

# Allegany County

## CONSERVATION EASEMENT

(Actual Easement. NY 2011, Format irregularities not in original )

THIS CONSERVATION EASEMENT (hereafter the "Easement") is by and between \_\_\_\_\_ having his principle residence at \_\_\_\_\_ (hereafter the "Landowner") and the Genesee Valley Conservancy, Inc., a New York not-for-profit corporation having its principal office at \_\_\_\_\_ (hereafter the "Holder").

Landowner is the owner in fee simple of certain real property located in the Town of \_\_\_\_ Allegany County, NY that consists of 136 acres as more fully described in SCHEDULE A and as shown on the property map marked EXHIBIT A, all attached hereto, made a part hereof (hereinafter the "Property").

The Property includes within its boundaries lands consisting of \_\_\_\_\_ acres described in EXHIBIT B to this Easement (hereinafter the "Conservation Area"). The Conservation Area contains lands that have aesthetic and ecological value in their present state as a natural area and that have been subject only minimally to development or exploitation and that consist of farmland used in production of crops and for other agricultural purposes.

The natural values of the Conservation Area and the location of the Homestead have been identified and are more fully described herein (Section A. Purposes of this Easement) and in the reports and plans prepared by the Holder (hereinafter the "Baseline Document") that have been signed by both the Landowner and the Holder and shall be kept on file at the principal office of the Holder and Landowner.

27 Landowner desires to perpetually preserve and conserve the Conservation Area by subjecting the  
28 Conservation Area to the covenants and restrictions of this Easement.

29

30 Landowner, subject to the conditions, permitted uses and rights of Landowner herein contained,  
31 and in consideration of the mutual covenants contained herein, and with the intention of making  
32 an absolute and unconditional gift, freely grants and conveys unto the Holder, its successors and  
33 assigns forever, a perpetual easement in gross over the Conservation Area according to the terms  
34 set forth in this Easement, and hereby agrees to subject the Conservation Area perpetually to the  
35 covenants and restrictions herein set forth.

36

### **37 A. Purposes of this Easement**

38 This Easement is entered into exclusively for the conservation purposes pursuant to Internal  
39 Revenue Code Section 170(1)(5). This Easement is also done in accordance with the purpose of  
40 Internal Revenue Code Section 170(h)(4)(A)(iii) preservation of open space (including farmland  
41 and forestland) where such preservation is (I) for the scenic enjoyment of the general public,  
42 yielding a significant public benefit (hereinafter the "Primary Purpose"). The Conservation Area  
43 in its present unfragmented scenic condition consists of valuable scenic land and open space  
44 vistas that are accessible to the public via several rights-of-way including State Route 70,  
45 Newville Road, and Delude Hill Road.

47 In addition to the Primary Purpose, the secondary purposes of this Easement are to protect the  
48 soils, water quality, ecosystems and natural resource of the Conservation Area for present and  
49 future generations. These purposes are secondary and shall not conflict with or significantly  
50 diminish the Primary Purpose of this Easement (hereinafter the "Secondary Purposes").  
51

52 The Conservation Area contains the following attributes that are more fully documented in the  
53 Baseline Document:

54 1. The Conservation Area in its present unfragmented and forested condition has  
55 substantial and significant value as an open space resource by reason of the fact  
56 that it has not been subject to extensive development and in which a stable plant  
57 community and ecosystem exists; and  
58

59 2. The Conservation Area in its present unfragmented and wetland condition has  
60 substantial and significant value as an open space resource by reason of the fact  
61 that it has not been subject to extensive development and in which a stable plant  
62 community and ecosystem exists. The wetland area, adjacent to the \_\_\_\_\_  
63 Creek, is identified as \_\_\_\_ and is a Class \_\_\_ wetland; and  
64

65 3. The Conservation Area in its present unfragmented open space condition contains viable  
66 soil resources that have agricultural and forestry viability and productive capacity; and  
67

68 4. The Conservation Area in its present unfragmented condition consists of unique,  
69 environmentally sensitive land area in the \_\_\_\_\_ River Watershed that drains  
70 into the \_\_\_\_\_ Creek which flows into the \_\_\_\_\_ River, which the Holder  
71 is trying to protect.  
72

73 Landowner and Holder share the common goal of achieving the Primary Purpose and Secondary  
74 Purposes (hereinafter collectively known as the "Purposes") and of preventing the use,  
75 conversion, or development of the Conservation Area in any way that would conflict with the  
76 terms and conditions of this Easement, either in whole or in part.  
77

78 The State of New York has recognized the importance of private efforts to preserve rural land in  
79 a scenic, natural and open condition through conservation restrictions by enactment of  
80 Environmental Conservation Law, Section 49-0301, et. Seq. and General Municipal Law,  
81 Section 247. This Easement is consistent with them.  
82

83 Holder is a non-profit corporation, having a tax-exempt status under Section 501(c)(3) of the  
84 Internal Revenue Code of 1986, as amended (hereinafter called the "Code"), which has been  
85 established as a public charity for the purpose of preserving and conserving natural habitats,  
86 environmentally sensitive areas and other charitable, scientific and educational purposes. Holder  
87 qualifies as a "qualified organization" under Section 170(h)(3) of the Code.

## **B. Covenants and Restrictions**

90 The Landowner for itself, its successors and assigns, covenants and declares that the following  
91 restrictions shall run with the land and bind the owner of the Conservation Area in perpetuity,  
92 subject only to the rights, reservations, and conditions set forth herein.

93

94 1. Restricted Uses and Activities. No residential, industrial or commercial uses or activities  
95 shall be made or undertaken within, upon, or under the Conservation Area with the  
96 exception of the following:

97 a. Homestead. Uses and activities within the area identified as a Homestead (which  
98 remains part of the Conservation Area), as shown on Exhibit B. Within this ±3  
99 acre area the Landowner reserves the right to construct, repair, remodel,  
100 reconstruct, and maintain the following improvements:

101 i. One single residence to create not more than one total residence;

102 ii. Accessory structures, including garages and sheds;

103 iii. Agricultural structures, including, barns, sheds, silos, and farmstands;

104 provided they remain used solely for agricultural purposes;

105 iv. Driveways and farm lanes constructed of both impervious and pervious  
106 surfaces;

107 v. Fences; and

108 vi. Facilities such as wells and septic systems normally used in connection  
109 with supplying utilities and removing effluent from the improvements  
110 permitted under the terms of this Easement;

111 b. Agriculture and forestry, which is limited to the production of products directly  
112 from the Conservation Area land for food, fiber, or energy production by tilling,  
113 cropping, harvesting or otherwise raising plants or trees in the soil, or breeding,  
114 raising, shearing, feeding and managing animals on the land.

115 c. No more than de minimus commercial recreational activities may be conducted on  
116 the property.

117 d. Accessory creative or professional use in the nature of a home office or art studio  
118 but only if such use is conducted exclusively within a residence or other enclosed  
119 structure permitted under this Easement and does not violate any other prohibition  
120 or limitation imposed upon the Conservation Area under this Easement.

121

122 2. Land Improvement. No excavation, construction, land improvement, or development  
123 activities shall occur within, upon or under the Conservation Area except to construct,  
124 repair, remodel, reconstruct, and maintain:

125 a. Improvements within the area identified as a Homestead as allowed under section  
126 B. 1. a. Homestead.

127 b. Existing fences; new fences may be built anywhere on the Conservation Area for  
128 purposes of reasonable and customary management of livestock and wildlife,  
129 safety and general management and to prevent trespassing on the Conservation  
130 Area, it being specifically understood that all new fences will be deemed to not

131 impair the Purposes of this Easement.

132 c. Improvements for passive outdoor recreation as defined by the Holder in  
133 consideration of the Purposes of the Conservation Area; such improvements  
134 include ponds and trails. Passive outdoor recreation is defined as hunting, fishing,  
135 hiking, horseback riding, snowshoeing, nature observation, and primitive non-  
136 commercial camping; passive outdoor recreation strictly prohibits uses such as  
137 golf courses, tennis courts, and tracks for motorized vehicles.

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138 d. Improvements for farm lanes and access paths onto and across the Property,  
139 provided that such improvements are not paved or covered with an impervious  
140 paving material.

141 e. All existing improvements at the time of donation, as documented within the  
142 Baseline Document, provided that damage to an extent rendering repair  
143 impractical, erection of a structure of comparable size, bulk, use, and general  
144 design to the damaged structure shall be permitted within the same location.  
145

146 3. Subdivision. The Property shall remain in unified ownership, which may be joint or  
147 undivided, but without division, partition, subdivision, or other legal or de facto creation  
148 of lots or parcels in separate ownership, with the exception of the following,:

149 a. Subject to the sole and absolute discretion and approval by the Holder,  
150 Landowner may partition or subdivide the Property. If Holder chooses to grant  
151 such approval, all parcels of land thereby created will be subject to the terms and  
152 conditions of this Easement. Holder will not grant such approval if it determines  
153 in its sole and absolute discretion that such additional subdivision will create an  
154 undue stewardship burden for the Holder or will result in a private benefit or  
155 private inurement to the Landowner.

156 b. Lot line adjustments, which do not create additional building lots or additional  
157 ownership of the Conservation Area, are permitted only with the prior written  
158 approval and permission of the Holder, which permission shall ensure that such  
159 lot line adjustments shall not result in a material reduction in or division of the  
160 size of the Conservation Area.

161

162 4. Timber. No cutting of timber or removal or destruction of trees without prior written  
163 approval of the Holder shall be permitted within the Conservation Area except for the  
164 following purposes:

165 a. To prune and selectively thin trees and harvest according to best forestry  
166 management practices as part of an agricultural or silvicultural operation;

167 b. To prune and selectively thin trees for personal home heating use;

168 c. To clear or restore vegetative cover that has been damaged or disturbed by forces  
169 of nature or otherwise;

170 d. To prune and selectively thin trees that risk potential harm or damage to existing  
171 structures.

172

173 5. Signs. No signs, billboards or outdoor advertising structures shall be placed erected or  
174 maintained within the Conservation Area except: a reasonable number of regulatory (for  
175 example, "no hunting") signs; educational signs (such as to identify historic sites);

176 directional signs; and one sign (or more if approved by the Holder) not exceeding sixteen  
177 (16) square feet for any of the following purposes:

178 a. Stating the name of the Conservation Area and/or the names and addresses of the  
179 occupants;

180 b. Advertising an activity on the Conservation Area permitted under the provisions  
181 of this Easement;

182 c. Identifying the interest of Landowner and Holder in the Conservation Area;  
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183 d. Temporarily advertising the Conservation Area or any portion thereof for sale or  
184 rent:

185 e. Temporarily advertising or expressing support for a political candidate, issue,  
186 referendum or other political consideration;  
187

188 6. Dumping, and Chemicals. No depositing, dumping, abandoning or release of any solid  
189 wastes or debris or any liquid wastes or chemical substances shall be permitted within the  
190 Conservation Area except for the substances, chemical or otherwise, for the purpose of  
191 maintaining or improving the growth of vegetation or the conservation of natural  
192 resources, provided such application conforms to the requirements of all applicable  
193 federal, state, and local laws, rules, and regulations, does not materially adversely affect  
194 surface or ground water quality, and does not occur within one hundred (100) feet of  
195 streams or wetlands;  
196

197 7. Minerals and Mining. There shall be no exploration for, or development and extraction  
198 of, minerals and hydrocarbons by any surface or subsurface mining method.  
199

200 8. Other. No activity within the Conservation Area shall occur which, in the reasonable  
201 opinion of the Holder, is (or may possess the potential to become) inconsistent with the  
202 Purposes of this Easement. All activities on the Conservation Area shall comply with  
203 any applicable local, state or federal laws, regulations, and permits.  
204

#### 205 C. Grant of Access Easement

206 Landowner hereby grants and conveys unto Holder, its successors and assigns, the following  
207 easements and rights of access to the Conservation Area:  
208

209 1. Inspection. The right of the Holder, in a reasonable manner at reasonable times to enter  
210 and inspect the Conservation Area. Holder makes it a practice to visit annually by pre-  
211 arranged appointment with Landowner.  
212

