

CONSERVATION RESTRICTION AGREEMENT AND EASEMENT

This Conservation Restriction Agreement and Easement (this "Agreement") is made this day of , by and among County of Fairfield and State of Connecticut , having an Audubon Connecticut ("Grantee"), and , having its headquarters in New Milford, Connecticut and ("Back-up Grantee"). ("Grantor"), office at its mailing address at

W I T N E S S E T H:

WHEREAS, Grantor is the sole owner in fee simple of that certain real property in the Town of Sherman, County of Fairfield and State of Connecticut, identified as (i) Lots 3, 10, 17, 20 on that certain Compilation Plan to be recorded within thirty (30) days of the date hereof in the Office of the Town Clerk of Sherman, Connecticut and (ii) Lot "1(a)" containing 3.412 acres plus or minus, identified on that certain map of property designated as map number 990, hanging file number 303A and recorded on in the Office of the Town Clerk of Sherman, Connecticut (all of the aforementioned lots (the "Protected Property")); and

WHEREAS, the Protected Property possesses natural, scenic, ecological, scientific, educational, aesthetic, open space and recreational values (collectively, "conservation values") of great importance to Grantor, the people of Fairfield County, and the people of the State of Connecticut; and

WHEREAS, the specific conservation values of the Protected Property are documented in a Conservation Restriction Documentation Report, prepared by Grantee and Back-Up Grantee and signed and acknowledged by Grantor, establishing the baseline condition of the Protected Property at the time of this grant and including reports, maps, photographs and other documentation; and

WHEREAS, Grantor intends, as owner of the Protected Property, to convey to Grantee the right to preserve and protect the conservation values of the Protected Property in its undeveloped and natural condition in perpetuity; and

WHEREAS, The State of Connecticut has authorized the creation of Conservation Restrictions pursuant to Connecticut General Statutes Sections 47 - 42a through 47 - 42c and Grantor and Grantee wish to avail themselves of the provisions of that law; and

WHEREAS, Grantee is a publicly supported, tax-exempt nonprofit organization described in Section 501(c)(3) and qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended (the "Code"), whose mission is to conserve and restore natural ecosystems, focusing on birds, other wildlife and their habitats for the benefit of humanity and the earth's biological diversity; and

WHEREAS, Back-up Grantee is a publicly supported, tax-exempt nonprofit organization described in Section 501(c)(3) and qualified under Section 170(h) of the Code, whose primary purpose is to preserve natural areas for scientific, charitable, educational and aesthetic purposes; and

WHEREAS, it is the purpose of Grantor to create a qualified contribution under Section 170(h) of the Code and it is the intention of Grantor that this Agreement should be construed accordingly; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Protected Property for the benefit of this generation and the generations to come; and

WHEREAS, Back-up Grantee agrees by accepting this back-up grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Protected Property for the benefit of this generation and the generations to come;

NOW, THEREFORE, 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 Grantee a Conservation Easement (the "Easement"), subject to all matters of record and to any future "driveway" lease entered into by and between the present or subsequent owner of the Protected Property and the present or subsequent owner of the property at
now currently owned by _____ in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth, and does hereby give, grant and convey to Back-up Grantee an Executory Interest (as hereinafter defined) in the Easement. The Easement shall encumber the Protected Property.

1. **Purpose.** It is the purpose of the Easement to assure that the Protected Property will be retained forever in its natural, undeveloped, scenic, forested, agricultural, and/or open space natural condition; to foster wildlife and wildlife habitats; and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values of the Protected Property. Grantor intends that the Easement will confine the use of the Protected Property to such activities, including, without limitation, those involving farming, timbering, animal grazing and watering and recreational uses, as are consistent with the purpose of the Easement, and Grantor further intends that the future use of the Protected Property by Grantee under the Easement shall be restricted to its educational, scientific and charitable purposes consistent with the conservation of the Protected Property.

2. **Prohibited Uses.** Any activity on or use of the Protected Property inconsistent with the purpose of the Easement is prohibited. Without limiting the generality of the foregoing, but excepting the provisions of Paragraph 3 below, there shall be no development, construction or placing on the Protected Property of any structures or appurtenances thereto, including, but not limited to, any residential, commercial, industrial or other buildings, towers, facilities or waste dumps.

3. **Grantor's Reserved Rights.** (a) Notwithstanding any provisions herein to the contrary, Grantor hereby reserves to herself, and to her personal representatives, heirs, successors, and assigns all rights accruing from her ownership of the Protected Property, including the right to privacy and exclusive use and possession of the Protected Property, and the right to engage in or permit or invite others to engage in all uses of the Protected Property that are not expressly prohibited herein and are not inconsistent with the purpose of the Easement. Grantor agrees to notify Grantee and Back-up Grantee in writing prior to making any substantial change in use of the Protected Property or exercising any reserved right which may have an adverse impact on the conservation values of the Protected Property.

(b) Without limiting the foregoing, Grantor's reserved rights shall include: (i) The right to sell, give, mortgage, lease, or otherwise convey the Protected Property in accordance with Paragraph 11 below and subject to the provisions of that certain Agreement to Make Gifts dated as of (the "Gifts Agreement")

(ii) The right to continue to manage the Protected Property as a Connecticut Tree Farm or under a forestry management plan.

(iii) The right, in accordance with generally accepted agricultural and forestry conservation practices, to plant, maintain, and harvest trees, seedlings, shrubs, plants, row crops, and other vegetation; to dig, cut and remove them; to clear cut, patch cut, plow and harrow areas to prepare land for agricultural, pasture, meadow, forestry, tree farm, or wildlife management use or scenic enjoyment; to mow, cut brush, and burn in accordance with local regulation and conservation practice; to construct, maintain and improve farm and forest access roads, wood roads, trails, foot paths, riding trails, bridges, culverts, fences, gates and stone walls; to establish meadows, fields, pastures, hedgerows, and clearings or openings for wildlife; to pasture and graze animals; to dig, maintain, and clean out ponds, including, but not limited to, scenic, fire, wildlife, agricultural, irrigation and siltation ponds; to drain the same into one or more run-offs or brooks on the Protected Property, and to deposit the material dredged on the Protected Property; to stock ponds with fish, including, but not limited to, triploid carp and other vegetation-eating fish; to hunt, trap, or fish; to improve wildlife habitat through the creation and placing of improvements including, but not limited to, bird houses, brush piles, sunning logs and the planting of specific habitat vegetation; to apply herbicides, pesticides, and fertilizer on the Protected Property; to engage in practices to prevent and correct or repair erosion, including, but not limited to, trenching, riprapping, establishing of water bars and other activities; to install and maintain an irrigation system or systems including pumps; and to engage in other activities incidental to or involved in tree farming, forestry management, wildlife management, and open space, pond and stream management;

(iv) The placement or construction of additional barns and paddocks, sheds, docks or floats on the ponds, and agricultural, educational or recreational buildings necessary to facilitate forestry, agricultural, educational and conservation activities.

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

(a) The right to preserve and protect the conservation values of the Protected Property.

(b) The right to enter the Protected Property at all reasonable times and with prior notice and, if necessary, across other lands retained by Grantor to determine if Grantor is complying with the terms of the Easement; provided, however, that such right of entry shall be exercised so as not to unreasonably interfere with Grantor's use and enjoyment of the Protected Property or such other lands.

(c) The right to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of the 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 by Grantor.

5. Grantee's Remedies

(a) In the event of a violation of the terms of the Easement, Grantee is authorized to enforce such terms by proceedings at law or in equity.

(b) Nothing contained herein shall be construed to entitle Grantee to institute any enforcement proceedings against Grantor for any changes to the Protected Property due to causes beyond Grantor's control, such as changes caused by fire, flood, storm, earthquake, erosion, or the unauthorized wrongful acts of third persons. In the event of violations of the 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.

6. Access. No right of access by the general public to any portion of the Protected Property is conveyed by the Easement.

7. Costs and Liabilities Grantor retains, for so long as Grantor owns the Protected Property, all of its legal and contractual responsibilities related to the ownership, operation, upkeep, and maintenance of the Protected Property, including maintaining general liability insurance and paying real property taxes.

8. Extinguishment. If circumstances arise in the future so as to render the purpose of the Easement impossible to accomplish, the Easement may be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Connecticut law at the time, in accordance with Paragraph 9 below. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

9. Proceeds. Grantor hereby agrees that, at the time of the conveyance of the Easement to Grantee, the Easement gives rise to a real property right, immediately vested in Grantee, with a fair market value of the Easement as of the date of the conveyance that is at least

equal to the proportionate value that the Easement at the time of the conveyance bears to the fair market value of the Protected Property as a whole at such time.

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

10. **Condemnation**. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.

11. **Subsequent Transfers**. Grantor agrees to make subject to the terms of the Easement any deed or other legal instrument by which she divests herself of any interest in all or a portion of the Protected Property, including, but not limited to, a leasehold interest.

12. **Merger**. Grantor and Grantee agree that the terms of the Easement shall survive any merger of the fee and easement interest in the Protected Property.

13. **Executory Limitation**. If (a) Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Code (or any successor section) or to be authorized to acquire and hold conservation easements under Sections 47-42a through 47-42c of the Connecticut General Statutes, (b) at any time it becomes impossible for Grantee to ensure compliance with the restrictions and covenants contained herein, (c) Grantee fails, subject to the notice and cure provisions of Paragraph 15 herein, to ensure such compliance, (d) Grantee fails to apply the income or principal of the endowment established under and according to the terms of the Gifts Agreement exclusively for the conservation and maintenance of the Protected Property, (e) Grantee fails to perform any of its duties and/or obligations pursuant to or to comply with the terms and conditions of the Gifts Agreement or (f) Grantee otherwise determines not to continue to hold Grantee's interest herein, then Grantee's rights and obligations under the Easement shall become vested immediately in Back-up Grantee, Weantinoge Heritage, Inc. (and such right of vesting shall be referred to herein as an Executory Interest (the "**Executory Interest**")) and the provisions of the Easement, and the rights, benefits and burdens that are applicable to Grantee shall become applicable to, and vested solely in, Back-up Grantee and Back-up Grantee shall thereupon be required to continue to carry out in perpetuity the conservation purposes that the granting of the Easement was intended to advance. In any such event, Back-up Grantee shall have the right to bring an action at law or equity in a court of competent jurisdiction to enforce its Executory Interest. If Weantinoge Heritage, Inc. is no longer in existence at the time that the rights and obligations under the Easement would otherwise vest in it, or if Weantinoge Heritage, Inc. is not qualified or authorized to hold conservation easements, or if it shall refuse such rights and obligations, then the rights and obligations under the Easement shall vest in such organization as a court of competent jurisdiction shall direct pursuant to the applicable Connecticut law as shall be a qualified organization as that term is defined in Section 170(h)(3) of the 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.

14. Back-up Grantee's Rights. To accomplish the purpose of the Easement, the following rights are hereby conveyed to Back-up Grantee, as of the date hereof.

(a) The right to preserve and protect the conservation values of the Protected Property.

(b) The right to enter the Protected Property at all reasonable times and with prior notice to Grantor and Grantee and, if necessary, across other lands retained by Grantor, for the purposes of inspecting the Protected Property to determine if Grantee is (a) ensuring compliance with the covenants and purposes of the Easement; (b) enforcing the terms of the Easement; and (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, all in such a manner as will not disturb the use and enjoyment of the Protected Property by Grantor or Grantee.

15. Back-up Grantee's Remedies. In the event that Grantee fails to perform any of its duties and/or obligations pursuant to or to comply with the terms and conditions of the Easement and/or the Gifts Agreement, then Back-up Grantee may, and, at the request of Grantor, shall, give notice to Grantee, at the last known post office address of Grantee via certified mail, return receipt requested, of such non-performance by Grantee of the terms of the Easement and/or the Gifts Agreement, and shall request corrective action on the part of Grantee sufficient to remedy Grantee's breach of duty hereunder. Failure by Grantee to take such remedial measures, as may be requested reasonably by Back-up Grantee, within thirty (30) days after the receipt of such notice, shall entitle Back-up Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the appointment of Back-up Grantee as Grantee pursuant to paragraph 13 herein and/or paragraph 7 of the Gifts Agreement (an "Action"); and Grantee shall be obligated to enter into and execute all necessary documentation required to effect the transfer to Back-up Grantee of the rights and obligations of Grantee under the Easement. Notwithstanding anything contained in this Agreement to the contrary, it is hereby understood that Back-Up Grantee shall have fulfilled any and all requirements to effect an Action by (i) notifying the Attorney General of the State of Connecticut of the failure of Grantee to perform any of its duties and/or obligations pursuant to the Easement and/or the Gifts Agreement, (ii) requesting that the Attorney General fulfill its statutory obligation to "represent the public interest in the protection of any gifts, legacies or devises intended for public or charitable purposes", as provided in Ct. St. § 3-125, by enforcing the appointment of Back-Up Grantee as Grantee pursuant to paragraph 13 of the Easement and/or paragraph 7 of the Gifts Agreement and (iii) otherwise using reasonable efforts, taking into account the financial resources of Back-Up Grantee at that time, to enforce the rights and remedies of Back-Up Grantee under the Easement and/or the Gifts Agreement.

16. Estoppel Certificates. Upon request by Grantor, Grantee shall, within thirty (30) days, execute and deliver to Grantor a certificate which certifies Grantor's compliance with the obligations of Grantor contained in the Easement and otherwise evidences the status of the Easement.

17. **Notices.** Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the others shall be in writing and either served personally or sent by certified mail, postage prepaid, addressed as follows:

To Grantor:

To Grantee:

To Back-up Grantee:

or such other address as any party
others.

notice to the

18. **Recording.** This instrument
in timely fashion in the official
Connecticut and may re-record it at any time as may be required to preserve its rights in the
Easement.

this instrument
field and State of

19. **General Provisions.**

- (a) **Controlling Law.** The interpretation and performance of the Easement shall be governed by the laws of the State of Connecticut.
- (b) **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, the Easement shall be liberally construed in favor of the grant to effect the purpose of the Easement and the

policy and purpose of Sections 47-42a through 47-42c of the Connecticut General Statutes. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of the Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

- (c) Severability. If any provision of the Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of the Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- (d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Easement, all of which are merged herein.
- (e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- (f) Successors. The covenants, terms, conditions and restrictions of the Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Protected Property.
- (g) Termination of Rights and Obligations. A party's rights and obligations under the Easement shall terminate upon transfer of the party's interest in the Easement or the Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- (h) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- (i) Counterparts. The parties may execute this instrument in three or more counterparts, which shall, in the aggregate, be signed by all 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.

TO HAVE AND TO HOLD unto Grantee and unto Back-up Grantee and their successors and assigns forever.

[Signatures on following page]

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IN WITNESS WHEREOF Grantor, Grantee and Back-up Grantee have set their hands on the day and year first above written.

Witnessed by:

SOCIETY, INC.

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