

Exhibit L

Watershed Conservation Easement

This Easement, made the ____ day of _____, 200__ between

GRANTOR,

and

THE CITY OF NEW YORK, a municipal corporation having its principal office at City Hall, New York, NY 10007 (“the City”) acting through its agency the New York City Department of Environmental Protection (“DEP”), having an office and principal place of business at 59-17 Junction Blvd., 19th Floor, Flushing, New York 11373-5708,

GRANTEE.

WITNESSETH

WHEREAS, Grantor is the owner in fee simple of all that real property and improvements of a certain plot, piece (s) and/or parcel(s) of land, situated, lying and being within the County of ____ in the Town of ____, New York, identified on the County Tax Map as Section ____, Block __, Lot ____, and being more particularly described in a deed recorded on _____ at the _____ County Clerk’s Office, in Liber ____ of Deeds at page ____, a copy of which is attached hereto and made a part hereof as Schedule A [this schedule to be inserted at Closing] (“Grantor’s Property”); and

WHEREAS, Grantor intends to convey and Grantee intends to accept a Conservation Easement in and on ____ acres of Grantor’s Property, being more particularly described in Schedule B attached hereto and made a part hereof [this schedule to be inserted at Closing] (the portion of Grantor’s Property under easement is referred to as the “Easement Property”); and

WHEREAS, the Easement Property contains natural resources such as watercourses, wetlands, and forests, the purity of which are important for maintaining the water quality of the City water supply, which is the source of drinking water for residents of the City and other New York State communities; and

WHEREAS, pursuant to State and Federal Law, the City has a legal responsibility to protect the quality of the water in the water supply system; and

WHEREAS, the City has determined that this Conservation Easement will aid in protecting the City's water supply by protecting natural areas and open space and preventing development and/or other activities that otherwise may degrade water quality; and

WHEREAS, the State of New York has enacted Article 49, Title 3 of the Environmental Conservation Law (“ECL”) to provide for the limitation and restriction of development, management and use of real property by conservation easement; and

WHEREAS, the City is a qualified holder of conservation easements as defined in Article 49, Title 3 of the ECL; and

WHEREAS, the City is a "qualified organization" within the meaning of Section 170(h)(3) of the Internal Revenue Code; and

WHEREAS, Water Supply Permit # 0-9999-00051/00001 dated January 21, 1997, granted to the City by the New York State Department of Environmental Conservation, authorizes the City to acquire conservation easements to protect watershed lands:

NOW THEREFORE, in consideration of \$_____ [the total purchase price pursuant to Paragraph 3 of the Contract For Sale of a Conservation Easement, to be inserted at Closing] and other good and valuable consideration, the receipt from the City and legal sufficiency of which are hereby acknowledged, and pursuant to Article 49, Title 3 of the ECL, Grantor hereby conveys in perpetuity to the Grantee a Conservation Easement consisting of the terms, covenants, rights, restrictions and obligations described herein.

1. PURPOSE. This Easement is granted for the purpose of limiting development and disturbance of the Easement Property; preventing pollution, and protecting any portion of the City's water supply system, including its reservoirs and their tributaries.

2. DEFINITIONS. Certain capitalized words or phrases used in this Easement have specific meanings. These terms are described as follows:

(A). Accessory Structure(s). A building, improvement or Impervious Surface such as a lean-to, shed, barn, gazebo, ski lift, pool, tennis court, etc. that shall not be serviced by a septic system or sewer utilities.

(B). Building Envelope(s). The area(s) identified as such on the Baseline Documentation in which improvement(s), clearing(s), Impervious Surfaces, utilities, water supply, subsurface sewage treatment system(s) have been or may be constructed.

(C). Commercial Bluestone Mining. The mining of bluestone that disturbs at any one time more than 10,000 aggregate square feet of surface area but no more than one half of one percent of the total surface area of the Easement Property, which includes stockpiles and excludes haulage ways. Areas that have been approved for Commercial Bluestone Mining under Section 4.5 B2 but that have then been stabilized and approved as such by DEP shall not be included in this one half of one percent of the total surface area maximum.

(D). Compost. The product of a managed process through which microorganisms break down plant material and Manure into a mature, homogenous fine-particle, humus-like material. Compost is mature and suitable for field application when the decomposition process within a moist aerated pile no longer generates heat, and a moist sample placed in a sealed plastic bag for one week at a temperature of 20 to 30 degrees Celsius does not emit a septic odor upon opening.

