

CONSERVATION EASEMENT

This DEED OF CONSERVATION EASEMENT made this _

RECITALS:

A. a Connecticut Limited Liability Company, having its principal place of business at acting herein by the hand of its duly authorized Member/Manager, hereinafter called the Grantor, is the owner in fee simple of certain real property, hereinafter called the Owned 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 property is located in Roxbury, Connecticut and is more particularly described in Schedule A attached hereto and incorporated by this reference, a portion of which is designated as Conservation Easement Total Area = 75.91 AC (hereinafter referred to as the Protected Property) on a map entitled "Conservation Easement Prepared For Scale 1" = 100' dated such map to be filed on the Roxbury Land Records; and

B. ROXBURY LAND TRUST, INC., hereinafter called the Grantee, is a Connecticut non-profit corporation and a tax exempt public charity under Section 501 (c) (3) and 509 (a) (1) of the Internal Revenue Code, qualified under section 170 (h) of the Internal Revenue Code to receive qualified conservation contributions, and having its headquarters in Roxbury, Connecticut and its mailing address at whose primary purpose is the preservation, protection, or enhancement of land predominantly in its natural, scenic, historical, agricultural, forested, and/or open space condition; and

C. The Protected Property is a significant natural area which qualifies as a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, as that phrase is used in P.L. 96-541, 26 USC 170 (h) (4) (A) (ii), as amended, and in regulation promulgated thereunder, and

D. Preservation of the Protected Property is for the scenic enjoyment by the general public and will yield a significant public benefit, and

E. Preservation of the Protected Property is pursuant to federal, state and local governmental conservation policy and will yield a significant public benefit, and

F. The specific conservation values of the Property are documented in a Baseline Documentation Report, to be filed at the offices of the Grantee, establishing the baseline condition of the Protected Property at the time of this grant and including reports, maps, photographs, and other documentation; and

G. The Grantor and the Grantee have the common purpose of conserving the above-described conservation values of the Protected Property in perpetuity; and

H. The State of Connecticut has authorized the creation of Conservation Easements pursuant to Connecticut General Statutes Sections 47 -

42a through 47 - 42c and the Grantor and Grantee wish to avail themselves of the provisions of that law.

NOW, THEREFORE, the Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained and as an absolute and unconditional gift, does hereby give, grant and convey to the Grantee a Conservation Easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth.

1. Purpose. It is the purpose of this Easement to assure the Protected Property will be retained forever predominantly in its natural, scenic, forested, and open space condition; to protect any rare plants, animals, or plant communities on the Protected Property; and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values or interest of the Protected Property described above. Grantor intends that this Easement will confine the use of the Protected Property to such activities as are consistent with the purpose of this Restriction.

2. Prohibited Uses. Any activity on or use of the Protected Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited except as provided in Paragraph 3 below:

2.1 There shall be no temporary or permanent improvements, buildings or structures of any kind, except as provided in Paragraph 3.1, below.

2.2 There shall be no use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.

2.3 There shall be no subdivision of the Protected Property

2.4 There shall be no dumping or accumulation of soil, trash, ashes, garbage waste or other unsightly or offensive material.

2.5 There shall be no removal, destruction or cutting of trees, shrubs or plants, planting of trees, shrubs or plants, or use of fertilizers, except in accordance with Paragraph 3.5.

2.6 There shall be no 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.

2.7 There shall be no operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles, hang gliders, helicopters or any other types of mechanized vehicles except those that may be specifically necessary to carry out the permitted uses on the Protected Property.

3. Grantor's Reserved Rights. Notwithstanding any provisions of this Easement to the contrary, the Grantor hereby reserves the following rights:

3.1 Agricultural, horticultural, farming and animal husbandry operations carried on in accordance with sound agricultural management practices, including without limitation the cultivation of existing fields, the mowing and grazing of existing meadows, and the installation, maintenance, repair and replacement of fences, gates and stone walls. The right to continue the agricultural uses as defined in the Connecticut General Statutes, Section 1-(q), and all other uses incidental to the permitted uses.

3.2 The construction, expansion, maintenance, repair and replacement of fencing necessary for farming, and /or equestrian uses and for use in conjunction with the permitted uses of the Property. Fencing permitted herein shall be agricultural in design as determined by Grantee and are not solid and no higher than five (5) feet from ground level at any point. Fencing shall be located and constructed to cause minimum interference with existing natural conditions, the enjoyment of public views and vistas, existing topography, drainage and agricultural productivity and shall not interfere with the purposes of this Restriction.

3.3 Hiking, horseback riding, cross-country skiing and other outdoor recreational activities not inconsistent with purposes of this Conservation Restriction.

3.4 The right to undertake or continue any activity or use of the Protected Property not prohibited by this Restriction. Prior to making any change in use of the Protected Property, the Grantor shall notify the Grantee in writing allowing Grantee to determine whether such change would violate the terms of this Restriction.

3.5 The right to cut and remove diseased trees, shrubs, or plants and to cut firebreaks; and the right to cut and remove trees and other forest vegetation, subject to a forest management plan prepared by a forester certified by the State of Connecticut, and subject to the prior written approval of Grantee pursuant to Paragraph 4.4 below.

4. Grantee's Rights. To accomplish the purpose of this Restriction, the following rights are conveyed to Grantee by this Restriction.

4.1 The right to preserve and protect the conservation values of the Protected Property.

4.2 Right of Entry. The right to enter the Protected Property at all reasonable times with prior notice and, if necessary, across other lands retained by the Grantor, for the purposes of: (a) inspecting the Protected Property to determine if the Grantor is complying with the covenants and purposes of this Restriction; (b) enforcing the terms of this Easement; (c) 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; (d) making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by the Grantor; and (e) monitoring and management.

