

**NORTHEASTERN CAVE CONSERVANCY, INC.**

**Minutes**

September 29, 2013 10:00am Octagon Barn, Knox NY  
**Minutes by Emily Davis/ Mike Warner**

Meeting called to order at 10:15

1. Introduction and greetings – President Bob Addis
2. Attendance:  
Officers: B. Addis, V. Kappler, B. Folsom,  
Trustees: M Chu, K. Dumont, T. Engel, P. Youngbaer, M. Berger, P.Woodell, M. Ingalls
3. Absent with Proxy
  - Christa Hay – Emily Davis proxy
4. Absent without Proxy
  - Alan Traino, Al Hicks
5. The Board voted in Bob Simmons as proxy for Al Hicks.
6. President's Report – Bob Addis- Attachment A
7. Vice President's Report –Vince Kappler – Attachment B
8. Treasurer's Report –Bill Folsom - Attachment C
  - Checks written for Merlin's closing not included in report.
9. Secretary's Report – Christa Hay
  - Status quo
  - August EC meeting minutes – Attachment D
10. Science Committee – Larry Davis
  - Nothing to report
11. Acquisitions Committee –Open
12. Bylaws Committee Report – Joe Levinson
  - Nothing to report
13. Publications/Publicity Committee Report - Christa Hay
  - Nothing to report
14. Barn Dance Report – Emily Davis, Mike Warner
  - Approximate profit \$1,173.00
15. Fundraising Committee – Open
16. Office Committee Report – Emily Davis / Mike Warner
  - *Problems:* None  
*Progress:* We managed to keep up to date even through a summer of travel. Thanks to Thom Engel for picking up and keeping an eye on the mail.  
Speleobooks shared the NCC tent space at a flooded OTR which ended up benefiting the NCC as the Office committee was there to pick up dues, donations and purchase money.  
*Plans:* No changes unless some are suggested.
17. Knox Cave Preserve Report –Emily Davis
  - *Problems:* Mitch Berger caught and talked with a group of trespassing teens that night a number of weeks ago.  
Emily found 6 cars at the cave with no permit. Went to entrance and had trip leader come out and put permit on windshield.  
*Progress:*
    - Emily brought Mitch up to speed on management of the preserve.
    - Peter Haberland did some Knox trail clearing before NCRC.
    - The NCRC used the preserve extensively - 2 days for L1 plus the mock.
    - Mitch stood in for Emily while she was away.
    - Peter Haberland and Mitch had a small workday there the day of the last HHG meeting - cut a fallen tree, trimmed the Knox trail, started to trim the jungle of the Crossbones trail, took down

the disgusting Posted sign and tried to replace it. (Peter has since replaced it)

-Mitch Issued permits) and answered various other e-mail inquiries.

The detail and information he provided was excellent.

*Plans:* I would like to board to seat Mitch Berger as co-chair of the Knox Cave Committee. He is already doing more than half of the work and doing it very well.

18. Onesquethaw Cave Preserve – Thom Engel
19. Sellecks Karst Preserve – Alan Traino
  - Status quo
20. Clarksville Preserve – Mike Chu, Thom Engel, Chuck Porter
21. Bentleys Preserve Report - Jonah Spivak
  - Nothing to report
22. Ella Armstrong Preserve – Alan Traino
  - Status quo
23. Merlins Cave Preserve – Morgan Ingalls
  - Deed of Conservation Easement - Attachment E
  - Rewrite of management plan for December
24. The Board voted in Chuck Porter as proxy for A. Traino.
25. Education Committee – Thom Engel
  - Fall Festival well attended. Club Day next week. Halloween at Hollyhock hollow. New gate photos shown at Fall Fest.
26. Membership Committee – Peter Youngbaer
  - All renewals and new memberships have been acknowledged and entered into the data base. All July/August/September maturing memberships had renewal notices sent earlier this summer. Second notices were sent Sept. 22.

All October, November, December notices were sent Sept. 22.

We provided complete print outs for the Old Timers Reunion and NRO of everyone who had ever been in our data base and whose membership had lapsed, and for those folks whose renewal notices were sent this summer. I noted a several folks have re-joined. We offered them an incentive of being able to forgive past lapses and re-set their membership renewal date to coincide with the OTR, so this seemed to work well.

As of information reported to me by September 22, 2013, our current membership stands as follows, compared to the baseline of April 22, 2012:

| Sept. 22, 2013 |     | April 22, 2012 |     |
|----------------|-----|----------------|-----|
| Life:          | 29  | Life:          | 8   |
| Family Life:   | 0   | Family Life:   | 0   |
| Benefactor:    | 11  | Benefactor:    | 10  |
| Regular:       | 86  | Regular:       | 88  |
| Family:        | 18  | Family:        | 16  |
| Student:       | 3   | Student:       | 0   |
| Institutional: | 7   | Institutional: | 3   |
| TOTAL:         | 154 | TOTAL:         | 137 |

Note: These numbers do not include renewals at the Fall NRO, which have not yet been reported. I'll have an update at the meeting.

27. Website Subcommittee – Mike Chu
  - Status quo
28. Legal Committee Report – Open
29. Special and Group Use Coordinators – Thom Engel
  - 226 group permits since last meeting. 122 Clarksville. 37 at Knox.

30. Financial and Investments Committee – Joe Levinson
  - Nothing to report
31. Volunteer Value Committee – Vince Kappler
  - Year to date totals: 1065.5 hours of volunteer work have been reported and members drove 11,852 miles for a total value of \$39,373.
32. Nominating Committee – Bob Simmons
  - Seeking candidates for Board seats for next year and for any officer's nominations for next meetings election..
33. Thacher Park Committee – Thom Engel
  - Scientific research permit expires November. Renew? Ask for longer permit. Should we cave after Sept 1? Gate project Monday through Wednesday. Built gate. Several NCC members volunteered.

**COMMENTS FROM THE NORTHEASTERN CAVE CONSERVANCY, INC.**

August 23, 2013

1. **Facilities and Operations – Action Step 8, Spelling:** Northeastern Cave Conservancy, Inc. (NCC), not the Northeast Caving Conservancy.
2. **Recreation Development:** Why isn't Cave Management included as an Action Step under Recreation Development rather than under Facilities and Operations? Noting what is included under Recreation Development like challenge courses, rock climbing, mountain biking, and a high ropes adventure course, this seems to make little sense.
3. **Timeline for Implementation:** There is no mention of cave access whereas other activities under Recreation Development are included. Mentioned is a bat gate at Hailes Cave and opening Helmes Crevice but caves and cave access aren't in the Timeline.
4. **Guided Tours:** What is meant by "guided cave exploration" or a "guided tour?" Who would lead such a trip?
5. **Cave Exploration in Hailes Cave:** It is the opinion of the Northeastern Cave Conservancy Inc. (NCC) that objective criteria can be developed to permit caving groups to access Hailes Cave without the need for a guide. If necessary, a separate set of criteria can be developed for trip leaders. However, the cave has no features of a technical nature that should necessitate trip leaders. If Hailes Cave was not in Thacher Park, it would be considered a beginners cave.
6. **Cave Management Plan(s):** While it may seem counter-intuitive, a cave management plan can be developed before a cave is entirely mapped. In fact, the NCC requires that a management plan be approved by the Board before a cave is acquired, and we have done this with our most recent acquisition, Merlins Cave. Management plans are intended to be living documents that are updated and changed as more is learned about the resources. The NCC reviews its management plans every 5 years and makes changes as necessary. Check out the many cave management plans on the NCC website.
7. **Cave Closure for Bats:** We agree with the winter closure of Hailes Cave and other caves usable by bats as hibernacula from October 1 to May 15 or such dates designated by NYSDEC's Endangered Species unit.
8. **Recreation Development, Action Step 9:** One cannot go very far north of the existing camping loops at Thompson's Lake without getting on to the Onondaga limestone. Due to thin soils, solutionally-enlarged joints, and other karst features, it is not wise to locate a large number of campsites on the limestone.

With 35 years of experience, the NCC stands ready to assist in the management of caves in the Park or to manage the caves by agreement with OPRHP. Reference: [www.necaveconservancy.org](http://www.necaveconservancy.org)

34. Ad hoc Committee – Surprise Cave – Bob Simmons
  - Productive summer over all. Made several visits to cave and gate was intact all summer until at least early September. Cave clean up, trail work and gate assessment done during NRO. Cave gate was open (since secured by DEC Ranger) and lots of trash and graffiti observed (Alan and Bill led in-cave efforts). Will need another clean up trip to finish, I have notified DEC that we will do another in cave this fall, preferably weekend of October 5<sup>th</sup> (Volunteers?). New trail laid out and mostly cut (a few hours work left to do). Has been OK'd by local ranger but am awaiting DEC R3 approval. Jim Kennedy visited entrance area and will assembling conceptual plan for new, bat-friendly gate over the entrance. Once we have proposal, will need to assess availability of funding from state and caver sources. Tentative construction date late summer-ish of 2014 if all the stars align. Will need to have access for ATVs etc. from adjacent property owners.
35. Ad hoc Committee- Tory's Cave – Bob Simmons
  - Met with land trust ED earlier this summer, very productive and will be helping assemble a management plan for the cave and a stewardship-type agreement to manage. Currently, the concept of transferring ownership is off the table, but may be a future option. WHLT has numerous properties in western CT, some of which are



42. Kappler moved The NCC Board accepts the reports on cave liability and certificates of additionally insured prepared by Daniel Richardson, Esq. The Ad Hoc Risk Management Committee is authorized to implement the recommendations made in the reports consistent with our insurance carrier policies. The reports contain proprietary legal advice and will not be available to the general public.  
2nd by Folsom  
For: Rest Against: Engel Abstained: Chu, Woodell  
**Passed**
43. Kappler moved Act 21-42, Clarksville Conservation Easement, is repealed.  
Act 21-42 Clarksville Conservation Easement 03/12/06  
The Northeastern Cave Conservancy will grant the conservation easement in Appendix XII to the Mohawk Hudson Land Conservancy subject to legal review.  
  
2nd by Folsom  
**Passed Unanimously**
44. Davis moved Berger appointed co chair Knox.  
2nd by Folsom  
For: rest Abstained: Berger  
**Passed**
45. Engel moved to remove Thacher Park research permit.  
2nd by Berger  
**Passed Unanimously**
46. Addis moved Chuck Porter appointed chair acquisition committee.  
2<sup>nd</sup> by ??  
For: Rest Abstained: Porter  
**Passed**
47. Younbaer moved that Nominating Committee duties including filling vacant committee slots.  
2<sup>nd</sup> by ??  
For: Rest Abstain: Engel, Berger, Simmons  
**Passed**
48. Informational Point: Executive committee meeting will be November 13<sup>th</sup>. NCC Conference Call: 605-475-6111, Access Code: 814008
49. Addis moved that the next NCC Board meeting will be December 8<sup>th</sup> at the Warner/Davis residence at 10:00am.  
2nd by Folsom  
**Passed Unanimously**
50. Addis moved to thank Amy and Russ for the meeting space.  
2nd by Folsom  
**Passed Unanimously**
51. Addis moved to adjourn.  
2<sup>nd</sup> by ??  
**Passed Unanimously**

Meeting adjourned at 1:03 pm

## **Attachment A PRESIDENT'S REPORT**

We will have a closing in Chatham, NY for the merlins Cave Conservation Easement on 9/25 at 8 AM. This is the conclusion of a very long process and represents, we believe, one additional form of protection to one of our cave preserves as well as fulfills an obligation to the seller of the property.  
Total costs: \$4166.

Of course the 5<sup>th</sup> Annual Barn Dance, our annual fund raiser, will be history by the time most of you read this. This event represents one more community interaction where we have cave preserves and it's fun! Reflecting on the total event, community involvement in terms of community-wide donations has continued to be strong.

I am also beginning to introduce the concept of NCC Projects without a clear understanding of what either the NCC or I expects of this. I think of the many things that the NCC has done and is being invited to do in the future as "Projects" – a running list is below. I encourage All members to think along these lines and outside the lines as well. Do we have to codify projects? Get Board approval? Obviously a good project might turn into a committee if long term commitment was involved. Right now I like the way they are being handling – someone gets an idea or an invitation and the NCC gathers to accomplish a goal or goals.

1. Thacher Park Project – Two sessions over the summer proved its popularity, no doubt due to the freedom to inventory, survey and study caves in the Park. September 14's day was well attended with Hailes and Fool's Crawl Caves being mapped.
2. Horn's Cave, Remsen, Oneida County, NY. NCC member Matt O'Donnell who lives out that way discovered a storm drainage problem related to a cave in the tiny hamlet. Several factors appear to have contributed to many basements being flooded on an increasingly regular basis, and government money to mitigate the situation may not be charted for the best solution. Matt inticed the NCC out with the promise of opening a cave that has been closed by the owners since long before WW II, 65+ years. Thom Engel wrote an insightful letter concerning regulatory steps that must be taken by the Town. Matt and the owners ran the dye tracing with coaching from others, and Art & Peggy Palmer proved the resurgences to the system that were 1.1 miles away. Our three digging efforts over the summer tested by an instant 3.2" rain on July 2 proved that we were definitely having a positive effect on the runoff.

The NCC is being looked at very favorably in Remsen as efforts and solutions continue.

3. Hollyhock Hollow, southern Albany County, NY. Working in partnership with the owners, the Audubon Society and partners the Appalachian Mountain Club, we first met last year at their "Halloween Fest" gathering with a booth manned by Thom Engel. We pursued the possibility of replacing the ineffective orange snow fence around the cave dig in the rear of the property, a definite safety improvement.

We were delayed this year in fence building because there is no easy way to get the materials back onsite, so if volunteers want to help in late October, we have a job. ATVs may be able to drag the boards. Other ideas considered.

## **Attachment B Vice President's Report**

### **NCC Manual**

Edits were made to the manual to reflect actions taken by the Board at the June meeting. The updated version of the manual was sent to Mike C. on June 24 and was posted on the website.

### **EC Conference Call 8/21**

Multiple topics were discussed including webpage revisions, the conservancy's presence at OTR, the NRO auction and Barn Dance. My primary input was a progress report on the Merlins CE.

### **Merlins Conservation Easement**

On September 4, after multiple phone conversations with our attorney Lawrence Howard and at least 20 email exchanges, we reached a verbal agreement on the conservation easement language. A few days later the complete easement contract was available and circulated among the EC, Morgan and Chuck for final NCC review. Mr. Howard approved the agreement stating in part "that the proposed CE should serve to protect your property from development activities that would interfere with the traditional caving activities that the Northeastern Cave Conservancy promotes."

While NCC President Addis negotiated a closing date and time, I contacted the Treasurer, Secretary, and Office Staff to collect the documents we would need prior to closing: our Certificate of Incorporation, tax exemption number, and certification that the NCC Board had approved granting the easement. If everything goes as planned, the president should be able to report on the actual closing at the meeting. Moving forward, the NCC has a year from closing to make some minor revisions to the Merlins Management Plan regarding goals and objectives for the surface of the property.

### **Liability Insurance**

Our liability policy was renewed and the premium was paid before the due date. There was no increase in cost for renewal.

**Attachment C**  
**Treasurer Report**  
September 29, 2013

## Balance Sheet

09/20/2013

As of September 20, 2013

Sep 20, 13

|                          |                             |
|--------------------------|-----------------------------|
| ASSETS                   |                             |
| Current Assets           |                             |
| Checking/Savings         |                             |
| Checking                 | 5,250.52                    |
| Money Market             | 15,678.13                   |
| NSF Account              | 46,112.99                   |
| PayPal Checking          | <u>14.66</u>                |
| Total Checking/Savings   | <u>67,056.30</u>            |
| Total Current Assets     | <u>67,056.30</u>            |
| <br>TOTAL ASSETS         | <br><u><u>67,056.30</u></u> |
| <br>LIABILITIES & EQUITY | <br>0.00                    |

## Profit & Loss Budget vs. Actual

09/20/2013

January 1 through September 20, 2013

|                         | Jan 1 - Sep 20, 13 | Budget           |
|-------------------------|--------------------|------------------|
| Ordinary Income/Expense |                    |                  |
| Income                  |                    |                  |
| Donations               |                    |                  |
| Auction Donations       | 1,472.00           | 2,000.00         |
| Donations - Other       | 1,436.28           | 6,000.00         |
| Total Donations         | <u>2,908.28</u>    | <u>8,000.00</u>  |
| Interest Earned         | 6.03               | 5.00             |
| Membership Income       | 4,510.00           | 6,500.00         |
| Total Income            | <u>7,424.31</u>    | <u>14,505.00</u> |
| Expense                 |                    |                  |
| Acquisitions            | 0.00               | 500.00           |
| Bank Charges            | 17.42              | 20.00            |
| Development             | 0.00               | 1,000.00         |
| Donations-outgoing      | 0.00               | 200.00           |
| Easements               | 0.00               | 2,500.00         |
| Education               | 0.00               | 100.00           |
| Executive               |                    |                  |
| President               | 0.00               | 150.00           |
| Secretary               | 0.00               | 75.00            |
| Treasurer               | 0.00               | 275.00           |
| VP                      | 0.00               | 75.00            |
| Executive - Other       | 0.00               | 0.00             |
| Total Executive         | <u>0.00</u>        | <u>575.00</u>    |

|  |                        |                  |
|--|------------------------|------------------|
| Insurance                                  | 952.32                 | 1,100.00         |
| Legal Fees                                 | 2,400.00               | 5,300.00         |
| Licenses & Permits                         | 0.00                   | 150.00           |
| Meeting Expense                            | 0.00                   | 100.00           |
| Membership Expenses                        | 0.00                   | 100.00           |
| Miscellaneous                              | 0.00                   | 100.00           |
| Office Expense                             | 100.00                 | 100.00           |
| Postage                                    | 44.00                  | 100.00           |
| Preserves-Maintenance                      |                        |                  |
| Bentleys                                   | 0.00                   | 100.00           |
| Clarksville                                | 270.00                 | 300.00           |
| Ella Armstrong                             | 0.00                   | 100.00           |
| Knox                                       | 0.00                   | 100.00           |
| Merlins                                    | 0.00                   | 100.00           |
| Onesquethaw                                | 0.00                   | 100.00           |
| Sellecks                                   | 0.00                   | 100.00           |
| Total Preserves-Maintenance                | <u>270.00</u>          | <u>900.00</u>    |
| Printing                                   | 0.00                   | 100.00           |
| Promotion/Fundraising                      | 30.00                  | 800.00           |
| Mailings                                   | 0.00                   | 100.00           |
| Website                                    | 0.00                   | 60.00            |
| Sponsorships                               | 0.00                   | 500.00           |
| Taxes on Properties                        | 649.55                 | 100.00           |
| Total Expense                              | <u>4,463.29</u>        | <u>14,505.00</u> |
| Net Ordinary Income                        | 2,961.02               | 0.00             |
| Other Income/Expense                       |                        |                  |
| Other Income                               |                        |                  |
| In Kind donations                          | 0.00                   | 0.00             |
| Volunteer Value                            | 39,373.00              | 0.00             |
| Total Other Income                         | <u>39,373.00</u>       | <u>0.00</u>      |
| Other Expense                              |                        |                  |
| In Kind Out                                | 0.00                   | 0.00             |
| Volunteer Value Exp                        | 39,373.00              | 0.00             |
| Total Other Expense                        | <u>39,373.00</u>       | <u>0.00</u>      |
| Net Other Income                           | <u>0.00</u>            | <u>0.00</u>      |
| Net Income                                 | <u>2,961.02</u>        | <u>0.00</u>      |
| Net Gain or Loss from NSF Fund             | -57.72                 |                  |
| <b>NET Income after NSF Fund Gain/Loss</b> | <u><u>2,903.30</u></u> |                  |



## Attachment D

EC Meeting  
08/21/2013  
Conference Call

Conference call: Bob, Bill, Vince, Christa

Lawyer fees – Bob will send check out tomorrow. Discussion on budget and balance...we are ok. Need to go thru the website and clean up the wording, waivers etc as recommended by the lawyer. Vince will send a motion for next board meeting...basically the board will accept the lawyers recommendation.

PMG grant – brochure, kiosks updates, table skirt or display , can we ask for \$1000 for education/training on the PMG grant.

Barn Dance – we need to get more prizes. We are not at the \$500 level

NRO - Alan will be auctioneer. Bill will do the treasurer auction work.

OTR – tent will be down there . I will contact Peter for updated membership list.

Thacher park = public hearing comments by Bob and Thom.

## Attachment E

*Return to:*  
Columbia Land Conservancy, Inc.  
P.O. Box 299  
Chatham, NY 12037  
Box 38

## DEED OF CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, between the **Northeastern Cave Conservancy, Inc.**, with a mailing address of P.O. Box 254 Schoharie, New York 12157, a New York not-for-profit corporation hereinafter called "Grantor", and the **Columbia Land Conservancy, Inc.**, with a mailing address of P.O. Box 299, 49 Main Street, Chatham, New York 12037, a New York not-for-profit corporation hereinafter called "Grantee."

### WHEREAS:

- A. Grantor is a not-for-profit corporation committed to the conservation, study, management, and acquisition of caves and karst areas having significant geological, hydrological, biological, recreational, historical or aesthetic features. Grantor combines the resources and expertise of affiliated cave explorers, educators, scientists, landowners, and conservation officials to preserve caves and karst, educate schools and local communities, and to establish karst preserves that safeguard the unique features of the property and promote the scientific study as well as the educational and recreational use of the caves and other karst features on the property.
- B. Grantee is a New York not-for-profit corporation within the meaning of Article 49, Title 3, of the Environmental Conservation Law of the State of New York (the "Conservation Law"), is organized for, among other purposes, conserving real property, is a tax exempt and qualified organization within the meaning of Sections 501(c)(3), 509(a)(1) and 170(b)(1)(A)(iv) of the Internal Revenue Code, and is qualified to accept and hold conservation easements under Section 170(h) of the Internal Revenue Code and U.S. Treasury Regulation Section 1.170A-14(c);
- C. Grantor is the owner in fee of real property (the "Property") consisting of approximately 35.69 acres in one (1) tax parcel in the Town of Canaan, Columbia County, New York, as described in Deed dated August 5, 2011 and recorded in the Columbia County Clerk's office on August 22, 2011 in Book 715 of official records at Page 824, more particularly described in Exhibit A and shown on Exhibit B attached hereto and incorporated herein by this reference. The Property consists of vacant land and contains stonewalls, wire fences and trails as further documented in the Baseline Documentation Report (Section 7.1);
- D. The Property, known as the Merlins Cave Preserve, contains a rich variety of scenic qualities and natural ecosystems and habitats, and is located over a major cave system. The Property and the cave systems have been managed by Grantor for cave exploration and study, public access, and wildlife habitat conservation pursuant to a Management Plan developed by Grantor initially dated December 9, 2007 and amended September 9, 2012;

E. The Property will be preserved to ensure permanent outdoor recreation by, and the education of, the general public and possesses significant recreational, scenic, and open space values and features and is comprised of relatively natural habitat (collectively the “Conservation Values”) of great importance to Grantor, Grantee, the people of Columbia County and the people of the State of New York, the preservation of which will provide a significant public benefit. The Conservation Values, which are more fully described and documented in the Baseline Documentation Report (Section 7.1), are summarized below:

- (1) Recreation and Education. The Property is located within the Town of Canaan and is within three (3) miles of an exit on the New York State Thruway (I-90), making it easily accessible to many area residents and visitors. The conservation, protection and preservation of the Property, subject to the terms of this Conservation Easement, will yield significant benefits to the public by providing the general public with permanent access to the Property for passive recreation and education. Public access to the Property is via a parking area located on Tunnel Hill Road and a 15-foot-wide pedestrian trail from the parking area to the Property, which is more particularly described in an Easement Agreement dated August 5, 2011 and recorded in the Columbia County Clerk’s office on August 22, 2011 in Book 715 of official records at Page 829.
- (2) Scenic Enjoyment. The Property is prominently visible from Tunnel Hill Road, Old Hudson Turnpike, County Route 5, Marble Ridge Road and Vendenberg Road, all public roads, and is visible from the New York State Thruway (I-90) and the hamlet of Canaan Center. It is highly compatible with other land in the vicinity, as it is comprised of mixed woodlands, with moderately steep slopes, intermittent streams and rocky ledges and outcroppings. The Property also provides a harmonious variety of shapes and textures, as the sloping hillsides covered with both deciduous hardwoods and coniferous trees offer a visual array of contours that blend gently with the surrounding woodlands and contribute to the rural character and visual enjoyment of the surrounding area. This Conservation Easement will prohibit development of the Property that would impair the open and scenic character of the Property and continue to provide an opportunity for the general public to appreciate the Property’s scenic values.
- (3) Relatively Natural Habitat. The Property is of particular importance as an ecologically diverse and scenic natural area. The Property is located over a major cave system discovered in September 2006. The caves are formed in Stockbridge Marble and run along a major Taconic thrust fault zone that crosses the Property. Initial explorations have identified numerous dolomitic boudins, gash veins, helictites and insoluble remnants that produce interesting passage geometries and photogenic areas. Two entrances to cave systems have been discovered and are named Merlins Cave and Dragon Bones Cave. To date more than 2,000 feet of passages have been surveyed, descending more than 140 feet in depth. Additional exploration and survey may connect the two cave systems forming the largest Marble solution cave in the Northeast.

The Property is characterized by mixed woodlands, comprised of hardwoods and conifers, and is part of a highly prominent and scenic ridge that rises to a summit of 1,340 feet. The Property’s significant forest lands provide critical habitat for many species of common and rare plants and animals, as well as water quality protection and carbon sequestration and is part of an approximately 4,151 acre area comprised of relatively large, unfragmented woodlands (United State Geological Survey Geographic Information Retrieval and Analysis System, National Land Cover Database 2001, Zone 13).

The Property contains intermittent streams and rocky ledges and outcroppings that provide important habitat for rare plants and wildlife and associated woodland flora and fauna (see Section 7.33 of the *Biodiversity Assessment Manual for the Hudson River Estuary Corridor*, Hudsonia Ltd., 2001). It also contains several (at least ten) large sinkholes, which transmit water into the underground marble and may connect with the cave system, and two circular trenches, approximately 40 feet in diameter, which mark the remnants of old charcoal pits. There is a strong likelihood that, if the Property were to be developed instead of preserved, it would contribute to the degradation of the Property’s forest habitat and ecological resources.

F. Several state and local programs and laws have been implemented to recognize and encourage the protection of lands, like the Property, which contain scenically and ecologically significant acreage:

- (1) New York State encourages the conservation of its environmental assets and natural resources, the preservation of open spaces, the preservation of agricultural and forest land through Article 49, Title 3, of the New York Environmental Conservation Law and tax exemptions (e.g., Real Property Tax Law Section 480; Real Property Tax Law Section 481; and Article 25AA of the New York State Agricultural and Markets Law); and
- (2) The Town of Canaan has planning, zoning and land use laws that partially regulate the Property. The Town has accepted provisions in its planning and zoning laws that encourage the preservation of agricultural, rural open space and scenic resources. The Draft Strategic Plan, accepted by the Town Board on December 29, 2003 states that “Preserving non-agricultural vacant land is critical to maintaining Canaan’s quality of life. Meadows, wetlands, and wood lots provide the texture and unspoilt [*sic*] environment. Open lands combined with concentrating development gives the best opportunity for meeting future agricultural needs, conserving wildlife habitat, maintaining water quality, and providing areas for outdoor recreation” (page 9). One of the Plans’ strategies is “Through the Town government, actively pursue open-space initiatives and support the establishment of open space for hunting, public recreation, open vistas and wildlife habitat” (page 10). A goal of the Plan is “to provide the leadership and citizens of Canaan with strategies to protect and promote the natural resources that define the ‘rural character’ of our community and enhance our quality of life” (page 10). The Town stated one of the actions it would take to “Support the conservation of undeveloped land” would be to “Partner with the Columbia Land Conservancy to increase public awareness of tools available to maintain a desirable open space standard for Canaan” (page 11).

- G. The conservation and permanent protection of the Property, subject to the terms of this Conservation Easement, will yield significant benefits to the public by providing for public recreation and education, while balancing its use by the public for educational and recreational purposes with programs serving to sustain or enhance the Property's natural communities as well as educating the public about conservation of natural resources, and other activities intended to protect, maintain, or enhance the Property's natural habitats and ecosystems;
- H. The Board of the Northeastern Cave Conservancy, Inc. resolved on June 9, 2013 to convey this Conservation Easement to Grantee, and the Board of Trustees of the Columbia Land Conservancy, Inc. resolved on September 10, 2011 to accept this Conservation Easement;
- I. The State of New York has enacted Article 49, Title 3 of the Environmental Conservation Law (as the same may be amended) to provide for the limitation and restriction of development, management and use of real property by Conservation Easement;
- J. The parties desire to conserve the Property by entering into this Conservation Easement pursuant to the provisions of Article 49, Title 3, of the Environmental Conservation Law of the State of New York; and
- K. Grantor has received independent legal and financial advice regarding this Conservation Easement to the extent that Grantor has deemed necessary. Grantor freely conveys this Conservation Easement in order to accomplish its conservation purposes.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties agree as follows:

1. General Provisions.

- 1.1. Grantee's Representation. Grantee represents and warrants that it is a New York not-for-profit corporation within the meaning of Article 49, Title 3 of the New York Environmental Conservation Law (together with any successor statute, the "Conservation Law"), is organized for, among other purposes, conserving real property, is a tax exempt and qualified organization within the meaning of Sections 501(c)(3), 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code, and meets the requirements of a "qualified organization" to accept, purchase, and hold Conservation Easements under Section 170(h) of the Internal Revenue Code and U.S. Treasury Regulation Section 1.170A-14(c).
- 1.2. Grant of Conservation Easement. Grantor grants and conveys to Grantee, and Grantee accepts, this Conservation Easement (the "Conservation Easement") to run with the land in perpetuity as defined by Article 49, Title 3, of the New York Environmental Conservation Law for the Purposes outlined below, and for the benefit of the general public, including the right of public access, subject to the further provisions of this Conservation Easement.
- 1.3. Purpose. The purpose of this Conservation Easement is to ensure permanent public access (subject to the further terms of this Conservation Easement) to the Property; and to conserve and protect the important Conservation Values of the Property including its open and scenic character (as seen from Tunnel Hill Road, Old Hudson Turnpike, County Route 5, Marble Ridge Road, Vendenberg Road, and the New York State Thruway (I-90), and from the hamlet of Canaan Center), and its relatively natural habitat and ecological characteristics as referenced in the recitals above and in the Baseline Documentation Report, as they may evolve over time; as well as to protect the general natural character of the Property, and to foster landscape-scale conservation, reduce land fragmentation, and establish potential habitat corridors, while providing for uses compatible with the Purposes herein.
- 1.4. Implementation. This Conservation Easement shall be implemented by limiting and restricting the development and use of the Property in accordance with the provisions described herein.

2. Definitions. When used in this Conservation Easement, the following terms shall be defined as follows:

- 2.1. Agroforestry. Agroforestry intentionally combines agriculture and forestry to create integrated and sustainable land use systems, taking advantage of the interactive benefits from combining trees and shrubs with crops and/or livestock. Agroforestry practices include such options as alley cropping (the cultivation of food, forage or specialty crops between rows of trees or shrubs), growing ginseng and gourmet mushrooms, combining forest management with livestock grazing, and selling specialty wood items. For purposes of this Conservation Easement, timber harvest is not included in this definition; see "Conservation Forestry," below.
- 2.2. Baseline Documentation Report. The document entitled "Baseline Documentation Report", incorporated by this reference, that the Grantor and Grantee mutually agree, as depicted by photographs, maps, and supporting text, describes the general condition of the Property, including improvements located on the Property, as of the date of this Conservation Easement.
- 2.3. Conservation Forestry. The removal of forest products (such as, but not limited to, trees, logs, poles, posts, pulpwood, firewood, chips, seeds, pine straw, stumps, shrubs, and lesser vegetation) for commercial purposes that perpetuate the forest resources on the Property as a sustainable working forest, encourage long-term, professional management of the forest resources, facilitate the biologically and economically sustainable production of forest resources, while minimizing the impacts on soil productivity, water quality, wetlands, riparian zones and the scenic character of the Property.

- 2.4. Foot Print of Structures. The Foot Print of a structure shall be that measurement encompassing the enclosed ground floor area, as measured from the exterior, at the point of contact with, or extending/cantilevering above, the ground, and does not apply to unenclosed decks, patios or porches.
- 2.5. Forestry Best Management Practices (BMPs). Forestry practices that prevent or reduce the erosion of soil which adversely affects surface and ground waters. These management practices may have standards associated with their installation, operation or maintenance, but do not impose effluent limits for specific substances or specified techniques.
- 2.6. Forestry Harvest Plan. A plan that provides for the identification and application of water quality and soil erosion Best Management Practices associated with specific Conservation Forestry activities. The plan will describe the size and timing of a harvest and the management practices necessary to mitigate potential adverse impacts on soil erosion and water quality.
- 2.7. Forestry Management Plan. A plan that provides for the identification and application of resource specific managerial and/or structural Best Management Practices designed to enhance forest productivity and economic viability as well as to mitigate potential adverse environmental impacts of Conservation Forestry activities.
- 2.8. Grantee. The term "Grantee" includes the original Grantee and its successors and assigns.
- 2.9. Grantor. The term "Grantor" includes the original Grantors, its successors and assigns, and all future owners of all or any portion of the Property.
- 2.10. Hazardous Substances. For purposes of this Conservation Easement, Hazardous Substances shall be defined as: (a) any hazardous waste as defined by the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC § 6901 et seq.) as amended; (b) any hazardous substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (15 USC § 9601 et seq.) as amended; (c) any substance regulated by the Toxic Substances Control Act (TSCA) (15 USC § 2601 et seq) as amended; (d) any substance regulated by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 USC § 136 et seq) as amended; (e) any pollutant as defined by the Water Pollution Control Act (33 USC § 1251 et seq.) as amended; (f) any air pollutant as defined by the Clean Air Act (42 USC § 7401 et seq.) as amended; (g) any hazardous waste as defined by §27-0901(3) and §27-1301 of the New York State Environmental Conservation Law and regulations promulgated thereunder; (h) friable asbestos or asbestos-containing material of any kind or character; (i) polychlorinated biphenyls; (j) any substances regulated under the provisions of Subtitle I of RCRA relating to underground storage tanks; (k) any other substance, pollutant or contaminant subject to any form of environmental law or regulation by any Federal, State or local governmental authority.
- 2.11. Height of Structures. The Height of a structure shall be determined by measuring the highest point of the roof or structure, excluding chimneys, as measured from the mean grade level prior to construction or grade alteration.
3. Reserved Rights of Grantor. Grantor reserves for itself and its successors in interest with respect to the Property all rights with respect to the Property except as provided herein.
4. Restrictions Applicable to the Property. The following restrictions apply to the Property.
  - 4.1. Use. The Property shall not be used for residential, commercial or industrial purposes, except as otherwise may be specifically permitted by this Conservation Easement. For purposes of this Conservation Easement, fees charged by Grantor for permitted uses of the Property or any other income generated by Grantor from permitted uses of the Property (such as agroforestry lease payments, or carbon sequestration payments) shall not be deemed a commercial use of the Property.

The Property shall be available to the public solely for passive recreational and educational uses including, but not limited to, caving; walking; hiking; bird watching; cross-country skiing; the study, research and enjoyment of plants, birds, and wildlife; wildlife habitat restoration and enhancement; environmental and outdoor education; nature interpretation, and other educational programs and other outdoor recreational activities so long as they are not inconsistent with the terms and purposes of this Conservation Easement and do not significantly impair the Conservation Values protected by this Conservation Easement.

Active recreational uses, such as ball fields, outdoor swimming pools, tennis courts, and buildings used for recreational uses (such as basketball courts and indoor swimming pools) are prohibited on the Property.

Specific uses of the Property shall be governed by a Master Plan, as more fully described in Section 4.2 below.

- 4.2. Master Plan. Use and development of the Property consistent with this Conservation Easement shall be governed by a Master Plan prepared for the Property by Grantor and approved by Grantee as follows:
  - 4.2.(a) Grantor shall prepare and present to Grantee a Master Plan for the Property by no later than one (1) year from the date of the grant of this Conservation Easement. At Grantor's discretion, such deadline may be extended by up to ninety (90) days upon prior notice to Grantee. The Master Plan shall identify Grantor's proposed uses of the

Property, all of which must not be inconsistent with the Purposes of this Conservation Easement, including: significant changes to any existing public uses; significant changes to Grantor's current land management practices; potentially contemplated Agroforestry or Conservation Forestry activities; and potential construction of any new structures or improvements or significant changes to existing structures and improvements.

Such Master Plan shall be submitted to Grantee for approval, which approval shall not be unreasonably withheld. Grantee shall approve or deny approval of the proposed Property Master Plan within thirty (30) days of submittal of the Master Plan to Grantee. Should Grantee deny approval of the Plan, Grantee shall inform Grantor of the reasons for such denial in writing. The Master Plan shall be updated as necessary, but with no less frequency than every ten (10) years. Each update of the Master Plan shall be submitted to Grantee for its approval in accordance with the provisions of this Section.

- 4.3. Cutting and Clearing of Trees; Removal of Invasive Plant Species. There shall be no removal, destruction or cutting of live trees on the Property except as follows:
- 4.3.(a) The cultivation, trimming, and removal of grass, trees, shrubs and flowers for the purpose of maintaining and enhancing the Property as a public conservation area, including creating and maintaining views, paths, trails, or open space, is permitted.
  - 4.3.(b) Trees may be removed anywhere on the Property that endanger public safety, are diseased, damaged or fallen, or need to be removed to ensure the health or productivity of other trees or ecological attributes of the Property.
  - 4.3.(c) Grantor may harvest wood from the Property for public educational programs, to enhance wildlife habitat, and/or for use on the Property including construction of structures and improvements permitted on the Property.
  - 4.3.(d) Conservation Forestry, as defined herein, may be conducted if in conformity with an approved Master Plan for the Property and sound land and Forestry Best Management Practices (BMPs), pursuant to New York State Timber Harvesting Guidelines as periodically updated, as outlined in a Forestry Management Plan and Forestry Harvest Plan prepared by a certified forester who is a member in good standing of the Society of American Foresters and a Cooperating Consulting Forester with the New York State Department of Environmental Conservation. Grantee shall have thirty (30) days, prior to initiation of logging, to review and approve or deny approval of the Forestry Management Plan and Forestry Harvest Plan, and supporting materials, to ensure they are in compliance with the terms of this Conservation Easement and its Master Plan. Such approval shall not be unreasonably withheld.
  - 4.3.(e) Grantor may remove invasive plants and species (as defined by either the New York State Department of Environmental Conservation, the New York State Office of Parks, Recreation, and Historic Places, the United States Department of Agriculture or The Nature Conservancy) anywhere on the Property, provided these activities are performed in a manner that shall minimize soil erosion and adverse impacts on the Property's streams, steep slopes and other natural resources, and adhere to all applicable laws and regulations. Grantee, its successors or assigns, reserves the right to inspect the site prior to the management of invasive species to ensure that such management is consistent with the Conservation Values of this Conservation Easement. This section shall be subordinate to any local, state, or fed laws enacted or adopted regarding invasive plant and species management.
- 4.4. Subdivision. The Property is currently comprised of one (1) tax parcel, and may not be subdivided. Notwithstanding the foregoing, Grantor may conduct boundary and lot line adjustments with the owners of adjacent parcels of property, subject to notice to and prior approval from Grantee as provided in Sections 7.4 and 7.5. Grantee may, in its sole discretion, grant such approval so long as Grantee determines that the boundary or lot line adjustment will expand or enhance the Purposes of this Conservation Easement.
- 4.5. Agroforestry Activities. In accordance with an approved Master Plan for the Property, Grantor may lease portions of the Property for Agroforestry practices (as defined herein), provided such Agroforestry practices are consistent with the purposes of this Conservation Easement and do not prevent or hinder public access to the Property and provided that any lease was first submitted to Grantee for its approval. Grantee shall have thirty (30) days, prior to execution of an agricultural lease, to review and approve the lease to ensure it is in compliance with the terms of this Conservation Easement.
- 4.6. Mining. Grantor agrees not to separate the mineral rights from ownership of the surface of the Property and not to lease the Property for the exploration for, or development and extraction of, minerals and hydrocarbons. The exploration for, or development and extraction of, minerals and hydrocarbons by any surface or subsurface mining method is prohibited; including excavation or removal of topsoil, sand, gravel, rocks or minerals, in any manner, except as may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Conservation Easement. This shall not prevent the activities related to exploring, expanding and improving the cave systems, as outlined in an approved Master Plan.

- 4.7. Chemicals. No pesticide, herbicide, fertilizer or other chemical treatment for land, water, vegetation or animals shall be used if the use shall violate any applicable state, local or federal law or regulation.
- 4.8. Dumping, Waste, Vehicles, Equipment and Storage. No dumping, burying, storing, applying or releasing of Hazardous Substances (as defined herein), waste, sewage, garbage, construction debris, vehicles or appliances, or any toxic, hazardous or offensive materials shall be allowed on the Property, except: (i) appropriate routine storage of garbage and wastes from permitted uses of the Property pending transport for proper disposal; (ii) biodegradable materials generated, utilized, and/or processed on the Property to further the permitted uses of the Property while maintaining the conservation purposes described herein; and (iii) vegetative debris deposited by storm damage or other such similar event, provided that all such materials comply with any applicable local, state, and federal law or regulation.
- 4.9. Waterways and Wetlands. No waterways, waterbodies, or wetlands located on the Property shall be in any way diverted, dammed or otherwise materially altered by Grantor, except with Grantee's prior approval and if in conformity with an approved Master Plan for the Property. Grantee shall grant such approval so long as Grantee determines that the waterway, waterbody, and/or wetland alteration proposed by Grantor will enhance the conservation goals of this Conservation Easement by, for example, exploring, expanding and improving the cave systems, increasing the size of the wetlands or waterway, increasing habitat diversity or assisting in the removal of exotic species. Grantee shall also grant approval if the purpose of the proposed waterway and/or wetland alteration is to restore or remediate the natural course of the waterway due to a naturally occurring alteration (such as those caused by beaver, floods or other similar natural events). Any such approvals given by Grantee shall not relieve Grantor from complying with any applicable local, State and Federal laws and regulations relating to the alteration of waterways or wetlands. If the wetland and/or waterway project will adversely affect one or more purposes of this Conservation Easement, the Grantee reserves the right to deny approval or require reasonable modifications to the project that will minimize such impacts.

Notwithstanding the foregoing, naturally occurring alterations (such as those caused by beaver, floods or other similar natural causes) or alterations caused by third parties that enhance the conservation goals of this Conservation Easement are permitted without approval from Grantee, subject to applicable local, State and Federal laws and regulations.

- 4.10. Health and Safety Measures. Notwithstanding any other restriction contained in this Conservation Easement, the Grantor may take such actions with respect to the Property as are necessary to protect the health and safety of the public and the persons using the Property; provided that if any such action is contrary to a restriction contained herein, the action shall be limited to the minimum variation necessary to afford the required protection. If notice would be required under this Conservation Easement to undertake such action, or if the action would otherwise violate any restriction contained herein, notice of the action shall be given to Grantee as soon as practicable, but the required action may be taken whether or not such notice has been given.
- 4.11. Property Income. Grantor may charge reasonable fees for permitted uses of the Property, such as entrance fees, hunting fees or fees to attend educational activities. In addition, Grantor may earn income from the Property from permitted uses of the Property including, but not limited to, leases for Agroforestry or Conservation Forestry activities or income generated by carbon sequestration payments.
5. Public Access. Access to the Property shall be provided or permitted for the uses and purposes described in Section 4.1, subject to such reasonable rules and regulations as Grantor may promulgate. Subject to such rules, access shall be provided to the general public by open trails and/or paths, at such times and in such other manner as Grantor deems appropriate, with the recognition that Grantor may need to manage and regulate such activities so as to ensure that the overall Conservation Values of the Property are upheld.

Vehicle access to the Property shall be limited to maintenance and emergency vehicles, vehicles necessary for the assembly and disassembly of permitted improvements, and wheelchairs and other vehicles that provide handicapped access to the Property.

Grantor may allow and regulate hunting.

6. Permitted Structures and Improvements. No permanent or temporary structures or other improvements shall hereafter be placed or maintained on the Property, except as specifically provided for below and approved as part of the Master Plan.
- 6.1. Existing Improvements. The existing improvements on the Property, including, without limitation, the existing trails, wire fences and stone walls are permitted and may be maintained, repaired, removed, rebuilt, improved, replaced or expanded, provided that any such activities are not inconsistent with the restrictions set forth in this Conservation Easement. Significant changes proposed by Grantor to existing improvements shall be submitted to Grantee for approval in the Master Plan or in a Master Plan update.
- 6.2. Access and Habitat Structures and Improvements. Grantor may construct, install and maintain structures and improvements reasonably necessary or helpful to the use and enjoyment of the Property as a public conservation area, including structures and improvements used for educational activities, recreational activities, and for enhancing or viewing wildlife and habitat. Such structures and improvements shall be identified in the Master Plan, are limited to 200 square feet in Foot Print and less than 35 feet in Height, and shall not include nor be served by any permanent utilities and/or septic systems. Such structures and improvements may consist of, but are not limited to, information

kiosks, interpretive signs, trail markers, observation towers, viewing platforms, deer stands bird blinds, gazebos, tent platforms for educational purposes, picnic shelters, benches, bridges, boardwalks, and foot paths. Boardwalks, unpaved trails and paths are not subject to the 200 square foot size limitation.

- 6.3. Maintenance Structures and Improvements. Structures and improvements necessary to maintain the Property consistent with the uses permitted in, and purposes of, this Conservation Easement are permitted as identified in the Master Plan. Such maintenance structures and improvements are limited to 200 square feet in Foot Print and less than 35 feet in Height and shall not include nor be served by any permanent utilities and/or septic systems.
- 6.4. Agroforestry Structures and Improvements. Grantor may construct and/or locate structures and improvements for permitted Agroforestry purposes, as provided in and if in conformity with an approved Master Plan for the Property.
- 6.5. Fences, Gates, Stonewalls, and Signs. Existing fences, gates, stone walls, and signs may be repaired, relocated, and replaced anywhere on the Property. New fences, gates, stone walls and signs as are normal and customary for the uses permitted in this Conservation Easement may be erected anywhere on the Property.

## 7. Additional Covenants and Provisions.

- 7.1. Existing Conditions and Baseline Documentation Report. By its execution of this Conservation Easement, Grantee acknowledges that Grantor's present uses of the Property are consistent with the purposes of this Conservation Easement. In order to evidence the present condition of the Property (including both natural and man-made features) and to facilitate future monitoring and enforcement of this Conservation Easement, a Baseline Documentation Report describing such condition at the date hereof, has been prepared and subscribed by both parties, and is incorporated herein by this reference. The original Baseline Documentation Report will be kept on file at the Grantee's office and a duplicate original will be supplied to the Grantor.
- 7.2. Extinguishment of Development Rights. Except as specifically reserved in this Conservation Easement (including, without limitation, the right to construct certain additional structures and improvements heretofore set forth in Section 6 herein), Grantor grants to Grantee all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the parties agree that subject to such reservations, such development rights are terminated and extinguished by this Conservation Easement, and may not be used or transferred to any portion of the Property as it is now or hereafter may be described, or to any other property, whether adjacent or otherwise, or used for the purpose of calculating permissible lot yield or building density of the Property or any other property.
- 7.3. Conservation Easement Administration Fee. Grantor understands and agrees that Grantee, through its acceptance and execution of this Conservation Easement, has incurred, and will incur over time, annual and ongoing conservation easement administration expenses, and that Grantee has estimated it would require a total dedicated fund of \$60,000 in order to generate the annual cost of stewarding this Conservation Easement. An "Easement Administration Fee," (a fee that will over time give rise to a fund sufficient to pay for the cost of stewarding Grantor's land as a single parcel), has been calculated as of the date of this Conservation Easement and will ensure that Grantee's basic legal and administrative obligations with respect to this Conservation Easement are upheld over time.

In consideration of Grantee's acceptance of this Conservation Easement, Grantor agrees that it shall pay Grantee an amount equal to the sum of the Easement Administration Fee. Grantee offered Grantor the following two payment options to satisfy the Easement Administration Fee:

- i. The first option involves payment of a one-time \$15,000 upfront fee paid at the time of the conveyance of this Conservation Easement to Grantee, which shall be invested by Grantee with the expectation that it will generate \$60,000 in approximately 20 years or in a timeframe deemed sufficient by Grantee.
- ii. The second option involves an upfront payment of \$2,500 and the allocation of future payments toward the Administration Fees from qualifying transfers when the Property is sold, as further described below and in Exhibit C.

Grantee acknowledges the satisfactory payment by Grantor of \$2,500 toward the Easement Administration Fee at the time of easement closing. Grantor has elected, with Grantee's consent, to make additional phased Easement Administration Fee payments over time based upon a payment equal to two-and-one-half percent (2.5%) of the Property's selling price, as outlined in Exhibit C. Such phased payments must coincide with any transfer of any interest in the Property and shall continue until such time as the total Easement Administration Fees paid with respect to the Property equal \$60,000. The time of payment and the method of calculating the phased payments, and exemptions from part or all of the Easement Administration Fee, are set forth in Exhibit C, attached hereto and incorporated herein by this reference.

- 7.4. Required Notice. Grantor agrees to give Grantee written notice before exercising any reserved right as delineated in this Conservation Easement. Grantor shall submit to Grantee sufficient written information in order to facilitate the monitoring of this Conservation Easement, to ensure continuing communication, and to determine that new or modified permitted structures conform to the terms of this Conservation Easement. Such information shall allow Grantee to confirm that the structures proposed for construction are not inconsistent with the terms of this Conservation Easement and the Master Plan, and do not exceed the permitted Foot Print or Height. Said information shall include the proposed location of the structure and/or improvement, and adequate information to determine its projected size (Foot Print), Height, and uses. Such information shall be

submitted to Grantee not less than forty-five (45) days prior to the anticipated site work/disturbance or commencement of construction.

Notice shall be pursuant to Section 7.5 herein. Grantee shall notify Grantor as to whether or not the proposal is in compliance with the terms of this Conservation Easement and the Master Plan, not more than forty five (45) days from receipt of the notice. If Grantee fails to respond within forty five (45) days, Grantor will further contact Grantee to confirm that Grantee received the first notice, and if after ten (10) days Grantee does not respond, the proposal shall be deemed approved.

- 7.5. Notice and Approval Requests, Responses, in Writing. Any written notice or approval request required or desired to be given under this Conservation Easement by Grantor, except as required in Section 7.6 of this Conservation Easement, and any subsequent response from Grantee, shall be in writing and shall be deemed given when received, or three (3) days after mailing by certified mail, or by FedEx or a similar public or private courier service which provides receipt of delivery, except as mutually agreed upon by both parties, and properly addressed as follows: (a) if to Grantee, at address set forth above; (b) if to Grantor, at the address set forth above, (c) if to any subsequent owner, at the address of the Property. Any party can change the address to which notices are to be sent to him, her or it by giving notice pursuant to this paragraph.
- 7.6. Inspection. Grantee and its duly authorized agents, employees and representatives shall have the right to enter the Property upon reasonable notice to Grantor, at such times during normal business hours, for the purpose of determining whether the provisions of this Conservation Easement are being observed. Grantee shall also have the right to inspect the Property at any time, without prior notice, if Grantee has cause to believe the provisions of the Conservation Easement have been, or are being, violated.
- 7.7. Enforcement. Grantee may enforce this Conservation Easement at law or in equity, including, without limitation, pursuant to the provisions of Article 49, Title 3 of the New York Environmental Conservation Law, against any or all of the owners of the Property or any part thereof. If there is a violation, or threatened violation, of this Conservation Easement, Grantee shall notify the party in violation or threatening the violation, who shall, in the case of an existing violation, promptly cure the violation by (a) ceasing the same and (b) restoring the Property to the condition before such violation, or in the case of a threatened violation, refrain from the activity that would result in the violation.

If (i) a violation continues for more than thirty (30) days after notice specifying such violation is given (or in the case of a violation which cannot with reasonable diligence be remedied within a period of thirty (30) days but which the party in violation has commenced to remedy with all reasonable diligence within such 30-day period, then for such longer period as may be necessary to remedy the same with all reasonable diligence), or (ii) at any time, if Grantee determines, in its sole discretion, that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may seek immediate injunctive relief and may pursue all its available legal remedies.

Grantee's remedies described in this Conservation Easement shall be cumulative and shall include the right to require restoration of the Property to the condition that existed prior to any such injury, to the extent reasonably possible.

The current Grantor (owner) shall reimburse Grantee for all reasonable expenses incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessary to cure the violation. Should Grantor prevail in a judicial enforcement action, each party shall bear its own costs. Failure to enforce any restriction or covenant herein contained shall in no event be deemed a waiver of a right to do so thereafter as to the same violation or breach or as to one occurring prior or subsequent thereto.

- 7.8. Acts Beyond Grantor's Control. Grantor shall not be responsible for any injury to or change in the Property resulting from natural events beyond the control of the Grantor. Such natural events include fire, flood, storm, earthquake, tornado, landslide or Acts of God, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. This paragraph shall not be construed to relieve the Grantor of the obligation to clean-up garbage or materials dumped on the Property by third parties or to otherwise maintain the Property in a condition consistent with the purposes of this Conservation Easement.
- 7.9. Amendment. This Conservation Easement may be amended only upon the written consent of Grantee and by a recorded instrument signed by the then current Grantor (owner) of the Property (or of the parcel of the Property affected by such amendment) and Grantee. Any amendment of this Conservation Easement shall be at the discretion of the Grantee and only if such amendment: is consistent with the overall purposes of this Conservation Easement and complies with Article 49, Title 3 of the New York Environmental Conservation Law, as amended, and any regulations promulgated pursuant thereto. Grantee shall have no right or power to agree to any amendment that would result in this Conservation Easement failing to qualify as a valid conservation easement under the Conservation Law. The Grantor requesting the amendment shall reimburse Grantee for all expenses, including staff time and reasonable attorneys' fees, incurred in evaluating, preparing and executing the amendment.
- 7.10. Severability. Invalidation of any provision of this Conservation Easement by court judgment, order, statute or otherwise shall not affect any other provisions, which shall be and remain in force and effect.



- 7.11. Binding Effect. The provisions of this Conservation Easement shall run with the Property in perpetuity and shall bind and be enforceable against the Grantor, and all future owners and any party entitled to possession or use of the Property or any portion thereof while such party is the owner or entitled to possession or use thereof. Notwithstanding the foregoing, upon any transfer of title, the transferor shall, with respect to the Property transferred cease being a Grantor or owner with respect to such Property for purposes of this Conservation Easement and shall, with respect to the Property transferred, have no further responsibility, rights or liability hereunder for acts or conditions arising thereafter on or with respect to such Property, but the transferor shall remain liable for earlier acts and conditions occurring during the period of his or her ownership or conduct.
- 7.12. Assignment and Continuity. Grantee agrees that it will assign or transfer this Conservation Easement only to an assignee that (a) is a Qualified Organization within the meaning of Article 49 and which (b) agrees to continue to carry out the conservation purposes of this Conservation Easement. Any assignee must be an entity able to enforce this Conservation Easement, having purposes similar to those of Grantee that encompass those of this Conservation Easement. If the Grantee ever ceases to exist or no longer qualifies under the Conservation Law or applicable state law, it will assign this Conservation Easement to a Qualified Organization. If it fails to do so, a court with jurisdiction may transfer this Conservation Easement to another qualified organization having similar purposes that agrees to assume the responsibility.
- 7.13. Indemnification. Grantee has no affirmative obligations relating to the maintenance of the Property. Grantee shall not be responsible for injuries or damage to persons or property in connection with Grantee's administration and/or enforcement of this Conservation Easement or otherwise with respect to the condition of the Property, provided that the foregoing shall not absolve Grantee of any liabilities it might otherwise have, independently of this Conservation Easement, for wrongfully and directly, without the participation or consent of the Grantor, causing any dangerous condition to come into existence on the Property. Except in the last-described instance, Grantor agrees to indemnify and hold Grantee and its trustees/directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") harmless from any and all costs, claims or liability, including reasonable attorneys' fees, arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof. Grantee shall have no liability to Grantor or any other owner for Grantee's acts, taken in good faith, in connection with the administration of this Conservation Easement.
- 7.14. Extinguishment. In the event that all or part of the Property is transferred or conveyed to the State of New York, this Conservation Easement may be extinguished in whole or in part if such transfer or conveyance is conditioned on the extinguishment of this Conservation Easement. If all or part of the Property is taken by eminent domain, or if a subsequent unexpected change in the conditions surrounding the Property make impossible the continued use of the Property or any portion thereof for conservation purposes, the restrictions may only be extinguished in whole or in part, by judicial proceeding in a court of competent jurisdiction. Upon any subsequent sale, exchange or involuntary conversion by the Grantor of such Property, the Grantee shall be entitled to that portion of the proceeds as provided by New York State law, however, Grantee's share of the proceeds shall not be less than as provided immediately below.
- For such purposes only, Grantor agrees that the conveyance of this Conservation Easement to Grantee gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value of the appraised fair market value of the Conservation Easement on the Property at the time of the extinguishment of any part of this Conservation Easement. Grantee agrees to use its share of such proceeds in a manner consistent with the conservation purposes of this Conservation Easement and within Columbia County, New York.
- 7.15. Interpretation. This instrument is intended to create a "qualified real property interest" for "conservation purposes," as defined in Article 49, Title 3, of the New York Environmental Conservation Law and shall be interpreted in a manner consistent with such intention. In the event any provision has been omitted from this instrument necessary to qualify the interest hereby granted as such a "qualified real property interest" for "conservation purposes," such provision shall be deemed incorporated herein to the extent necessary to cause the interest hereby granted to be so qualified.

IN WITNESS WHEREOF, the parties have executed and delivered this instrument on the date or dates set forth below their respective names.

Grantor:

\_\_\_\_\_  
Name of Grantor

Date: \_\_\_\_\_

Grantee:

COLUMBIA LAND CONSERVANCY, INC.

\_\_\_\_\_  
By: Peter R. Paden, Executive Director

Date: \_\_\_\_\_

STATE OF NEW YORK                    )  
  )ss.:  
COUNTY OF                            )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2013, before me, the undersigned, personally appeared \_\_\_\_\_, 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 person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK                    )  
  )ss.:  
COUNTY OF COLUMBIA                )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2013, before me, the undersigned, personally appeared **Peter R. Paden**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual(s) or person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

## EXHIBIT A

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### DESCRIPTION OF PROPERTY

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ALL that certain piece or parcel of land, situate, lying and being in the Town of Canaan, County of Columbia and State of New York, with the improvements thereon, bounded and described as follows:

Beginning at an iron pipe in the westerly line of land now or formerly of J. David Nisson. Said iron pipe is located S 34° 52' 00" W a distance of 36.00 feet from an iron pipe marking the northwesterly corner of said J. David Nisson; thence running the following seven (7) courses and distances along the westerly line of said J. David Nisson:

S 13° 07' 00" W a distance of 91.43 feet, to a point;  
S 47° 50' 20" W a distance of 109.95 feet to a point;  
S 39° 21' 30" W a distance of 178.01 feet to a point;  
S 66° 14' 00" W a distance of 132.00 feet to a point;  
S 48° 59' 00" W a distance of 171.60 feet to a point;  
S 68° 59' 00" W a distance of 290.40 feet to a point; and  
S 66° 29' 00" W a distance of 166.98 feet to an iron pipe;

Thence running the following two (2) courses and distances along the remaining land of Martha Burke-Hennessy and Michael Belknap:

N 69° 37' 29" W a distance of 676.17 feet to an iron pipe; and N 28° 22' 14" E a distance of 1,797.04 feet to an iron pipe in the southerly line of land now or formerly of John Crosby;

Thence running the following six (6) courses and distances along the southerly line of said Crosby:

S 56° 05' 18" E a distance of 136.04 feet to a point;  
S 54° 23' 32" E a distance of 104.63 feet to a point;  
S 55° 40' 32" E a distance of 122.88 feet to a point;  
S 53° 33' 59" E a distance of 114.46 feet to a point;  
S 53° 41' 19" E a distance of 281.13 feet to a point; and  
S 57° 57' 00" E a distance of 59.26 feet to an iron pipe. Said iron pipe also marks the northwesterly corner of land to be conveyed to Daniel B. Kamensky and Amy Kamensky;

Thence running the following two (2) courses and distances along the westerly and southerly lines of said land to be conveyed to Kamensky:

S 30° 40' 47" W a distance of 562.00 feet to an iron pipe; and S 52° 06' 09" E a distance of 365.00 feet to the point of beginning.

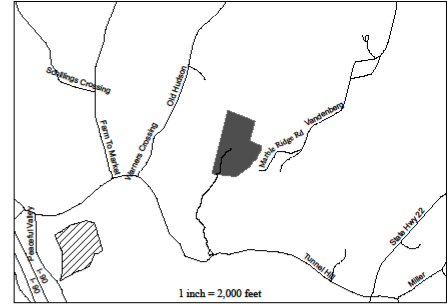
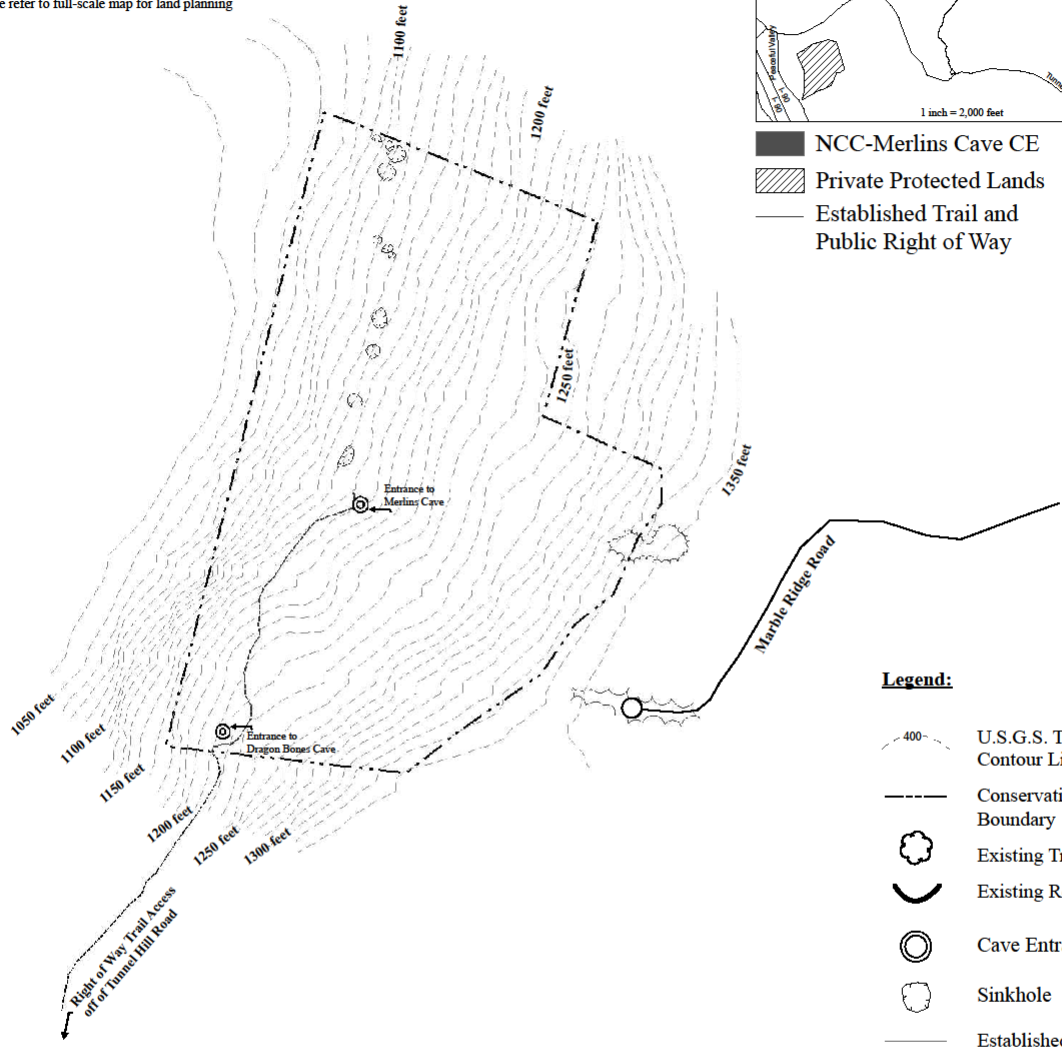
The above described parcel of land containing 35.69± acres is shown as Parcel A, Land to be conveyed to Northeastern Cave Conservancy, Inc. on a plan entitled "Plan of Land prepared for Michael H.P. Belknap, 41 Warner Crossing Road, Town of Canaan, Columbia County, NY, Belknap Cave Parcel", dated May 31, 2011, prepared by Foresight Engineering & Surveying, P.C. and filed in the Columbia County Clerk's office on July 5, 2011 as Map No. 2011-90.

# Exhibit B



**COLUMBIA**  
LAND CONSERVANCY  
PO BOX 299 | 49 MAIN STREET  
CHATHAM, NEW YORK 12037

Reduced Map: Full-scale map available at Columbia Land Conservancy, Inc.  
Please refer to full-scale map for land planning



- NCC-Merlins Cave CE
- Private Protected Lands
- Established Trail and Public Right of Way

**Legend:**

- 400 U.S.G.S. Ten Foot Contour Lines
- Conservation Easement Boundary
- Existing Treelines
- Existing Roads
- Cave Entrance
- Sinkhole
- Established Trail

## NCC-Merlins Cave 2013 Conservation Easement Canaan, New York

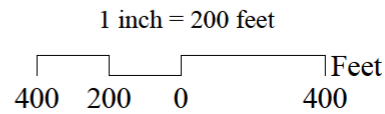
Conservation Easement Acres: +/- 35.69 Acres

Grantors: Northeastern Cave Conservancy, Inc.  
Schoharie, New York

Grantee: Columbia Land Conservancy, Inc.  
Chatham, New York

Sources:

- U.S.G.S. Topographic Map, Canaan Quadrangle
- USDA Digital Orthoimagery Program, 2009
- Survey Map by Foresight Engineering and Surveying, P.C., dated January 21, 2011, titled "Plan of Land Prepared for Michael H.P. Belknap"



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## EXHIBIT C

### Easement Administration Fee

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Calculation of phased payments: As established in Section 7.3, Grantor shall make continuing Easement Administration Fee payments upon any transfer of an interest in the Property, or as described below, until the total amount of Easement Administration Fee payments equals \$60,000. Upon written notification of a pending transfer by Grantor, Grantee will provide Grantor with a statement of the remaining balance due on the Easement Administration Fee.

Exemptions from Easement Administration Fee Notwithstanding anything in this Conservation Easement to the contrary, the Easement Administration Fee shall not be due upon transfer of any interest in the Property by Grantor to:

1. A spouse or life-partner, parent, grandparent, sibling, child, stepchild, or a grandchild (as such terms are defined by the Internal Revenue Code) of Grantor (any one or more of whom are hereinafter referred to as a "Relative");
2. A trust for the exclusive benefit of Grantor, and/or a Relative
3. A family partnership, family limited partnership, limited liability company, or other entity, provided that all interests in any such entity are owned by Grantor and/or a Relative;
4. A third party without consideration; or
5. A lender through the form of the grant of a mortgage, deed of trust or similar security interest, including any release or satisfaction thereof or any transfer in connection with the foreclosure thereof.

Upon request by Grantee, Grantor shall provide documentation sufficient to evidence the relationship(s) set forth above in order to demonstrate that a transfer by Grantor qualifies for an exemption from the Easement Administration Fee established by this Conservation Easement.

An exchange of properties pursuant to Internal Revenue Code §1031, or similar statute, shall be deemed to be for consideration based on the market value of the property received at the time of such transfer. Market value shall be determined by agreement of the Grantor and Grantee, or in the absence of such agreement, by an independent appraisal prepared in compliance with the Uniform Standards of Professional Appraisal Practice by a state licensed or certified appraiser selected by the parties, whose appraisal fee shall be paid by the Grantor.

Payment of the Easement Administration Fee shall be made as follows: Grantor shall pay two-and-one-half percent (2.5%) of the sales price of the Property, to Grantee, who shall apply such payment against the remaining balance due on the Easement Administration Fee, but such payment shall not exceed the balance due. For purposes of calculation of this Easement Administration Fee, the term "sales price" shall be defined as the gross proceeds of the sale without regard to any transaction expenses.

If the payment from a sale of the Property is not sufficient to pay the remaining balance due on the Easement Administration Fee, two-and-one-half percent (2.5%) of the sales price of subsequent sales of the Property shall also be applied against the amount of fee due, until the entire amount of the Easement Administration Fee is paid in full. The Easement Administration Fee, if not paid by Grantor as described herein, shall become a lien on the Property, subordinate only to the priority of this Conservation Easement.

Nothing in this Conservation Easement shall preclude Grantor from paying the Easement Administration Fees from funds other than two-and-one-half percent (2.5%) of the sales price of the Property at any time. Once the Easement Administration Fee is paid in full, the Grantee shall record a statement of satisfaction in the office of the Clerk of Columbia County stating such Easement Administration Fee is paid in full and all future transfers and/or sales of the Property are not subject to said fee.

Easement Administration Fee is due and payable at the following time: The Easement Administration Fee shall be paid to Grantee by Grantor in good funds, out of escrow at the closing of any conveyance of interest in the Property. In addition, at any time; Grantor may also elect to make payments above and beyond the required two-and-one-half percent (2.5%) Easement Administration Fee due at the closing, and if Grantor elects to do so, then such payments will be applied towards the Easement Administration Fee.

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