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After recording, please return to:

_____ [Grantee or Grantee’s attorney]

CONNECTICUT MODEL CONSERVATION EASEMENT

This Grant of **CONSERVATION EASEMENT** made this _____ day of _____, 201__ by and between [Donor names] having an address at _____ who with his/her/their successors in title to all or any portion of the Protected Property as hereinafter defined, including heirs, executors, administrators, successors and assigns, in perpetuity, are collectively referred to as “**Grantor**,” and _____, [A Connecticut nonstock corporation with a business address at _____, _____, _____][a municipal entity having a principal place of business at _____.] hereinafter referred to as “**Grantee**.” Grantor and Grantee are hereinafter collectively referred to as the “**Parties**.”

RECITALS:

A. Grantor is the owner in fee simple of certain real property in the Town of _____, County of _____, and State of Connecticut, with an address of _____ and comprising ___#_____ acres[more or less], hereinafter called the “**Protected Property**,” which has ecological, scientific, educational and aesthetic value in its present state as a natural area which has not been subject to development or exploitation, which Protected Property is more particularly described in Schedule A attached hereto and incorporated by this reference and delineated on a certain map entitled “_____” [attached as Schedule B/recorded in the _____ land records] and incorporated herein by reference (hereinafter referred to as the “**Plan**”).

[ALTERNATIVE 1: WHERE LAND TRUST IS THE HOLDER] B. Grantee is a publicly-supported tax exempt, non-stock organization incorporated under the laws of the State of Connecticut, whose primary purpose is to preserve and conserve natural areas for aesthetic, scientific, charitable, and educational purposes. Grantee is qualified to acquire and hold conservation restrictions under the provisions of Connecticut General Statutes Section 47-42a et seq. and is a “qualified organization” under Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (hereinafter referred to as the “**Code**”). Grantee has received determination letters from the Internal Revenue Service, on file at the offices of Grantee, to the effect that Grantee is a “publicly supported” charitable organization [or, if applicable: “charitable supporting organization”] under Sections 501(c)(3) and 170(b)(1)(A)(vi) [or: 509(a)(2) or 509(a)(3)] of the Code and is not a private foundation as defined in Section 509(a) of the Code.

[ALTERNATIVE 2. WHERE MUNICIPAL ENTITY IS THE HOLDER] B. Grantee is a governmental unit described in Section 170(b)(1)(A)(v) of the Internal Revenue Code of 1986, as amended, (hereinafter referred to as the “**Code**”), and is a “qualified organization” under Section 170(h) of the Code to receive qualified conservation contributions.

C. The Protected Property possesses significant natural, [agricultural] scenic, forested, and open space conservation values and interests (collectively “**Conservation Values**”) of great importance to Grantor and the people of _____, County of _____, and State of Connecticut as set forth below in these Recitals E through J and as documented in the **Baseline Report**.

D. Grantor and Grantee have the common purpose of conserving the Protected Property in perpetuity by Grantor’s placing voluntary restrictions upon the use of the Protected Property and by providing for the transfer from Grantor to Grantee of affirmative rights for its protection in perpetuity, intending the grant of such restrictions to be a “qualified conservation contribution” as that term is defined under Section 170(h)(2)(C) of the Code, [and as a “qualified conservation easement” under Section 2031(c) of the Code,] and so as to qualify as a “Conservation Restriction” under the Connecticut General Statutes Sections 47-42a through 47-42e. Grantor and Grantee wish to avail themselves of the provisions of those laws through the protection of those Conservation Values hereinafter described in the following Recitals E through H.

In addition, the conservation of the Protected Property will accomplish a number of the factors that determine “significant public benefit” under Treas. Reg. Section 1.170A-14(d)(4)(iv), such as but not limited to the following: (i) development of the Protected Property beyond the [limited] development permitted hereunder would lead to or contribute to the degradation of the scenic, natural, and open character of the area, [particularly in light of the fact that the region is under development pressure], (ii) by [limiting/prohibiting] development of the Protected Property and limiting its use this Conservation Easement will help prevent habitat fragmentation and will increase the potential for restoring or increasing biological diversity and native plant communities, (iii) the Protected Property is an integral part of the scenic character of the local rural

landscape in which it lies, and (iv) this conservation easement is consistent with public programs for conservation in the region, some of which are enumerated below.

The protection of those Conservation Values hereinafter described is in fulfillment of, and consistent with the corresponding “conservation purposes” that are required to be protected under Section 170(h)(4) of the Code.

SCENIC ENJOYMENT:

E. Preservation of the Protected Property is for the scenic enjoyment of the general public and will yield a significant public benefit in accordance with Section 170(h)(4)(A)(iii)(I) of the Code. Specifically, the Protected Property is situated on and prominently visible from [**elaborate view characteristics** and identify public ways, public areas etc.]

