

Introduction to Conservation Easements in New York

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INTRODUCTION TO CONSERVATION EASEMENTS IN NEW YORK

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What is a conservation easement?

“Conservation easement” means an easement, covenant, restriction or other interest in real property, created under and subject to the provisions of this title which limits or restricts development, management or use of such real property for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the real property
Environmental Conservation Law § 49-0303(1).

How does a conservation easement differ from a typical restrictive covenant?

The primary difference is that:

At common law easements did not run with the land, and therefore were not binding on subsequent owners, unless “appurtenant” -- benefiting [sic] contiguous property owned by the holder of the easement. This statute abolished that anachronistic vestige of ancient English landholding doctrine. McKinney’s Practice Commentaries to ECL § 49-0303(1). See also ECL § 49-0305(5).

Conservation easements are of a character wholly distinct from the easements traditionally recognized at common law and are excepted from many of the defenses that would defeat a common-law easement, including that it be appurtenant to an interest in real property. Stonegate Family Holdings v. Revolutionary Trails, BSA, 73

A.D.3d 1257, 1261 (3d Dept. 2010)(citation omitted).

In addition, pursuant to ECL §§ 49-0305 and 49-0307, other “defenses that exist at common law have no application in the context of a conservation easement.” Argyle Farm and Properties, LLC v. Watershed Agricultural Council, 135 A.D.3d 1262, 1265 (3d Dept. 2016); see ECL § 49-0305(5)(barring application of laches, estoppel, waiver, lack of privity and other defenses).

What are the legal foundations for conservation easements?

- Title 3 of ECL Article 49 was adopted in 1983 to clarify and confirm the legal status of conservation easements in the State of New York.
- Internal Revenue Code § 170(h) and 26 C.F.R. § 1.170A-14 govern when the donation of a partial interest in real property, such as a conservation easement, can be deducted as a charitable donation for federal income taxation purposes.

Who can grant a conservation easement?

Anyone who owns land or a historic property, including:

- Farmers
- Timber companies
- Private landowners
- Not-for-profits or public bodies
- Developers
- Syndicators /tax shelter promoters

Who can hold a conservation easement?

- Land Trusts:

“Not-for-profit conservation organization” means a not-for-profit corporation organized inter alia for the conservation or preservation of real property and which has the power to acquire interests in real property. Such organization must have qualified as exempt for federal tax purposes pursuant to Section 501(c)(3) of the internal revenue code or any similar successor statutory provision. ECL § 49-0303(2).

- Most land trusts are members of the Land Trust Alliance, a not-for-profit umbrella organization, and follow its Land Trust Standards and Practices.
- Most land trusts are accredited by the Land Trust Accreditation Commission.
- Public Bodies:
 - State of New York
 - Local governments
 - The United States
 - Certain other “public bodies” listed in ECL § 49-0303(3).

What are some of the essential elements of a conservation easement?

- Describes public benefits and defines purposes - varies depending on type of easement; if income tax deduction is desired, should include benefits and purposes that qualify under IRC § 170(h)(4) and 26 C.F.R. § 1.170A-14.
- Is perpetual in duration:
 - ECL § 49-0305(1) creates presumption of perpetuity, unless easement states otherwise; see also ECL § 49-0305(7)(a).
 - Perpetuity required for income tax deduction (IRC § 170(h)(2)(c) and § 170(h)(5)) and for NYS real property tax credit (see below),
 - Required by many grant-makers, as well as by most, and perhaps all, land trusts.
- Expressly terminates non-reserved development rights; should also bar the use of the protected acreage for calculating cluster subdivision yield on other properties (see Friends of the Shawangunks v. Knowlton, 64 N.Y.2d 387, 396 (1985)).
- Designates reserved building areas or building envelopes (if any), and preserved areas.
- Lists prohibited actions for the different use areas.

- Lists permitted activities and improvements for the different use areas.
- Allocates proportionate shares of proceeds in the event of partial or complete termination of the easement. 26 C.F.R. § 1.170A-14(g)(6).
- Contains an amendment clause (otherwise it may not be amended). ECL § 49-0307(1)(a).
- Satisfies statute of frauds and is in recordable form. ECL § 49-0305(1) & (4).
- Includes property description and map.

What are the tax benefits of conservation easements?

- Income tax deduction -
 - if fully donated or bargain sale;
 - if the substantive terms of the easement meet Internal Revenue Code requirements;
 - if the donor has income to offset; and
 - if substantiated by a "qualified appraisal".
- Real property tax reduction -
 - Property remains taxable at its assessed value.
 - Easement limiting future development may not result in reduced assessment, especially if the land is already assessed based on its current condition and use. See Adirondack Mountain Reserve v. Board of Assessors of the Town of North Hudson, 106 A.D.3d 1232, 1236 (3d Dept. 2013).
 - See Adirondack Mountain Reserve v. Board of Assessors of the Town of North Hudson, 99 A.D.2d 600, 601 (3d Dept. 1984)(landowner failed to prove that conservation easement reduced the value of its property below the assessed value).
 - State income tax credit for 25% of property taxes paid, up to \$5,000 per year:
 - refundable to landowner if credit exceeds NYS income tax due,

- available to subsequent owners,
 - available to non-residents,
 - must file NYS income tax return,
 - only applies to donated or bargain sale easements. Tax Law § 606(kk).
 - www.dec.ny.gov/lands/26428.html
- For certain easements held by the State of New York in the Adirondack and Catskill Parks and other specified locations, the State will pay a portion of the property taxes. Real Property Tax Law § 533. A similar benefit exists for certain easement properties in the New York City Watershed. RPTL § 584, et seq.
- Estate tax reduction -
 - Inter vivos gifts - prospective reduction in gross value of estate
 - Testamentary gifts
 - Gifts by executors - IRC § 2031(c)

What is the process for granting a conservation easement?

The following is a general description. The process will vary depending on whether the easement is being purchased or donated, the source of any funding, the type of easement, and the policies and priorities of the holder.

- Landowner finds a land trust or other qualified holder that is interested in protecting the property - each organization's criteria for what type of land resources it wants to protect and how it will do so are unique.
- Holder and landowner come to agreement on general terms of the easement and the amount of the landowner's contribution to the holder's stewardship fund/endowment.
- If easement is to be purchased and not donated, holder secures funding.
- Holder and landowner execute a letter of intent.

- Holder's staff prepares draft easement, including easement map, using its standard template. See attached sample. Some terms are not negotiable.
- Title search/title insurance commitment obtained. For donated and bargain sale easements, amount of title insurance policy can be based on the market value of the easement.
- Clear up any title problems.
 - Mortgages and life estates must be subordinated to ensure that the easement is perpetual. 26 C.F.R. § 1.170A-14(g)(2).
 - If easement is being sold, mortgages may be paid off using proceeds instead of subordinating.
- Obtain a survey - in many, but not all, cases.
- Holder prepares baseline documentation report ("BDR").
- Holder and/or landowner obtains appraisal(s) - in many, but not all, cases.
- Closing - both sides sign all documents, including BDR.
- Record the documents and file the survey (if any). See ECL § 43-0305(4).
 - Recording a conservation easement requires Form TP-584, but Schedules C and D do not apply.
 - Transfer tax must be paid on non-donated easements.
 - Forms RP-5217 and IT-2663 are not required.
 - Most organizations do not record the BDR.
- Must be recorded by year-end to claim a tax deduction for that year (26 C.F.R. § 1.170A-14(g)).
- Form 1099 issued for purchased easements.
- Title insurance policy issued to holder in most, but not all, cases.
- File a copy of the easement with DEC per ECL § 49-0305(4). Otherwise, the property is not

eligible for the income tax credit. Tax Law § 606(kk)(2).

What happens after a conservation easement is granted?

- Use and management of the property - landowner continues to use, occupy and manage the property, subject to the new restrictions.
- Monitoring - access by holder of easement to inspect property and ensure compliance with easement restrictions. Process is usually set forth in the easement. See also ECL § 49-0305(6).
- Enforcement - process is usually set forth in the easement. See also ECL § 49-0305(5); The Nature Conservancy v. Congel, 296 A.D.2d 840 (4th Dept. 2002)(enforcing common law restrictive covenant granted to land trust).
 - Holder (land trust or public body)(many land trusts carry insurance to fund enforcement litigation)
 - Funders (if such rights are granted in easement - usually a public agency)
 - Third-party enforcer (if such rights are granted in easement; see ECL § 49-0303(4))
 - NYS Attorney General? Maybe.
 - General public or neighbors? No.
- Runs with the land - binding on future owners.
- Amendments - strictly limited by:
 - Terms of the easement
 - Tax exempt status of holder and IRC prohibitions on creating private inurement and impermissible private benefit
 - Income tax deduction claimed by grantor
 - Holder's amendment policy
 - LTA Land Trust Standards and Practices
 - See also ECL § 49-0305(2), § 49-0307(1).
- Payment of real property taxes - continuing obligation of landowner in most cases.

- Public access - only if specifically granted by the easement. See *Stonegate Family Holdings v. Revolutionary Trails, BSA*, 73 A.D.3d 1257, 1261-1262 (3d Dept. 2010).
- Termination - only permitted under very limited circumstances. See ECL § 49-0307(1); *Argyle Farm and Properties, LLC v. Watershed Agricultural Council*, 135 A.D.3d 1262, 1265 (3d Dept. 2016)(dismissing action for rescission of conservation easement); *The Nature Conservancy v. Congel*, 296 A.D.2d 840 (4th Dept. 2002)(denying request to terminate restrictive covenant under RPAPL § 1951).

What Resources Are Available?

- Land Trust Alliance www.landtrustalliance.org
 - Land Trust Standards and Practices www.landtrustalliance.org/taxonomy/term/17
 - Land Trust Accreditation Commission www.landtrustaccreditation.org/home
- Land Conservation Assistance Network www.landcan.org
- McKinney's Practice Commentaries to ECL Article 49, Title 3
- *Preserving Family Lands*, Books I, II & III, Steve Small, Esq., www.stevesmall.com/shop
- Internal Revenue Service, Conservation Easement Audit Techniques Guide, revised January 24, 2018
www.irs.gov/pub/irs-utl/conservation_easement.pdf
- *The Conservation Easement Handbook*, Elizabeth Byers and Karin Marchetti Ponte, Land Trust Alliance (2005) (available from LTA or Amazon)
- NYS Department of Agriculture and Markets, Agricultural and Farmland Protection Program www.agriculture.ny.gov/ap/agservices/farmprotect
- NYS Department of Environmental Conservation, Public Recreational and Working Forests Conservation Easements www.dec.ny.gov/lands/41156

Attachment: Sample Conservation Easement

SAMPLE CONSERVATION EASEMENT

John W. Caffry

This DEED OF CONSERVATION EASEMENT (hereinafter referred to as the “Conservation Easement” or “Easement”) is made this ___ day of xxx, 2019.