(E). Day/Days. Refers to calendar days.

(F). Farming. Tilling, plowing, harrowing, or the cultivation of agricultural crops, orchards and gardens, or grazing, raising and/or keeping of Livestock.

(G). Forestry. The disturbance, cutting, or clearing, of trees or shrubs on the Easement Property for any purpose during one calendar year if such activities result in: (1) the cutting of more than 10 standard cords of wood or more than 5,000 board feet of timber, or (2) a clearing or disturbance of trees and shrubs on more than one acre of land.

(H). Grantee. The City of New York, acting through its agency, the Department of Environmental Protection, its successors and/or assigns.

(I). Grantor. The owner(s) in fee simple of the real property and improvements that are subject to this Easement. The term “Grantor” shall include Grantor’s executors, administrators, legal representatives, devisees, heirs, successors, agents and/or assigns.

(J). Hazardous Materials. Those materials defined as such by applicable local, state or federal regulation.

(K). Impervious Surfaces. Surfaces that are resistant to penetration by moisture. Impervious Surfaces include but are not limited to paving, plastic, concrete, asphalt, and roofs.

(L). Livestock. Animals raised primarily for food, hide, or fiber production, or beasts of burden, including but not limited to horses, sheep, cows, pigs, and goats.

(M). Livestock Animal Unit. One mature cow or two horses or their equivalent based on pounds of Manure produced per annum.

(N). Manure. Feces, urine, other excrement, and bedding produced by Livestock that has not been composted.

(O). Prior Notice and Approval. The phrase “subject to Prior to Notice and Approval” in this Easement indicates that the activity may not be commenced without the written approval of Grantee. The procedures for obtaining such approval are set forth in Section 7. Determinations to approve or deny an activity are within the discretion of the City and are Final. Nothing in this Conservation Easement shall preclude Grantor from challenging a final determination issued by the City in a court of competent jurisdiction.

(P). Prior Notice. The phrase “with Prior Notice” in this Easement indicates that before Grantor may commence the activity, it must first provide Notice of its intention to Grantee. Requirements relating to Notices are set forth in Section 6.

(Q). Mining. The mining of sand, shale, gravel or bluestone for use on the Easement Property as long as the open active mining area is not within 100 feet of a Watercourse or Wetland and is less than 10,000 square feet of surface area at any one time.

(R). Riparian Area. An area adjacent and running parallel to any Watercourse, which area is 50 feet in width on each side of the Watercourse, measured back from the top of each Stream Bank.

(S). Steep Slopes. Land in excess of a fifteen percent (15%) grade.

(T). Stream Bank. The relatively vertical portion of the stream channel adjacent to the Stream Bed.

(U). Stream Bed. The relatively horizontal portion of the stream channel over which water typically flows.

(V). Stream Work. Any activity conducted within a Riparian Area or Wetland or between Stream Banks, including but not limited to Surface or Subsurface Disturbance, cutting or removal of trees and other vegetation, tapping springs, pond construction or maintenance, Stream Bank and Stream Bed disturbance or stabilization, and bridge or culvert placement or removal. Maintenance of existing fords and culverts shown on the Baseline Documentation is not considered Stream Work.

(W). Subdivision/Subdivided. A division of the Easement Property so as to create a new taxable lot(s), parcel(s), or site(s), with or without legal access.

(X). Surface or Subsurface Disturbance. Activities or conditions that may result in siltation and erosion of Wetlands and Watercourses or produce negative impacts to water quality, including but not limited to filling; excavating; grading; mining; drilling or digging for water; applying chemicals, commercial extraction of water; and/or the exposure, addition or removal of topsoil, stumps, sand, gravel, rocks, gas, oil or minerals.

(Y). Utilities. Pipes, cables, transformers, poles and other structures which provide water, sewer, electric, and/or communication services on, over, or under the Easement Property.

(Z). Waste. Materials such as non-composted manure, trash, refuse, sewage, garbage, abandoned vehicles, or other similar debris.

(AA). Watercourse. A visible path through which surface water travels on a regular basis, including an intermittent stream, pond or lake and any areas identified as a watercourse in the Baseline Documentation. A drainage ditch, swale or surface feature that contains water only during and immediately after a rainstorm or snowmelt shall not be considered a Watercourse.