HABITAT PRESERVATION:

F. This Conservation Easement protects a significant “relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,” in accordance with Section 170(h)(4)(A)(ii) of the Code. Specifically, the Protected Property [is habitat for or is adjacent to habitat for] [**elaborate**], and is within an area which Grantee has determined is of substantial [scenic, aesthetic and ecological] importance to the Town of _____;

[specifically, the Protected Property is habitat for species of greatest conservation need and their habitat, as listed on the Connecticut Department of Energy and Environmental Protection Wildlife Division Natural Diversity Database and referenced in Connecticut’s Comprehensive Wildlife Conservation Strategy completed under the U.S. State Wildlife Grant Program and approved by the U.S. Fish and Wildlife Service, which species have been observed on or about the property, including: [reference, if applicable, federally listed species, state-listed endangered, threatened and special concern species, Global Status Rank, State (subnational) Status Rank and New England Regional Conservation Concern]

G. The Protected Property abuts [is adjacent to][is in close proximity to][contiguous to] property owned by _____ and as a result is part of a corridor of protection for a diversity of species and their associated habitat, including nesting and migratory birds, other woodland species and mammal, reptile and insect species.

OUTDOOR RECREATION AND EDUCATION:

H. This Conservation Easement preserves “land areas for outdoor recreation by, or for the education of, the general public” in accordance with Section 170(h)(4)(A)(i) of the Code. Specifically [**elaborate**]:

WATER QUALITY PROTECTION:

I. The Protected Property is traversed by a watercourse [**elaborate**] and its protection affords an ecologically important buffer for the protection of water quality and habitat in

accordance with Section 170(h)(4)(A)(ii) of the Code.

PUBLIC POLICY:

J. The preservation of the Protected Property is pursuant to clearly delineated federal, state and local governmental conservation policies and will yield a significant public benefit in accordance with Section 170(h)(4)(A)(iii)(II) of the Code. Specifically:

(1) in 1963, the Connecticut General Assembly declared “that it is in the public interest to encourage the preservation of farmland, forest land and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the state, to conserve the state’s natural resources and to provide for the welfare and happiness of the inhabitants of the state...” (P.A. 490, Section 1; C.G.S. Section 12-107a), and

(2) in 1971, the Connecticut General Assembly passed Public Act 173 (C.G.S. Sections 47-42a through 47-42c which authorizes the creation and enforcement of conservation restrictions “whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural farming, forest or open space use,” and

(3) the Protected Property has been specifically designated on the Open Space Plan of the Town of _____ as _____; and

(4) in a letter dated _____, the Town of _____ endorsed the preservation of the Protected Property through this conservation easement, referencing the consistency of such preservation with the [Town Plan of Conservation and Development][Open Space Plan] of the Town and the conservation and preservation goals of the Town relating particularly to [farmland and wetlands][**elaborate**] [and in recognition of the importance of the Protected Property as an ecological, scenic and recreational resource]; and

(5) The U.S. State Wildlife Grant Program provides funding for the protection of species of greatest conservation need and their habitat, as listed on the Connecticut Department of Energy and Environmental Protection Wildlife Division Natural Diversity Database, which species [as listed in Recital F] have been observed on or about the Protected Property, including:

(6) [Add any other public policies that relate to the specific property, such as those described in the town plan, regional plan or other public conservation policy document; for further examples see commentary.]

NOW, THEREFORE, Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained [if a purchased or bargain sale easement, insert consideration here] and as an absolute and unconditional [gift/grant], does hereby give, grant and convey to Grantee this

conservation easement (“**Easement**”) in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth.

1. PURPOSE. It is the purpose (“**Purpose**”) of this Easement:

- i. to assure that the Protected Property will be retained forever predominantly in its natural, scenic, [agricultural,][forested], and open space condition for the protection of the Protected Property’s Conservation Values;
- ii.[ALTERNATIVE 1: to protect any rare plants, animals, or plant communities on the Protected Property;] [ALTERNATIVE 2: to protect the ecological qualities of the Protected Property;] [ALTERNATIVE 3: to protect any rare plants, animals, or plant communities on the Protected Property and to protect the ecological qualities of the Protected Property;]
- [iii. to protect the agricultural soils, agricultural viability, and agricultural productivity of the Protected Property.] [NOTE: This purpose requires the addition to the Model of reserved rights pertaining to agriculture and a definition of “Agricultural”. See the Commentary.]
- iv. to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property described above.

Grantor intends that this Easement will confine the use of the Protected Property to such activities as are consistent with the Purpose of this Easement. Any permitted uses reserved to Grantor must be carried out in a manner that is consistent with the Purpose of this Easement.

2. DEFINITIONS. [READ CAREFULLY AND EXCLUDE ITEMS AND PARTS OF DEFINITIONS AS REQUIRED – Add relevant definitions if any optional sections have been added to the Easement] The following definitions apply throughout this Easement. Many terms are defined within the individual paragraphs of this Easement. Defined terms are indicated as such in the body of this Easement by capitalization. ALL TERMS ARE BROADLY WORDED AND ARE SUBJECT TO CONDITIONS, LIMITATIONS AND EXCLUSIONS AS FURTHER SET FORTH IN THIS EASEMENT.

2.1 “**Baseline Report**” is defined in Paragraph 19.10.

2.2 “**Best Management Practices**” are a series of guidelines or minimum standards recommended by governmental resource management agencies, professional organizations and universities for proper farming and forestry operations and application of pesticides, with the goal of limiting non-point pollution of water resources and other disturbances of soil, water, and vegetative resources and to protect wildlife habitats.

2.3 “**Code**” is defined in Recital B.

2.4 “**Conservation Values**” are defined in Recitals C and E through J [as

applicable].

2.5 "Environmental Laws" means any and all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, **Hazardous Materials**^[LPF1], worker and community right-to-know, light, noise, ^[LPF2] resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building, and land use restrictions as may now or at any time hereafter be in effect.

2.6 "Grantee" means the _____ [full legal name of Grantee Land Trust or Municipal entity] and its successors and assigns, in perpetuity.

2.7 "Grantor" is defined in the first paragraph of this Easement and includes the owner of the Protected Property in whom the Protected Property is titled. It shall also mean the masculine, feminine, corporate, singular or plural form of the word as needed in the context of its use.

2.8 "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

2.9 "Invasive Species" are: (i) non-native plants that are disruptive in a way that causes environmental or economic harm or harm to human health, and (ii) non-native insects, fungi, parasites, and other organisms that attack native species of flora and fauna or threaten the diversity and health of the forest or other natural ecological communities.

2.10 "Purpose" is defined in Paragraph 1 hereof.

2.11 "Qualified Natural Resource Professional" is a certified professional forester, forest ecologist, wildlife biologist, soil scientist or agricultural specialist with substantial training and expertise, and any necessary certifications, in the relevant environmental sciences.

2.12 "Structure" means anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground. This includes, but is not limited to: dwellings and buildings.

3. LIMITATIONS AND PROHIBITED USES. In order to carry out the Purpose, and subject to the exceptions set forth in Paragraph 4 below, the following acts or uses are expressly prohibited on or in connection with the Protected Property:

3.1 Subdivision. The Protected Property may not be divided, partitioned, or subdivided, nor conveyed, except in its current configuration as an entity and except as may be permitted in Paragraph 4 below; provided, however, that with prior approval from Grantee, Grantor may convey any portion of the Protected Property to any organization or government entity that would qualify as an eligible assignee in accordance with Paragraph 16 of this Easement. Any portion of the Protected Property conveyed pursuant to this provision shall remain subject to this Easement in all respects.

3.2 Use for Development. The Protected Property and any portion thereof shall not be included as part of the gross area of other property not subject to this Easement for the purposes of determining density or lot coverage, set backs and frontage requirements, under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by the Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise. Nothing herein contained shall be construed to prevent Grantor from using any of the Protected Property as property qualifying for open space, forest or farmland for tax exemption purposes under applicable statutes and laws.

3.3 Prohibited Structures. There shall be no construction or placing of any building, tennis or other recreational court, landing strip, mobile home, swimming pool, crypt, fence or sign (other than those reasonably required by Grantor for appropriate management), asphalt or concrete pavement, parking area, billboard or other advertising display, antenna, utility pole, tower, conduit, line, electric light or any other temporary or permanent Structure or facility on, under or above the Protected Property except as provided in Paragraph 4 below.

3.4 Changes in Topography and Mining. There shall be no ditching, draining, diking, filling, excavating, dredging, surface or subsurface mining or drilling, removal of topsoil, sand, gravel, rock, stone walls, minerals or other materials, nor any building of roads or change in the topography of the land in any manner except as provided in Paragraph 4 below.

3.5 Changes to Vegetation. There shall be no removal, destruction or cutting of trees, shrubs or plants, or planting of non-native species with [invasive characteristics], introduction of non-native animals, grazing of domestic animals, or disturbance or change in the natural habitat except in connection with:

- (i) the maintenance of existing unpaved trails and open areas;
- (ii) the removal of Invasive Species pursuant to **Paragraph 4.6**;
- (iii) the removal or the pruning of dead, damaged, diseased or live trees and brush that pose a threat to safety or structures;
- (iv) the prevention of the spread of plant or animal species that pose a significant threat to the health of the forest;
- (v) any recommendations regarding the Protected Property by the Connecticut Department of Energy and Environmental Protection or other duly authorized governmental authority, or in a written forest and/or wildlife management plan prepared by a Qualified Natural Resource Professional which plan must be

approved in writing by Grantee;
(vi) with consent of Grantee; or
(vii) as permitted by Paragraph 4 below.

3.6 Pesticides. There shall be no use of pesticides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, or other potentially harmful substances or the use or disposal of said products and by-products on the Protected Property, except (i) as provided in Paragraph 4.6 below, (ii) as used in a selective manner, in accordance with applicable law and Best Management Practices to treat non-native insects, fungi, parasites, invasive species and other organisms that attack native species of flora and fauna or threaten the diversity and health of the forest or other natural ecological communities on or adjacent to the Protected Property, (iii) as used by a licensed pesticide applicator in accordance with Best Management Practices established by the Natural Resources Conservation Service or its successor, (iv) as used by a licensed pesticide applicator in accordance with a written forest and/or wildlife management plan prepared by a Qualified Natural Resource Professional, which plan must be approved in writing by Grantee, except as provided in **Paragraph 4** below or (v) as approved in writing by Grantee.

3.7 Trash. There shall be no storage, placing, filling or dumping of ashes, trash, vehicles or vehicle parts, debris, junk, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks, in, on or under the Protected Property. The preceding restriction shall not apply to the aboveground presence, use or storage on the Protected Property of small quantities of the aforementioned substances that are generally recognized to be appropriate to normal residential use.

3.8 Pollution and Alteration of Water Resources. There shall be no pollution, alteration, depletion nor extraction of surface water, natural water courses, lakes, ponds, marshes, wetlands, subsurface water or any other water bodies, nor shall there be activities conducted on the Protected Property, which would be detrimental to water purity, or which could alter natural water level and/or flow in or over the Protected Property, except as provided in Paragraph 4 below.

3.9 Recreational Vehicles [ADD IF APPLICABLE: and Horseback riding]. There shall be no operation of [snowmobiles], dune buggies, motorcycles, bicycles, all-terrain vehicles, hang gliders, aircraft, helicopters, jet skis, motorized boats or any other types of mechanized [land based][motorized] recreational vehicles except as provided in Paragraph 4 below. [There shall be no horseback riding.]

[3.10 Commercial Recreational Activities. There shall be no [non-agricultural – define agricultural if this option is inserted] commercial or industrial uses of the Protected Property [other than de minimis commercial recreational activities as defined in accordance with Section 2031(c) of the Code.]

3.11 Other use. Any other use of the Protected Property which would be

inconsistent with the Purpose of this Easement or that would impair the Protected Property's Conservation Values is prohibited, unless such use or activity is deemed necessary by Grantor and Grantee for the protection of the Protected Property's Conservation Values, in which case such use or activity shall be subject to the prior written approval of Grantee as provided in Paragraph 7.1.

4. GRANTOR'S RESERVED RIGHTS AND PERMITTED USES. Grantor reserves the right to undertake or continue any activity or use of the Protected Property not prohibited by this Easement and not inconsistent with the Purpose of the Easement. Notwithstanding the Limitations and Prohibited Uses of Paragraph 3, the following activities and uses are hereby acknowledged by Grantor and Grantee to be consistent with the Purpose of this Easement, and are expressly permitted to be carried out on the Protected Property by Grantor and Grantor's guests and invitees in a manner that does not impair the Conservation Values protected by this Easement. To the extent required for compliance with 1.170A-14(g)(5)(ii) of the Regulations, and only to the extent such activity is not otherwise subject to Notice or Approval under this Grant, Grantor agrees to notify Grantee before exercising any right that may have an adverse impact on the conservation interests associated with the Protected Propertyⁱ

4.1 Mortgage and Convey subject to Easement. Grantor reserves the right to sell, give, mortgage, lease, devise or otherwise convey the Protected Property in its entirety, except as otherwise provided herein. Any such conveyance shall be subject to the terms of this Easement. Grantor shall provide written notice of any conveyance that is not a mortgage to Grantee at least thirty (30) days prior to such conveyance.

4.2 Existing Structures. Grantor reserves the right to maintain such Structures as currently exist on the Protected Property, if any, as shown at Exhibit __ hereof [or, in the **Baseline Report**] (which Structures may be repaired or replaced, but not expanded, on the same site in whole or in part by like Structures used for the same or similar purposes). Existing stone walls as shown at Exhibit __ hereof [or, in the **Baseline Report**] may be maintained, replaced or repaired utilizing only dry-laid field stone construction, although the interior layers may be mortared to maintain the integrity of the wall or prevent the unauthorized removal of stones. No stones from walls, forest floor, or any other location may be removed from the Protected Property.

4.3 Outdoor Recreational Activities. Grantor reserves the right to engage in non-commercial outdoor recreational activities that do not require development of, or the construction of Structures on the Protected Property, including by way of illustration and not limitation, camping, walking, hiking, running, fishing, [shooting, hunting,] cross country skiing, wildlife observation, ecological education, [horseback riding and equestrian activities,] snowshoeing, and similar uses, but not those activities involving the recreational use of motorized vehicles or that would impair the Conservation Values protected by this Easement [; Provided however, that horseback riding and equestrian activities may be conducted for commercial or non-commercial purposes]. [See Commentary]

4.4 Signs. Grantor reserves the right to place signs identifying the Protected Property and to post all or a portion of the Protected Property about permitted uses and against trespass, hunting or prohibited uses.

4.5 Habitat Enhancement. Grantor reserves the right to improve wildlife habitat through the creation and placement of improvements, including but not limited to bird houses, brush piles, sunning logs and the planting of specific habitat vegetation, to temporarily erect fences to exclude deer and other animals for the purpose of protecting habitat from browse, and to conduct other habitat enhancement activities recommended by a Qualified Natural Resource Professional who is approved by Grantee.

4.6 Invasive Species Removal. Grantor reserves the right to remove or control Invasive Species or species which are a threat to the health of humans, animals or native species of flora and fauna. The use of herbicides, fungicides, insecticides, biological agents, and pesticides for such purposes shall be undertaken in accordance with Best Management Practices established by the Natural Resources Conservation Service of the U.S. Department of Agriculture or its successor in a manner reasonably designed to control the identified threat with the least possible damage to non-target species; for example, by use of the narrowest spectrum, least persistent, material appropriate for the target species. Such use is subject to all applicable laws and regulations.

[4.7 Special Subdivision Rule. [insert special circumstances; See Commentary]]

5. GRANTEE'S RIGHTS OF ENTRY. To accomplish the Purpose of this Easement, the following rights of entry are conveyed to Grantee by this Easement:

5.1 Right of Entry for Stewardship and Monitoring Purposes. Grantee has the right to enter the Protected Property at all reasonable times and in a reasonable manner for the purposes of: (i) inspecting the Protected Property to determine if Grantor is complying with the terms of this Easement; and (ii) documenting Grantor's compliance with this Easement and the condition of the Protected Property through photographs and other forms of visual media. Grantee will make a reasonable effort to notify Grantor prior to entry onto any area of the Protected Property, except when emergency circumstances or prevention of a threatened breach of this Easement requires immediate entry.

[Optional 5.2 Signs. Grantee shall have the right to install and maintain signs on the boundary of the Protected Property in furtherance of the rights and responsibilities of Grantee under this Easement.]

6. NO PUBLIC ACCESS. Nothing contained in this Easement shall give or grant to the public a right to enter upon or to use the Protected Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Easement.

[Alternate: 6. PUBLIC ACCESS. Grantee shall have the right to allow public access as follows: [elaborate: Specify public access rights conferred to Grantee]]

7. NOTICE AND APPROVAL.

7.1 Notice. Whenever notice to or approval by Grantee is required under the provisions of this Easement, or whenever Grantor intends to undertake any activity or to exercise any right that may have a material adverse effect on the Conservation Values of the Protected Property, Grantor shall notify Grantee in writing not less than ninety (90) days prior to the date Grantor intends to undertake the activity in question or exercise such right. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Easement.

7.2 Approval. Where Grantee's approval is required by the terms of this Easement, Grantee shall approve or withhold its approval in writing. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon Grantee's finding that the proposed activity is not inconsistent with the Purpose of this Easement and will not impair the Conservation Values protected hereby. Grantee may establish reasonable conditions for the conduct of activities approved under this provision.

7.3 Approval in Changed or Unforeseen Circumstances. Recognizing that Best Management Practices, technologies, climate and the ecological state of the region, and scientific knowledge will change over time, Grantor and Grantee agree that Grantee may grant approval for activities otherwise restricted or prohibited, or for which no provision is made in this Easement, as provided in this section.

(a) Grantee's approval for activities otherwise restricted or prohibited, or for which no provision is made in this Easement, may be given in limited circumstances if Grantee determines, in its sole discretion, that such approval would (i) be in furtherance of a clearly delineated public policy, (ii) be consistent with the Purpose of this Easement and in substantial conformity with the intent of the original Grantor, and (iii) result in a material improvement in the protection of important Conservation Values or ecological resources on the Protected Property. The circumstances that would justify such approval include:

- (i) disease, pests, fire, storm or natural disaster,
- (ii) changes in scientific knowledge, technology, or Best Management Practices,
- (iii) the existence of threatened or endangered species on or abutting the Protected Property;
- (iv) changes in climate affecting the ecological condition of the surrounding area or ecological system; or
- (v) other unforeseen circumstances that would threaten or have an adverse impact on the Purpose of this Easement,

(b) Grantee and Grantor have no right or power to agree to any activities that would:

- (i) adversely affect the perpetual duration of this Easement or the conservation purposes,

(ii) allow any residential, commercial or industrial activities not provided for within this Easement;

(iii) result in the termination of this Easement over all or a portion of the Protected Property; or

(iv) or impair the qualification of this Easement or the status of Grantee under any applicable laws, including C.G.S. § 47-42a through 47-42e, and Sections 170(h) and 501(c)3 of the Code.

(c) All requests for approval shall be in writing and shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activities with the Purpose. Grantee shall not be liable for any failure to grant approval under this paragraph.

8. COSTS AND LIABILITIES.

8.1 In General. 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 comprehensive general liability insurance coverage. Grantor shall keep Grantee's interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor.

8.2 Taxes. Grantor agrees to pay any real estate taxes or other assessments levied on the Protected Property.

8.3 Indemnification by Grantor. Grantor acknowledges that Grantee has neither possessory rights in the Protected Property, nor any right to control, maintain, or keep up the Protected Property. Grantor agrees to release, hold harmless, indemnify and defend Grantee from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which Grantee may suffer or incur as a result of or arising out of the condition of the Protected Property or the activities of Grantor, Grantor's invitees, licensees and lessee on the Protected Property, other than those caused by the negligent acts or acts of misconduct of Grantee, and except those arising out of Grantee's workers' compensation obligations.

8.4 Indemnification by Grantee. Grantee agrees to release, hold harmless, defend and indemnify Grantor from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expense and fees which Grantor may suffer or incur as a result of or arising out of the activities of Grantee on the Protected Property, other than those caused by the negligent acts or acts of misconduct of Grantor, and except those arising of Grantor's workers' compensation obligations.

8.5 Acts Beyond 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 Grantor's control, including without limitation, fire, flood, storm, earth movement, natural disease,

unauthorized wrongful acts of third persons, 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; and nothing in this Easement shall require Grantor to take any action to restore the condition of the Protected Property after any act or event over which Grantor has no control. Notwithstanding the foregoing, nothing contained herein shall limit or preclude Grantor's and Grantee's rights to pursue any third party for damages to the Protected Property from vandalism, trespass, or any other violation of the terms of this Easement. In the event of violations of this Easement caused by unauthorized wrongful acts of third persons, at Grantee's option, Grantor agrees to assign its right of action to Grantee, to join in any suit, and/or to appoint Grantee its attorney-in-fact for the purposes of pursuing enforcement action.

9. GRANTEE'S REMEDIES.

9.1 In General. Grantee has the right to preserve and protect the Conservation Values of the Protected Property.

9.2 Enforcement. Grantee has the right generally to (i) prevent any activity on or use of the Protected Property by Grantor or third persons (whether or not claiming by, through, or under Grantor) that is inconsistent with the Purpose of this Easement; (ii) to require Grantor or third persons to restore such areas or features of the Protected Property that may be damaged by any inconsistent activity or use to its condition at the time of the donation; and (iii) to enforce this Easement in the case of violation of its terms by Grantor or by third persons (whether or not claiming by, through, or under Grantor) by appropriate legal proceedings.

Specifically, in the event that Grantee becomes aware of a violation of the terms of this Easement, Grantee shall give notice to Grantor, and request corrective action sufficient to abate such violations and restore the Protected Property to its previous condition prior to the violation. Grantor agrees that the Baseline Report shall be deemed to provide objective information concerning the Protected Property's conditions at the time of this grant. Failure by Grantor to discontinue or take such other corrective action as may be requested by Grantee within thirty (30) days after receipt of such notice shall entitle Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Easement; to require the restoration for the Protected Property to its condition substantially similar to that which existed prior to the violation; to enjoin such non-compliance by ex parte temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any damages arising from such noncompliance. Such damages when recovered may be applied by Grantee, in its sole discretion, to corrective action on the Protected Property.

9.3 Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Paragraph 9 without prior notice to Grantor or without waiting for the period for the thirty (30) day cure to expire.

9.4 Forbearance Not a Waiver. Any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein 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. 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. Grantor hereby waives any defense of laches with respect to any delay by Grantee, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Easement.

10. COSTS. Grantor acknowledges that Grantee has accepted this Easement in reliance on its entitlement to costs as set forth hereafter. By accepting a deed to the Protected Property, any successor Grantor agrees to be personally bound by the terms and conditions of this Easement, including the obligations of this paragraph.

10.1 Grantee's Entitlement to Costs of Enforcement. Recognizing that Grantee is a charitable organization with limited resources that has a duty to protect the Protected Property and property rights it holds in the public interest, Grantor agrees to reimburse Grantee for all reasonable costs incurred by Grantee in enforcing this Easement or in taking reasonable measures to remedy or abate any violation hereof by Grantor, Grantor's agents, employees, lessees, guests or others for whose action on the Protected Property Grantor is responsible, including without limitation the costs of suit and reasonable expert and attorneys' fees, mediation and, if applicable, arbitration costs, the drafting any related new conservation protection or enhancement documents, and other payments ordered by such court or arbitrator; provided that a violation of this Easement is acknowledged by Grantor or determined to have occurred by an arbitrator or court of competent jurisdiction, as the case may be. If Grantor ultimately prevails in a judicial enforcement action, each party shall bear its own costs.

10.2 Non-Enforcement Costs. Grantor acknowledges that any stewardship endowment does not cover Grantee's non-monitoring costs in considering and documenting any request made to Grantee by Grantor to interpret, clarify, amend or approve requested activities. Grantee may require Grantor to pay all reasonable costs incurred by Grantee, whether or not the request is granted, pertaining to such requests and, if applicable, of implementing any permission granted. Such costs shall include, as applicable, staff time and consulting fees for reviewing the request and evaluating its potential environmental impacts, appraisal costs to determine if such approval would result in private inurement or confer an impermissible private benefit, and any necessary boundary surveys and monumentation.

11. TITLE. Grantor covenants and represents that Grantor is the sole owner and is seized of the Protected Property in fee simple and has good right to grant and convey the aforesaid Easement; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Easement, and that Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Easement.

12. GRANTOR’S ENVIRONMENTAL WARRANTY AND HOLD HARMLESS.

Grantor warrants that Grantor has no actual knowledge of any notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with, or any liability under any Environmental Laws relating to the operations or conditions of the Protected Property. Grantor further warrants that Grantor has no actual knowledge of a release or threatened release on, at, beneath or from the Protected Property of Hazardous Materials.

Grantor hereby promises to hold harmless and indemnify Grantee against all litigation, claims, demands, penalties, and damages, including reasonable attorneys’ fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property by Grantor, or arising from or connected with a violation of any Environmental Laws by Grantor.

13. DURATION; PARTIES SUBJECT TO EASEMENT. The covenants agreed to and the terms, conditions, and restrictions imposed by this Easement shall not only be binding upon the Parties but also their lessees, agents, personal representatives, successors and assigns, and all other successors to Grantor and Grantee in interest and shall continue as a servitude running in perpetuity with the Protected Property. A party's rights and obligations under this Easement shall terminate upon the transfer of the party's interest in the Easement or Protected Property to a party assuming its obligations hereunder, except that liability for acts or omissions occurring prior to transfer shall survive transfer, but this Easement shall not be affected by such transfer, the transferee having the rights and obligations of the transferring party.

14. SUBSEQUENT TRANSFERS. Grantor agrees that the terms, conditions, restrictions and Purpose of this Easement or reference thereto will be inserted by Grantor in any subsequent deed or other legal instrument by which Grantor divests either the fee simple title or possessory interest in the Protected Property; and Grantor further agrees to notify Grantee of any pending transfer at least thirty (30) days prior to the said transfer **[to be consistent with Para. 4.1]**. By acceptance of any deed or other conveyance of the Protected Property, any successor Grantor personally accepts and agrees to comply with the covenants and obligations set forth in this Easement. The Parties recognize that Grantee has accepted this Easement in reliance on every successor Grantor’s acceptance of such obligations and liabilities.

15. NO EXTINGUISHMENT BY MERGER. Grantor and Grantee agree that the terms of this Easement shall survive any merger of the fee and Easement interest in the Protected Property in view of the public interest in the enforcement of this Easement. In the event of merger, (i) Grantee as successor in title to Grantor shall observe and be bound by the obligations of Grantor and the restrictions imposed upon the Protected Property by this Easement; (ii) Grantor and Grantee shall immediately undertake such steps as are necessary under the laws of the State of Connecticut to re-instate the terms and conditions of this Easement; and (iii) Grantee as promptly as practicable shall assign Grantee’s interests in this Easement of record to another holder in conformity with the

requirements of this Paragraph 15 and with the assignment provisions of Paragraph 16. Any instrument of assignment of this Easement or the rights conveyed herein shall refer to the provisions of this Paragraph 15, and shall contain language necessary to continue it in force. Further, no deed, transfer, or assignment shall be effective if it will result in merger, until a like conservation easement has been granted to avoid merger. This provision survives the extinguishment of the Easement.

16. ASSIGNMENT. The parties hereto recognize and agree that the benefits of this Easement are in gross and assignable. Grantee hereby covenants and agrees that in the event it transfers or assigns this Easement, the organization receiving the interest must be a qualified organization as that term is defined in Section 170(h)(3) of Code (or any successor section) and the regulations promulgated thereunder, which is organized and operates primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code. Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which this Easement was originally intended to advance.

17. Limitation on Amendments. [* SEE COMMENTARY AND RENUMBER AS NEEDED]

18. EXTINGUISHMENT. Grantor hereby agrees that at the time of the conveyance of this Easement to Grantee, this Easement gives rise to a real property right, immediately vested in Grantee. The value of the real property right is represented by the ratio of the value of the Easement on the date of this Easement to the value of the Protected Property, without deduction for the value of the Easement, on the date of this Easement, as determined in accordance with the valuation substantiation requirements of Treas. Reg. Section 1.170A-14(h)(3) (the “Grantee’s percentage interest”).

The Parties shall maintain, together with the Baseline Report [and the appraisal on which Grantor’s claimed tax deduction attributable to this Easement is based], a record of the ratio of those values and Grantee’s resulting percentage interest and shall amend such values and Grantee’s percentage interest, if necessary, to reflect any final determination thereof by the Internal Revenue Service or court of competent jurisdiction. For purposes of this Paragraph, the ratio of the value of the Easement to the value of the Protected Property unencumbered by the Easement shall remain constant, and Grantee’s percentage interest in the fair market value of the Protected Property thereby determinable shall remain constant, except that the value of any improvements made by Grantor after the date of this Easement is reserved to Grantor to the extent permitted by Treas. Reg. Section 1.170A- 14(g)(6).

If a subsequent unexpected change in the conditions surrounding the Protected Property can make impossible or impractical the continued use of the Protected Property for conservation purposes, this Easement can only be terminated or extinguished, whether with respect to all or part of the Protected Property, by judicial proceedings in a court of competent jurisdiction and in accordance with state law. Unless otherwise required by

applicable law at the time, in the event of any sale of all or a portion of the Protected Property (or any other property received in connection with an exchange or involuntary conversion of the Protected Property) after such termination or extinguishment, and prior to the payment of any costs or expenses associated with such sale, Grantee shall be entitled to receive Grantee's percentage interest in the gross proceeds of such sale, exchange, or involuntary conversion of the Protected Property in priority to the owner of the Protected Property in whom the Protected Property is titled at the time of such post-extinguishment sale, exchange, or involuntary conversion, and in priority to any other lien or claim encumbering the Protected Property, as such percentage interest is determined under the provisions of this Paragraph 18.

The owner of the Protected Property in whom the Protected Property is titled at the time of such post-extinguishment sale, exchange, or involuntary conversion shall bear the responsibility for the payment and satisfaction of any claims or liens against the Protected Property. If Grantee does not receive its percentage interest from the proceeds of such sale, exchange, or involuntary conversion, then Grantee may recover the resulting deficiency from the post-extinguishment owner of the Protected Property in whom the Protected Property is titled at the time of such post-extinguishment sale, exchange, or involuntary conversion. Grantee may record a lien to secure its recovery of such deficiency. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with the Purpose of this Easement.

Any extinguishment of this Easement in accordance with the provisions of this Paragraph 18 shall be recorded in the official land records where the Protected Property is located and Grantee shall, upon request, promptly and without charge, execute in recordable form and deliver to Grantor such instrument as Grantor may reasonably request for this purpose. In the event of extinguishment, the provisions of this Paragraph 18 shall survive extinguishment.

Whenever all or any part of the Protected Property or an interest therein is taken by public authority under power of eminent domain or other act of public authority, then Grantor and Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. Prior to any reimbursement of related expenses incurred by Grantor and Grantee, Grantee shall first be entitled to its percentage interest from the recovered proceeds in conformity with the provisions of this Paragraph 18 (with respect to the allocation of proceeds). The respective rights of Grantor and Grantee set forth in this subparagraph shall be in addition to, and not in limitation of, any rights they may have at common law. Grantee shall use its share of the proceeds in a manner consistent with the Purpose set forth herein.

19. GENERAL AND MISCELLANEOUS PROVISIONS.

19.1 In General. The interpretation and performance of this Easement shall be governed by the laws of the State of Connecticut. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect. The obligations imposed by this Easement upon Grantor, if more than one, shall be joint and several.

19.2 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to effect the purposes of this Easement and the policy and purpose of Sections 47-42a through 47-42e of the Connecticut General Statutes. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid and perpetually enforceable shall be favored over any interpretation that would render it invalid. Reference to any paragraph herein shall be construed to include all subparagraphs and subsections under the referenced paragraph.

19.3 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 for this Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

19.4 Entire Agreement. This Easement and the Exhibits attached hereto set forth the entire agreement of the parties with respect to the Easement and supersede all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

19.5 Re-recording. Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement; for such purpose, Grantor appoints Grantee its attorney-in-fact to execute, acknowledge and deliver any necessary instrument on its behalf. Without limiting the foregoing, Grantor agrees to execute any such instruments upon request.

19.6 Governmental Approvals. The conveyance of this Easement by Grantor to Grantee shall not relieve Grantors of the obligation and responsibility, to obtain any and all applicable federal, state, and local governmental permits and approvals, if necessary, to exercise Grantor's retained rights and uses of the Protected Property even if consistent with the conservation purposes of this Easement.

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

19.8 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

19.9 Notices. Any notices required in this Easement shall be sent by registered or certified mail return receipt requested, or sent by receipted delivery service or acknowledged facsimile transmission, or delivered by an official authorized to make service of process in the recipient's jurisdiction, to the following address or such address as may be hereafter

specified by notice in writing:

Grantor: [Insert Name(s)]
[mailing and street address here]

Grantee: [Insert Name]
[mailing and street address here]

If no address has been designated, notice shall be provided to the address shown for the owner of the Protected Property or Grantee on the Assessor's records of the Town where the property is located.

19.10 Baseline Report. In order to establish the condition, present uses and state of improvement of the Protected Property and its Conservation Values as of the date of this Easement, Grantee and Grantor have prepared an inventory of the Protected Property's relevant features and conditions (the "Baseline Report") including maps, photographs, and other documentation, and have certified the same as an accurate representation of the condition of the Protected Property as of the date of this Easement. The Baseline Report is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement. It may be used by Grantee to establish that a change in the use or character of the Protected Property has occurred, but its existence shall not preclude the use by Grantee or Grantor of other evidence to establish the condition of the Protected Property as of the date of this Easement. Grantee shall maintain copies of the Baseline Report.

20. ECONOMIC HARDSHIP. In making this grant, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both Grantor and Grantee that any such changes shall not be deemed to be a circumstance justifying the amendment, termination or extinguishment of this Easement. In addition, the inability of Grantor, or 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.

21. NO TAX ADVICE. Each Party hereto acknowledges and agrees that it has not received and is not relying upon tax or other advice from any other Party, and that it has and will continue to consult its own advisors. Grantee makes no representation or warranty whatsoever regarding the tax treatment to Grantor of this Easement.

22. RECITALS AND EXHIBITS INCORPORATED HEREIN. Any and all recitals in this Easement are agreed by the parties to be accurate, are incorporated into this Easement by reference, and shall constitute integral terms and conditions of this Easement. Any and all exhibits and addenda attached to and referred to in this Easement are hereby incorporated into this Easement as if fully set out in their entirety herein.

SCHEDULE A

Description of Property Subject to the Easement

SCHEDULE B

Plan (or record on land records)

APPENDIX: List of Possible Options

SUPPLEMENTARY OPTIONS: PROHIBITED USES

3.X Prohibition on Hunting and Trapping.

SUPPLEMENTARY OPTIONS: GRANTOR RESERVED RIGHTS

4.X Selective Cutting.

4.X Agricultural Activities

4.X. Agricultural Structures:

4.X Forestry Activities.

4.X. Accessory Structures.

4.X New Trails and Woods Roads.

4.X Watercourse Maintenance.

4.X Hunting and Trapping.

4.X Necessary Vehicles.

4.X Compost.

4.X Renewable Energy and Communications.

4.X Building Envelope/Reserved Residential Area

4.X. Access and Utilities to Building Envelope/Reserved Residential Area

SUPPLEMENTARY OPTIONS: GRANTEE RIGHTS

5.X Management by Grantee.

X Grant of Permanent Easement of Access and Right of Way.
