

WARREN COUNTY
PAMELA J. VOGEL DOCUMENT# 00001256
COUNTY CLERK VOLUME# 4191 PAGE# 18
Lake George, NY 12845



Volm-4191 Pg-18

Instrument Number: 2011- 00001256

As

Easement

Recorded On: February 04, 2011

Parties: JOHNSBURG TOWN OF

To

OPEN SPACE CONSERVANCY INC

Billable Pages: 10

Recorded By: MOUNTAIN ABSTRACT

Num Of Pages: 11

Comment:

**** Examined and Charged as Follows: ****

Easement	90.00	Cover Page	5.00	TP-584	5.00
Recording Charge:	100.00				
	Amount	Consideration Amount	RS#/CS#		
Transfer Tax	0.00	0.00	TT 1215	Basic	0.00
JOHNSBURG				Local	0.00
				Additional	0.00
Tax Charge:	0.00			Special Additional	0.00
				Transfer	0.00

RECORDED
County Clerks Office
Feb 04, 2011 03:37P
Pamela J. Vogel
Warren County Clerk

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: WARREN COUNTY, NY

File Information:

Document Number: 2011- 00001256

Receipt Number: 198587

Recorded Date/Time: February 04, 2011 03:37:08P

Book-Vol/Pg: Bk-RP VI-4191 Pg-18

Cashier / Station: T Ryther / Cash Station 2

Record and Return To:

KATIE STONE

OPEN SPACE INSTITUTE

291 HUDSON AVE SUITE B

ALBANY NY 12210

ESM
10/9/5. 711
951
5/11

CONSERVATION EASEMENT
(Kellogg Parcel)

THIS DEED OF CONSERVATION EASEMENT is made as of January 28th, 2011, by the TOWN OF JOHNSBURG, a municipal corporation under New York law, having its principal place of business at Post Office Box 7, North Creek, New York 12853 ("Grantor"), and OPEN SPACE CONSERVANCY, INC., a New York not-for-profit corporation having an office at 1350 Broadway, Room 201, New York, New York 10018 ("Grantee");

WITNESSETH:

WHEREAS, the Grantor is the owner in fee of the real property consisting of approximately 1.43 acres in the Hamlet of North Creek, Town of Johnsburg, Warren County, New York, more particularly shown on a survey map entitled "~~Map of a Survey Made for Open Space Conservancy Inc.,~~" prepared by Van Dusen & Steve's Land Surveyors, dated May 10, 2004, and filed in the Warren County Clerk's Office as Map Dwg. No. 04111, attached hereto as Exhibit A, and described in Exhibit B also attached hereto and made a part hereof (the "Premises"); and

MJM

WHEREAS, the Premises were conveyed by the Grantee to the Grantor by deed dated on even date herewith; and

WHEREAS, the Premises were originally acquired by Grantee for the protection of the site's historic significance and to provide for public access; and

WHEREAS, the Premises adjoin the historic North Creek depot and contains associated structures, dating to the mid-nineteenth century; and

WHEREAS, the Premises borders and may provide public access to the Hudson River; and

WHEREAS, the provision of public access to the Hudson River and its shoreline is listed as a Regional Priority for Region 5 / Eastern Adirondacks in the 2009 New York State Open Space Conservation Plan; and

WHEREAS, it is the express intent of the Grantor and the Grantee that the Premises be used and managed exclusively for non-motorized public recreation, historic interpretation, and public education; and

WHEREAS, the use of the Premises for public educational and recreational purposes, subject to the terms of this Conservation Easement, is consistent with the Grantee's conservation objectives within the state of New York; and

WHEREAS, 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

MOUNTAIN ABSTRACT CO., INC.
2011-0011T

“Conservation Law”), which corporation is organized for the purpose of conserving real property in New York State and elsewhere; and

WHEREAS, the parties desire to conserve the Premises by entering into a Conservation Easement Agreement pursuant to the provisions of Article 49, Title 3, of the Conservation Law.

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

1. Grant of Easement. Grantor hereby grants to Grantee a perpetual conservation easement (the “Conservation Easement”) over the Premises that shall encumber the Premises to the extent provided herein.

2. Purpose. The purpose of this Conservation Easement is to allow limited development of the Premises for public educational and recreational uses.