4.3 Enforcement. The right to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, pursuant to Paragraph 10.

4.4 Discretionary Consent. Grantee's consent for activities otherwise prohibited under Paragraph 2 above, or for any activities requiring Grantee's consent under Paragraph 3 above, may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the 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 and permission for activities requiring Grantee's consent under Paragraph 3, 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 the Restriction. Grantee may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate the purpose of the Easement and (2) either enhance or do not impair any significant conservation

interest associated with the Protected Property. Notwithstanding the foregoing, the Grantee and Grantor have no right or power to agree to any activities that would result in the termination of this Easement or to allow any residential, commercial or industrial structures or any commercial industrial activities not provided for above.

5. 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 Restriction.

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, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the 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 hold harmless, defend and indemnify Grantee and its members, directors, officers, employees, agents, and contractors, and the heirs, successors and assigns of each of them (collectively Indemnified Parties) from any and all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation reasonable attorney's fees arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified herein and in Paragraphs 7; and (3) the existence or administration of this Restriction.

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

8. Titles. The Grantor covenants and represents that the 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 Restriction; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Restriction, and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Restriction.

9. The Grantor covenants and represents to the best of Grantor's knowledge and belief that:

A. The Protected Property has never been used for any commercial or industrial purpose other than agriculture.

B. No hazardous substance or toxic waste exists nor has been generated, treated, stored used, disposed of, or deposited in or on the Protected Property, and that there are not now any underground storage tanks on the Protected Property.

C. The Protected Property has never been the subject to an investigation or order by the Connecticut Department of Environmental Protection or any other state or federal environmental agency.

D. No violation of any governmental rules, regulations or limitations including provisions of any ordinance municipal regulation, including planning and zoning and applicable building and/or health codes, or

public or private law, relating to the Protected Property exists of the date hereof.

10. Grantee's Remedies. In the event that the Grantee becomes aware of a material violation of the terms of this Restriction, the Grantee shall give notice to the Grantor, at Grantor's last known post office address, of such violation via certified mail, return receipt requested, and request corrective action sufficient to abate such violations and restore the Protected Property to its previous condition at the time of this grant. Grantor agrees that the Baseline Documentation Report shall be deemed to provide objective information concerning the Protected Property's conditions at the time of this grant. Failure by the Grantor to cause discontinuance, abatement or such other corrective action as may be requested by Grantee within sixty (60) 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 Restriction; to require the restoration of the property to its previous condition; 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 non-compliance. Such damages when recovered, may be applied by the Grantee, in its sole discretion, to corrective action on the Protected Property. If such court determines that the Grantor has failed to comply with this Restriction, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including reasonable costs of restoration, court costs and reasonable attorney's fees, in addition to any other payments ordered by such court.

10.1 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 cure to expire.

10.2 Failure to Act or Delay. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this Easement by any prior failure to act and Grantor hereby waives any defense of laches with respect to any delay by the Grantee, its successors or assigns, in acting to enforce any Easement or exercise any rights under this Restriction.

10.3 Violations Due to Causes 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 wrongful acts of third persons. 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 without recourse or costs to Grantor, to join in any suit, and/or to appoint Grantee its attorney-in-fact for the purposes of pursuing enforcement action.

11. Parties Subject to Restriction. The covenants agreed to and the terms, conditions, and restrictions imposed by this grant shall not only be binding upon the Grantor but also its lessees, agents, personal representatives, successors and assigns, and all other successors to Grantor in interest and shall continue as a servitude running in perpetuity with the Protected Property.

12. Subsequent Transfers. The Grantor agrees that the terms, conditions, restrictions and purposes of this grant or reference thereto will be inserted by Grantor in any subsequent deed or other legal instrument by

which the Grantor divests either the fee simple title or possessory interest in the Protected Property; and Grantor further agrees to notify Grantee of any pending transfer at least thirty (30) days in advance.

13. Merger. The Grantor and Grantee agree that the terms of this Easement shall survive any merger of the fee and Easement interest in the Protected Property.

14. Assignment. The parties hereto recognize and agree that the benefits of this Easement are in gross and assignable, and the Grantee hereby covenants and agrees that in the event it transfers or assigns the Easement it holds under this indenture, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (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 Internal Revenue Code, and 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 the contribution was originally intended to advance.

15. Extinguishment. The Grantor hereby agrees that at the time of the conveyance of this Easement to the Grantee, this Easement gives rise to a real property right, immediately vested in the Grantee, with a fair market value of said Easement as of the date of the conveyance that is at least equal to the proportionate value that this Easement at the time of the conveyance bears the fair market value of the Property as a whole at the time.

That proportionate value of the Grantee's property rights shall remain constant. When a change in conditions takes place which makes impossible or impractical any continued protection of the Protected Property for conservation purposes, and the restrictions contained herein are extinguished by judicial proceeding, the Grantee, upon a subsequent sale, exchange or involuntary conversion of the Protected Property, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Restriction. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein or 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 P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended and in regulations promulgated thereunder.

16. General and Miscellaneous Provisions.

16.1 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. Any uncertainty in the interpretation of this Easement shall be resolved in favor of conserving and protecting the Conservation values.

16.2 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.

16.3 Successors and Assigns. The term Grantor shall include the Grantor and the Grantor's heirs, executors, administrators, successors and assigns and shall also mean the masculine, feminine, corporate, singular or plural form of the word as needed in the context of its use. The term Grantee' shall include Roxbury Land Trust, Inc., and its successors and assigns.

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

16.5 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.

16.6 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.

16.7 Notices. Any notices required in this Easement shall be sent by registered or certified mail to the following address or such address as may be hereafter specified by notice in writing:

Grantor:

Grantee: