

12-30-08 1:33 p.m.

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CONSERVATION EASEMENT

This CONSERVATION EASEMENT is granted this 30th day of December, 2008, by
a non-stock corporation organized and existing under the laws
of the State of Connecticut with a mailing address of
(hereafter "Grantor"), to the , a municipal corporation organized under
the laws of the State of Connecticut and having a place of business at
(hereafter "Grantee").

WITNESSETH

WHEREAS, Grantor is the owner in fee simple of certain real property located in the
Town of Sherman, Connecticut, more particularly described on Schedule A attached hereto and
incorporated herein by reference (the "Protected Property"); and

WHEREAS, Grantee has contributed the sum of \$350,000.00 towards the Grantor's
purchase of the Protected Property pursuant to a land conservation partnership project with the
Grantor and other State and Federal entities; and

WHEREAS, the Protected Property is a significant natural area which has not been
subject to development or exploitation that has ecological, scientific, educational and aesthetic
value in its present state; and

WHEREAS, the Grantor and the Grantee have the common purpose of conserving the
conservation values of the Protected Property in perpetuity:

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms,
conditions and restrictions contained herein, and pursuant to Connecticut General Statutes,
Sections 47-42a through 47-42c, the Grantor hereby grants and conveys to Grantee, in perpetuity,
a Conservation Easement with respect to the Protected Property described on Schedule A,
attached hereto, of the nature and character and to the extent hereinafter set forth

1. Purpose. It is the purpose of this Conservation Easement to assure that the
Protected Property will be retained forever in its in predominantly natural, scenic and open space
condition; that any rare plants, animals, or plant communities located within or upon the
Protected Property be protected; and that any use of the Protected Property that will significantly
impair or interfere with the conservation values or interest of the Protected Property will be
prohibited. Grantor intends that this Conservation Easement will confine the use of the Protected
Property to such activities as are consistent with the purpose set forth herein while allowing
opportunities for passive recreational use of the Protected Property,

2. Development Rights and Restrictions. The use of the Protected Property shall be limited as follows:

A) No building, residential dwelling, structure, parking lot, driveway, road or other temporary or permanent structure or improvement requiring construction shall be placed upon the Protected Property except as provided herein. In addition, any activity on or use of the Protected Property inconsistent with the purpose of this Conservation Easement or the Grantor's reserved rights is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- 1) Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.
- 2) Any substantial alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod, except as may be required in the course of any permitted activity, and except as may be required to create, improve or obtain access to any other land now owned or controlled by Grantor.
- 3) Storage, dumping or burial of ashes, trash, garbage, contaminated material, or other unsightly or offensive material, hazardous substance, or toxic wastes.

B) The Grantor reserves the following rights subject to the limitation that such rights be exercised in a manner consistent with the conservation and public recreation purposes set forth in this Conservation Easement:

- 1) The right to maintain existing unpaved driveways, footpaths, wood roads and other minor surface alterations; to excavate and fill as necessary to accomplish permitted building, recreational and silvicultural activities, and to construct, maintain and reconstruct additional unpaved footpaths or minor, roofless rustic improvements necessary or appropriate to assure safe passage, prevent erosion, or to enhance or protect the natural habitat.
- 2) The right to construct public access and limited parking facilities on the Protected Property as Grantor deems reasonable and appropriate for the public enjoyment of the permitted recreational uses described in paragraph 3;
- 3) The right to construct on the Protected Property interpretive and directional signs and informational kiosks, benches, boardwalks, observation blinds and

stations and wildlife shelters and other small structures, such as sheds or lean-tos, for the storage of maintenance equipment and emergency supplies and to serve as shelters for the public, all as appropriate for the public enjoyment of the permitted recreational uses described in paragraph 3;

4) The right to engage in sound forest management practices, including the right to construct wood roads and to selectively harvest timber from the Protected Property, provided however, that the Protected Property shall be cleared of debris and top branches and restored within 120 days following any such harvesting activity, and provided further that Grantor shall conduct such activity pursuant to a timber harvesting plan which shall be consistent with the practices and guidelines promulgated by the Society of American Foresters and the U.S. Forest Service, and which shall incorporate erosion and sedimentation control measures to minimize potential adverse effects on water quality, soil conservation, wildlife habitat and damage or disruption to the Protected Property to the extent reasonably practicable.

