

## DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2023 by VIRTUS NOSTRA, LLC, a New York Limited Liability Company, with a mailing address of P.O. Box 262, Hillsdale, NY 12529 (hereinafter “Grantor”), and the Town of Copake a NY Municipal Corporation with an address of 230 Mountain View Road, Copake NY 12516 (hereinafter “Grantee”).

### WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Columbia County, New York, more particularly described in Exhibits A & B. The portion of the property described in Exhibit A attached hereto shall be subject to the terms of this Deed of Conservation Easement (hereinafter the "Protected Property") the remaining lands of the Grantor is described in Exhibit B; and

WHEREAS, the Protected Property possesses wooded or forested lands, open spaces, wildlife habitats, viewsheds and recreational values (collectively “Conservation Values”) the protection of which is a significant public benefit; and

WHEREAS, Grantor intends that the Conservation Values of the Protected Property be preserved and maintained by permitting only land uses on the Protected Property that do not significantly impair or interfere with the Conservation Values of the Protected Property; and

WHEREAS, Grantor further intends, as owner of the Protected Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Protected Property in perpetuity; and

WHEREAS, Article 14 of the New York State Constitution states that “the policy of this state shall be to conserve and protect its natural resources and scenic beauty” as well as “the protection of wetlands and the development and regulation of water resources” in New York State; and

WHEREAS, The legislature of the State of New York has found and declared in Environmental Conservation Law 49-0301 that “in order to implement the state policy of conserving, preserving, and protecting its environmental assets, and natural and man-made resources. . . the preservation, development and improvement of forest lands and wetlands . . . is fundamental to the maintenance, enhancement and improvement of recreational opportunities, tourism, community attractiveness, balanced economic growth and the quality of life in all areas of the state,” and in furtherance thereof has enacted Article 49, Title 3, of the New York Environmental Conservation Law, “Conservation Easements,” to provide for and encourage limitation and restrictions of development, and use of, real property through conservation easements; and

WHEREAS, the Grantor intends that the Conservation Values of the Protected Property be conserved and maintained in perpetuity by the continuation of land use patterns consistent with said Conservation Values; and



WHEREAS, the Grantor further intends, as owner of the Protected Property, to convey to Grantee this Easement for the purpose of conserving and protecting the Conservation Values of the Protected Property in perpetuity; and

WHEREAS, Grantee is a municipal corporation, which is qualified under Section Article 49, Title 3 of the New York Environmental Conservation Law to accept conservation easements, whose primary purpose is to protect and conserve forestry, wildlife habitat and open space; and

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the law of the State of New York, Grantor hereby voluntarily grants and conveys to Grantee a Conservation Easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth in the Deed of Conservation Easement. (the "Easement").

### **1. Recitals.**

The recitals set forth above are hereby incorporated into and made a part of this Easement.

### **2. Grant of Conservation Easement.**

Grantor does hereby grant, release and convey unto Grantee, its successors and assigns, a Conservation Easement in perpetuity over the Protected Property of the nature and character and to the extent described in this Easement. This Easement is granted pursuant to and is intended to constitute a "conservation easement" under Article 49, Title 3 of the New York Environmental Conservation Law.

### **3. Purpose.**

It is the purpose of this Easement to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property. Specifically, the purpose of this Easement, in priority order, is to: A) protect the natural habitat, B) protect water quality and surrounding wetlands, C) protect nesting birds, D) protect the wild forest and its ecosystems in perpetuity, E) protect plant habitat, F) to protect the vernal streams and ponds, H) to foster landscape-scale conservation and reduce land fragmentation, I) conserve and protect the Protected Property's scenic and open space resources and other Conservation Values.

### **4. Definitions.**

When used in this Easement, the following terms shall be defined as follows:

**Improvement:** Anything that is constructed, installed or placed upon or in the ground or on a Structure, that is not a Structure (as defined herein), and includes but is not limited to, driveways, parking areas, ponds, wells, drainage ways, utility lines, windmills, dams, solar panels, fences, stone walls, paths, carriage paths, walkways, trails, and signs.

**Passive Recreational Activities:** Passive recreational activities are non-intensive outdoor recreational activities that are dispersed, noncommercial, nonexclusive, and non-motorized recreational activities that generally do not rely on buildings or spectator facilities and have minimal impact on renewable natural resources. These are passive recreational activities that



neither require nor produce significant surface alteration of the Protected Property, and that are consistent with the purpose of this Easement. Such activities include, but are not limited to, walking, nature viewing, cross-country skiing, picnicking.

**Structure:** A building or object constructed, installed or placed upon the ground, whether temporarily or permanently. Structures shall include, but are not limited to, sheds, greenhouses, barns, animal “run-in” shelters, sap-boiling houses, sap storage structures, farm markets/stands, silos, grain drying facilities, observation towers, deer stands, temporary workers’ housing, care takers’ cottage, and moveable buildings.

## **5. Rights of Grantee.**

To accomplish the purpose of the Easement, the following rights are conveyed to Grantee by this Easement:

**5.1.** To preserve and protect the Conservation Values of the Protected Property in perpetuity; and

**5.2.** To enter upon the Protected Property at reasonable times in order to monitor the Grantor’s compliance with this Easement and otherwise enforce its terms; provided that such entry shall be upon prior reasonable notice to the Grantor, and Grantee shall not unreasonably interfere with the Grantor’s use and quiet enjoyment of the Property; and

**5.3.** To enter upon the Protected Property at any time, without prior notice, if Grantee has reasonable cause to believe that the provisions of the Easement have been or are being violated and that such violation may reasonably be expected to cause substantial harm to the Conservation Values; and

**5.4.** To prevent any activity on or use of the Protected Property that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use; and

**5.5.** All carbon, water and methane credits and the right to sell or trade them on the open market derived from the Protected Property belong to the Grantee provided these acts do not diminish or interfere with the Conservation Values of the Easement.

## **6. Grantor’s Reserved Rights and Responsibilities.**

**6.1.** The Grantor reserves to itself, and to Grantor’s successors in interest to the Protected Property, all rights accruing from Grantor’s ownership of the Protected Property except as provided by the restrictions and covenants set forth in this Easement. The Grantor’s reserved rights include, without limitation, the right to engage in or permit or invite others to engage in all uses of the Protected Property that are not expressly prohibited in this Easement and are not inconsistent with the purpose of this Easement, the right of exclusive use, possession and enjoyment of the Protected Property, and the right to sell, transfer, lease, mortgage or otherwise encumber the Protected Property, as well as the right to exclude any member of the public from trespassing on the Protected Property. Nothing in this Easement relieves the Grantor of any obligation with respect to the Protected Property or restriction on the use of the Protected Property imposed by law.



**6.2.** Grantor retains the right to use the Protected Property for otherwise lawful passive recreational activities, including, but not limited to, hiking, walking, picnicking, berry picking, making maple syrup, snowshoeing, birding, sledding, and cross-country skiing. Under no circumstances shall athletic fields, golf courses, driving ranges, racing tracks or stunt courses for vehicles, or other recreational structures or improvements that impair or interfere with the Purposes of this Easement, significantly disturb the soil profile, or adversely affect the watershed and forests be allowed on the Protected Property.

**6.3.** Grantor reserves the right to harvest fire wood for personal use consistent with paragraph 7.18.

**7. Prohibited Uses.**

Any activity on or use of the Protected Property which interferes with or impairs or is inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

**7.1.** The dumping, land filling, burial, application, injection, burning, or other disposal or the accumulation of wastes, refuse or debris on the Protected Property is prohibited. In no event shall hazardous or toxic waste be stored or disposed on the Protected Property, no petroleum products shall be discharged on the Protected Property, and all use of and disposal of petroleum products, pesticides, herbicides, fungicides, and insecticides shall be carried out in accordance with all applicable laws and regulations.

**7.2.** Any alteration of the surface of the land, including the excavation or removal of soil, sand, gravel, rock, peat or sod, or any ditching, draining, diking, filling, excavating or dredging, is prohibited.

**7.3.** Mining, defined as the exploration for, or development of and extraction of, minerals, oil, gas, sand, gravel, rocks or any other materials by any surface or subsurface mining method, drilling or any other method is prohibited. No sale of surface or subsurface minerals or mineral rights, including gravel, sand, rock or topsoil from the Protected Property, is permitted. There shall be no exploration for or extraction of oil, gas, hydrocarbons, minerals, solids, sand, gravel, rock or other materials on or below the surface of the Protected property.

**7.4.** There shall be no placement of high voltage transmission lines on the Protected Property.

**7.5.** There shall be no action which would result in pollution of any creek, wetlands, vernal streams and pools, ground, runoff, and surface water. Any actions which are otherwise sanctioned shall not interfere with natural hydrologic processes including, but not limited to, the recharge of groundwater and the quantity and quality of storm water runoff.

**7.6.** No wires, lines, pipes, cables, or other facilities providing electrical service, gas, water, sewer, communications towers including cellular towers and ancillary units, or other utility services, such as windmills, solar panel arrays are permitted to be installed. Additionally, no septic or underground sanitary systems serving any structure may be installed.



**7.7.** Trails on the Protected Property shall be designed, used, and maintained only in compatibility with the purposes of this conservation easement. Trails shall be constructed and located in a manner to minimize soil erosion and limit the impact on the landscape and natural resources.

**7.8.** No snowmobiles, all-terrain vehicles, motorcycles or motorized vehicles, or devices that damage the terrain, shall be brought onto the Protected Property except in cases of emergency.

**7.11.** Mountain biking, by the general public, is not allowed anywhere on the Protected Property.

**7.12.** Any use of or activity on the Protected Property of a commercial or industrial nature is prohibited.

**7.13.** No pesticide, rodenticide, herbicide, chemical or biotechnological treatment for land, vegetation, insects, birds, amphibians or land animals shall be used except in emergencies. Emergencies shall mean, but not be limited to, blight, or immediate danger to human or animal health, welfare and safety, or degradation of natural resources, or to control invasive species. In the event of an emergency, natural treatment efforts shall first be exhausted before employing any of the treatments enumerated in the first sentence, these to be carried out in strict accordance with government regulations, and so as not to contaminate any watercourse or waterway, or any adjacent lands.

**7.14.** No blacktopping, concrete or hard topped impervious surfaces are allowed on the Protected Property.

**7.15.** There shall be no planting of or introduction of non-native or exotic species of trees or vegetation on the Protected Property.

**7.16.** The Protected Property shall not be used for commercial agricultural purposes.

**7.17.** Any other use of, or activity on, the Protected Property which is or may become inconsistent with the purposes of this Conservation Easement, the preservation of the Protected Property substantially in its natural condition, or the protection of its environmental systems is prohibited.

**7.18.** Forest Management. The Grantors intend that the Property be managed as Forest Land. Commercial and non-Commercial timber harvest on the Property is prohibited. "Forest Land" means land protected in its natural condition; the ecological integrity and natural character of the land are conserved and protected in perpetuity. Land managed as Forest Land benefits the natural communities thereon as well as humans who may enjoy the scenic beauty through management strategies that impose minimal impact upon the Property. Removal of Vegetation is limited to: (1) The construction and maintenance of Trails. (2) Actions taken to combat a public safety hazard threatening the Property, adjacent and or surrounding lands, such as an active fire. (3) The limited personal harvest of fire wood for use on the property, which harvest shall not create any new clearings larger than one-eighth (1/8) of one acre (approximately 50' by 50'). (4) In addition to any other restriction upon the removal of vegetation, no live tree greater than 3 inches in



diameter when measured three feet above the surface of the ground shall be cut down or removed, except in the case of an active emergency.

#### **8. Boundary Markings.**

The boundaries of the Protected Property shall be marked with capped iron rods at intervals determined by a professional surveyor. The maintenance of the boundary shall be the initial and ongoing responsibility of the property owners. Prominent signage or other forms of marking the boundaries may be made at the discretion of the Property owners. Such markings may consist of posting signs, paint blazes, and/or other durable boundary markers. Grantee may also mark the boundaries if it determines that it is necessary for its enforcement of the provisions herein.

#### **9. Grantee's Remedies.**

If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the terms or purpose of this Easement, to restore the portion of the Protected Property so injured, including re-forestation. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, it is agreed that Grantor and Grantee shall first seek resolution of the disagreement by negotiation. If negotiation is unsuccessful, it is agreed by Grantor and Grantee to then seek resolution of the disagreement by mediation, and as a last resort if both of those measures fail, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation *ex parte* if necessary, by temporary restraining order, and to obtain a temporary or permanent injunction, to recover any damages to which Grantee may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including damages for the loss of Conservation Values, and to require the restoration, including re-forestation, of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Grantee in its sole discretion, may apply any damages recovered, to the cost of undertaking any corrective action on the Protected Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this Section without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Easement. The Grantor agrees that Grantee's remedies at law for injunctive relief described in this Section, are both prohibitive and mandatory, and are in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel or waiver. The Grantee's enforcement rights are in addition to, and shall not limit,



enforcement rights available under the provisions of law or equity, or under any applicable permit or certification.

**9.1 Negotiation.** In the event of any dispute, claim, question, or disagreement arising from or relating to this agreement or the breach thereof, or in the event that the parties disagree concerning the consistency of any proposed use or activity with the Purpose of this Easement, the parties shall agree not to proceed with the proposed use of activity and shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If the dispute cannot be settled through negotiation in thirty (30) days or other time frame agreed upon in writing, the parties agree to try in good faith to settle the dispute by mediation, or either party may refer the dispute to mediation by a request made in writing by certified mail to the other.

**10. Costs of Enforcement.**

Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including costs of suit and attorneys' fees, and any costs of restoration necessitated by the Grantor's violation of the terms of this Easement, shall be borne by Grantor, and Grantee may have judgment for same from a court of competent jurisdiction.

In any case, when a court finds that a violation against the terms of this easement has occurred, Grantor shall reimburse Grantee for all its' expenses incurred in stopping and correcting the violation, including but not limited to, reasonable attorney's fees.

**11. Grantee's Discretion.**

Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee in exercising its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

**12. Acts Beyond the Grantor's Control.**

Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Protected Property resulting from causes beyond the Grantor's control, including fire, war, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Protected Property resulting from such causes.

**13. Subdivision.**

The Protected Property may not be further subdivided beyond the subdivision approved on May 4, 2023 by the Planning Board of the Town of Copake. Mortgages, or other non-possessory interests in land, do not constitute subdivisions for the purposes of this section, provided such interests encompass the entire Protected Property.



#### **14. Hold Harmless.**

Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, regardless of cause, unless due solely to the negligence or intentional action of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") and Article 27, Title 13 of the New York State Environmental Conservation Law, The Inactive Hazardous Waste Disposal Site Remediation Program, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Protected Property; (3) the presence or release in, on, from, or about the Protected Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and (4) the obligations, covenants, representations, and warranties of paragraph 18.

#### **15. Public Access.**

No right of access by the general public to any portion of the Protected Property is conveyed by this Easement. Public access may be granted and authorized only by the Grantor.

**16. Costs, Liabilities, Legal Requirements, Taxes, and Environmental Compliance.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. Grantee shall have no obligation for the upkeep or maintenance of the Protected Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantee's exercise of, or failure to exercise, any right conferred by this Easement shall not be deemed to be management or control of the activities on the Protected Property. Other than as specified in this Easement, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any obligations of Grantor as owner of the Protected Property.

##### **16.1. Taxes.**

Grantor shall be solely responsible for payment and shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of this Easement, and shall furnish Grantee with satisfactory



evidence of payment upon request. If Grantee ever pays any taxes or assessments on its or Grantor's interest in the Protected Property, Grantor will reimburse Grantee for the same.

**17. Subsequent Transfers of an Interest in the Protected Property.**

This Easement shall be perpetual and run with the land and shall be binding upon all future owners of any interest in the Protected Property. Any subsequent conveyance, including without limitation, a transfer or sale, exchange, devise or gift, lease or mortgage of the Protected Property, shall be subject to this Easement, and any deed or other instrument evidencing or effecting such conveyance shall contain language substantially as follows: "This (conveyance, deed, mortgage, easement) is subject to a Conservation Easement which runs with the land and which was granted to the Town of Copake, New York, by instrument dated

\_\_\_\_\_ and recorded in the Office of the Columbia County Clerk at Book\_\_\_\_\_, Page\_\_\_\_\_,” Grantor further agrees to give written notice to Grantee of the transfer of any interest in the Protected Property at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

**17.1. Lien for Sums Due Grantee.**

If any sum is due Grantee pursuant to the provisions of this Easement, then Grantee shall have, and is hereby given as security for such sum due it, a valid and enforceable lien upon the Protected Property, and Grantee shall have the right to foreclose its lien in the manner provided by law, it being understood and agreed that Grantee's lien shall be superior to any other lien or encumbrance on the Protected Property created or arising after the date of this Easement.

**18. Representations and Warranties.**

Grantor represents and warrants that, after reasonable investigation and to the best of their knowledge:

(a) No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Protected Property; and

(b) There are not now any underground storage tanks located on the Protected Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Protected Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements; and

(c) Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use; and

(d) There is no pending or threatened litigation in any way affecting, involving, or relating to the Protected Property; and

(e) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any



violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Protected Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders; and

(f) Grantor warrants that Grantor have good and sufficient title to the Protected Property, free from all encumbrances and hereby promises to defend and indemnify Grantee against all claims that may be made against it.

## **19. Remediation.**

If, at any time, there occurs, or has occurred, a release in, on, or about the Protected Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

## **20. Control.**

Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and Article 27, Title 13 of the New York State Environmental Conservation Law, The Inactive Hazardous Waste Disposal Site Remediation Program.

## **21. Extinguishment and Condemnation.**

**21.1. Extinguishment.** If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with Paragraph 21.2.

### **21.2. Valuation.**

This Easement constitutes a real property interest immediately vested in Grantee and, for the purposes of "Extinguishment", Grantor stipulates the fair market value of this Easement shall be determined by multiplying (a) the fair market value of the Protected Property (without deduction for the value of this Easement) at the time in question, minus any increase in value attributable to Structures and Improvements constructed on the Protected Property after the date hereof, times (b) the ratio of the value of this Easement on the date hereof to the value of the Protected Property (without deduction for respective values of this Easement) as of the date of this Easement. The values as of the date of this Easement shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this Easement pursuant to



Section 170(h) of the Internal Revenue Code, as amended. For the purposes of this Section, the ratio of the value of this Easement to the value of the Protected Property unencumbered by the Easement shall be deemed to remain constant from and after the date of this Easement.

### **21.3. Condemnation.**

If the Easement is taken, in whole or in part by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law. The proceeds of any award judgment or settlement payable by the condemning authority shall be and remain the sole and exclusive Protected Property of Grantee and Grantor shall not be entitled to any portion of such award, judgment or settlement received by Grantee from such condemning authority. Grantor may, however, pursue Grantor's own claim against the condemning authority for any damage or award permitted under applicable law. In the event of a condemnation, it is recognized that both the Grantor and the Grantee have interests in the Protected Property.

### **21.4. Application of Proceeds.**

Grantee shall use any proceeds received under the circumstances described in this Section 21 in a manner consistent with its conservation purposes, which are exemplified by this grant.

## **22. Amendment.**

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including Chapter 49 of the Environmental Conservation Law and any amendment shall be consistent with the Purpose of this Easement and shall not affect its perpetual duration.

This Easement may be amended only upon the written consent of Grantee and the then current record owner of the Protected Property. Grantee, on a case-by-case basis, may agree to amend individual provisions of the Easement, provided, however, that any amendment must comply with the Grantee's then current amendment policy as in effect from time to time. No amendment shall be approved unless Grantor have demonstrated, to Grantee's satisfaction that the proposed amendment is consistent with the Purpose of this Easement and will not substantially diminish or impair the Conservation Values of the Protected Property and shall not affect the perpetual duration of this Easement. Any amendment of this Easement shall be at the discretion of the Grantee (which may establish such requirements for the submission of plans and other documentation as it deems necessary to make the determination required or permitted of it hereunder) and shall comply with Article 49, Title 3, of the Environmental Conservation Law, Any such amendment that does not comply with said Article 49 shall be void and of no force or effect.

