

### **Conservation Easement Modification**

THIS CONSERVATION EASEMENT MODIFICATION, made this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ between **The Nature Conservancy Inc.** who has an address at 4245 North Fairfax Drive, Arlington, VA, 22203 and maintaining a chapter office at Central and Western New York Chapter, 274 N. Goodman Street, Suite B261, Rochester, NY, 14607("Grantor"); and **PEOPLE OF THE STATE OF NEW YORK**, acting by and through their Commissioner of Environmental Conservation, who has an address at 625 Broadway, 14<sup>th</sup> Floor, Albany, New York 12233 ("Grantee").

WHEREAS, reference is made to a Conservation Easement, comprised of approximately 14,269 acres, granted by The Nature Conservancy, Inc., a District of Columbia non-profit corporation with a principal address at 4245 North Fairfax Drive, Arlington, VA, 22203 and maintaining a chapter office at Central and Western New York Chapter, 1048 University Avenue, Rochester, NY, 14607, and The People of the State of New York, by and through their Commissioner of Environmental Conservation, 625 Broadway, Albany, NY, 12233, dated the 9<sup>th</sup> day of February, 2006 and recorded in the Lewis County Clerk's Office the 28<sup>th</sup> day of February, 2006, in Instrument 2006-00698; and

WHEREAS, pursuant to Article 49-307 of the Environmental Conservation Law (ECL) and the express terms of said Conservation Easement, the Grantor and the Grantee are allowed to amend or modify the terms of this Conservation Easement; and

WHEREAS, 6 NYCCR Part 592 sets forth the procedure for the modification or extinguishment of a conservation easement held by the New York State Department of Environmental Conservation; and

WHEREAS, pursuant to 6 NYCRR Part 592.3(a), the proposed modification of a DEC conservation easement shall result in a net conservation benefit to the People of the State of New York; and

WHEREAS, Grantor desires to modify the Conservation Easement to allow the retention of Camp #10 (Brandy Brook Camp), associated outbuildings, and associated five (5) acre camp envelope at its current location; and

WHEREAS, Grantor desires to modify the Conservation Easement to permit one (1) additional recreational lease structure on the Protected Property; and

WHEREAS, in exchange for the modification of the Conservation Easement on the Protected Property, the Grantor desires to donate to the Grantee a Conservation

Easement on their adjacent 430+/- acre "Lyndaker" parcel (Instrument No. 2015-004164 and Town of Turin Tax ID #286.00-1-1.1), which will result in a net conservation benefit to the People of the State of New York; and

WHEREAS, Grantee would like to add the Lyndaker parcel to the Protected Property under the same Conservation Easement terms as apply to the portions of the Protected Property that are not open for public hunting; and

WHEREAS, Grantee would like to modify the Conservation Easement to acquire the rights to construct and maintain a public snowmobile trail, as depicted on Exhibit 1, extending north from the G&W Road near the eastern edge of the Protected Property along an existing gravel road to the Lyndaker parcel and then across the Lyndaker parcel to adjoining Lesser Wilderness State Forest lands in the vicinity of the Old Toole Road; and

NOW THEREFORE, Grantor and Grantee, in consideration of the mutual covenants herein, do hereby modify certain terms of the above-referenced Conservation Easement as expressively provided herein:

#### **MODIFICATION ONE:**

THE FOLLOWING WHEREAS CLAUSES ARE HEREBY DELETED:

WHEREAS, the provisions of this Conservation Easement are consistent with the open space conservation goals and objectives established under the Forest Legacy Program in Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC Section 2103c) which was created "to protect environmentally important forest lands threatened with conversion to non-forest uses," and

WHEREAS, the Grantor has confirmed that the provisions of this Conservation Easement are consistent with the conservation goals and objectives established under the Grant Agreement Number 98210-3-G656 dated September 25, 2003 between the U.S. Fish and Wildlife Service (Service) and the Grantor.

#### **MODIFICATION TWO:**

THE FOLLOWING LANGUAGE IS ADDED TO THE AFFIRMATIVE RIGHTS, SECTION 5). PUBLIC MOTORIZED ACCESS:

(a) (viii). the right to provide public snowmobile access generally located on Exhibit 1 and labeled as "public snowmobile trail". The final location of the public snowmobile trail shall be mutually agreed upon by the Grantor and Grantee and established pursuant to an approved Public Recreation Plan.

**MODIFICATION THREE: THE FOLLOWING TERMS OF THE RESERVED RIGHTS, SECTION 2). ARE HEREBY DELETED:**

2). Reserved Right for Forest Management. Grantor reserves the right to conduct forest management activities, including management actions to maintain the health of forest ecosystems, and commercial activities related to the harvesting and management of timber and other forest products, provided that such forest management activity is in compliance with the provisions of this Conservation Easement.

THE FOLLOWING REPLACES THE ABOVE DELETED TERMS, SECTION 2).:

2). Reserved Right for Forest Management. Grantor reserves the right to conduct forest management activities, including management actions to maintain the health of forest ecosystems, commercial activities related to the harvesting and management of timber and other forest products, and research activities to enhance management of the resources of the Protected Property, provided that such forest management activity is in compliance with the provisions of this Conservation Easement and is approved in the Forest Management Plan.

**MODIFICATION FOUR:**

THE FOLLOWING TERMS OF THE RESERVED RIGHTS, SECTION 3). ARE HEREBY DELETED:

3). Property Administration Structure. Upon the Protected Property, the Grantor, its successors and assigns, reserves the right to construct, occupy, use, repair, maintain, and improve one structure to support Grantor's administration of the Protected Property, including property oversight, forest management, public recreation management, scientific research, environmental education, and other related non-residential purposes. Such structure shall have a maximum of three thousand (3,000) square feet and shall not be located within one hundred (100) feet of a wetland or stream.

THE FOLLOWING REPLACES THE ABOVE-DELETED TERMS OF THE RESERVED RIGHTS, SECTION 3):

3). Property Administration Structure. Upon the Protected Property, the Grantor, its successors and assigns, reserves the right to construct, occupy on a temporary or transient basis, use, repair, maintain, and improve one structure to support Grantor's administration of the Protected Property, including property oversight, forest management, public recreation management, scientific research, environmental

education and other related non-commercial purposes. Such structure shall have a maximum of three thousand (3,000) square feet and shall not be located within one hundred (100) feet of a wetland or stream. Any associated outhouse, vault toilet or leach fields shall not be located within one hundred fifty (150) feet of any wetland or stream.

#### **MODIFICATION FIVE:**

THE FOLLOWING TERMS OF THE RESERVED RIGHTS, SECTION 5). ARE HEREBY DELETED:

5). Recreational Lease Structures. After December 31, 2016, the Grantor reserves the exclusive right to occupy, let, use, repair, maintain, improve, demolish, replace, abandon, and vacate seven (7) hunting, fishing and recreation camps. Each such camp shall not exceed one thousand (1,000) square feet of primary dwelling space, except that any camps existing at such date that are larger than 1,000 square feet of primary dwelling space may be maintained but not expanded.

THE FOLLOWING REPLACES THE ABOVE-DELETED TERMS OF THE RESERVED RIGHTS, SECTION 5).:

5). Recreational Lease Structures.

(a). After December 31, 2016, the Grantor reserves the exclusive right to occupy, let, use, repair, maintain, improve, demolish, replace, abandon, and vacate eight (8) "hunting, fishing and outdoor recreation camps". Each such camp shall not exceed one thousand (1,000) square feet of primary dwelling space, except that any camps existing at such date that are larger than 1,000 square feet of primary dwelling space may be maintained but not expanded.

For the purposes of this Conservation Easement "primary dwelling space" shall mean the area in square feet of residential or recreational lease structures as measured from the exterior walls of a structure. Primary dwelling space will include wall space, interior storage areas, hallways, stairways, and any areas that may be directly associated with the occupancy of the structure. Primary dwelling space shall not include woodsheds, porches, decks or other outbuildings

#### **MODIFICATION SIX:**

THE FOLLOWING IS ADDED TO THE RESERVED RIGHTS, SECTION 5).  
RECREATIONAL LEASE STRUCTURES:

(b). The Brandy Brook Camp, associated outbuildings and five (5) acre camp envelope

are permitted to remain at its current location under the following conditions:

- i. If/when the camp structure needs to be replaced, as determined by the Grantor in consultation with NYSDEC, it and all associated outbuildings must be moved outside of the 200-foot buffer around Page Swamp (Pond) to an upland area, or if moved to another part of the eased property, the camp structure and associated outbuildings will need to comply with the requirements for placement and size in the Conservation Easement that apply to the rest of the camps;
- ii. The camp structure cannot be expanded beyond its current building footprint, including porches, decks, etc. as identified in the revised baseline documentation;
- iii. Associated outbuildings, as identified in the revised baseline documentation, may remain and be maintained and replaced in kind, but no more may be constructed;
- iv. A 50-foot wide natural/un-mowed area between the Brandy Brook Camp and along the water/wetlands of Page Pond must be retained, except on the Page Pond Dam and the area immediately adjacent to the dam.

The second paragraph of Section 5 is labeled as paragraph (c). and states the following:

(c). It shall be the responsibility of the Grantor to remove the six (6) "hunting, fishing and outdoor recreation camps" that must be removed after December 31, 2016. Removal of camps, including any refuse on the Protected Property at that time, shall be completed no later than September 1, 2017 and shall be accomplished by removing camps and associated improvements from the Protected Property and proper disposal in accordance with applicable laws and regulations.

#### **MODIFICATION SEVEN:**

THE FOLLOWING TERMS OF THE RESERVED RIGHTS, SECTION 5). THIRD PARAGRAPH, ARE HEREBY DELETED

Grantor further reserves the right to exclude from the public recreation rights provided for herein, including the right to post such areas as restricted from public use, a five (5) acre area surrounding each of the hunting, fishing, and outdoor recreation camps reserved herein. The five (5) acre area surrounding each camp shall not be configured in a manner which restricts access on roads or trails which would otherwise be available to the Grantee. The approximate location of the final seven (7) camps and the five (5) acre area surrounding each structure shall be agreed upon by the Grantor and the Grantee. The final location of any structure shall not be allowed within one hundred (100) feet of a wetland or stream and shall be subject to approval of the Grantee, which approval shall not be unreasonably withheld. In cases where multiple Hunting, Fishing, and Outdoor Recreation Camps are located in close proximity to each other, a common area equal to five (5) acres per Camp may be excluded from public use under the terms of this paragraph. This reservation shall include the right of motorized access to said

five (5) acre parcel by the most practical direct route. Lessees of hunting, fishing and outdoor recreation camps as well as invitees of the Grantor can only recreate on the Protected Property subject to the same opportunities provided for the public, notwithstanding their exclusive rights on the five (5) acre hunting, fishing and outdoor recreation sites, and not withstanding their rights to use ATV's and other motor vehicles during the hunting season as referenced in Paragraph thirteen (13) below.

**THE FOLLOWING REPLACES THE RESERVED RIGHTS, SECTION 5). THIRD PARAGRAPH:**

(d). Grantor further reserves the right to exclude from the public recreation rights provided for herein, including the right to post such areas as restricted from public use, a five (5) acre area surrounding each of the hunting, fishing, and outdoor recreation camps reserved herein. The five (5) acre area surrounding each camp shall not be configured in a manner which restricts access on roads or trails which would otherwise be available to the Grantee. The approximate location of the final eight (8) camps and the five (5) acre area surrounding each structure shall be agreed upon by the Grantor and Grantee. The final location of any structure shall not be allowed within one hundred (100) feet of a wetland or stream and shall be subject to approval of the Grantee, which approval shall not be unreasonably withheld. In cases where multiple Hunting, Fishing, and Outdoor Recreation Camps are located in close proximity to each other, a common area equal to five (5) acres per Camp may be excluded from public use under the terms of this paragraph. This reservation shall include the right of motorized access to said five (5) acre parcel by the most practical direct route. Lessees of hunting, fishing and outdoor recreation camps as well as invitees of the Grantor can only recreate on the Protected Property subject to the same opportunities provided for the public, notwithstanding their exclusive rights on the five (5) acre hunting, fishing and outdoor recreation sites, and not withstanding their rights to use ATV's and other motor vehicles during the hunting season as referenced in Paragraph thirteen (13) below.

The fourth paragraph of Section 5 is labeled as paragraph (e) and states the following:

(e). Any relocated hunting, fishing, and outdoor recreation camp must be constructed and located in a manner which is in full compliance with federal, state and local laws and regulations. All other provisions of this Conservation Easement shall govern the use and occupancy of the relocated hunting, fishing, and outdoor recreation camps

**MODIFICATION EIGHT:**

**THE FOLLOWING TERMS, OF THE RESERVED RIGHTS SECTION 13). (A) ARE HEREBY DELETED:**

(a). *Recreational Uses.* Grantor reserves exclusive recreational snowmobiling and ATV use on the Protected Property, provided that Grantor, its lessees and invitees, may only

undertake recreational snowmobile or ATV uses that are also available to the public, at the sole discretion of Grantor, pursuant to the Public Recreation Plan.

THE FOLLOWING REPLACES THE ABOVE-DELETED TERMS OF THE RESERVED RIGHTS SECTION 13). (A):

(a). *Recreational Uses*. Grantor reserves exclusive recreational snowmobiling and ATV use on the Protected Property, with the exception of the snowmobile trail identified in the Affirmative Rights 5(a)(viii), provided that Grantor, its lessees and invitees, may only undertake recreational snowmobile or ATV uses that are also available to the public, at the sole discretion of Grantor, pursuant to the Public Recreation Plan.

#### **MODIFICATION NINE:**

THE FOLLOWING TERMS OF THE TERMS AND CONDITIONS, SECTION 8).(b)(i), ARE HEREBY DELETED:

(i). No new buildings may be constructed and any camps or buildings currently within these Buffer Areas must be removed no later than December 31, 2016;

THE FOLLOWING REPLACES THE ABOVE-DELETED TERMS OF THE TERMS AND CONDITIONS SECTION 8).(b)(i):

(i). With the exception of the Brandy Brook Camp and associated outbuildings as depicted in the revised baseline document, no new buildings may be constructed and any camps or buildings currently within these Buffer Areas must be removed no later than December 31, 2016;

#### **MODIFICATION TEN:**

THE FOLLOWING TERMS OF THE TERMS AND CONDITIONS, SECTION 31).B. ARE HEREBY DELETED:

(b). Should Grantor 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 Grantor and not taken for the benefit of the Granter. In the event that the Grantee is successful in acquiring the title or other interest of the Grantor from the taxing authority, this Easement shall merge with the fee to such property and such Easement shall be extinguished

**MODIFICATION ELEVEN:**

THE FOLLOWING TERMS OF THE TERMS AND CONDITIONS, SECTIONS 33 and 34 ARE HEREBY DELETED:

33). Grantor's Negligence. (A) The Grantor, for itself and its successors and assigns, covenants and agrees to indemnify and hold the Grantee harmless against all claims, loss, damages, and expense the Grantee may suffer as a result of the Grantor's negligence, or negligence of Grantor's agents, employees, lessees, and invitees, in the course of exercising any Reserved Rights enumerated herein. (B) The Grantor, for itself and its successors and assigns, covenants and agrees to indemnify and hold the Grantee harmless against all claims, loss, damages, expense the Grantee may suffer as a result of any actions by the United States Fish and Wildlife Service as a result of their determination that the terms of this Conservation Easement do not comply with the requirements of the Grant Agreement No. 98210-3-G656 dated September 25, 2003.

34). Grantee's Negligence.

(a). Subject to the availability of lawful appropriations, Grantee agrees to indemnify and hold Grantor harmless against claims, loss, damage and expense the Grantor 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.

(b). Grantee's duty to indemnify and save harmless prescribed by this subsection shall be conditioned upon:

(i) Delivery to the Attorney General by Grantor 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

(ii). 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 Grantor; and

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

THE FOLLOWING REPLACES THE ABOVE DELETED TERMS OF THE TERMS AND CONDITIONS, SECTIONS 33 and 34:

33). Grantor's Negligence.

The Grantor agrees to indemnify and hold the Grantee harmless against all claims, loss, damage and expense the Grantee may suffer as a result of the Grantor's negligence in the course of exercising any rights reserved under this Conservation Easement or as the fee owner. The Grantor's duty to indemnify and save harmless prescribed by this subsection shall be conditioned upon the delivery to the Grantor by the Grantee of the original or a copy of any summons, complaint, process, notice, demand or pleading within fifteen (15) business days after the Grantee is served with such document.

34). Grantee's Negligence.

Subject to the availability of lawful appropriations, Grantee agrees to indemnify and hold Grantor harmless from any amounts finally to be determined by a court of competent jurisdiction, or any settlement of a claim or suit for damages to person or property, where it has been finally determined by said court that such damages have been caused by the negligent acts of Grantee or against loss, damage or any final determination of a judgment or settlement of a claim against Grantor, provided said settlement is approved in writing by Grantee, which Grantor may suffer as a result of Grantee's negligence in the course of exercising any rights granted under this Conservation Easement or as a result of actionable conduct of Grantee, as permitted by Section 8 of the Court of Claims Act and Section 17 of the Public Officers Law.

Grantee's obligation to indemnify and hold harmless under this provision shall be further conditioned upon the delivery by the Grantor of the original or a copy of any summons, complaint, process, notice, demand, pleading or notice of settlement to the Commissioner of the Department of Environmental Conservation and the Attorney General of the State of New York within five (5) business days after the Grantor is served with such document and the Grantor's continued cooperation in the defense and/or settlement of such claim or claims.

**MODIFICATION TWELVE:**

THE FOLLOWING TERMS OF THE TERMS AND CONDITIONS, SECTIONS 36 and 38 ARE HEREBY DELETED:

36). Assignment of Grantee's Interest. In accordance with the requirements of the Forest Legacy Program, Grantee may assign this Conservation Easement only to another governmental agency, consistent with Section 107(c) (1) of the U.S. Internal Revenue Code of 1986, as amended, and the Forest Legacy Program (16 USC Section 2103(c)), 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 purposes of this Conservation Easement.

38). Acknowledgment of Forest Legacy Funding. Grantee acknowledges that this Conservation Easement may be acquired with Federal funds under the Forest Legacy

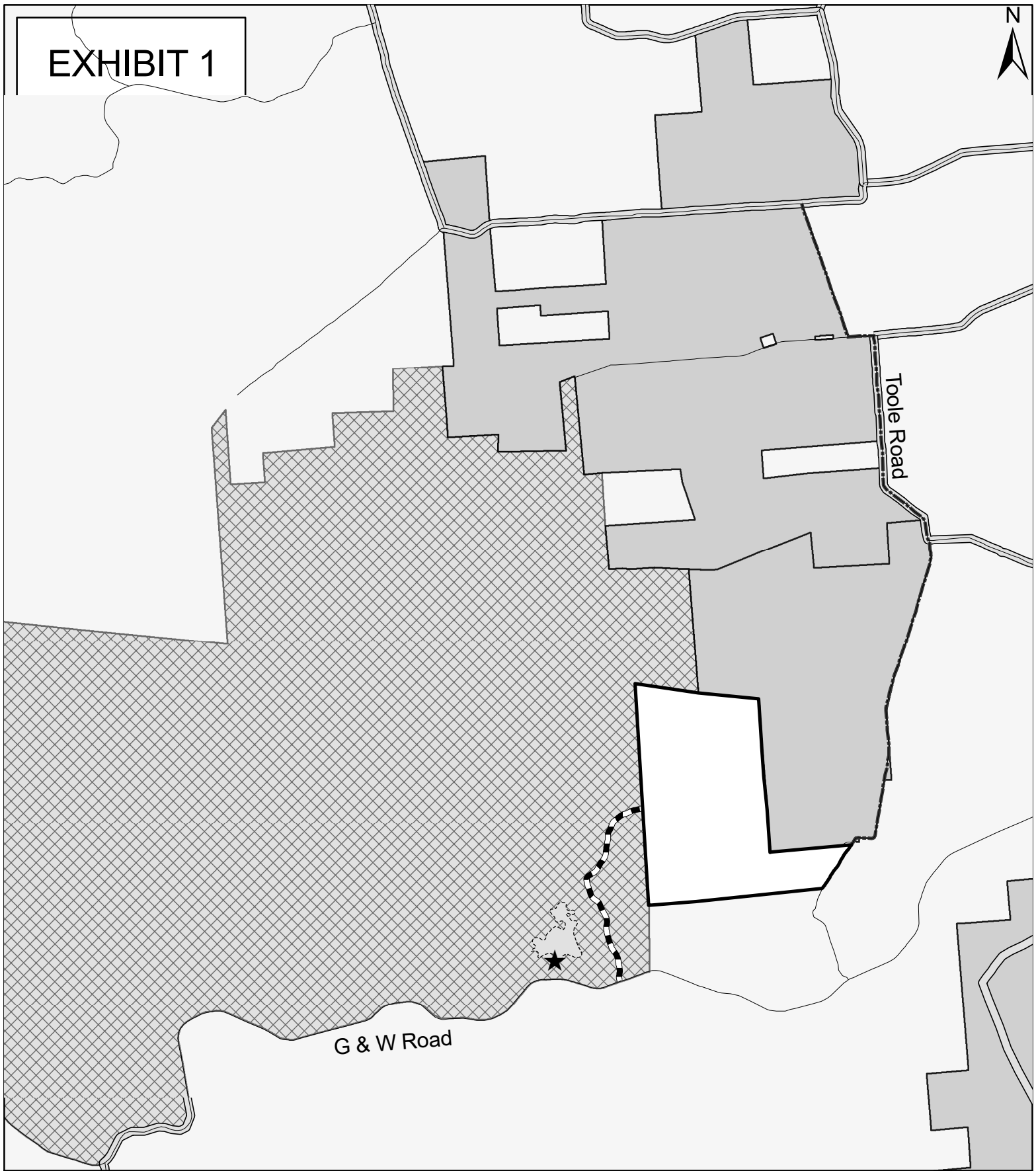
Program (16 USC Section 2103(c)), or may be used as a matching conservation property under such program, and the interest acquired cannot be sold, exchanged, or otherwise disposed, except as provided in paragraph 36 herein, unless the United States is reimbursed the fair market value of the interest in the land at the time of disposal. Provided, however, the Secretary of Agriculture may exercise discretion to consent to such sale, exchange, or disposal upon Grantee's tender of other equal valued consideration acceptable to the Secretary. The Grantee's obligation to reimburse the United States is expressly subject to available State funding and appropriation, and compliance with applicable State statutes and regulations.

THE FOLLOWING REPLACES THE ABOVE DELETED TERMS OF THE TERMS AND CONDITIONS, SECTION 36:

36). Assignment of Grantee's Interest. Grantee may assign this Conservation Easement only to another governmental agency, 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 Conservation Easement and which, as a condition of transfer, agrees to uphold the Conservation Purposes of this grant.

All other terms of the 2006 Conservation Easement shall remain in full force and effect. To the extent that there is any conflict or inconsistency between the terms of this Modification and the 2006 Conservation Easement, the terms of this Modification will control.

# EXHIBIT 1



★ Camp #10 (Brandy Brook Camp)

— Proposed Public Snowmobile Trail (General Location)

— Proposed Toole Road Snowmobile Trail

— Existing NYS Snowmobile Trails

— Town Road

□ Lyndaker Parcel (430 acres)

□ East Branch Fish Creek, North CE (14,269 acres)

□ Lesser Wilderness State Forest

□ Page Pond

0 0.25 0.5 1 mi