5) The right to cut and remove diseased trees, shrubs, or plants and to mow or cut as necessary to prevent undesirable growth of brush in woodland areas.

6) The right to engage in programs to manage and control invasive plant species (as defined on the Connecticut Invasive Plant List published by the Connecticut Invasive Plants Council or as otherwise determined by the Connecticut Department of Environmental Protection) that may be found to occur on the Protected Property. Such programs may include the control and eradication of invasive species by hand removal or by the appropriate use of biocides, herbicides, or other agents.

7) The right to manage and monitor the Protected Property for rare and endangered species, such activities including, but not limited to:

- a) The rerouting or closing of trail segments or public access points that pose a substantial threat to protected species, provided that a system of public access trails remains open to the public at all times;
- b) The right to grant access to the site for research;
- c) Use of the property for educational and outreach purposes, including limited attendance walks and on-site stewardship training programs.

8) Unless otherwise prohibited by the Town of Sherman by ordinance or land use regulation, the right to engage in programs to manage and control wildlife populations, including nuisance animal populations, through hunting, trapping or other means provided that such programs are carried out pursuant to a written management plan that conforms to the requirements of applicable state laws and regulations.

9) The right to sell, give, mortgage, lease, or otherwise convey the Protected Property, provided such conveyance is subject to the terms of this Conservation Easement.

3. Provision of Public Passive Recreation. The Grantor agrees to allow the public access to the Protected Property for passive recreational purposes and to use such trails or other facilities as they may exist or be developed on the Protected Property, subject however, to such reasonable rules or regulations as Grantor may prescribe. The public shall be defined as any resident of any municipality, state, country or nation. Passive recreation shall be defined as recreational trail usage (non-motorized), recreational activities which do not require a formalized delineated playing field or area, picnicking, fishing, hunting, and environmental education. The Grantor may develop passive recreational facilities and support facilities for those passive activities on the Protected Property if none exists.

4. Grantee's Rights. To effect and accomplish the purpose of this Conservation Easement, the following rights are conveyed to Grantee by this Conservation Easement:

a) Protection of Conservation Values. Subject to the rights reserved to the Grantor, the right to preserve and protect the conservation values of the Protected Property.

b) Right of Entry. The right to enter the Protected Property at all reasonable times for the purposes of (1) inspecting the Protected Property to determine if the Grantor is complying with the covenants and purposes of this Conservation Easement; (2) enforcing the terms of this Conservation Easement; (3) taking any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof; (4) making scientific and educational observations and studies and taking samples in such manner as will not disturb the quiet enjoyment of the Protected Property by the Grantor; and (5) monitoring and management as described below.

c) Monitoring and Management. The right, but not the obligation, to monitor the condition of plant and animal populations, plant communities,

and natural habitats on the Protected Property, and to manage them, if necessary, to ensure their continued presence and viability on the Protected Property.

d) Enforcement. The right to prevent any activity on or use of the Protected Property that is inconsistent with the purposes and provisions of this Conservation Easement and to require that restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use.

5. Discretionary Consent. Grantee's consent for activities otherwise prohibited under the provisions of paragraph 2 above may be given under the following conditions or circumstances. If, owing to unforeseen or changed circumstances, any of the prohibited activities listed in paragraph 2 are deemed desirable by Grantor and Grantee, Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission directed to the Board of Selectmen, shall be in writing and shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Conservation Easement. Grantee may give its permission if it determines, in its sole and reasonable discretion, that such activity (1) does not violate the purpose or intent of this Conservation Easement and (2) either enhances or does not impair any significant conservation interest associated with the Protected Property. Notwithstanding the foregoing, the Grantee and the Grantor have no right or power to agree to allow any commercial or industrial structures or activities not expressly permitted herein.

6. Costs and Liabilities. 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. Grantor agrees to release, hold harmless, defend and indemnify 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 activities of Grantor on the Protected Property.

7. Grantee's Remedies. In the event of any violation of the terms of this Conservation Easement, the Grantee may give written notice to the Grantor of the existence of such violation and of the corrective action which the Grantee deems necessary to correct or abate such violation and to restore the Protected Property to a condition which no longer violates this Conservation Easement.

Grantee's rights under this paragraph apply equally in the event either of actual or threatened violation of the terms of this Conservation Easement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate immediate and significant threatened damage to the conservation values of the Protected

Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for any period established by Grantee for cure to expire.

8. Failure to Act or Delay. Enforcement of the terms of this Conservation Easement shall be at the discretion of Grantee, and no forbearance, 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 of same. The Grantor hereby waives any defense of laches, estoppel or prescription with respect to any delay by the Grantee, its successors or assigns, in acting to enforce any provisions or to exercise any rights it may have under this Conservation Easement.

9. Acts Beyond Grantor's Control. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm, earthquake or the unauthorized acts of third persons. In the event of violation of this Conservation Easement by unauthorized 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 appoint Grantee its attorney-in-fact for the purposes of pursuing enforcement action.

10. Eminent Domain. Whenever all or part of the Protected Property is taken in the exercise of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of the Grantee's and Grantor's interest, and Grantee's proceeds shall be used solely in a manner consistent with the conservation purposes set forth herein of for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in and defined under 26 USC 170(h)(4)(A)(ii), as amended and in regulations promulgated thereunder. All expenses incurred by the Grantor and the Grantee in such action shall be paid out of the recovered proceeds.

11. Grantee's Agreement to Subordinate and /or Release: This Conservation Easement is granted pursuant to a land conservation partnership project in which the Grantor expects to receive reimbursement funding on account of the purchase price paid for the Protected Property by way of an Open Space and Watershed Acquisition Grant from the State of Connecticut in the amount of \$500,000.00 and by way of grant in the amount of \$246,000.00 from the United States Department of the Interior under the Federal Highlands Grant Program. If as a condition of such reimbursement funding, Grantor is required to establish a conservation and public recreation easement in favor of the State of Connecticut and / or the United States, then in such event, Grantee agrees to subordinate the priority of this Conservation Easement to the rights and easements to be established in favor of the State of Connecticut and /or the United States pursuant to such funding arrangements.

In the event that Grantor does not receive such reimbursement funding within three (3) years from the date hereof and determines that it is necessary to sell the Protected Property free of this Conservation Easement in order to satisfy the liabilities incurred in purchasing such property, then in such event, Grantee agrees that it will provide Grantor with a release of this Conservation Easement upon Grantor's repayment of the sum of \$350,000.00 contributed by Grantee towards the purchase of such property. This agreement to provide a release, however, shall expire three (3) years from the date hereof.

12. Parties Subject to Easement. The covenants, agreements and restrictions imposed or provided by this Conservation Easement shall run with the land and be binding upon the Grantor, his heirs, successors and assigns and shall be enforceable by the Grantee, its successors and assigns.

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

IN WITNESS WHEREOF, the Grantor has signed and sealed this instrument this 30th day of December, 2008.

Signed, Sealed and Delivered
in the Presence of:

By:

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STATE OF CONNECTICUT)
) ss:
COUNTY OF LITCHFIELD)

On this the _____, personally appeared _____ who
acknowledged herself to be the _____, a Connecticut non-stock
corporation, and that she, as such President, being authorized to do so, executed the foregoing
instrument on behalf of said _____ for the purposes therein contained by
signing the name of said corporation as her and its free act and deed, before me.

In witness whereof I hereunto set my hand and seal.

Commissioner of the Superior Court
Notary Public
My commission expires: