

Broome County
DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Conservation Easement") made this _____ day of _____, 2004, by and between _____ ("Grantors"); and the Chenango Land Trust, P.O. Box 1284, Norwich, NY 13815-6534 ("Grantee").

WITNESSETH

WHEREAS Grantors own in fee simple approximately 200 acres of certain real property ("Premises") as hereinafter described, situate, lying, within the Town _____ Broome County, New York, and

WHEREAS, a major portion of the Premises has current and potential forest resources developed over many years of sound management, and ecological and natural characteristics which this Easement will help to preserve while protecting water quality and habitat for a variety of wildlife species ("conservation values"), and

WHEREAS Grantors are willing to grant a perpetual Conservation Easement over approximately 195 acres of the premises ("Protected Property" or "Property"), thereby restricting and limiting the use of a major portion of the premises in accordance with the terms, conditions and purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement; and

WHEREAS protection of property by Conservation Easement is provided for pursuant to Article 49, Title 3 of the Environmental Conservation Law of New York, and Section 170(h) of the Internal Revenue Code, and

WHEREAS, the Property is in a Broome County Agricultural District created under the authority of New York's Agricultural Districts Law, which states that: "It is the purpose of this article to provide a locally-initiated mechanism for the protection and enhancement of New York State's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance", and

WHEREAS, the Grantors' long term maintenance of forest values, has been recognized since state approval in 1972 under Section 480 of the Real Property Tax law, which states that: " In view of the benefits to the state and municipal corporations therein which will accrue through the reforestation of idle lands, eligible tracts forest land may be granted an exemption from taxation as hereinafter provided", and

WHEREAS, the property is certified by the American Tree Farm System, originally in 1979 and renewed each five years since, based on meeting standards for having written management plans, complying with water quality/ best management practices / forest practices, maintaining satisfactory restocking levels, and following practices which protect or enhance wildlife habitat and consider forest aesthetics and biodiversity, and

WHEREAS the Chenango Land Trust is charitable in nature, and is created for the purpose of preservation of the natural and scenic qualities of Chenango County, surrounding counties, and its environs, and

WHEREAS Grantee is a "qualified organization" within the meaning of Section 170(h)(3) of the Internal Revenue Code, is authorized by the laws of New York to accept, hold, and administer Conservation Easements and is willing to accept this Easement under the terms and conditions hereinafter described, and

WHEREAS Grantors and Grantee recognize the open-space conservation and forest values of the protected property in its present state as a natural and rural area that has not been subject to development, and whose characteristics have been improved through determined management, and

WHEREAS Grantor and Grantee have a common purpose in conserving the dominant rural, agricultural, and woodland character of the property, and, except as hereinafter provided, in preventing the use or development of the property for any purpose or in any manner that would conflict with the maintenance of the property and its conservation values; and

WHEREAS the parties have a mutual desire and goal to foster landscape scale conservation, reduce land fragmentation, and provide blocks of protected land that allow for agriculture and forestry in perpetuity,

NOW THEREFORE, as an absolute gift of no monetary consideration but in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors, and assigns, forever and in perpetuity, a Conservation Easement on the Property of the nature and character and to the extent hereinafter set forth.

A. Definitions

As used in this Conservation Easement, the term:

-- "Grantor" or "Grantors" means the original grantor, its heirs, and successors and assigns, and all future owners of any legal or equitable interest in the property.

-- "Grantee" means the original grantee and its successors and assigns.

-- "Premises" means the entire 200 +/- acre parcel owned by the grantor as described by the deed attached hereto.

-- "Protected Property" or "Property" means the approximately 195 +/- acres of the premises being granted under this Easement. The portion of the premises not included as part of the protected property is identified as follows:

Starting at a point along the easterly side of _____ Road approximately 135 +/- feet northerly from the center point of the driveway to _____ easterly at right angles approximately 825 +/- feet to a stone wall, thence southerly at right angles along the stonewall for approximately 315 feet, then westerly at right angles approximately 825 +/- feet to _____, thence Northerly along the easterly side of the Road approximately 315 +/- feet to the place of beginning.