(BB). Wetland. Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and any areas identified as a wetland in the Baseline Documentation.

3. BASELINE DOCUMENTATION. The Baseline Documentation describes or depicts significant aspects of the Easement Property and consists of those items identified in the Conservation Easement Baseline Documentation, affirmed by the parties in the Certification Document dated _____ attached hereto and made a part hereof as Schedule C [this schedule to be inserted at Closing] as well as subsequent updates, revisions and amendments, if any, (“Baseline Documentation”). The Survey and Baseline Documentation Map identified in Schedule C may be filed in the [insert county] County Clerk’s Office.

4. RESTRICTED USES. Sections 4.1 and 4.9 shall apply to the entire Easement Property including the Building Envelope(s). Sections 4.2 to 4.7 shall apply to the Easement Property only outside the Building Envelope(s). Section 4.8 shall apply only to the Building Envelope(s).

4.1. Subdivision. The Easement Property may not be further Subdivided nor a portion conveyed to a third party except that:

(A) Existing Tax Lots. Subject to Prior Notice, Grantor may sell, convey or otherwise dispose of one or more tax lots to a third party, provided (1) no additional Building Envelope(s) are created and no existing Building Envelope(s) are divided and (2) such tax lot(s) along with all lots retained by the Grantor are each subject to a new conservation easement, with the following restrictions (“New Easement”):

1. Any threshold or quantity limits applicable to any activity discussed in this Easement will be apportioned by Grantor among the New Easements such that all such rights and limitations in aggregate shall not exceed those provided herein.
2. Except for those threshold and quantity limits apportioned pursuant to Section 4.1(A)1 above, the terms and conditions of each New Easement will be identical to this Easement.
3. Grantee and Grantor shall enter into New Easements with respect to each such lot. Each New Easement, together with a complete metes and bounds description of the New Easement Boundary prepared by a licensed professional land surveyor and reviewed and approved by Grantee, shall be recorded at the appropriate County Clerk’s Office.
4. All costs associated with any sale, conveyance or disposal shall be borne solely by Grantor.

(B) Newly Subdivided Lots. Subject to Prior Notice and Approval, Grantor may Subdivide the Easement Property to create a new, legally approved, taxable lot or lots provided (1) no additional Building Envelope(s) are created and no existing Building Envelopes are divided and (2) such tax lot(s), along with all lots retained by the Grantor, are each subject to a New Easement in accordance with the following restrictions:

1. Any threshold or quantity limits applicable to any activity discussed in this Easement will be apportioned by Grantor among the New Easements such that all such rights and limitations in aggregate shall not exceed those provided herein.
2. Except for those threshold and quantity limits apportioned pursuant to Section 4.1(B) 1 above, the terms and conditions of each New Easement will be identical to this Easement.

3. Grantee and Grantor(s) shall enter into New Easements with respect to each such lot. Upon completion of the subdivision, each New Easement, together with a complete metes and bounds description of the New Easement boundary prepared by a licensed professional land surveyor and reviewed and approved by grantee, shall be recorded at the appropriate County Clerk's Office.
4. All costs associated with any Subdivision shall be borne solely by Grantor.

4.2. Construction, Maintenance, and Replacement of Structures, Impervious Surfaces, and Utilities. The construction, maintenance, repair and replacement of structures, Impervious Surfaces or Utilities on, over, or under the Easement Property is prohibited except that:

- (A) Without Prior Notice or Approval, Grantor may:
 1. Demolish, maintain, or repair existing Accessory Structures, Impervious Surfaces or Utilities.
 2. Replace existing Accessory Structures, Impervious Surfaces or Utilities in the existing locations and at no more than the existing sizes that are depicted in the Baseline Documentation.
 3. Construct, maintain, and repair elevated deer stands anywhere on the Easement Property.
- (B) Subject to Prior Notice Grantor may:
 1. Construct new or expand existing Accessory Structures on the Easement Property in accordance with the following requirements:
 - a. Accessory Structures may be located anywhere beyond 200 feet of a Watercourse or Wetland.
 - b. Accessory Structures and access thereto shall avoid Steep Slopes and shall be designed and constructed to minimize runoff. Erosion and sedimentation controls shall be installed and maintained, as necessary, during and after construction.
 - c. Accessory Structures shall not exceed 1,000 square feet of surface area in aggregate.
- (C) Subject to Prior Notice and Approval Grantor may:
 1. Construct new Utilities.
 2. Construct Accessory Structures or other Impervious Surfaces beyond 100 feet from but within 200 feet of a Watercourse or Wetland.

4.3. Waste Disposal or Storage of Hazardous or Toxic Materials or Waste. Storing, disposing, dumping, or burying Waste or Hazardous Materials on the Easement Property is prohibited except as specifically permitted by this Easement.

4.4. Farming. Farming on the Easement Property is prohibited except that:

- (A) Without Prior Notice or Approval Grantor may conduct Farming or keep Livestock subject to the following restrictions:
 1. Farming shall not occur on more than 10 acres of the Easement Property during the course of one calendar year.
 2. Surface soil shall be protected as soon as practicable after tilling or other soil disturbance. Bare surface soil shall not be exposed through winter.

3. Except for Compost, fertilizers derived from natural materials, and agricultural lime, Grantor may not use Manure, pesticides, herbicides, or other chemicals.
4. Farming as limited herein is allowed only outside of Riparian Areas, Wetlands, or Steep Slopes.
5. Grantor may keep and/or graze no more than one Livestock Animal Unit on the Easement Property. Such livestock must be managed in a manner consistent with the terms and purposes of the Easement.
6. Grantor shall erect and maintain adequate fences so as to exclude Livestock from Riparian Areas and Wetlands.
7. Grantor shall prevent the discharge of Waste or contaminated runoff from Livestock into any Watercourse or Wetland.

(B) Subject to Prior Notice and Approval Grantor may:

1. Keep and/or graze more than one Livestock Animal Unit.
2. Use organic herbicides, organic pesticides, Manure, or chemicals for horses in a manner consistent with the terms and purposes of this Easement.
3. Conduct Farming on more than 10 acres.
4. Use fertilizer derived from natural materials for Farming conducted on more than 10 acres.

4.5. Surface or Subsurface Disturbance. Surface or subsurface disturbance of the Easement Property for purposes other than those addressed in Sections 4.2, 4.4, 4.6 and 4.7 is prohibited except that Grantor may:

(A) Without Prior Notice or Approval:

1. Protect persons or Easement Property from imminent harm, injury or damage.
2. Engage in Residential Mining.

(B) Subject to Prior Notice and Approval:

1. Conduct Stream Work.
2. Conduct Commercial Bluestone Mining.

4.6. Tree Disturbance. Disturbing, cutting, or clearing trees or shrubs on the Easement Property for purposes other than those addressed in Section 4.7 are prohibited except that Grantor may:

(A) Without Prior Notice or Approval Grantor may disturb, cut, or clear trees or shrubs on the Easement Property:

1. To remove fallen, dead or dangerous trees, limbs or shrubs.
2. For any personal use as long as the trees or shrubs are located outside of Riparian Areas or Wetlands and the disturbance, cutting, or clearing does not exceed the threshold for Forestry set forth in Section 2G herein.

(B) Subject to Prior Notice and Approval Grantor may:

1. Disturb, cut, or clear trees or shrubs on the Easement Property within a Riparian Area or Wetland.
2. Use organic herbicides, organic pesticides, lime, or fertilizers derived from natural materials in a manner consistent with the terms and purpose of this Easement.
3. Conduct Forestry.

4. Disturb, cut, or clear trees or shrubs on the Easement Property to construct trails for horse riding or to construct ski trails or lifts for the purpose of providing ski access to the Village of Fleischmanns.

4.7 Construction, Maintenance and Replacement of Roads and Trails. Constructing, maintaining, or replacing roads or trails on the Easement Property is prohibited except that:

- (A) Without Prior Notice or Approval Grantor may:
 1. Maintain or repair existing roads or trails that are depicted on the Baseline Documentation.
 2. Construct new Non-Impervious trails less than eight feet wide outside of any Watercourses or Wetlands.
- (B) Subject to Prior Notice and Approval Grantor may:
 1. Construct new unpaved roads.
 2. Maintain or repair existing and construct new road or trail crossings through Watercourses or Wetlands.