INTRODUCTION

WHEREAS, **XXXXXXXX** (hereinafter called the “**Grantor**”), is the owner in fee simple of XXXXXX +/- acres of real property located in the Town of XXXXX, XXXX County, New York, more particularly described in Exhibit “A”, and in the deed from XXXXXXXX to Grantor dated XXXX and recorded in the XXXXXX County Clerk’s Office on XXXXX in Book XXX of Deeds at Page XXX, and which is shown on the survey map attached hereto as Exhibit “B” (hereinafter called the “Protected Property”). Exhibits A and B are attached hereto and incorporated herein by reference. The Protected Property has significant ecological, conservation, open space, and aesthetic values, as more fully set forth below; and

WHEREAS, **XXXXXXXXXXXXXXXXXXXX** (hereinafter called the “**Grantee**”), is a not-for-profit corporation incorporated under the laws of the State of New York. Grantee is a tax-exempt public charity under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (hereinafter the “Code”), has received determination letters from the Internal Revenue Service, on file at the offices of Grantee, to the effect that Grantee is a “publicly-supported” organization under Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code, is not a “private foundation” as described in Section 509(a) of the Code, and is a “qualified organization” under Section 170(h)(3) of the Code. Grantee is qualified under Article 49, Title 3 of the New York State Environmental Conservation Law (the “ECL”) to receive and hold conservation easements by purchase, gift, conveyance, grant, devise, bequest, or otherwise; and

WHEREAS, Grantee has as its mission the preservation of natural areas for conservation, biological, scientific, charitable, educational, and aesthetic purposes; and

WHEREAS, the grant of this Conservation Easement will serve the following “Conservation Purposes,” as such term is defined in Section 170(h)(4)(A) of the Code, as amended: “The preservation of open space ... where such preservation is (i) for the scenic enjoyment of the general public, or (ii) pursuant to clearly delineated Federal, State, or local governmental conservation policy” and will also preserve and protect the “Conservation Values” of the Protected Property, as described below; and

WHEREAS, the Protected Property is a significant natural area qualifying as 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 Code; and

WHEREAS, Article 14, Section 4 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

WHEREAS, the Protected Property lies entirely within the Adirondack Park and is primarily classified as Low Intensity Use on the Adirondack Park Development and Land Use Plan Map, for which lands the Legislature of the State of New York has deemed it necessary and in the public interest to protect the physical and biological resources, while still providing for orderly growth and development in the Park, pursuant to Section 805(3)(e)(2) of the New York Executive Law; and

WHEREAS, the Protected Property lies entirely within the Lake George Park, regarding which the Legislature of the State of New York has found, in ECL Section 43-0101, for it to be in the public interest to preserve and conserve its pure water supplies and other natural resources, and has declared to “be in the public interest to preserve, protect, conserve and enhance [its] unique natural scenic beauty”; and

WHEREAS, the 2016 New York State Open Space Conservation Plan designates as priority conservation projects the protection of Lake George’s undeveloped shorelines, its watershed, its viewshed and its natural communities; and

WHEREAS, the 2016 New York State Open Space Conservation Plan promotes the use of conservation easements and other means to protect forest lands and other natural resources in the Adirondack Mountains and elsewhere; and

WHEREAS, the Protected Property currently serves as an important watershed property for Lake George, as it has about XXXX feet of frontage on XXXXX Brook, a major tributary to Lake George. The Protected Property harbors wetlands and streams whose conservation and preservation help protect the water quality of Lake George, since these wetlands and streams serve as “feeder water bodies” of Lake George; and

WHEREAS, the Protected Property is part of a scenic landscape that can be enjoyed by the public from XXXX feet of frontage on XXXX Road, and from XXXXXXXXXXXXXXXX, thereby yielding a significant public benefit; and

WHEREAS, Grantee has identified the Protected Property as one that is important to protect and conserve due to its important ground and surface water resources, its open space qualities, the scenic vistas that it is a part of, the impact that insensitive development of the Protected Property would have on Lake George and the surrounding community, its forested qualities, and its function as natural wildlife and plant habitat; and

WHEREAS, for the foregoing reasons, the conservation of the Protected Property “will yield a significant public benefit” under Section 170(h)(4)(A) of the Code; and

WHEREAS, the Legislature of the State of New York has declared conservation, preservation, and protection of its environmental assets and natural and man-made resources to be the public policy of the State, and in furtherance thereof has enacted Article 49, Title 3, of the ECL to provide for and encourage the limitation and restriction of development and use of real property through conservation easements; and

WHEREAS, Grantor and Grantee desire to provide for the preservation and conservation of the Protected Property in perpetuity, and desire to limit the uses of and activities on the Protected Property to those that are compatible with the preservation and conservation goals set forth herein; and

WHEREAS, the specific Conservation Values of the Protected Property are documented in a Conservation Easement Baseline Documentation Report (the “BDR”), prepared by Grantee and signed and acknowledged by Grantor and Grantee, establishing the baseline condition of the Protected Property at the time of the conveyance of this Conservation Easement. The BDR includes a written report, maps, photographs and other documentation pertaining to the Protected Property; and

WHEREAS, Grantor has received independent legal and financial advice regarding this Conservation Easement to the extent that Grantor has deemed necessary, and Grantor freely signs this Conservation Easement in order to achieve its Conservation Purposes.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties agree as follows:

ARTICLE ONE

PURPOSE OF CONSERVATION EASEMENT

It is the “Purpose” of this Conservation Easement to ensure that the Protected Property will be retained forever predominantly in its natural, scenic, forested, and open space condition; to protect plants, animals, natural communities, wetlands, and other water resources on the Protected Property; and to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property described in the Introduction above. Grantor intends that this Conservation Easement will confine the use of the Protected Property to such activities as are consistent with the Purpose of this Conservation Easement.

The prohibited acts and uses of the Protected Property, as set forth in Article Four below, and Grantor’s reserved rights, as set forth in Articles Five and Six below, are intended to achieve the Purpose of this Conservation Easement and Grantor and Grantee’s mutual goals and objectives to continue the private use and enjoyment of the Protected Property while ensuring that the Protected Property’s important Conservation Values are protected and preserved in perpetuity. The approach taken in this Conservation Easement is to articulate generally and broadly in Article Four acts and uses of the Protected Property that could, without the conditions imposed upon them hereunder, impair the Protected Property’s important Conservation Values, and in Article Fives and Six to designate where and to what extent certain uses and activities that would not impair these important Conservation Values may be permitted.

ARTICLE TWO

GIFT

In consideration of the recited facts set forth above, and in consideration of the mutual promises, undertakings, and forbearances contained in this Conservation Easement, Grantor, as an absolute, unconditional gift, hereby grants, releases, demises and conveys to Grantee this Conservation Easement over the Protected Property, it being Grantor's intent to encumber the Protected Property in perpetuity with this Conservation Easement and to grant to Grantee all rights necessary to enforce it. Grantee hereby accepts this Conservation Easement, agrees to abide by its terms and conditions, and agrees to monitor and enforce its terms and conditions.

ARTICLE THREE

WARRANTIES

Grantor warrants and represents to Grantee that Grantor has good and sufficient fee title ownership of the Protected Property, and that any mortgage or life estate encumbering the Protected Property is subordinated to the terms and provisions of this Conservation Easement. Grantor hereby promises to defend and indemnify Grantee against all claims that may be made against the title hereto.

Grantee warrants and represents that it possesses the intent, ability, commitment, and resources to enforce the terms and conditions of this Conservation Easement, and that the Protected Property meets the criteria adopted by Grantee relating to the properties over which Grantee should accept the responsibility of holding a conservation easement.

ARTICLE FOUR

PROHIBITED ACTS AND USES OF PROTECTED PROPERTY

Except as otherwise provided for and reserved to Grantor in Articles Five and Six of this Conservation Easement, from and after the date of conveyance of this Conservation Easement, the following acts, uses, and practices are prohibited on, over, or within the Protected Property.

4.1 Buildings and Improvements. The construction or placement of residential, commercial, industrial, or other buildings or improvements of any kind or nature is prohibited.

For the purposes of this Conservation Easement, the terms "building" and "improvement" shall be defined as broadly as possible, and shall include the construction or placement of any building, structure, facility, road, device, edifice, or man-made development of any kind or nature upon, above, or below the Protected Property, whether of a permanent or temporary nature, including, but not limited to, houses, sheds, airstrips, pipes, wires or cables, gazebos, tennis courts, athletic fields, swimming pools, basketball courts, cabanas, stairs, patios or decks, driveways, parking areas, gardens, ponds, wells, septic systems, drainage ways, utility lines, towers, windmills, dams, solar panels, fences, stone walls, carriage paths, walkways, and signs.

For the purposes of this Conservation Easement, the terms “commercial use” or “commercial activity” shall mean an activity or use that is generally undertaken with the expectation of securing an economic benefit or for which money is charged or goods, services or other compensation exchanged, whether or not the activity or use actually generates a profit, but shall not include the rental of a single-family residence solely for residential purposes.

4.2 Excavation and Removal of Materials; Mining. Excavating, dredging, ditching, filling, draining, diking, mining, drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, are prohibited. Exploration for, or development, storage and extraction of, minerals and hydrocarbons on, under, or from the Protected Property by any method is prohibited.

4.3 Subdivision. The division, subdivision, or partitioning of the Protected Property is prohibited. Mortgages or other non-possessory interests in land do not constitute subdivisions for the purposes of this Conservation Easement, provided that such interests encompass the whole Protected Property.

4.4 Dumping. The placing, filling, storing, dumping, or accumulation of trash, garbage, sawdust, ashes, hazardous substances, toxic waste, chemical waste, petroleum products, vehicle bodies or parts, rubbish, debris, junk, waste, or environmentally harmful materials, is prohibited.

4.5 Pollutants. The release, generation, treatment, disposal or abandonment of any substances defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation or requirement as hazardous, toxic, polluting or otherwise contaminating to the air, water, soil, or in any way harmful or threatening to human health or the environment, on the Protected Property is prohibited.

4.6 Signs. The display of signs, billboards and advertisements anywhere on the Protected Property is prohibited, except that the erection, maintenance and replacement of signs with respect to hunting, trespass, trail access, identity and address of the occupants, sale of the property, the Grantee's interest in the property, and the protected Conservation Values are permitted, upon notice to Grantee pursuant to Article Nine hereof.

4.7 Soil and Water. Any use of or activity on the Protected Property that causes, or is likely to cause, in the sole discretion of Grantee, significant soil degradation or harm to surface or subsurface waters on, under or near the Protected Property, is prohibited.

4.8 Wetlands, Springs, and Other Water Bodies. The draining, filling, dredging or diking of lakes, ponds, wetlands, streams, creeks and intermittent watercourses, and other water bodies located on or contiguous to the Protected Property, including the construction of any seawalls or ponds or the enlargement of any watercourse, is prohibited, except where such action is necessary in the good faith opinion of Grantee and Grantor to protect, preserve or maintain the Conservation Values of the Protected Property and such actions are approved by Grantee in advance under Section 7.5 and Article 9 below.

4.9 Landscaping Activities. Landscaping activities are prohibited.

4.10 Utilities. The creation or placement of overhead utility transmission lines, utility poles, wires, pipes, wells, or drainage and septic systems is prohibited.

4.11 Uses. The use of the Protected Property for any residential, commercial (including commercial recreational), industrial, or agricultural purpose is prohibited.

4.12 Drainage. The use of the Protected Property for a drainage basin, stormwater control facility, leaching field, septic disposal field or sump is prohibited.

4.13 Development Rights. The use of the acreage of the Protected Property for purposes of calculating lot yield on any property other than the Protected Property is prohibited. Grantor hereby grants and donates to Grantee any and all development rights (and any further development rights allocable to the Protected Property that may be created through a rezoning of the Protected Property), that are not otherwise reserved hereunder by Grantor and those required to carry out the permitted uses of and activities on the Protected Property as specified herein. The parties agree that all of the development rights granted by this Conservation Easement are hereby terminated and extinguished by Grantee and may therefore not be used or transferred by Grantee to any other party or property.

4.14 Pesticides and Herbicides. The use of pesticides and biocides, including, but not limited to insecticides, fungicides, rodenticides, and herbicides, is prohibited.

4.15 Motorized Vehicles. The use of snowmobiles, dune buggies, motorcycles, motorized bicycles (mopeds), all-terrain vehicles and all other types of land-based motorized recreational vehicles, except for emergency vehicles, is prohibited on the Protected Property. Automobiles, including trucks and jeeps, may not be used for recreational purposes. However, motorized vehicles may be used by Grantee, and by Grantor with permission from Grantee, for management purposes, as long as the use, in Grantee's sole discretion, does not diminish the Conservation Values of the Protected Property.

4.16 Non-native Species. The introduction to the Protected Property of any species of plant, animal or other living thing that is not indigenous to the northeastern region of the United States is prohibited.

4.17 Recreational Activities. Commercial recreational activities are prohibited on the Protected Property, other than *de minimus* commercial activities which do not exceed the limit set forth in Internal Revenue Code Section 2031(c)(8)(B).

4.18 Roads. No new roads may be constructed on the Protected Property.

4.19 Other Uses. Any other use of or activity on the Protected Property which would permit destruction of the Conservation Values of the Protected Property or of other significant conservation interests is prohibited unless such use or activity is deemed necessary by Grantor and Grantee for the protection of the Conservation Values that are the subject of this Conservation Easement, in which case such use or activity shall be subject to notice to and

approval of Grantee as provided for in Section 7.5 and Article Nine below.

ARTICLE FIVE

GRANTOR'S RESERVED RIGHTS AND RESPONSIBILITIES

In general, Grantor reserves: (i) those customary rights of ownership to the Protected Property and those exclusive rights to possession of the Protected Property which are not expressly restricted or prohibited herein and that are not inconsistent with the protection of the Conservation Values of the Protected Property or the Purpose of this Conservation Easement, and (ii) the right to engage in all acts and uses which are not expressly restricted or prohibited herein and that are not inconsistent with the protection of the Conservation Values of the Protected Property or the Purpose of this Conservation Easement.

5.1 Maintenance, Insurance, and Taxes. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage.

- (i) Grantor shall keep the Grantee's interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.
- (ii) Grantor shall pay any real estate taxes or other assessments levied on the Protected Property. If the Grantor becomes delinquent in payment of said taxes or assessments, such that a lien is or may be created, Grantee shall have, at its option, after written notice to the Grantor, the right to pay such taxes or assessments, including any interest and penalties due thereon, or to take such other actions as may be necessary to protect the Grantee's interest in the Protected Property and to assure the continued enforceability of this Conservation Easement, and to recoup the costs of doing so from Grantor. That payment, if made by Grantee, shall, to the extent permitted by law, become a lien on the Protected Property of the same priority as the item if not paid would have become, and until paid by Grantor shall bear interest at two (2) percentage points over the prime rate of interest from time to time charged by Citibank, N.A., or its corporate successor.
- (iii) Grantor shall be solely responsible for the upkeep and maintenance of the Protected Property, to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Protected Property.
- (iv) Grantor's use and occupancy of the Protected Property shall comply with all applicable federal, state and local laws and regulations.

5.2 Grantor's Additional Rights. Grantor shall have the right to undertake or continue any

activity or use of the Protected Property not prohibited by this Conservation Easement.

Grantor shall have the right to sell, give, mortgage, lease, or otherwise convey the Protected Property in its entirety, provided that all such transactions are subject to the terms of this Conservation Easement, that the instrument of conveyance complies with Section 10.12 hereof, and that advance written notice is provided to the Grantee in accordance with Article Nine.

5.3 Boundary Line Adjustments. Notwithstanding the prohibition on subdivision set forth above, portions of the Protected Property may be conveyed to abutters to the extent necessary to resolve bona fide boundary disputes, which conveyances shall not constitute a subdivision for purposes of this Conservation Easement, provided that: (i) any conveyance for the purpose of resolving a bona fide boundary dispute shall require the approval of the Grantee, in accordance with Section 7.5 and Article Nine below, which approval shall not be unreasonably withheld; (ii) any real property received by the Grantor to resolve a boundary dispute shall be merged into the Protected Property and shall become subject to this Conservation Easement unless Grantee agrees otherwise; and (iii) any property conveyed by the Grantor shall be released from this Conservation Easement.

Notwithstanding the prohibition on subdivision set forth above, subject to the approval of the Grantee in accordance with Section 7.5 and Article Nine below, which approval shall not be unreasonably withheld, portions of the Protected Property may be merged with adjoining lots by conveyance by the owner of the adjoining lot to the Grantor, and any such merger with an adjoining lot shall not be deemed to create a separate parcel or lot. The real property acquired by merger shall become part of the Protected Property and shall be subject to the terms of this Conservation Easement.

5.4 Recreational Activities. Grantor retains the right to use the Protected Property for otherwise lawful noncommercial recreational activities, including, but not limited to, hunting, fishing, hiking, walking, bicycling, camping, horseback riding, and cross-country skiing, provided that these activities do not impair or interfere with the Purpose or Conservation Values of this Easement. Under no circumstances shall athletic fields, golf courses, driving ranges, airfields, racing tracks for vehicles, or other recreational structures or improvements that impair or interfere with the Purpose or Conservation Values of this Easement, be allowed on the Protected Property.

5.5 Recreational Improvements. Notwithstanding Article 4 above, subject to the advance approval of the Grantee in accordance with Section 7.5 and Article Nine below, trails, paths, small wooden bridges, erosion control measures, and other such recreational improvements traditionally related to hiking, walking, bicycling (non-motorized), snowshoeing, and cross-country skiing and other such non-motorized activities permitted under Section 5.4 may be constructed on the Protected Property, provided that these improvements do not impair or interfere with the Purpose or Conservation Values of this Easement.

5.6 Motorized Vehicle Use. Grantee may use snowmobiles on the Protected Property during winter months, so long as such use does not harm the Conservation Values of the Protected Property.

5.7 Residences. Each of the two lots which is subject to this Conservation Easement includes an area designated as a Designated Residential Area (“DRA”), which is shown on Exhibit B, and described in Exhibit C which is attached hereto and incorporated herein. On each of said lots, the Grantor may construct on the lot, or relocate to it, one single family residential structure, and use, maintain, repair, alter, expand and replace said structure, for single-family residential purposes only. Grantor may also construct a driveway to provide access to said residence, utilities (including septic system, well, telephone, electricity and gas), and Accessory Structures, as defined below.

a. Building Envelopes: Prior to any construction on each lot, Grantor shall notify Grantee and seek approval of the location of a ¼ +/- acre “Building Envelope”, which shall be located within the DRA. Upon Grantee’s approval of the Building Envelope, the Grantor shall have the Building Envelope surveyed by a licensed surveyor. The surveyor shall mark the boundaries of the Building Envelope, and each party shall be given a copy of the survey map. The residence and all Accessory Structures shall be located within the Building Envelope.

b. “Accessory Structures” include garages, sheds, unheated barns for animals, and any other non-residential structures typically associated with residential dwelling units, together with any driveway and utilities such as electric or telephone lines.

c. All such structures and improvements permitted under this Section 5.7 shall be subject to the approval of the Grantee in accordance with Section 7.5 and Article Nine below.

d. Within the approved Building Envelope, vegetation management incidental to the residential use, including but not limited to gardening, landscaping, invasive plant control, tree and brush removal, and tree and bush planting is permitted without notice to, or prior approval from, the Grantee.

5.8 Roads and Driveways. Grantor retains the following rights:

- (i) The right to maintain and replace existing roads at the same location with roads of like size and composition, as described in the BDR.
- (ii) The right to widen existing road clearings for utility rights-of-way.
- (iii) The right to construct a driveway to the new residences, if desired or necessary for access. However, only gravel or permeable pavement may be used, and existing roads and driveways shall be used whenever possible.
- (iv) The right to maintain roads, which shall be limited to normal practices for non-paved roads, such as the removal of dead vegetation, pruning or removal of hazardous trees and plants, application of permeable materials necessary to correct erosion, placement of culverts, water control devices and bridges for non-public use and maintenance of roadside ditches.
- (v) Roads shall not be paved with impermeable materials.

- (vi) Logging roads may be constructed for Forestry Activities pursuant to Section 6.2.

ARTICLE SIX

VEGETATION REMOVAL AND FORESTRY ACTIVITIES

6.1 General Vegetation Removal. In accordance with a Habitat Management Plan prepared by Grantee, or by Grantor with prior approval by Grantee, and pursuant to Section 7.5 and Article 9 hereof, Grantor and Grantee shall have the right, but not the obligation, throughout the Protected Property, to remove and/or replace trees, shrubs or other vegetation for the purpose of managing habitat on the Protected Property. Such Habitat Management Plan must be prepared and signed by a qualified forester in good standing, as defined in Section 6.2, or a person holding a degree in forest ecology or equivalent or by a person having credentials mutually agreed upon by Grantor and Grantee.

No such plan shall be required for activities within the Building Envelope.

The planting of trees, shrubs or plants that are not indigenous to the northeastern region of the United States is prohibited on the Protected Property.

Grantee, or Grantor with prior approval by Grantee, shall have the right, but not the obligation, to remove any invasive non-native species by mechanical, biological or chemical means, following the guidelines of the Adirondack Park Invasive Plant Program or a comparable program.

Notwithstanding any other language in this section, Grantor may cut down, but not remove, dangerous trees, without prior notification to Grantee.

6.2 Forestry Activities. With prior written approval from Grantee pursuant to Section 7.5 and Article 9 hereof, Grantor may commercially harvest timber and other wood products and construct, maintain, remove, and repair unpaved access roads and “staging areas” (those areas where logs are temporarily stored for transport) necessary for such activities, in accordance with a Forest Management Plan (“FMP”). At least one-hundred twenty (120) days prior to the expected commencement of timber harvesting, as required by Section 7.5 and Article Nine, Grantor shall provide notice of such activities and obtain Grantee’s approval by submitting a proposed FMP to Grantee. Grantee’s approval of such activities shall not be unreasonably withheld. In order to uphold the Conservation Values of the Protected Property, Grantee, in its sole discretion, may require measures more stringent than “Best Management Practices”, including, but not limited to, restricting harvesting to when the ground is frozen. The FMP shall include (1) management objectives tailored to protect the Conservation Values of the Protected Property, (2) detailed maps, (3) stand descriptions and recommendations, and (4) detailed plans for any new roads or infrastructure requirements associated with any management recommendations.

The FMP must be prepared and signed by a qualified forester in good standing. A qualified

forester is defined as a graduate of a four-year forestry education program that is certified by the Society of American Foresters or such successor organization as is later created, or a person who has attained other professional credentials mutually agreed to by Grantee and Grantor.

ARTICLE SEVEN

GRANTEE'S RIGHTS AND OBLIGATIONS

To accomplish the Purpose of this Conservation Easement, the following rights are conveyed to Grantee, and the following obligations are imposed, under this Conservation Easement:

7.1 General. The right to preserve and protect the Conservation Values of the Protected Property and the Purpose of this Conservation Easement.

7.2 Right of Entry. The right to enter the Protected Property at all reasonable times with twenty-four (24) hours prior notice to Grantor for the purposes of: (a) inspecting the Protected Property to determine if the Grantor is complying with the covenants and Purpose of this Conservation Easement; (b) enforcing the terms of this Conservation Easement; (c) taking any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof; (d) making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by the Grantor; and (e) monitoring and management as set forth in this Article Seven.

7.3. Species Monitoring and Management. The right, but not the obligation, to monitor the condition of any rare plant and animal populations, plant communities, and natural habitat on the Protected Property, and to manage them, if necessary, to ensure their continued presence and viability on the Protected Property. Such activities shall be in accordance with the customary management practices of Grantee, and any such management activities shall be set forth in a written management plan prepared by Grantee in consultation with Grantor, which may not be amended thereafter without consultation with Grantor.

7.4 Prevention and Restoration Rights. The right to prevent any activity on or use of the Protected Property that is inconsistent with the Purpose of this Conservation Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use.

7.5 Consent. Grantee's consent for any activities requiring Grantee's consent under Article Five or Article Six above, or elsewhere in this Conservation Easement, may be given under the following conditions and circumstances, subject to the limitations set forth in this Section 7.5 and the process and requirements set forth in Article 9.

Such requests for permission, for activities requiring Grantee's consent under Articles Five or Six above or elsewhere in this Conservation Easement, shall be made in writing pursuant

to Article 9 below and shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the terms and Purpose of this Conservation Easement. Grantee may give its permission only if it determines, in its sole discretion, that such activity: (1) does not violate the terms and Purpose of this Conservation Easement and (2) either enhances, or does not impair, any significant Conservation Value associated with the Protected Property.

Notwithstanding the foregoing, the Grantor shall have no right to request consent for, and Grantee have no right or power to agree to, any activities that would result in the termination of this Conservation Easement, adversely affect the qualification of this Conservation Easement or the status of Grantee under any applicable federal or state laws, including Section 170(h) or Section 2031(c) of the Code, or Article 49 Title 3 of the ECL, or that would constitute an “impermissible private benefit” or a “private inurement”, as defined in the regulations implementing Section 501(c)(3) of the Code. Nor may Grantee consent to any subdivision of the Protected Property, or any residential, commercial or industrial buildings or improvements, or any residential, commercial or industrial activities not expressly provided for in this Conservation Easement.

7.6 Hold Harmless By Grantor. Grantor shall hold harmless, indemnify and defend Grantee, and its members, directors, officers, employees, agents and contractors, and the heirs, successors and assigns of each of them (hereinafter referred to collectively as the “Indemnified Parties”), from and against all liabilities, injuries, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including attorneys’ fees, arising from or in any way connected with: (a) injury to or death of any person, physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Protected Property, regardless of cause, unless due solely to the gross negligence or willful misconduct of any of the Indemnified Parties; (b) any release of hazardous substances on the Protected Property or any violation of federal, state or local law; (c) the obligations specified in the section hereof entitled “Maintenance, Insurance, and Taxes”; and (d) the existence or administration of this Conservation Easement, including any actions taken by Grantee pursuant to the section hereof entitled “Grantee’s Remedies”, and including Grantee being made a party to any court action by reason of it holding this Conservation Easement.

7.7 Lien for Sums Due Grantee. If any sum is due to Grantee pursuant to the provisions of this Conservation Easement, then Grantee shall have, and is hereby given as security for such sum due it, a valid and enforceable lien upon the Protected Property, and Grantee shall have the right to foreclose its lien in the manner provided by law, it being understood and agreed that Grantee’s lien shall be superior to any other lien or encumbrance on the Protected Property created or arising after the date of this Conservation Easement, except that any such lien of Grantee is and shall be subject and subordinate to the lien of any mortgages hereafter encumbering the Protected Property. Any such sum due, until paid by Grantor, shall bear interest at two (2) percentage points over the prime rate of interest from time to time charged by Citibank, N.A., or its corporate successor.

7.8 Indemnification and Insurance by Grantee. Grantee agrees to release, hold harmless, defend, and indemnify Grantor from any and all liabilities, including but not limited to injury,

losses, damages, judgments, costs, expenses, and fees that the Grantor may suffer or incur as a result of or arising out of the activities of the Grantee on the Protected Property. Grantee shall also maintain adequate comprehensive general liability insurance coverage for its activities on the Protected Property.

ARTICLE EIGHT

PUBLIC ACCESS

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

ARTICLE NINE

NOTICE AND APPROVAL

9.1 Grantor's Approval. When Grantee's approval for any action on the Protected Property is required by this Conservation Easement, Grantee shall give notice of its granting or withholding of its approval in writing to Grantor within thirty (30) days of Grantee's receipt of Grantor's written request therefor and any supplemental information reasonably requested by Grantee. Grantor's request shall include plans and information identifying the proposed activity and the reasons for the proposed activity with reasonable specificity. The request for approval shall describe the nature, scope, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantee to evaluate such activity. The request shall also include information evidencing the conformity of such activity with the requirements of the applicable sections of this Conservation Easement under which approval is requested.

In reviewing such requests, Grantee shall also adhere to the requirements of Section 7.5 above. Grantee agrees to evaluate Grantor's requests under this Conservation Easement based on its good faith exercise of professional judgment. In the case of Grantee's withholding of its approval, Grantee shall notify Grantor in writing with reasonable specificity of the reasons for withholding of approval, and the conditions, if any, on which approval might otherwise be given.

Failure of Grantee to send a response to Grantor within such thirty (30) days shall entitle Grantor to resubmit Grantor's written request for approval. Any resubmission shall include written notification to Grantee that the request for approval is a resubmission of the prior request for approval. Failure of Grantee to send a written response to Grantor within ten (10) days of Grantee's receipt of the resubmission of Grantor's request for approval shall be deemed to constitute written approval by Grantee of any request submitted for approval that is not contrary to the express restrictions hereof.

9.2 Notice. Any notices sent pursuant to this Conservation Easement shall be sent by personal delivery, by an overnight delivery service which provides verification of delivery, or by

registered or certified mail, to the following addresses or such addresses as may be hereafter specified by notice in writing:

Grantor: XXXXXXXXXXXX

Grantee: XXXXXXXXXXXX

Unless otherwise provided herein, any such notice shall be effective as of the date of its sending. If any new Grantor of the Protected Property fails to provide Grantee with an address for such notice, Grantee may send any such notice to said Grantor's address which is on file with the Assessor of the Town in which the Protected Property is located.

ARTICLE TEN

MISCELLANEOUS

10.1 Grantor's Title. The Grantor covenants and represents that, at the time of the conveyance of this Conservation Easement, the Grantor is the sole owner and is seized of the Protected Property in fee simple and has good right to grant and convey this Conservation Easement; that the Protected Property is free and clear of any and all encumbrances except those of record as of the date hereof, and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement. All future mortgages encumbering the Protected Property shall be subject to and subordinate to this Conservation Easement.

In addition to the land described on page 1 of this Conservation Easement and in Exhibits A and B hereto, the Protected Property includes all of Grantor's right, title, and interest, if any, in and to: (a) any land lying within or under any public road or street adjoining the Protected Property, subject to the rights of the public and the government, if any, to use and maintain such roads or streets; (b) any land, including land under water, below the mean high water mark of any lake, pond, river, or stream adjoining the Protected Property, subject to the public's rights, if any, of navigation on any such lake, river, or stream that is navigable in law or fact; and (c) any land which may be added to the Protected Property by accretion or avulsion.

10.2 Grantee's Remedies. Grantor acknowledges and agrees that Grantee's remedies at law for any violations of this Conservation Easement are inadequate. Therefore, in addition to, and not in limitation of, any other rights of Grantee hereunder at law or in equity, in the event any breach, default or violation of any term, provision, covenant or obligation on Grantor's part to be observed or performed pursuant to this Conservation Easement is not cured by Grantor within fifteen (15) days of, or within a reasonable time after, notice thereof by Grantee to Grantor (which notice requirement is expressly waived by Grantor with respect to any breach, default or violation which, in Grantee's reasonable judgment that irreversible harm will occur, which requires immediate action to preserve and protect any of the Conservation Values of the Protected Property or the Purpose of this Conservation Easement, as defined in Article One hereof, Grantee shall have the right, at Grantee's election:

- (i) to institute a suit to enjoin or cure such breach, default or violation by temporary and/or permanent injunction, and, if deemed necessary by Grantee, to enjoin such non-compliance by an *ex parte* temporary restraining order,
- (ii) when necessary to prevent irreversible harm to the Conservation Values of the Protected Property and the Purpose of this Conservation Easement, as defined in Article One, or in the event that a court of competent jurisdiction orders Grantor to undertake any action on the Protected Property and Grantor fails to do so, to enter upon the Protected Property and exercise reasonable efforts to terminate or cure such breach, default or violation and/or cause the restoration of that portion of the Protected Property affected by such breach, default or violation to the condition that existed prior thereto; or
- (iii) to seek or enforce such other legal and/or equitable relief or remedies as Grantee deems necessary or desirable to ensure compliance with the terms, conditions, covenants, obligations and Purpose of this Conservation Easement; provided, however, that any failure, delay or election to so act by Grantee shall not be deemed to be a waiver or a forfeiture of any right or available remedy on Grantee's part with respect to such breach, default, or violation or with respect to any other breach, default, or violation of any term, condition, covenant or obligations under this Conservation Easement.

If such court determines that the Grantor has failed to comply with this Conservation Easement, Grantor shall reimburse Grantee for any reasonable costs of restoration incurred by Grantee. Any damages, when recovered, may be applied by Grantee, in its sole discretion, to corrective action on the Protected Property.

If such court determines that a violation of this Conservation Easement has occurred, Grantor shall pay, either directly or by reimbursement to Grantee, all reasonable attorney's fees, court costs and other expenses incurred by Grantee in connection with any proceedings under this section, together with any costs incurred by Grantee in restoring damage to the Protected Property and its Conservation Values.

10.3 Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under Section 10.2 without prior notice to Grantor, without waiting for the period for cure to expire, and without attempting mediation under Section 10.4. In such a case, Grantee shall provide Grantor with notice as soon as reasonably possible after taking such action.

10.4 Resolution of Disputes. The parties shall promptly and in good faith attempt to resolve any dispute arising out of or relating to this Conservation Easement. If those negotiations are not successful, the parties shall in good faith attempt to resolve the dispute through mediation. The parties shall appoint a mutually acceptable person. If the parties cannot agree on who should serve as mediator, each party shall submit to the other a list of three potential mediators acceptable to them. Each party shall then strike two names from the list provided by the other.

The two people remaining on the lists shall confer and jointly name a mediator. The mediation will be held no later than ninety days after the dispute has arisen, and the costs of the mediation shall be shared equally by the parties. Except as provided in Section 10.3 of this Conservation Easement, no judicial action may be instituted by either party until after such mediation has been held. If the mediation is not successful and a judicial action is instituted, the parties shall not assert the defense of the statute of limitations or laches based upon the time devoted to attempting to resolve the dispute in accordance with this section.

10.5 Failure to Act or Delay. Grantee will not waive or forfeit the right to take any action as may be necessary to ensure compliance with this Conservation Easement by any failure to act or delay in acting, and Grantor hereby waives any defenses of estoppel or laches with respect to any delay by the Grantee, its successors or assigns, in acting to enforce any restriction or exercise any of its rights under this Conservation Easement.

10.6 Violations Due to Causes Beyond Grantor's Control. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons. In the event of a violation of this Conservation Easement caused by the unauthorized wrongful act of a third person, Grantor hereby appoints Grantee its attorney-in-fact for the purposes of pursuing enforcement action, and, at Grantee's option, Grantor agrees to assign its right of action to Grantee, or to join in any such suit.

10.7 Existing Conditions; Baseline Documentation Report. By its execution of this Conservation Easement, Grantee acknowledges that the present condition, uses and structures and improvements of the Protected Property are compatible with the Purpose, terms and conditions of this Conservation Easement. In order to evidence the present condition of the Protected Property so as to facilitate future monitoring and enforcement of this Conservation Easement, the BDR, describing such condition at the date hereof, has been prepared and subscribed by both parties, and copies thereof will be kept on file with Grantee and Grantor. Notwithstanding the foregoing, Grantor and Grantee may use information other than that found in the BDR to evidence the present condition of the Property.

10.8 Successors. The covenants, terms, conditions and restrictions of this Conservation Easement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Protected Property, provided that (i) a person who has not, or an entity which has not, caused a violation of this Conservation Easement to occur on such person's or entity's land after that person or entity ceases to be an owner or to have any interest therein shall not be deemed responsible for such violation; and (ii) a person who has not, or an entity which has not, caused a violation of this Conservation Easement to occur on another person's or entity's land which is a part of the Protected Property shall not be deemed responsible for such violation.

The term "Grantor" shall include the Grantor and the Grantor's heirs, executors, trustees, administrators, successors and assigns and shall also mean the masculine, feminine, corporate,

singular or plural form of the word as needed in the context of its use. The term “Grantee” shall include XXXXXXXXXXXX, Inc. and its successors and assigns.

10.9 Alienability. Grantor reserves the right to convey all or any part of its remaining interest in the Protected Property, but only in accordance with, and subject to the terms and conditions of, this Conservation Easement. Grantor shall promptly notify Grantee of any conveyance of any interest in the Protected Property, including the full name, mailing address and telephone number of any transferee, and the individual principals thereof, under any such conveyance.

10.10 Termination of Rights and Obligations. A party’s rights and obligations under this Conservation Easement shall terminate upon transfer of such party’s interest in this Conservation Easement or the Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

10.11 Grantee’s Assignment Rights. The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, and the Grantee hereby covenants and agrees that in the event it transfers or assigns this Conservation Easement it holds under this indenture, the organization receiving the interest will be a “qualified organization” as that term is defined in Section 170(h)(3) of the Code, and is qualified to hold interests in conservation easements under Article 49, Title 3 of the ECL. Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the contribution was originally intended to advance.

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

"This [conveyance, lease, mortgage, easement, etc.] is subject to a Conservation Easement which runs with the land and which was granted to XXXXXXXX, Inc. by instrument dated XXXX, 2019, and recorded on XXXX, 2019, in the Office of the Clerk of XXXXX County in Book XXX at Page XXX."

The failure to include such language in any deed or instrument shall not affect the validity or the applicability of this Conservation Easement to such property.

10.13 Perpetual Nature of Conservation Easement. 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 Protected 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 Protected Property now or hereafter held by Grantee, including that Grantor and Grantee agree and intend that the terms of this Conservation Easement shall survive any merger of the fee title and conservation easement interest in the Protected Property or any portion thereof. Furthermore, the fact that any use of the Protected Property that is expressly prohibited

by the terms of this Conservation Easement may become greatly more economically valuable than uses permitted by the terms of the Conservation Easement, or that neighboring properties may, in the future, be put entirely to uses that are not permitted by this Conservation Easement, has been considered by Grantor in granting this Conservation Easement and by Grantee in accepting it. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Conservation Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Conservation Easement. In addition, the inability of Grantor, Grantor's successors and assigns, to conduct or implement any or all of the uses permitted under the terms of this Conservation Easement, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment.

10.14 Extinguishment. The Grantor hereby agrees that at the time of the conveyance of this Conservation Easement to the Grantee, this Conservation Easement gives rise to a real property right, immediately vested in the Grantee, with a fair market value of said Conservation Easement as of the date of the conveyance that is at least equal to the proportionate value that this Conservation Easement at the time of the conveyance bears to the fair market value of the property as a whole at that time. That proportionate value of the Grantee's property rights shall remain constant. When a change in conditions takes place, which makes impossible or impractical any continued protection of the Protected Property for Conservation Purposes, and the restrictions contained herein are extinguished by judicial proceeding, the Grantee, upon a subsequent sale, exchange or involuntary conversion of the Protected Property, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Conservation Easement. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in and defined under Section 170(h)(4)(A)(ii) of the Code.

10.15 Eminent Domain. Whenever all or part of the Protected Property is taken by the exercise of the power of eminent domain by any public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, in whole or in part, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided pursuant to Section 10.14 in accordance with the proportionate value of the Grantee's and Grantor's interests, and Grantee's share of the proceeds shall be used as specified in Section 10.14. All expenses incurred by the Grantor and the Grantee in such action shall be paid out of the recovered proceeds.

10.16 Amendment. This Conservation Easement may be amended only upon the written consent of Grantee and the then-current Grantor of the Protected Property. Grantee, on a case-by-case basis, may agree to amend individual provisions hereof, provided, however, that any amendment must comply with the Grantee's then-current amendment policy as is in effect from time to time. No amendment shall be approved unless Grantor has demonstrated, to Grantee's satisfaction, that the proposed amendment is consistent with the Purpose of this Conservation Easement, will not substantially diminish or impair the Conservation Values of the Protected Property, and will not

affect the perpetual duration of this Conservation Easement.

Any amendment to this Conservation Easement shall be at the discretion of the Grantee (which may establish such requirements for the submission of plans and other documentation as it deems necessary to make the determination required or permitted of it hereunder) and shall comply with Article 49, Title 3, of the ECL, and Section 170(h) of the Code. Any such amendment that does not comply with said Article 49 or said Section 170(h) shall be void and of no force or effect. No such amendment shall result in a private inurement or impermissible private benefit in violation of the Code.

Grantor shall reimburse Grantee for all costs, fees and other expenses, including staff time, surveys, title costs, and reasonable attorneys' fees, incurred by Grantee in connection with the review of a request by Grantor to amend this Conservation Easement. Any amendment shall be recorded in the Office of the XXXXX County Clerk at Grantor's expense.

10.17 Severability. If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid by a court of competent jurisdiction, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

10.18 Re-recording. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement; for such purpose, the Grantor appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any necessary instrument on its behalf. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.

10.19 Captions. The captions herein have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.

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

If any provision of this Conservation Easement is ambiguous or shall be subject to two or more interpretations, one of which would render that provision invalid, then that provision shall be given such interpretations as would render it valid and be consistent with the Purpose of this Conservation Easement.

Any rule of strict construction designed to limit the breadth of the restrictions on use of the Protected Property shall not apply in the construction or interpretation of this Conservation Easement, and this Conservation Easement shall be interpreted broadly to effect the Purpose of

this Conservation Easement as intended by the parties. The parties intend that this Conservation Easement, which is by nature and character primarily negative in that Grantor has restricted and limited Grantor's right to use the Protected Property, except as recited herein, be construed at all times and by all parties to effectuate its Purpose.

10.21 Additional Rules of Interpretation. The following additional rules shall govern the interpretation of this Conservation Easement:

- (i) a reference to any law shall include any amendment or modification to such law, or any law superseding such law;
- (ii) the terms "hereby", "hereof", "herein", "hereunder" and any similar terms as used in this document refer to the entire document, and the term "heretofore" shall mean before, and the word "hereafter" shall mean after, the date of the execution and delivery of this document;
- (iii) the terms "include", "includes" and "including" are not limiting;
- (iv) words of masculine gender shall mean and include correlative words of feminine and neuter genders, and words importing the singular number shall mean and include the plural number, and vice versa;
- (v) words importing persons shall include firms, associations, partnerships, trusts, corporations and all other legal entities, including public bodies, as well as natural persons; and
- (vi) a reference to any person shall include the person's successors and assigns.

10.22 Controlling Law and Venue. The interpretation and performance of this Conservation Easement shall be governed by, and construed in accordance with, the laws of the State of New York. Any legal action regarding this Conservation Easement shall be venued in XXXX County, New York.

10.23 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

10.24 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Easement and supersedes all prior discussions, negotiations, understandings and agreements relating to this Conservation Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 10.16.

IN WITNESS WHEREOF, the parties have executed this document the day and year first written above.

GRANTOR: XXXXXXXXXXXXXXXX

By:
Its:

GRANTEE: XXXXXXXXXXXXXXXX

By:
Its:

State of New York)
County of) ss.

On the _____ day of _____ in the year 2019 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of New York)
County of) ss.

On the _____ day of _____ in the year 2019 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Record and Return to:

XXXXXXXXXXXXX

Exhibits omitted from this sample.

Appraising Conservation Easements

The Appraiser's Perspective

July 13, 2019

New York State Bar Assn (NYSBA) Real Property Law Section (RPLS) event at the SVAC

Presented by Jesse Larson and Richard Larson

Larson Appraisal Company

661 South St

Wells, VT 05774

jessedavidlarson@gmail.com

Types of Conservation Easement Appraisals

Conservation easement appraisals generally fall into the following three types: traditional appraisal to Uniform Standards for Professional Appraisal Practice (USPAP), Uniform Appraisal Standards for Federal Land Acquisitions aka UASFLA or "Yellowbook", and IRS compliant appraisals. For this presentation, I focus on IRS appraisals.

Do you need an appraisal for a donated easement?

Under section 170(f)(11)(C), taxpayers are required to obtain a qualified appraisal for donated property for which a deduction of more than \$5,000 is claimed. A qualified appraisal must be attached to any tax return claiming a deduction of more than \$500,000.

Is the Appraiser and appraisal Qualified?

Section 170(f)(11)(E)(ii) provides that the term *qualified appraiser* means an individual who (1) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary, (2) regularly performs appraisals for which the individual receives compensation, and (3) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance. Section 170(f)(11)(E)(iii) provides that an individual will not be treated as a qualified appraiser with respect to any specific appraisal unless that individual (1) demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and (2) has not been prohibited from practicing before the IRS by the Secretary under section 330(c) of Title 31 of the United States Code at any time during the 3-year period ending on the date of the appraisal.

What is the subject property?

IRS requires the appraisal consider the entire contiguous family held parcel, analogous to the UASFLA "Larger Parcel." Treasury Reg. 26 CFR §1.170A-14(h)(3)(i), 4th sentence states "The amount of the deduction in the case of a charitable contribution of a perpetual conservation restriction covering a portion of the contiguous property owned by **a donor and the donor's family** (as defined in section 267(c)(4)) is the difference between the fair market value of the **entire contiguous parcel** of the property before and after the granting of the restriction."

(Emphasis added) Section 267(c)(4) defines donor's family as the following members (whether by whole or half blood):

- a. Brothers
- b. Sisters

- c. Spouse
- d. Ancestors (i.e., parents and grandparents)
- e. Lineal descendants (i.e., children and grandchildren)

Appraisal Process

The appraiser should provide an opinion of market value (Treasury Regulations use the term *fair market value*) for the subject property before the easement is placed, and then appraise the same parcel after the easement is placed. The difference between these two, minus enhancement is the value of the easement. Careful consideration should be made to highest and best use under both scenarios. Usually, the greater the change in highest and best use, the greater the impact of the conservation easement.

Considering Enhancement

The deduction claimed must be reduced by the amount that the easement enhances other property owned by donor or family members.

Treasury Reg. §1.170A-14(h)(3)(i), 5th sentence states “If the granting of a perpetual conservation restriction after January 14, 1986, has the effect of increasing the value of ***any other property owned by the donor or a related person***, the amount of the deduction for the conservation contribution shall be reduced by the amount of the increase in the value of the other property, ***whether or not such property is contiguous.***” (Emphasis added)

Corporations, partnerships, and trusts are included in the Enhancement scenario. In order to be recognized as a related person, one must have a controlling interest of 50% or more in the corporation, partnership, or trust.

What about timing?

IRS rules state that the effective date of the appraisal must be no earlier than 60 days prior to the date of donation. The donor must be in possession of the report before their tax filing deadline including extensions. The IRS form 8283 must be filled out and signed by the appraiser, the donee and the donor **after** the easement document is signed and recorded.

Common pitfalls

In my experience the most frequent pitfall is when the easement includes quid pro quo benefits. For example, a developer attempts to donate a conservation easement that is being considered as common land to meet density requirements or as mitigation or “open space.” In this case, the development rights have already been extinguished and are no longer part of the “bundle of rights.” There is likely no qualified contribution.

Sample Appraisal: The following is a redacted and severely truncated appraisal conducted for income tax purposes:

CONSERVATION EASEMENT APPRAISAL REPORT

Conservation Easement on 144.5-acre **XXXXX Farm**
5.6-acre previously deed restricted exclusion
150.1-acre contiguous family held parcel
Main Road
Town of Anytown
Anytown County Vermont

OWNED BY

John Q. Landowner
(NAME & ADDRESS CHANGED FOR CONFIDENTIALITY)

VALUATION DATE

September 25, 2018, date of easement recording

SUBMITTED

John Q. Landowner
(NAME & ADDRESS CHANGED FOR CONFIDENTIALITY)
123 Fourth Street
Small Town, VT 12345

PREPARED BY

Jesse D. Larson
Larson Appraisal Company
661 South Street
Wells, Vermont 05774
Phone/FAX 802-645-0865

Letter of Transmittal

Jesse D. Larson
Larson Appraisal Company
661 South Street
Wells, Vermont 05774
Phone/FAX 802-645-0865

January 8, 2019

John Q. Landowner(NAME & ADDRESS CHANGED FOR CONFIDENTIALITY)
123 Fourth Street
Small Town, VT 12345

RE: Conservation Easement Appraisal
Main Road
Anytown, Anytown County, Vermont

Dear Mr. and Mrs. John Q. Landowner,

As requested, I am pleased to submit the attached appraisal report of the above captioned land in Anytown.

The purpose of the appraisal is for the client to substantiate the value of the charitable donation of a qualified conservation easement for income tax purposes. In keeping with IRS Rules, I provide an opinion of the market value of the 150.1-acre entire contiguous family held parcel before and after the establishment of the conservation easement. Also considered is enhancement to nearby properties that are not part of the contiguous family held parcel. The effective date is the date of easement recording. The report is completed to USPAP 2018-19 standards and IRS Appraisal Standards found in § 1.170A.

The conservation easement encumbers a 144.5-acre portion of the 150.1-acre farm. Excluded is a previously conserved 5.6-acre former landfill which has since been fully remediated, and deed restricted. The appraised conservation easement delineates a 2.2-acre "Homestead area" around the existing improvements and 142.3 acre "Protected Property." Uses of the protected property are now limited to agriculture, silvaculture, and non-commercial recreation. Forestry must be in accordance with an approved forest management plan. One cabin is permitted not to exceed 150 sf. The easement limits the Homestead to 2 total housing units, one of which will be forever linked to the conserved land. The "Homestead Area" cannot be conveyed separately from the "Protected Property" except that the smaller dwelling can be subdivided and conveyed separately if allowed by zoning. No additional subdivision is permitted. No additional dwellings can be built on the 142.3-acre "Protected Property." A riparian buffer will be established along the Mill Brook which includes all the land south of the river and extending north 50' into the subject from the top of the embankment. Within this area, only selective harvest with minimal breaks in the canopy. The easement provides for normal agricultural, silvacultural, and non-commercial recreational uses of the property.

The farm is currently not on the market. The conservation easement was gifted to the Anytown Valley Land Trust, dated September 25, 2018 and recorded the same day, September 25, 2018 at Book 101, Page 428-37 of the Town of Anytown land records.

To this end, I have conducted an analysis of the physical aspects of the subject property, and have reviewed relevant market and economic considerations that affect the value of the real estate. Enclosed are descriptions of the approaches relied upon in arriving at the valuation opinions.

I have made a personal inspection of the appraised property that is the subject of this report and all comparable sales used in developing the opinion of value. In my opinion, as of September 25, 2018, the market value of the contiguous family held parcel before conveyance of the partial interest is \$755,000, and the market value of the contiguous family held parcel after conveyance of the partial interest is \$635,000. For the convenience of the reader, the following format is provided.

Market Value of 150.1-acre Contiguous Parcel, <u>before-easement</u> :	\$ 755,000
Market Value of 150.1-acre Contiguous Parcel, <u>after-easement</u> :	\$ -635,000
Enhancement to exclusions:	<u>\$ 0</u>
Change in market value due to easement:	\$ 120,000

The loss in market value to the subject property due to the conservation easement is as follows:

One Hundred Twenty Thousand Dollars
(\$120,000)
\$799/ overall acre,
\$830/ conserved acre

Thank you for the opportunity to provide my professional services. If I can be of further assistance in this matter, please do not hesitate to contact me.

Respectfully,



Jesse D. Larson

Larson Appraisal Company

New York Certified General Real Estate Appraiser, License #46000050304

Vermont Certified General Real Estate Appraiser, License #80-0000272

Table of Contents

Redacted for brevity

Summary of Important Facts and Conclusions

Following is a summary of salient factual data and of valuation conclusions. Value opinions presented herein are based upon the material in the report and the appraiser's background, knowledge, training and experience. The opinions are developed and reached through the use of recognized appraisal theory and represent the appraiser's opinion with respect to the subject property.

Effective Date:	September 25, 2018, date of easement recording
Interests Appraised:	Market Value of the contiguous parcel before and after establishment of a deeded conservation easement.
Type of Property:	Rural residential/farm-type property improved with dwellings and outbuildings
Land Area:	150.1-acre farm
Tax Map:	Parcel 440000.520 in Anytown
Zoning Districts:	RUR

Highest and Best Use

Highest and Best Use, Before Easement: Rural residential/farm type property with surplus land for future residential development.

Highest and Best Use, After Easement: Rural residential/farm type property with potential for limited non-subdividable additional housing in the Homestead Area, with excess (value to whole) land.

Opinions of Market Value:

Market Value of 150.1-acre Contiguous Parcel, <u>before-easement</u> :	\$ 755,000
Market Value of 150.1-acre Contiguous Parcel, <u>after-easement</u> :	\$ -635,000
Enhancement:	\$ <u>0</u>
Change in market value due to easement:	\$ 120,000

The loss in market value to the subject property due to the conservation easement is as follows:

One Hundred Twenty Thousand Dollars
(\$120,000)
\$799/ overall acre,
\$830/acre protected property

Appraiser's Certification

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- I have made a personal inspection of the property that is the subject of this report. The landowner accompanied me on the inspection.
- No one provided significant real property appraisal assistance to the person signing this certification. -
- The fee for this appraisal is \$3,350.

Opinions of Market Value as of effective date of the appraisal, September 25, 2018:

Market Value of 150.1-acre Contiguous Parcel, <u>before-easement</u> :	\$ 755,000
Market Value of 150.1-acre Contiguous Parcel, <u>after-easement</u> :	\$ -635,000
Enhancement:	\$ 0
Change in market value due to easement:	\$ 120,000

Respectfully,



Jesse D. Larson

January 8, 2019

New York Certified General Real Estate Appraiser, License #46000050304
Vermont Certified General Real Estate Appraiser, License #80-0000272

Maps and Photos of Subject Property

Subject location map(**REDACTED**)

Subject Conservation Easement Map(**REDACTED**)

Town Tax Map(**REDACTED**)

USDA Soil Map(**REDACTED**)

FEMA Flood Hazard Map(**REDACTED**)

Town Zoning Map(**REDACTED**)

Sketch, Main dwelling and outbuildings(**REDACTED**)

Photos (**REDACTED**)

Client and Intended User

The client is the landowners. The IRS and the easement holder are additional intended users. The report is submitted to the following recipient(s):

John Q. Landowner
123 Fourth Street
Small Town, VT 12345

Intended Use of Report

The **intended use** is for the client to substantiate the value of the charitable donation of development rights and establishment of a permanent deeded conservation easement for income tax purposes.

Purpose and Date of Appraisal

The purpose of this appraisal is to provide an opinion of the market value of the 150.1-acre contiguous family-held property before the acquisition and to provide an opinion of the market value of the same holdings after the acquisition of a perpetual conservation easement held by the Anytown Land Trust. The intended use is for the clients to substantiate the value of the charitable donation of development rights and establishment of a permanent deeded conservation easement on the farm. The effective date of the appraisal is the date of easement recording, September 25, 2018.

Property Identification

The appraised easement is the 144.5-acre John Q. Landowner farm excluding the previously deed restricted town dump. The 5.6-acre former dump is an inholding and is included in the contiguous parcel appraisal.

Summary of Appraisal Problem(s)

The **Before Value** is made with the understanding that the present ownership of the subject property does not include all of the rights that may be lawfully owned and is, therefore, not title in “fee simple,” due to utility easements. “Fee Simple Estate” is defined by The Dictionary of Real Estate Appraisal, 5th ed. (Chicago, Appraisal Institute, 2010) as “Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.” The property is not appraised under fee simple ownership in any scenario. The **After Value** is made under the hypothetical condition that a portion of the property is encumbered by a deed restriction, which limits future development of the site.

In estimating the market value of the subject property, any decrease or increase in market value of the subject property prior to the date of valuation which is caused by the likelihood that the property will be acquired was disregarded in determining the valuation of the subject property.

Summary of the Conservation Easements

The conservation easement encumbers a 144.5-acre portion of the 150.1-acre farm. Excluded is a previously conserved 5.6-acre former landfill which has since been remediated and deed restricted. The appraised conservation easement delineates a 2.2-acre “Homestead area” around the existing improvements and 142.3-acre “Protected Property.” Uses of the protected property are now limited to agriculture, silvaculture, and non-commercial recreation. Forestry must be in accordance with an approved forest management plan. One cabin is permitted not to exceed 150 sf. The easement limits the Homestead to 2 total housing units, one of which will be forever linked to the conserved land. The “Homestead Area” cannot be conveyed separately from the “Protected Property” except that the smaller dwelling can be subdivided and conveyed separately if allowed by zoning. No additional subdivision is permitted. No additional dwellings can be built on the 142.3-acre “Protected Property.” A riparian buffer will be established along the Mill Brook which includes all the land south of the river and extending north 50’ into the subject from the top of the embankment. Within this area, only selective harvest with minimal breaks in the canopy. The easement provides for normal agricultural, silvacultural, and non-commercial recreational uses of the property.

Property Rights and/or Interest Appraised

The farm does not include all of the rights that may be lawfully owned and is, therefore, not title in “fee simple” due to utility easements, the life estate, and the fact that we are asked to appraise surface rights only. “Fee Simple Estate” is defined by The Dictionary of Real Estate Appraisal, 5th ed. (Chicago, Appraisal Institute, 2010) as “Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.”

Definition of Market Value

Redacted for brevity.

Statement of Extraordinary Assumptions and Hypothetical Conditions

None.

Scope of the Appraisal

Larson Appraisal Company has been retained to provide an opinion of the market value of the real property pertaining to John Q. Landowner that is located on Main Road in the Town of Anytown, Anytown County Vermont. The property consists of the 150.1-acre farm improved with a single-family dwelling, guest house and various farm buildings. This appraisal will address the physical, economic, governmental and marketing considerations affecting the value of the subject real property.

Town, neighborhood and subject data is based on information provided by published statistics both public and subscription and the Town Clerk’s and Listers’ offices of the Town of Anytown. Additional regional data was based on a physical inspection of the area as well as the appraiser’s experience in this region.

Comparable sales data is supplied by municipal records, real estate brokers, inspection by the appraiser, and most importantly, interviews with buyers and sellers.

A physical inspection of the subject property was completed by the appraiser, Jesse Larson, on November 15, 2018. On that date, the landowners and I inspected the farm including an interior inspection of all structures. The forest management plan provided additional information about the timberland, soils and topographical characteristics.

Determination of the highest and best use of the subject property is made by an analysis of the area and the market for properties similar to the subject. A number of sales were considered in the opinion of value.

The final value is based on the Sale Comparison Approach and the Cost Approach, with the greatest weight placed on analysis of recent sales of similar properties. A diligent search was made for comparable sales in Vermont. Each comparable sale utilized in the report was researched and verified by the appraiser.

Market Conditions, Trends and Exposure Time

Redacted for brevity

Anytown County Market Conditions

Redacted for brevity

County, Town and Neighborhood Description

Redacted for brevity

Contiguous Parcel Determination

Treasury Reg. 26 CFR §1.170A-14(h)(3)(i), 4th sentence, states that “The amount of the deduction in the case of a charitable contribution of a perpetual conservation restriction covering a portion of the contiguous property owned by *a donor and the donor’s family* (as defined in section 267(c)(4)) is the difference between the fair market value of the *entire contiguous parcel* of the property before and after the granting of the restriction.” Section 267(c)(4) defines *donor’s family* as the following members (whether by whole or half blood): a. Brothers, b. Sisters, c. Spouse, d. Ancestors (i.e., parents and grandparents), e. Lineal descendants (i.e., children and grandchildren)

In determining the contiguous property, I interviewed the owners and determined the following:

John Q. Landowner own a 5.3-acre inholding. It was previously restricted against development with deed covenants. It is clearly part of the contiguous parcel.

John Q. Landowner have a 50% undivided interest in a woodlot in another portion of Anytown, about 2 miles north of the subject. It is not contiguous. It is not part of the contiguous parcel.

Conclusion of the “Contiguous Family Owned Property”: In my opinion, the 150.1-acre farm constitutes the entire contiguous family held parcel and is therefore appraised before and after the conservation easement is placed.

Site Description, Land

Redacted for brevity

Assessment and Taxes

Redacted for brevity

Ownership History/Legal Description

Redacted for brevity

Zoning Data

Redacted for brevity

Highest and Best Use

The Appraisal of Real Estate, 12th Edition, defines highest and best use as:

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value.

Generally accepted professional appraisal practice requires that the subject property must be valued under this premise. If the property being appraised is improved with constructed improvements, two highest and best use analyses are required; the highest and best use of the land as though vacant, and the highest and best use of the total property as improved.

The highest and best use analysis is developed by applying the following four tests:

Possible Use - What uses are physically possible considering the site's size, configuration, topography, availability of utilities, etc.

Legal (Permissible) Use - What uses are legally permitted by zoning regulations and not prohibited by deed restrictions or covenants.

Financially Feasible Use - Which uses, being both possible and legally permitted, will produce any net return to the site.

Maximally Productive Highest and Best Use - Among the feasible uses, which use will produce the highest net return.

Both the site and the improved property have a highest and best use; highest and best use of the improved property may differ from that of the site.

The site is valued as though vacant and available to be put to its highest and best use. The value of the improved property is also estimated in terms of its highest and best use taking into consideration what contribution, if any, the improvements are making to the value of the total property. If the value of the site should exceed the value of the improved property, the existing improvements are worthless.

In estimating the highest and best use of the subject property, we have considered the following:

Highest and Best Use, 150.1-acre John Q. Landowner Farm Before Easement:

Physically possible as vacant: The subject is located in a rural residential and farming neighborhood. Electricity and phone service is available along much of the road frontage. Municipal sewer and water are not available. There is extensive road frontage. Views are very good of Mt. XXX. There are several potential very private home sites throughout the property with good views, especially on the west side of the road where privacy of the existing dwellings would not be negatively impacted. There are portions which are too steep for residential development. There is a minimal amount floodplain along the river. A former dump was once located on a small exclusion, though remediation has been completed.

Physically possible AS IMPROVED: The farmhouse and guest house are both antique dwellings, well suited for rural residential uses. The barns are used for storage.

Legally permissible AS VACANT: Minimum lot size depends on the availability of certain services. Minimum lot size without a PRD is 5 acres, though much smaller lots are allowed if associated with a PRD. Several light commercial uses are allowed on a conditional basis. State wastewater and water supply permits would be needed prior to development. A 5.6-acre portion is restricted by covenants due to the former town dump, though the existing restrictions are contained within the 5.6 acres. The public roads create some natural subdivision lines which would allow separate conveyance of 3 portions of the farm without any permitting needed.

Legally permissible AS IMPROVED: The existing farmhouse and guest house are legal grandfathered uses for septic and zoning.

Financially feasible AS VACANT: The subject is located in a rural neighborhood in Anytown. The town of Anytown has generally lower property values than highly desirable surrounding towns. Access to regional employment is via the nearby Interstate X. There is moderate demand for oversized building lots in the subject market area. Currently, there are 7 active vacant land listings in Anytown. Most are small building lots asking around \$50,000-\$80,000, though a 70-acre parcel of vacant land with pond is listed for \$229,000. There have been about 15 residential lot sales on MLS over the past 5 years averaging \$52,000. The state has issued an average of 4 wastewater permits for new residential lots per year for the past 4 years, suggesting modest growth in a town with less than 200 residential units.

Financially feasible AS IMPROVED: The improvements are attractive structures for a high end farm/estate, though the main house is in need of some updating.

Maximally productive Conclusion of Highest and Best Use AS VACANT: A few oversized rural farm-type residential properties.

Maximally productive Conclusion of Highest and Best Use AS IMPROVED: Rural residential/farm type property with surplus land for residential development.

-Highest and Best Use, John Q. Landowner farm, AFTER EASEMENT As Conserved:

Physically possible AS VACANT: The parcel is a mix of pasture, hayland and woodland. Outbuildings are well suited for rural residential/estate type uses.

Physically possible AS IMPROVED: The dwelling is a good quality restored barn/contemporary dwelling with some dated areas. The secondary dwelling is in good condition but smaller and with inferior privacy.

Legally permissible VACANT: The easement prohibits non-agricultural development of the 142.3-acre “protected area.” The current dwellings are permitted. The Homestead Area cannot be conveyed separately from the 142.3-acre “protected area” except that the small house site can be subdivided and sold off if zoning allows.

Legally permissible AS IMPROVED: Only the smaller house can be subdivided off the farm, and only in the current location near the main farmhouse.

Financially feasible AS VACANT: The subject will continue to be well suited for an oversized rural residential/farm type property, but will lack the potential for sale of lots, either now or in the future. The delineated “Homestead Area” has some good views. There is some overlap in the market for small conserved farms and fee simple farms, but the perceived involvement of the easement holder in management decisions and diminished investment or development potential does notably reduce the market for these properties. Nevertheless, there is still an active market for conserved small farms, as evidenced by the sales chosen.

Financially feasible AS IMPROVED: The subject will be best suited for an oversized rural farm type property, keeping the two units together.

Maximally Productive Conclusion of Highest and Best Use AS VACANT: Rural residential/farm type property with potential for limited non-subdividable additional housing in the Homestead Area, with excess (value to whole) land.

Maximally Productive Conclusion of Highest and Best Use AS IMPROVED: Rural residential/farm type property, with some excess land for agriculture, forestry and recreation.

Appraisal Methodology

The problem of this appraisal is to provide an opinion of the market value of the subject property, as of the date of easement recording, September 25, 2018. Generally, there are three accepted and commonly utilized approaches to estimating value: the Sales Comparison Approach, Income Approach and Replacement or Cost Approach.

The Sales Comparison Approach is a process of comparing market data, essentially prices paid for comparable or similar properties, which have sold recent to the date of the appraisal. Comparable data is then compared to the subject property, with appropriate adjustments applied, to account for any differences between the comparable sales and the subject property. Differences considered may include adjustments for location, land size and quality, improvement size, age, condition, and quality, zoning, etc. Greatest weight is placed on the Sales Comparison Approach.

The Income Approach is based upon reasoning which supposes that one measure of the value of a property is the present worth of the net income it will generate throughout the remainder of its productive life. The Income Approach is not appropriate in this appraisal assignment as the property is not an income-producing property.

The Cost Approach, premised upon the principal of substitution, presumes that a reasonable purchaser would not pay more than the cost to produce a substitute property offering the same utility as the subject property. Therefore, the Replacement or Cost Approach assumes that the costs to construct the improvements, less depreciation from all factors, when added to the land value, usually indicate maximum property value. The Cost Approach is not utilized in the appraisal of vacant land, and is most accurate when the improvements are new, which is not the case on the subject property.

Cost Approach, Before Easement:

Redacted for brevity and confidentiality

Comparable Sales Approach, Before Easement:

Sales descriptions and maps redacted for brevity

Sales Summary Grid, Before Easement

	Sale #1	Sale #2	Sale #3	Sale #4	<u>Subject</u>
Date	8/17	3/18	5/18	5/17	9/18 (effective)
Location	260 Dan Jarvis Rd, Weathersfield	315 Parker Hill Rd, Springfield	3230 Weathersfield Ctr Rd, Weathersfield	1139 Hewett Rd, Windsor	Main Rd, Anytown
Sales Price	\$450,000	\$825,000	\$535,000	\$425,000	-----
Concessions	None	None	None	None	----
Size	59 acres	163.8 acres	211.37 acres	23.32 acres	150.1+/-acres
Open Land	6 acres	18 acres	5 acres	10 acres	45 acres
Views	Good Mt Ascutney	Good Mt Ascutney	Avg	Good	Good Mt Ascutney
Amenities	Brk	Small brook, wooded pond	Brk	Brk	Brook, small pond
Frontage/access	Good end of road	2,175 feet/Good	4,500+/- feet	1,350 feet	3,970+/- feet/Good
Privacy	Good	Good	Good	Good	Good
Topography	Level to sloping	Sloping	Level to sloping	Sloping	Rolling to steep
Zoning	RRR35, Hamlet	Res Ag-5, Land Reserve 25	RR Reserve, Conservation 10	RUR	RUR
Site Improvements	Septic, well, Drive	Septics, well, Drive	Septic, well, Drive	Septic, well, Drive	Septics, wells, Drive
Landscaping	Avg	Avg+	Avg	Avg	Avg
Restrictions	Limited frontage	Some areas steep	Some areas steep	Some areas steep	Some areas steep
Improvements	Contemporary dwelling	Brick dwelling	Historic 2-story	Farmhouse	Contemporary dwelling
Year built	1985	1823, Reno 2000	c1820, reno 70's	C1931, updated and expanded 2007	1971 barn conversion
Room Count	10-3-2	12-5-3.1	9-5-4.1	12-4-2.1	12-4.2.1
GLA	2,275 sf	3,664 sf	4,723 sf	2,920 sf	3,600 sf
Finished Basement	None	None	None	None	None
Woodstoves/FP	FP, Wd stove, pellet stove	6+/- FP's	1 FP	Wood stove	3 fireplaces
Condition	Good	Very Good	Avg/Dated	Good	average
Porches/Decks/Attached sheds	Porch, pool	Attached 3-car		front porch	120 sf enclosed porch, 296 sf porch
Dwelling contribution	\$182,000 \$80/sf	\$348,000 \$95/sf	\$189,000 \$40/sf	\$219,000 \$75/sf	----
Secondary dwelling	None	Guest House, Hermitage	None	None	1,656 sf guest house/Good
Contribution	-	57,000	-	-	
Outbuildings	Semi-finished garage w/ apartment, sugar house, equip barn	High end barn	Oversized garage/Barn	Old-style barn, smaller equipment barn	3,008 sf stanchion barn, 817 sf woodshop, 800 sf shed
Outbuilding contrib	\$52,000	\$45,000	\$10,000	\$20,000	-----
Solar Panels	None	None	None	None	Yes
Land Allocation	\$216,000 \$3,661/acre	\$375,000 \$2,289/acre	\$336,000 \$1,590/acre	\$186,500 \$7,976/acre	-----
Highest and Best Use	SFR/Subdivision	SFR/Subdivision	SFR/Subdivision	SFR/Subdivision	-----

Analysis of Sales Before Easement

Redacted for brevity.

Explanation of Adjustments Before Easement

Redacted for brevity.

Sales Adjustment Grid Before Easement

	Sale #1	Sale #2	Sale #3	Sale #4
	260 Dan Jarvis Rd, Weathersfield	315 Parker Rd, Springfield	3230 Weathersfield Ctr Rd, Weathersfield	1139 Hewett Rd, Windsor
Sales Price	\$450,000	\$825,000	\$535,000	\$425,000
Financing	\$0	\$0	\$0	\$0
Conditions of sale	\$0	\$0	\$0	\$0
Adjusted sale price	\$450,000	\$825,000	\$535,000	\$425,000
Time	\$0	\$0	\$0	\$0
Time adjusted sales price	\$450,000	\$825,000	\$535,000	\$425,000

Location	\$0	\$0	\$0	\$0
Lot Size	\$113,875	-\$17,125	-\$76,588	\$158,475
Open Land	\$78,000	\$54,000	\$80,000	\$70,000
Views	\$0	\$0	\$80,250	\$0
Road influence	\$0	\$0	\$0	\$0
Amenities	\$0	\$0	\$0	\$0
Soils	\$0	\$0	\$0	\$0
Frontage	\$0	\$0	\$0	\$0
Timber	\$0	\$0	\$0	\$0
Topography	\$0	\$0	\$0	\$0
Dwelling	\$34,000	-\$132,000	\$27,000	-\$3,000
2nd dwell/camp	\$99,000	\$42,000	\$99,000	\$99,000
Solar Array	\$7,000	\$7,000	\$7,000	\$7,000
Barns/ outbuildings	-\$35,000	-\$28,000	\$7,000	-\$3,000
Net Adjustments	\$296,875	-\$74,125	\$223,662	\$328,475

Indicated Market Value	\$746,875	\$750,875	\$758,662	\$753,475
Average	Indicated	Market	Value	\$752,472

Conclusion of Market Value – Sales Comparison Approach Before Easement

The average indicated market value, based on the above sales, is \$752,472. All sales bracket \$755,000. Utilizing these various sales, and based upon the foregoing analysis, it is my opinion that the market value of the 150.1+/- acres subject property, as of September 25, 2018, is as follows:

Seven Hundred Fifty-Five Thousand Dollars
(\$755,000)

Reconciliation and Conclusion of Market Value

Cost Approach:	\$754,000
Sales Comparison Approach:	\$755,000
Income Approach:	N/a

Greatest weight is placed on the sales comparison approach as a more reliable indicator of market value. Based on the foregoing analysis, it is my opinion that the market value of the 150.1+/-acre subject property, as of September 25, 2018, is as follows:

Seven Hundred Fifty-Five Thousand Dollars
(\$755,000)

Cost Approach, 150.1 Acre Contiguous Parcel After Easement

Redacted for brevity.

Sales Comparison Approach, 150.1 Acre Contiguous Parcel After Easement

Sales descriptions and maps redacted for brevity

Restricted Farm Sales Summary Grid, 150.1 Acres After Easement

Sale #	Sale #5	Sale #6	Sale #7	Sale #8	Subject
Date of sale	8/18	8/17	9/16	8/17	9/18 (effective)
Location	166 Jewett Rd, West Windsor	Reservoir Rd, Weathersfield	2063 East Hill Rd, Andover	Turnpike Rd, Marlboro	Main Rd, Anytown
Sale price	\$450,000	\$345,000	\$363,113	\$495,000	-----
Size/acres	98	54.41 acres	124.26 acres	113.8 acres 103.6 conserved 10.2 fee simple	150.1+/-acres
Sale price/Acre	\$4,592/acre	\$6,341	\$2,922/acre	\$4,350/acre	
Ag land	32 acres	1 acre open	45 acres	5 acres open	45 acres
Topography	Sloping	Rolling, Wooded uplands	Sloping	Wet swampy woods, upland dwelling	Rolling to steep
Soils	Uplands	Uplands	Uplands		
Views	Good Mt Ascutney	Avg	Avg	Avg	Good Mt XXX
Amenities	2 ponds	Pond	Small brook	Swamp, stream	Brook, small pond
Dwelling	Antique Cape 1850 2,400 sf Avg dated 7-4-2	Federal 200+ years 2,692 sq ft Avg-Gd	Colonial, c. 1802 3,666 sq ft Average 7-5-3	Contemp C 1972 2,445 sf Avg-Gd	Contemporary C1971 3,600 sf Avg 12-4-2.1
Contribution	\$192,000 \$80/sf	\$188,000 \$70/sf	\$165,000 45/sf	\$171,000 \$70/sf	-----
Other dwellings Contribution	None	None	None	None	1,656 sf guest house/Good
Farm improvements	Historic Barn	1,290 square foot barn/good, sheds	3,000 sf pole barn, tractor barn	Finished studio area with basement garage, barn	3,008 sf stanchion barn, 817 sf woodshop, 800 sf shed
Contribution	\$10,000	\$20,000	\$15,000	\$50,000	-----
Restrictions	No additional dwellings permitted outside the 2-acre farmstead, public trail	House and 1+/- acre is subdividable, No further residences	No additional dwellings permitted outside the 5-acre exclusion	Con. Easement, one additional SFR allowed	Con. Easement, one additional SFR allowed
Total SFRs permitted	2	1 or duplex	1	3 on exclusions (h&b use)	2
Timber	Avg	Avg	Avg	Avg managed woodlot	
breakdown:					
Total Land	<u>\$248,000</u>	<u>\$137,000</u>	<u>\$ 183,113</u>	<u>\$274,000</u>	
\$/Ac, land only	\$2,531/acre	\$2,518/acre	\$1,474/acre	\$2,408/acre	

Analysis of Sales, After Easement

Redacted for brevity

Explanation of Adjustments After Easement

Redacted for brevity

Sales Adjustment Grid, After Easement

	Sale #5 166 Jewett Rd, W. Windsor	Sale #6 Reservoir Rd, Weathersfield	Sale #7 2063 E. Hill Rd, Andover	Sale #8 Turnpike Rd, Marlboro
Sales Price	\$450,000	\$345,000	\$363,113	\$495,000
Subdividable lots	\$0	\$0	\$30,000	-\$55,000
Public Trail	\$90,000	\$0	\$0	\$0
Financing	\$0	\$0	\$0	\$0
Conditions of sale	\$0	\$0	\$0	\$0
Time	\$0	\$0	\$0	\$0
Time adjusted sales price	\$540,000	\$345,000	\$393,113	\$440,000

Location	-\$54,000	\$0	-\$39,311	-\$44,000
Acreage	\$39,075	\$71,768	\$19,380	\$34,875
Ag land	\$19,500	\$66,000	\$0	\$60,000
Views	-\$54,000	\$51,750	\$58,967	\$66,000
Road influence	\$0	\$0	\$0	\$0
Amenities	\$0	\$0	\$0	\$0
Soils	\$0	\$0	\$0	\$0
Frontage	\$0	\$0	\$0	\$0
Topography	\$0	\$0	\$0	\$0
Dwelling	\$24,000	\$28,000	\$51,000	\$45,000
Guest House	\$99,000	\$99,000	\$99,000	\$99,000
Outbuildings	\$7,000	-\$3,000	\$2,000	-\$33,000
Solar Array	\$7,000	\$7,000	\$7,000	\$7,000

Net Adjustments	\$87,575	\$320,518	\$198,036	\$234,875
	0	0		
Indicated Market Value	\$627,575	\$665,518	\$591,149	\$674,875
Average	Indicated	Market Value		\$639,779

Conclusion of Market Value –150.1 Acre Contiguous Parcel as if Conserved

The mean of the indicated market values derived in the Sales Comparison Approach is \$639,779. Sale #5 is in West Windsor, recent and close geographically. Sale 6 is a recent sale in Weathersfield with good market exposure. Views are inferior. Sale #7 results in a lower indicator but sold privately. While the buyer believed that the price was market value, it appears that it may have been low. Sale #8 is a sale in Windham County far from the subject and retaining significantly superior property rights. Sales are widespread but generally bracket \$635,000, most notably the most applicable sales #5&6. Based on the foregoing analysis, it is my opinion that the market value of the 150.1-acre subject property, as partially restricted by a conservation easement, as of September 25, 2018, is as follows:

Six Hundred Thirty-Five Thousand Dollars
(\$635,000)

Reconciliation, Before Value, 150.1 Acre Contiguous Parcel as if Conserved

Site value plus improvements:	\$635,000
Sales Comparison Approach:	\$635,000
Greatest weight is placed on the direct sales comparison approach.	
Conclusion of Market Value	\$635,000

Enhancement:

The Internal Revenue Code and Treasury Regulations require, when valuing a conservation easement, that the appraiser make an adjustment for the conservation easement's affect in "enhancing" the value of any other excluded lands owned by the donor or any "related person." The excluded, enhanced property need not be contiguous. See Treas. Reg. Sec. 1.170A-14(h){3}{i}.

"Related persons" is defined by reference to two other Treasury Regulations: Section 267{b) and 707(b) as:

- (1) Members of a family, as defined in subsection (c)(4), which states: The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;
- (2) A corporation that has more than 50 percent in value of the outstanding stock owned directly or indirectly by the subject farm owner who is an individual;
- (3) A corporation that is a member of the same "controlled group" as a corporation that owns the subject property (IRS regulations further define "controlled group" in 12 different ways).
- (4) A controlled partnership that is more than 50% owned by the individual subject farm owner or by another partnership owning the farm.

In determining the contiguous property, I interviewed John Q. Landowner who told about the following ownership interest:

John Q. Landowner has a 50% undivided interest in a woodlot in another portion of Anytown, about 2 miles north on the same road. It is not contiguous and is in no way part of the economic unit. It is not part of the Contiguous parcel. Because it has no views of the conserved land, it is not enhanced.

According to him, he and his family own no other real estate in the immediate vicinity which could be impacted by the easement other than what is already appraised. I conclude that there is no additional enhancement due to the appraised conservation easement.

Final Conclusion of Easement Value – 150.1-Acre John Q. Landowner Farm:

Market Value of 150.1-acre Contiguous Parcel, <u>before-easement</u> :	\$ 755,000
Market Value of 150.1-acre Contiguous Parcel, <u>after-easement</u> :	\$ -635,000
Enhancement:	\$ <u>0</u>
Change in market value due to easement:	\$ 120,000

The loss in market value to the subject property due to the conservation easement is as follows:

One Hundred Twenty Thousand Dollars

(\$120,000)

\$799/ overall acre,

\$830/acre protected property

Underlying Assumptions and Contingent Conditions

In this appraisal, made as of September 25, 2018, no responsibility is assumed for matters of a legal nature, nor has an opinion been rendered on title, good and clear title being assumed, free of any encumbrances and/or defects or liens other than those indicated.

The distribution of values estimated herein for land and/or improvements where separately scheduled are values applicable to each such respective element of the subject property under the program of utilization defined herein by virtue of the definition and description of highest and best use. Such individual values may not be applicable under other alternative use programs, and are invalid in conjunction with any other appraisal.

If this appraisal report contains a valuation relating to an estate that is less than the whole fee simple estate, then the value reported for such estate relates to a fractional interest only in the real estate involved, and the value of this fractional interest plus the value of all other fractional interests may or may not equal the value of the entire fee simple estate considered as a whole.

If this appraisal report contains a valuation relating to a geographical portion of a larger parcel or tract of real estate, then the value reported for such geographical portion relates to such portion only and should not be construed as applying with equal validity to other portions of the larger parcel or tract, and the value reported for such geographical portion plus the value of all other geographical portions may or may not equal the value of the entire parcel or tract as considered as an entity.

The subject property has been considered to have been held under responsible ownership and competent management, unless otherwise specifically stated. It is assumed that such quality ownership and management will continue for the remaining economic and useful life estimated thereof.

The appraiser assumes that the subject property is in compliance with all applicable federal, state and local environmental regulations and laws, unless non-compliance is stated, defined and considered in the report.

The appraiser further assumes that the property is in compliance with all applicable zoning and use regulations, and that any applicable licenses or permits have been obtained or can be obtained or renewed for any use on which the value opinion contained in this report is based.

Larson Appraisal Company

Any representation, indication, and/or description herein as to the physical condition and/or content of the unseen, underlying land or of the indiscernible improvements included in this report is intended solely as an expression of the general visual impression gained by the appraiser upon inspection of the property. No representation is made of a technical nature pertaining to the presence or absence of hazardous materials. The appraiser is not qualified to detect such materials and urges the client to retain an expert in that field if desired. Any sketches, maps, drawings, and/or diagrams prepared by the appraiser and included in this report have been offered only for the purpose of providing visual assistance. No engineering survey or analysis of the property has been made by the appraiser, and no responsibility is assumed in connection therewith.

To the extent, if any, that information, estimates, and/or opinions have been obtained by others, and to the extent, if any, that such information, estimates, and/or opinions have been utilized and/or included herein, the sources of such information, estimates, and/or opinions may be deemed to have been sound, responsible, and reliable. However, no responsibility or liability thereof is assumed by the appraiser.

Possession of this report, or a copy thereof, does not confer any right of disclosure as to the value conclusions, identity of the appraiser, or any part of the contents hereof, or of publication, nor may it be used for any purpose by anyone other than the submittee without the prior written consent of the appraiser of the submittee, and then only subject to such qualifications as may be imposed in connection therewith. Exception to this condition is granted for appraisal reports submitted to any court of competent jurisdiction, or other duly constituted official body by, or on behalf of the submittee, pursuant to duly instituted legal proceedings.

Professional Qualifications

Jesse D. Larson

New York Certified General Real Estate Appraiser, License #46000050304
Vermont Certified General Real Estate Appraiser, License #080-0000272
VT Chapter of the Appraisal Institute Board of Directors-2008-2010
VT Chapter of the Appraisal Institute, Secretary-2011-2013
Appraisal Institute Leadership Development and Advisory Council (LDAC), Washington DC, 2010, 2011
Former Affiliate of the Appraisal Institute
Member, Rutland Area Board of Realtors

Appraisal Education

Solving Land Valuation Puzzles-Appraisal Institute 2018
Uniform Standards of Professional Appraisal Practice '18-19, Calypso – 2017
Appraising Energy Efficient Residential Properties– Calypso 2017
Advanced Excel for Appraisers, Appraisal Institute – 2017
Appraisal Refresher ~ Covering the Bases-Vermont Realtors 2016
Strange but True: Appraising Complex Residential Properties-McKissock – 2016
Uniform Standards of Professional Appraisal Practice, Appraisal Institute – 2015
Valuation of Conservation Easements, Appraisal Institute-2014
Uniform Standards of Professional Appraisal Practice, Appraisal Institute – 2014
Valuation of Conservation Easements and Taxes Seminar, Appraisal Institute-2013
Land Valuation Seminar, AI-2013
Using your HP12C Financial Calculator, AI – 2013
IRS Valuation Seminar, Appraisal Institute-2012
Uniform Standards of Professional Appraisal Practice, McKissock – 2012
Fundamentals of Separating Real Property, Personal Property, and Intangible Business Assets, AI – 2012
Uniform Appraisal Dataset, McKissock – 2011
Valuation of Green Residential Properties, Appraisal Institute – 2011
Thinking Outside the Form: Tools, Techniques, and Opportunities for Residential Appraising, AI – 2011
Uniform Standards of Professional Appraisal Practice, Appraisal Institute – 2010
Business Practices and Ethics, Appraisal Institute – 2009
Analysis of OPAV Sales & NRCS Technical Review – 2008
Appraisal Challenges in Today's Market, Appraisal Institute – 2008
Real Property Appraisal Issues, Current Issues and Misconceptions in Appraisal – 2008
Uniform Standards of Professional Appraisal Practice, Appraisal Institute – 2008
Real Estate Finance, Statistics, and Valuation Modeling, Appraisal Institute-2007
General Market Analysis and Highest and Best Use, Appraisal Institute – 2007
General Applications, Appraisal Institute – 2007
Basic Income Capitalization, Appraisal Institute – 2007
Uniform Appraisal Standards for Federal Land Acquisition, Appraisal Institute – 2006
Uniform Appraisal Standards for Federal Land Acquisition, ASFMRA –2006
Appealing Assessed Value and Related Assessment Issues, Appraisal Institute – 2006
Uniform Standards of Professional Appraisal Practice, Appraisal Institute – 2005
Review Appraising, Appraisal Institute – 2005
Appraisal Report Writing, – 2004
Standards of Professional Practice – 2004
Single Family Appraisal Residential – 2004
Appraisal Basics: General and Residential – 2004

Experience

2007 to 2010: Town of Wells lister.

2004 to Present: Employed with Larson Appraisal Company in Wells, Vermont, appraising farms, woodlots, vacant land and conservation easements.

2000 to Present: Partner in the management of Larson Farm, a beef, dairy farm, and equine center

Addenda: Tax Bills, Deed, Signed Conservation Easement Document(REDACTED)