval of Grantee, pursuant to Section 10.2 (“Approvals in Writing”) herein, Grantor may construct or place trailer homes to be used solely for Farm Labor Housing within the Farm Area. Grantee shall give written approval for such permission, provided Grantor has supplied sufficient information for Grantee to make such a determination unless Grantee determines that the proposed building or structure could otherwise be located within the Farmstead Complex or would significantly disturb the farm soils or otherwise adversely affect agricultural uses on a continuing basis on the Property. Said structures may be maintained and repaired without Grantee’s written approval. Said structures shall not exceed 1,000 square feet in size. Said structures shall be non-permanent and mobile in nature, and shall not be constructed on a concrete slab or footings, or with excavated foundations. Any such improvements shall be subject to the 5% [UPDATE WITH PERCENTAGE APPROVED BY NRCS] impervious surface limit as specified in Section 6 above (“Permitted Uses and Activities”).

6.2.F. Residential Dwellings. No Residential Dwellings may be constructed within the Farm Area.

6.2.G. De Minimis Commercial and Non-commercial Activities. De minimis commercial and non-commercial activities may be established and carried out within the Farm Area, provided such activities are compatible with the agricultural use of the Property and the rural character of the Property and subordinate to the agricultural and residential use of the Property and otherwise compatible with the purpose and intent of this Conservation Easement. Examples of de minimis commercial activities and non-commercial activities include, without limitation, photo shoots, fundraising events, firewood distribution, cross-country skiing, horseback riding, camping, hunting, home schooling, day care, farm tours, agricultural classes, nature interpretation, and other educational programs. Enterprises which market petroleum or chemical products are prohibited. 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 commercial 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.

The Parties agree the Existing use of a portion of the property by the Red Hook Soccer Club (the “Soccer Club”) is compatible with the agricultural use of the Property and the rural character of the Property and subordinate to the agricultural use of the Property. Said use is compatible with the purpose and intent of this Conservation Easement. Therefore, subject to the restrictions of this Section 6 and Section 7 (“Restrictions Applicable to the Property”), the Existing athletic fields may be maintained at their Existing location for continued use as soccer playing fields by the Soccer Club provided such activities continue to be compatible with the agricultural use of the Property and the rural character of the Property and subordinate to the agricultural and residential use of the Property and otherwise compatible with the purpose and intent of this Conservation Easement. All management activities on this portion of the property – including but not limited to turf management, nutrient management, stormwater management, subsurface water use and management, pest control, and management of slopes and grades – shall be in conformance with the Conservation Plan for the Farm as indicated above and subject to obtaining any permits or approvals required by local, state or federal law or regulation, copies of which shall be provided to the Grantee prior to commencing any such action. The Existing shed maintained and used by the Soccer

Club may be maintained, repaired, removed, or replaced. Fencing may be established in conjunction with this use only with the prior consent of the Grantee in accordance with Section 10.2 of this Conservation Easement. Such fencing shall be agricultural in appearance and character, and shall not interfere with the ongoing agricultural use of the property. If at any time the use of this portion of the Property by the Soccer Club shall cease, so shall this right and the lands shall be immediately made available for agricultural use.

Temporary mass gatherings may be permitted provided such is (a) approved in advance by Grantee, which approval shall be at the sole and absolute discretion of Grantee and is (b) otherwise consistent with the purposes of this Conservation Easement and the uses permitted hereby.

With the prior written approval of Grantee, pursuant to Section 10.2 (“Approvals in Writing”) herein, new temporary non-habitable de minimis commercial and non-commercial structures and improvements may be constructed or placed within the Farm Area. Any such improvements shall be subject to the 5% **[UPDATE WITH PERCENTAGE APPROVED BY NRCS]** impervious surface limit as specified in Section 6 above (“Permitted Uses and Activities”). Under no circumstances shall the land on which these structures stand be subdivided into separate or individual lots.

6.2.H. 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.I. Stream crossings. Bridges, culverts or other means of crossing wet areas may be constructed or placed subject to obtaining necessary permits from the New York State Department of Environmental Conservation, or such other governmental authorities as is appropriate.

6.2.J. Utilities, Driveways, Roadways. The construction and repair of utilities (including septic systems) and roads necessary to provide access to permitted structures or improvements within the Farmstead Complexes, or to conduct other activities permitted by this Conservation Easement are permitted, provided to the greatest extent practicable, impact to the prime and statewide important farmland is minimized. Said roads 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”) and Section 8 (“Additional Restrictions Applicable to the Resource Protection Area”), 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 in the Resource Protection Area for purposes of safety,

reasonable and customary management of livestock and wildlife and to prevent trespassing on the Property and as may be otherwise required by law.

6.3.B. Open Areas. Existing open areas, pasture and otherwise, within the Resource Protection Area may continue to be used as pasture and may be mowed.

6.3.C. Structures and Improvements. With the prior written approval of Grantee, pursuant to Section 10.2 (“Approvals in Writing”) herein, small structures or improvements whose Footprint shall not exceed 200 square feet for passive recreation and wildlife observation by the public may be constructed within the Resource Protection Area. With the prior written approval of Grantee, pursuant to Section 10.2 (“Approvals in Writing”) herein, and at the Grantee’s sole discretion, improvements designed to enhance [the](#) habitat and ecological diversity of the Property and the surrounding landscape may be permitted.

6.3.D. 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 and to maintain Existing paths, utility lines, roads, trails, driveways, and open spaces. With the prior written approval of Grantee, pursuant to Section 10.2 (“Approvals in Writing”) herein, Invasive Plant Species may be removed or trimmed. No such prior written approval will be required for the removal of Invasive Plant Species less than six inches diameter breast height (DBH) within an area equal to or less than 400 square feet within any twelve month period. 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.

6.3.E. Water Resources. Existing culverts, dams and drainage facilities may be maintained, repaired and replaced within the Resource Protection Area, but only if such work is: (a) approved in advance by Grantee pursuant to Section 10.2 (“Approvals in Writing”) herein, which approval shall not be unreasonably withheld provided that the proposal meets the requirements of this Conservation Easement; and (b) otherwise consistent with the purposes of this Conservation Easement and the uses permitted hereby.

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. There shall be no surface or subsurface exploration for, or development, storage and extraction of, minerals and hydrocarbons or excavation and removal of topsoil, sand, gravel, or stone, in any manner, except as may be reasonably necessary and incidental to carrying out any improvements or use permitted on the Property by this Conservation Easement and as otherwise provided herein. Notwithstanding the previous prohibitions, no quarry, gravel pit, mining or drilling, or other mining or drilling activities prohibited under applicable provisions of Section 170(h) of the Internal Revenue Code are permitted on or under the Property. This shall not prevent the installation of local and

residential utility lines, wells, septic systems or other utilities as reasonably necessary to serve the permitted structures.

7.4. Reaffirmation. Except as otherwise provided in this Conservation easement 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, or impairs the Property’s conservation values.

7.5. 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.

7.6. 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.

7.7. Waste Management. The dumping, land filling, burial, application, injection, or accumulation of any kind of waste including but not limited to garbage, trash, hazardous materials, abandoned vehicles, appliances, or debris on the Property is prohibited. However, this shall not prevent (i) the storage, compost, application, or injection of agriculturally-related waste or biodegradable material; (ii) appropriate routine storage of garbage and wastes from permitted uses of the Property pending transport for proper disposal; (iii) the storage of old farm equipment used for parts, and (iv) 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 and any applicable local, state, and federal laws and regulations. Notwithstanding the foregoing, the storage and treatment of sewage associated with buildings permitted on the Property, is permitted by this Conservation Easement.

Grantor and Grantee acknowledge the Existing farm dumps located in the Farm Area, near the Resource Protection Area and in the Farmstead Complex as depicted on Exhibit B and documented in the Baseline Documentation Report. Any additional dumping, land filling, burial, application, injection, or accumulation of any kind of garbage, trash or debris at this location on the Property is prohibited.

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. The Existing farm road depicted on Exhibit B and located near the boundary of the Resource Protection Area can may be maintained.

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, except where permitted in Section 6.3.B. (“Open Areas”) and where in compliance with the Conservation Plan.

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

8.5. Tree Cutting. Except as expressly permitted in Section 6.3.D (“Tree Cutting”) herein, the removal or trimming of trees within the Resource Protection Area is prohibited.

8.6. Waste Management. The dumping, land filling, burial, application, injection, or accumulation of any kind of waste including but not limited to garbage, trash, hazardous materials, abandoned vehicles, appliances, or debris in the Resource Protection Area is prohibited.

9. SUBDIVISION.

The Protected Property is currently comprised of four separately deeded parcels owned by Grantor. Except as provided herein for lot line adjustments, the Property may not be divided, partitioned, subdivided or conveyed except in its current configuration of the entire 156.5 acres. Lot line adjustments, which do not create additional building lots, are permitted with the advance written permission of the Grantee if the portion of the Protected Property to be conveyed will be acquired by a qualified, working farmer as determined by the Grantee. The deed(s) of conveyance of any such parcels shall contain a metes and bounds description of the parcel(s) prepared by a licensed professional land surveyor at Grantor’s sole cost, which description shall be provided to the Grantee prior to the conveyance of the parcel(s).

10. CONSERVATION EASEMENT MANAGEMENT, ADMINISTRATION AND CONTINUITY.

10.1 Amendment. This Conservation Easement Deed may be amended only if in the sole and exclusive judgment of the Grantee, the United States, the County, and the Town such amendment furthers or is not inconsistent with the purposes of this Conservation Easement Deed. Any such amendment must be mutually agreed upon by the Grantee, the Grantor, the United States, the County, and the Town, signed and duly recorded by the parties and comply with applicable laws and regulations. The Grantee must provide to NRCS timely notice in writing of the proposed amendment prior to signing and recordation. An amendment may be agreed upon if it (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 2 (“Purposes”) herein; (iii) does not affect the perpetual nature of this Conservation Easement; (iv) complies with the Conservation Law; (v) does not have a negative impact on the fair market value of the restrictions contained in this Conservation Easement, and (vi) does not constitute impermissible inurement or impermissible private benefit under Section 501(c)(3) and other applicable provisions of the Internal Revenue Code. Any such amendment that does not comply with the Conservation Law, Section 501(c)(3) 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.

10.2 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 (i) consistent with the purposes of this Conservation Easement; (ii) conforms with the permitted uses and restrictions of the relevant area and the other terms and conditions of this Conservation Easement, (iii) would not impair significant conservation values, (iv) would not be unnecessarily located on prime agricultural farmland and/or agricultural farmland of state-wide importance; and (v) 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 10.11 (“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

10.3 Continuity. Grantee agrees that it will assign this Conservation Easement first to SHLT. If SHLT declines to accept the Grantee’s interest, such interest shall be transferred or assigned only to an assignee that: (i) is a not-for-profit conservation organization (or, with the consent of the Landowner, a public body) within the meaning of Article 49, Title 3 of the Conservation Law that is qualified to be the grantee of tax-deductible conservation easements pursuant to Section 170(h) of the Internal Revenue Code; and (ii) agrees to continue to carry out and enforce 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 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.

10.4 Acts Beyond the Grantor's Control. The Grantor and the Grantee shall not be under any duty to prevent, and shall not be liable for, any violations of this Conservation Easement caused by natural processes, by disasters, by force majeure, including, without limitation, fire, flood, storm and earth movement, or by any prudent action taken by the Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes, or by third parties whose presence on the Property has not been authorized by the Grantor or the Grantee. The Grantee may enter the Property to remedy any third-party violation that has not been remedied by the Grantor and may pursue all available legal and equitable remedies against such third-party violator, with reasonable prior notice to the Grantor and at the Grantee’s sole cost and expense.

10.5 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, Grantee shall notify Grantor and may notify a party in violation or threatening the violation, if such party is not Grantor. At Grantee’s discretion, Grantee may require Grantor to identify and notify any third party causing or threatening a violation of this Conservation Easement.

Upon notification of a violation or threatened violation, Grantor shall act to promptly cure the violation by: (a) ceasing the activity; (b) stabilizing and restoring the Property to the condition before the violation; or (c) taking such other action, including but not

limited to action against a third party violator, as directed by Grantee in Grantee's sole discretion; or in the case of a threatened violation, (d) 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, including, without limitation, the right to restore the Property to a condition in compliance with this Conservation Easement, and the owner(s) shall reimburse Grantee for all reasonable expenses, including attorney's fees, incurred to enforce this Conservation Easement and cure the violation. Failure to discover a violation or enforce any restriction or covenant herein contained shall in no event be deemed a waiver or estoppel of a right to do so thereafter as to the same violation, or as to one occurring prior to or subsequent thereto.

10.3.1 Right of Enforcement of United States . Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee fails to enforce any of the terms of this Easement, as determined in the sole discretion of the Secretary.

10.3.2 Right of Enforcement of Dutchess County and the Town of Red Hook. In recognition of the fact that funds are being provided by both Dutchess County and the Town of Red Hook for a portion of the cost of the purchase of the Easement over the Protected Property, the County and the Town of Red Hook are each hereby granted third party enforcement rights to enforce the terms of this Easement against any and all of the owners of the Protected Property, or any part thereof, at law or in equity, without limitation, pursuant to the ECL. In the event that the County or the Town believe that the Grantee has failed to carry out their monitoring responsibility, or enforce any of the terms of this Easement, the County or the Town shall provide notice to the Grantee. The Grantee shall have 45 days to respond to said notice either by carrying out the monitoring or enforcement needs identified by the County or the Town or by explaining the Grantee's monitoring and enforcement activities and/or interpretation of the Easement. If the County or the Town still believe that a violation has occurred without enforcement or that monitoring needs are still unmet, the County or the Town, together or individually, may, upon 10 days prior notice to Grantee, Grantor, United States, and the County or Town in the manner provided in Section 6.15, proceed to monitor or inspect the Protected Property and may enforce the terms of the Easement against the Grantor at law or in equity by action in a court of competent jurisdiction. Neither the 45-day nor the 10-day notification requirements shall apply when their application may result in significant harm to the conservation purposes of this Easement. In any case where a court finds that a violation has occurred, the Grantor shall reimburse the County or the Town for all its expenses incurred in stopping and correcting the violation, including but not limited to, reasonable attorneys' fees. The failure of the County or the Town to discover a violation or to take immediate legal action shall not bar the County or the Town 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. The Grantee will provide to the County and the Town a copy of any notice given to Grantor of any default or a notice of intent to enforce this Easement. The warranties and representations made in this Easement shall be deemed to run to

and benefit the County and the Town as holders of a third party enforcement right. Any transfer or assignment of the rights of Grantee other than to SHLT and any amendment of this Easement shall be subject to the consent of the County and the Town. The County and the Town have no other obligations under this Easement with respect to the Protected Property.

10.6 Contingent Rights of the United States. In the event the Grantee fails to enforce the terms of this Conservation Easement Deed, as determined in the sole discretion of the Secretary of the United States Department of Agriculture (“Secretary”), the Secretary, his or her successors and/or assigns have the right to enforce the terms and conditions of this Conservation Easement Deed through any and all authorities available under Federal and/or State law. Further, in the event Grantee attempts to terminate, transfer, or otherwise divest itself of rights, title, or interest in this Conservation Easement Deed or extinguish the Conservation Easement without prior written consent of the Secretary and payment of consideration as provided herein, then, at the option of the Secretary, all rights, title, and/or interest in this Conservation Easement become vested in the United States of America.

10.7 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, maps and the Conservation Easement Map, Exhibit B, 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, and Grantor and Grantee have each executed the Certification And Acknowledgement Of Baseline Documentation, a copy of which is attached hereto as Exhibit D and incorporated herein by reference. The Grantee may use the Baseline Documentation Report in enforcing provisions of this Conservation Easement Deed, but is not limited to the use of the Baseline Documentation report to show a change of conditions. Grantee’s responsibilities include but are not limited to:

- Maintaining the Baseline Documentation Report and annually monitoring the Protected Property in accordance with applicable policies and guidelines, such as the Standards and Practices of the Land Trust Alliance.
- Ensuring the active farm operations are in compliance with the Conservation Plan for the Protected Property.
- Investigating potential violations of this Conservation Easement Deed, informing NRCS or successor agency of any violations, taking appropriate enforcement action, and providing an annual monitoring report to NRCS or successor agency, including any follow-up or actions needed to maintain compliance with the terms and conditions of this Conservation Easement Deed. The Grantee must resolve violations within sixty (60) days of their discovery in accordance with 7 CFR Section 1491.30. Failure to cure the violation may result in enforcement of the terms and conditions of this Conservation Easement Deed by the United States.

10.8 Extinguishment. This Conservation Easement constitutes a real property interest immediately vesting in the Grantee and the United States of America and may be extinguished only with the approval of the Grantee and the United States. Grantee and the United States stipulate to have a fair market value of sixty-two (62%), the “Proportionate Share” of the fair market value of the Protected Property unencumbered by this Conservation Easement. The Proportionate Share has been determined at the time of conveyance of this Conservation Easement by dividing the fair market value of this

Conservation Easement (\$6,069 per acre) by the fair market value of the Protected Property without this Conservation Easement (\$9,769 per acre). The Proportionate Share shall remain constant overtime.

If this Conservation Easement is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse the Grantee an amount equal to the Proportionate Share of the fair market value of the Protected Property unencumbered by this Conservation Easement. The fair market value of the Protected Property will be determined at the time this Conservation Easement is terminated, extinguished, or condemned by a complete summary appraisal. The fair market value of the Protected Property may not include any increase in value after the date of this Conservation Easement Deed attributable to improvements.

In such event, Grantee shall return 50% of those proceeds (of the Proportionate Share) to the United States, which represents the United States' share of the cost of the Easement. Further, Grantee will return 25% of those proceeds (of the Proportionate Share) to the Town, which represents the Town's share of the cost of the Easement, 23% of those proceeds (of the Proportionate Share) to the County, which represents the County's share of the cost of the Easement, and 2% of those proceeds (of the Proportionate Share) to SHLT, which represents SHLT's share of the cost of the Easement. The County, Town and SHLT will use their share of any and all proceeds received for such sale, exchange or involuntary conversion in a manner consistent with the conservation purposes of this Easement which may include payment of related indebtedness or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code.

Until such time as the Grantee and the United States receive the proceeds from the Grantor or Grantor's successor(s) or assign(s), Grantee and the United States each have a lien against the Protected Property for the amount of their share due each of them. This Conservation Easement may only be extinguished with the joint approval of the Grantee, the United States, the County, and the Town.

If a subsequent change in the conditions of or surrounding the Property make impossible the continued use of all or any portion of the Property for the conservation purposes provided for in this Conservation Easement, and if the restrictions herein are extinguished by judicial proceeding with respect thereto, or if the Property or a portion of the Property is the subject of a condemnation or taking procedure (eminent domain), then, upon any subsequent sale or exchange, or upon receipt of compensation from any involuntary conversion, the Grantee shall be entitled to a portion of the proceeds therefrom, equal to the Proportionate Share of the then fair market value of the land only (unrestricted and unimproved). 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 as aforesaid. In the event of extinguishment, the provisions of this paragraph shall survive extinguishment and shall constitute a lien on the Property.

Grantor, upon receipt of notification of any pending condemnation action brought by any government entity affecting and/or relating to the Protected Property shall notify the Grantee, the United States of America, the County, and the Town, in writing, within fifteen (15) days of receipt of said notification.