4.8 Limitation of Improvements and Impervious Surfaces within the Building Envelope(s). The total acreage of Impervious Surfaces including but not limited to structures, pavement, tennis courts and other improvements may not exceed one acre or 30% of the total acreage of each associated Building Envelope (whichever is smaller) as identified in the Baseline Documentation.

4.9 Improvements. Residential dwellings and improvements related to industrial use are prohibited on the Easement Property.

5. RESERVED RIGHTS. Grantor retains the rights to use, possess and enjoy the Easement Property as encumbered by this Easement, which rights may be extended to invitees at Grantor's discretion. Such rights include but are not limited to hiking, skiing, hunting, fishing, trapping, sightseeing, and other such activities consistent with the terms and purpose of this Easement. Grantor further retains the right to sell, transfer, lease, mortgage, or otherwise encumber the Easement Property, but only as subject to the restrictions and covenants set forth in this Easement.

6. NOTICE.

- (A) All Notices shall be in writing.
- (B) All Notices sent pursuant to this Conservation Easement, unless otherwise specified herein, shall be delivered personally, by facsimile or regular U.S. first class mail to the following addresses:

GRANTOR:

Address

Address

Address

GRANTEE:

Conservation Easement Stewardship Manager

7. APPROVALS AND PLANS.

(A) Prior Approvals

1. All requests pursuant to activities that are subject to Prior Notice and Approval (“Requests”) shall be in writing and comply with the delivery requirements for Notices set forth in Section 6.
2. Requests shall comply with the information requirements of DEP approval applications, available at the address in 6 (B) above, that are relevant to the activity that is the subject of the request.
3. All Requests shall be prepared by Grantor at his or her sole expense.
4. Grantee shall respond reasonably to all Requests.

(B) Schedule for Determinations of Requests by Grantee:

1. Within 30 days of receiving a Request, Grantee must notify Grantor that:
 - a. The Request is not complete, and specify the additional information that is required; and/or
 - b. A visit to the site (a “Site Visit”) where the requested activities are proposed is necessary, and make reasonable effort to promptly schedule such Site Visit; or
 - c. The Request is complete and that Grantee will commence review; or
 - d. The Request has been approved, approved with conditions or denied.
2. Within 20 days of a Site Visit Grantee must notify Grantor that:
 - a. The Request is not complete, and specify additional information that is required; or
 - b. The Request is complete and that Grantee will commence review; or
 - c. The Request has been approved, approved with conditions or denied.
3. Within 20 days of receiving additional information delivered in response to a request for such from Grantee, Grantee must notify Grantor that:
 - a. The Request is not complete, and specify additional information that is required; or
 - b. A Site Visit is necessary, and make reasonable effort to promptly schedule such Site Visit; or
 - c. The Request is complete and that Grantee will commence review; or
 - d. The Request has been approved, approved with conditions or denied.
4. In the event Grantee fails to notify Grantor as required in this Section 7 (B), Grantor must notify Grantee in writing by first class and certified mail, postage prepaid, return receipt requested of Grantee’s failure to notify, in which case the Request is automatically deemed complete if Grantee does not provide proper notice within 20 days after receiving Grantor’s notification.

(C) Review of Request.

1. Within 45 days after a Request is complete, Grantee must notify Grantor that:
 - a. The Request has been approved; or
 - b. The Request has been approved with conditions; or
 - c. The Request has been denied.
2. If Grantor's Request to conduct Forestry is denied by Grantee and Grantor's Property is an eligible tract certified in accordance with Section 480-a of the New York State Real Property Tax law ("480-a"), Grantor may resubmit the Request to Grantee together with a letter from the New York State Department of Environmental Conservation stating that such denial by Grantee would result in the issuance of a notice of violation to Grantor under 480-a ("DEC Letter") at which point Grantee will, within 45 days of receipt of the DEC Letter, notify Grantor that:
 - a. The Request has been approved
 - b. The Request has been approved with conditions which would not result in the issuance of a notice of violation under 480-a.
3. In the event Grantee fails to notify Grantor as required in this Section 7(C), Grantor must notify Grantee in writing by first class mail and certified mail, postage prepaid, return receipt requested of Grantee's failure to notify, in which case the Request is automatically deemed approved if Grantee does not provide a determination of the Request within 20 days after receiving Grantor's notification.

8. INSPECTION. Upon reasonable notice to Grantor, except for reasons of emergency and as provided in Section 11 herein, Grantee and its duly authorized agents, employees, and representatives shall have access to the Easement Property, including but not limited to the right to make aerial inspection(s), to inspect and maintain boundaries, to review proposed and approved activities, to determine compliance with and to enforce any and all terms of this Easement.

9. MORTGAGE, ENCUMBRANCE, or TRANSFER.

- (A) Any deed, mortgage, lien, easement, lease, or other encumbrance on or affecting the Easement Property or any portion thereof (a "Transfer") that arises subsequent to the execution of this Easement shall be subordinate to this Easement.
- (B) Grantor, and the recipient of the Transfer (the "New Grantor") shall notify Grantee in writing within 10 days after any Transfer, such notice to include the full names and addresses of all interested parties.
- (C) The deed or instrument of any Transfer shall specifically state that the interest thereby conveyed is subject to this Easement without any modification or amendment of the terms of this Easement and shall incorporate this Easement by reference, specifically setting forth the date, office, liber and page of the recording hereof.
- (D) The failure of any such instrument to comply with the provisions of this Section 9 shall not affect Grantee's rights under this Easement.

10. ASSIGNMENT OR TRANSFER BY GRANTEE.

- (A) Grantee may assign or transfer this Easement to the extent allowed by and in a manner consistent with law, but only to a qualified holder of conservation easements as defined in Article 49, Title 3 of the ECL, and only to a "qualified organization" within the meaning of Section 170(h)(3) of the Internal Revenue Code, or to the State of New York, or to the Federal Government or any subdivision of either of them, consistent with Article 49, Title 3 of the ECL, and Section 170(c)(1) of the U.S. Internal Revenue Code. Such government entity or conservation organization shall have among its purposes the conservation or preservation of land and water areas and shall agree to and be capable of enforcing the conservation purposes and terms of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.
- (B) Grantee will not transfer this Easement to a tax exempt entity unless the entity enters into a written agreement acceptable to and with the assessing unit to make payments in lieu of Grantee's portion of the property tax and ad valorem levies to each applicable taxing entity.
- (C) If Grantee or any successor or assign of Grantee, and the New York State Attorney General cease to exist or cease to be qualified holders of conservation easements as defined in Article 49, Title 3 of the ECL, and fail to assign all of their rights and obligations to a "qualified organization," then the rights and obligations of Grantee under this Easement shall be vested in another "qualified organization" pursuant to the proceedings of a court of competent jurisdiction.

11. ENFORCEMENT.

- (A) Grantee may enforce this Easement to the full extent as may be provided at law or in equity.
- (B) If Grantee has a reasonable belief that there has been or may be a breach of this Easement, Grantee shall have the right to inspect the Easement Property without Notice. Grantee will notify Grantor of the existing or potential breach and, if practical, of the measures reasonably calculated to cure such breach.
- (C) Grantor shall have 30 days after receipt of such Notice, or such other longer period which Grantee may deem appropriate and specifically indicates in writing, to undertake and complete those actions which are reasonably calculated to cure the conditions constituting the breach and to notify Grantee of such cure.
- (D) In the event that Grantor fails to cure the breach within the time period designated pursuant to the previous paragraph, Grantee shall have the right to:
 - 1. Seek or enforce such legal and/or equitable remedies or relief as Grantee deems necessary to ensure Grantor's compliance with the terms and purposes of this Easement; or
 - 2. Enter the Easement Property and exercise reasonable efforts to itself cure the breach.

- (E) If Grantor fails to take curative action and Grantee attempts to cure, then the full costs thereof, including but not limited to Grantee's expenses, reasonable court costs and legal fees, shall be paid by Grantor to Grantee.
- (F) Following litigation over an alleged Easement violation (including appeal if any) where there is a finding that Grantee's position was not sustained to any extent, Grantor shall be entitled to recover reasonable court costs and legal fees from Grantee.
- (G) Grantee reserves the right to demand that Grantor cease any activity and commence immediate curative action if such activity results in a material amount of sediment or other pollutant entering a Watercourse or Wetland located either on or off the Easement Property.
- (H) Any failure or delay in acting by Grantee or the election not to act shall not be deemed a waiver or forfeiture of any right or available remedy of Grantee with respect to any breach of the terms of this Easement.

12. THIRD PARTY ENFORCEMENT. The New York State Attorney General and his or her successors are hereby granted full third party enforcement rights over this Easement subject to the following provisions:

- (A) The Attorney General may bring an action to enforce this Easement in a court of competent jurisdiction provided that:
 - 1. Such action shall only be brought in the case of a material breach of the Easement;
 - 2. Before commencing such an action the Attorney General must first notify Grantee and Grantor and give Grantee 60 days to take appropriate action, including commencing an enforcement action;
 - 3. If Grantee is diligently prosecuting an enforcement action, in either an administrative or judicial proceeding, the New York State Attorney General shall not have a right to prosecute an action for the same breach of this Easement.
- (B) Nothing contained herein shall be construed as providing the New York State Attorney General with the right to inspect or otherwise enter the Easement Property.

13. ACTS or EVENTS BEYOND GRANTOR'S CONTROL. This Easement shall not be construed to entitle Grantee to bring any legal action against Grantor for any injury to or change in the Easement Property resulting from acts or events beyond the control of Grantor. Such acts or events include, but are not limited to fire, flood, storm, war, judicial injunction, strike, insurrection, radioactive fallout, earthquake, landslide, Acts of God, or any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Easement Property or person(s) resulting from such causes.

14. CONTRAVENTION. The use of the Easement Property shall not contravene the terms and purpose of this Easement.

15. INDEMNIFICATION. Grantor shall release, indemnify and hold harmless Grantee and any of its agents, assigns, employees or independent contractors from and against any claims, suits, causes of action, penalties, losses, costs, expenses, judgments or liabilities

including, but not limited to, attorney's fees and disbursements, suffered or incurred by Grantee in connection with:

- (A) Any injury to persons or damage to the Easement Property arising from any activity on or use of the Easement Property, except injury to persons or damage to the Easement Property proximately caused by the negligence or willful acts or omissions of Grantee, its agents, assigns, employees or independent contractors.
- (B) Any actions or claims of any nature by third parties arising out of the granting of this Easement;
- (C) Any breach of the terms and conditions contained herein by Grantor and any exercise by Grantee or the New York State Attorney General of any right or remedy of enforcement of the terms of this Easement.

16. TAXES, CHARGES, LEVIES, and ASSESSMENTS.

- (A) Grantor and Grantee shall pay their respective apportioned taxes, charges, levies or assessments pursuant to Title 4-A of Article 5 of the Real Property Tax Law on Grantor's Property and the Easement Property, as may be required by law or inter-municipal agreement.
- (B) If Grantor or Grantee fails to pay when due its apportioned tax, charge, levy, assessment, or other governmental or municipal charge that may become a lien on Grantor's Property if unpaid, the other party may make such payment (but shall have no obligation to do so) on behalf of the defaulting party in accordance with any bill or statement issued by an assessing entity without inquiry into the accuracy thereof. Such payment shall entitle the paying party to a claim against the defaulting party that shall immediately bear interest until paid at two percentage points over the published prime rate of interest (as such rate appears in the *Wall Street Journal* or, if the *Wall Street Journal* is no longer published or no longer lists its prime rate, in such other publication as shall be selected by Grantee), and adjusted quarterly.

17. WAIVER OR AMENDMENT.

- (A) Upon Grantor's written request, Grantee, without approval from the Attorney General, may in its discretion waive or amend any non-material requirements set forth in this Easement. Any such waiver or amendment shall be in writing, signed by both Grantor and Grantee, and may be recorded in the appropriate County Clerk's office
- (B) Upon either Grantor's or Grantee's written request, the parties, with written approval from the New York State Attorney General, may waive or modify a material requirement set forth in this Easement, providing such waiver or amendment does not interfere with the purpose of this Easement. Any such waiver or amendment shall be in writing and signed by both Grantor and Grantee and shall be recorded in the appropriate County Clerk's office.
- (C) Grantee shall have no right or power to agree to any amendment hereto that would result in this Easement failing to qualify as a valid conservation easement under Article 49, Title 3 of the ECL, or Section 170(h) of the U.S. Internal Revenue Code.

18. EXTINGUISHMENT. The parties shall have no right to voluntarily extinguish this Easement without the prior approval of the New York State Attorney General or his or her successor.

19. EMINENT DOMAIN.

- (A) If and when the rights and obligations contained in this Easement are ever involuntarily extinguished in whole or in part by an eminent domain taking or otherwise, Grantor and Grantee agree to divide the proceeds recovered from the taking of land exclusive of the value of the improvements in proportions equal to their interests in the Easement Property as of the date of the execution of this Easement, unless otherwise prohibited by law.
- (B) Grantor and/or Grantee may take the following actions if all or any part of the Easement Property is taken under the power of eminent domain by a public, corporate or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, if such taking has the effect of abrogating the restrictions imposed by this Easement or otherwise frustrates the purposes hereof:
1. Join in the taking proceedings to oppose such taking and/or to recover the full value of the interests in the Easement Property subject to taking and all incidental or direct damages resulting from the taking, and
 2. Pay out of the recovered proceeds, all expenses reasonably incurred by the parties to this Easement in connection with such taking.
- (C) The respective rights of the parties set forth in this Section 19 shall be in addition to and not in limitation of any rights they may have at law with respect to the exercise of the powers of eminent domain.

20. SUBJECT to CONDITIONS of RECORD. Except as otherwise specified herein, this Easement is subject to all legally enforceable rights, covenants, conditions, easements and other matters of record and shall not abrogate, impair or otherwise affect any rights that persons, other than Grantor, may have to use the Easement Property pursuant to any such rights.

21. OTHER LAWS and REGULATIONS in EFFECT.

Any and all rights acquired by Grantee under this Easement are in addition to any current and future authority to regulate or permit. This Easement shall not be construed to limit or modify the regulatory authority of the City. This Easement does not relieve Grantor from the obligation to comply with applicable ordinances, laws, regulations and/or permit requirements of any appropriate governmental or regulatory body, including but not limited to the City, its successors or assigns. In addition to any restrictions or requirements set forth in this Easement, Grantor must apply for and conform to any and all permits or approvals in the manner set forth in applicable law or regulation. Any approval by Grantee made pursuant to this Easement is not intended and shall not be construed as superceding or replacing any regulatory requirements or standards which may otherwise be applicable.

22. VESTING of RIGHTS. This Easement gives rise to a real property right and interest immediately vested in Grantee.

23. EXTINGUISHMENT OF DEVELOPMENT RIGHTS. The parties to this Easement agree that all development rights not specifically reserved are extinguished and, notwithstanding any municipal law, rule or regulation to the contrary, may not be transferred to any other land or used to calculate permissible density or lot yield for any other land not restricted by this Easement.

24. BURDEN RUNS WITH LAND. The burden of the Easement conveyed hereby shall run with the land and shall be enforceable against all future owners and tenants in perpetuity.

25. FURTHER COVENANTS. Grantor shall promptly execute and deliver to Grantee any documents or instruments determined necessary or desirable by Grantee to qualify or perfect this Easement as a conservation easement under Article 49, Title 3 of the ECL.

26. FILTRATION NOT TO DEFEAT THE PURPOSES OF EASEMENT. Filtration or other treatment of all or any portion of the water supply this Easement seeks to protect, now or in the future, shall not be deemed to defeat the purposes of this Easement.

27. CONSTRUCTION.

(A) Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to give the fullest effect to the purpose of this Easement and the policy and purpose of Article 49 of the ECL. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(B) Any reference herein to statute, regulation or any specific provision of law shall be construed to include any revisions or amendments thereto.

28. COMPLIANCE CERTIFICATES. Upon request by Grantor, Grantee shall within 45 days execute and deliver to Grantor, or to any party designated by Grantor, any document, including a compliance certificate, that certifies, to the best of the Grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement or that otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Easement Property as observed by Grantee during its most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection at Grantor's expense within 45 days of receipt of Grantor's written request therefore.

29. SEVERABILITY. If any portion of this Easement, or the application thereof to any person or circumstance, is found invalid, the remainder of the provisions of this Easement, or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

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

Grantor

Dated: _____

By: _____

Title: _____

Approved As To Form:

Acting Corporation Counsel, City of New York

Date: _____

Schedule A (Deed)
XXX to NYC, PID #XX

Schedule B (Description)
XXX to NYC, PID #XX

Schedule C (Conservation Easement Baseline Documentation Certification)
XXX to NYC, PID #XX