

*Editor’s Note: This easement is a compilation of the 2014 Connecticut Model Grant of Agricultural Conservation Restriction (developed by a coalition including the American Farmland Trust, Connecticut Farmland Trust, CT Dept. of Agriculture), and the Connecticut Land Conservation Council Model [Open Space] Conservation Easement (Second Edition 2019). The objective of this compilation is to update the Agricultural Conservation Restriction (now titled “Easement”) to be consistent with the general boilerplate legal provisions, format and of the Model Conservation Easement and make the Agricultural Conservation Easement more consistent with the format and general provisions of the Model [Open Space] Conservation Easement, while retaining the provisions specific to agriculture from the Agricultural Conservation Easement. Reference should be made to the Commentaries for both easements for further information.*

**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.

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 other drafting numbering.

Review the accompanying commentary for drafting considerations and explanations for the various component sections.

After recording, please return to:

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

\_\_\_\_\_  
\_\_\_\_\_

**[CONNECTICUT MODEL]  
GRANT OF AGRICULTURAL CONSERVATION EASEMENT  
[insert if applicable INCLUDING OPTION AND RIGHT TO PURCHASE]**

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 as map number [\_\_\_\_] 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, [agricultural] 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), including 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 includes and 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. Grantor and Grantee acknowledge that conditions which sustain the conservation values may change over time, and that the change or disappearance of some conservation values do not invalidate the others.

#### **AGRICULTURAL CONSERVATION VALUES:**

E. Preservation of the Protected Property protects significant agricultural conservation values, as follows:

(a) The Protected Property represents a farm in the State of Connecticut, many of which have ceased to exist in Connecticut and throughout New England due to increased development pressures and a variety of other social, economic, and global forces, the protection of which shall conserve productive agricultural land in Connecticut and prevent its change in use to residential, commercial, or industrial development;

(b) Approximately [\_\_\_\_\_] percent ( [\_\_\_\_\_]%) of the Protected Property is in or supports agricultural production and approximately [\_\_\_\_\_] percent ([\_\_\_\_\_]%) of the soils have been classified as Prime Farmland, Statewide Important Farmland, and Local Important Farmland by the Natural Resource Conservation Service (NRCS), U.S. Department of Agriculture (USDA). The primary purpose of this conveyance is to protect agricultural soils, agricultural viability, and the general productive capacity of the Protected Property in perpetuity, [in connection with the preservation of the agricultural heritage of the Grantor]; and

(c) Approximately [\_\_\_\_] percent ([\_\_\_\_] %) of the Protected Property is in or supports productive forest vegetation. Maintaining soil productivity sustains forest soils in a condition that favors regeneration, survival and long-term growth of desired forest vegetation. Forestry practices that protect the productivity of the forest soils provide a public benefit by meeting society’s need for forest products while contributing to the resource-based economy of the surrounding region, and also support other conservation value and amenities provided by these woodlands.

(d) The Protected Property is **[INSERT RELEVANT FARM HISTORY, ETC.]**

**[OPTIONAL] PROTECTION OF WILDLIFE HABITAT CONSISTENT WITH AGRICULTURAL USE**

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] **[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], and is within an area which Grantee has determined is of substantial **[scenic and ecological]** importance to the Town of [\_\_\_\_\_];

G. The Protected Property abuts **[is adjacent to][is in close proximity to][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.

**OPEN SPACE PRESERVATION AND FURTHERANCE OF GOVERNMENTAL POLICY, INCLUDING AGRICULTURAL PROTECTION POLICIES:**

H. The preservation of the Protected Property’s open space (including farmland and forest land) through this Easement 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:

(a) The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. Section 4201, *et seq.*, whose purpose is “to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government and private programs

and policies to protect farmland;” and

(b) The federal Agricultural Act of 2014, whose purposes include “(3) protect the agricultural use and future viability, and related conservation values of eligible land by limiting nonagricultural uses of that land;” and

(c) 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, 1; C.G.S. Section 12-107a); and

(d) In 1971, the Connecticut General Assembly passed Public Act 173 (codified as amended in C.G.S. Sections 47-42a through 47-42e) that 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

(e) Also, in 1978, the Connecticut General Assembly found that unless there is a statewide agricultural preservation program, “remaining agricultural land will be lost to succeeding generations and that the conservation of certain arable agricultural land and adjacent pastures, woods, natural drainage areas, and open space areas is vital for the well-being of the people of Connecticut.” As a consequence, the General Assembly enacted a state program for the preservation of agricultural lands through the purchase of development rights (P.A. 78-232; C.G.S. Chapter 422a, Section 22-26aa through 22-26ii); and

(f) [if applicable] Preservation of the Protected Property is of community and agricultural importance because it includes highly productive and important agricultural soils and is reflected as agricultural land on the land use and open space maps in the [town] Plan of Conservation and Development dated [\_\_\_\_\_]. [Insert relevant plan information]; and

(g) [if applicable] Funding of the preservation for the Protected Property has been approved by NRCS, USDA. [elaborate]; and

(h) [if applicable] the Protected Property has been specifically designated on the Open Space Plan of the Town of [ \_\_\_\_\_ ] as [ \_\_\_\_\_ ]; and

(i) [if applicable] 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**

resource]; and

(j) [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.]

I. The current use of the Protected Property for agricultural production and its current improvements are consistent with the foregoing conservation purposes; and

J. Grantor and Grantee have the common purpose of conserving the above-described agricultural Conservation Values and additional Conservation Values of 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 described in the above Recitals.

**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 (ex. and in consideration of the payment of [\_\_\_\_\_] Dollars and 00/100 Cents (\$[\_\_\_\_\_] .00) to Grantor)] and as an absolute and unconditional [gift/grant], the Grantor 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.** The primary purpose of this Easement is to protect the agricultural soils, current and future agricultural viability, and agricultural productivity of the Protected Property in perpetuity. No activity that may significantly impair the actual or potential use of the Protected Property for agricultural production shall be permitted.

To the extent that the preservation and protection of the non-agricultural Conservation Values of the Protected Property referenced above are consistent with the primary purpose of protecting the agricultural soils, current and future agricultural viability, and agricultural productivity of the Protected Property in perpetuity, it is also the purpose of this Easement to protect those additional Conservation Values of the Protected Property, and to such extent, no activity that impairs or adversely impacts the Conservation Values of the Protected Property shall be permitted.

Any permitted uses reserved to Grantor must be carried out in a manner that is consistent with the Purpose of this Easement.

The foregoing purposes of this Easement are hereinafter collectively referred to as the “Purpose.”

**2. DEFINITIONS. [READ CAREFULLY AND EXCLUDE ITEMS AND PARTS OF DEFINITIONS AS REQUIRED]** The following definitions apply throughout this Grant. If any term defined in this section is not used in the Easement, the defined term is to be disregarded as surplus material. 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 “Agriculture” and “Agricultural Activities” means:**

(a) The cultivation of the soil, including the creation, restoration, and/or maintenance of fields, grasslands, pasture, coverts, or meadows for commercial and/or non-commercial farm, nursery, agricultural or wildlife management purposes including by way of example and not limitation:

- (i) Clearing forest trees and other growth for the purposes set forth above;
- (ii) Preparing land for agricultural, pasture, garden, or open meadow use;
- (iii) Planting, seeding, and re-seeding agricultural crops, but not species with known invasive characteristics;
- (iv) Trimming and cutting brush and trees in order to maintain clear borders around or paths within such areas;
- (v) Applying herbicides, pesticides, fungicides, and fertilizers for bona-fide agricultural purposes; and
- (vi) other similar uses upon written request to the Grantee, in Grantee’s sole discretion.

(b) The cultivation, raising, production, harvesting, or sale of any agricultural or horticultural commodity grown on the Protected Property, including, but not limited to:

- (i) Crops commonly found in the community surrounding the Protected Property;
- (ii) Field crops, including, but not limited to, corn, grains, hay, potatoes, cotton, tobacco, herbs, beans, grasses and biofuels;
- (iii) Fruits, tree products and non-timber forest products, including, but not limited to, apples, grapes, nuts, berries, mushrooms and maple syrup or maple

sugar;

(iv) Vegetables of all kinds;

(v) Horticultural specialties, including seeds, nursery stock, Christmas trees, compost, and flowers;

(vi) Livestock and livestock products, including, but not limited to raising, shearing, feeding, hatching, caring for, training and management of livestock, including: beef cattle, sheep, swine, goats, horses, poultry, bees, milk and other dairy products, eggs, and fur bearing animals and wildlife;

(vii) The private or commercial stabling, breeding, training, riding, pasturing and care of horses, livestock and other animals, including maintaining a riding stable [including indoor and outdoor riding rings];

(viii) Raising or harvesting of aquatic plants and animals including oysters, clams, mussels, other shellfish or fish and their byproducts (“Aquaculture”); and

(ix) Forestry Activities;

(x) Other similar uses and commodities upon written request to the Grantee, in Grantee’s sole discretion.

(c) Agricultural Activities shall also include the following associated uses which are customary, supportive and agriculturally compatible uses in Connecticut:

(i) The production, primary processing, direct sale, and storage of agricultural products grown, produced or raised principally (defined as more than [\_\_\_\_\_]#\_\_\_\_\_] on a yearly average) on the Protected Property. Primary processing shall include handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market, or to a carrier for transportation to market, or for direct sale any agricultural or horticultural commodity as an incident to ordinary agricultural operations, or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market or for direct sale;

(ii) Structures associated with the production of energy for use principally (defined as more than [\_\_\_\_\_]#\_\_\_\_\_] on a yearly average) on the Protected Property, [and the abutting farmland of Grantor – only if part of farm and expressly limited to such], including wind, solar, hydroelectric, methane, wood and fossil fuel systems, and structures and facilities for the storage and treatment of animal waste as more fully set forth herein;

(iii) The operation, management, conservation, improvement or maintenance of a farm and its buildings, tools and equipment;



(iv) Structures and facilities associated with irrigation, farm pond impoundment, and soil and water conservation and the construction, operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for agricultural purposes;

(v) Composting and other soil enhancement activities; and

(vi) The lawful onsite disposal of animals and agricultural products raised or housed on the Protected Property pursuant to permitted activities.

The above definition of Agriculture and Agricultural Activities is broadly worded. Inclusion of use or activity in this definition does not mean that such specific use or activity is not otherwise limited or specifically excluded elsewhere in this Easement, or restricted by applicable laws or regulations. Agricultural structures are restricted by the Structure Limitations in **paragraph 4.10**. Forestry Activities are governed by **paragraph 4.3**.

**2.2 “Approval”** is defined in **paragraph 9**.

**2.3 “Baseline Report”** is defined in **paragraph 19.10**.

**2.4 “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.

**2.5 “Clear, Clearing and Clear Cutting”** means the removal of all or substantially all trees and shrubs with an average diameter at base of 2 inches, where the length or width of the cleared area generally exceeds the average height of mature trees in the immediate vicinity.

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

**2.7 “Conservation Plan”** is that plan, or modified plan adopted pursuant to **paragraph 4.2**.

**2.8 “Conservation Values”** are defined in Recitals.

**2.9 “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.

**2.10 “Farm”** means the facilities, equipment, structures and lands used primarily for Agriculture.

**2.11 “Farm Road”** is defined in **paragraph 4.7**.

**2.12 “Farmstead Building Area”** means that approximately [\_\_\_\_#] acre portion of the Protected Property within which the **[current house and barns are situated and where]** new structures may be built pursuant to subject to the Structure Limitations herein and which is illustrated on the **Plan [attached hereto as Schedule C or recorded in the [\_\_\_\_\_] Land Records]** and identified in the Baseline Report.

**2.13 “Footprint”** means the surface space occupied by a structure or device including, but not limited to, closed and unenclosed porches and garages, unenclosed decks, raised surfaces or roofs, basements and attics, measured as a product of the outermost width and length dimensions.

**2.14 “Forestry Activities”** means: planting, growing, harvesting, spraying, pruning, or cutting of live or dead trees, or other removal of live or dead trees, in accordance with generally accepted forestry practices and Best Management Practices, and are more particularly described and limited in **paragraph 4.3**.

**2.15 “Forest Management Plan”** means that written plan adopted pursuant to **paragraph 5.3**, prepared by a Connecticut Certified Forester.

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

**2.17 “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.

**2.18 “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.

**2.19 “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.

2.20 “Notice” is defined in **paragraph 9**.

2.21 “Passive Recreational Activities” are defined in **paragraph 4.4**.

2.22 “Purpose” is defined in Paragraph 1 hereof.

2.23 “Qualified Farmer” is defined in **paragraph 20.1.c**.

2.24 “Regulations” means the provisions of C.F.R. §1.170A-14, and any other regulations promulgated under the Code that pertain to qualified conservation contributions, as amended through the applicable date of reference.

2.25 “Rural Enterprises” are defined in **paragraph 4.5**.

2.26 “Structure Limitations” are set forth in **paragraph 4.10**.

2.27 “Temporary Agricultural Structure” is defined in **paragraph 4.10(d)**.

2.28 “Water Rights” are defined in **paragraph 3.5**.

**3. LIMITATIONS AND PROHIBITED USES.** The following prohibited uses and reserved rights for the Protected Property are based on Grantee's evaluation of the Conservation Values of the Protected Property and Grantor's goals and objectives to continue limited private use and enjoyment of the Protected Property while ensuring that the Purpose of the Easement is protected in perpetuity.

Any activity on or use of the Protected Property inconsistent with the Purpose of this Easement 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**.

In order to carry out the Purpose, and subject to the Grantor's Reserved 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 for purposes of the Connecticut General Statutes Chapter 422a 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, partitioned, or subdivided, nor conveyed, 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. Notwithstanding the foregoing, with prior approval from the Grantee, Grantor may convey any portion of the Protected Property: (i) to any organization or government entity that would qualify as an eligible assignee of this Easement as provided herein; (ii) to the owner of any adjacent property that is subject to a conservation restriction substantially similar to this Easement, or (iii) if the subdivision would protect the agricultural viability of the Protected Property and will have minimal impact on prime and important soils; [or iv. \_\_\_\_\_ insert any other permitted divisions]. Any portion of the Protected Property conveyed pursuant to this provision shall remain subject to this Easement in all respects.

The legal or de facto division, subdivision, resubdivision, or boundary line adjustment of the Protected Property, or any division of the title to the Protected Property in the form of condominium or cooperative form of ownership is hereby prohibited.

**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, lot coverage, or open space requirements under otherwise applicable laws, regulations, or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise; provided, however, that with Approval of the Grantee, this paragraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Protected Property.

**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** Grantor's Reserved Rights.

**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** Grantor's Reserved Rights.

**3.5 Changes to Vegetation.** Removal, destruction, or cutting of trees over 3" or introduction of invasive plants and animals, is prohibited, except as may be permitted in Grantor's Reserved Rights.

**3.6 Pesticides.** There shall be no use of herbicides, insecticides, fungicides, or other potentially harmful substances or the use or disposal of said products and by-products on

the Protected Property, except for Agricultural Activities and Forestry Activities, or (i) as used in a selective manner in accordance with applicable law 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, and (ii) as used in a selective manner to treat or to combat particular infestations of nuisance insects or animals such as wasp, hornet and rodent infestation.

**3.7 Trash.** There shall be no storage or dumping of ashes, trash, garbage, or similar unsightly or offensive waste material (except for storage and composting of biodegradable waste [**principally**] [**produced on the Protected Property**], as part of activities permitted to Grantor hereunder), hazardous substance or toxic waste, nor any placement of underground storage tanks in, on, or under the Protected Property, except as may be permitted under the Structure Limitations. The preceding sentence shall not apply to the aboveground presence, use, or storage on the Protected Property of small quantities of the above mentioned substances that are generally recognized to be appropriate to normal residential, Agricultural or Forestry Activities on the Protected Property.

**3.8 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.** Recreational use of, dune buggies, motorcycles, all-terrain vehicles, or any other types of motorized recreational vehicles, is prohibited, except as may be permitted in Grantor's Reserved Rights. [**Optional: To the extent required to qualify for exemption from federal estate tax under 2031(c) of the Code, and only to the extent such activity is not otherwise prohibited or limited under this Easement, Grantor agrees that commercial recreational uses are not permitted within the Protected Property.**]

**3.10 Divesting of Water Rights.** The Protected Property subject to this Easement includes all water and water rights, ditches and ditch rights, springs and spring rights, reservoir and storage rights, wells and groundwater rights, and other rights in and to the use of water historically used on or otherwise appurtenant to the Protected Property (collectively, "Water Rights"). Grantor shall not transfer, encumber, sell, lease, or otherwise separate the Water Rights from the Protected Property or change the historic use of the Water Rights without the Approval of Grantee except as may be permitted in Grantor's Reserved Rights. Grantor shall not abandon or allow the abandonment of, by action or inaction, any of the Water Rights without the approval of Grantee.

**3.11 Non-permitted Commercial and Industrial Uses.** Any commercial or industrial use of the Protected Property is prohibited, except as may be permitted in Grantor's Reserved Rights.

**3.12 Subsequent Encumbrances Contrary to Purpose.** The grant of any right of way easements (except as provided in the Structures Limitations) or use easements that might diminish or impair the agricultural viability or productivity of the Protected Property or otherwise diminish or impair the Purpose of this Easement is prohibited, except with the Approval of Grantee.

**3.13 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

**3.14 IMPERVIOUS SURFACE LIMITATION.** The total Impervious Surface permitted on the Protected Property, including the Farmstead Building Area, shall not exceed [ \_\_\_#\_\_\_ ] [square feet] [acres] or [ \_\_\_#\_\_\_ ]% of the Protected Property. For the purposes of this Easement, "Impervious Surface" shall be defined as a hard surface area that either prevents or retards the entry of water into the soil mantel at a rate lower than that present under natural conditions prior to development. Impervious Surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots, concrete, or asphalt paving, greenhouses, solar panels or other surfaces which similarly impede the natural infiltration of surface and stormwater runoff. With prior Approval of Grantee, conservation practices listed in the NRCS Electronic Field Office Technical Guide may be exempt from the Impervious Surface limitation. Impervious surfaces may include hoop houses, depending on the type of construction, in Grantee's sole discretion.

**[Grantor must notify Grantee of any construction or activity that increases Impervious Surface coverage by \_\_\_#\_\_\_sq. or more, whether or not approval is required for that construction or activity.]**

**4. GRANTOR'S RESERVED RIGHTS.** 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 retains 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. 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.

**[Notwithstanding the foregoing, such conveyances are subject to the provisions of the Option and Right to Purchase in Paragraph 20 if applicable.]**

**4.2 Agricultural Activities.** Grantor retains the right to conduct Agricultural Activities on the Protected Property as more fully set forth herein.

A. In General. An adequate buffer of high grasses, shrubs, or trees should generally be maintained between the permitted activity and adjacent slopes, wetlands, and watercourses on the Protected Property in order to ensure the preservation of the quality thereof and to protect the Purpose of the Conservation Restriction. Applications of herbicides, pesticides, fungicides, and fertilizers may be applied for bona fide agricultural purposes and shall be undertaken in accordance with law, agricultural best management practices, and in light of the actual needs of the crops or cover being grown at any time and the slope, filtration, and run-off characteristics of the site. No herbicides, pesticides, fungicides, and fertilizers may be applied and there shall be no tillage of the soil within fifty (50) feet of a watercourse or fifty (50) feet of the top bank of a watercourse. The use of fields or wooded areas as pasture for animals shall be managed to limit erosion and sedimentation of the Protected Property and limited in extent so as to prevent detrimental levels of animal waste. Agricultural lands shall be managed in accordance with sound soil and water conservation practices in a manner which will not destroy or substantially and inevitably diminish the productive capability of the Property or water quality.

B. Conservation Plan. All Agricultural Activities on the Protected Property shall be conducted in accordance with a Conservation Plan prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service, or by its successor, or by a qualified conservation professional approved by Grantee. This plan shall be updated periodically, and in any event at any time the basic type of agricultural operation on the Protected Property changes or ownership of the Protected Property changes; and shall provide for management of the Protected Property in a manner consistent with generally accepted Best Management Practices, including, but not limited to, those practices identified by the Natural Resource Conservation Service (NRCS) Electronic Field Office Technical Guide, and in a manner that takes into account the protection of the Conservation Values of the Protected Property. The Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with the standards and specifications of the NRCS Electronic Field Office Technical Guide or comparable source. Grantor shall provide Grantee with a copy of the Conservation Plan [within one year of execution of this Easement] and with copies of any updates and/or revisions. Grantor and NRCS or other applicable organization, shall have the right to enter the Protected Property, with advance notice to Grantor, in order to monitor compliance with the Conservation Plan.

Activities related to Forestry Activities shall be subject to **paragraph 4.3**, provided hereafter. Structures related to Agricultural Activities are limited and governed by the Structures Limitations in **paragraph 4.10**.

### **4.3 Forestry Activities.**

(a) In General. No Clear Cutting or prescriptive burning shall be permitted unless conducted in accordance with an approved Forest Management Plan, Farmland Restoration Plan (as defined in C.G.S sections 22-6c and 22-6d, as may be amended) or Conservation Plan. All Forestry Activities shall be consistent with then current Best Management Practices.

(b) Personal Use. Without permission of Grantee, Grantor may:

(i) Clear forested areas for conversion to agricultural purposes or conduct prescriptive burning, but only if done in accordance with the Conservation Plan or Farmland Restoration Plan; and

(ii) Cut timber to reasonably control insects and disease, to prevent personal injury and property damage, and for firewood, to maintain existing open areas on the Protected Property, and for construction material for use on the Protected Property, including construction of permitted buildings, roads, trails and fences on the Protected Property.

(c) Commercial Use. All commercial harvesting of timber and other wood products, timber stand improvements, and other forestry activities, including the marking of trees for harvest, as well as the construction, maintenance, removal and repair of access roads shall be conducted under the supervision of a Connecticut Certified Forester in conformance with a written Forest Management Plan, including any updates and/or revisions, **[approved by Grantee,]** which takes into account the protection of the Conservation Values of the Protected Property. This plan may be incorporated by reference in the Conservation Plan for the property, but such a Conservation Plan does not meet this requirement for a Forest Management Plan unless that section is prepared by a qualified Connecticut Certified Forester and consistent with the provisions of this paragraph.

**[Optional: The objectives of the Forest Management Plan shall include:**

**(i) Long term productivity and sustainability of the forest resource;**

**(ii) Maintenance or improvement of the diversity and quality of the forest resource;**

**(iii) Preservation of wetlands, water quality and riparian areas, by avoidance of erosion, siltation or other degradation of waters;**

**(iv) Preservation of [Passive] Recreational Activities, and**



**(v) Protection of wildlife habitat.]**

**4.4 Passive Recreational Activities.** Grantor shall retain the right to conduct outdoor Passive Recreational Activities compatible with the Purpose of this Easement. For the purposes of this Easement, "Passive Recreational Activities" means low-impact, non-developed uses that do not involve structures or uses that threaten the soil resource, and are consistent with the Purpose, such as: exercise, sporting, and nonmotorized recreational activities that are predominantly outdoor in nature, including but not necessarily limited to hunting, trapping, bird watching, biking with non-motorized bicycles, fishing, walking, hiking, running, crosscountry skiing, snow shoeing, shooting, non-commercial camping, horseback riding, and similar activities. Passive Recreational Activities do not include operation of dune buggies, motorcycles, all-terrain vehicles, or any other types of motorized land-based recreational vehicles or construction or placement of any permanent or temporary playing field, course, or court for recreational activities including, but not limited to, golf, tennis, soccer, football, hockey, baseball, and/or basketball, or shooting ranges [except as follows:].

**[Grantor shall also retain the right for private, non-commercial recreational purposes, to reasonably use and operate motorized vehicles (specify any restrictions on type) on the Protected Property; provided however, that such use shall be limited in extent and location so as not to have a significant impact on soils or cause siltation and erosion of the Protected Property.]**

**4.5 Rural Enterprises.** The right to operate Rural Enterprises within the Farmstead Building Area, and to construct and improve buildings for such use in accordance with the Structure Limitations, provided that the Rural Enterprise shall be incidental and subordinate to the primary use of the Protected Property for Agricultural, Forestry and residential purposes. For the purposes of this Easement, "Rural Enterprises" are defined as ancillary businesses or home occupations that support the financial viability of the use of the Protected Property for Agricultural Activities, including but not limited to, lawful home occupations, professional home offices, bed and breakfasts, events such as festivals and weddings, farm machinery repair, firewood sale and distribution, breweries and wineries #[ **insert applicable % crop grown on the premises**], and educational programs. Trailer parks, golf courses, shooting and driving ranges and auto dealerships are expressly prohibited. Buildings and improvements relating to Rural Enterprises must be completely located within the Farmstead Building Area and be consistent with the Structures Limitations.

**4.6 Operate Necessary Vehicles.** As reasonably necessary in connection with permitted uses, activities, management, and protection of the Protected Property, the right to use and operate automobiles, light trucks, off-road vehicles, Forestry equipment, emergency and rescue vehicles, maintenance equipment, and other equipment. Notwithstanding the foregoing, the right to use all-terrain vehicles and other off-road vehicles shall not be construed to include their use by the general public or for general recreational purposes, as distinguished from oversight and management of the Protected Property or the reasonable exercise of activities permitted to Grantor on the Protected Property.

**4.7 Trails and Farm Roads.** The right to construct, relocate on site, repair, maintain, and use unpaved paths, trails, Farm Roads, and roadways, stone walls, bridges, culverts, gates and fences in furtherance of the activities permitted herein only, and the right to utilize motorized vehicles in performing such activities. All such paths, trails, and Farm Roads shall be constructed with permeable materials, including but not limited to sand, gravel, shell, rock, or crushed stone and subsurface synthetic stabilization materials and located to have as little disturbance as reasonably possible to prime and important soils. Impermeable surfaces may be used where necessary for erosion control. **[All new surfaced roads and paths for vehicular use shall be subject to the Grantee's Approval.]** For the purposes of this Easement, "Farm Road" means a passable roadway, surfaced in accordance with the above limitations, suitable for farm and forestry equipment and uses reasonably related to the activities permitted to Grantor hereunder.

**4.8 Use of Water Resources.** The right to use, maintain, establish, construct, and improve water sources, watercourses, and water bodies within the Protected Property for Agricultural Activities. In addition, Grantor may alter the natural flow of water over the Protected Property in order to improve drainage of agricultural soils, reduce soil erosion, or improve the Agricultural or Forestry potential of the Protected Property, provided such alteration is consistent with the Purpose of this Easement and is carried out in accordance with law and the Conservation Plan or applicable Forest Management Plan. Grantor may conduct wetlands and watercourse habitat improvement or restoration, including Invasive Species control, as allowed by law and the applicable Conservation Plan or Forest Management Plan.

If such activity is aimed at increasing Aquaculture on the Protected Property and would have a substantial impact on farmland soils, such activity may only be conducted with prior Approval of the Grantee, in its sole discretion.

**4.9 Erosion Control.** The right to remove, place, or replace soil or ground material to control and reduce soil erosion, preserve man made wetlands, restore or remove dams, and restore manmade ponds within the existing Footprint as depicted in the Baseline Report. Such modifications shall only be conducted as part of a Conservation Plan or Forest Management Plan in furtherance of Agricultural Activities and/or Forestry Activities.

**4.10 Allowed Structures and Improvements ("Structure Limitations").** The right to construct, maintain, relocate, improve, and replace structures and farm buildings as provided hereafter:

(a) Fences and walls. Existing fences and stone walls may be removed, repaired and replaced and new fences and stone walls may be built on the Protected Property, for purposes of reasonable and customary management and protection of crops, livestock and

wildlife, and for security of farm produce, livestock, equipment and improvements on the Protected Property, and to define boundaries, without Notice or Approval of the Grantee.

(b) Existing Permanent Agricultural Structures and Improvements. The existing agricultural structures and improvements may be repaired and replaced on their current Footprints at their current location within the area in the Farmstead Building Area without Notice or Approval of Grantee. Grantor shall request Approval of Grantee prior to enlarging existing structures inside the Farmstead Building Area, or if required by current zoning, municipal, environmental and health regulations, replacing existing agricultural structures in another location in the Farmstead Building Area.

Grantor shall submit a request for Approval of Grantee to construct any replacement Agricultural Structures outside of the Farmstead Building Area, or enlargement of existing agricultural structures outside the Farmstead Building Area. Grantee may give Approval for construction outside of the Farmstead Building Area in Grantee's sole discretion. Such Approval shall not be unreasonably withheld.

(c) Temporary Agricultural Structures may be built on the Protected Property without prior Notice or Approval of Grantee. "Temporary Agricultural Structure" means a non-habitable structure, including without limitation pole sheds and run-in sheds, to be used for Agricultural Activities, constructed on vertical poles, posts, or concrete tubes, but without full footings, a foundation, or any facilities requiring a septic or other underground waste disposal system, and which only requires minor grading, but not excavation, of the land. Provided however, that prior Notice to Grantee is required if utilities (water, electric) to Temporary Agricultural Structures are to be constructed or run underground outside of the Farmstead Building Area [**or if the structure to be constructed exceeds [\_\_\_#\_\_\_]sq. ft. in Footprint**].

(d) New Permanent Agricultural Structures & Agricultural Improvements.

(i) Within Farmstead Building Area. Subject to Grantee's Approval, new buildings and other structures and improvements to be used primarily for Agricultural or Forestry Activities and not to be used for human habitation may be built in the Farmstead Building Area.

(ii) Outside of Farmstead Building Area. Grantor shall submit a request for Approval to Grantee to construct any new building or other structure or improvement to be used primarily for Agricultural or Forestry Activities outside the Farmstead Building Area. Grantee may give Approval for such construction in Grantee's sole discretion... Such Approval shall not be unreasonably withheld.

(e) Existing Residential Dwelling. The existing Residential Dwelling may be repaired on its same Footprint without Notice or Approval of Grantee. The Grantor shall give Notice to Grantee prior to replacing the existing Residential Dwelling on its same Footprint. Subject to Grantee's Approval, the existing Residential Dwelling may be expanded to a maximum Footprint of [**ex: [3,000][\_\_\_#\_\_\_\_\_] square feet**] or replaced, if required by

current zoning and municipal and health regulations, at another location within the Farmstead Building Area. No new recreational structures such as in-ground pools, pool houses, or tennis courts may be built on the Protected Property. **[No new residential dwellings may be built on the Protected Property.]** The existing Residential Dwelling may have Accessory Structures as hereinafter defined. Accessory Structures shall be constructed only within the Farmstead Building Area. Driveways to permitted structures may be paved with impervious materials. “Accessory Structures” for existing Residential Dwellings means other buildings, structures, and improvements customarily incidental and subordinate to the principal building. Such buildings may include or contain separate guest and employee quarters, studios, workshops, solar panels, flagpoles, gazebos, generator sheds, improvements for fresh water supply, utilities, and communication, satellite dishes, septic waste disposal facilities, outbuildings, garages, and outdoor furniture and ornaments, all as allowed by law. All such Accessory Structures shall not exceed [\_\_\_\_#\_\_\_\_] (ex. 1,200) square feet]in total Footprint.

(f) **[Where there is no existing dwelling on Protected Property]** New Residential Dwelling. With Approval of Grantee, Grantor may construct no more than one new (single-family) residential Dwelling Unit (as hereinafter defined) and Accessory Structures (as hereinafter defined) in the Farmstead Building Area and provide Access and utilities thereto. All improvements for such Dwelling Unit and its Accessory Structures, exclusive of access drives and utilities, shall be located within the Farmstead Building Area. At the time Grantor makes use of the site location for the new Residential Dwelling, Grantor shall provide Grantee with a plan showing the location of the Dwelling Unit and Accessory Structures, Access and utilities, if known. Such plan shall also show all mitigating measures necessary to ensure that the construction activities will not have an adverse impact on the Purpose of this Grant. No new Residential Dwelling may be constructed outside of the Farmstead Building Area. **[This paragraph should be revised and the location specifically identified if a new residence is permitted to be built outside of the Farmstead Building Area.]**

Definitions. The following definitions apply for purpose of this paragraph:

(i) “Dwelling Unit” means a structure or self-contained portion thereof designed as a single-family dwelling (including associated wells and septic systems). A Dwelling Unit may include household guest and employee quarters and a home occupation or professional offices for the occupant as allowed by law and may have Accessory Structures as hereinafter defined. The Dwelling Unit shall not exceed [\_\_\_\_#\_\_\_\_] [ex. 3,000] sq. feet in Footprint.

(ii) “Accessory Structures” for a new residential dwelling, means other buildings, structures, and improvements customarily incidental and subordinate to the principal building. Such buildings may include or contain separate guest and employee quarters, studios, workshops, solar panels, flagpoles, gazebos, generator sheds, improvements for fresh water supply, utilities, and communication, satellite dishes, septic waste disposal facilities, outbuildings, garages, and outdoor furniture and ornaments, all as allowed by law. All such Accessory Structures shall not

exceed [ \_\_\_#\_\_\_ ] [ex. 1,200] square feet in total Footprint.

(iii) “Access” means a private driveway, private road, or right-of-way as shown on the [Baseline Report/Plan] to the permitted Dwelling Unit and Accessory Structures within the Farmstead Building Area. Improvements for such Access which are located outside of the Farmstead Building Area shall be undertaken and maintained in a manner that creates the least possible disturbance to the Purpose of this Conservation Restriction, and in no event shall such improvements be greater than those imposed by governmental requirements.

(g) Farm Support Housing. All existing dwellings or structures used to house farm tenants and employees, as shown on the Baseline Report, may be repaired without Notice or Approval of Grantee, or replaced in their current location with prior Notice to Grantee. Such Farm Support Housing, subject to Grantee’s Approval, may be reasonably enlarged within the Farmstead Building Area [to no more than [ \_\_\_#\_\_\_]sq. feet in Footprint]. New Farm Support Housing may be constructed within the Farmstead Building Area [**to no more than [ \_\_\_#\_\_\_]sq. feet with Approval of Grantee**]. Grantor may request approval to enlarge such existing Farm Support Housing or create new Farm Support Housing in the Farmstead Building Area in excess of such limitation. Grantee may give Approval for such construction in Grantee’s sole discretion. Such Approval shall not be unreasonably withheld.

No Farm Support Housing may be created outside of the Farmstead Building Area. Farm Support Housing shall not be subdivided from the Protected Property under any circumstances.

(h) Utility Services and Septic System. Within the Farmstead Building Area, wires, lines, pipes, cables, or other facilities providing electrical, gas, water, sewer, communications, satellite dishes, septic waste disposal facilities, solar panels, or other utility services necessary to serve the permitted uses and buildings permitted herein (“Utility Services”) may be installed, maintained, repaired, removed, relocated, or replaced, and Grantor may grant Utility Services easements over and under the Protected Property for such purposes without Approval of Grantee. Unless it is economically unreasonable to do so, Utility Services shall be limited to the Farmstead Building Area and the existing driveway on the Protected Property. Septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired, improved, or replaced and existing lines, sewers, and other utilities may be maintained, repaired, improved, replaced or expanded, within the Farmstead Building Area and existing driveway. All utilities and septic systems shall be located so as to minimize any impacts to the Conservation Values. Any Utility Services outside of the Farmstead Building Area shall be subject to prior Approval of Grantee.

(i) Rural Enterprises Improvements. Existing buildings and improvements within the Farmstead Building Area, including the existing residential dwelling, as of the date of this Grant, may be used for Rural Enterprises, as provided herein. Such buildings and improvements may be maintained and repaired within existing Footprints without Notice

or Approval of Grantee. With prior Notice to Grantee, existing Rural Enterprises Improvements may be replaced on the same Footprint. Grantor may request Approval of Grantee for construction of new Rural Enterprises Improvements within the Farmstead Building Area or enlargement of existing Rural Enterprises Improvements within the Farmstead Building Area [so long as the total square footage of Footprint of all structures, improvements, and expansions used for Rural Enterprises does not exceed [ \_\_\_#\_\_\_ ][**ex. 1,000**] square feet. Signage shall be allowed consistent with local zoning requirements. [**Bed and Breakfasts are limited to[ \_\_\_#\_\_\_ ] units.**] Such Approval may be granted in Grantee's sole discretion.

(j) Ancillary Improvements. Provided such construction is in accordance with the Impervious Surface Limitation, in addition to the structures otherwise permitted, the Grantor may construct and place minor accessory structures on the Protected Property without Notice to Grantor limited to a cumulative Footprint of [ \_\_\_#\_\_\_ ][**ex. 1,000**] square feet, including (i) roosting, watering, feeding, and nesting shelters for wildlife, (ii) benches, and tree houses, and (iii) identification or educational signs associated with farm marketing. Grantee may request Approval for construction or placement of such improvements in excess of the cumulative Footprint limitation. Such Approval may be granted in Grantee's sole discretion.

(k) **[OPTIONAL] [Commercial Renewable Energy, Advertising and Communications. Subject to Grantee's Approval, new buildings and other structures and improvement for renewable energy and communications may be built on the Protected Property in the Farmstead Building Area. Grantee may grant Approval for construction of any such renewable energy, advertising display or billboard, or communications structure outside the Farmstead Building Area, in Grantee's sole discretion.]**

**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 Preserve and Protect.** The right to preserve and protect the Conservation Values of the Protected Property;

**5.2 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.

**5.3 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.** 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 of 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 Purpose of this Easement; 2.) be in substantial conformity with the intent of the original Grantor, and 3.) result in **[a material improvement ]****[no negative net 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 any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor. Grantor shall be solely responsible for the upkeep and maintenance of the Protected Property, to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Protected Property. Grantee shall be liable for Grantee's monitoring activities that do not constitute corrective action. If Grantee discovers that corrective action is necessary, Grantor shall be responsible for all costs



associated with such corrective action as provided herein.

**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.

**8.6 Affirmative Farming Covenant.** Grantor and Grantee intend that the Protected Property shall be actively used for commercial Agricultural Activities in perpetuity; however, Grantor and Grantee recognize that unforeseen events may necessitate that the Protected Property, or a portion thereof, be taken out of such use temporarily or that Grantor may, for whatever reason, wish to cease conducting commercial Agricultural Activity on the Protected Property for a period longer than one (1) year. Grantor shall notify Grantee within (i) thirty (30) days of the decision to cease to conduct commercial Agricultural Activities on the Protected Property or a portion

thereof, for a period longer than one (1) year; or (ii) within fifteen (15) days of the date that is one (1) year from the date of last conducting commercial Agricultural Activities on the Protected Property, or portion thereof.

During the period of cessation of Agricultural Activities, Grantor agrees to keep the Protected Property open and available for Agricultural Activities consistent with the Conservation Plan and its open condition at cessation of Agricultural Activities. If Grantor fails to resume active commercial Agricultural Activities within one (1) year after last conducting Agricultural Activities on the Protected Property, regardless of whether a cessation notice is given, and fails to maintain the property in its open and agricultural condition during such time by cutting the open areas at least once per year, Grantee shall have the right, but not the obligation, to enter on the Property to cut, mow or hay the fields and open areas as reasonably necessary to preserve their availability for agricultural use and to control invasive species, and to retain the proceeds therefrom, if any. Grantee shall have the right to obtain reimbursement from Grantor for the costs associated with the implementation of such maintenance to keep the Protected Property open and available for Agricultural use.

## **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 of 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 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 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 fees and 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 of 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. 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 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 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.** 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 or 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(s) of this Easement,
- (f) not be inconsistent with the charitable intent of the donor, 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").

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, Schedules 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.

**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. OPTION AND RIGHT TO PURCHASE [OPTIONAL].** Grantee shall have an option to purchase the Protected Property at its agricultural value in accordance with terms and provisions of this paragraph "Option"). This Option is an integral part of this Easement and constitutes a restriction and a right and interest in real property that runs with the land. This Option shall be perpetual in duration and is given on the following terms and conditions.

1. Option Trigger; Exceptions. Grantor shall not sell, transfer or convey the Protected Property, in whole or in part, without first offering the Protected Property for sale to Grantee pursuant as provided herein, however, the following described transactions shall not trigger Grantee's rights under this Option:

- a. Any mortgage, pledge, or other assignment of the Protected Property to a lender as security for indebtedness, provided the Grantee's interest under this Option is treated as an interest in real estate such that in the event of foreclosure Grantee is deemed a necessary party defendant in such foreclosure case and has the right to redeem the Protected Property from the foreclosure action; and
- b. Any conveyance by the Grantor to Grantor's family **[define]**, by gift, inheritance, sale or other transfer; and

c. Any conveyance of the Protected Property to a person who presently earns at least one-half of his or her annual gross income from the “business of farming,” as that term is defined in Regulation 1.175-3 issued under the Internal Revenue Code of 1986 and who, in connection with the farming operations of the Protected Property, will continue to earn at least one-half of his or her annual gross income from the business of farming (“a Qualified Farmer”); and

d. Any lease to a Qualified Farmer or a lease having a term of 15 years or less, including renewal rights; provided, however, that any such lease shall expressly provide that, unless otherwise agreed by Grantee, the lease shall terminate and possession shall be delivered free and clear of any rights of the tenant upon a closing of the sale of the Protected Property following exercise of this Option.

This Option shall apply to all other sales and conveyances of the Protected Property, including any sale or conveyance of any interest in the Protected Property including any conveyance by, or conveyance of any interest in a corporation, limited liability company, partnership or other holding entity.

2. Notice of Intent to Sell. Whenever Grantor receives an offer from a person or persons (“Buyer”) to purchase or lease for a term in excess of fifteen (15) years, including renewal rights, all or any part of the Protected Property including an offer involving property other than the Protected Property (“the Offer”), and Grantor accepts the Offer subject to this Option, Grantor shall deliver to Grantee a Notice of Intent to Sell as provided herein, which shall include:

a. A complete duplicate of the Offer, together with such other instruments as may be required to show the bona fides of the Offer; and

b. A written description of the Buyer’s training and experience as an agricultural producer and an agricultural business plan for the Protected Property, including a description of the agricultural activities to be conducted or facilitated by Buyer, proposed improvements to the Protected Property, and a statement of anticipated agricultural income and expenses for three-year period following Buyer’s acquisition of the Protected Property or, if Buyer has no such training and experience or intention of operating an agricultural business on the Protected Property, a written statement to that effect; and

c. If the Buyer is purported to be a Qualified Farmer or family member, the documents necessary to establish the Buyer as such, including the Buyer’s most recent federal income tax filing, if applicable; and

d. The Grantor’s current mailing address.

Information delivered to Grantee pursuant to this clause shall remain confidential and shall not be released to any person or entity not a party to this Grant, without the prior approval of Grantor.

3. Exercise of Option. This Option may be exercised by Grantee as follows.

a. A Grantee shall give written Notice of Intent to Exercise not more than thirty (30) days following receipt of the Notice to Sell described herein; failure by a Grantee to provide such notice shall constitute a waiver of its rights under this Option; and

b. Thereafter, Grantor and Grantee shall fix the purchase price for the Protected Property by establishing a Price Agreement in the manner described hereafter.

c. Grantee shall exercise this Option by giving written Notice of Intent to Purchase not more than thirty (30) days following Grantor's and Grantee's establishment of the Price Agreement.

d. After giving Notice of Intent to Purchase, the Grantee shall have [\_\_#\_\_] ] days to close on the Protected Property. Closing shall be subject to Grantee obtaining financing for the purchase and satisfactory investigation and inspection of the Protected Property. If such financing is not obtained by [\_\_#\_\_] or investigation or inspection of the Protected Property is not satisfactory, Grantee may rescind its Notice of Intent to Purchase and will have no further obligation to purchase the Protected Property. [ADD OR ATTACH STANDARD PURCHASE AND SALE AGREEMENT TERMS]

4. Purchase Price. The Purchase Price shall be determined by mutual agreement of Grantor and Grantee; provided that if no such agreement can be reached, the purchase price of the land only shall be the greater of:

a-1. \$[\_\_\_\_#\_\_\_\_] plus an inflation adjustment determined by multiplying the foregoing value by 1(one) plus the fractional increase calculated from the date hereof in the Consumer Price Index for all Urban Consumers, Northeast, All Items published by the Bureau of Labor Statistics, U.S. Department of Labor, or a successor index published by the United States government to the date of Offer;

or

a-2. The full fair market value of all Protected Property land subject to the Offer (including the site of any structures) assuming its highest and best use in commercial agricultural production commonly occurring within the market area where the Protected Property is located on the date of the Offer, as determined by a mutually approved disinterested appraiser selected by Grantor and Grantee, with the expense of such appraisal divided equally between Grantor and Grantee. Permanently installed land improvements, such as in-ground irrigation systems, farm roads, and drainage tiling shall be considered part of the land. This appraisal shall take into consideration the permitted and restricted uses set forth in, and the impact on value caused by the Grant.

Should Grantor and Grantee be unable to mutually agree on a disinterested appraiser, then Grantor shall obtain an appraisal at its own expense. Grantee shall have the right to disagree with the appraisal and obtain its own appraisal at Grantee's expense. If the two appraisals disagree, then the two appraisers shall choose a third appraiser to prepare a third appraisal, the expense of which shall be equally shared by the parties, which third appraisal shall set the Fair Market Value. Failure of either party to cooperate in the above process shall constitute acceptance of the other party's appraised value.

With respect to any agricultural, forestry or minor incidental structures and improvements in existence as of the date of the Offer, then in addition to the foregoing land value, the Purchase Price shall also include:

b. The value of all such structures and improvements on the Protected Property as of the date of the Offer excluding all land (which is included in the valuation above). The value of the structures and improvements shall be determined using the replacement cost approach to valuation (i.e., the cost to replace the structures and improvements with those of comparable size and utility, less depreciation and functional obsolescence) by a mutually approved disinterested appraiser selected by Grantor and Grantee, with the expense of such appraisal divided equally between Grantor and Grantee.

**[DRAFTER NOTE: Delete this section if there is no house or house right on the Protected Property.]**

With respect to any residence(s) in existence as of the date of the Offer, then in addition to the foregoing land value, the Purchase Price shall also include:

c. The value of the residence and its appurtenant structures and improvements as of the date of the Offer excluding the value of the land upon which these structures sit (which is included in the valuation above). The value of the residence and appurtenant structures and improvements shall be determined using the replacement cost approach to valuation (i.e., the cost to replace the structures and improvements with those of comparable size and utility, less depreciation and functional obsolescence) by a mutually approved disinterested appraiser selected by Grantor and Grantee, with the expense of such appraisal divided equally between Grantor and Grantee.

Grantor and Grantee shall establish the Purchase Price by either entering into a written agreement fixing the Purchase Price as provided herein, within ten working days of reaching mutual agreement or, if no such agreement is reached, the Purchase Price shall be based upon the appraised values which shall be the Purchase Price unless another Purchase Price is mutually agreed upon in writing by the parties within ten working days after the last party's receipt of the appraisals. The passage of said ten working days shall constitute the effective date of establishing the Purchase Price ("Price Agreement").

**21. 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.

**22. 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.

**23. 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, schedules 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.

**24. 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 the said 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]



Commissioner of Superior Court/  
Notary Public  
My commission expires:

attach:

**SCHEDULE A**

Description of Property Subject to the Easement

**SCHEDULE B**

Description of the Farmstead Building Area

**SCHEDULE C**

Plan (or record on land records)