In making this Grant the Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both the Grantor and the Grantee that any such changes shall not be

deemed to be circumstances justifying the termination or extinguishment of this Conservation Easement in whole or in part. In addition, the inability of the Grantor, or Grantor's heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for termination of this Easement in whole or in part.

10.9 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).

10.10 Interpretation. This instrument is intended to create a "conservation easement" as defined by the Conservation Law, 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 such provision shall be deemed incorporated herein to the extent necessary to cause the interest hereby granted to be so qualified. The parties agree to construe this Easement as having been drafted jointly. If any provision in said Conservation Easement Deed is found to be ambiguous, an interpretation consistent with the purposes of said Conservation Easement Deed that would render the provision valid must be favored over any interpretation that would render it invalid.

This Conservation Easement Deed shall be interpreted under the laws of the State of New York and the United States. Any general rule of construction to the contrary notwithstanding, this Conservation Easement Deed must be liberally construed to effect purposed of the Conservation Easement Deed.

10.11 Notices and Requests for Approval. In order to facilitate the monitoring of this Conservation Easement and to ensure the impervious surface coverage limitation is not exceeded, the Grantee shall give the Grantor at least 21 days' prior written notice before commencement of site preparation, construction, expansion, excavation, replacement, relocation or removal of any structure or improvement. In conjunction with this the Grantor shall submit sufficient information to enable the Grantee to confirm that any proposed new structures, enlargements and/or replacements are located within the boundaries of the Farmstead Complex and that the aggregate footprint area combined with all other existing impervious surface areas do not exceed the allowed total impervious surface limit as specified in Section 6 ("Permitted Uses and Activities"). Such information may include, but is not limited to, survey information, site plans, and/or physically marking the boundaries of the proposed structure or improvement.

Grantor also [agrees](#) to notify Grantee of any conveyance, lease, transfer, or lot line adjustment involving 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; (ii) via Federal Express or other private courier of national reputation providing written evidence of delivery, or (iii) in any other manner as agreed to in advance by the Grantee. Notices and requests for approval shall be deemed given three (3) days after delivery to the U.S. Postal Service or private courier, or in such other manner as agreed to in advance by the Grantee. All notices and requests for approval shall be properly addressed as follows: (i) if to Grantee, to its President at the address set forth above; (ii) if to the original Grantor, at the address set forth above; (iii) if to any subsequent owner, at the address of the Property, or (iv) if to the United States at 441 South Salina Street, Suite 354, Syracuse, New York 13202-2450. 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.

10.12 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.

10.13 Subordination. Any mortgage or lien arising after the date of this Conservation Easement Deed must be subordinated to the terms of this Conservation Easement Deed. Any liens, mortgages, easements, or other clouds on title existing prior to the date of the Conservation Easement Deed must be subordinated to the Conservation Easement or otherwise appropriately dealt with prior to recording the Conservation Easement Deed.

10.14 Warranty of Title. Grantor warrants that grantor has good title to the Protected Property, that the grantor has the right to convey this Conservation Easement, and that the Protected Property is free and clear of any encumbrances. Grantor also warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Protected Property.

10.15 Environmental Warranty. Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

Moreover, Grantor hereby promises to hold harmless and indemnify the Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by the Grantee or the United States to Grantor with respect to the Property or any restoration activities carried out by The Grantee at the Property; provided, however, that the Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by the Grantee.

11. ADDITIONAL PROVISIONS.

11.1. 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.

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

11.3. Counterparts. This Conservation Easement may be signed in counterparts or counterpart signature pages and acknowledgments.

11.4. 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 [INSERT MONTH DAY, YEAR] and recorded [INSERT MONTH] ____, 2012 in the office of the Clerk of Dutchess 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.

11.5. 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.

11.6. 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 owner, 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.

Grantor shall indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts or omissions, Grantor's breach of any representation, warranty, covenant, agreements contained in this Conservation Easement, or Grantor's violations of any Federal, State, or local laws, including all Environmental Laws.

11.7. 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. In the event the Grantee or the United States takes legal title to Grantor's interest in the Protected Property, the Grantee must commit the monitoring and enforcement of the Conservation Easement to another qualified organization within the meaning of section 107(h)(3) of the United States Internal Revenue Code (1986), as amended, which organization has among its purposes the conservation and preservation of land and water areas.

11.8. 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.

11.9. Signage. Notwithstanding the restrictions on signage in Section 7.5 ("Signage Restrictions"), Grantor agrees to allow Grantee to install, repair, remove and replace signage to promote, acknowledge, or announce this Easement; provided that such signage shall not exceed 10 square feet and the maintenance of which shall be the sole responsibility of Grantee. Grantee and Grantor shall agree on location of any such sign.

11.10. Exhibits. All Exhibits referenced herein are incorporated and made a part of this Conservation Easement.

11.10. 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.

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.

IN WITNESS WHEREOF, the parties have executed this Conservation Easement this [INSERT DAY] day of [INSERT MONTH], 2012.

GRANTOR

JAMES A. GREIG and CORINA GREIG

By: _____
James A. Greig

By: _____
Corina Greig

GRANTEE

DUTCHESS LAND CONSERVANCY, INC.

By: _____
Rebecca E. C. Thornton
President

STATE OF NEW YORK
COUNTY OF DUTCHESS:

On _____, before me, the undersigned, a notary public in and for said State, personally appeared **James A. Greig** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK
COUNTY OF DUTCHESS:

On _____, before me, the undersigned, a notary public in and for said State, personally appeared **Corina Greig** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK
COUNTY OF DUTCHESS:

On _____, before me, the undersigned, a notary public in and for said State, 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 he/she executed the same in his/her capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

ACKNOWLEDGEMENT

THE SCENIC HUDSON LAND TRUST, INC.

By: _____
Steve Rosenberg
Executive Director

By: _____
Seth McKee
Land Conservation Director

**STATE OF NEW YORK
COUNTY OF DUTCHESS:**

On _____, before me, the undersigned, a notary public in and for said State, personally appeared **Steve Rosenberg** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

**STATE OF NEW YORK
COUNTY OF DUTCHESS:**

On _____, before me, the undersigned, a notary public in and for said State, personally appeared **Seth McKee** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

**ACCEPTANCE OF PROPERTY INTEREST BY THE NATURAL RESOURCES
CONSERVATION SERVICE**

The rights conveyed herein are accepted by the undersigned official on behalf of the administering agency Natural Resources Conservation Service, an agency under the United States Department of Agriculture of the United States of America.

Signed: _____

Name: _____

New York State Conservationist

STATE OF NEW YORK
COUNTY OF _____

On _____, before me, the undersigned, a notary public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

ACCEPTANCE AS TO RIGHTS OF THIRD PARTY BENEFICIARY

TOWN OF RED HOOK

By: _____

Sue T. Crane

Title: Supervisor

State of New York)

County of Dutchess), ss:

On the ____ day of _____ in the year ____ before me, the undersigned, personally appeared Sue T. Crane, 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

Notary Public for the State of _____

My Commission Expires _____

ACCEPTANCE AS TO RIGHTS OF THIRD PARTY BENEFICIARY

DUTCHESS COUNTY

By: _____

Marcus J. Molinaro,

Title: County Executive

State of New York)

County of Dutchess), ss:

On the ____ day of _____ in the year ____ before me, the undersigned, personally appeared Marcus J. Molinaro,, 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

Notary Public for the State of _____

My Commission Expires _____

- Exhibit A “Legal Description of Property”
- Exhibit B “Conservation Easement Map”
- Exhibit C “Legal Description of Farmstead Complex”
- Exhibit D “Certification And Acknowledgement of Baseline Documentation”

AFTER RECORDING RETURN TO:

Dutchess Land Conservancy, Inc.
P.O. Box 138
Millbrook, NY 12545

MONITORING AGREEMENT

THIS AGREEMENT, made this ___ day of _____, 2012, by and between the **COUNTY OF DUTCHESS**, a municipal corporation with offices at 22 Market Street, Poughkeepsie, New York 12601 (hereinafter referred to as the “County”), the **TOWN OF RED HOOK**, a municipal corporation with offices at 7340 South Broadway, Red Hook, New York 12571 (the “Town”), and **SCENIC HUDSON LAND TRUST, INC.**, a not-for-profit corporation, with offices at One Civic Center Plaza, Suite 200, Poughkeepsie, New York 12601, 7015 Route 9, Rhinebeck, Dutchess County, New York 12571 (hereinafter referred to as the “Scenic Hudson”); and **DUTCHESS LAND CONSERVANCY, INC.**, a not-for-profit corporation, with offices at 2908 Route 44, Millbrook, New York 12545 (hereinafter referred to as the “Conservancy”).

WITNESSETH:

WHEREAS, the County, the Town, Scenic Hudson and the Conservancy have been cooperating to implement a Farmland and Open Space Protection Plan which will result in the acquisition of a Conservation Easement of approximately 159.92 acres on the Greig Family Farm, located at Rockefeller Lane, Red Hook, Dutchess County, New York (the “Property”), and

WHEREAS, as a result thereof, the Conservancy shall hold the Conservation Easement for the Greig Family Farm and the Town and County shall have, among other things, third party enforcement rights with each assuming such rights, obligations, and responsibilities as set forth therein, and

WHEREAS, Scenic Hudson and the Conservancy, in their role as a conservation organizations, have obtained extensive experience monitoring and administering conservation easements, and the Conservancy, as a co-holder of the Conservation Easement, shall assume responsibility to monitor and administer this Conservation Easement, and

WHEREAS, this Agreement shall further define those rights, obligations and responsibilities;

NOW, THEREFORE it is mutually agreed by and between the parties as follows:

