

## **CONNECTICUT MODEL FOREVER WILD CONSERVATION EASEMENT OPTION**

NOTE: This is a comprehensive drafting option for those parties wishing to ensure a natural area is preserved in perpetuity. A Forever Wild Easement generally allows passive use and limited human intervention with the goal of protecting and restoring wild ecological systems and their many benefits. A Forever Wild Easement retains the fewest landowner rights but offers the greatest assurance that the property will be an intact ecosystem in the future. However, the carbon markets are increasingly becoming available to land trusts and other landowners. Prior to granting a Forever Wild easement, consideration should be given to whether the Forever Wild easement will effectively prohibit the granting of emission reduction benefits by an eligible landowner.

This Forever Wild Easement was created as a stand-alone option. A number of the sections of the base Model had to be modified and an add-in section would not be sufficient or practical. If you are planning to use the Forever Wild Easement you should review the accompanying commentary to the base Model for drafting considerations and explanations for the various base model component sections.

Like many non-agricultural open space easements, the Forever Wild Easement prohibits agricultural uses. Land trusts are encouraged to do soil mapping to determine if agricultural soils are present, in order to have appropriate information on which to base their decision to use the Forever Wild option.

A Forever Wild Easement is essential if the landowner's intent is for property to evolve in a condition shaped primarily by natural processes. Forest is the natural condition across most of New England, and a Forever Wild Easement would typically increase what used to be the most common but is now the rarest habitat: old-growth forest.

Forever Wild landscapes offer unique places of beauty and solitude for people, as well as structural and habitat features for many organisms. Initially, because of the virtual absence of old growth forests, properties preserved as Forever Wild will not necessarily be older than nearby properties. However, over time, these wildlands will grow older, support a greater diversity of many types of organisms, sequester the highest levels of carbon and provide vital habitats for many species not found in younger or managed forests. A Forever Wild Easement is ideal for wildlife corridors – particularly corridors that extend north-south – giving forest interior species the possibility to move and migrate during a changing climate.

Looking ahead, a Forever Wild Easement provides a landowner the highest confidence that the landowner's forest can be enjoyed by, but remain largely undisturbed by, humans in the future. It is best suited for forests that are large, adjacent to additional forest and/or have few invasive plants. However, biologists have found that even small forest patches can exhibit old-growth characteristics.

The issue of dealing with invasive species in Forever Wild Easements has been discussed

in the ecological preservation community for years. Many agree we should allow the removal of non-native invasive plants and animals to facilitate native structure and function and native biodiversity and to provide flexibility to future land managers who may have new tools and techniques for controlling invasives. Without invasive management, some properties, particularly smaller ones in suburban areas, can become dominated by non-native plants, which often diminish the beauty of the parcel and reduce the diversity of some native organisms. Others believe that manipulation by humans is inherently against the spirit of a wildland where nature is left to self-organize. In this case wildlands also provide essential scientific value as biological controls against which to compare the effects of human management

Accordingly, we have provided options for both trains of thought. The parties must determine how to best preserve the Protected Property based on what they are trying to achieve. A Forever Wild zone can be drafted into a more conventional, but hybrid easement - offering an opportunity for some areas of a property preserved in primarily a natural condition and others reserved for ongoing farming, forestry, or other uses.

Taking the long view, a Forever Wild Easement contributes to the rarest habitat in the state and one that offers unique features that benefit both nature and people. It contributes a property with the highest ability to store carbon, mitigate flooding, and protect our water resources. While the rights of a landowner in a Forever Wild easement are limited, they are exchanged for the highest assurance that nature would be protected from unnecessary intervention in perpetuity.

*The Model Forever Wild Conservation Easement below and this commentary have been prepared for illustrative and informational purposes only. The use of the modifier “model” in the document and associated commentary is not intended to imply that the document satisfies all legal requirements. While based on current developments in the continuing evolution of land conservation law, practice and documentation, neither the Connecticut Land Conservation Council, its funders, officers, directors, employees, contractors, agents or other representatives, nor the members of the Connecticut Model Conservation Easement Working Group guarantee the qualification of this model conservation easement document under federal, state and local law. Neither these publications nor their release are intended to impart definitive legal, accounting or tax planning advice. Because of the complexity of the subject matter and the conditions of these documents’ release, anyone intending to use or apply this sample document or the related commentary should retain the services of competent professional counsel.*

**Drafting Directions: Areas in the Model where information needs to be inserted, or choices between options particularly need to be made, are indicated by brackets. THE DRAFTER SHOULD DO A GLOBAL SEARCH FOR THE BEGINNING BRACKET TO MAKE SURE THAT NO SUCH AREAS ARE LEFT UNCONSIDERED AND UNEDITED. The whole of the document should be examined for editing appropriate to the property at issue.**

**If an X appears in a number in the Base Model or the Options, you are to insert the**

proper numerical listing for that paragraph as it is dependent on the numbering of other provisions.

