

APPENDIX K

Conservation Easement

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CONSERVATION EASEMENT

Between

HORTON ROAD, LLC

as Grantor

and

as Grantee

April 1, 2019

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CONSERVATION EASEMENT

This **CONSERVATION EASEMENT** is made and entered into as of this ____ day of _____, 2019 (the "Effective Date"), between **HORTON ROAD, LLC.**, a New York limited liability company with an address at 315 East 91st Street, New York, New York 10128, as Grantor (hereinafter called the "Grantor") and -----, a New York not-for-profit corporation with an office at -----, as Grantee (hereinafter called the "Grantee").

Recitals

WHEREAS, the Grantor is the sole owner in fee of real property (the "Property") described in Exhibit A attached hereto and incorporated by reference:

WHEREAS, the Hudson Highland Reserve is a Conservation Subdivision located on 210 acres, approved by the Town of Philipstown Planning Board.

WHEREAS, Conservation Subdivisions are an alternative to conventional subdivisions. In a Conservation Subdivision, units are clustered or sited on those portions of a property most suitable for development, while leaving substantial portions as undeveloped open space. Conservation subdivision results in the preservation of contiguous open space and important environmental resources, while allowing compact development, more walkable neighborhoods, and more flexibility than conventional subdivisions.

WHEREAS, the Property consists of approximately 170.8 acres of unimproved land located on the easterly side of US Route 9 in the North Highlands section of the Town of Philipstown, Putnam County, New York between Horton Road, on the south, and East Mountain Road North, on the north.

WHEREAS, the Property is shown on the Conservation Easement Map attached hereto as Exhibit B and incorporated by reference, and as "Open Space Conservation Easement 170.8 AC" on a survey map titled "Subdivision Plat of Hudson Highlands Reserve Prepared for Horton Road, LLC," prepared by Badey & Watson, Surveying & Engineering, P.C. dated _____, and filed in the Putnam County Clerk's Office on _____ as Map No. _____ (the "Survey Map").

WHEREAS, this Conservation Easement is established in perpetuity exclusively for conservation purposes consistent with the provisions of Article 49, Title 3, of the Environmental Conservation Law of the State of New York (the "Conservation Law").

WHEREAS, the Grantee is a not-for-profit conservation organization within the meaning of Article 49, Title 3, of the Environmental Conservation Law and is a publicly funded, nonprofit 501(c)(3) organization with the authority to accept lands, easements and buildings for the purpose of preserving and protecting natural, scenic, forested, and open-space values of real property, and with the commitment to preserve the conservation purposes of the Property.

WHEREAS, the [Equestrian Center operator], is a New York LLC with an address at _____, and shall be responsible for operating the Equestrian Center facility in the Conservation Easement area, as described in Paragraph 4.2.

WHEREAS, the Town of Philipstown (the “Town”) is a municipal corporation and has the authority pursuant to Section 247 of the General Municipal Law and Article 49, Title 3 of the Environmental Conservation Law to acquire conservation easements.

WHEREAS, as a grant condition, Grantor and Grantee grant to the Town a third-party enforcement right as defined by Article 49, Title 3, Section 0303 of the Environmental Conservation Law.

WHEREAS, the Property consists of relatively natural habitat scenic open space, including forested areas, steep slopes, natural beauty, and other conservation values including those listed below (collectively “Conservation Values”) which are of great importance to the Grantor, Grantee, the people of Philipstown, the people of Putnam County and the people of the State of New York, and which provide a significant public benefit.

WHEREAS, the conservation of the Property, subject to the terms of this Conservation Easement, yields significant benefits to the public by substantially protecting the outstanding scenic, historic and recreational significance of the area in which the Property is located and is therefore consistent with the requirements of Section 175-21.A of the Code of the Town of Philipstown for the following reasons:

1. The Property is characterized by scenic views, ridge lines, agricultural land, steep slopes, large areas of contiguous mature forest, wetlands, Ulmar Pond, Clove Creek, and natural beauty, and is visible from Horton Road, East Mountain Road South and East Mountain Road North, both public highways.
2. It is important to the conservation of the open, scenic and natural character and beauty of the area to maintain the Property's forest lands and open fields while restricting development so that it is compatible with the natural surroundings.
3. The Comprehensive Plan of the Town of Philipstown, adopted by its Town Board on March 9, 2006 (the “Comprehensive Plan”), includes in its goals and strategies the preservation of the Town’s natural resources, important wildlife habitats and large contiguous forest blocks. Philipstown’s open space provides important natural resources for the community-at-large; it supports native species, maintains natural ecological processes, and contributes to public health and quality of life. The Town of Philipstown prepared the Natural Resource/Open Space Work Group Report dated July 2002, revised February 2004.
4. On February 18, 2016, the Applicant submitted the required Conservation Analysis to assess whether the Property has sufficient conservation value to be considered for approval of a Conservation Subdivision. The Planning Board of the Town of Philipstown unanimously accepted the Conservation Analysis at its July 21, 2016 meeting and adopted a Conservation Analysis Finding in November 2016. The conservation analysis

provides data demonstrating significant cultural and environmental value for conservation.

5. The Property is located in an area of the State and County known to be rich in both cultural resources and environmentally sensitive lands land providing habitat for a variety of flora and fauna.
6. A large hillside wetland and bifurcated watercourse system are located on the southeast portion of the property. This system flows west down to an access road coming off Horton Road, crosses under the access road through a series of small culverts and drains into Ulmar Pond, an impounded waterbody of 5.7 acres controlled by a dam at its southern boundary. Ulmar Pond outlets via a small control structure through the dam to NYSDEC Wetland #WP-17, which lies on both sides of Horton Road. The pond and the wetland drain offsite to Clove Creek via a tributary that passes under Horton Road. Clove Creek consists of a large perennial stream with adjacent riparian wetlands. It crosses the far western edge of the subject property before exiting under Route 9.
7. A small man-made depression, which was created by the initial construction for an access road from Route 9 is located on the property just east of where Clove Creek passes under Route 9. This depression supports a pocket of wetland vegetation, but has no nexus to the Clove Creek or other wetlands.
8. Historic use of the property was associated with an historic roadway that connected today's Horton Road to East Mountain Road North. This historic roadway is still present as a one-lane stonewall-lined trail. The historic roadway in its existing state has been identified as an important cultural resource and will be preserved.

WHEREAS, the Grantor shares the land conservation goals of the Grantee and desires to ensure that the rural, scenic enjoyment and ecological characteristics of the Property will be preserved for the benefit of future generations.

WHEREAS, the parties desire to preserve the character of the Property in perpetuity by subjecting it to a Conservation Easement pursuant to the provisions of Article 49, Title 3, of the Environmental Conservation Law and the terms and provisions hereof.

WHEREAS, protection of the Property through this Conservation Easement will achieve the preservation of open space pursuant to the clearly delineated governmental conservation policy and will yield significant public benefit consistent with the requirements of Section 175-21 of the Code of the Town of Philipstown.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein by reference, and for the benefit of the general public, the Grantor and Grantee hereby establish this Conservation Easement on, under, over and across the Property consisting of the foregoing recitals and the following purposes, terms, mutual covenants, restrictions and affirmative rights granted to the Grantee, which shall run with and bind the Property in perpetuity, and the parties agree as follows:

1. Grant of Easement. The Grantor hereby grants to the Grantee this Conservation Easement over the Property, which shall run with and burden title to the Property in perpetuity and shall encumber the Property to the extent provided herein. The foregoing grant shall not, however, be construed as a grant to the general public of any access to, or any right to enter upon, all or any part of the Property, it being understood that Grantor shall have the unqualified right to exclude members of the general public from the Property. Grantor and Grantee hereby acknowledge and agree that the Property shall be encumbered by this Conservation Easement as of the Effective Date.

2. Purpose. The Conservation Purpose of this Conservation Easement is to provide significant public benefit by conserving and protecting the Conservation Values, including:

- A. Preserving open space for the scenic enjoyment of the general public;
- B. Preserving open space pursuant to clearly defined federal, state and local governmental conservation policies;
- C. Protecting and preserving the scenic integrity and open, wooded and natural character of the Property; and
- D. Protecting and preserving the natural resources, wildlife habitat and other ecological values of the Property;
- E. Protecting the ridgelines, steep slopes, large areas of contiguous mature forest, wetlands, watercourses, stream corridors, forest lands, steep slopes, and habitat located on the Property by restricting development and use of the Property.

The Grantor and the Grantee intend that this Conservation Easement will confine the use of the Property to activities that are deemed by the Grantee to be consistent with the purposes of this Conservation Easement and will prohibit and prevent any use of the Property that will materially impair or interfere with the conservation purposes of the Property.

2.1. Implementation. The Conservation Purpose shall be implemented by limiting and restricting the development, management and use of the property in accordance with this Conservation Easement. This Conservation Easement shall bind, in perpetuity, Grantor and: (i) all future Owners, tenants and holders of an interest in the Property and in the Conservation Subdivision; and (ii) their successors, heirs and assigns. Grantor shall have the unqualified right to exclude members of the general public from the Property.

3. Reserved Rights. The Grantor reserves to itself and to its personal representatives, heirs, successors and assigns, all rights accruing from their ownership of the Property, including: (a) the right to engage in or allow or invite others to engage in all activities that are Conservation Compatible; and (b) subject to this Conservation Easement, the right to sell, transfer, grant access to, lease, mortgage, or otherwise encumber the Property and/or the Conservation Subdivision.

4. Restrictions Applicable to the Property. By this Conservation Easement, the Grantor agrees to restrictions that apply to the entire Property and in the Conservation Subdivision. The Grantor may take certain actions relating to the Property only after giving the Grantee prior notice or obtaining the Grantee's prior consent, as set forth in Sections 4 and 5.

The procedure for giving such notice and seeking such consent, and the standards governing the Grantee's decision whether to grant or withhold such consent, are set forth in Section 5. No structure or other improvement shall hereafter be constructed, reconstructed, erected, installed, placed, expanded or replaced on the Property except as specifically provided in this Section 4. The term structure, as used in this Conservation Easement, shall be inclusive of all structures, buildings and improvements now or hereinafter located on, over, under or across the Property. Grantor's development, management and use of the Property shall be Conservation Compatible.

4.1 Use of Property. The Property shall be used solely for agricultural, passive and recreational uses. The term "passive recreational use" shall be defined as outdoor activities compatible with preserving natural resources, including but not limited to walking, hiking, picnicking, cross-country skiing, snowshoeing, sunbathing, fishing and bird watching. Said term shall not include any obtrusive outdoor activities that may have adverse impacts on natural or open space values including the operation of motorized vehicles or equipment, except for motor vehicles and equipment used for the routine maintenance or upkeep of the Property or for emergency purposes.