1. SCOPE OF SERVICES. While the County and Town have third party enforcement rights as provided in Article 49, Title 3 of the Environmental Conservation law, the Conservancy is primarily responsible to enforce the Conservation Easement, the Conservancy is primarily responsible for enforcement of the Conservation Easement and for monitoring the Property in a systematic manner to ensure compliance with the terms of the Conservation Easement, all further set forth in the Conservation Easement identified at Exhibit “A” attached hereto, which Conservation Easement is hereby incorporated herein in its entirety. The Conservancy shall provide, using the standards set forth in *Standards and Practices* of the Land Trust Alliance (developed by the Land Trust Alliance in 1989 to help ensure the credibility and effectiveness of land trusts across the country, last revised in 2004, and adopted by the Conservancy) and, in strict compliance with all applicable federal, state and local laws, regulations and procedures, the services as set forth on Exhibit “B” annexed hereto and made a part of this Agreement. Without limiting the foregoing, the conservancy expressly acknowledges that (i) it will not amend the Conservation Easement without the prior written consent of the County and the Town in accordance with Section 4.3 of the Conservation Easement, and (ii) it will not attempt to terminate, transfer, or otherwise divest itself of rights, title, or interest in the Conservation

Easement or extinguish the Conservation Easement without prior written consent of the United States in accordance with Section 4.2 of the Conservation Easement.

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. TERMS OF AGREEMENT. This Agreement shall become effective upon the conveyance of a conservation easement of approximately 159.92 acres by the owners of Greig Family Farm, on the Property (Dutchess County Tax Map Numbers: 6374-00-677518, 854567, 760494, and 640370) to the Conservancy and shall run for as long as the Conservancy remains the holder of the Conservation Easement.

3. STEWARDSHIP ENDOWMENT FUND. The Conservancy has undertaken its responsibilities hereunder because the Conservation Easement to be acquired protects the agricultural values 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. The County and Town have determined that providing funds for the acquisition of third party enforcement rights in a conservation easement limiting the development rights on the Property is the best interests of the County and Town and furthers its desire to preserve open space, protect agricultural lands and water resource areas, and preserve the rural character of the community. In recognition of the County and Town's financial contribution to the acquisition of the Conservation Easement and the right to claim their proportionate share of the monetary value of this Easement in the event that it is extinguished. In addition, in recognition of the costs the Conservancy will incur in annually monitoring the Property, the County and Town shall pay to the Conservancy a sum of \$2,000.00 which is intended to cover 50% of the Conservancy's Stewardship Endowment fee. This amount shall be paid to the Conservancy to defray the costs of monitoring and administering the Conservation Easement. The \$2,000.00 shall be deposited into the Conservancy's Stewardship Endowment Fund for this purpose. Should the Conservation Easement ever be terminated, the Conservancy shall pay to the County and Town any funds remaining in the account, up to a maximum of \$2,000.00. the Conservancy further acknowledges that the remaining 50% of the Conservancy's Stewardship Endowment Fee will be contributed by the Conservancy.

4. INDEPENDENT STATUS OF SCENIC HUDSON AND THE CONSERVANCY. Scenic Hudson and the Conservancy (jointly referred to as "it") agree that they are an independent contractor and that it shall not hold itself out to be an employee or office of the County or the Town, and that therefore, neither federal, state nor local income tax nor payroll tax of any kind shall be withheld or paid by the County or Town on behalf of Scenic Hudson and the Conservancy or its employees; that Scenic Hudson and 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 or Town; that it shall have no workers' compensation or disability coverage through the County or Town for it or its employees, and that Scenic Hudson and the Conservancy shall not be entitled to make any claim against the County or Town for these or any other rights or privileges of an officer or employee of the County or Town.

5. INDEMNIFICATION BY SCENIC HUDSON: Scenic Hudson shall hold the County and Town 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 CONSERVANCY: The Conservancy shall hold the County and Town 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 TOWN. The Town shall hold Scenic Hudson, the Conservancy and 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.

7. INDEMNIFICATION BY THE COUNTY. The County shall hold Scenic Hudson, the Conservancy, and the Town 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.

8. INSURANCE REQUIREMENTS. At all times during the term of this Agreement, Scenic Hudson and the Conservancy, shall maintain at its own cost the following insurance and shall provide proof thereof to the County and Town, 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 and Town must be listed as additional named insureds.

Prior to Cancellation or material change in any policy, a thirty (30) day notice shall be given to the County Attorney and the Town Supervisor and Town Attorney at the addresses listed below:

Dutchess County Attorney
County Office Building
22 Market Street, 5th Floor
Poughkeepsie, New York 12601

Town Supervisor and Town Attorney
Town of Red Hook
7340 South Broadway
Red Hook, New York 12571

On receipt of such notice, the County and the Town shall each have the option to cancel this Agreement without further expense or liability to the County and/or Town, or to require either Scenic Hudson or 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 and/or Town. Failure of either Scenic Hudson or the Conservancy to take out or maintain, or the taking out or the maintenance of any required insurance, shall not relieve either 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, permitted to write insurance in New York and have from A.M. Best a rating of "A" or better or, if not, otherwise acceptable to the County and Town.