Grantor agrees to reimburse Grantee for all reasonable costs, fees and other expenses, including staff time, surveys, title costs, and reasonable attorneys' fees, incurred by Grantee in connection with the review of a request by Grantor to amend this Easement. Any amendment shall be recorded in the office of the County Clerk, Columbia County, New York, and with the New York State Department of Environmental Conservation or its successor, at Grantor's expense.

## **23. Assignment.**



This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Article 49, Title 3, of the New York Environmental Conservation Law ("Qualified Organization"), (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this Easement is intended to advance, continue to be carried out.

**24. Perpetual Nature of Easement.**

This Easement shall be of perpetual duration, and no merger of title, estate or interest shall be deemed affected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Protected Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Protected Property now or hereafter held by Grantee. Furthermore, the fact that any use of the Protected Property that is expressly prohibited by the terms of this Easement may become greatly more economically valuable than uses permitted by the terms of the Easement, or that neighboring properties may, in the future, be put entirely to uses that are not permitted by this Easement, has been considered by Grantor in granting this Easement and by Grantee in accepting it. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement. In addition, the inability of Grantor, Grantor's successors and assigns, to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

**25. Notices.**

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give shall be in writing and either served personally or sent by certified mail, postage prepaid, addressed as follows:

To Grantor:\_\_\_\_\_

To Grantee:\_\_\_\_\_

Or to such address as either party from time to time shall designate by written notice to the other in accordance herewith. Any party can change the address to which notices are to be sent by giving notice pursuant to this section. Notice to any subsequent owner of the Protected Property after the initial Grantor may be sent to the Protected Property's address unless such subsequent owner gives written notice to Grantee of a different address to be used for such notice. Any such notice shall be deemed given when received, or three (3) days after mailing by certified mail, or the next business day after being sent when sent by overnight mail or by an overnight courier service.

**26. Recordation.**

Grantee shall record this instrument in a timely fashion in the official records of Columbia County, New York, and with the State of New York, and may re-record it at any time as may be required to preserve its rights in this Easement. A copy shall be sent to Grantor.



## **27. General Provisions.**

### **27.1. Controlling Law.**

The interpretation and performance of this Easement shall be governed by the laws of the State of New York unless federal law supersedes it.

### **27.2. Liberal Construction.**

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

### **27.3. Severability.**

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

### **27.4. Entire Agreement.**

This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Paragraph 22.

### **27.5. No Forfeiture.**

Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

### **27.6. Successors.**

The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Protected Property. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and their personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.

### **27.7. Termination of Rights and Obligations.**

A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

### **27.8. Captions.**

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



TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF, Grantor and Grantee have set their hands on the day and year first above written.

**For Grantor VIRTUS NOSTRA, LLC:**

\_\_\_\_\_

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2023 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and, being duly sworn by me, did depose and say that he resides at \_\_\_\_\_, that he is [title] \_\_\_\_\_ of Virtus Nostra, LLC, the Limited Liability Company described in and which executed the above instrument, and that he had the authority to sign his name thereto, and he did duly acknowledge to me that he executed the same in his capacity as an act and deed of said Virtus Nostra, LLC, and that by his signature on the instrument, Virtus Nostra, LLC executed the instrument.

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

**For Grantee TOWN OF COPENACK, NEW YORK:**

\_\_\_\_\_

Seal of the Town of Copake, New York

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2023 before me, the undersigned, personally appeared Jeanne E. Mettler, 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, being duly sworn by me, did depose and say that she resides at \_\_\_\_\_, that she is Town Supervisor of the Town of Copake, New York, the municipal corporation described in and which executed the above instrument, and that the seal of said Town of Copake is affixed to said instrument and that it was so affixed by order of the Town Board of said Town of Copake, and that she signed her name thereto by like order, and she did duly acknowledge to me that she executed the same in her capacity as an act and deed of said Town of Copake, and that by her signature on the instrument, the Town of Copake executed the instrument.

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