

Project Number: Westchester 29
Proceeding: 7694
Town: Somers
County: Westchester

CONSERVATION EASEMENT

ANGLE FLY PRESERVE

Town of Somers and County of Westchester

THIS CONSERVATION EASEMENT, made this 15 day of May,
2006 between:

TOWN OF SOMERS, with offices located at 335 Route 202,
Somers, New York 10589, the **COUNTY OF WESTCHESTER**, with
offices located in the Michaelian Office Building, 148
Maritime Avenue, White Plains, New York 10601 (collectively,
"Grantors") and

THE PEOPLE OF THE STATE OF NEW YORK acting by and through
their Commissioner of Environmental Conservation with offices
at 625 Broadway, Albany, NY 12233 ("Grantee").

WHEREAS, Grantors are the owners, as tenants in common, of
the fee to certain real property located in the Town of
Somers, County of Westchester, New York, more particularly
described in **Schedule A** attached hereto and incorporated by
this reference and as generally shown on a map entitled
"SKETCH MAP OF CONSERVATION EASEMENT TO BE ACQUIRED PURSUANT
TO SECTION 3-0305 OF THE ENVIRONMENTAL CONSERVATION LAW,
PROJECT: WESTCHESTER 29 & 29A, ICC BRIDGEPORT LIMITED
PARTNERSHIP & EAGLE RIVER LIMITED PARTNERSHIP," by Robert A.
Burgher, L.S., Reg. Number 49601, dated May 25, 2005, last
revised on December 29, 2005 and filed in NYSDEC offices in

Albany, N.Y. as Map # 11,934 ("the Protected Property"); and WHEREAS, by granting this Conservation Easement, the Grantors intend that the Protected Property shall be forever held in public trust and never alienated therefrom, remaining open and available as public parkland known as the Angle Fly Preserve.

WHEREAS, this Conservation Easement establishes an "Open Space Recreation Area," which encumbers Parcels "A" through "D," more particularly described in Schedule A and generally shown on Map # 11,934; and this Conservation Easement establishes an "Athletic Field Area," which encumbers Parcel E, more particularly described in Schedule A and generally shown on Map # 11,934; and

NOW, THEREFORE, the Grantors, for the consideration of Three Million Two Hundred Thousand and 00/100 Dollars (\$3,200,000) and other valuable consideration paid by the Grantee, the receipt and sufficiency of which are hereby acknowledged, grant, convey and release to the Grantee a Conservation Easement in perpetuity pursuant to Article 49, Title 3 of the Environmental Conservation Law (ECL) in, on, over, under and upon the Protected Property on the terms and conditions set forth herein (hereinafter, the "Easement"):

1. PURPOSES OF THE GRANT. The parties acknowledge that the purposes (hereinafter, the "Purposes") of this Easement are:

1.1 Public Trust. Ensure that the Protected Property is

held in public trust in perpetuity, as public parkland, and never Alienated therefrom.

1.2 Conserve Natural Resource Values. Ensure that the Protected Property is held in perpetuity in a relatively undeveloped state in order to protect its Natural Resource Values, including water quality in the Croton Watershed and the New York City drinking water supply.

1.3 Establish Two Recreation Use Areas. Establish an "Open Space Recreation Area" and an "Athletic Field Area," in order to provide two levels of public recreation on the Protected Property.

1.4 Provide Public Recreation. Provide and manage for public recreation and the construction and maintenance of public recreation improvements, both of which are to be compatible with the public trust requirements and conservation goals stated above.

1.5 Prohibit Certain Uses. Prohibit residential, commercial, industrial, and agricultural uses that are inconsistent or incompatible with the above-stated Purposes, and, except for the limited development and forest management activities allowed herein, maintain and manage the Protected Property forever as parkland in its natural, scenic, forested, and open space condition.

2. PROHIBITED ACTIVITIES AND USES. The following activities are prohibited and Grantors grant to Grantee the right to enforce the following prohibitions, whether such activities

are undertaken by Grantors or others:

1. Grantors shall not Subdivide the Protected Property.
2. Constructing residences, mobile homes or other residential Structures on the Protected Property.
3. Constructing any Structures on the Protected Property, except those allowed in Sections 7.2 through 7.6.
4. Constructing or maintaining improvements and Structures associated with the Athletic Field Area on any portion of the Protected Property described in Schedule A and generally shown on Map # 11,934 as Open Space Recreation Area.
5. Charging a fee for entry on or use of the Open Space Recreation Area by a member of the public.
6. Dumping or storing ashes, non-composted organic waste, sewage or garbage, scrap material, discharges or other such waste, except as allowed in Section 7.9.
7. Dumping or storing petroleum and its byproducts, leached compounds, toxic substances, hazardous materials; except that Grantors may store in approved containers and tanks, heating oil and other fuels as needed to enjoy Grantors' Reserved Rights.
8. The Protected Property shall not be used in any way that adversely affects drainage, flood control, water conservation, fish or wildlife habitat preservation, erosion control, or soil conservation. No construction

of dams or impoundments, manipulation of water levels in Streams, Rivers or Wetlands, or alterations of natural water courses shall be undertaken by the Grantors on the Protected Property, unless such actions are necessary for Grantor's Reserved Rights; or are necessary to satisfy stormwater management obligations of the Town as an MS4 under the SPDES general permit or stormwater discharges and have received prior written approval by Grantee.

9. Use of snowmobiles, dune buggies, motorcycles, all-terrain vehicles or any other motorized vehicles for recreational purposes anywhere on the Protected Property.

10. Excavating, extracting, grading, or removing soil, sand and gravel, and mining or extracting gas or oil; however, within the Athletic Field Area, Grantors may excavate, blast rock, move soil, and modify the topography in accordance with the Recreation Management Plan but such activities shall not occur outside the Athletic Field Area.

11. Siting or routing of any lines, pipes, or facilities required for the local gathering, transmission, or distribution of gas, electricity, water, telephone, or cable television services on, over or under the Protected Property, except as provided in Section 7.10.

12. The commercial, residential, agricultural or

industrial use of the Protected Property; except that Grantors may solicit and contract for concessions and charge reasonable fees for the use of the Athletic Field Area and improvements but neither the County nor the Town shall charge non-residents of either Westchester County or the Town of Somers differently than residents for such uses. Other commercial activities are prohibited if they are unrelated to Grantors' Reserved Rights.

13. Use of the Protected Property in such a manner that causes the introduction of sediments, chemicals, microbiological pathogens, nutrients or other pollutants to any Watercourse or Wetland on or off the Protected Property and that may adversely effect the quality of such Watercourse or Wetland.

14. Allowing hunting or conducting Forest Management Activities within the Athletic Field Area.

3. DEFINITIONS CONSTRUCTION OF TERMS AND INTERPRETATION

3.1 Definitions. The parties intend that certain words and phrases which are used in this Easement and any document attached hereto or made a part hereof, as well as any document, plan, or agreement developed as a requirement of this Easement shall have the meaning and interpretation as defined in **Appendix 1**, Definitions, unless otherwise specifically and intentionally defined.

3.2 Construction of Terms and Interpretation.

1. Notwithstanding any term or condition of this Easement or any provision of State law, this Easement shall be construed to affect the Purposes for which it was acquired and, in interpreting its terms, there shall be no presumption favoring the Grantee or Grantors.

2. If any provision of this Easement is found to be ambiguous, an interpretation that is consistent with the Purposes of this Easement and that would render the provision valid shall be favored over any interpretation that would render it invalid.

3. The captions herein have been inserted solely for convenience of reference and are not part of this Easement and shall have no effect upon construction or interpretation.

4. BASELINE DOCUMENTATION

1. The parties shall agree and acknowledge that the Baseline Documentation, which shall consist of, at a minimum, descriptions, maps, photographs, surveys, and other related documentation, shows or depicts significant aspects of the Protected Property as of the date of this Easement. The Baseline Documentation is intended to serve as an objective, although not exclusive, information baseline for monitoring compliance with the terms of this Easement. The parties agree that, in the event a controversy arises with respect to the nature and extent of uses or the condition of the Protected

Property, the parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy.

2. Grantors will make available to Grantee existing documentation in their possession relating to the condition of the Protected Property and Grantee shall cause to be prepared such additional documentation deemed appropriate by Grantee, including a survey of the Protected Property showing its relationship to adjacent features and properties and on-site photographs.

3. Counterparts of the Baseline Documentation, signed and acknowledged by both parties to the Easement, shall be provided to the Grantors and the Grantee. One counterpart shall be maintained in the Grantee's Central Office in Albany.

5. PUBLIC RECREATION; IMPROVEMENTS; RECREATION MANAGEMENT

PLAN. **1. Responsibility For Public Recreation.**

(a) *Opening the Protected Property To Public Recreation.* Within twenty-four (24) months of the date of recording this Easement in the Westchester County Clerk's Office, Grantors shall have opened some or all of the Protected Property for public recreational uses in accordance with this Easement.

(b) *Keeping the Property Open.* Subject to the availability of legal appropriations and funding,

Grantors shall ensure that the Protected Property remains available for public recreation, subject also to reasonable limitations on the timing, duration, type and location of such uses as Grantors may deem appropriate to impose on public recreation.

(c) *Grantors' Obligations and Responsibility.* Grantors expressly assume all obligations and responsibility for providing such public recreation, subject to the terms of this Easement.

2. Athletic Field Area and the Open Space Recreation

Area. Schedule A and Map # 11,934 separate the Protected Property into two (2) areas for the purpose of providing different levels of public recreation: the Athletic Field Area ("Parcel E") and the Open Space Recreation Area (Parcels "A" through "D").

3. Public Recreation Within the Athletic Field Area.

(a) Grantors agree to provide public recreation within the Athletic Field Area for at least those activities allowed within the Open Space Recreation Area, described in Section 7.4, except that hunting shall not be permitted within the Athletic Field Area.

(b) Grantors may at their discretion allow other forms of non-motorized recreation and provide improvements such as: ball fields; fields houses, community centers and related buildings; skating areas, parking lots and utilities.

4. Public Recreation Within the Open Space Recreation

Area. Grantors agree to provide public recreation within the Open Space Recreation Area for non-motorized recreation including but not limited to: hiking; mountain biking and horseback riding on trails designated for such use in the Recreation Management Plan; snowshoeing; cross-country skiing; nature study; wildlife observation; hunting and fishing; and providing access to those with mobility impairment.

5. Recreation Management Plan.

(a) Review By the Grantee. Before opening the Protected Property to public recreational use or within twenty-four (24) months of the date of recording this Easement in the Westchester County Clerk's Office, whichever occurs first, Grantors shall provide Grantee a Recreation Management Plan for the Protected Property ("Plan"). Within sixty (60) days of Grantee's receipt of the Plan, Grantee shall notify Grantors that Grantee has all the information needed to consider the Plan and that it has begun its review, or that Grantee requires additional information. Within 120 days of notifying Grantors that it has begun its review of the Plan, Grantee shall either approve the Plan, approve the Plan with modifications, or not approve the Plan. Grantee may withhold approval of the Plan only if it reasonably determines that the proposed Plan is not consistent with the terms of this Easement. If Grantee does not approve the Plan in the manner described in this

subparagraph within 120 days, or disapproves it with conditions that Grantors disagree with, the Grantors may invoke the dispute resolution provisions of Section 8 of this Agreement in regard to the Plan.

(b) *Plan Contents.* The Plan and any updates thereof shall address, at a minimum, the following items:

(i) The type and extent of public recreation that will be allowed within the Open Space Recreation Area, which information shall include: maps of proposed trails; the location of public parking areas that will service the Open Space Recreation Area; areas open for hunting; Stream areas open for fishing; signs and other forms of controlling public access and use.

(ii) The type and extent of public recreation that will be allowed within the Athletic Field Area, which information shall include: the proposed location of ball fields; the location of public parking areas that will service the Athletic Field Area; the size and location of improvements such as field houses, restrooms, and utilities and which information shall include engineering diagrams and other related plans and specifications.

(iii) How Grantors intend to protect Natural Resource Values associated with the Protected Property while providing high-quality public recreation.

(c) *Plan Amendments.* The parties may amend the Plan by mutual agreement from time to time as needed.

(d) *Regular Meetings.* The parties shall meet at least once every two calendar years to discuss details of implementing the Recreation Management Plan.

6. Uses of the Protected Property otherwise permitted by this Easement will be subject to the reasonable regulation of the Grantors as permitted by law.

6. GRANTEE'S AFFIRMATIVE RIGHTS Grantors grant to Grantee the following Affirmative Rights, which shall run with the Protected Property and which Grantee may exercise anywhere on the Protected Property unless otherwise expressly limited:

6.1 Right to Enter. Grantee may enter the Protected Property at all reasonable times for the purpose of:

1. Determining if Grantors are complying with the provisions of this Easement.
2. Enforcing the terms of the Easement.
3. Taking any and all legally permissible actions necessary or appropriate to remedy or abate violations of this Easement.

6.2 Prohibit Certain Uses and Development. Grantors grant to Grantee the right to enforce the prohibitions contained in Section 2, above.