In addition, every policy required above shall be primary insurance and any insurance carried by the County and Town, their officers, or its employees shall be excess and not contributory insurance to that provided by Scenic Hudson and 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. Either Scenic Hudson or 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 either Scenic Hudson or the Conservancy until either furnishes such additional security, as is determined necessary by the County or Town.

9. USE OF PRIVATE AUTOMOBILES. Scenic Hudson and the Conservancy represent that it does not currently own any automobiles and its employees use their own private automobiles when an automobile is necessary for its business. Scenic Hudson and/or the Conservancy will not knowingly allow its employees, and any others discharging responsibilities pursuant to this Agreement, to drive without being properly licensed and having, at least, the statutory insurance coverage required by New York State law.

10. QUALIFICATIONS OF THE 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 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.

Scenic Hudson and 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. Scenic Hudson and the Conservancy agree to maintain and have available for audit such records as may be required by the County, Town, 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 shall be permanently maintained. Other records shall be maintained for a period of six (6) years on an ongoing basis unless the County or Town requires otherwise. In such event, the County or Town shall, upon request of either Scenic Hudson or the Conservancy, provide an Archival Storage Facility for such other records.

In the event that either Scenic Hudson or 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, Scenic Hudson or the Conservancy agree it shall transfer all records associated with this Agreement and the Conservation Easement to the County or Town, as directed, 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 either Scenic Hudson or the Conservancy or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of other than in connection with a permitted assignment of the Conservation Easement on the Property.

14. EXECUTORY. This Agreement shall be deemed executory only to the extent of moneys appropriated and available to the County or the Town for the purpose of this Agreement, as specified in the County and Town's adopted Budget, and no liability on account thereof shall be incurred by the County or the Town 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. Notice required to be given pursuant to this Agreement shall be made in writing and addressed to the following or such other persons or addresses as the parties may designate in writing:

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: Anthony De Rosa, Chief Assistant County Attorney

Dutchess County Commissioner of Planning and Development
27 High Street
Poughkeepsie, New York 12601
Attn: Roger P. Akeley, Commissioner

If to the Town: any notices necessary or convenient hereunder shall be directed in writing to the Town of Red Hook Town Supervisor and Town Attorney, or their successors at their official addresses, which at present are:

Town of Red Hook
7340 South Broadway
Red Hook, New York 12571
Attn: Sue T. Crane, Town Supervisor

Town of Red Hook
7230 South Broadway
Red Hook, New York 12571
Attn: Christine Chale, Attorney for the Town

If to Scenic Hudson: 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:

The Scenic Hudson Land Trust, Inc.,
One Civic Center Plaza, Suite 200
Poughkeepsie, NY 12601

If to Dutchess Land Conservancy, Inc.: any notice necessary or convenient hereunder shall be directed in writing to the President, or her/his successor at its official address, which at present is:

The Dutchess Land Conservancy
2908 Route 44
Millbrook, NY 12545

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. 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.

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

22. 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.

23. 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 and Town, in writing, of each and every change of address to which service of process can be made. Service by the County and/or Town to the last known addresses shall be sufficient. The Conservancy will have thirty (30) calendar days after service is complete in which to respond.

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:

ACCEPTED: COUNTY OF DUTCHESS

County Attorney's Office

By: _____
Marcus J. Molinaro, County Executive

APPROVED AS TO CONTENT:

ACCEPTED: TOWN OF RED HOOK

Commissioner of Planning & Development

By: _____
Sue T. Crane, Supervisor

ACCEPTED:
SCENIC HUDSON LAND TRUST, INC.

By: _____

ACCEPTED:
DUTCHESS LAND CONSERVANCY, INC.

By: _____

EXHIBIT A TO MONITORING AGREEMENT
FORM OF CONSERVATION EASEMENT

EXHIBIT B TO MONITORING AGREEMENT
SCOPE OF SERVICES

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 the Conservancy staff to ensure compliance with the Conservation Easement.

B. Minimum Frequency for Monitoring Visits

- Aerial monitoring, if done, to occur annually. Ground monitoring of the property to occur once every three to four years.

C. Procedure

- Contact landowner 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.

- Before the Conservancy monitors it shall check property ownership through Dutchess County Parcel Access or, if not available, the successor program.

- 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, after reviewing:

(1) easement summary

(2) copy of easement

(3) survey plan (or other detailed map)

(4) baseline documentation map showing site features (or topographic map with property boundaries drawn in), and bringing camera

(5) easement inspection form/monitoring log (attached hereto)

(6) photo location map/baseline photos

- 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, if done, to be performed by the Conservancy staff who know the property and can interpret the property from the air

- With reference to baseline documentation, note any changes and 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 and Town 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

- Explain monitoring program, Lead Grantee's role in enforcement, what the landowner can expect.

- Personally contact a new landowner when known, including changes of ownership within the same family, to make the same explanations as immediately above.

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 and Town in writing within two business days of the discovery.

- 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 and Town Supervisor if violation activity continues or if landowner refuses to cooperate with restoration plan.