-- "Forester" means an individual possessing a Bachelor of Science or higher degree in forestry from an educational institution with a forestry curriculum accredited by the Society of American Foresters who subscribes to the cannons of the Society of American Foresters, and has experience in the preparation and implementation of plans for long range forest management.

-- "Forest Management Plan" mean a document that sets forth the Grantor's forest management objectives, identifies areas or stands individually or grouped to form generally homogeneous management areas, describes for each management area species composition, stocking levels, and suggested actions or elements for review on a time scale with sufficient flexibility to allow for changing conditions and unforeseen circumstances, references generally accepted guidelines to prevent and control undesirable soil and surface water conditions during and after forest management activities, identifies activities which are to be supervised or conducted by a forester, and such other information as might be appropriate in carrying out the purpose of this easement.

B. Purpose and Intent

The purpose of this Easement is to conserve the Property to enable it to be managed as a working forest in accordance with long term sustainable forest practices designed to achieve continuing yields of high quality forest products, and to be managed for agricultural productivity and viability, while demonstrating the compatibility of working forest and agricultural activities with achievement of complimentary education, recreation, wildlife, and other conservation, economic, environmental, and social benefits.

This Easement primarily is intended to encourage and realize continuing benefits from forest management planning, foster sustainable forest management activities in accordance with a forest management plan, and provide periodic timber harvests for income and the health of the forest while secondly providing for diverse wildlife habitat and allowing for continuing recreational, educational and residential use of the premises.

C. Prohibited Activities

- 1) The Property shall not be partitioned or subdivided.
- 2) Construction of facilities, buildings and structures is prohibited except as provided below.
- 3) Dumping trash, waste, abandoned vehicles, appliances, machinery, or other non-vegetative materials is prohibited.
- 4) Diking, draining, filling, or removal of wetlands is prohibited.
- 5) Any agricultural or forestry uses or practices not consistent with principles of sustainable management and the purpose of this easement are prohibited.
- 6) Construction of roads beyond that necessary to achieve forestry, educational, recreational and other activities consistent with the purpose of this easement is prohibited.

- 7) Removal of stone, soil or other ground material is limited to that which would be used on the premises and would not significantly adversely affect carrying out the purpose of this easement.
- 8) Mineral exploration or extraction by surface or subsurface methods is prohibited except that exploration or extraction using methods that have only limited, localized impact on the property and are not permanently destructive of significant conservation values is permitted.

D. Reserved Rights and Restricted Activities

1) Grantor reserves to itself all rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are consistent with the purpose of this easement. The conveyance of this Easement does not grant the general public or any person or entity the right to enter the Property with the exception of the Grantee as provided below.

2) Forest Management Plan: The Grantor shall have prepared a forest management plan at least every 15 years.

A copy of the Forest Management Plan as approved by the Grantor's forester will be provided to the Grantee. Grantee will have no authority to approve or disapprove the plan, provided, however, if the Grantee finds that elements of the plan are or may be inconsistent with the purpose of this Easement, the Grantee may request review or alteration of the plan in accordance with recommendations prepared by a forester.

3) Without limiting the generality of the foregoing, the following rights are expressly reserved:

a) Forest Management Activities: Conduct of forest management activities, consistent with the current forest management plan along with the attendant operation of tools and equipment and placement, construction, maintenance, and removal of temporary structures, unpaved access roads and staging areas necessary for such activities is reserved, and may entail but is not limited to:

-- timber stand improvement practices such as thinning and pruning of trees to improve timber quality and control of insects, disease and invasive species;

-- harvest of forest products such as trees, logs, poles, posts, pulpwood, firewood, chips, seeds, seed cones, maple sap, ginseng and mushrooms;

-- maintenance of existing open lands or conversion of open land to forestry and permitting open lands to revert naturally to a forested and/or natural state;

-- opening up areas now wooded, or planting open areas;