6.3 Right to Manage Fish and Wildlife Resources.

1. The Grantee may install, maintain, repair, replace, and remove Structures or devices, or otherwise manipulate

vegetation or habitat, intended to restore or enhance the habitat for plants, fish, and other wildlife located within the Open Space Area. Such activities are referred to in this Section as the "Projects."

2. Projects shall require the prior written approval of the Grantors. The Grantors shall have sixty (60) days from the receipt of the Grantee's plan for such a Project to review the plan and either: (i) approve the Project; (ii) approve the Project with conditions; or (iii) disapprove the Project. Grantors' review and determination shall consider only whether the Project is consistent with the terms of this Easement. Projects shall not unreasonably interfere with the Grantors' Reserved Rights,

6.4 Emergency Actions.

1. The Grantee may take emergency action necessary to respond to natural disaster, environmental hazard, public nuisance or threats to human safety in order to preserve the Protected Property and protect the public from such disaster, hazard, or threat, provided however that Grantee shall have no duty to protect or preserve any property of the Grantors' beyond that duty owed to any member of the general public in the exercise of its governmental obligation to protect the public from injury or damage caused by such disaster, hazard, nuisance, or threat.

2. To the extent practicable, the Grantee shall notify the Grantors of its entry under this Section and shall consult with the Grantors regarding such emergency action.

Nothing contained in this paragraph shall relieve the Grantors from any liability for or duty under this Easement or under applicable law to repair, remediate, dispose or otherwise remedy any condition which it may have caused and which is the proximate cause of the Grantee's entry pursuant to this Section.

6.5 Grantee's Administrative Motorized Use. Even though the use of Motor Vehicles may be prohibited on certain parts of the Protected Property, Grantee may use motorized vehicles, including ATVs and snowmobiles, to monitor and enforce compliance with the provisions of this Easement anywhere on the Protected Property provided, however, that the Grantee shall use motorized vehicles, motorized recreational vehicles, and motorized equipment on and off road in a manner that causes the least impact to the Protected Property.

7. GRANTORS' RESERVED RIGHTS Notwithstanding the foregoing, Grantors reserve for themselves, their successors, invitees, contractors and assigns, subject to and in accordance with all applicable laws and regulations, including without limitation, the Environmental Conservation Law, the Public Health Law and any rules and regulations promulgated thereto, the following rights with regard to the Protected Property, whether or not Grantors receive any payment or other consideration in connection therewith:

7.1 Right to Protect and Preserve. With prior notice to and approval of Grantee, the right to: stabilize or restore

slopes and stream banks; undertake earthmoving activities; manage wildlife; preserve water levels and water quality; prevent the erosion of any slope or shoreline; or take any other action necessary to protect and preserve the natural resources located on the Protected Property.

7.2 Dams and Water Impoundments; Beaver Dams; Emergencies.

1. Dams, Water Impoundments. Grantors may maintain or replace existing dams or impoundments identified in the Baseline Documentation or use those Structures in a manner consistent with their historical use and impact upon the Protected Property.

2. Beaver Dams. Subject to laws and regulations, Grantors may remove dams or obstruction of Watercourses placed by beavers.

3. Emergencies. Nothing in this Section shall prevent the Grantors from responding to an emergency or acting as otherwise allowed herein, provided that Grantors shall provide notice to Grantee within twenty-four hours of taking any action in response to any action under this Section.

7.3 Athletic Field Area; Grantors' Recreational Improvements; Fees.

On that portion of the Protected Property described in Schedule A and as generally shown on Map # 11,934 as the Athletic Field Area and "Parcel E," Grantors shall provide public recreation in accordance with the following terms:

1. Grantors' Obligations. Grantors reserve the right and expressly assume all obligations for providing public recreation and associated improvements within the Athletic Field Area and to assure that these activities conform to the terms of this Easement and the Recreation Management Plan.

2. Improvements. In accordance with a Recreation Management Plan, Grantors may allow public recreational use of the Athletic Field Area, and may construct, use, repair, maintain, and improve all manner of improvements appropriate for providing public recreation within the Athletic Field Area such as: ball fields; fields houses; community centers and related buildings; skating areas, parking lots, and utilities, all in accordance with the Purposes of this Easement and common law or statutory limitations on the use of parklands.

3. Restricted To the Athletic Field Area. It is the intent of this Easement to minimize impacts to Natural Resource Values on the Protected Property by prohibiting intensive recreational uses of the Protected Property and constructing or maintaining related improvements anywhere within the Open Space Recreation Area. Except as necessary to coordinate the use of both the Open Space Area and the Athletic Field Area for optimum public recreational use, the improvements identified in this Section and associated with Athletic Field Area uses shall not be constructed or maintained within the Open Space

Recreation Area.

4. Charging Fees. Grantors may charge reasonable fees for the use of the Athletic Field Area and improvements but neither the County nor the Town shall charge non-residents of either Westchester County or the Town of Somers differently than residents for such uses.

5. Hunting. The use of firearms or any weapon for hunting is prohibited in the Athletic Field Area.

6. Forest Management Activities. Forest Management Activities are prohibited within the Athletic Field Area.

7.4 Open Space Recreation Area. On that portion of the Protected Property described in Schedule A and as generally shown on Map # 11,934 as the Open Space Recreation Area and Parcels "A through D," Grantors shall provide public recreation in accordance with the following terms:

1. Grantors' Obligations. Grantors reserve the right and expressly assume all obligations for providing public recreation and associated improvements within the Open Space Recreation Area and it shall be Grantors' obligation to assure that these activities conform to the terms of this Easement and the Recreation Management Plan.

2. Improvements. In accordance with a Recreation Management Plan, Grantors may allow recreational use of the Open Space Recreation Area by the public, and to construct and/or maintain hiking/interpretive trails, kiosks, parking areas, boardwalks, signs, markers, and improvements to facilitate accessibility for the mobility

impaired, and other like improvements.

3. Forest Management Activities. Grantor may conduct Forest Management Activities within the Open Space Area, in accordance with Section 7.8(2).

7.5 Temporary Buildings and Structures. Grantors reserve the right to construct and maintain temporary buildings and Structures pertaining to the monitoring of weather, fire, vegetation, wildlife, and other biotic or abiotic features and processes, and to construct and maintain other like improvements pursuant to the conduct of scientific research, subject to the terms and conditions set forth in this Easement.

7.6 Grantors' Duties and Responsibilities For Roads, Trails, Bridges, Culverts, Parking Lots; Impervious Surfaces.

1. Grantors' Duties. Grantors shall repair and correct, at the Grantors' expense, damage caused by the Grantors, their invitees, licensees, guests, officers, employees, agents or contractors to all roads, trails, bridges, culverts, parking lots, and other related amenities that are identified in the Recreation Management Plan as available for public recreational use, whether such amenities are identified as "existing" in the Baseline Documentation or established after the date of this Easement pursuant to the Recreation

Management Plan.

2. Impervious Surfaces. Roads, trails, parking lots, and other such areas shall not be paved or covered with impervious surface materials.

7.7 New Roads, Trails, Parking Lots.

1. In accordance with the Recreation Management Plan, the Grantors may construct, maintain, correct, and repair new roads, trails, parking lots, and other related recreational improvements, and thereafter close and abandon recreational improvements in accordance with a Recreation Management Plan.

2. Construction of new roads shall be in accordance with the Recreation Management Plan.

7.8 Vegetation Removal, Firewood, and Forestry Activities.

1. Control and Remove Vegetation. Grantors may trim, prune and otherwise use mechanical means to control vegetation, and remove trees, shrubs, and other vegetation for the following purposes, and which purposes shall not be considered Forest Management Activities:

(a) Landscape and maintain grounds; create and maintain roads and trails.

(b) Construction, maintenance, and continued use of Structures and recreation improvements allowed by this Easement.

(c) Remove trees, shrubs and other vegetation when dead, diseased, decayed or damaged; or that are leaning

or partially uprooted and that either pose a hazard to life or property or, if not cut, would degrade the stability of a shoreline.

2. Forestry Management Activities. The parties acknowledge that the natural resources present on the Protected Property, as well as the Purposes of this Easement, will require Grantors to use extraordinary care before, during, and after any Forest Management Activities. Subject to this understanding, Grantors may do the following:

(a) Grantors may conduct Forest Management Activities within the Open Space Area, but only after Grantors provide for Grantee's review and approval, a Forest Management Plan ("FMP") prepared by an approved forester.

(b) Grantors shall provide Grantee a proposed FMP. Within sixty (60) days of Grantee's receipt of the proposed FMP, Grantee shall notify Grantors that Grantee has all the information needed to consider the FMP and that it has begun its review, or that Grantee requires additional information. Within 120 days of notifying Grantors that it has begun its review of the FMP, Grantee shall either approve the FMP, approve the FMP with modifications, or not approve the FMP. Grantee may withhold approval of the FMP only if it reasonably determines that the proposed FMP is not consistent with the terms of this Easement.

(c) Logging roads in existence on the Protected Property at the time of the conveyance of this Easement may be maintained in all respects, and new logging roads and staging areas may be established pursuant to any FMP established for the Protected Property.

(d) Forestry activity debris may be deposited within the Open Space Area, out of sight of publicly visible areas.

7.9 Waste Disposal. Grantors shall not dump or store ashes, non-composted organic waste (except organic logging debris within the Open Space Area), sewage or garbage, scrap material, sediment discharges, oil and its by-products, leached compounds, toxic fumes or any other unsightly or offensive material in, on, over, under or upon the Protected Property, except for the following activities, which shall be permitted:

1. Latrines or outhouses associated with the Structures allowed by this Easement; discharge of sewage into an approved and properly-operating onsite sewage treatment system.

2. The routine storage and containment of solid waste generated on the Protected Property prior to transport for lawful disposal off the Protected Property.

7.10 Existing and New Utilities.

1. Grantors reserve the right to maintain, repair, replace in kind, and subsequently remove lines, pipes, or facilities required for the local gathering, transmission,

or distribution of gas, electricity, water, telephone, or cable television services that are located on, over or under the Protected Property as of the date of this Easement.

2. Grantors reserve the right to allow major utilities to cross the Protected Property pursuant Article 49 of the ECL.

3. Grantors reserve the right to construct, install, and maintain customary and typical utilities to service their improvements located within the Athletic Field Area.

4. Grantors may allow the installation and maintenance of facilities required for the local gathering, transmission, or distribution of gas, electricity, water, telephone, or cable television services, if such facilities are to be installed and maintained entirely within the bounds of or beneath a public highway that is located in whole or part on the Protected Property.

5. Except as provided in this Section, siting or routing of any lines, pipes, or facilities required for the local gathering, transmission, or distribution of gas, electricity, water, telephone, or cable television services on, over or under the Protected Property is prohibited.

8. ENFORCEMENT

8.1 Inspections. Grantee intends to schedule periodic inspections of the Protected Property to determine compliance with the terms of this Easement. In doing so, Grantee will

provide Grantors five (5) business days' prior written notice and the Grantors will have the right to accompany the Grantee on said inspections.

8.2 Notice to Cure.

1. Either party shall notify the other of a breach or suspected breach of any of the terms or conditions of this Easement. Such notice shall set forth how the subject party can cure such breach or suspected breach and shall give the subject party sixty (60) days from the date of receipt of the notice in which to cure, which time period may be extended in the event severe weather conditions are experienced.

2. At the expiration of such period of time to cure, or any extensions thereof granted, the aggrieved party shall notify the other party of any failure to adequately cure the breach or suspected breach. The subject party shall then have an additional fifteen (15) days from receipt of such notice to cure. At the expiration of said fifteen-day period, the aggrieved party may commence any legal or equitable action or proceedings in accordance with any applicable law to require compliance with the terms of this Easement.

8.3 Dispute Resolution.

1. In the event the parties cannot resolve a dispute through the Notice to Cure process outlined above and prior to the initiation of any action or proceeding based upon the Notice of Cure and upon the concurrence of both

parties, the dispute may be mediated by Grantee's Office of Hearings and Mediation Services whose recommendations are advisory to the parties.

2. Within thirty (30) days of receipt of such recommendations each party must advise the other of its concurrence or non-concurrence.

3. Any disputes remaining unresolved after mediation may be pursued through initiation of any appropriate action or proceeding in a court of competent jurisdiction.

8.4 Right to Restore.

1. In the event of a breach of a term of this Easement, Grantee may require Grantors to restore the Protected Property to its Natural State and to enforce this right by any action or proceeding necessary, subject to the notice to cure provisions and dispute resolution provisions of Section 8.

2. Grantee, at its sole discretion, may enter the Protected Property for the purpose of restoring the same to its Natural State, subject to the notice to cure provisions and dispute resolution provisions of Section 8.

3. Grantee may resort to the following in order to restore the Protected Property, subject to the notice to cure provisions and dispute resolution provisions of Section 8:

(a) Remove items and materials not permitted by this Easement.

(b) Close, fill, grade and plant with appropriate

vegetative cover, those affected areas.

(c) Correct, through reasonably practicable measures, conditions that harm any of the following Natural Resource Values on the Protected Property: native flora and fauna and the Ecological Processes that support them; diverse forest types and conditions; Soil Productivity; Biological Diversity; water quality; and Wetland, Riparian, and Aquatic Habitats.

(d) Take any other appropriate action reasonably necessary to remedy any breach of this Easement.

8.5 Force Majeure/Acts of Third Parties. Grantors shall not be liable for any changes to the Protected Property caused by any natural disaster, act of God, or acts of Grantee, its officers and employees and contractors.

8.6 Failure to Act. The failure of either party to enforce any of the terms of this Easement, shall not be deemed a waiver of any such term nor shall any such failure in any way bar any enforcement rights hereunder in the event of any subsequent breach of, or noncompliance with, or fault in observance of, any of the terms of this Easement.

9. OTHER TERMS AND CONDITIONS

9.1 Notice, Review and Approval Process.

1. Whenever notice or an approval is required from either party, the party that must provide notice or that is seeking the approval shall deliver a written notice, or request for such approval in accordance with the notification directions herein.

2. Requests shall be either approved, approved with conditions, or denied.

3. The parties shall not unreasonably delay or deny an approval.

9.2 Notices, Notification.

1. Any notice required to be sent to the Grantors herein shall be addressed to :

The Town of Somers
335 Route 202
Somers, New York 10589

AND

The County of Westchester
Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

Commissioner of Department of Parks, Recreation, and
Conservation
County of Westchester
25 Moore Avenue
Mount Kisco, New York 10549

County Attorney
Westchester County
148 Maritime Avenue, Room 600
White Plains, New York 10601

2. Any notice required to be sent to the Grantee herein shall be addressed to:

New York State Department of Environmental
Conservation
Director, Lands and Forests, 5th Floor
625 Broadway
Albany, New York 12233

AND

New York State Department of Environmental
Conservation
Region 3, Natural Resources Supervisor
21 South Putt Corners Road
New Paltz, New York 12561-1696

3. Notices and requests for approval shall be delivered by hand, or by registered, or certified mail and return receipt requested, to the address of the other party as provided herein and said party shall acknowledge receipt of the notice or respond to the request within sixty (60) days of its receipt, unless otherwise specified herein.

4. Either party may change the individual or address to which notices are to be sent by giving written notice thereof to the other party.

5. Upon mutual agreement, the parties may provide for other means of receiving and communicating notices and responses to requests for approval.

9.3 Biannual Meeting. Grantors and Grantee shall meet at least every two years, or more frequently if necessary, and review activities completed in the previous year(s), and review and coordinate upcoming work plans with the goal of ensuring smooth use of the Protected Property and the parties' compliance with the Recreation Management Plan and other provisions of this Easement.

9.4 Regulatory Authorities, Compliance With Law. This Easement shall not remove the necessity of the Grantors or Grantee to obtain any permit and/or approval from any governmental agency having jurisdiction over any activity

conducted or to be conducted on the Protected Property.

9.5 Real Property Taxes and Assessments.

1. To the extent required by law, Grantors covenant and agree to pay all taxes and assessments lawfully assessed against its interest in the Protected Property and to furnish upon request to Grantee copies of tax receipts showing such payment.

2. Should Grantors fail to pay any such taxes or assessments within the time prescribed by law for such payment, Grantee may take any lawful steps available to it to acquire fee title or such other interests which are the subject of any unpaid assessment or tax, including payment to the taxing authority of any amounts unpaid as the State may be required to pay to obtain title to such property. Any steps so taken by the Grantee are intended and shall be deemed to be adverse to the interest of the Grantors and not taken for the benefit of the Grantors. In the event that the Grantee is successful in acquiring the title or other interest of the Grantors from the taxing authority, this Easement shall merge with the fee to such property and such Easement shall be extinguished.

9.6 Public Use of Forest Products Prohibited. This

Easement does not grant the public the right to exploit or use Forest Products on the Protected Property or remove such products from the Protected Property.

9.7 Amendments or Modifications. Grantors and Grantee may amend this Easement by mutual agreement in writing, executed

by both parties, in accordance with the provisions of Section 49-0307 of the ECL, and recorded in the County Clerk's office. Amendment to or modification of the Recreation Management Plan shall not constitute an amendment to or a modification of this Easement.

9.8 Grantor's Negligence.

1. Subject to the availability of lawful appropriations and as permitted by applicable law, Grantors agree to indemnify and hold Grantee harmless against all claims, loss, damage and expense the Grantee may suffer as a result of Grantors' negligence in the course of exercising any rights reserved under this Easement.

2. The parties acknowledge that, as of the date of this Easement, certain Structures located on the Protected Property are abandoned residences and related Structures in poor or uninhabitable condition. Notwithstanding the limitations on indemnification in Section 9.8(1) above, Grantors agree to indemnify and hold Grantee harmless against all claims, damages, and expense the Grantee may suffer as a result of injury to persons or property involving any and all such Structures.

9.9 Grantee's Negligence.

1. Subject to the availability of lawful appropriations, Grantee agrees to indemnify and hold Grantors harmless against claims, loss, damage and expense the Grantors may suffer as a result of the Grantee's negligence in the

course of exercising any rights granted under this Easement or as a result of actionable conduct of Grantee, as permitted by the Court of Claims Act and Section 17 of the Public Officers Law.

2. Grantee's duty to indemnify and save harmless prescribed by this Section shall be conditioned upon:

(a) Delivery to the Attorney General by Grantors of the original or a copy of any summons, complaint, process, notice, demand or pleading within fifteen (15) business days after it is served with such document; and

(b) Representation by the Attorney General or, if the Attorney General determines in his or her sole discretion based upon investigation and review of the facts and circumstances of the case that representation by the Attorney General would be inappropriate, representation by private counsel to be selected by the Attorney General after consultation with the Grantors; and

(c) The full cooperation of Grantors in the defense of such action or proceeding against Grantee based upon the same act or omission, and in the prosecution of any appeal.

9.10 Assignment of Grantee's Parties' Interest. The Grantee may assign this Easement only to another governmental agency, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, which governmental assignee

has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the terms of this Easement.

9.11 Extinguishment of Development Rights. Except as otherwise provided by this Easement, the parties agree that all development rights specifically restricted by this Easement are extinguished. The Protected Property and any portion thereof shall not be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations, or ordinances controlling land use and building density. No development or principal building rights which have been encumbered, clustered, or extinguished by this Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

9.12 Additional Covenants. Grantors do further covenant with Grantee as follows:

1. That Grantors are seized of the Protected Property in fee simple and have good right to convey this Easement and the rights hereunder.
2. That Grantee shall quietly enjoy said rights.
3. That the Protected Property is free from encumbrances, except as provided on **Schedule B** attached hereto and made a part hereof.
4. That Grantors will execute or procure any further

necessary assurances of the title to the Protected Property reasonably requested by Grantee.

5. That Grantors will forever warrant the title to the Protected Property.

6. That this conveyance is made subject to the trust fund provisions of Section 13 of the Lien Law.

9.13 Severability. The parties agree that the provisions of this Easement are severable and that if any court of competent jurisdiction shall render a judgment voiding or nullifying any provision(s) hereof, the effect of said judgment shall be limited to the nullified or voided portion of this Easement and the remaining provisions hereof shall continue in full force and effect.

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IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first written above.

Town of Somers

By: May Beth Murphy
Title: Town Supervisor
FEIN: 13-600-7329

AND

County of Westchester

By: Andrew Fano
Title: COUNTY EXECUTIVE
FEIN: 13-600-7353

ACCEPTED:

THE PEOPLE OF THE STATE OF NEW YORK

acting by and through their Commissioner
of Environmental Conservation

By: Nancy Lussier
NANCY LUSSIER

Its: Director, Division of Management
and Budget

**APPROVED AS TO FORM AND MANNER
OF EXECUTION.**

[Signature]
ASSISTANT COUNTY ATTORNEY

Town of Somer's Acknowledgment:

STATE OF NEW YORK)

SS.:

COUNTY OF WESTCHESTER)

On the 3rd day of May in the year 2006, before me, the undersigned personally appeared

MARY Beth Murphy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

KATHLEEN R. PACELLA
Notary Public, State of New York
No. 01PA6092646
Qualified in Westchester County
Commission Expires May 27, 2007

Kathleen R. Pacella
Notary Public, State of New York

Westchester County's Acknowledgment:

STATE OF NEW YORK)

SS.:

COUNTY OF WESTCHESTER)

On the 8th day of May in the year 2006, before me, the undersigned personally appeared

Andrew J. Spano, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

DAWN M. FALCO
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01FA8125845
QUALIFIED IN WESTCHESTER COUNTY
COMMISSION EXPIRES APRIL 25, 2004

Dawn M Falco
Notary Public, State of New York

APPENDIX 1 DEFINITIONS

Alienate; Alienation, Parkland Alienation. Alienation in the context of this Easement shall be interpreted in accordance with the body of common law and/or statutory law addressing either of two breaches of the public trust doctrine: (1) outright sale or conveyance of parkland or an interest therein or a lease of the parkland, without prior State legislative approval; and/or (2) abandoning or discontinuing the area as a park impressed with public trust; but also including temporarily or permanently depriving the public of the use and enjoyment of the parkland, except as permitted under Section 5.1 of this Easement or otherwise authorized under a Recreation Management Plan prepared and approved pursuant to the terms of Section 5(5) of this Agreement.

Athletic Field Area. That portion of the Protected Property described in Schedule A and as generally shown on Map # 11,934 as "Parcel E"; public recreation within the Athletic Field Area shall be provided in accordance with the terms of Section 7.3, herein.

Aquatic Habitats. Environments and conditions that occur predominantly on or in water and that support plants, animals, and other living creatures adapted for such environments.

Biological Diversity. The variety and abundance of life forms, processes, functions and structures of plants, animals and other living organisms, including the relative complexity of species, communities, gene pools and ecosystems at spatial scales that range from local to regional to global.

Ecological Processes. The interactions and relationships between living organisms and their environment.

Forest Management Activities. Forest Management Activities shall mean managing the Protected Property for the commercial production of one or more Forest Products, including such activities as:

1. The removal of Forest Products such as trees, logs, poles, posts, pulpwood, firewood, chips, seeds, pinestraw, stumps, seed cones, shrubs, lesser vegetation, fungi, and all sugar maple products.
2. Planting trees in non-forested areas.
3. Reforesting, planting, growing, and harvesting Forest Products and other vegetation.
4. Clearing or restoring forest cover damaged or destroyed by fire, water, or natural disaster.
5. Harvesting Forest Products with mechanical equipment and/or with domestic animals.
6. Clearing forested areas necessary for activities allowed by this Easement.
7. Using herbicides, pesticides, fungicides, rodenticides, insecticides, fertilizer, and pH control.
8. Cutting and removing trees from the growing site and the attendant operation of mobile or portable sawmills or chippers and of cutting, forwarding, and skidding machinery or such future equipment or technology as shall perform the same or similar tasks.
9. Creating and using skid trails, skid roads, forest management roads and winter haul roads and associated

bridges, culverts, and log yards.

Forest Products. Trees, logs, poles, posts, pulpwood, firewood, chips, seeds, pine straw, stumps, seed cones, shrubs, lesser vegetation, fungi, and all sugar maple products.

Grantors/Grantee. The terms Grantors and Grantee as used herein shall include the parties' respective successors, assigns, and where appropriate for the interpretation of the terms of this Easement, the Grantors' officers, Boards, commissions, and authorized agents and employees and the Grantee's authorized employees and contractors.

Motor Vehicle. Passenger and non-passenger vehicles powered by engines and which are manufactured for ground travel such as use on public roads and highways; and including for the purposes of this Easement, ATVs and snowmobiles.

Natural Resource Values. Goods and services provided either directly or indirectly to humans by the biotic and abiotic environment; examples of which include clean air and water, scenic vistas, flood mitigation and control, pollution abatement, wildlife habitat, and genetic diversity.

Natural State. The term "Natural State" shall mean the condition of the Protected Property existing immediately prior to a breach of any term of this Easement, giving due consideration to the following:

1. The normal effects of the passage of time;
2. The results of natural forces such as fires, earthquakes, landslides, lightning, floods, ice storms or other acts of God; and

3. The historical management of the Protected Property for recreation and forest management activities.

Non-native Species. Non-native Species are not native to the northeastern region of the United States.

Open Space Area. That portion of the Protected Property described in Schedule A and as generally shown on Map # 11,934 as Parcels "A" through "D"; public recreation shall be provided in accordance with Section 7.4, herein.

Riparian. Land next to a Stream or River; land along, bordering upon, bounded by, fronting upon, abutting or adjacent and contiguous to and in contact with a River.

River. See definition for Watercourse, herein.

Soil Productivity. The capacity of a forest soil for producing a specific plant or succession of plants; or for providing Natural Resource Values.

Stream. See definition for Watercourse, herein.

Structure: Any building, facility, edifice, or human-made development of any kind or nature, whether permanent or temporary; including by not limited to: any residence, commercial or industrial building, tower, mobile home, bridge, dock, utility, pavilion, fence, sign, billboard or other advertising material, outhouse and other sanitary facility, bunkhouse, lean-to, or camp.

Subdivision/Subdivide. Subdivision, for the sole purpose of this Easement shall mean:

1. Any division of the Protected Property into two or more lots, parcels, or sites, whether adjoining or not, for the purpose of sale or conveyance of a portion of the

Protected Property to a separate owner.

2. The outright sale of any or all recreational rights retained by the Grantors hereunder.

3. The sale or conveyance to the State of New York (or a conveyance to an intermediary party, which intends to convey the subject property to the State of New York) of all or a portion of the Protected Property in fee or the sale, conveyance or grant to the State of New York of any additional rights in all or a portion of the Protected Property, including additional conservation easement interests and recreational rights, shall not constitute a Subdivision for purposes of this Easement.

4. The correction of a boundary line location shall not constitute a Subdivision for purposes of this Easement.

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

Wetland. Those areas that (1) are inundated or saturated by surface water or groundwater for significant periods, and (2) support a prevalence of vegetation typically adapted for life in saturated soil conditions, and (3) contain predominantly hydric soils and are identified as such on freshwater Wetland maps prepared by any of the following: New York State Department of Environmental Conservation, or the United

States Army Corps of Engineers ("USCOE"), or any successors of aforementioned. In addition, Wetlands shall include those areas on the Protected Property identified as such in the Baseline Documentation.

SCHEDULE A

PROJECT: WESTCHESTER 29 (Eagle River)
Designated as: Conservation Easement
ICC Bridgeport Limited Partnership
&
Eagle River Limited Partnership
(Reputed Owners)

ALL THOSE CERTAIN TRACTS OR PARCELS OF LAND, situate, lying and being in the Town of Somers, County of Westchester and State of New York being more particularly bounded and described as follows:

Open Space Recreation Area

PARCEL A

BEGINNING at a point formed by the intersection of the northerly side of Plum Brook Road with the easterly side of Primrose Street (N.Y.S. Route 139) and runs

thence along said easterly side of Primrose Street (N.Y.S. Route 139), along a stone wall, North 35° 37' 53" East 192.53 feet to a point;

thence continuing, North 06° 43' 32" East 327.23 feet to land now or formerly of Methodist Church Mt. Zion Cemetery;

thence along the same, along a stone wall, South 83° 44' 52" East 315.94 feet to a point;

thence continuing, along a stone wall, North 04° 31' 00" East 207.09 feet to lands formerly Carry Reis (Town Park);

thence along the same, along a stone wall, South 85° 16' 20" East 493.28 feet to a point at a "T" intersection of stone walls and lands now or formerly of Frances Billingsley (Liber 6724 cp. 239);

thence along the same and along a stone wall, the following three (3) courses and distances:

- 1) South 05° 37' 10" West 98.49 feet,

2) South 04' 25' 10" West 378.88 feet, and
3) South 03' 40' 00" West 155.67 feet to the northerly side
of Plum Brook Road;

thence along said northerly side of Plum Brook Road, North 89'
33' 30" West 582.54 feet;

thence continuing, North 87' 41' 10" West 341.42 feet to the
point or place of beginning, containing **11.092 Acres** of land, more
or less.

PARCEL B

BEGINNING at a point formed by the intersection of the
southerly side of Plum Brook Road with the easterly side of
Primrose Street (N.Y.S. Route 139) and runs

thence along said southerly side of Plum Brook Road, partly
along the remains of a post and wire fence, the following eleven
(11) courses and distances:

- 1) North 89' 52' 50" East 510.02 feet,
- 2) South 89' 38' 00" East 197.80 feet,
- 3) North 88' 26' 00" East 80.61 feet,
- 4) South 87' 28' 00" East 132.75 feet,
- 5) South 89' 37' 00" East 286.94 feet,
- 6) South 88' 12' 00" East 10.05 feet,
- 7) South 61' 30' 00" East 19.75 feet,
- 8) South 36' 28' 00" East 29.48 feet,
- 9) South 21' 44' 00" East 22.58 feet,
- 10) South 00' 38' 00" East 50.64 feet, and

11) South 12' 42' 00" West 246.00 feet to lands now or
formerly of William R. Driver III and Marilyn E. Driver (Liber
7028 cp. 691);

thence along said lands the following three (3) courses and
distances:

1) along remains of a stone wall and post and wire fence,
North 85° 06' 30" West 62.09 feet,
2) North 86° 29' 40" West 243.20 feet, and
3) South 12° 15' 20" West 285.00 feet to a point marking the
most northerly point of **Parcel E** of the herein described premises;

thence running through the lands of the grantor herein, being
along the westerly bounds of said **Parcel E**, the following four (4)
courses and distances:

1) South 12° 15' 20" West 300.00 feet,
2) North 77° 44' 40" West 180.00 feet,
3) South 12° 15' 20" West 1000.00 feet, and
4) South 77° 44' 40" East 552.22 feet to a point in the
mean center line of a stone wall and lands now or formerly Somers
Manor Nursing Home, Inc. (Liber 7054 cp. 419);

thence southerly along the aforesaid lands and the mean center
line of said stone wall the following three (3) courses and
distances:

1) South 09° 00' 50" West 749.76 feet,
2) South 17° 34' 20" East 156.22 feet, and
3) South 16° 54' 20" East 253.61 feet to a point;

thence easterly, still along the last mentioned land and the
mean center line of a stone wall, the following five (5) courses
and distances:

1) South 84° 05' 20" East 24.43 feet,
2) South 87° 58' 30" East 386.65 feet,
3) South 85° 46' 10" East 63.53 feet,
4) North 88° 02' 50" East 40.87 feet, and
5) South 87° 47' 10" East 353.03 feet to lands now or
formerly of Alberta D. Francesco (Liber 5361 cp. 255);

thence southerly along said lands, along a wire fence, South

15' 24' 30" West 205.54 feet to a point;

thence easterly still along said lands, South 67' 44' 20" East 135.50 feet to Somerstown Road (N.Y.S. Route 100);

thence southerly along the said Somerstown Road (N.Y.S. Route 100), along a stone wall, the following two courses and distances:

- 1) South 34' 31' 30" West 73.16 feet, and
- 2) South 32' 26' 00" West 882.80 feet to a point and lands now or formerly of Joseph Henshaw, Jr., and Jane R. Henshaw (Liber 5932 cp. 369);

thence westerly along said lands, North 76' 35' 00" West 384.60 feet to a point in a stone wall;

thence southerly along lands of Henshaw as aforesaid, along lands now or formerly of John Thomas and Gertrude Elizabeth McMachan (Liber 6206 cp. 25) and along lands now or formerly of Dorothy M. Henshaw (Liber 6914 cp. 774), along the mean center line of said stone wall, the following five (5) courses and distances:

- 1) South 19' 00' 00" West 55.94 feet,
- 2) South 15' 26' 00" West 90.75 feet,
- 3) South 17' 29' 30" West 90.36 feet,
- 4) South 13' 11' 40" West 37.00 feet, and
- 5) South 17' 11' 20" West 237.74 feet to a point and land now or formerly of Olga Levis;

thence westerly and along said Levis land and land now or formerly of Charles M. Phinny (Liber 6630 cp. 7) and the mean center line of a stone wall, the following two (2) courses and distances:

- 1) North 86' 07' 50" West 482.62 feet, and
- 2) North 86' 45' 50" West 428.06 feet to a point and land now or formerly of Rio and Nella Marceca (Liber 6075 cp. 453);

thence northerly along said land of Marceca and land now or formerly of Donald M. And Elizabeth Foulke (Liber 5836 cp. 276) and the mean center line of a stone wall, the following three (3) courses and distances:

- 1) North 03' 42' 30" East 152.33 feet,
- 2) North 02' 11' 40" East 377.79 feet, and
- 3) North 02' 21' 20" West 65.48 feet to a point;

thence still along Foulke's land, continuing along said mean center line of a stone wall, North 87' 25' 20" East 3.70 feet to a point;

thence northerly along the land of Foulke as aforesaid, along land now or formerly of Costanzo and Ines Clorinda Manes (Liber 6602 cp. 43) and along land now or formerly of John M. Anderson, Jr. (Liber 6411 cp. 498) and the mean center line of said stone wall, the following six (6) courses and distances:

- 1) North 02' 38' 00" East 57.07 feet,
- 2) North 00' 57' 10" West 14.63 feet,
- 3) North 00' 28' 40" East 163.14 feet,
- 4) North 01' 51' 10" East 98.81 feet,
- 5) North 10' 58' 30" East 8.90 feet, and
- 6) North 01' 28' 00" East 361.16 feet to a point;

thence still along land of Anderson as aforesaid, continuing along the mean center line of said stone wall, North 85' 07' 20" West 33.07 feet to a point;

thence northerly along land now or formerly of Carnick and land now or formerly of Thomas K. and Susan C. Schneider (Liber 6989 cp. 625) and the mean center line of said stone wall, the following two (2) courses and distances:

- 1) North 03' 55' 20" East 293.70 feet, and
- 2) North 03' 31' 50" East 266.23 feet to a point;

thence westerly still along land of Schneider as aforesaid the following two (2) courses and distances:

- 1) partly along the mean center line of a stone wall, North 85° 41' 20" West 352.41 feet, and
- 2) North 81° 28' 10" West 25.54 feet to the easterly side of Primrose Street (N.Y.S. Route 139);

thence northerly along said easterly side of Primrose Street (N.Y.S. Route 139), the following thirteen (13) courses and distances:

- 1) North 04° 32' 30" West 224.31 feet,
- 2) North 06° 05' 00" West 47.45 feet,
- 3) North 01° 50' 00" East 44.42 feet,
- 4) North 09° 41' 00" West 54.35 feet,
- 5) North 04° 05' 50" West 388.64 feet,
- 6) North 07° 12' 40" West 173.82 feet,
- 7) North 39° 04' 00" West 99.77 feet,
- 8) on a non-tangent curve to the right whose radial bearing bears

North 22° 27' 40" East, having a radius of 285 feet, a distance of 434.88 feet,

- 9) North 19° 53' 20" East 598.35 feet,
- 10) North 28° 34' 10" East 281.46 feet,
- 11) North 36° 55' 40" East 241.75 feet,
- 12) along the remains of a post and wire fence, North 38° 50' 40" East 327.98 feet, and
- 13) North 67° 41' 00" East 18.13 feet to the point or place of beginning, containing 134.327 Acres of land, more or less.

PARCEL C

BEGINNING at a point on the northerly side of Van Renssalaer

Road, where the same is intersected by the southeasterly boundary of the premises herein described and the southwesterly boundary of lands now or formerly of Alvin and Irene Golankiewicz and runs

thence along said northerly side of Van Renssalaer Road, the following five (5) courses and distances:

- 1) South 87° 27' 40" West 244.20 feet,
- 2) South 87° 19' 31" West 150.01 feet,
- 3) South 79° 54' 46" West 51.29 feet,
- 4) South 53° 10' 36" West 51.40 feet, and
- 5) South 60° 12' 00" West 10.79 feet to a point;

thence continuing along said northerly side of Van Renssalaer Road, along the remains of a stone wall the following fourteen (14) courses and distances:

- 1) South 40° 17' 30" West 75.72 feet,
- 2) South 38° 35' West 43.74 feet,
- 3) South 40° 03' West 96.69 feet,
- 4) South 44° 34' West 117.46 feet,
- 5) South 46° 42' West 78.75 feet,
- 6) South 40° 52' West 81.39 feet,
- 7) South 35° 54' West 66.80 feet,
- 8) South 32° 40' West 18.60 feet,
- 9) South 42° 40' West 8.21 feet,
- 10) South 32° 36' West 78.30 feet,
- 11) South 37° 35' West 64.17 feet,
- 12) South 15° 51' West 12.34 feet,
- 13) South 29° 51' 40" West 15.16 feet, and
- 14) South 20° 01' West 46.01 feet to the easterly side of

lands now or formerly of Eugene and Dorothy Alotrico;

thence along the same, North 01° 05' 36" West 2,341.49 feet to a point;

thence along the same and along land now or formerly of Royce and Larsen the following five (5) courses and distances:

- 1) North 85° 18' 40" West 17.43 feet,
- 2) North 84° 19' 40" West 120.38 feet,
- 3) North 84° 45' 00" West 326.79 feet,
- 4) North 84° 19' 10" West 166.99 feet, and
- 5) North 85° 16' 40" West 109.06 feet to a point;

thence along other lands of the party of the first part herein the following nine (9) courses and distances:

- 1) North 06° 00' 40" East 200.76 feet,
- 2) North 06° 49' 40" East 210.42 feet,
- 3) North 12° 40' 10" East 266.58 feet,
- 4) North 00° 38' 20" West 211.82 feet,
- 5) North 01° 40' 50" East 192.94 feet,
- 6) North 03° 05' 50" East 306.00 feet,
- 7) North 00° 51' 40" East 253.66 feet,
- 8) North 08° 55' 30" East 76.92 feet, and
- 9) North 04° 14' 50" East 78.95 feet to lands now or

formerly of Jonas Bastys;

thence along the same, along a stone wall, the following four (4) courses and distances:

- 1) South 85° 18' 20" East 711.53 feet,
- 2) South 84° 43' 00" East 312.37 feet,
- 3) South 85° 43' 00" East 441.79 feet, and
- 4) South 85° 06' 00" East 1,159.28 feet to a point;

thence continuing along said lands of Bastys, North 17° 08' 40" East 770.72 feet to lands now or formerly of Jay M. Mosher and Bertha B. Mosher;

thence along the same, South 61° 36' 35" East 635.91 feet to the westerly side of Primrose Street (N.Y.S. Route 139) the

following seven (7) courses and distances:

- 1) South 21° 08' 00" West 228.97 feet,
- 2) South 16° 51' 02" West 75.61 feet,
- 3) South 15° 37' 10" West 75.74 feet,
- 4) South 15° 58' 52" West 59.54 feet,
- 5) South 20° 40' 10" West 81.33 feet,
- 6) South 85° 03' 22" East 9.08 feet, and
- 7) South 15° 01' 20" West 158.89 feet to a point;

thence running through the lands of the grantor herein the following four (4) courses and distances:

- 1) South 24° 43' 20" West 630.62 feet,
- 2) South 82° 30' 00" West 512.56 feet,
- 3) South 53° 00' 00" West 390.00 feet, and
- 4) South 01° 22' 00" West 690.00 feet to lands now or

formerly of Mohammed and Nicole Benaissa;

thence along the same and the aforementioned lands of Alving and Irene Golankiewicz, along a stone wall, North 84° 29' 40" West 419.61 feet to a point;

thence along the said lands of Golankiewicz, South 01° 54' 05" West 1,553.69 feet to the point or place of beginning, containing 161.246 Acres of land, more or less.

PARCEL D

BEGINNING at a point on the southwesterly side of Colonial Drive, said point of beginning being 405.00 feet westerly along the southwesterly side of Colonial Drive from the westerly end of a curve having a radius of 25.00 feet connecting the said southwesterly side of Colonial Drive with the westerly side of Edgewood Drive and runs

thence along the westerly boundary of lands now or formerly of Giuseepe Runa the following four (4) courses and distances:

- 1) South 04' 11' 00" West 300.00 feet,
- 2) North 85' 49' 00" West 66.36 feet,
- 3) South 04' 11' 00" West 201.43 feet, and
- 4) South 85' 49' 00" East 84.86 feet to lands now or

formerly of Horst Giewat and Maria Giewat;

thence along the same and lands of now or formerly Emmett J. Boldt and Claire Boldt and lands now or formerly of R. Barry Deickler, South 04' 11' 00" West 487.54 feet to lands now or formerly of Jonas Bastys;

thence along the same the following six (6) courses and distances:

- 1) North 87' 41' 50" West 95.23 feet,
- 2) North 87' 34' 40" West 140.57 feet,
- 3) North 88' 44' 00" West 272.10 feet,
- 4) North 86' 25' 50" West 165.57 feet,
- 5) North 87' 31' 20" West 420.51 feet, and
- 6) North 04' 06' 20" East 84.87 feet to the lands now or

formerly Abraham Friedenber;

thence along the same the following three (3) courses and distances:

- 1) North 04' 06' 20" East 423.26 feet,
- 2) North 04' 20' 50" East 423.39 feet, and
- 3) North 03' 44' 00" East 93.67 feet to other lands of

Giuseppe Runa;

thence along the same the following two (2) courses and distances:

- 1) South 88' 42' 40" East 468.42 feet, and
- 2) North 72' 35' 40" East 286.77 feet to the southwesterly

side of Colonial Drive;

thence along said southwesterly side of Colonial Drive the

following two (2) courses and distances:

- 1) South 64° 26' 30" East 291.37 feet, and
- 2) along a curve to the left having a radius of 825.00 feet, a distance of 73.17 feet to the point or place of beginning, containing 25.885 Acres of land, more or less.

Athletic Field Area

PARCEL E

BEGINNING at a point on the westerly side of Plum Brook Road where the same is intersected by the southerly boundary of lands of now or formerly William R. Driver III and Marilyn E. Driver (Liber 7028 cp. 691) and runs

thence southerly along said westerly side of Plum Brook Road, along a post and wire fence, South 17° 13' 20" West 49.63 feet to lands of now or formerly of Somers Manor Nursing Home, Inc. (Liber 7054 cp. 419);

thence southerly along the aforesaid lands of Somers Manor Nursing Home, Inc., and the mean center line of a stone wall, the following five (5) courses and distances:

- 1) South 08° 51' 30" West 301.89 feet, ✓
- 2) South 08° 20' 10" West 137.38 feet, ✓
- 3) South 09° 05' 35" West 549.14 feet, ✓
- 4) South 08° 47' West 241.35 feet, and ✓
- 5) South 09° 00' 50" West 68.23 feet to a point; ✓

thence running through the lands of the grantor herein, being along the easterly bounds of **Parcel B** herein described, the following four (4) courses and distances:

- 1) North 77° 44' 40" West 552.22 feet, ✓
- 2) North 12° 15' 20" East 1000.00 feet, ✓
- 3) South 77° 44' 40" East 180.00 feet, and ✓
- 4) North 12° 15' 20" East ✓ 300.00 feet to the

aforementioned lands now or formerly of William R. Driver III and Marilyn E. Driver;

thence along the same the following two (2) courses and distances:

- 1) South 84° 49' 40" East 274.28 feet, and ✓
- 2) North 80° 21' 30" East ✓/30.48 feet to the point or place of beginning, containing 14.240 Acres of land, more or less.

BEARINGS are with reference to Magnetic North.

BEING a portion of the lands described in conveyance from Walter I. Seligsohn, Referee, to ICC Bridgeport Limited Partnership and Eagle River Limited Partnership by deed dated August 16, 1996, recorded on August 30, 1996 at the Westchester County Clerk's Office in Liber 11514 of Deeds at page 91.

THE ABOVE DESCRIBED PARCELS BEING FURTHER DESCRIBED in accordance to Survey of Property prepared for Westchester Land Trust, Inc. by Badey & Watson, Surveying & Engineering, P.C., dated September 28, 2005 as follows:

ALL THOSE CERTAIN TRACTS OR PARCELS OF LAND, situate, lying and being in the Town of Somers, County of Westchester and State of New York being more particularly bounded and described as follows:

Open Space Recreation Area

PARCEL A

BEGINNING at a point formed by the intersection of the northerly side of Plum Brook Road with the easterly side of Primrose Street (N.Y.S. Route 139) and runs

thence along said easterly side of Primrose Street (N.Y.S. Route 139), along a stone wall, North 23° 31' 23" East 164.71 feet to a point;

thence continuing, North 05° 22' 59" West 327.21 feet to land

of the Town of Somers, formerly of the Methodist Church Mt. Zion Cemetery;

thence along the same, along a stone wall, North 84° 08' 38" East 315.92 feet to a point;

thence continuing along the same, along a stone wall, North 07° 35' 30" West 207.08 feet to lands of the Town of Sommers, formerly Reese;

thence along the same, along a stone wall, North 82° 37' 10" East 493.25 feet to a point at a "T" intersection of stone walls and lands now or formerly of Blair (Document #410190580);

thence along the same and along a stone wall, the following three (3) courses and distances:

- 1) South 06° 29' 20" East 98.48 feet,
- 2) South 07° 41' 20" East 378.85 feet, and
- 3) South 08° 26' 30" East 155.66 feet to the northerly side

of Plum Brook Road;

thence along said northerly side of Plum Brook Road, South 78° 20' 00" West 582.50 feet;

thence continuing, South 80° 12' 20" West 313.59 feet;

thence continuing, along a curve to the right having a radius of 15.00 feet and a length of 32.28 feet to the point or place of beginning, containing **11.087 Acres** of land, more or less.

PARCEL B

BEGINNING at a point formed by the intersection of the southerly side of Plum Brook Road with the easterly side of Primrose Street (N.Y.S. Route 139) and runs

thence along said southerly side of Plum Brook Road, partly along the remains of a post and wire fence, the following eleven (11) courses and distances:

- 1) North 77° 46' 30" East 509.98 feet,

- 2) North 78° 15' 40" East 197.79 feet,
- 3) North 76° 19' 40" East 80.60 feet,
- 4) North 80° 25' 40" East 132.74 feet,
- 5) North 78° 16' 40" East 286.92 feet,
- 6) North 79° 41' 40" East 10.05 feet,
- 7) South 73° 36' 20" East 19.75 feet,
- 8) South 48° 34' 20" East 29.48 feet,
- 9) South 33° 50' 20" East 22.58 feet,
- 10) South 12° 44' 20" East 50.64 feet, and
- 11) South 00° 35' 40" West 246.00 feet to lands now or

formerly of Berman & Rissetto (Liber 9476 cp. 104);

thence along said lands the following three (3) courses and distances:

- 1) along remains of a stone wall and post and wire fence,
South 82° 47' 10" West 62.08 feet,
- 2) South 81° 24' 00" West 243.18 feet, and
- 3) South 00° 09' 00" West 284.98 feet to a point marking the

most northerly point of **Parcel E** of the herein described premises;

thence running through the lands of the grantor herein, being along the westerly bounds of said **Parcel E**, the following four (4) courses and distances:

- 1) South 00° 09' 00" West 299.98 feet,
- 2) North 89° 51' 00" West 179.99 feet,
- 3) South 00° 09' 00" West 999.93 feet, and
- 4) South 89° 51' 00" East 552.18 feet to a point in a

stone wall and lands now or formerly A L Development Properties, LLC (Liber 11837 cp. 116);

thence southerly along the aforesaid lands and said stone wall the following three (3) courses and distances:

- 1) South 03° 05' 30" East 749.71 feet,

- 2) South 29° 40' 40" East 156.21 feet, and
- 3) South 29° 00' 40" East 253.59 feet to a point;

thence easterly, still along the last mentioned land and stone wall, the following five (5) courses and distances:

- 1) North 83° 48' 20" East 24.43 feet,
- 2) North 79° 55' 10" East 386.62 feet,
- 3) North 82° 07' 30" East 63.53 feet,
- 4) North 75° 56' 30" East 40.87 feet, and
- 5) North 80° 06' 30" East 353.01 feet to lands now or

formerly of Lopez (Liber 10090 cp. 136);

thence southerly along said lands, along a wire fence, South 03° 44' 40" West 205.53 feet to a point;

thence easterly, still along said lands, South 79° 24' 10" East 122.86 feet to Somerstown Turnpike (N.Y.S. Route 100);

thence southerly along the said Somerstown Turnpike (N.Y.S. Route 100), along a stone wall, South 20° 22' 40" West 954.94 feet to a point and lands now or formerly of Staruch (Liber 12376 cp. 032);

thence westerly along said lands, North 88° 48' 00" West 375.43 feet to a point in a stone wall;

thence southerly along lands of Staruch as aforesaid, along lands now or formerly of McMachan (Liber 6206 cp. 025) and along lands now or formerly of Helgans (Liber 10893 cp. 203), along a stone wall, the following seven (7) courses and distances:

- 1) South 06° 47' 00" West 55.94 feet,
- 2) South 03° 13' 00" West 90.74 feet,
- 3) South 05° 16' 30" West 90.35 feet,
- 4) South 00° 58' 40" West 37.00 feet,
- 5) South 07° 19' 20" West 24.54 feet,
- 6) South 04° 26' 10" West 107.54 feet, and

7) South 04' 58' 20" West 105.67 feet to a point and land now or formerly of Tepp (Liber 11723 cp. 252;

thence westerly along said lands and land now or formerly of Bolan (Document #993630211) and a stone wall, the following three (3) courses and distances:

- 1) South 82' 05' 30" West 222.38 feet,
- 2) South 81' 23' 40" West 258.68 feet, and
- 3) South 81' 14' 50" West 428.20 feet, to a point and land now or formerly of Ryan (Liber 7805 cp. 674);

thence northerly along said land of Ryan and land now or formerly of Fedele LLC (Liber Document #441560865) and a stone wall, the following three (3) courses and distances:

- 1) North 08' 23' 50" West 152.32 feet,
- 2) North 09' 54' 40" West 377.76 feet, and
- 3) North 14' 27' 40" West 65.48 feet to a point;

thence still along Fedele LLC lands, continuing along said stone wall, North 75' 19' 00" East 3.70 feet to a point;

thence northerly along the land of Fedele LLC as aforesaid, along land now or formerly of Scarfone (Liber 11101 cp. 165) and along land now or formerly of Anderson (Liber 6411 cp. 498) and said stone wall, the following six (6) courses and distances:

- 1) North 09' 28' 20" West 57.07 feet,
- 2) North 13' 03' 30" West 14.63 feet,
- 3) North 11' 37' 40" West 163.13 feet,
- 4) North 10' 15' 10" West 98.80 feet,
- 5) North 01' 07' 50" West 8.90 feet, and
- 6) North 10' 38' 20" West 361.14 feet to a point;

thence still along land of Anderson as aforesaid, continuing along said stone wall, South 82' 46' 20" West 32.97 feet to a point;

thence northerly along land now or formerly of Beach (Liber 7646 cp. 596) and land now or formerly of Papalia (Document #410590145) and said stone wall, the following two (2) courses and distances:

- 1) North 08° 28' 00" West 293.19 feet, and
- 2) North 08° 28' 04" West 266.21 feet to a point;

thence westerly still along land of Papalia as aforesaid the following two (2) courses and distances:

- 1) partly along a stone wall, South 82° 18' 46" West 352.39 feet, and
- 2) South 86° 31' 56" West 23.19 feet to the easterly side of Primrose Street (N.Y.S. Route 139);

thence northerly along said easterly side of Primrose Street (N.Y.S. Route 139), the following eleven (11) courses and distances:

- 1) North 16° 21' 00" West 320.20 feet,
- 2) North 17° 37' 00" West 492.20 feet,
- 3) North 19° 50' 00" West 75.00 feet,
- 4) North 25° 50' 00" West 79.50 feet,
- 5) North 61° 50' 00" West 150.00 feet,
- 6) on a curve to the right having a radius of 284.98 feet, a distance of 345.02 feet,
- 7) North 07° 32' 00" East 692.05 feet,
- 8) North 18° 47' 00" East 155.42 feet,
- 9) North 26° 00' 00" East 269.62 feet,
- 10) North 26° 44' 20" East 327.96 feet, and
- 11) North 55° 34' 40" East 18.13 feet to the point or place of beginning, containing 134.039 Acres of land, more or less.

PARCEL C

BEGINNING at a point on the northerly side of Van Renssalaer Road, where the same is intersected by the southeasterly boundary of the premises herein described and the southwesterly boundary of lands now or formerly of Grochowski (Liber 8377 cp. 337) and runs

thence along said northerly side of Van Renssalaer Road, the following eighteen (18) courses and distances:

- 1) South 77° 04' 20" West 51.30 feet,
- 2) South 75° 22' 20" West 347.00 feet,
- 3) South 65° 49' 20" West 50.14 feet,
- 4) South 41° 11' 37" West 51.40 feet,
- 5) South 48° 13' 01" West 10.79 feet,
- 6) South 26° 58' 00" West 75.70 feet,
- 7) South 26° 36' 01" West 43.74 feet,
- 8) South 28° 04' 01" West 96.68 feet,
- 9) South 32° 35' 01" West 117.45 feet,
- 10) South 34° 43' 01" West 78.74 feet,
- 11) South 28° 53' 01" West 81.38 feet,
- 12) South 23° 55' 01" West 66.80 feet,
- 13) South 20° 41' 01" West 18.60 feet,
- 14) South 30° 41' 01" West 8.21 feet,
- 15) South 20° 37' 01" West 78.29 feet,
- 16) South 24° 16' 50" West 62.30 feet,
- 17) South 19° 19' 20" West 31.52 feet, and

18) South 08° 35' 10" West 44.85 feet to the easterly side of lands now or formerly of Alotrico (Liber 4861 cp. 136);

thence along the same, North 12° 59' 55" West 2,341.33 feet to a point;

thence along the same and along land now or formerly of Villani (Document #441881463), South 83° 20' 30" West 740.60 feet to a

point,

thence along other lands of the party of the first part herein the following nine (9) courses and distances:

- 1) North 06° 07' 10" West 198.93 feet,
- 2) North 05° 18' 10" West 210.41 feet,
- 3) North 00° 32' 20" East 266.56 feet,
- 4) North 12° 46' 10" West 211.81 feet,
- 5) North 10° 27' 00" West 192.93 feet,
- 6) North 09° 02' 00" West 305.98 feet,
- 7) North 11° 16' 10" West 253.64 feet,
- 8) North 03° 12' 20" West 76.91 feet, and
- 9) North 07° 53' 00" West 78.94 feet to lands now or formerly of Diggins (Liber 11596 cp. 225);

thence along the same, and along lands now or formerly of Levine (Liber 11286 cp. 337), and along lands now or formerly of Miller (Liber 11402 cp. 289), and along lands now or formerly of Pollock (Liber 11767 cp. 235), along a stone wall, the following fourteen (14) courses and distances:

- 1) North 82° 36' 33" East 711.48 feet,
- 2) North 83° 11' 53" East 157.00 feet,
- 3) North 82° 41' 40" East 162.40 feet, and
- 4) North 82° 28' 40" East 159.80 feet,
- 5) North 82° 18' 26" East 274.89 feet,
- 6) North 82° 07' 40" East 127.00 feet,
- 7) North 83° 20' 20" East 166.44 feet,
- 8) North 82° 48' 53" East 190.29 feet,
- 9) North 83° 26' 40" East 116.00 feet,
- 10) North 81° 51' 00" East 63.00 feet,
- 11) North 84° 38' 40" East 50.00 feet,
- 12) North 82° 40' 00" East 208.50 feet,

13) North 81° 50' 00" East 74.26 feet, and

14) North 82° 48' 53" East 163.78 feet to a point;

thence continuing along said lands of Pollock (Liber 11767 cp. 235), and lands of now or formerly Parcesepe (Liber 11648 cp. 049), and lands of now or formerly Allegretti-Davenport (Liber 11704 cp. 052), lands of now or formerly Rotanelli (Document #440200038), and lands of now or formerly Greco (Liber 11827 cp. 75), North 05° 03' 33" East 769.58 feet to lands now or formerly of Mosher (Liber 10457 cp. 229);

thence along the same, South 73° 41' 42" East 635.87 feet to the westerly side of Primrose Street (N.Y.S. Route 139);

thence along the same, the following six (6) courses and distances:

- 1) South 09° 02' 53" West 228.95 feet,
- 2) South 04° 45' 55" West 75.60 feet,
- 3) South 03° 32' 03" West 75.73 feet,
- 4) South 03° 53' 45" West 59.54 feet,
- 5) South 03° 27' 50" West 78.30 feet, and
- 6) South 02° 54' 40" West 158.88 feet to a point;

thence running through the lands of the grantor herein the following four (4) courses and distances:

- 1) South 12° 36' 40" West 630.55 feet,
- 2) South 70° 23' 20" West 512.51 feet,
- 3) South 40° 53' 20" West 389.96 feet, and
- 4) South 10° 14' 40" East 689.94 feet to lands now or

formerly of Benaissa (Liber 7045 cp. 715);

thence along the same and the aforementioned lands of Grochowski (Liber 8377 cp.337), along a stone wall, South 83° 23' 40" West 419.58 feet to a point;

thence along the said lands of Grochowski (Liber 8377 cp. 337),

South 10° 12' 35" East 1,552.96 feet to the point or place of beginning, containing 161.199 Acres of land, more or less.

PARCEL D

BEGINNING at a point on the southwesterly side of Colonial Drive, said point of beginning being 404.97 feet westerly along the southwesterly side of Colonial Drive from the westerly end of a curve having a radius of 25.00 feet connecting the said southwesterly side of Colonial Drive with the westerly side of Edgewood Drive and runs

thence along the westerly boundary of lands now or formerly of Wray (Liber 12410 cp. 041), the following four (4) courses and distances:

- 1) South 07° 54' 40" East 299.98 feet,
- 2) South 82° 05' 20" West 66.36 feet,
- 3) South 07° 54' 40" East 201.42 feet, and
- 4) North 82° 05' 20" East 84.86 feet to lands now or formerly of Perelman (Document #420610451);

thence along the same and lands of now or formerly Cheung (Document #433120014) and lands now or formerly of Thomas (Liber 10045 cp. 087), South 07° 54' 40" East 487.51 feet to lands now or formerly of Adriano (liber 12347 cp. 128);

thence along the same the following five (5) courses and distances:

- 1) South 80° 12' 30" West 95.22 feet,
- 2) South 80° 19' 40" West 140.56 feet,
- 3) South 79° 10' 20" West 272.08 feet,
- 4) South 81° 28' 30" West 165.56 feet, and
- 5) South 80° 23' 00" West 420.48 feet to a point,

thence along the same, and along lands of now or formerly Friedenbergl, North 07° 59' 20" West 508.10 feet to the lands now

or formerly of Lawler (Liber 7629 cp. 747);

thence along the same, and along lands now or formerly of Bleser (Liber 10480 cp. 195), and along lands now or formerly of Katz (Liber 12010 cp. 202), North 07' 44' 50" West 423.36 feet;

thence continuing along said Katz (Liber 12010 cp. 202), and along lands now or formerly of Ross (Liber 12068 cp. 244), North 08' 21' 40" West 93.66 feet to a point;

thence along the lands now or formerly of Carnaghi (Liber 11738 cp. 144) the following two (2) courses and distances:

- 1) North 79' 11' 40" East 468.39 feet, and
- 2) North 60' 30' 00" East 286.75 feet to the southwesterly

side of Colonial Drive;

thence along said southwesterly side of Colonial Drive the following two (2) courses and distances:

- 1) South 76' 32' 10" East 291.35 feet, and
- 2) along a curve to the left having a radius of 824.94 feet, a distance of 73.16 feet to the point or place of beginning, containing 25.882 Acres of land, more or less.

Athletic Field Area

PARCEL E

BEGINNING at a point on the westerly side of Plum Brook Road where the same is intersected by the southerly boundary of lands of now or formerly Berman & Rissetto (Liber 9476 cp. 104) and runs

thence southerly along said westerly side of Plum Brook Road, along a post and wire fence, South 05' 07' 00" West 49.63 feet to lands now or formerly of A L Development Properties, LLC (Liber 11837 cp. 116);

thence southerly along the aforesaid lands of A L Development Properties, LLC (Liber 11837 cp. 116), and center line of a stone

wall, the following five (5) courses and distances:

- 1) South 03' 14' 50" East 301.87 feet,
- 2) South 03' 46' 10" East 137.37 feet,
- 3) South 03' 00' 45" East 549.10 feet,
- 4) South 03' 19' 20" East 241.33 feet, and
- 5) South 03' 05' 30" Est 68.22 feet to a point;

thence running through the lands of the grantor herein, being along the easterly bounds of **Parcel B** herein described, the following four (4) courses and distances:

- 1) North 89' 51' 00" West 552.18 feet,
- 2) North 00' 09' 00" East 999.93 feet,
- 3) South 89' 51' 00" East 179.99 feet, and
- 4) North 00' 09' 00" East 299.98 feet to the

forementioned lands of Berman & Rissetto (Liber 9476 cp. 104);

thence along the same the following two (2) courses and distances:

- 1) North 83' 04' 00" East 274.26 feet, and
- 2) North 68' 15' 10" East 30.48 feet to the point or place

of beginning, containing **14.240** Acres of land, more or less.

BEARINGS, distances and coordinate values described herein are with reference to the New York State Coordinate System, East Zone (NAD - 83/96), **TRUE NORTH** at 74' 30' West Longitude (NAD - 83/96), distance values described herein are Grid Horizontal, to obtain Ground Horizontal distance, divide by scale factor of 0.99993000.

BEING a portion of the lands described in conveyance from Walter I. Seligsohn, Referee, to ICC Bridgeport Limited Partnership and Eagle River Limited Partnership by deed dated August 16, 1996, recorded on August 30, 1996 at the Westchester County Clerk's Office in Liber 11514 of Deeds at page 91.

SCHEDULE B

Excepted Encumbrances

Easements granted to AT & T recorded in Liber 6694 cp 398 and in Liber 6694 cp 400.

Easements granted to NYSE & G recorded in Liber 8841 cp 181 and in Liber 8935 cp 34.

Interests of others in Streams and ponds on several parcels, and roads: Primrose Street (Route 139), Somerstown Road (Route 100), Colonial Drive, Van Rensselaer Road, Plum Brook Road (Hilltop Road - Parcel 6 only).

Project Number: Westchester 29
Proceeding: 7694
Town: Somers
County: Westchester

CONSERVATION EASEMENT

ANGLE FLY PRESERVE

Town of Somers and County of Westchester

THIS CONSERVATION EASEMENT, made this 15 day of May,
2006 between:

TOWN OF SOMERS, with offices located at 335 Route 202,
Somers, New York 10589, the **COUNTY OF WESTCHESTER**, with
offices located in the Michaelian Office Building, 148
Maritime Avenue, White Plains, New York 10601 (collectively,
"Grantors") and

THE PEOPLE OF THE STATE OF NEW YORK acting by and through
their Commissioner of Environmental Conservation with offices
at 625 Broadway, Albany, NY 12233 ("Grantee").

WHEREAS, Grantors are the owners, as tenants in common, of
the fee to certain real property located in the Town of
Somers, County of Westchester, New York, more particularly
described in **Schedule A** attached hereto and incorporated by
this reference and as generally shown on a map entitled
"SKETCH MAP OF CONSERVATION EASEMENT TO BE ACQUIRED PURSUANT
TO SECTION 3-0305 OF THE ENVIRONMENTAL CONSERVATION LAW,
PROJECT: WESTCHESTER 29 & 29A, ICC BRIDGEPORT LIMITED
PARTNERSHIP & EAGLE RIVER LIMITED PARTNERSHIP," by Robert A.
Burgher, L.S., Reg. Number 49601, dated May 25, 2005, last
revised on December 29, 2005 and filed in NYSDEC offices in

Albany, N.Y. as Map # 11,934 ("the Protected Property"); and WHEREAS, by granting this Conservation Easement, the Grantors intend that the Protected Property shall be forever held in public trust and never alienated therefrom, remaining open and available as public parkland known as the Angle Fly Preserve.

WHEREAS, this Conservation Easement establishes an "Open Space Recreation Area," which encumbers Parcels "A" through "D," more particularly described in Schedule A and generally shown on Map # 11,934; and this Conservation Easement establishes an "Athletic Field Area," which encumbers Parcel E, more particularly described in Schedule A and generally shown on Map # 11,934; and

NOW, THEREFORE, the Grantors, for the consideration of Three Million Two Hundred Thousand and 00/100 Dollars (\$3,200,000) and other valuable consideration paid by the Grantee, the receipt and sufficiency of which are hereby acknowledged, grant, convey and release to the Grantee a Conservation Easement in perpetuity pursuant to Article 49, Title 3 of the Environmental Conservation Law (ECL) in, on, over, under and upon the Protected Property on the terms and conditions set forth herein (hereinafter, the "Easement"):

1. PURPOSES OF THE GRANT. The parties acknowledge that the purposes (hereinafter, the "Purposes") of this Easement are:

1.1 Public Trust. Ensure that the Protected Property is

held in public trust in perpetuity, as public parkland, and never Alienated therefrom.

1.2 Conserve Natural Resource Values. Ensure that the Protected Property is held in perpetuity in a relatively undeveloped state in order to protect its Natural Resource Values, including water quality in the Croton Watershed and the New York City drinking water supply.

1.3 Establish Two Recreation Use Areas. Establish an "Open Space Recreation Area" and an "Athletic Field Area," in order to provide two levels of public recreation on the Protected Property.

1.4 Provide Public Recreation. Provide and manage for public recreation and the construction and maintenance of public recreation improvements, both of which are to be compatible with the public trust requirements and conservation goals stated above.

1.5 Prohibit Certain Uses. Prohibit residential, commercial, industrial, and agricultural uses that are inconsistent or incompatible with the above-stated Purposes, and, except for the limited development and forest management activities allowed herein, maintain and manage the Protected Property forever as parkland in its natural, scenic, forested, and open space condition.

2. PROHIBITED ACTIVITIES AND USES. The following activities are prohibited and Grantors grant to Grantee the right to enforce the following prohibitions, whether such activities

are undertaken by Grantors or others:

1. Grantors shall not Subdivide the Protected Property.
2. Constructing residences, mobile homes or other residential Structures on the Protected Property.
3. Constructing any Structures on the Protected Property, except those allowed in Sections 7.2 through 7.6.
4. Constructing or maintaining improvements and Structures associated with the Athletic Field Area on any portion of the Protected Property described in Schedule A and generally shown on Map # 11,934 as Open Space Recreation Area.
5. Charging a fee for entry on or use of the Open Space Recreation Area by a member of the public.
6. Dumping or storing ashes, non-composted organic waste, sewage or garbage, scrap material, discharges or other such waste, except as allowed in Section 7.9.
7. Dumping or storing petroleum and its byproducts, leached compounds, toxic substances, hazardous materials; except that Grantors may store in approved containers and tanks, heating oil and other fuels as needed to enjoy Grantors' Reserved Rights.
8. The Protected Property shall not be used in any way that adversely affects drainage, flood control, water conservation, fish or wildlife habitat preservation, erosion control, or soil conservation. No construction

of dams or impoundments, manipulation of water levels in Streams, Rivers or Wetlands, or alterations of natural water courses shall be undertaken by the Grantors on the Protected Property, unless such actions are necessary for Grantor's Reserved Rights; or are necessary to satisfy stormwater management obligations of the Town as an MS4 under the SPDES general permit or stormwater discharges and have received prior written approval by Grantee.

9. Use of snowmobiles, dune buggies, motorcycles, all-terrain vehicles or any other motorized vehicles for recreational purposes anywhere on the Protected Property.

10. Excavating, extracting, grading, or removing soil, sand and gravel, and mining or extracting gas or oil; however, within the Athletic Field Area, Grantors may excavate, blast rock, move soil, and modify the topography in accordance with the Recreation Management Plan but such activities shall not occur outside the Athletic Field Area.

11. Siting or routing of any lines, pipes, or facilities required for the local gathering, transmission, or distribution of gas, electricity, water, telephone, or cable television services on, over or under the Protected Property, except as provided in Section 7.10.

12. The commercial, residential, agricultural or

industrial use of the Protected Property; except that Grantors may solicit and contract for concessions and charge reasonable fees for the use of the Athletic Field Area and improvements but neither the County nor the Town shall charge non-residents of either Westchester County or the Town of Somers differently than residents for such uses. Other commercial activities are prohibited if they are unrelated to Grantors' Reserved Rights.

13. Use of the Protected Property in such a manner that causes the introduction of sediments, chemicals, microbiological pathogens, nutrients or other pollutants to any Watercourse or Wetland on or off the Protected Property and that may adversely effect the quality of such Watercourse or Wetland.

14. Allowing hunting or conducting Forest Management Activities within the Athletic Field Area.

3. DEFINITIONS CONSTRUCTION OF TERMS AND INTERPRETATION

3.1 Definitions. The parties intend that certain words and phrases which are used in this Easement and any document attached hereto or made a part hereof, as well as any document, plan, or agreement developed as a requirement of this Easement shall have the meaning and interpretation as defined in **Appendix 1**, Definitions, unless otherwise specifically and intentionally defined.

3.2 Construction of Terms and Interpretation.

1. Notwithstanding any term or condition of this Easement or any provision of State law, this Easement shall be construed to affect the Purposes for which it was acquired and, in interpreting its terms, there shall be no presumption favoring the Grantee or Grantors.

2. If any provision of this Easement is found to be ambiguous, an interpretation that is consistent with the Purposes of this Easement and that would render the provision valid shall be favored over any interpretation that would render it invalid.

3. The captions herein have been inserted solely for convenience of reference and are not part of this Easement and shall have no effect upon construction or interpretation.

4. BASELINE DOCUMENTATION

1. The parties shall agree and acknowledge that the Baseline Documentation, which shall consist of, at a minimum, descriptions, maps, photographs, surveys, and other related documentation, shows or depicts significant aspects of the Protected Property as of the date of this Easement. The Baseline Documentation is intended to serve as an objective, although not exclusive, information baseline for monitoring compliance with the terms of this Easement. The parties agree that, in the event a controversy arises with respect to the nature and extent of uses or the condition of the Protected

Property, the parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy.

2. Grantors will make available to Grantee existing documentation in their possession relating to the condition of the Protected Property and Grantee shall cause to be prepared such additional documentation deemed appropriate by Grantee, including a survey of the Protected Property showing its relationship to adjacent features and properties and on-site photographs.

3. Counterparts of the Baseline Documentation, signed and acknowledged by both parties to the Easement, shall be provided to the Grantors and the Grantee. One counterpart shall be maintained in the Grantee's Central Office in Albany.

5. PUBLIC RECREATION; IMPROVEMENTS; RECREATION MANAGEMENT

PLAN. **1. Responsibility For Public Recreation.**

(a) *Opening the Protected Property To Public Recreation.* Within twenty-four (24) months of the date of recording this Easement in the Westchester County Clerk's Office, Grantors shall have opened some or all of the Protected Property for public recreational uses in accordance with this Easement.

(b) *Keeping the Property Open.* Subject to the availability of legal appropriations and funding,

Grantors shall ensure that the Protected Property remains available for public recreation, subject also to reasonable limitations on the timing, duration, type and location of such uses as Grantors may deem appropriate to impose on public recreation.

(c) *Grantors' Obligations and Responsibility.* Grantors expressly assume all obligations and responsibility for providing such public recreation, subject to the terms of this Easement.

2. Athletic Field Area and the Open Space Recreation

Area. Schedule A and Map # 11,934 separate the Protected Property into two (2) areas for the purpose of providing different levels of public recreation: the Athletic Field Area ("Parcel E") and the Open Space Recreation Area (Parcels "A" through "D").

3. Public Recreation Within the Athletic Field Area.

(a) Grantors agree to provide public recreation within the Athletic Field Area for at least those activities allowed within the Open Space Recreation Area, described in Section 7.4, except that hunting shall not be permitted within the Athletic Field Area.

(b) Grantors may at their discretion allow other forms of non-motorized recreation and provide improvements such as: ball fields; fields houses, community centers and related buildings; skating areas, parking lots and utilities.

4. Public Recreation Within the Open Space Recreation

Area. Grantors agree to provide public recreation within the Open Space Recreation Area for non-motorized recreation including but not limited to: hiking; mountain biking and horseback riding on trails designated for such use in the Recreation Management Plan; snowshoeing; cross-country skiing; nature study; wildlife observation; hunting and fishing; and providing access to those with mobility impairment.

5. Recreation Management Plan.

(a) Review By the Grantee. Before opening the Protected Property to public recreational use or within twenty-four (24) months of the date of recording this Easement in the Westchester County Clerk's Office, whichever occurs first, Grantors shall provide Grantee a Recreation Management Plan for the Protected Property ("Plan"). Within sixty (60) days of Grantee's receipt of the Plan, Grantee shall notify Grantors that Grantee has all the information needed to consider the Plan and that it has begun its review, or that Grantee requires additional information. Within 120 days of notifying Grantors that it has begun its review of the Plan, Grantee shall either approve the Plan, approve the Plan with modifications, or not approve the Plan. Grantee may withhold approval of the Plan only if it reasonably determines that the proposed Plan is not consistent with the terms of this Easement. If Grantee does not approve the Plan in the manner described in this

subparagraph within 120 days, or disapproves it with conditions that Grantors disagree with, the Grantors may invoke the dispute resolution provisions of Section 8 of this Agreement in regard to the Plan.

(b) *Plan Contents.* The Plan and any updates thereof shall address, at a minimum, the following items:

(i) The type and extent of public recreation that will be allowed within the Open Space Recreation Area, which information shall include: maps of proposed trails; the location of public parking areas that will service the Open Space Recreation Area; areas open for hunting; Stream areas open for fishing; signs and other forms of controlling public access and use.

(ii) The type and extent of public recreation that will be allowed within the Athletic Field Area, which information shall include: the proposed location of ball fields; the location of public parking areas that will service the Athletic Field Area; the size and location of improvements such as field houses, restrooms, and utilities and which information shall include engineering diagrams and other related plans and specifications.

(iii) How Grantors intend to protect Natural Resource Values associated with the Protected Property while providing high-quality public recreation.

(c) *Plan Amendments.* The parties may amend the Plan by mutual agreement from time to time as needed.

(d) *Regular Meetings.* The parties shall meet at least once every two calendar years to discuss details of implementing the Recreation Management Plan.

6. Uses of the Protected Property otherwise permitted by this Easement will be subject to the reasonable regulation of the Grantors as permitted by law.

6. GRANTEE'S AFFIRMATIVE RIGHTS Grantors grant to Grantee the following Affirmative Rights, which shall run with the Protected Property and which Grantee may exercise anywhere on the Protected Property unless otherwise expressly limited:

6.1 Right to Enter. Grantee may enter the Protected Property at all reasonable times for the purpose of:

1. Determining if Grantors are complying with the provisions of this Easement.
2. Enforcing the terms of the Easement.
3. Taking any and all legally permissible actions necessary or appropriate to remedy or abate violations of this Easement.

6.2 Prohibit Certain Uses and Development. Grantors grant to Grantee the right to enforce the prohibitions contained in Section 2, above.

6.3 Right to Manage Fish and Wildlife Resources.

1. The Grantee may install, maintain, repair, replace, and remove Structures or devices, or otherwise manipulate

vegetation or habitat, intended to restore or enhance the habitat for plants, fish, and other wildlife located within the Open Space Area. Such activities are referred to in this Section as the "Projects."

2. Projects shall require the prior written approval of the Grantors. The Grantors shall have sixty (60) days from the receipt of the Grantee's plan for such a Project to review the plan and either: (i) approve the Project; (ii) approve the Project with conditions; or (iii) disapprove the Project. Grantors' review and determination shall consider only whether the Project is consistent with the terms of this Easement. Projects shall not unreasonably interfere with the Grantors' Reserved Rights,

6.4 Emergency Actions.

1. The Grantee may take emergency action necessary to respond to natural disaster, environmental hazard, public nuisance or threats to human safety in order to preserve the Protected Property and protect the public from such disaster, hazard, or threat, provided however that Grantee shall have no duty to protect or preserve any property of the Grantors' beyond that duty owed to any member of the general public in the exercise of its governmental obligation to protect the public from injury or damage caused by such disaster, hazard, nuisance, or threat.

2. To the extent practicable, the Grantee shall notify the Grantors of its entry under this Section and shall consult with the Grantors regarding such emergency action.

Nothing contained in this paragraph shall relieve the Grantors from any liability for or duty under this Easement or under applicable law to repair, remediate, dispose or otherwise remedy any condition which it may have caused and which is the proximate cause of the Grantee's entry pursuant to this Section.

6.5 Grantee's Administrative Motorized Use. Even though the use of Motor Vehicles may be prohibited on certain parts of the Protected Property, Grantee may use motorized vehicles, including ATVs and snowmobiles, to monitor and enforce compliance with the provisions of this Easement anywhere on the Protected Property provided, however, that the Grantee shall use motorized vehicles, motorized recreational vehicles, and motorized equipment on and off road in a manner that causes the least impact to the Protected Property.

7. GRANTORS' RESERVED RIGHTS Notwithstanding the foregoing, Grantors reserve for themselves, their successors, invitees, contractors and assigns, subject to and in accordance with all applicable laws and regulations, including without limitation, the Environmental Conservation Law, the Public Health Law and any rules and regulations promulgated thereto, the following rights with regard to the Protected Property, whether or not Grantors receive any payment or other consideration in connection therewith:

7.1 Right to Protect and Preserve. With prior notice to and approval of Grantee, the right to: stabilize or restore

slopes and stream banks; undertake earthmoving activities; manage wildlife; preserve water levels and water quality; prevent the erosion of any slope or shoreline; or take any other action necessary to protect and preserve the natural resources located on the Protected Property.

7.2 Dams and Water Impoundments; Beaver Dams; Emergencies.

1. Dams, Water Impoundments. Grantors may maintain or replace existing dams or impoundments identified in the Baseline Documentation or use those Structures in a manner consistent with their historical use and impact upon the Protected Property.

2. Beaver Dams. Subject to laws and regulations, Grantors may remove dams or obstruction of Watercourses placed by beavers.

3. Emergencies. Nothing in this Section shall prevent the Grantors from responding to an emergency or acting as otherwise allowed herein, provided that Grantors shall provide notice to Grantee within twenty-four hours of taking any action in response to any action under this Section.

7.3 Athletic Field Area; Grantors' Recreational Improvements; Fees.

On that portion of the Protected Property described in Schedule A and as generally shown on Map # 11,934 as the Athletic Field Area and "Parcel E," Grantors shall provide public recreation in accordance with the following terms:

1. Grantors' Obligations. Grantors reserve the right and expressly assume all obligations for providing public recreation and associated improvements within the Athletic Field Area and to assure that these activities conform to the terms of this Easement and the Recreation Management Plan.

2. Improvements. In accordance with a Recreation Management Plan, Grantors may allow public recreational use of the Athletic Field Area, and may construct, use, repair, maintain, and improve all manner of improvements appropriate for providing public recreation within the Athletic Field Area such as: ball fields; fields houses; community centers and related buildings; skating areas, parking lots, and utilities, all in accordance with the Purposes of this Easement and common law or statutory limitations on the use of parklands.

3. Restricted To the Athletic Field Area. It is the intent of this Easement to minimize impacts to Natural Resource Values on the Protected Property by prohibiting intensive recreational uses of the Protected Property and constructing or maintaining related improvements anywhere within the Open Space Recreation Area. Except as necessary to coordinate the use of both the Open Space Area and the Athletic Field Area for optimum public recreational use, the improvements identified in this Section and associated with Athletic Field Area uses shall not be constructed or maintained within the Open Space

Recreation Area.

4. Charging Fees. Grantors may charge reasonable fees for the use of the Athletic Field Area and improvements but neither the County nor the Town shall charge non-residents of either Westchester County or the Town of Somers differently than residents for such uses.

5. Hunting. The use of firearms or any weapon for hunting is prohibited in the Athletic Field Area.

6. Forest Management Activities. Forest Management Activities are prohibited within the Athletic Field Area.

7.4 Open Space Recreation Area. On that portion of the Protected Property described in Schedule A and as generally shown on Map # 11,934 as the Open Space Recreation Area and Parcels "A through D," Grantors shall provide public recreation in accordance with the following terms:

1. Grantors' Obligations. Grantors reserve the right and expressly assume all obligations for providing public recreation and associated improvements within the Open Space Recreation Area and it shall be Grantors' obligation to assure that these activities conform to the terms of this Easement and the Recreation Management Plan.

2. Improvements. In accordance with a Recreation Management Plan, Grantors may allow recreational use of the Open Space Recreation Area by the public, and to construct and/or maintain hiking/interpretive trails, kiosks, parking areas, boardwalks, signs, markers, and improvements to facilitate accessibility for the mobility

impaired, and other like improvements.

3. Forest Management Activities. Grantor may conduct Forest Management Activities within the Open Space Area, in accordance with Section 7.8(2).

7.5 Temporary Buildings and Structures. Grantors reserve the right to construct and maintain temporary buildings and Structures pertaining to the monitoring of weather, fire, vegetation, wildlife, and other biotic or abiotic features and processes, and to construct and maintain other like improvements pursuant to the conduct of scientific research, subject to the terms and conditions set forth in this Easement.

7.6 Grantors' Duties and Responsibilities For Roads, Trails, Bridges, Culverts, Parking Lots; Impervious Surfaces.

1. Grantors' Duties. Grantors shall repair and correct, at the Grantors' expense, damage caused by the Grantors, their invitees, licensees, guests, officers, employees, agents or contractors to all roads, trails, bridges, culverts, parking lots, and other related amenities that are identified in the Recreation Management Plan as available for public recreational use, whether such amenities are identified as "existing" in the Baseline Documentation or established after the date of this Easement pursuant to the Recreation

Management Plan.

2. Impervious Surfaces. Roads, trails, parking lots, and other such areas shall not be paved or covered with impervious surface materials.

7.7 New Roads, Trails, Parking Lots.

1. In accordance with the Recreation Management Plan, the Grantors may construct, maintain, correct, and repair new roads, trails, parking lots, and other related recreational improvements, and thereafter close and abandon recreational improvements in accordance with a Recreation Management Plan.

2. Construction of new roads shall be in accordance with the Recreation Management Plan.

7.8 Vegetation Removal, Firewood, and Forestry Activities.

1. Control and Remove Vegetation. Grantors may trim, prune and otherwise use mechanical means to control vegetation, and remove trees, shrubs, and other vegetation for the following purposes, and which purposes shall not be considered Forest Management Activities:

(a) Landscape and maintain grounds; create and maintain roads and trails.

(b) Construction, maintenance, and continued use of Structures and recreation improvements allowed by this Easement.

(c) Remove trees, shrubs and other vegetation when dead, diseased, decayed or damaged; or that are leaning

or partially uprooted and that either pose a hazard to life or property or, if not cut, would degrade the stability of a shoreline.

2. Forestry Management Activities. The parties acknowledge that the natural resources present on the Protected Property, as well as the Purposes of this Easement, will require Grantors to use extraordinary care before, during, and after any Forest Management Activities. Subject to this understanding, Grantors may do the following:

(a) Grantors may conduct Forest Management Activities within the Open Space Area, but only after Grantors provide for Grantee's review and approval, a Forest Management Plan ("FMP") prepared by an approved forester.

(b) Grantors shall provide Grantee a proposed FMP. Within sixty (60) days of Grantee's receipt of the proposed FMP, Grantee shall notify Grantors that Grantee has all the information needed to consider the FMP and that it has begun its review, or that Grantee requires additional information. Within 120 days of notifying Grantors that it has begun its review of the FMP, Grantee shall either approve the FMP, approve the FMP with modifications, or not approve the FMP. Grantee may withhold approval of the FMP only if it reasonably determines that the proposed FMP is not consistent with the terms of this Easement.

(c) Logging roads in existence on the Protected Property at the time of the conveyance of this Easement may be maintained in all respects, and new logging roads and staging areas may be established pursuant to any FMP established for the Protected Property.

(d) Forestry activity debris may be deposited within the Open Space Area, out of sight of publicly visible areas.

7.9 Waste Disposal. Grantors shall not dump or store ashes, non-composted organic waste (except organic logging debris within the Open Space Area), sewage or garbage, scrap material, sediment discharges, oil and its by-products, leached compounds, toxic fumes or any other unsightly or offensive material in, on, over, under or upon the Protected Property, except for the following activities, which shall be permitted:

1. Latrines or outhouses associated with the Structures allowed by this Easement; discharge of sewage into an approved and properly-operating onsite sewage treatment system.

2. The routine storage and containment of solid waste generated on the Protected Property prior to transport for lawful disposal off the Protected Property.

7.10 Existing and New Utilities.

1. Grantors reserve the right to maintain, repair, replace in kind, and subsequently remove lines, pipes, or facilities required for the local gathering, transmission,

or distribution of gas, electricity, water, telephone, or cable television services that are located on, over or under the Protected Property as of the date of this Easement.

2. Grantors reserve the right to allow major utilities to cross the Protected Property pursuant Article 49 of the ECL.

3. Grantors reserve the right to construct, install, and maintain customary and typical utilities to service their improvements located within the Athletic Field Area.

4. Grantors may allow the installation and maintenance of facilities required for the local gathering, transmission, or distribution of gas, electricity, water, telephone, or cable television services, if such facilities are to be installed and maintained entirely within the bounds of or beneath a public highway that is located in whole or part on the Protected Property.

5. Except as provided in this Section, siting or routing of any lines, pipes, or facilities required for the local gathering, transmission, or distribution of gas, electricity, water, telephone, or cable television services on, over or under the Protected Property is prohibited.

8. ENFORCEMENT

8.1 Inspections. Grantee intends to schedule periodic inspections of the Protected Property to determine compliance with the terms of this Easement. In doing so, Grantee will

provide Grantors five (5) business days' prior written notice and the Grantors will have the right to accompany the Grantee on said inspections.

8.2 Notice to Cure.

1. Either party shall notify the other of a breach or suspected breach of any of the terms or conditions of this Easement. Such notice shall set forth how the subject party can cure such breach or suspected breach and shall give the subject party sixty (60) days from the date of receipt of the notice in which to cure, which time period may be extended in the event severe weather conditions are experienced.

2. At the expiration of such period of time to cure, or any extensions thereof granted, the aggrieved party shall notify the other party of any failure to adequately cure the breach or suspected breach. The subject party shall then have an additional fifteen (15) days from receipt of such notice to cure. At the expiration of said fifteen-day period, the aggrieved party may commence any legal or equitable action or proceedings in accordance with any applicable law to require compliance with the terms of this Easement.

8.3 Dispute Resolution.

1. In the event the parties cannot resolve a dispute through the Notice to Cure process outlined above and prior to the initiation of any action or proceeding based upon the Notice of Cure and upon the concurrence of both

parties, the dispute may be mediated by Grantee's Office of Hearings and Mediation Services whose recommendations are advisory to the parties.

2. Within thirty (30) days of receipt of such recommendations each party must advise the other of its concurrence or non-concurrence.

3. Any disputes remaining unresolved after mediation may be pursued through initiation of any appropriate action or proceeding in a court of competent jurisdiction.

8.4 Right to Restore.

1. In the event of a breach of a term of this Easement, Grantee may require Grantors to restore the Protected Property to its Natural State and to enforce this right by any action or proceeding necessary, subject to the notice to cure provisions and dispute resolution provisions of Section 8.

2. Grantee, at its sole discretion, may enter the Protected Property for the purpose of restoring the same to its Natural State, subject to the notice to cure provisions and dispute resolution provisions of Section 8.

3. Grantee may resort to the following in order to restore the Protected Property, subject to the notice to cure provisions and dispute resolution provisions of Section 8:

(a) Remove items and materials not permitted by this Easement.

(b) Close, fill, grade and plant with appropriate

vegetative cover, those affected areas.

(c) Correct, through reasonably practicable measures, conditions that harm any of the following Natural Resource Values on the Protected Property: native flora and fauna and the Ecological Processes that support them; diverse forest types and conditions; Soil Productivity; Biological Diversity; water quality; and Wetland, Riparian, and Aquatic Habitats.

(d) Take any other appropriate action reasonably necessary to remedy any breach of this Easement.

8.5 Force Majeure/Acts of Third Parties. Grantors shall not be liable for any changes to the Protected Property caused by any natural disaster, act of God, or acts of Grantee, its officers and employees and contractors.

8.6 Failure to Act. The failure of either party to enforce any of the terms of this Easement, shall not be deemed a waiver of any such term nor shall any such failure in any way bar any enforcement rights hereunder in the event of any subsequent breach of, or noncompliance with, or fault in observance of, any of the terms of this Easement.

9. OTHER TERMS AND CONDITIONS

9.1 Notice, Review and Approval Process.

1. Whenever notice or an approval is required from either party, the party that must provide notice or that is seeking the approval shall deliver a written notice, or request for such approval in accordance with the notification directions herein.

2. Requests shall be either approved, approved with conditions, or denied.

3. The parties shall not unreasonably delay or deny an approval.

9.2 Notices, Notification.

1. Any notice required to be sent to the Grantors herein shall be addressed to :

The Town of Somers
335 Route 202
Somers, New York 10589

AND

The County of Westchester
Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

Commissioner of Department of Parks, Recreation, and
Conservation
County of Westchester
25 Moore Avenue
Mount Kisco, New York 10549

County Attorney
Westchester County
148 Maritime Avenue, Room 600
White Plains, New York 10601

2. Any notice required to be sent to the Grantee herein shall be addressed to:

New York State Department of Environmental
Conservation
Director, Lands and Forests, 5th Floor
625 Broadway
Albany, New York 12233

AND