4.2 Equestrian Center. The Property shall include an Equestrian Center Facility located on 11.1 acres. The Equestrian Center facility will be owned and operated by the Equestrian Center Operator. Allowable uses in the conservation easement area include uses that promote agriculture, forestry, recreation, protection of natural resources, or similar conservation purposes. The equestrian center constitutes a commercial horse boarding operation, which is defined in the Town Code of the Town of Philipstown as an agricultural enterprise, consisting of at least seven acres and boarding at least 10 horses, regardless of ownership, that receives \$10,000 or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production." Town Code § 175-74B. Access roads, driveways, local utility distribution lines, subsurface wastewater collection, pumping, and treatment systems, temporary structures for outdoor recreation and agricultural structures shall be permitted on the Property in connection with the Equestrian Center, provided that they do not impair the conservation value of the land. The Equestrian Center is considered an agricultural use in the Town of Philipstown. Horses and horseback riding shall be permitted only in the 11.1 acres of the Equestrian Center, in all other areas horses of the Property and the Conservation Subdivision horseback riding shall be prohibited.

4.3 Permitted Structures and Improvements. No structures or improvements shall be constructed, reconstructed, erected, installed, placed, expanded or replaced anywhere on the Property except in compliance with this Section. Access roads, driveways, local utility distribution lines, subsurface wastewater collection, pumping, and treatment systems shall be permitted on the Property in connection with any buildable lot in the Conservation Subdivision, provided that they do not impair the conservation value of the Property. All new structures or improvements allowed by this Conservation Easement on the Property may be expanded or replaced consistent with the restrictions set forth in this Conservation Easement and may be reconstructed if damaged, razed or destroyed. If the Grantor removes or razes any structure or improvement, and does not build a new structure or improvement in the same location, the Grantor shall restore the site to a relatively natural condition with suitable landscaping and re-

vegetation and grading that matches the natural contours of the land, unless the Grantee otherwise consents.

4.3(a) Road Construction. Grantor may construct roads or other improvements necessary to provide access to, and parking for, permitted buildings or improvements, or to conduct other activities permitted by this Conservation Easement.

4.3(b) Signs. No signs or billboards shall be permitted except to state the name and address of the Property, to advertise an on-site activity permitted by this Conservation Easement, to advertise the Conservation Subdivision for sale or rent, to announce that the Conservation Subdivision is subject to the Conservation Easement and identify the holder of the Conservation Easement, and to post the Property to control unauthorized entry or use. Such signs shall be of professional quality and their size, placement, number and design shall not significantly diminish the scenic and rural character of the Property.

4.3(c) Fences. There are no existing fencing or gates on the Property. With prior written notice to Grantee, new fencing and gates on the Property may be constructed provided that any newly constructed fence or gate is conservation compatible and:

- [i] Blends with the natural landscape;
- [ii] Does not obstruct the public's visual access to the Property; and
- [iii] Is of a type and design that, in Grantee's opinion, does not unreasonably interfere with movement, nesting, or forage of wildlife on the Property (other than the wildlife the fence is intended to exclude, e.g., deer fencing).

4.3(d) Pedestrian Trails, Utilities and Drainage Ways. Pedestrian trails, utilities and drainage ways may be located anywhere on the Property provided that they are constructed and located in a manner which is compatible with forested use of the Property and which minimizes erosion and adverse effect on scenic landscape quality. Pedestrian trails shall be constructed and maintained to minimize erosion and shall not be paved. Utility lines serving permitted structures or improvements shall be installed underground where feasible. No roads shall be constructed that traverse the Property to gain access to neighboring lands not protected by this Conservation Easement except pursuant to the emergency access easement agreement and with the consent of the Grantee.

4.4 Chemicals. No pesticide, herbicide or other chemical treatment for land, vegetation or animals shall be used on the Property or the Conservation Subdivision unless the Grantee otherwise consents and unless its use is legal and in accordance with all applicable laws, rules and regulations and the manufacturer's directions.

4.5 Dumping of Waste. No dumping, disposal, storage or release of non-composted organic waste, sewage, garbage, scrap materials, sediment discharge, oil and its by-products, leached compounds, toxic fumes or other unsightly, hazardous or offensive materials shall be allowed on the Property or the Conservation Subdivision.

4.6 Clearing of Trees and Vegetation. All clearing of trees and vegetation shall be conducted in conformity with sound land and forest management practices to minimize erosion

and adverse impacts on natural resources and there shall be no removal, destruction or cutting of mature live trees on the Property and Conservation Subdivision with a trunk diameter at breast height of eight inches or more, except trees may be removed which endanger public safety, are diseased, damaged or fallen, or need to be cleared to ensure the health of other trees, or in connection with the construction of permitted structures, utility lines, or trails, as approved by Grantee.

4.7 Mining, Transmission Lines, Pipelines and Landfills. There shall be no surface or subsurface mining, quarrying, filling, excavating, drilling, removing of topsoil, sand, gravel, rock, minerals or other materials nor shall there be any change in the topography of the land on the Property and the Conservation Subdivision except with the prior consent of the Grantee. No wireless telecommunications towers or associated antennas may be placed on the Property except with the prior consent of the Grantee and then only after obtaining any necessary permits or approvals. There shall be no placement of high-voltage transmission lines, pipelines, landfills or other land uses detrimental to the scenic character or ecosystems of the Property.