--recreational activities such as hunting, fishing, hiking, mountain biking, horseback riding, cross-country skiing, and snowmobiling;

--generally accepted practices for wildlife habitat improvement; and,

--other activities not detrimental to the purpose of this Easement, provided that forest management activities shall be consistent with the current Forest Management Plan for the Property.

b) Open Land Activities: Management and use activities on lands not identified as part of a management area in the forest management plan such as those in agricultural use, ponds, predominately open, or in a brushy transition stage are reserved and may take any form consistent with the purpose of this Easement, including but not limited to: mowing, brush removal or invasives control; planting, caring for and harvesting agricultural crops, shrubs or trees; conversion to active forestry or reversion to a forested and/or a natural state after use for agricultural crops or forestry; generally accepted practices for habitat improvement; and other activities not detrimental to the purpose of this Easement, provided that activities shall be consistent with the forest management plan.

c) Ancillary Facilities: Construction, maintenance, and use of ancillary structures, facilities and improvements is reserved, including but not limited to signs, bird houses, unpaved access roads, drainage facilities, water and utilities supply, trails, fences, and walls which support the purpose of the Easement or serve the portion of the premises not protected by this Easement, provided that such construction, maintenance or use does not significantly adversely impact achievement of the purpose and intent of this Easement.

Ancillary structures, facilities and improvements may include those that are temporary, do not have installed utilities, are not designed for permanent human habitation and whose number and placement facilitates educational, recreational and research activities while not significantly adversely impacting the Property's forest and open land resources.

Ancillary structures, facilities, and improvements also may also include up to four permanent camping lean-tos incorporating design and materials blending with their surroundings, not constructed or equipped for all-weather or full time personal habitation, and whose placement and use shall not significantly adversely impact the Property's forest resource or be detrimental to the purpose and intent of this easement.

E. Enforcement and Remedies

1) Upon any breach of the terms of this Conservation Easement by Grantor, Grantee may, after reasonable notice to Grantors, institute suits to enjoin any breach or enforce any covenant by ex parte, temporary, and/or permanent injunction; and, to the extent feasible and practical, require actions to restore or ameliorate the result of the breach. This conservation easement shall not be construed to entitle Grantee to bring legal action against the Grantor for injury or change in the property resulting from natural events beyond the control of the grantor, including without limitation unauthorized actions by third parties, fire, flood, storm, disease, earthquakes, tornado, landslide or Acts of God or from any prudent action taken by the Grantor under emergency condition to prevent, abate, mitigate significant injury to the property resulting from such causes.

2) By its execution of this Easement, Grantee acknowledges that the present uses of the Property are compatible with the purpose of this Easement. In order to evidence the present condition of

the Property, a Baseline Documentation Report describing such conditions at the date hereof has been prepared with a copy for the Grantee and the Grantor and subscribed to by both parties.

3) If a dispute arises between the Grantor and Grantee concerning the consistency of any proposed use or activity with the purpose and intent of this Easement or any of the specific provisions contained herein, and the Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may request a meeting between the parties, or refer the dispute to a mediator knowledgeable about practices associated with the Easement's purpose and intent to recommend potential resolution of the dispute. The impartial mediator may determine reasonable costs associated with the mediation process.

4) Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to Grantee in law or equity. If Grantor is found to have breached any of Grantor's obligations under this Conservation Easement, Grantor shall reimburse Grantee for any costs or expenses incurred by Grantee, including court costs and reasonable attorney's fees.

5) Grantor's remedies shall be cumulative and shall be in addition to any other rights and remedies available to the Grantor in law or equity. If Grantor is found not to have breached any of the Grantor's obligations under this Conservation Easement, or if Grantor's contentions are upheld regarding any suit to enjoin any breach or enforce any covenant by ex parte, temporary, and/or permanent injunction, or Grantor's contentions regarding required actions to restore or ameliorate are upheld, Grantee shall reimburse Grantor for any costs or expenses incurred by the Grantor including court costs and reasonable attorneys' fees.

6) No failure on the part of Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

7). Grantee has the right with reasonable notice to enter the Property annually at reasonable times for the purpose of inspecting the Property to determine whether the Grantor is complying with the terms, conditions, and restrictions of this Conservation Easement.

F. MISCELLANEOUS

1). Grantee may assign, upon prior written notification to Grantor, its rights under this Conservation Easement to any "qualified organization" within the meaning of Section 170(h)(3) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code; and, if any such assignee shall be dissolved or shall abandon this Conservation Easement or the rights and duties of enforcement herein set forth, or if proceedings are instituted for condemnation of this Conservation Easement, the Easement and rights of enforcement shall revert to Grantee; and if Grantee shall be dissolved and if the terms of the dissolution fail to provide a successor, a court with jurisdiction may transfer this Easement to another qualified organization with similar purposes and agreeing to assume the responsibility.

2) Grantor agrees to notify Grantee in writing of the names and addresses of any party to whom the Property or any part thereof is to be transferred at or prior to the time said transfer is consummated. Grantors further agree to make specific reference to this Conservation Easement

in a separate paragraph of any subsequent deed or other legal instrument by which any interest in the Property is conveyed.

3) Grantee agrees to hold this Conservation Easement exclusively for conservation purposes, as defined in Section 170(h)(4)(A) of the Internal Revenue Code.

4) The donation of this Conservation Easement gives rise to a property right, immediately vested in Grantee, with a fair market value equal to the proportionate value that the Conservation Easement bears to the value of the Property as a whole.

5) The granting of this Conservation Easement does not convey to the public the right to enter the Property for any purpose whatsoever.

6) This Conservation Easement shall be construed to promote the conservation purposes of the Grantee and the conservation purposes of this Easement, including such purposes as are defined in Section 170(h)(4)(A) of the Internal Revenue Code.

7) The provisions of this Conservation Easement do not replace, abrogate, or otherwise set aside any local, state, or federal laws, requirements or restrictions applicable to the Property.

8) All rights reserved by or not prohibited to Grantor are deemed consistent with the conservation purposes of this Easement and require no prior notification to or approval by the Grantee, provided that, if Grantor believes that undertaking a particular activity may have a significant adverse effect on the conservation interests associated with the Property, Grantor is encouraged to notify Grantee in writing and await Grantee's determination before undertaking the activity. If Grantee does not respond to the Grantor's request with 45 days the activity shall be deemed to not have a significant adverse effect on such conservation interests.

9) Any notices by Grantors to Grantee pursuant to any provision hereof shall be sent by registered or certified mail, return receipt requested, addressed to Chenango Land Trust, Post Office Box 1284, Norwich, New York, 13815-4284, or to such other address as Grantee may establish in writing on notification to Grantor.

10) Grantee and Grantor have the right to mutually agree in writing to amendments to this Easement that are not inconsistent with the purpose of this Easement, provided however, that the Grantee shall have no right or power to agree to any amendments hereto that would result in this Easement failing to qualify as a valid Conservation Easement under Article 49, Title 3 of the Environmental Conservation Law of the State of New York as may be amended, or Section 170(h) of the Internal Revenue code governing "qualified conservation contributions". Any amendments that do not comply with Article 49 or Section 470(b) shall be void and of no force or effect.

11) If all or part of the Property is taken by eminent domain or if a subsequent unexpected change in conditions surrounding the Property make impossible the continued use of the Property or any portion thereof for conservation purposes, the restrictions may only be extinguished in whole or in part by judicial proceeding in a court of competent jurisdiction.

12) This Conservation Easement shall be perpetual. It is an easement in gross and as such is inheritable and assignable and runs with the land as an incorporeal interest in the Property, enforceable with respect to the Property by Grantee against Grantor and its personal representatives, heirs, successors, and assigns.

TO HAVE AND TO HOLD unto the Chenango Land Trust, its successors, and assigns forever. The covenants agreed to and the terms, conditions, restrictions, and purposes imposed as aforesaid shall be binding upon Grantor, its survivors, agents, personal representatives, heirs, assigns, and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the above described Property.