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After recording, please return to:

\_\_\_\_\_ [Grantee or Grantee's attorney]  
\_\_\_\_\_  
\_\_\_\_\_

## FOREVER WILD CONSERVATION EASEMENT

This Grant of **CONSERVATION EASEMENT** made this [\_\_\_\_\_] day of [\_\_\_\_\_, 202\_] by and between [Donor names] having an address at [\_\_\_\_\_] who with his/her/their/its 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 \_\_\_\_\_,] together with its successors and assigns, in perpetuity, 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 “[\_\_\_\_\_]” recorded in the land records of the town where the Protected Property is located.]

#### [ALTERNATIVE 1: WHERE LAND TRUST IS THE GRANTEE

**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.] Grantee represents that it has the commitment to protect the conservation purposes of this conservation easement and the resources to monitor and enforce the restrictions in perpetuity.]**

**[ALTERNATIVE 2: WHERE MUNICIPAL ENTITY IS THE GRANTEE**

**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, scenic, forested, and open space conservation values and conservation 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 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.

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.

#### E. BENEFITS OF FOREVER WILD PROTECTION.

Fragmentation and loss of wildlife habitat due to human activity, including development and logging, has fractured ecosystems and wildlife corridors, and splintered natural communities, and impeded their natural function, degrading air and water quality.

Due to the integrated nature of forested ecosystems, human activities on the Protected Property will affect not only the Protected Property's Conservation Values, as herein defined, but also those of nearby lands.

Old Growth Forests, that will eventually develop in Forever Wild parcels, were originally the predominant ecosystem type in Connecticut, and now rank among the rarest ecosystems in Connecticut and New England;

Forever Wild forests are an important source of carbon sequestration, helping to mitigate rising CO2 levels and associated climate change.

Forever Wild forests provide exceptional locations of solitude and beauty.

Forever Wild ecosystems harbor or will foster much of the Biological Diversity, genetic diversity, and age diversity that was present in Old Growth Forest habitats of Connecticut; Forever Wild forests have or will gain over time, more complex ecological structure and function driven by natural forces;

Forever Wild land preservation can be used to prevent further fragmentation and habitat loss and to restore Ecological Integrity (as hereinafter defined).

#### **SCENIC ENJOYMENT:**

F. 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 **[specify view characteristics and identify public ways, public areas etc.]**

#### **HABITAT PRESERVATION:**

G. 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 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]**

H. The Protected Property abuts [is adjacent to] [is in close proximity to] [is contiguous to] property owned by [Grantee/Town/State of Connecticut etc.] 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.

**[OPTION OUTDOOR RECREATION AND EDUCATION:**

**I. 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:**

J. 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:**

K. 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 [wetlands/habitat][elaborate]; 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 have been observed on or about the Protected Property, including: [\_\_\_\_\_]

(6) Connecticut General Statutes § 26–303 declares “it is a policy of the state to conserve, protect, restore and enhance any endangered or threatened species and essential habitat.”

(7) **[Add any other public policies that relate to the specific property and are consistent with Forever Wild, 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 preserve and restore the Forever Wild character of the Protected Property, with minimal interference by humans, in order to conserve plant and wildlife habitats and Biological Diversity, native flora and fauna, and the environments and ecological processes that support them, as those values exist on the date of this Easement and as they may evolve in the future; and to contribute to the preservation of larger forest ecosystems and other natural resources.

(ii) to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property described above.

Grantee and Grantor recognize the wildlife habitat and wilderness values of the Protected Property, and share the common purpose of preserving these values for present and future generations through the conveyance and acceptance of this Conservation Easement.

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

**2.X “Best Management Practices”** unless a specific set of practices is otherwise indicated, 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. **“Biological Diversity”** is the variety of life and its processes; it includes the variety of living organisms and the genetic differences among them, the communities and ecosystems in which they occur, and the ecological and evolutionary processes that keep them functioning; it is ever changing and adapting.

**2.X “Code”** is defined in the Recitals.

**2.X “Conservation Values”** are defined in the Recitals.

**2.X “Ecological Integrity”** describes a condition in which natural processes (e.g. biological competition and cooperation, floods, fire, drought, seed dispersal, herbivory, nutrient cycling, and maintenance of microclimates) are allowed to occur within their natural variation over time without human manipulation or suppression. This dynamic and changing environment provides opportunities for biological evolution.

**2.X “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, worker and community right-to-know, light, noise, 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.X “Forever Wild”** means land protected in its natural condition, as free from human manipulation and disturbance as possible[,with management actions, if any, primarily limited to those necessary for health and safety, trail maintenance, or ecological restoration, or to preserve natural communities and rare species at risk]. The Ecological Integrity and wild character of the land are intended to be preserved and protected in perpetuity. Non-human occurrences such as floods, weather events, fire, and native insect outbreaks should continue to influence the land over time, creating at times areas of Old-growth Forest, downed/dead wood, and early successional habitat. Land managed as Forever Wild benefits the natural communities therein, as well as humans who benefit from its Ecological Integrity and Biological Diversity and may enjoy the scenic beauty and other wilderness values.



**2.X “Grantee”** is defined in the first paragraph of this Easement and includes the initial Grantee and its successors and assigns, in perpetuity.

**2.X “Grantor”** is defined in the first paragraph of this Easement. It shall also mean the masculine, feminine, corporate, singular or plural form of the word as needed in the context of its use.

**2.X “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.X “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.X “Native Species”** are those that were present in the area of the Protected Property prior to Euro-American settlement or that have moved into an area since that time without direct human assistance.

**2.X “Non-native Invasive Species”** are non-native animal, plant, or other organisms that through their capacity to spread into native systems demonstrably or potentially threaten Native Species.

**2.X “Old-growth Forest”** is a forest that has attained great age without significant disturbance and thereby exhibits unique ecological features and is classified as a climax community. Old-growth Forest features include diverse tree-related configurations that provide varied wildlife habitat that increases the biodiversity of the forested ecosystem. Diverse tree-related structures include multi-layered canopies and canopy gaps, greatly varying tree heights and diameters, diverse tree species of all age classes, and extensive woody debris on the forest floor. A forest is considered to have reached the Old-growth Forest stage when enough time passes for the effects of past human disturbance to be no longer readily evident.

**2.X “Purpose”** is defined in Paragraph 1 hereof.

**2.X “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.X “Structure”** means anything constructed or erected, the use of which requires permanent location on, above or under the ground, or attachment to something having a

permanent location on, above or under 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 Retained Rights set forth in **Paragraph 4** below and provisions elsewhere in this Easement, the following acts or uses are expressly prohibited on or in connection with the Protected Property:

**3.1 Subdivision.** The Protected Property shall together constitute one entire and undivided parcel of land notwithstanding that said Protected Property may be described as one or more parcels of land on Schedule A hereof. The Protected Property shall be granted, sold, exchanged, gifted, conveyed or transferred as a unit in order to prevent land and management fragmentation, whether or not said Protected Property is described herein or has been described in any prior deed, as more than one piece or parcel of land. The Protected Property may not be divided (including by lot line change, partitioned, or subdivided, nor conveyed, whether by physical, legal or other process, except in its current configuration as an entity or except as may be permitted in **Paragraph 4** below; Partition of the Protected Property between owners or tenants in common shall be considered a subdivision and is prohibited under the terms of this Easement. 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 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, setbacks 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 and Other Improvements.** 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.**

**3.5 Changes to Vegetation.** To ensure the wild and natural character of the Protected Property, in accordance with the Purpose, there shall be no removal, destruction or cutting of trees, shrubs or herbs, or planting of non-native species, 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 Non-native Invasive species or non-native pest species of plant or animals including feral animals;]**

(iii) the right to conduct limited cutting of dead or damaged trees to remove dangerous conditions (but not to remove dead or dying trees that are not a hazard). If dead or damaged trees are cut, whenever practicable the wood shall remain on the Protected Property;

**[(iv) the prevention of the spread of nonnative plant or animal species that pose a significant threat to Native Species of interest and to the native structure and function of the forest, with the consent of the Grantee pursuant to Paragraph 4.5 or pursuant to Paragraph 5.X.;**

**[(v) restoration of areas impacted by the activities listed in (i) (ii) (iii) and (iv) above with native flora.]**

(vi) with consent of Grantee [in its sole discretion] [pursuant to Paragraph 4.5 or pursuant to Paragraph 5.X.]

**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 as (i) provided in Paragraph 4.5 and 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 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 a written forest and/or wildlife management plan prepared by a Qualified Natural Resource Professional, which plan must be approved in writing by Grantee, or (iv) as approved in writing by Grantee, in its sole discretion. The use of any pesticides in the neonicotinoid family is prohibited. The use of pesticides, defined above, for such purposes shall be undertaken in accordance with Best Management Practices for pesticide application in a manner reasonably designed to control the identified threat with the least possible damage to non-target species; for example, by use of**

**non-broadcast, narrowest spectrum, least persistent, material appropriate for the target species and all such use shall be subject to the prior written approval of Grantee in its sole discretion].**

**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 quality, or which could alter natural water level and/or flow in or over the Protected Property, except as provided in **Paragraph 4.**

**3.9 Recreational Vehicles.** 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 motorized [or mechanized] recreational vehicles except as provided in Paragraph 4 below.

**3.10 Commercial Recreational Activities.** There shall be no commercial or industrial uses of the Protected Property.

**3.11 Prohibition on Hunting and Trapping.** There shall be no hunting or trapping of animals except as reasonably required to remove nuisance animals that pose an immediate risk to human or animal health or safety (for example animals with rabies or distemper)[ or pursuant to **Paragraph 4.5 Habitat Enhancement**].

**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.**

**4. GRANTOR'S RETAINED RIGHTS AND PERMITTED USES.** Grantor retains 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 or its Purpose. To the extent required for compliance with 26

CFR. 1.170A-14(g)(5)(ii), and only to the extent such activity is not otherwise subject to Notice or Approval under this Easement pursuant to **Paragraph 7**, Grantor agrees to notify Grantee before exercising any right that may have an adverse impact on the conservation interests associated with the Protected Property.

**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 to provide the opportunity for Grantee to explain the terms of the Easement to potential new owners or interest holders prior to any closing or transfer. No later than thirty (30) days after the transfer, any new successor Grantor shall copy the Grantee with the newly recorded deed, as well as the successor Grantor's name and contact information.

**4.2 Existing Structures; Trails.** 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 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 fieldstone 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.

Existing trails and Woods Roads may be maintained. All new trails and Woods Roads, and relocation of existing trails and Woods Roads, shall be subject to the Grantee's Approval and all conditions imposed by Grantee to protect the Conservation Values of the Protected Property. Trails and Wood Roads shall be planned, located, and constructed to substantially prevent sedimentation or erosion of the Protected Property and wetlands and watercourses on or adjacent to the Protected Property. The extent and use of such improvements shall not, individually or in the aggregate, have an adverse impact on the Purpose of this Easement. Such paths, trails, and Woods Roads may be surfaced with permeable materials only, including but not limited to sand, gravel, shell, rock, or crushed stone and subsurface synthetic stabilization materials. For the purposes of this Easement, "Woods Road" means a passable vehicular roadway, surfaced in accordance with the above limitations, suitable for the activities permitted to Grantor hereunder.

**4.3 Outdoor Recreational Activities.** Grantor reserves the right to engage in non-commercial non-motorized outdoor recreational activities ("Outdoor Recreational Activities") that do not (a) require development of, or the construction of Structures or other facilities described in **Paragraph 3.3** on the Protected including by way of illustration and not limitation, [camping,] walking, hiking, running, cross country skiing,

wildlife observation, ecological education, [horseback riding] snowshoeing, and similar uses, but not those activities involving the recreational use of motorized vehicles or mountain bikes, or that would impair the Conservation Values protected by this Easement. All dog walking shall be performed with the dog under leash [leash with direct remote control] [under control]. Provided, however, that there shall be no fishing, shooting, or hunting of any kind unless otherwise specifically allowed under other provisions of this Easement.