4.8 Waterways. No waterways on the Property shall be polluted by sedimentation, siltation, or otherwise by action of the owners. No change to any existing ponds, streams or wetlands, and no construction or alteration of any structure or improvement within 100 feet of any existing pond, stream, or wetland, shall be permitted except with the consent of the Grantee and then only after obtaining any necessary permits or approvals.

4.9. General Design and Construction Guidelines. The location, construction and use of any new permitted structure or new permitted improvement shall be Conservation Compatible. All such new structures and such new improvements shall be designed and constructed to harmonize to the extent reasonably feasible with existing slopes and contours.

4.10 Subdivision. There shall be no further subdivision of the Property into parcels or lots for the purpose of conveyance into separate ownership except with the consent of the Grantee. Lot line adjustments which do not create additional building lots are permitted. No such subdivision or lot line adjustment shall affect the use of the Property permitted by this Conservation Easement or the character of structures permitted by this Conservation Easement.

5. Notice to Grantee and Required Prior Consent.

5.1 Notice of Construction. To facilitate the monitoring of this Conservation Easement, the Grantor shall give the Grantee at least 30 days' written notice prior to commencement of site preparation, construction of any new structure or improvement, addition or substantial alteration to an existing structure or improvement, excavation or clearing for any structure, replacement, relocation or removal of any structure or improvement or construction of any trail. Prior to construction, the Grantor shall submit survey information, or shall physically mark the boundaries of the structure or improvement, to confirm that the location is permitted by and consistent with this Conservation Easement and with the terms of any consent required for such structure or improvement.

5.2 Procedure for Requesting Consent. To request the written consent of the Grantee that is required by this Conservation Easement, the Grantor shall submit plans and/or a description of its proposal. Such submission shall contain sufficient information to enable the Grantee to make an informed determination whether the proposal is consistent with the purposes and restrictions of this Conservation Easement. The Grantor shall reimburse the Grantee for reasonable fees and costs incurred in connection with review of any proposals. The Grantee may waive review of and consent to any improvement, change or alteration, which it deems to be insubstantial.

5.3 Standards and Timetable for the Grantee's Decision. Where the Grantee's consent is required, the Grantee shall grant or withhold its consent in writing within 30 days of receipt of the Grantor's request for consent accompanied by plans and other materials the Grantee deems sufficient for its review. All plans submitted to the Grantee shall be submitted simultaneously to the Town for informational purposes. The Grantee may withhold consent only upon a reasonable determination by the Grantee that the Grantor's proposal would be inconsistent with the purposes or specific provisions of this Conservation Easement. The Grantee may grant its consent subject to reasonable conditions, which must be satisfied. If the Grantee fails to act within 60 days of receipt of plans and materials it deems sufficient for its review, consent shall be deemed granted unless the Grantor consents to a longer period of time for review and discussion with the Grantee. The actual completed change or improvement shall conform in all material respects to the plans that receive the consent of the Grantee.

6. Grantee's Remedies for Violation of Easement.

6.1 Notice of Violation; Corrective Action. If the Grantee determines a violation of the terms of this Conservation Easement has occurred or is threatened, the Grantee shall give written notice to the Grantor of such violation, with a copy to the Town as provided in Section 6.8, and shall demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Conservation Easement, restore the portion of the Property so injured to its prior condition in accordance with a plan to be submitted to and approved by the Grantee.

6.2 Injunctive Relief. If the Grantor fails to cure the violation within 30 days after receipt of notice thereof from the Grantee, or under circumstances where the violation cannot reasonably be cured within the 30 day period, fails to begin curing such violation within the 30 day period, or fails to continue diligently to cure such violation until finally cured, the Grantee may bring an action at law or suit in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to such an injury.

6.3 Damages. The Grantee shall be entitled to recover damages for violation of the terms of this Conservation Easement or injury to any conservation purposes protected by this Conservation Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting the Grantor's liability therefor, the Grantee, in its sole

discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

6.4 Emergency Enforcement. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation purposes of the Property, the Grantee may pursue its remedies under this Section 6 without prior notice to the Grantor or without waiting for the period provided for cure to expire.

6.5 Scope of Relief. The Grantee's rights under this Section 6 apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. The Grantor agrees that the Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in Section 6.2, both prohibitive and mandatory, in addition to such other relief to which the Grantee shall be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this Section 6 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity or pursuant to the provisions of Article 49, Title 3 of the Environmental Conservation Law.

6.6 Costs of Enforcement. All reasonable fees and costs incurred by the Grantee in enforcing the terms of this Conservation Easement against the Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by the Grantor's violation of the terms of this Conservation Easement, shall be borne by the Grantor; provided, however, that if the Grantor ultimately prevails in a judicial enforcement action, each party shall bear its own costs.

6.7 Forbearance. Forbearance by the Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any of the Grantee's rights under this Conservation Easement or at law or in equity. No delay or omission by the Grantee in the exercise of any right or remedy upon a breach by the Grantor shall impair such right or remedy or be construed as a waiver.

6.8 Third Party Enforcement Rights. The Grantor and the Grantee grant to the Town third party enforcement rights to enforce the terms of this Conservation Easement against any and all of the owners of the Property, or any part thereof, or any person entering upon and using the Property, or any part thereof, at law or in equity, without limitation, pursuant to the Environmental Conservation Law. By its execution of this Conservation Easement the Town accepts the grant provided for herein, but does not assume any responsibility or liability to enforce any of its rights hereunder. The terms of the Town's third party enforcement rights are as follows: In the event that the Town believes that the Grantee has failed to carry out its monitoring responsibility or to enforce any of the terms of this Conservation Easement, the Town shall provide notice to the Grantee of said failure, with a copy to the Grantor. The Grantee shall have 45 days to respond to said notice either by carrying out the monitoring or enforcement needs identified by the Town or by explaining the Grantee's monitoring and enforcement activities and/or interpretation of the Conservation Easement. If the Town still believes that a

violation has occurred without enforcement or that monitoring needs are still unmet, the Town may monitor or inspect the Property and may enforce the terms of the Conservation Easement against the Grantor by action in a court of competent jurisdiction. In such instance, the Town shall notify the Grantee and the Grantor by certified mail or by recognized national, over-night delivery service of its intent to monitor or exercise its enforcement rights at least 10 days prior to exercising such rights. Neither the 45-day nor the 10-day notification requirements shall apply when their application may result in significant harm to the conservation purposes of this Conservation Easement. In any case where a court finds that a violation has occurred, the Grantor shall reimburse the Town for all its expenses incurred in stopping and correcting the violation, including but not limited to, reasonable attorneys' fees and expenses. The failure of the Town to discover a violation or to take immediate legal action shall not bar the Town from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs. In addition, the Grantee or the Grantor shall further provide to the Town a copy of any notice or document provided to the other regarding enforcement of this Conservation Easement.

6.9 Waiver of Certain Defenses. The Grantor hereby waives any defense of laches, estoppel or prescription.

6.10 Effect of Lot Line Adjustment or Subdivision. After any lot line adjustment or subdivision of the Property permitted by Section 4.9 into parcels having differing ownership, references in this Section 6 to the Grantor shall mean any or all of the owners of the parcel that is the subject of the violation, but the Grantee shall use reasonable efforts to give notice of the violation to the owners of all of the parcels comprising the Property.

7. Amendment and Waiver.

7.1 Amendment. This Conservation Easement may be amended by a recorded instrument signed by the then owner of the Property and by the Grantee and by the Town. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Article 49, Title 3 of the Environmental Conservation Law, Section 170(h) of the Internal Revenue Code, as amended, and any regulations promulgated pursuant thereto. The Grantee shall have no right or power to agree to any amendment that would result in this Environmental Conservation Easement failing to qualify as a valid conservation easement under Article 49, Title 3 of the Environmental Conservation Law. The Grantor shall reimburse the Grantee and the Town for reasonable costs incurred with respect to Grantor requests to amend this Conservation Easement. Such reasonable costs shall be set from time to time by the Grantee's Board of Directors in accordance with the Grantee's Conservation Easement Amendment Policy.

7.2 Waiver. The Grantee may on a case-by-case basis waive any provision of this Conservation Easement that it deems not to be essential in fulfilling this Conservation Easement's conservation purposes. Such waivers may not be granted to allow for the construction of a residence or residences. Any such waiver must be supported by a written finding in the minutes of the meeting of the Grantee at which it was approved. Such finding shall state the rationale for allowing the waiver and shall indicate why such a waiver will not

compromise the conservation purposes of this Conservation Easement. Such individual waivers will not affect the future applicability of any waived provision as applied to other situations, and the provision waived in an individual case shall continue in full force and effect for other cases. Any such waiver shall comply with Article 49, Title 3 of the Environmental Conservation Law and Section 170(h) of the Internal Revenue Code (or any successor provisions of applicable law), and any regulations promulgated pursuant thereto. Copies of resolutions of the Grantee's Board of Directors approving such waivers shall be kept in the Grantee's permanent file with this Conservation Easement. The Grantee shall, if requested by an owner of the Property, issue a certificate of compliance indicating that an alteration of the Property or other action undertaken pursuant to this Section was undertaken pursuant to an approved waiver of this Conservation Easement.

8. Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law and this Conservation Easement. [Operator] shall be solely responsible for the upkeep and maintenance of the 11.1 acres used for the Equestrian Center. - Grantee shall have no obligation for the upkeep or maintenance of the Property.

9. Costs, Liabilities, Taxes, Insurance and Environmental Compliance.

9.1 Owner to Pay Taxes and Assessments. Grantee shall not have any responsibility for any costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. Nothing in this Conservation Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or managerial control over the operations of the Property, or any of the activities of Grantor, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (CERCLA) and any corresponding state statute. Nether Grantee nor its agents shall be liable to Grantors or other person or entity in connection with consents given or withheld, or in connection with any entry upon the Property pursuant to this Conservation Easement.

Grantor shall continue to pay all taxes, levies, assessments and other governmental municipal charges which may become a lien on the Property, including any taxes or levies imposed to secure those payments lawfully assessed against the Property. If the Grantor fails to make any such payment, Grantee is authorized to make such payments (but shall have no obligation to do so) upon ten (10) days' prior written notice to said Grantor, according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy thereof. That payment, if made by Grantee and if permitted by applicable law, shall become a lien on the Property of the same priority as the item if not paid would have become, and shall bear interest until paid by Grantor at three (3) percent over the prime rate of interest from time to time charged by Citibank, N.A., or its corporate successor, but in no event to exceed the highest legal interest rate.

9.2 Representations and Warranties. The Grantor represents and warrants that after reasonable investigation and to the best of its knowledge:

9.2(a) Hazardous, etc., Materials. Any handling, transportation, storage, treatment or use of any substance defined, listed or otherwise classified pursuant to any federal, state or local law, regulation or requirement as hazardous, toxic, polluting or otherwise contaminating to the air, water or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Conservation Easement has been in compliance with all applicable federal, state and local laws. No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the Property, which is free of all such contamination.

9.2(b) Compliance. The Grantor and the Property are in compliance with all federal, state and local laws, regulations and requirements applicable to the Property and its use.

9.2(c) Litigation. There is no pending or threatened litigation in any way affecting, involving or relating to the Property.

9.2(d) Proceedings or Investigations. No civil or criminal proceedings or investigations have been initiated at any time or are now pending, and no notices, demands, claims or orders have been received, arising out of any violation or alleged violation of any federal, state or local law, regulation or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that the Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

9.3 Control. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in the Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of the Grantor's activities on the Property, within the meaning of Title 42, Section 9601, et seq., of the United States Code (the Comprehensive Environmental Response, Compensation and Liability Act of 1980) as amended or other applicable law. The Grantor is solely responsible, and the Grantee has no responsibility whatsoever, for the operation of the Property or the monitoring of hazardous and other conditions thereon. Notwithstanding any other provision of this Conservation Easement to the contrary, the parties do not intend, and this Conservation Easement shall not be construed, such that: (1) it creates in the Grantee or the Town the obligations or liabilities of an "owner" or "operator" as those words are defined and used in the environmental laws, including without limitation the Comprehensive Environmental Response Compensation and Liability Act or any successor or related law or (2) it creates in the Grantee or the Town obligations or liabilities of a person described in Title 42, Section 9607(a)(3) of the United States Code, or any successor or related law. The term "environmental laws" includes, without limitation, any federal, state, local, or administrative agency statute, regulation, rule, ordinance, order, or requirement relating to environmental conditions or hazardous substances.

9.4 Indemnification.

9.4(a) Grantor. The Grantor shall hold harmless, indemnify and defend the Grantee and the Town, and each of its directors, officers, employees, agents and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively, "Indemnified

Parties") from and against all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments, or administrative actions, including without limitation reasonable attorneys' fees, arising from or in any way connected with (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Property, regardless of cause, except to the extent caused by the negligence of any of the Indemnified Parties, (b) the violation or alleged violation of, or other failure to comply with, any federal, state, or local law, regulation, or requirement, including, without limitation, environmental laws, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (c) claims arising out of or in any way related to the existence or administration, performed in good faith, of this Conservation Easement, and (d) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation or requirement as hazardous, toxic, polluting or otherwise contaminating the air, water or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties. In the event any claim is asserted which may give rise to liability under the foregoing indemnity, (a) the Grantee shall give the Grantor prompt notice thereof, (b) the Grantor may defend the same with counsel selected by the Grantor, subject to the Grantee's reasonable approval, (c) the Grantee shall cooperate with the Grantor in the defense thereof, and (d) the Grantee shall not settle any such claim without having received the Grantor's prior written consent therefor.

9.4(b) [Equestrian Center Operator]. The [Equestrian Center Operator] shall hold harmless, indemnify and defend the Grantee, the Town, and the Grantor and each of its directors, officers, employees, agents and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively, "Indemnified Parties") from and against all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments, or administrative actions, including without limitation reasonable attorneys' fees, arising from or in any way connected with (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about any portion of the Property used as Equestrian Center and leased by [Operator], regardless of cause, except to the extent caused by the negligence of any of the Indemnified Parties, (b) the violation or alleged violation of, or other failure to comply with, any federal, state, or local law, regulation, or requirement, including, without limitation, environmental laws, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to any portion of the Property used as Equestrian Center and leased by [Operator]; (c) claims arising out of or in any way related to the existence or administration, performed in good faith, of this Conservation Easement, and (d) the presence or release in, on, from, or about any portion of the Property used as Equestrian Center and leased by [Operator], at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation or requirement as hazardous, toxic, polluting or otherwise contaminating the air, water or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties. In the event any claim is asserted which may give rise to liability under the foregoing indemnity, (a) the Grantee shall give the [Operator] prompt notice thereof, (b) the [Operator] may defend the same with counsel selected by the [Operator], subject to the Grantee 's reasonable approval, (c)

the Grantee shall cooperate with the [Operator] in the defense thereof, and (d) the Grantee shall not settle any such claim without having received the [Operator]'s prior written consent therefor.

9.5 Public Use and Liability. The Grantee claims all the rights and immunities against liability for injury to the public to the fullest extent of the law under Section 9-103 of the New York State General Obligations Law, and any other applicable provision of law. Nothing herein should be construed to grant the public standing to bring an action at law or in equity hereunder, nor any rights in the Property.

9.6 Insurance. The Equestrian Center operator shall maintain at all times a standard policy of general commercial liability insurance in an amount not less than Three Million Dollars (\$3,000,000.00) with an insurance company licensed to do business in the State of New York providing coverage for the Equestrian and naming the Grantor, or its successors and assigns, and the Grantee, or its successors and assigns, as additional insureds on said policy of insurance.

10 Sale, Transfer and Subdivision of the Property.

10.1 Required Language in Future Deeds, Mortgages and Leases. Any subsequent conveyance of any interest in the Property or in the Conservation Subdivision, including without limitation any transfer, lease or mortgage of the Property or any parcel in the Conservation Subdivision, shall be subject to this Conservation Easement, and any deed or other instrument evidencing or effecting such conveyance shall contain language substantially as follows: "This [conveyance, lease, mortgage, easement, etc.] is subject to a Conservation Easement which runs with the land in perpetuity and which was granted to Grantee, by Conservation Easement dated _____ 20__ and recorded in the Putnam County Clerk's Liber ____ of deeds at page ____ on _____, 20__." The failure to include such language shall not affect the validity or applicability of this Conservation Easement.

10.2 Easement Binding on Future Owners and Others. The provisions of this Conservation Easement shall run with the land and shall be binding on each owner and any party entitled to possession or use of the Property or the Conservation Subdivision while such party is entitled to possession or use thereof. As used in this Section, the term owner shall include the owner of any beneficial equity interest in the Property or the Conservation Subdivision, but this sentence shall not impose personal liability on any such beneficial owner except to the extent such beneficial owner has personal liability with respect to the Property or the Conservation Subdivision under the instrument creating such equity interest and under applicable law.

10.3 Discharge of Owner Upon Transfer. In the event any owner transfers fee ownership of all or any portion of the Property or the Conservation Subdivision, such owner shall be discharged from all obligations and liabilities under this Conservation Easement with respect to such portion transferred, except for acts or omissions which occurred during such owner's period of ownership.

10.4 Notice and Effect of Lot Line Adjustment or Subdivision. Upon a lot line adjustment or subdivision of the Property or Conservation Subdivision (permitted by the terms of this Conservation Easement) into two or more parcels of land having differing ownership, the conveying owner or owners shall give notice of such conveyance to the Grantee . Regardless of whether such notice is given, after any such subdivision or lot line adjustment, this Conservation Easement shall be deemed to create separate easements on each such parcel, references in this Conservation Easement to the Property or Conservation Subdivision shall be deemed to refer to each such parcel, references to the owner or owners of the Property or Conservation Subdivision shall, as to each such parcel, be deemed to refer to the owner or owners of such parcel, and no owner of any parcel shall have any responsibility or liability to the Grantee for any violation of this Conservation Easement which may occur on any other parcel in the Conservation Subdivision.

11 Miscellaneous Provisions.

11.1 Assignment by Grantee to Another Organization. This Conservation Easement may be assigned by the Grantee by a written instrument duly executed by the Grantee and recorded in the Putnam County Clerk's Office, provided, however, that an assignment may be made only after at least 20 days' prior written notice to the owner or owners of the Property and only to a not-for-profit conservation organization or the Town of Philipstown (or, with the consent of the Grantor, another public body) within the meaning of Article 49, Title 3 of the Environmental Conservation Law, and as a condition of transfer, Grantee agrees to uphold the conservation purposes of this Conservation Easement by executing the instrument.

11.2 Acts Beyond the Grantor's Control. The Grantor and the Grantee shall not be under any duty to prevent, and shall not be liable for, any violations of this Conservation Easement caused by natural processes, by disasters, by force majeure, including, without limitation, fire, flood, storm and earth movement, or by any prudent action taken by the Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes, or by third parties whose presence on the Property has not been authorized by the Grantor or the Grantee . The Grantee may enter the Property to remedy any third-party violation that has not been remedied by the Grantor and may pursue all available legal and equitable remedies against such third-party violator, with reasonable prior notice to the Grantor and at the Grantee's sole cost and expense.

11.3 Extinguishment of Development Rights. The parties agree that all development rights that are prohibited by or inconsistent with this Conservation Easement and not reserved herein are extinguished and cannot be used to transfer development rights to other land, or to permit increased development density or increased natural resource use or extraction on other land, or to achieve other regulatory mitigation credits for fiber, discharge of pollutants, or other similar accommodation on land not subject to this Conservation Easement, or to calculate permissible density or lot yield for any other land not subject to this Conservation Easement. Lands not encumbered by this Conservation Easement shall be subject to development pursuant to the survey map approved by the Town of Philipstown Planning Board titled "Subdivision Plat of Hudson Highlands Reserve Prepared for Horton Road, LLC," prepared by Badey & Watson,

Surveying & Engineering, P.C. dated _____, and filed in the Putnam County Clerk's Office on _____ as Map No. _____ (the "Survey Map").

11.4 Estoppel Certificates. Within 30 days after any request by the Grantor, the Grantee shall execute and deliver to the Grantor any document, including an estoppel certificate, that may be requested by the Grantor which certifies, to the best of the Grantee's knowledge, as to Grantor's compliance with any obligation of the Grantor contained in this Conservation Easement or otherwise evidence the status of this Conservation Easement. The Grantee shall conduct a site inspection within 20 days of receipt of the Grantor's request for an estoppel certificate and the Grantor shall reimburse the Grantee for reasonable costs incurred in connection with the execution and delivery of an estoppel certificate or similar certification.

11.5 Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, private courier (or by such other means as the parties may agree), addressed as set forth in the first paragraph of this Conservation Easement, or to such other address as either party may from time to time designate by written notice to the other. Notice to the Town shall be sent c/o Town Supervisor, Town of Philipstown Town Hall, 238 Main Street, Cold Spring, New York 10516. Notice shall be deemed given upon proof of receipt in the case of personal delivery, and upon delivery by certified mail, return receipt requested.

11.6 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to affect the purpose of this Conservation Easement and the policy and purpose of Article 49, Title 3 of the Environmental Conservation Law. If any provision of this Conservation Easement is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement shall be favored over any interpretation that would render it invalid.

11.7 Severability. Invalidation of any provision of this Conservation Easement, by court judgment or order, statute or otherwise, shall not affect the validity of any other provisions, which shall be and remain in full force and effect.

11.8 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement, all of which are merged herein. Nothing contained herein will result in a forfeiture of this Conservation Easement or reversion to the Grantor of any rights conveyed hereby.

11.9 Joint Obligations. The obligations imposed by this Conservation Easement upon the Grantor shall be joint and several.

11.10 Successors. The covenants, terms, conditions and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, legal representatives and assigns. All references to the Grantor shall include the above-named Grantor and its personal representatives, heirs, successors and

assigns. All references to the Grantee include the above-named Grantee and its successors and assigns.

11.11 Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

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

12. Qualified Conservation Contribution Covenants.

12.1 Continuity. The Grantee agrees that it will assign this Conservation Easement only to an assignee which agrees to continue to carry out the conservation purposes of this Conservation Easement. This Conservation Easement may only be assigned to an assignee which is a qualified organization as defined in Section 170(h) of the Internal Revenue Code, or any successor provisions then in effect, and the regulations thereunder. Any assignee other than a governmental unit must be an entity authorized to acquire and hold conservation easements under New York law, able to enforce this Conservation Easement, having purposes similar to those of the Grantee which encompass those of this Conservation Easement.

12.2 Notice of Exercise of Certain Rights. The Grantor agrees to give the Grantee written notice before exercising any right reserved hereby, the exercise of which may have an adverse impact on the conservation interests of this Conservation Easement.

12.3 Inspection. The Grantee, by its duly authorized representatives, shall have the right to enter the Property at reasonable times, in a reasonable manner, and where practicable, after giving reasonable advance notice to the Grantor, to inspect for compliance with the terms of this Conservation Easement. Grantee, its employees, designees, and/or authorized representatives shall also have the right to enter and inspect the Property at any time, without prior notice to the Grantor, if Grantee has cause to believe that this Conservation Easement is threatened to be, has been, or is being violated.

12.4 Economic Hardship. In making this grant, the Grantor has considered the possibility that uses prohibited by the terms of this Conservation Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both the Grantor and the Grantee that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Conservation Easement pursuant to Section 12.5. In addition, the inability of the Grantor, or its heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Conservation Easement, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment.

12.5 Extinguishment.

12.5(a) Donation of Vested Interest. The Grantor and the Grantee acknowledge that the granting of this Conservation Easement constitutes the donation to the Grantee of a fully vested interest in the Property.

12.5(b) Involuntary Extinguishment. If and when the restrictions contained in this Conservation Easement are involuntarily extinguished by eminent domain taking or otherwise, the Grantor and the Grantee agree to divide the proceeds, if any, in proportion to the fair market values of their interests in the Property as of the date of delivery of this Conservation Easement, unless the laws of New York provide otherwise. For purposes of this Section, the Grantor and the Grantee agree that the value of the Grantee's interest on the date of delivery of this Conservation Easement shall equal the amount by which the fair market value of the Property immediately prior to the delivery of this Conservation Easement is reduced by the restrictions imposed by this Conservation Easement. The Grantee agrees to devote the proceeds it receives in a manner consistent with the conservation purposes inherent in this Conservation Easement.

12.5(c) Judicial Extinguishment. If this Conservation Easement is extinguished pursuant to a judicial proceeding initiated by the Grantor or its successors, the Grantor shall pay to the Grantee the greater of the amount specified in Section 12.5 (b) and the fair market value of the Conservation Easement on the date of judicial extinguishment, as determined by independent appraisal, the cost of such appraisal shall be divided equally between the Grantor and the Grantee.

12.6 Merger. The Grantors and the Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

12.7 Existing Conditions. This Conservation Easement is granted subject to any existing conditions shown on the Conservation Easement Map or on photographs or other materials agreed upon in writing. In order to establish the present condition of the Property and its conservation purposes protected by this Conservation Easement so as to be able to monitor future uses of the Property and assure compliance with the terms hereof, the Grantee has prepared, and Grantor has subscribed to, an inventory of the Property's relevant features and conditions (the "Baseline Documentation"). The Grantor and the Grantee have certified the same as an accurate representation of the condition of the Property as of the date of this Conservation Easement. The Baseline Report may be used by the Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by the Grantee of other evidence to establish the condition of the Property as of the date of this Conservation Easement. The Baseline Documentation is incorporated herein by reference.

13. Applicable Law. The Property will at all times remain subject to all applicable local, state and federal laws and regulations, including those in the Town of Philipstown. This Conservation Easement shall be governed by and construed in accordance with the laws of the State of New York. Any such approvals given by the Grantee shall not relieve the affected Grantor from complying with any applicable local, State and Federal laws and regulations.

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

**GRANTOR
HORTON ROAD, LLC**

By _____

=

GRANTEE

By _____

TOWN OF PHILIPSTOWN

By _____

EQUESTRIAN CENTER OPERATOR

By _____

STATE OF NEW YORK)

SS:

PUTNAM COUNTY)

On the ___ day of _____, in the year 20__ before me, the undersigned, personally appeared -----, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)

SS:

PUTNAM COUNTY)

On the ___ day of _____, in the year 20__ before me, the undersigned, personally appeared -----, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or person upon behalf of which the individual acted, executed the instrument.

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Notary Public

EXHIBIT A

Description of the Property

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situated, lying and being in the Town of Philipstown, Putnam County, New York, more particularly described as follows:

EXHIBIT B
Conservation Easement Map

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