

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into as of July 17, 2014 between SILO RIDGE VENTURES PROPERTY A, a New York Limited Liability Company, with an address at 5021 Route 44, Amenia, New York, 12522, (hereinafter “Silo Ridge”), the TOWN OF AMENIA PLANNING BOARD (hereinafter the “Planning Board”), an instrumentality of the Town of Amenia, and DUTCHESS LAND CONSERVANCY, INC., a not for profit corporation organized under New York law having its principal place of business at 4289 Route 82, Millbrook, New York 12545 (hereinafter “DLC”).

Recitals

WHEREAS, Silo Ridge wishes to redevelop the former Silo Ridge Golf Course site (the “Site”) in the Town of Amenia’s Resort Development Overlay District (“RDO District”) as a golf course community with residential and other uses, with preserved open space (the “Project”), and has applied to the Planning Board for approval of the Project (known as the “Silo Ridge Resort Community”) from the Planning Board; and

WHEREAS, under the RDO District regulations of the Town of Amenia Zoning Law (the “Zoning Law”), 80% of the Site is required to be permanently protected as open space by a conservation easement granted to, and accepted by, a qualified conservation organization as part of the approval of the Project, and the lands proposed to be subject to a conservation easement have been identified and mapped in the course of the development review process; and

WHEREAS, according to the Zoning Law, the conservation easement must be recorded prior to or simultaneously with the filing of the final subdivision plat of the Project in the County Clerk's office; and

WHEREAS, DLC is a qualified not-for-profit conservation organization as defined in the Zoning Law and has expressed an interest in being the grantee of such conservation easement under the terms of this MOU; and

WHEREAS, it is in the best interest of all of the parties to reach agreement as to the terms and conditions of the conservation easement and an orderly procedure for its granting and recording according to the customary process by which conservation easements are granted and recorded in New York State; and

WHEREAS, while DLC was not involved in the design of the development portion of the Project and takes no position as to the merits of the proposed development, it has determined that the property to be placed under conservation easement meets its Conservation Easement Acceptance Criteria and therefore wishes to serve in the capacity of holder of the conservation easement on the land in fulfillment of its charitable purposes as a not-for-profit conservation organization; and

WHEREAS, DLC has determined that it will further agree to accept a conservation easement provided that it meets all of DLC's Conservation Easement Acceptance Criteria; and

WHEREAS, under the Town Code, the Planning Board must approve any conservation easement to be granted to DLC as part of the Project and the Planning Board will consider the approval of such an easement, provided that the conservation easement meets the criteria for conservation easements set forth in Sections 121-18C(4) and 121-20K of the Zoning Law, any other applicable laws and is consistent with the Project applications submitted by Silo Ridge to the Planning Board for approval.

NOW THEREFORE it is agreed as follows:

1. Silo Ridge will grant, and DLC will accept, a conservation easement to be drafted by DLC and approved by Silo Ridge and the Planning Board, as a result of a negotiation and approval process described in Exhibit B, and subject to the conditions of DLC holding such a conservation easement as described in Exhibit C attached hereto and made a part hereof, premised upon Silo Ridge satisfying the requirements of Sections 121-18C(4) and 121-20K of the Zoning Law, DLC's Conservation Easement Acceptance Criteria and any applicable laws.
2. Silo Ridge will compensate DLC for the reasonable costs of drafting the conservation easement, to cover DLC's staff time, legal review costs, title examination, Baseline Documentation Report preparation, and any other costs of materials or services reasonably necessary and customarily required for the drafting of such conservation easements, as itemized in Exhibit A. To help facilitate the process, Silo Ridge will furnish all necessary surveys, aerial photographs, and other documentation in its possession that DLC needs in order to properly draft the conservation easement.
3. As part of this MOU, Silo Ridge will pay to DLC the amount listed in Exhibit A as Phase I expenses, upon signing of this MOU, which DLC will apply toward the expenses listed in Paragraph 2 above, and for which DLC will provide an accounting to Silo Ridge. In the event that this amount proves to be insufficient, DLC will request additional funds, as reasonably required and agreed to by Silo Ridge. If Silo Ridge does not agree to pay reasonable additional funds, the conservation easement drafting and approval process

shall be suspended until such time as the parties reach agreement on the payment of additional costs.

4. In the event that Silo Ridge withdraws the application to the Planning Board or the Planning Board denies approval of the Project for any reason, all unexpended funds shall be returned to Silo Ridge within 30 days of submitting notice of such withdrawal or denial to DLC.
5. In the event that DLC does not expend all of the Phase I funds and the Project proceeds to final approval, DLC shall apply these unexpended Phase I funds toward Phase II expenses as described in Paragraph 6 below.
6. If Silo Ridge receives final approval of the Project subject to the condition that a final conservation easement must be recorded, Silo Ridge shall pay to DLC (i) an additional amount listed in Exhibit A as Phase II expenses to cover the costs of final revisions to the conservation easement, closing costs, including actual title insurance charges and recording fees incurred by DLC, and costs of preparation of Baseline Documentation, and (ii) a Stewardship Endowment Fee as itemized in Exhibit A and further described in Exhibit B. DLC shall account to Silo Ridge for all funds paid to third parties.
7. If the amounts paid to DLC under paragraphs 5 and 6 are insufficient to cover costs, Silo Ridge shall make such additional payments as may be necessary, provided such additional payments are reasonable in conjunction with the expense items identified in this MOU. If the Phase I and Phase II amounts paid to DLC exceed the actual costs as shown in DLC's accounting, DLC shall promptly refund the excess payments to Silo Ridge.

8. Silo Ridge agrees that it will not represent to the Town, Dutchess County, the media, the public, its prospective customers, or any other person or entity, that DLC has endorsed or supports the development component of the Project or is in any type of partnership with DLC. Any references to DLC in documents to be distributed publicly shall be submitted to and approved by DLC in advance of their public release in order to ensure compliance with this condition. However, Silo Ridge may refer to DLC as the holder or prospective holder of the conservation easement on the open space land in its description of the Project and its presentation materials to the public, prospective customers, and the Town. In the event of a breach of this covenant, DLC may require Silo Ridge, at its sole expense, to publish a retraction approved by DLC in a manner that will adequately inform any person who may have been misled by such statements.
9. The parties to this MOU will negotiate in good faith the terms of a conservation easement that does not infringe upon Silo Ridge's rights to develop the portion of the land that is not subject to the conservation easement, while preserving open space of conservation value under the terms of the conservation easement and consistent with the provisions of this MOU, including Exhibits B and C hereto.
10. The Planning Board may decide: (1) not to approve the Project until the parties agree to the terms of the conservation easement; or (2) approve the Project conditioned upon the parties agreeing to the terms of a conservation easement. Notwithstanding the foregoing or anything in this MOU, nothing prevents Silo Ridge from entering into a conservation easement with a different qualified non-profit conservation organization (subject to the approval by the Planning Board) if the parties to this MOU fail to reach agreement. If the

parties do not agree, any unexpended funds paid by Silo Ridge to DLC shall be promptly returned by DLC.


11. The Planning Board finds DLC to be a qualified not-for-profit conservation organization acceptable to hold the conservation easement described under the Zoning Law.
12. As required by Section 105-26(B) of the Town of Amenia Subdivision Law, "the proposed conservation easement shall be submitted to the Planning Board and the Planning Board Attorney for review and approval prior to the Planning Board granting preliminary subdivision approval."
13. The conservation easement shall comply with, where applicable, the Town of Amenia Code, General Municipal Law § 247, Environmental Conservation Law §§ 49-0301 to 49-3011 and any other applicable laws.
14. As provided by the Zoning Law, the Planning Board shall require the conservation easement to be enforceable by the Town of Amenia. The Planning Board shall also require that the conservation easement allow the Town of Amenia to assume all the rights and obligations of DLC under the easement in the event that DLC declares bankruptcy, becomes insolvent, formally dissolves as a legal entity or ceases to exist as a functioning legal entity. DLC shall not assign any of its rights and obligations under the conservation easement without the consent of the Town of Amenia.
15. The terms of this MOU shall not be binding upon the Planning Board. The Planning Board has only agreed to execute this MOU in an effort to facilitate the preparation of a conservation easement between Silo Ridge and DLC.

16. By executing this MOU, the Planning Board is not agreeing to approve the Project or the location or terms of any particular conservation easement.

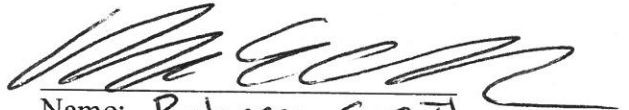
AGREED, this 17 day of July 2014.

SILO RIDGE VENTURE PROPERTIES A, LLC

a New York Limited Liability Company


Name: Pedro D. Torres Jr.
Title: Representative.

DUTCHESS LAND CONSERVANCY, INC.,
a not for profit New York corporation


Name: Rebecca E.C. Thornton
Title: President

TOWN OF AMENIA PLANNING BOARD



Name: Joseph Fontana
Title: Planning board chairman.

Exhibit A - Itemized Cost Estimate for Conservation Easement Expenses broken into Phase I and Phase II

PROJECT COSTS

Phase I:

Conservation Easement Drafting & Negotiation:	\$4,500
Legal Costs to Review Conservation Easement:	<u>\$3,500</u>

Total Phase I: **\$8,000**

Phase II:

Legal Costs to Review Final Conservation Easement:	\$2,500
Title Search (estimate):	\$250
Title Insurance (estimate):	\$5,000
Conservation Easement Recording Costs (estimate):	\$250
Baseline Documentation Report I:	\$6,000
Baseline Documentation Report II:	<u>\$6,000</u>

Total Phase II (not including Stewardship Endowment Fee – “SEF”): **\$20,000**

Stewardship Endowment Fund (SEF) Fee

The amount required from a conservation easement donor for the SEF (as described in Paragraph 8 herein) is calculated based on an amount of money needed to sufficiently cover the actual costs of annual management, monitoring and future enforcement. The principal sum of the payment to the SEF must be sufficient to generate enough accrued income (invested at 5% and adjusted for inflation) to cover yearly staff costs for overseeing and monitoring the conservation easement, with the principal restricted solely for enforcement if necessary. DLC has determined that the following amount will generate sufficient income to pay for DLC’s annual monitoring and enforcement costs for the open space/conservation easement area of Silo Ridge’s Project into the future. Because the level of DLC’s stewardship responsibility increases with each residential unit to be constructed which adjoins the protected open space, DLC’s Stewardship Endowment Fund Fee is calculated based on this number using the Land Trust Alliance standard recommended stewardship and enforcement fees, plus DLC’s annual TerraFirma Defense Insurance premium cost.

Stewardship Endowment:

Cost to oversee easement stewardship, easement enforcement, and TerraFirma Defense Insurance costs based on the construction of 142 single family residential units that back up to the Open Space :

\$98,640

To be paid at the signing of the Conservation Easement:

\$98,640

In addition, DLC will require that a section be included in the conservation easement that ensures that all reasonable costs and expenses incurred by the Conservancy in enforcing the terms of the conservation easement shall be charged to, paid by and borne by the Landowner including staff and consultant costs and expenses:

- 1) other than routine monitoring, to determine whether or not a violation has occurred regardless of whether or not legal action is commenced;
- 2) to resolve a violation without commencing a legal action;
- 3) of legal action (including reasonable attorneys' fees); and
- 4) of restoration necessitated by the violation of the terms of the conservation easement.

Exhibit B – Description of DLC’s Conservation Easement Drafting and Approval Process

The Conservation Easement Drafting and Approval Process

The standard process for drafting and approval of a conservation easement consists of the following steps.

1. Site Visit

DLC’s staff will visit the property with Silo Ridge and its representatives to assess the areas to be protected.

2. Draft Conservation Easement

DLC will draft a conservation easement for review by Silo Ridge and the Planning Board, taking into account both DLC’s Conservation Easement Acceptance Criteria and the Town’s land preservation objectives, as indicated in the Town’s Comprehensive Plan, Town Code, and the approval process for the Project (including SEQR). The draft conservation easement will set forth the restrictions to be placed on the conserved open space to ensure its protection. The conservation easement negotiation process is a collaborative one in which DLC staff work with Silo Ridge and the Planning Board on the conservation easement terms. This collaboration ensures that Silo Ridge’s future plans for the Site, together with the Town’s and DLC’s conservation goals, are integrated into the final document, with the understanding that DLC will only include provisions in the conservation easement which can be reasonably overseen, stewarded, and enforced by DLC.

3. Seeking Advice from Financial and Legal Advisors

Throughout the conservation easement process, Silo Ridge and the Planning Board will work with their own planning and legal advisors. Placing a conservation easement on land is a commitment that lasts forever. DLC is happy to consult with the parties and their advisors at any time during the process.

4. DLC Board Approval

Once the terms of the conservation easement have been agreed upon in principle, DLC staff will submit the conservation easement to DLC’s Board of Directors for approval. DLC’s Board will review the conservation easement for consistency with DLC’s Conservation Easement Acceptance Criteria, and either vote to accept it or request modifications. All DLC conservation easements must be voted upon and approved by DLC’s Board before they can be signed and recorded.

5. Baseline Documentation Report(s)

As part of the conservation easement process, DLC will create two Baseline Documentation Reports. These reports consist of detailed maps and photographs of the property and include a summary of its important resources. The purpose of these reports is to document the condition of the easement area at the time that the conservation easement is executed and at the time that any improvements to the easement area are complete. These reports help DLC to monitor any changes to the easement area over time. The first Baseline Documentation Report is signed by
MOU – DLC, Silo Ridge Ventures Property A, LLC & the Town of Amenia - Page 10 of 15

both Silo Ridge and DLC at the time the conservation easement is executed, certifying that it is an accurate and current account of the easement area.

For this particular project, because there may be changes to the easement area, DLC will have to complete a second "as built" Baseline Documentation Report once any changes to the easement area are completed. This report must also be signed by Silo Ridge and DLC once completed.

6. Final Conservation Easement

The final conservation easement is the legal document, signed by Silo Ridge and DLC and approved by the Planning Board, that will be recorded with the County Clerk. Recording the conservation easement is required by New York State law for the conservation easement to be effective and it ensures that each subsequent landowner knows about the conservation easement in order to comply with its restrictions. Recording the conservation easement prior to or simultaneously with recording the approved subdivision plat is a requirement of the Town's Zoning Law.

7. The Closing

Once the conservation easement and the [first] Baseline Documentation Report are in final form, all documents will be signed by Silo Ridge and DLC and the signatures will be notarized. This may occur just prior to or simultaneously with the approval and/or signing of the subdivision plat by the Planning Board. Silo Ridge and the Planning Board will receive a fully executed copy of the conservation easement and the first and second Baseline Documentation Reports for their files. DLC staff will record the conservation easement at the County Clerk's office and send a copy of the recorded conservation easement to Silo Ridge and the Planning Board once it is returned to DLC's office. Regardless of the exact timing of the signing of the conservation easement and the signing of the final plat, the recording of the conservation easement and the filing of the final plat in the County Clerk's office will occur on the same day.

8. Stewardship Endowment Fund

In accepting a conservation easement DLC assumes the legal obligation, under both state and federal law, to uphold the terms of the conservation easement. This obligation is for the benefit of the public, the Town of Amenia, and to fulfill the obligations of Silo Ridge, who has made a major commitment to protect land for future generations in exchange for the ability to develop the unprotected portion of the Site. DLC, as conservation easement holder, assumes the perpetual responsibility to monitor, oversee, and enforce the conservation easement, and consequently, also assumes all related financial obligations associated with this perpetual responsibility.

In order to cover the expenses associated with monitoring and enforcing the conservation easement, DLC requires that Silo Ridge contribute an amount sufficient to oversee and enforce the conservation easement to DLC's Conservation Easement Stewardship Endowment Fund (SEF). The SEF is a restricted fund that meets two needs: (1) to provide a long term, ongoing source of funds to help cover DLC's annual costs associated with monitoring, overseeing, and managing DLC's conservation easements; and (2) to cover expenses associated with upholding or defending a conservation easement should its terms or validity be at risk.

The amount of the Stewardship Endowment Fee is calculated based on an amount of money needed to sufficiently cover the actual costs of annual management and monitoring as well as enforcement and insurance costs. Costs are based on the size of the open space parcel, its permitted uses, the complexity of the responsibilities imposed by the easement, and the likelihood that violations will occur over time. This endowment helps to ensure that DLC will meet its stewardship obligations to the landowner, the Town of Amenia, and to the public.

Conservation easement holders across the country have found through experience that the cost of overseeing and enforcing conservation easements increases greatly with the number of residential units whose occupants have direct access to or directly abut eased property. Lots that directly abut or are in close proximity to open space could provide additional complexity and require added DLC oversight, even in conjunction with the Master Homeowner's Association ("Master HOA") management and oversight of the development portion of the Site, and the management and oversight of the easement area by the Silo Ridge Country Club (the "Club"). Added boundary markers, clear signage, and a wider area of undevelopable buffer open space adjoining the land under conservation easement can be a factor in determining the amount of the Stewardship Endowment Fee. In order to keep stewardship costs reasonable, the Master HOA and the Club will be responsible for ensuring that no encroachments occur within the easement area by the owners of the developed land or otherwise, and the Master HOA will take action to cure any encroachments if they should occur. Because enforcement costs for development easements is difficult to determine, DLC will also include a section in the conservation easement that stipulates that all reasonable costs and expenses incurred by the Conservancy in enforcing the terms of the conservation easement shall be charged to, paid by and borne by the Landowner, as noted in Exhibit A herein.

9. Monitoring and Enforcement

After the closing, DLC's stewardship obligations begin. DLC understands that the development portion of the Silo Ridge Site is to be managed by a Master Homeowners Association ("Master HOA"), and the Club will have the responsibility for maintaining the conservation easement area. At least twice a year, DLC will provide the Club and the Master HOA (once it takes title) with notice that DLC is planning its monitoring of the conservation easement. DLC will do both aerial and ground monitoring of the easement area. In terms of aerial monitoring, DLC staff and a local pilot will fly over the Site in the winter when the leaves are off the trees and the easement area is most visible to ensure that the conservation easement obligations are being met. Additionally, DLC will provide notice that DLC plans to ground monitor the conservation easement before entering the Site for this purpose. Representatives of the Master HOA, the Club, and the Town are welcome to accompany DLC on its ground monitoring visit or DLC is happy to monitor the easement area on its own.

Exhibit C: CONDITIONS OF DLC'S AGREEMENT TO HOLD THE CONSERVATION EASEMENT

DLC needs to assure that following conditions are satisfied in order to accept a conservation easement on the protected open space area of the Silo Ridge Site. These conditions, where applicable, will be contained in the proposed conservation easement that DLC will draft. The estimated costs of items that involve payment or reimbursement to DLC are listed in Exhibit A above on costs. These are only estimates and DLC will provide Silo Ridge with proof of actual costs as they are incurred.

1. A right of access to the easement area for inspection purposes must be provided both prior to and after the conservation easement is executed and recorded.
2. DLC's model conservation easement will serve as the base document for drafting the conservation easement. It contains numerous boilerplate provisions relating to our administration and enforcement of the conservation easement, protections against DLC liability, condemnation, future transfers, etc. These provisions reflect current laws and regulations, as well as experience gained from almost 30 years preparing and holding conservation easements. Should Silo Ridge seek revisions to these boilerplate provisions, DLC will need to confer with its legal counsel. Any reasonable legal fees incurred in this regard will be charged to Silo Ridge.
3. The conservation easement shall protect the conservation values present on the easement area.
4. A legal description and survey map of the easement area to serve as an exhibit to the conservation easement will be provided by Silo Ridge.
5. An Open Space Management Plan will be provided by Silo Ridge for DLC's review and approval. Any subsequent amendments or modifications of the Open Space Management Plan will be subject to DLC's approval, which shall not be unreasonably withheld, delayed, or conditioned. DLC will not own, manage or maintain the easement area. DLC's only role will be to oversee the terms of the conservation easement on the easement area.
6. Maintenance standards for the easement area shall be agreed upon prior to acceptance of the conservation easement by DLC and will be incorporated into the easement. DLC will deal directly on stewardship matters with the Club.
7. Silo Ridge agrees that the proposed conservation easement area, with the exception of the golf course, recreational fields and areas, and those areas agreed to in advance will remain in its current condition prior to the granting of the conservation easement, with normal land mowing and maintenance practices continuing as before.
8. Silo Ridge will install (before the conservation easement is granted) permanent above-ground conservation easement boundary markers delineating the easement area boundaries at DLC and Silo Ridge agreed upon locations. These permanent markers shall consist of above-ground stone or concrete monuments, permanent survey markers, fences or walls, or other permanent features that are readily identifiable including signs noting "Conservation Area" or other such notation as agreed upon by DLC and Silo Ridge and approved by the Planning Board. These markers help ensure the open space boundaries are clear and help deter encroachment violations. In the case of specific areas within the easement area that

will be modified under the approved Project plan (e.g. the golf course), temporary markers shall be placed until such time as the final improvements to each area is accomplished. Once complete permanent above-ground conservation easement boundary markers delineating the easement area boundaries at DLC-designated locations shall be installed. DLC shall be fully informed of all areas of the easement area to be modified prior to the signing of the conservation easement.

9. The easement area shall be owned by the Club and shall not be sold or transferred to another owner or lessee without first consulting with DLC and informing DLC of the proposed new owner prior to such sale or transfer.
10. If the Club fails to maintain the easement area according to the standards required in the conservation easement, or if the Club ceases to exist as a functioning legal entity, the easement area may be transferred to the Town, as provided in the Town of Amenia Zoning Law, or to another owner after consultation with DLC. Any stipulation regarding disposition of the easement area shall be incorporated into the conservation easement.
11. The names, addresses, and phone numbers of the project principals and agents: landowners, developers, project managers, real estate brokers, and other responsible parties will be provided to DLC by Silo Ridge.
12. All purchasers or lessees of any portion of the development portion of the Site will be informed by the Master HOA of the existence and general provisions of the conservation easement and shall be furnished copies of the conservation easement document prior to executing any lease or closing any sale.
13. DLC shall not be liable for the cleanup and disposal of any hazardous materials found on the easement area as DLC have no active land management responsibility.
14. A Phase I Environmental Assessment conducted at Silo Ridge's expense shall be provided to DLC and depending upon the results of the Phase I, DLC may require that a Phase II or III Environmental Assessment at Silo Ridge's expense be provided to DLC as well. These Assessments can be the same Assessments that have been provided to the Town in conjunction with the Planning Board's approval of the Project.
15. The Club and/or all future owners of the easement area will carry insurance to indemnify and hold DLC harmless against and claims of liability, including but not limited to reasonable attorneys fees, arising from any personal injury, accidents, negligence or damage relating to the easement area.
16. The Master HOA will be responsible for enforcing the conservation easement against homeowners and/or third parties and will remedy any violations or intrusions. This will be incorporated into the final Master HOA documents.
17. The Master HOA members shall be made aware that DLC, as the conservation easement holder, is not responsible for managing and maintaining the easement area, enforcing the Master HOA restrictions, or addressing trespass problems. The conservation easement and the Open Space Management Plan shall be incorporated as exhibits in the final Master HOA documents. A project description sheet prepared or approved by DLC, explaining the importance of the open space resources, the conservation easement restrictions, and the responsibilities of DLC and the Master HOA, will be provided to all Master HOA members and prospective purchasers and lessees.

18. All contractors and construction crew supervisors will be made aware of the conservation easement terms and conditions. To prevent encroachment that is not permitted by the approved Open Space Management Plan into the conservation easement area(s) during construction, temporary construction fencing shall be erected and maintained at the easement area borders. Any damaged or removed permanent easement area boundary markers shall be replaced.