3. Implementation. This Conservation Easement shall be implemented by limiting and restricting the development, management and use of the Premises in accordance with the provisions of this Conservation Easement.

4. Restrictions Applicable to the Premises. The following restrictions are applicable to the Premises. Nothing contained herein, however, shall restrict an owner of the Premises from imposing further restrictions upon conveyance or otherwise.

(a) Subdivision. The Premises may not be further divided or subdivided.

(b) Use. No commercial, industrial or institutional use of the Premises shall be permitted, except that the following uses (collectively, the “Permitted Uses”) shall be allowed:

- i. Museum. Use as an interactive and/or passive museum and/or interpretive center that is open and available to the general public;
- ii. Public Education. Public education/Cultural uses, including, but not limited to: farmer’s market/craft fair; artisan space for work/demonstrations; various classroom types; museum with hands-on, interactive exhibits; winter carnival with snowmaking demonstrations, ice sculptures, etc.; fishing, fishing equipment sales (as an accessory use), museum, instruction, rentals, fly-tying demonstrations; bandshell, concert series, outdoor theater; satellite museum for Adirondack Museum or other regional museum; not-for-profit concession sales; historic exhibitions, such as tannery, logging, hunting, mining, skiing, boating, etc., in careful cooperation with existing regional attractions; exhibition space for large items; informational and wayfinding kiosk;
- iii. Public Recreation. Public recreation, including but not limited to: public access to the Hudson River; canoe/kayak/guideboat put-in; outdoor winter gathering place with warming hut, ice skating rink, cross-country ski stop, etc.; rock wall; canoe loop with

Riparious (train); outdoor sports comfort and staging facilities; picnic tables; riverwalk with views; and a launching point for a walking tours;

- iv. Historic Preservation. Historic preservation, including collection storage and study for Historical Society and Depot Association historical documents and artifacts; and
- v. Municipal. Municipal office spaces, so long as such use does not comprise the sole or even primary use of the Premises. Municipal office spaces shall comprise no more than twenty percent (20%) of the aggregate square footage of all structures on the Premises.

Other uses may be permitted upon agreement by Grantee and Grantor.

(c) Existing Structures. The following Structures currently exist on the Premises, and are depicted in Exhibit A:

- (i) An historical barn, having an aggregate footprint of 360 square feet;
- (ii) a wood frame structure, having an aggregate footprint of 1,400 square feet, and
- (iii) a wood frame structure, having an aggregate footprint of 4,552 square feet.

Existing Structures may be maintained, expanded, demolished and rebuilt; provided, however, that any expansion or rebuilding must (i) not increase the aggregate footprint of an individual structure by more than ten percent (10%), (ii) shall not exceed a height of thirty five (35) feet, (iii) shall be located within two hundred (200) feet of the current location of the individual structure, and (iv) shall be subject to the Exterior Appearance requirements which are set forth below.

The existing structures are more fully described in the Baseline Data Report as more fully discussed in Section 5 below.

(d) New Structures. Except as provided in Section 4(c) above, no new structures may be constructed on the Premises.

(e) No Mobile Homes. No mobile home or house trailer shall be allowed on the Premises.

(f) Roads, Utilities, Etc. Roads, parking areas, and trails that are reasonably necessary for access to and reasonable use and enjoyment of the permitted structures on and Permitted Uses of the Premises, and any permanent or temporary structures necessary for roads, parking spaces, wells, or trails, such as bridges, culverts, and railings may be constructed, repaired, reconstructed, and maintained on the Property. The installation of wells, septic systems, electric and other utility distribution lines shall be permitted in connection with the structures permitted on the Premises; provided, however, that all utility or other lines (not including utility boxes) shall be installed underground.

(g) Grading. Any structure or improvement shall be designed to relate to existing slopes and contours. Any grading shall blend into the natural topography of the parcel and be limited to the extent necessary for a driveway, foundation (which shall be of a permanent continuous nature), or other permitted improvement.

(h) Exterior Appearance. All roofing and exterior surfaces (except for glass) shall be non-reflective and earth tone in color, within the medium and dark range of color value.

(i) Signs. No signs shall be permitted except those of professional quality that are associated with the Permitted Uses, those customarily used for posting property boundaries, and such signage as Grantor and Grantee may erect on the premises recognizing Grantor's donation of the premises, such signage to be of professional quality.

(j) Trash. No outdoor storage or disposal of trash or refuse shall be permitted except for temporary storage in enclosed and screened receptacles. Trash or refuse may not be dumped or burned and shall be regularly removed unless being composted. Junk vehicles and/or equipment shall not be placed, kept or stored on the Premises.

(k) Chemicals. No synthetically derived pesticide, herbicide or other chemical treatment for land, vegetation or animals shall be used unless its use is in conformance with label restrictions applicable to the specific product, safe for humans, and will not contaminate any source of drinking water or the Hudson River.

(l) Nuisance. No visual, aural or olfactory public nuisance shall be maintained on the Premises.

(m) Firearms. The discharge of firearms on the Premises is not permitted.

(n) Vehicles. No unregistered motor vehicle shall be placed, kept or stored on the Premises. No off-road motorized recreational vehicle, including a snowmobile, dirt bike or all-terrain vehicle, shall be used, kept or stored on the Premises. Provided, however, that the foregoing shall not preclude the use of vehicles used exclusively for the Permitted Uses.

(o) Tree Cutting. No cutting or removing of trees or other natural landscaping shall be permitted except to: (i) remove those trees or limbs which are fallen, dead, diseased or dangerous; (ii) provide for the construction of structures or improvements allowed under this Conservation Easement; (iii) maintain existing roads, trails, views, and open spaces; or (iv) create a new driveway.

(p) Mining. No quarry, gravel pit, surface or subsurface mining or drilling shall be permitted except for use on the property to maintain driveways or building projects.

(q) Livestock. No livestock shall be kept on the Premises except for temporary, non-profit purposes, including but not limited to seasonal festivals and educational agricultural events. Good conservation practices shall be used in order to minimize soil erosion, run-off and other potentially adverse effects resulting from maintenance of livestock on the Premises

5. Baseline Documentation

In order to aid in identifying and documenting the present condition of the Premises' agricultural, natural, wildlife, scenic, and aesthetic resources as of the date hereof, and to assist Grantor and Grantee with monitoring the uses and activities on the Premises and ensuring compliance with the terms hereof, Grantee has prepared, with Grantor's cooperation, an inventory of the Premises' relevant features and conditions (the "Baseline Documentation"). This Baseline Documentation includes, but need not be limited to, maps, photographs, a description of existing land uses, features, and structures, and an acknowledgment page signed by Grantor and Grantee that verifies that the Baseline Documentation report accurately represents the condition of the Premises at the time the easement was recorded. Grantor and Grantee acknowledge and agree that in the event a controversy arises with respect to the nature and extent of the Grantor's uses of the Premises or its physical condition as of the date hereof, the parties shall not be foreclosed from utilizing any other relevant or material documents, surveys, reports, photographs, or other evidence to assist in the resolution of the controversy.

6. Reserved Rights. Grantor reserves for itself and its successors in interest with respect to the Premises all rights with respect to the Premises, including, without limitation, the right of exclusive use, possession and enjoyment of the Premises and the right to sell, transfer, lease, mortgage or otherwise encumber the Premises, as owner, subject to the restrictions and covenants set forth in this Conservation Easement. Nothing herein shall be construed as a grant to the general public of any right to enter upon any part of the Premises.

7. Enforcement. Grantee may enforce this Conservation Easement in law or equity pursuant to the provisions of Article 49, Title 3, of the Conservation Law against any or all owners of the Premises. Grantee shall have the right to enter the Premises at reasonable times and upon reasonable advance notice to assure compliance with the restrictions imposed by this Conservation Easement. If there is a violation of any of the provisions of this Conservation Easement, Grantee shall notify (by written instrument) the party in violation, who shall promptly cure the violation by (a) ceasing the violation or (b) restoring the Premises to its condition before the violation or (c) both, as the case may be. If the violation continues, Grantee shall have the right, but not the obligation, to pursue legal actions or proceedings at law and equity to cause such violation to be cured, and if a court of competent jurisdiction determines that a violation has occurred hereunder, the owner shall reimburse Grantee, as applicable, for all reasonable expenses incurred, including legal fees whether in or out of court and the cost of legal proceedings brought to cure the violation or to collect such reimbursement. 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.

8. Amendment. This Conservation Easement may be amended only with the written consent of Grantee and the then owner of the Premises. Any such amendment shall be consistent with the basic purpose of this Conservation Easement and shall comply with Article 49, Title 3, of the Conservation Law.

9. Further Acts. Each party shall perform any further acts and execute and deliver any documents, including amendments to this Conservation Easement which may be reasonably

necessary to carry out the provisions of this Conservation Easement or which are necessary to qualify this instrument as a conservation easement under Article 49, Title 3, of the Conservation Law or any regulations promulgated pursuant thereto.

10. Encumbrance by Conservation Easement. Any subsequent conveyance including, without limitation, the transfer, lease or mortgage of the Premises, shall be subject to this Conservation Easement, and any deed or other instrument evidencing or effecting such conveyance shall contain language substantially as follows: "This [conveyance, lease, mortgage, easement, etc.] is subject to a Conservation Easement which runs with the land and which was granted to the Open Space Conservancy, Inc., dated January 28, 2011, and recorded February ___, 2011 in the Office of the Warren County Clerk in Liber ___, Page ___." The failure to include such language in any deed or instrument shall not, however, affect the validity or applicability of this Conservation Easement to such property.

11. Assignment. This Conservation Easement may be assigned by the Grantee, provided, however, that an assignment may be made only to a not-for-profit conservation organization or otherwise as provided in Article 49, Title 3, of the Conservation Law.

12. Taxes and Assessments. Each owner of the Premises shall pay all taxes and assessments lawfully assessed against the Premises owned by such owner, who shall provide to Grantee receipted tax bills or other evidence satisfactory to the Grantee within fifteen (15) days after written request.

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

14. Binding Effect. The provisions of this Conservation Easement shall run with the land and shall be binding on each owner of and party entitled to possession or use of the Premises and the holder of any interest in the Premises for so long as such party is the owner or entitled to possession or use thereof or holds an interest in the Premises and only with respect to the Premises owned by such party or to which such party shall be entitled to possession or use or holds an interest in, but nothing herein shall relieve any such party from any liability arising hereunder during the period that such party was the owner or entitled to possession or use of the Premises or hold an interest in the Premises. As used in this Paragraph 14, the term "owner" shall include the owner of any beneficial or equity interest in all or a part of the Premises.

15. Approvals.

(a) Before undertaking the construction of any structure, fixture, improvement or road, written plans for the work shall be provided to Grantee for its review. The "written plans" shall include:

- (i) detailed plans and specifications (showing design, size, materials, color and finish);
- (ii) site plan showing proposed location of structures;
- (iii) construction schedule; and

(iv) such other documents and information reasonably required by Grantee to evaluate any such improvement or change.

(b) If Grantee determines in its judgment that the proposed work is not in compliance with the terms of this Conservation Easement, Grantee shall provide written objections in reasonable detail and any proposed modifications. Grantee shall approve or disapprove any proposed plans, action or other matter submitted to it for approval under the provisions of this Conservation Easement within 30 days. Grantee's failure to do so, or to request from Grantor additional information necessary for its decision, shall be deemed an approval.

(c) No land shall be cleared or work commenced without Grantee's prior written approval pursuant to this Section. The actual clearing of land and completed structure, fixture, improvement or road shall conform to the approved plans.

16. Certificate of Compliance. At the written request of an owner of the Premises, Grantee shall inspect the Premises and issue a certificate in recordable form certifying that the Premises complies, as of the date of the certificate, with the terms of this Conservation Easement, or stating in what respect the Premises or applicable portions are not in compliance. Any owner requiring such certificate shall pay Grantee its reasonable charges in connection with the inspection and issuance of the certificate.

17. Notices. Any notice, demand, request, approval or other communication (collectively, a "Notice") which any party is required or may desire to give to or make upon the other party pursuant to this Conservation Easement shall be effective and valid only if in writing, signed by the party giving such Notice, and delivered personally to the other party or sent by registered or certified mail of the United States Postal Service, return receipt requested, postage prepaid, and addressed as follows:

(a) if to an "owner" (as defined in Paragraph 14) of the Premises, to the tax billing address of the Premises shown on the tax rolls of the Town of Johnsbury and Warren County, and

(b) if to Grantor or Grantee, at their respective addresses set forth on page 1 of this Conservation Easement or such other address as any party may specify by written Notice.

18. Liability; Indemnification. Grantee has no affirmative obligations relating to the maintenance of the Premises. Grantee shall not be responsible for injuries or damage to persons or property in connection with Grantee's administration or enforcement of this Conservation Easement or otherwise with respect to the condition of the Premises, provided that the foregoing shall not absolve Grantee of any liability it might otherwise have independently of this Agreement for (i) wrongfully and directly, without the participation or consent of the owner, causing any dangerous condition to come into existence on the Premises or (ii) arising out of Grantee's negligence or willful misconduct. Except to the extent of claims arising with respect to items (i) or (ii) in the previous sentence, Grantor shall indemnify and hold Grantee harmless from all costs, claims, liability, or expenses, including reasonable attorneys' fees arising out of

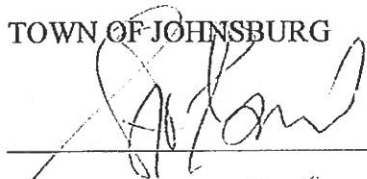
any personal injury, accident, negligence or damage relating to the Premises or any claims thereof.

19. Counterparts. This Conservation Easement may be executed in counterparts all of which when taken together will constitute one and the same document.

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

GRANTOR:

TOWN OF JOHNSBURG

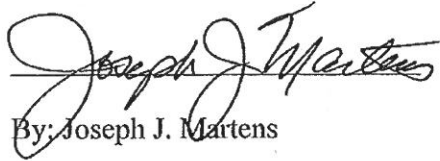


By: Sterling T. Goodspeed

Title: Supervisor

GRANTEE:

OPEN SPACE CONSERVANCY, INC.



By: Joseph J. Martens

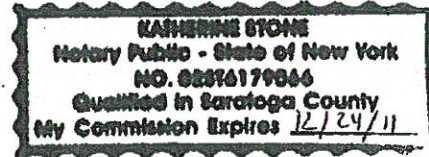
Title: President

Exhibits: ~~Exhibit A (Map of Premises)~~ ^{nrjw}
Exhibit B (description of Premises)

STATE OF NEW YORK)
)
:SS.:
COUNTY OF Albany)

On the 6 day of January, 2011, before me, the undersigned, personally appeared Joseph J. Markens, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Katherine Stone
Notary Public



STATE OF NEW YORK)
)
:SS.:
COUNTY OF Warren)

Acting in Albany County

On the 28th day of January, 2011, before me, the undersigned, personally appeared Sterling Goodspeed, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Tammy M. Monroe
Notary Public

TAMMY M. MONROE
Notary Public, State of New York
Warren County #01MO6112577
Commission Expires July 06, 2012

Record and return to:

Katie Stone, Esq.
Open Space Institute
291 Hudson Ave, Suite B
Albany, NY 12210

EXHIBIT B

Description of Premises

All that certain piece or parcel of land situate, lying and being in the Town of Johnsburg, County of Warren and the State of New York, depicted on a survey map prepared by Van Dusen and Steves Land Surveyors, dated May 4, 2004, Dwg. No. 04111, more particularly bounded and described as follows:

BEGINNING at point in the westerly shore of the Hudson River at the northeast corner of lands of the County of Warren; running thence along said lands, South 54 degrees, 30 minutes and 42 seconds West, a distance of 20.00 feet more or less to an iron rod set in the ground for a corner; thence continuing along said lands of Warren County, South 54 degrees, 30 minutes and 42 seconds West, a distance of 156.27 feet to a point in the easterly bounds of the former Delaware and Hudson Railroad right of way; running thence along the same, North 33 degrees, 34 minutes and 18 seconds West, a distance of 375.78 feet to an iron rod set in the ground for a corner to a point in the southerly bank of an inlet; thence running easterly along said inlet, 145.00 feet more or less to the shore of the Hudson River; thence running southerly along the shore as it winds and turns a distance of 370.00 feet more or less to the point and place of beginning, containing 1.43 acres of land to be the same more or less.

Bearings given in the above description refer to magnetic North.

SUBJECT to easements of record.

BEING the same premises conveyed to the Donor herein by bargain and sale deed with covenant against grantor's acts dated May 25, 2004, and recorded in the Warren County Clerk's office on June 1, 2004 in Liber 1386 of Deeds at Page 11.

