

«Application_Type»-«ContractNumber»-«Variable_Number»
«Region_Code»
«Project_Name»

Office of Parks, Recreation and Historic Preservation
EPF Conservation Easement
ECL Article 49

CONSERVATION EASEMENT/PRESERVATION COVENANT

THIS DEED OF CONSERVATION EASEMENT, made this _____ day of _____, 20____ between the _____, having an address at _____, New York ("Grantor"), and **THE PEOPLE OF THE STATE OF NEW YORK**, acting by and through the Commissioner of the Office of Parks, Recreation and Historic Preservation, Albany, New York 12238 (for USPS postal mail), with offices at 625 Broadway, Albany, New York 12207 (for physical delivery) ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of all that certain real property located in <<**List Property Location**>>, «County», New York, as more particularly described in Exhibit A attached hereto and made a part hereof (the "Protected Property"); and

WHEREAS, the Protected Property possesses significant recreational, scenic, historical, architectural and open space features and values; and

WHEREAS, Grantor is, as of the date hereof, with the granting of this Conservation Easement, confirming its commitment to develop, maintain, operate and provide for the public's use and enjoyment a << **PARK OR HERITAGE AREA OR HISTORIC PRESERVATION** >> PROJECT as defined in 9 NYCRR << 439.2m **OR** 439.2f **OR** 439.2g >> and 441.4b; and is agreeing to construct, develop, preserve and operate a park on the Protected Property as required in 9NYCRR 441.4b; and

WHEREAS, the State of New York has awarded the Grantor funding pursuant to Article 54 of the Environmental Conservation Law, commonly known as the Environmental Protection Act, identified as EPF Grant «Project_Number» for the acquisition of the Protected Property; and

WHEREAS, the Protected Property will be used as a «**Property_Used_For**» which will include <<**list elements contained in project scope**>> **among other amenities; and**

WHEREAS, Grantor has agreed to place restrictions on the Protected Property as part of its transaction with Grantee, while retaining the use of the Protected Property as a «**Property_Used_For**» as defined above; and

WHEREAS, the State of New York has enacted Article 49, Title 3 of the Environmental Conservation Law (as the same may be amended, "Article 49") to provide for the limitation and restriction of development, management and use of real property by Conservation Easement;

NOW, THEREFORE, in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained and other good and valuable consideration, Grantor does hereby grant and convey to Grantee, its successors and assigns forever, a Conservation Easement pursuant to Article 49, in perpetuity consisting of the terms, covenants and obligations on Grantor's part to be observed and performed and Grantee's rights to monitor and enforce same, all as hereinafter set forth, over and across the Protected Property (the "Easement").

1. Purpose. The purpose of this Easement is to grant to Grantee certain rights to restrict the use and development of the Protected Property to protect in perpetuity the use of the Protected Property for the purpose of «**Property_Used_For**», and through such protection, enhance, preserve and protect said «**Property_Used_For**» for the use and enjoyment of the public.

«Application_Type»-«ContractNumber»-«Variable_Number»
«Region_Code»
«Project_Name»

2. Prohibited Uses and Practices. The following uses and practices are inconsistent with the purpose of this Easement and shall be prohibited upon or within the Protected Property, except to the extent permitted by Paragraph 4 hereof:

- (a) Any commercial, industrial or residential uses of the Protected Property, except as expressly permitted herein.
- (b) The division or subdivision of the Protected Property.
- (c) The construction, erection, maintenance or replacement of any buildings, roads, roadways, signs (other than informational or directional signs), billboards, satellite dishes, fences, docks or other structures or improvements of any kind or nature whatsoever on or over the Protected Property except solely the Permitted Improvements (as defined in subparagraph 4(a) hereof).
- (d) The dumping or storage of ashes, trash, waste, garbage and sawdust on any portion of the Protected Property, except such storage of the aforementioned material as may be normally and reasonably incidental to uses permitted hereunder. No chemical wastes or other hazardous waste materials may be dumped or stored on the Protected Property.
- (e) Dredging, mining, excavation, filling or other use of the Protected Property, which is detrimental to drainage, water quality, flood control or the fish and wildlife attributes of the Protected Property; subject, however, to Grantor's right to build, install, maintain, repair and replace the Permitted Improvements in accordance with the provisions hereof and all applicable laws and governmental regulations.
- (f) Disturbances of the Protected Property's surface topography, including but not limited to filling, excavation, grading, removal of topsoil, sand, gravel, rocks or minerals, or changing of the topography of the land in any manner except as may be reasonably necessary for the construction, erection, installation, maintenance or replacement of any of the Permitted Improvements in accordance with the terms hereof or as may be normally and reasonably incidental to any of the uses of the Protected Property expressly permitted hereby.
- (g) The use of toxic chemicals, including, without limitation, pesticides and herbicides, on the Protected Property, except in connection with interior operation and maintenance of the Permitted Improvements or as permitted by the Office of Parks, Recreation and Historic Preservation ("OPRHP") and the Department of Environmental Conservation ("DEC") or any other governmental agency having jurisdiction over the Protected Property and in accordance with all applicable governmental laws and regulations.
- (h) Except as may be required for emergency purposes or for necessary management actions of Grantee or Grantor or for the construction and maintenance of the Permitted Improvements, the use of off-road motorized vehicles other than on the roads on the Protected Property, including, without limitation, automobiles, all-terrain vehicles and motorcycles.

3. Affirmative Rights Conveyed. Grantee shall have the right to review and approve any plans for development, construction or installation of structures or improvements on the Protected Property.

4. Retained Rights of GRANTOR. Subject to the purpose and provisions of this Easement, including, without limitation, the provisions of Paragraphs 2 and 3 hereof, and to conditions set forth below, GRANTOR reserves and retains all customary rights of ownership in the Protected Property to the extent such rights are exercised in a manner which is not inconsistent with the use of the Protected Property as a «Property_Used_For», including, but not limited to:

«Application_Type»-«ContractNumber»-«Variable_Number»
«Region_Code»
«Project_Name»

(a) <<**Insert ONLY if there are existing structures or facilities on the Protected Property**>> The right, subject to approval of Grantee as noted below, to renovate, repair and maintain the following existing structures and facilities, in order to enhance the Protected Property for use as a «**Property_Used_For**»:

(1) <<**List Permitted Renovations, Repairs, Maintenance, if any, here**>>

(b) The right, subject to approval of Grantee as evidenced by a letter signed by the Commissioner or the Commissioner's delegate, to construct, install and maintain future recreational, cultural and support facilities which are reasonably necessary and consistent with the use and enjoyment of the Protected Property for use as a «**Property_Used_For**».

No work affecting the Protected Property shall be commenced until the Grantor has received approval thereof from the Grantee as evidenced by a letter signed by the Commissioner or the Commissioner's delegate.

All permitted renovation, repair, and maintenance work is to be performed in conformance with The Secretary of the Interior's Standards for the Treatment of Historic Properties 1995, The Secretary of the Interior's Standards and Guidelines for Archeological Documentation or any other applicable Secretary of the Interior's Standards (collectively referenced as STANDARDS).

Before the plans for any proposed renovation, repair, maintenance or construction, alteration or demolition affecting the Protected Property are finalized, the Grantor will provide such information to the Grantee as will reasonably inform the Grantee as to the work to be performed, the scope of the work, the details of the treatment and materials and application, along with any other documentation requested by the Grantee that is reasonably needed to define the nature and character of the work to be performed and the anticipated period of time in which the work is estimated to be completed.

All work on the Protected Property shall be undertaken in a way which mitigates, to the greatest extent practicable, any effects on any stream, wetland, pond, lake or other body of water located within 100 feet of such improvement.

5. Public Access. There shall be public access to the Protected Property, except that access to those areas customarily used for administrative, maintenance, safety and public health purposes, may be restricted. Grantor may promulgate rules and regulations regarding hours of use for the public.

6. Inspection. Grantee and its duly authorized agents, employees and representatives shall have the right to enter the Protected Property upon reasonable notice to Grantor, at such times during normal business hours and in such manner as will not unreasonably interfere with Grantor's use of the Protected Property in accordance with this Easement, to examine and inspect the Protected Property to ensure there are no violations, breaches or defaults of any term, provision, covenant or obligation on Grantor's part to be observed or performed under this Easement.

7. Enforcement Rights of Grantee. Grantor acknowledges and agrees that Grantee's remedies at law for any violation of this Easement are inadequate. Therefore, in addition to, and not in limitation of, any other rights of Grantee hereunder or 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 Easement is not cured by Grantor within 30 days notice thereof by Grantee (which notice requirement is expressly waived by Grantor with respect to any such breach, default or violation which requires immediate action to protect the purpose of this Easement) Grantee shall have the right (a) to institute a suit to enjoin or cure such breach, default or violation by temporary and/or permanent injunction, or (b) 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,

«Application_Type»-«ContractNumber»-«Variable_Number»
«Region_Code»
«Project_Name»

conditions, covenants, obligations and purpose of this 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 obligation under this Easement.

8. Violations. In the event of a violation of any provision of this covenant the GRANTEE may, at its option, and following reasonable notice to the GRANTOR, exercise any or all of the following remedies:

- (a) declare the grant forfeited and demand the return of all funds disbursed under this agreement.
- (b) declare the grant forfeited and demand the return of all funds disbursed under this agreement plus a penalty equal to ½ of the amount of the grant.
- (c) enter the SUBJECT PROPERTY, correct any violation of the terms of this covenant, restore the SUBJECT PROPERTY to its prior condition, and hold the owner or any successor in interest responsible for the cost thereof.
- (d) Institute suit to enjoin such violations and, if appropriate, require the restoration of the SUBJECT PROPERTY to its prior condition.

In addition to the remedies set forth above, the GRANTEE shall have all legal and equitable remedies to enforce the GRANTOR's obligations under this agreement, and in the event the GRANTOR or any successor in interest is found to have violated such obligations, the GRANTOR or such successor shall reimburse the GRANTEE for any costs and expenses incurred in connection with the enforcement of this agreement, including court costs and attorney's fees.

9. Baseline Data. In order to establish the present uses and condition of the Protected Property so as to be able to properly monitor its future uses and condition and assure compliance with the terms hereof, Grantor will make available to Grantee existing documentation in its possession of the natural condition of the Protected Property and Grantee has caused to be prepared such additional documentation deemed appropriate by Grantee, including a survey of the Protected Property showing its relationship to adjacent features and properties, and on-site photographs. The aforementioned documentation shall constitute an inventory of the Protected Property's relevant features and conditions (the "Baseline Data"). The Baseline Data shall be kept on file at Grantee's offices and shall be accessible to Grantor upon reasonable notice during normal business hours. The parties acknowledge and agree that in the event a controversy arises with respect to the nature and extent of the present uses or condition of the Protected Property, the parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy. To the extent Grantor and Grantee have initialed the Baseline Data, such Baseline Data shall be presumed to be a correct depiction of the Protected Property as of the date hereof.

10. Grant in Perpetuity.

- (a) The provisions of this Easement shall run with and be a burden upon the Protected Property in perpetuity and shall be binding on Grantor and Grantee and their respective successors and assigns, and any party entitled to possession or use of the Protected Property while such party is entitled to such possession or use. Any successor or assign of Grantee shall be a qualified organization within the meaning of Article 49 and shall expressly assume the obligation to carry out the conservation purpose for which this Easement is granted and the other obligations of Grantee hereunder.

«Application_Type»-«ContractNumber»-«Variable_Number»
«Region_Code»
«Project_Name»

(b) If Grantee or any successor or assign ceases or fails (i) to enforce this Easement, (ii) to exist, or (iii) to be a Qualified Organization, and upon the occurrence of such event, fails to assign all its rights and interest in the Protected Property, and delegate all its responsibilities under this Easement to a Qualified Organization, then the rights and interest of Grantee under this Easement shall be vested in another Qualified Organization in accordance with a cypres proceeding of a court of competent jurisdiction.

11. Amendment. This Easement can be modified only in accordance with the common and statutory law of the State of New York applicable to the modification of easements or covenants running with the land. Grantor and Grantee recognize that circumstances could arise which would justify the modification of certain of the restrictions contained in this Easement including requirements imposed on Grantor pursuant to licensing procedures or any authorized governmental licensing or permitting agency. To this end, Grantee and Grantor shall mutually have the right, in their sole discretion, to agree to amendments to this Easement which are not inconsistent with the purpose of the Easement provided, however, that the parties 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, any regulation issued pursuant thereto, and provided further that Grantee shall agree to the modification of this Easement to conform to such licensing procedures or any other authorized governmental licensing or permitting agency.

12. Notice. All notices required by this instrument must be in writing, and must be personally delivered or deposited in a mail receptacle maintained by the United States Postal Service. A mailed notice must be contained in an accurately addressed, sealed envelope, marked for delivery by first class registered or certified mail, with sufficient prepaid postage affixed and with return receipt requested. Notices to Grantor and Grantee shall be addressed to their respective addresses as set forth above, or to such other addresses as they may designate by notice given in accordance with this Paragraph and to either of their attorneys as they may from time to time designate by notice given in accordance with this Paragraph. Notice shall be deemed given and received as of the date of its personal delivery or the date of its mailing in accordance with this Paragraph.

13. Cooperation Agreement. Grantor and Grantee agree to cooperate to comply with the provisions of Article 49, and the Regulations promulgated pursuant thereto, so that this Easement will qualify, as a perpetual conservation restriction, thereunder.

14. Indemnification of Grantee. Grantor agrees that Grantee has no affirmative obligation relating to maintenance of the Protected Property. Grantor further agrees that Grantee has no responsibility relating to costs, claims or liability arising from personal injury, accidents, negligence, or damage to the Protected Property resulting from public or private use of the Protected Property allowed by, arising out of, or resulting from this Easement. Grantor shall indemnify, hold harmless, defend and reimburse the Grantee from and against any and all claims, actions, suits, damages, liabilities, penalties, costs or expenses, including reasonable attorneys' fees, of any kind or nature whatsoever on account of injuries to or death of any person or damage to any Protected Property arising out of Grantee's ownership of this Conservation Easement.

15. Grantor's Title. Grantor represents and warrants to Grantee (a) that Grantor is seized of the Protected Property in fee simple, and (b) that Grantor possesses full corporate right and authority to grant and convey this Easement pursuant to this instrument.

16. Grantee's Representations. Grantee represents and warrants that Grantee is a Qualified Organization.

17. Further Conveyance by Grantor.

(a) The Grantor shall not sell, dispose or use the Protected Property acquired hereunder for other than public park purposes without the prior written approval of the Commissioner, and the express authority of an act of the Legislature as provided in 9 NYCRR 441.5.

«Application_Type»-«ContractNumber»-«Variable_Number»
«Region_Code»
«Project_Name»

(b) (Municipalities) The Grantor Municipality shall not restrict the use of or access to the Protected Property by non-residents of the municipality or impose a fee for such use without prior written approval of the Commissioner of Parks, Recreation and Historic Preservation.

18. Miscellaneous.

- (a) This Easement shall be binding on the parties and their respective successors and assigns. The terms "Grantor" and "Grantee", wherever used herein, and any pronouns used in place thereof, shall mean and include their respective successors and assigns.
- (b) If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this 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.
- (c) In enforcing its rights hereunder with respect to a breach, default or violation of this Easement, Grantee shall take into account the reasonableness of requiring Grantor to cure the same and the time required to restore the Protected Property under the relevant circumstances, including but not limited to the season of the year and the accessibility of the Protected Property to Grantor.
- (d) All captions set forth herein are for convenience of reference only, and shall in no event be construed to limit, enlarge or modify any substantive provision of this Easement.
- (e) References herein to specific actions required or permitted to be undertaken by OPRHP and DEC hereunder shall in no way be deemed to waive or limit the regulatory authority or jurisdiction which OPRHP or DEC otherwise have or shall have (independently of the provisions of this Easement).

IN WITNESS WHEREOF, Grantor has executed and delivered this Deed of Conservation Easement as of the date first set forth above.

GRANTOR:

By: _____

Name: _____

Title: _____

Acknowledged and Accepted:

GRANTEE: THE PEOPLE OF THE STATE OF NEW YORK, acting by and through their Commissioner of Parks, Recreation and Historic Preservation

By: _____

Name: Carol Clark

Title: Deputy Commissioner for Real Property and Legislative Affairs

«Application_Type»-«ContractNumber»-«Variable_Number»
«Region_Code»
«Project_Name»

EXHIBIT A

(Enter the metes and bounds description of the Protected Property)

Being and intending to grant a conservation easement over all of the Protected Property acquired by the Grantor by deed from _____, dated _____, and recorded _____, in the _____ County Clerk's Office in Liberia of deeds at page _____.