213 2. Promoting Habitat. The Holder may, at Holder's expense and with permission of the  
214 Landowner, enter on the Conservation Area for the purpose of performing any action  
215 required, in Holder's judgment, to preserve, conserve or promote the natural habitat of  
216 the wildlife, trees, fish, plants, or other vegetation located within the Conservation Area,  
217 provided that such changes are disclosed to the Landowner in writing at least thirty (30)  
218 days prior to performing such act and Landowner approves, in writing, such actions;

219

220 3. Correcting Violations. Without limitations of the foregoing or other rights or remedies  
221 herein contained, the Holder's right, but not the obligation, to enter the Conservation  
222 Area and take such action or actions as the Holder deems necessary to correct violations  
223 of any restriction or covenant contained herein; whereupon the Holder shall have the  
224 right to charge the Landowner for any and all repair or restoration costs incurred by  
225 Holder in so doing; provided that the Landowner has failed to commence an effort to cure  
226 such violation within 30 days after written notice by Holder to Landowner and thereafter  
227 diligently and in good faith proceed to cure the violation with respect to which the notice  
228 was provided.

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229

230 4. Public Access. Nothing contained in this Easement shall be construed to grant a right of  
231 entry onto the Conservation Area by the general public or any member thereof.

232

### **233 D. Holder's Rights and Obligations**

234 In consideration of the foregoing covenants, Holder, by acceptance of this Easement, covenants  
235 and declares the following on behalf of itself and its successors and assigns:

236

237 1. Holder its successors or assigns shall hold this Easement exclusively for the Purposes  
238 enumerated herein and in the Baseline Document, as amended with the written consent of  
239 the Landowner and Holder from time to time, in perpetuity.

240

241 2. Holder shall use its best efforts to enforce both the rights granted to it and the restrictions  
242 imposed upon the Conservation Area under this Easement.

243

244 3. Notwithstanding the foregoing or anything else in this Easement to the contrary, Holder,  
245 its successors and assigns shall have the right to assign, either wholly or partially, its  
246 right, title and interest hereunder provided that the assignee is a qualified organization  
247 under the Internal Revenue Code and provided that the assignee shall hold this Easement  
248 exclusively for the Purposes herein set forth. The term "Holder" as used in this Easement  
249 shall mean the above-named Holder and any of its successors and assigns.

250

251 4. If at any time Holder or any successor or assignee is unable to enforce this Easement in  
252 full or fails to do so, or if Holder or any successor or assignee ceases to exist or ceases to  
253 be a qualified organization, and, if, on the occurrence of any of these events, Holder or  
254 any successor or assignee fails to assign all of its rights and responsibilities under this  
255 Easement to a qualified organization, then the rights and responsibilities under this  
256 Easement shall become vested in and fall upon another organization defined as qualified  
257 by the Internal Revenue Code, as awarded by a court of competent jurisdiction, with  
258 consideration given to suggestions of a qualified organization, if any, by the Landowner.

259

### **260 E. General Provisions**

261 Holder and Landowner understand they have a perpetual obligation to work together to uphold

262 the Purposes of this Easement. To this end, Landowner and Holder shall confer with each other  
263 and make a good faith attempt to resolve any issue by mutual agreement in a timely manner.  
264

265 1. Right to Enforce. The Holder shall have the right to enforce by proceedings at law or in  
266 equity each and every provision in this Easement, by any of the rights or remedies  
267 available to the Holder as set forth in any law, administrative remedy, or in this Easement  
268 including by ex parte injunctive relief to prevent harm to the resources protected hereby.  
269

270 2. Landowner Violation. In the event of any violation of this Easement, Landowner shall  
271 pay, either directly or by reimbursement to Holder, all reasonable costs of enforcement  
272 including attorney's fees, court costs and other expenses, including staff time, incurred by  
273 Holder (herein called "Legal Expenses") in connection with any proceedings under this  
274 Section.  
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275 3. Easement Ambiguity. Any general rule of construction to the contrary notwithstanding,  
276 this Easement shall be liberally construed in favor of this Easement to effect the Purposes  
277 of this Easement and the policy and purposes of the Holder. If any provision in this  
278 instrument is found to be ambiguous, an interpretation consistent with the Purposes of  
279 this Easement that would render the provision valid should be favored over any  
280 interpretation that would render it invalid. The parties intend that this Easement, which is  
281 by nature and character primarily negative in that the Landowner has restricted and  
282 limited their right to use the Conservation Area, except as otherwise recited herein, be  
283 construed at all times and by all parties to effectuate its Purposes.  
284

285 4. Indemnification. Landowner shall indemnify and hold Holder harmless for any liability,  
286 costs, reasonable attorneys' fees, judgments, or expenses to Holder or any of its officers,  
287 employees, agents or independent contractors resulting: (a) from injury to persons or  
288 damages to property arising from any activity on the Property, except those due solely to  
289 the acts of the Holder; and (b) from actions or claims of any nature by third parties  
290 arising out of the entering into or exercise of rights under this Easement, except those due  
291 solely to the acts of the Holder.  
292

293 Landowner is solely responsible, and Holder has no responsibility whatsoever, for the  
294 operation of the Property or the monitoring of hazardous and other conditions thereon.  
295 Notwithstanding any other provision of this Easement to the contrary, the parties do not  
296 intend, and this Easement shall not be construed, such that: (1) it creates in the Holder the  
297 obligations or liabilities of an "owner" or "operator" as those words are defined and used  
298 in the environmental laws, including without limitation the Comprehensive  
299 Environmental Response, Compensation and Liability Act of 1980, as amended (42  
300 USCA §9601 et seq.) or any successor or related law; (2) it creates in the Holder  
301 obligations or liabilities of a person described in 42 U.S. Code §9607(a)(3) or any  
302 successor or related law. The term "environmental laws" includes, without limitation,  
303 any federal, state, local, or administrative agency statute, regulation, rule, ordinance,  
304 order, or requirement relating to environmental conditions or hazardous substances.  
305

306 5. Responsibilities, Costs, and Liabilities. Landowner shall retain all responsibilities and  
307 shall bear all costs and liabilities of any kind related to the ownership, operations,  
308 upkeep, and maintenance of the Conservation Area, including the maintenance of general  
309 liability insurance coverage.

310

311 6. Taxes. Landowner shall continue to pay all taxes, levies, and assessments and other  
312 governmental or municipal charges that may become a lien on the Property, including  
313 any interest and penalties. If Landowner fails to make such payments, Holder is  
314 authorized to make such payments, but shall have no obligation to do so, upon ten (10)  
315 days prior written notice to Landowner, according to any bill, statement, or estimate  
316 procured from the appropriate public office without inquiry into the accuracy thereof  
317 That payment, if made by Holder, shall become a lien on the Property of the same  
318 priority as the item if not paid would have become, and shall bear interest until paid by  
319 Landowner at the rate of six (6) percent per annum..

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321 7. Property Interest Proportionate Share. This Easement gives rise to a property right and  
322 interest immediately vested in the Holder. For the purposes of this document, the fair  
323 market value of such right and interest shall be equal to the difference, as of the date  
324 hereof, between the fair market value of the Conservation Area subject to this Easement  
325 and the fair market value of the Conservation Area if unencumbered hereby. Such  
326 difference divided by the fair market value of the Conservation Area if unencumbered  
327 hereby is the Holder's proportionate share of the fair market value of the Conservation  
328 Area (hereinafter the "Proportionate Share"). In the event a material, unforeseeable  
329 change in the conditions surrounding the Conservation Area makes impossible its  
330 continued use for the Purposes contemplated hereby, resulting in an extinguishment of  
331 this Easement or any material term or provision hereof by a judicial proceeding; then  
332 upon subsequent transfer of title of all or any part of the Conservation Area, and after  
333 satisfaction of prior claims and net of any costs or expenses associated with such sale,  
334 Landowner and Holder shall divide the proceeds from such sale (minus any amount  
335 attributable to the value of improvements made after the date of this Easement, which  
336 amount shall be reserved to the Landowner) so that Holder receives its Proportionate  
337 Share of the fair market value of the Conservation Area. All such proceeds received by  
338 Holder shall be used in a manner consistent with the conservation purposes of the Holder.  
339

340 8. Eminent Domain. If all or part of the Conservation Area is taken by exercise of eminent  
341 domain by public, corporate or other authority so as to abrogate the restrictions imposed  
342 by this Easement, the Landowner and Holder shall join in appropriate actions at the time  
343 of such taking to recover the full value of the taking and all incidental or direct damages  
344 resulting from the taking. All expenses incurred by the Landowner and Holder, including  
345 reasonable attorney's fees, in any such action shall be paid out of the recovered proceeds.  
346 Holder shall be entitled to its Proportionate Share of the recovered proceeds and shall use  
347 such proceeds in a manner consistent with the conservation purpose of this Easement.  
348 The respective rights of the Landowner and Holder set forth above shall be in addition to  
349 and not in limitation of, any rights they may have in common law with respect to a  
350 modification or termination of this Easement by reason of changed conditions or the

351 exercise of powers of eminent domain as aforesaid.

352

353 9. Failure to Enforce. The failure of the Holder to exercise any of its rights under this  
354 Easement on any occasion shall not be deemed a waiver of said rights and Holder retains  
355 the right in perpetuity to require full compliance by Landowner the covenants and  
356 restrictions in this Easement.

357

358 10. Amendment. This Easement can only be amended at the sole discretion of the Holder  
359 with the written consent of Holder and current Landowner. Any such amendment shall  
360 be consistent with the Purposes of this Easement, shall not have a negative impact on the  
361 Conservation Area, shall comply with the Environmental Conservation Law or any  
362 regulations promulgated thereunder, shall not create an undue stewardship burden for the  
363 Holder, and shall not result in any more than an incidental private benefit or private  
364 inurement to the Landowner. Any such amendment shall be in writing signed by both  
365 parties and shall be duly recorded.

366

11. Invalidation and Waivers. Invalidation or waiver of any of the provisions herein shall not affect any other provision of this Easement. Titles and subtitles are for the convenience of the reader and have no contractual significance. The terms "Landowner" and "Holder" include their respective heirs, successors and assigns who have any legal ownership or fiduciary interest in the Conservation Area, which may include heirs, trustees, executors, and administrators. The same terms apply whether any Landowner or Holder is a person or entity, male or female, singular or plural.

12. Violation Liability. Landowner shall be and remain liable for any breach or violation of this Easement only if such breach or violation occurs during such time as Landowner is the legal owner of the Conservation Area or part thereof. This Easement may only be enforced by the parties hereto, and their respective heirs, successors and assigns, and no third party beneficiary rights, including but not limited to third party rights of enforcement, are created hereby.

13. Successors in Interest. Landowner agrees that all mortgages upon any or all of the Conservation Area entered into after the date of this Easement will be subject to and subordinate to the Easement.

14. Sale and Transfer. Landowner shall notify Holder in writing of any sale, transfer or other disposition of the Property or any interest therein, whether by operation of law or otherwise, at least 30 days prior to such disposition. Such notice shall include a copy of the proposed transfer document, date of the proposed transfer, and the name(s) and address(es) for notices to the transferee(s).

15. By signing this Easement, Landowner certifies that:

Landowner has received and fully reviewed the Baseline Document in its entirety.

The Baseline Document sets forth the true, correct and complete conservation values and present condition of the Conservation Area as of the date of this Easement.

Landowner has had the opportunity to be represented by counsel of Landowner's selection, and fully understands that Landowner is permanently relinquishing property rights, which would otherwise permit the Landowner to have the full use and enjoyment of the Conservation Area.

Landowner hereby certifies that the Property is not encumbered by any mortgage, lien or other encumbrance, or that all such existing mortgages, liens or encumbrances, if any, have been subordinated to this Easement by a duly executed instrument satisfactory to Holder and recorded in the Office of the County Clerk in which the Property is located.

The undersigned individual signing on behalf of the Landowner has all legal authority to enter into this Easement as the binding act of the Landowner and to perform all of the obligations of the Landowner hereunder.

TO HAVE AND TO HOLD the easements and rights and obligations set forth in this Easement unto Holder, its successors and assigns, for its own use and benefit forever.

IN WITNESS WHEREOF, and intending to be legally bound hereby, Landowner and Holder have executed this Easement as of the dates below.