**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 carry out land management actions designed to assure ecological restoration or preservation of natural communities and rare species to a scale and density that matches the best scientific knowledge of their pre-Euro-American settlement state as recommended in writing by a Qualified Natural Resource Professional who is approved by Grantee; Provided, however, that any forest management, cutting, or logging activities, such as cutting vegetation, shall be limited to ecological restoration to remove Non-native Species, damage or disease posing an extreme threat to the health of a particular Native Species in the forest ecosystem, and re-introducing extirpated species. All such activity shall be based on peer-reviewed scientific literature that identifies an extreme threat and recommends the felling or removal of forest flora. The most minimally invasive option necessary to protect an imperiled species in the forest ecosystem shall be utilized. No such forest management, cutting, or logging is permitted without the prior written Approval of Grantee in its sole discretion.]**

**4.7 Necessary Vehicles.** As reasonably necessary in connection with permitted uses, management, and protection of the Protected Property, the right to bring on the Protected Property and operate automobiles, light trucks, off-road vehicles (but not motorcycles), farm equipment, forestry equipment, emergency and rescue vehicles, maintenance equipment, and other vehicles and equipment.

**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, including the use of drone aircraft, 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.

**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.

**5.3 Management by Grantee.** The right, but not the obligation, subject to the approval of Grantor which approval will not be unreasonably withheld, to monitor the condition of plant and animal populations, plant communities, and natural habitats on the Protected Property[, **and to manage them to promote the Purpose of this Easement, in accordance with the recommendations of a Qualified Natural Resource Professional and consistent with the standards in Paragraph 4.5].**

**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.

## **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.** No use shall be made of the Protected Property and no activity thereon shall be permitted which is or is likely to become inconsistent with the Purpose of this Easement. Grantor and Grantee acknowledge that, in view of the perpetual nature of this Easement, they are unable to foresee all potential future land uses, future technologies and future evolution of the land and other natural resources, and other future occurrences affecting the Purpose of this Easement or the Protected Property. Grantee therefore, in its sole discretion, may determine whether the following are consistent with the Purpose of this Easement: (a) proposed uses or proposed improvements not contemplated, or addressed by this Easement or (b) alteration in existing uses or Structures.

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 paragraph.

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 1.) consistent with the Purposes of this Easement; 2.) be in substantial conformity with the intent of the original Grantor, and 3.) result in **[a material improvement ]**~~**[no negative impact]**~~ 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 under this Paragraph that would:

- (i) adversely affect the perpetual duration of this Easement or Purpose of this Easement;
- (ii) result in the termination of this Easement over all or a portion of the Protected Property; or
- (iii) 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 of this Easement. 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 mechanics 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. The Parties to this Easement specifically acknowledge that events and circumstances of noncompliance constitute immediate and irreparable injury, loss and damage to the Protected Property and accordingly entitle Grantee to such equitable relief, including but not limited to injunctive relief, as the court deems just. The remedies described herein are in addition to, and not in limitation of, any other remedies available to Grantee at law, in equity or through administrative proceedings.

**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 Grantee's Remedies Paragraph 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, failure or delay 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, laches or estoppel of its rights to do so later.

**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 or defending 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 the Grantor is responsible, including without limitation, costs and expenses of investigation, dispute management, negotiation, mediation and, if applicable, arbitration costs, settlement or suit and reasonable attorneys', expert's and consultant's fees, staff time and any fees and costs of restoration, remediation or other damage correction necessitated by any such action, and including the drafting of any related new conservation protection or enhancement documents, and other payments as may be ordered by such court or arbitrator. If Grantor ultimately prevails in a judicial enforcement action, each party shall bear its own costs.

**10.2 Non-Enforcement Costs.** Grantor acknowledges that its general operating funds and any stewardship endowment it may have do 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 this 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 this 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 such 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. Grantor and successor Grantor shall comply with the notice provisions in **Paragraph 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 reinstate 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 and with the assignment provisions of this Easement. Any instrument of assignment of this Easement or the rights conveyed herein shall refer to the provisions of this Paragraph, 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 this 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.** This Easement is intended by the Parties to protect the Conservation Values of the Protected Property in perpetuity. There may come a time when unusual and unforeseen circumstances arise which in the judgment of Grantor and Grantee merit consideration of amendment of this Easement, and Grantee determines, in its sole and absolute discretion, that such amendment is appropriate to enhance the preservation of the Protected Property in perpetuity, to correct an error or clarify an ambiguity, to add new land area to the protection of the Easement, to remove a Grantor's retained right, or to upgrade standard language and format to reflect statutory and regulatory changes, improve enforcement and improve administration, and is consistent with the conservation purposes of the Easement.

Such amendment must meet ALL of the following criteria, as determined by Grantee in its sole and absolute discretion:

- (a) clearly serve the public interest and be consistent with Grantee's mission,
- (b) comply with all applicable federal, state and local laws,
- (c) not jeopardize Grantee's tax-exempt status or status as a charitable organization under federal or state law,
- (d) not result in private inurement or confer an impermissible private benefit,
- (e) be consistent with the Purpose and intent of this Easement,
- (f) not be inconsistent with the documented intent of the donor, Grantor and any direct funding source,
- (g) have a net beneficial or neutral effect on the relevant Conservation Values protected by this Easement, and
- (h) not negatively affect the enforceability of this Easement.

The Parties may not amend this Easement in any way that could adversely affect the perpetual duration of this Easement with respect to all or any portion of the Protected Property.

Any amendment of this Easement in accordance with this Paragraph shall be executed by

Grantee or by Grantee's successor in title to the benefits of this Easement and by the record owner or owners of the portion or portions of the Protected Property to which the amendment applies and recorded in the official land records of the town where the Protected Property is located. Grantee shall not be liable for any failure to grant approval under this paragraph.

**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 Grantee's real property right is represented by the ratio of the value of this Easement on the date of this Easement to the value of the Protected Property as a whole at that time, 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 this Easement to the value of the Protected Property unencumbered by this Easement shall remain constant, and Grantee's percentage interest in the fair market value of the Protected Property thereby determinable shall remain constant,

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. On a subsequent sale, exchange, or involuntary conversion of the Protected Property, the Grantee shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Easement 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.

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 shall be recorded in the official land records of the town 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 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. 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. Reference to any Paragraph herein shall be construed to include all subparagraphs and subsections under the referenced Paragraph. Whenever the context so requires or admits, words in the singular number shall include the plural, and vice-versa, and any word in a given gender shall include either or both genders.

**19.2 Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to effect the conservation Purpose of this Easement and the policy and purpose of Sections 47-42a through 47-42e of the Connecticut General Statutes, as amended. 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.

**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 schedules attached hereto set forth the entire agreement of the parties with respect to this Easement and supersede all prior discussions, negotiations, understandings, or agreements relating to this 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 Grantor 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 Purpose 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.

**19.11 Authority.** Each signatory of this Easement represents and warrants that he or she is duly authorized to enter into and execute the terms and conditions of the Easement and to legally bind the party he or she represents.

**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 schedules, 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.

**23. ACCEPTANCE AND ACKNOWLEDGMENT OF EASEMENT.** As attested by the signature of its authorized officer affixed hereto, Grantee hereby accepts the interest in real property and the rights and responsibilities conveyed by this Easement, in accordance with the provisions of section 47-6b of the Connecticut General Statutes. Except for the monetary consideration, if any, specifically set forth herein, Grantee acknowledges that no goods or services were provided as consideration for this Easement.

TO HAVE AND TO HOLD this Easement unto the said Grantee forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

Witness:  
[INSERT NAME]

**Grantor**

\_\_\_\_\_  
[Print name of above signer]

\_\_\_\_\_

\_\_\_\_\_  
[Print name of above signer]

Witness  
[INSERT NAME]

**Grantee**

\_\_\_\_\_  
[Print name of above signer]

By \_\_\_\_\_  
[insert name of signer]

\_\_\_\_\_  
[Print name of above signer]

Its [insert capacity of signer],  
duly authorized

STATE OF CONNECTICUT )  
 ) ss. Town of  
COUNTY OF \_\_\_\_\_ )

, 20\_\_

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did depose and say that he/she is the person named in the foregoing instrument, and acknowledged said instrument to be his/her free act and deed.

*In Witness Whereof*, I hereunto set my hand and official seal.

\_\_\_\_\_  
Commissioner of Superior Court/  
Notary Public/My commission expires:

STATE OF CONNECTICUT )  
 ) ss. Town of  
COUNTY OF \_\_\_\_\_ )

, 20\_\_

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that [he/she] is the \_\_\_\_\_ of \_\_\_\_\_, the corporation named in the foregoing instrument; and acknowledged said instrument to be the free act and deed of said corporation.

*In Witness Whereof*, I hereunto set my hand and official seal.

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Commissioner of Superior Court/  
Notary Public/My commission expires: