

CONSERVATION EASEMENT

This **CONSERVATION EASEMENT** made this _____ day of _____, 2022 by and between The Town of Easton, Connecticut, having an address at _____ who with its successors in title to all or any portion of the Protected Property (as hereinafter defined) are collectively referred to as “Grantor” and The Conservation Commission of the Town of Easton, Connecticut, its successors and assigns forever (hereinafter referred to as “Grantee”). The Grantor and the Grantee are hereinafter referred to as the “Parties”.

W I T N E S S E T H :

WHEREAS, the Grantor is the owner in fee simple of certain real property, hereinafter called the “Protected Property,” which has ecological, scientific, and aesthetic value in its present state, which property is located in the Town of Easton, County of Fairfield and State of Connecticut and is more particularly described in Exhibit A attached hereto and incorporated by this reference; and

WHEREAS, Grantee is a commission of the Town of Easton responsible for maintaining town-owned land designated as “Open Space”; and

WHEREAS, preservation of the Protected Property will yield a significant public benefit; and

WHEREAS, the conservation values of the Protected Property include but are not limited to being part of and serving as a buffer for the aquatic systems of the Mill River, which includes wetlands, watercourses, and the organisms, natural communities, and ecological processes associated with the overall watershed system; and

WHEREAS, preservation of the Protected Property will materially contribute to protecting the surface water and groundwater associated with the Mill River aquatic system; and

WHEREAS, the Grantor and Grantee have the common purpose of conserving the above-described conservation values of the Protected Property in perpetuity; and

WHEREAS, the State of Connecticut has authorized the creation of Conservation Easements pursuant to Connecticut General Statute Title 47, Section 47-42a, b and c and 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, bargain, sell and convey unto 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 Conservation Easement, subject to the terms and conditions set forth herein, to assure that the Protected Property will be retained forever predominantly in its present natural and open condition for conservation, open space, agriculture, green space, passive recreational purposes or water supply purposes and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values or interests of the Protected Property described above. Grantor intends that this Conservation Easement will confine the use of the Protected Property to such activities as are consistent with the purpose of this Conservation Easement, subject to the terms and conditions set forth herein.

2. Prohibited Uses. Any activity on or use of the Protected Property inconsistent with the purpose of this Conservation 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 the constructing or placing of any new building, tennis or other recreational court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, billboard or other advertising display, antenna, tower, conduit, sodium vapor light or any other new temporary or permanent structure or facility on or above the premises.

2.2 the ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, nor any building of roads or change in the topography of the land in any manner.

2.3 the removal, destruction or cutting of trees, shrubs or plants, planting of trees, shrubs or plants, use of fertilizers, introduction of non-native animals, grazing of domestic animals, or disturbance or change in the natural habitat in any manner, except as otherwise provided herein.

2.4 the use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, and no use of devices commonly known as “bug-

zappers”. Notwithstanding the foregoing, the Grantee shall have the right to use certain chemical compounds used to inhibit or control invasive plant or animal species, subject to any applicable requirements of state or local law (including the securing of any necessary permits).

2.5 the storage or dumping of ashes, trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks in, on, or under the Protected Property; or the changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, or the conduct of activities on the Protected Property which could cause erosion or siltation on the Protected Property.

2.6 the pollution of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, or any activities conducted on the Protected Property, which would be detrimental to water purity.

2.7 the operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles, hang gliders, aircraft, or any other types of recreational motorized vehicles, or the use of the Protected Property for any commercial recreational activity.

3. Grantor’s Reserved Rights. The Grantor hereby reserves the following rights for itself, its successors and assigns:

3.1 the right to undertake or continue any activity or use of the Protected Property not specifically prohibited by this Conservation Easement. Prior to making any change in use of the Protected Property, the Grantor shall notify the Grantee in writing.

3.2 the right to sell, give, mortgage, lease, or otherwise convey the Protected Property, provided the same is subject to the terms of this Conservation Easement.

3.3 the right to maintain such structures as currently exist on the Premises (which may be repaired or replaced, but not expanded, on the same site, in whole or in part by like structures used for the same or similar purposes).

3.4 the right to use or lease the existing structures referenced in Section 3.3 (and/or extend or continue any existing use), but not to expand the use to any commercial or residential use not in existence on the date hereof.

- 3.5 the right to remove any underground storage tanks or remediate any adverse environmental condition on the property.
- 3.6 the right to cut and remove diseased trees, shrubs, or plants and to cut firebreaks.
- 3.7 the right to use, or allow the use of, any portion of the land for farming or agricultural purposes.
- 3.8 the right to construct, use, maintain and keep clear footpaths and hiking trails.
- 3.9 the right to cut vegetation as presently maintained.

Grantor and Grantee acknowledge that the exercise of any reserved right enumerated herein by the Grantor shall not relieve Grantor from complying with or obtaining any permit from any applicable governmental authority prior to the exercise thereof.

4. Grantee's Rights. To accomplish the purpose of this Conservation Easement, the following rights are conveyed to Grantee by this Conservation Easement, subject to the terms and conditions set forth herein:

- 4.1 Preservation and Protection. 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 and with prior notice, for the purposes of: (a) inspecting the Protected Property to determine if the Grantor is complying with the covenants and purposes of this Conservation Easement; (b) enforcing the terms of this Conservation Easement; (c) taking any and all reasonable actions with respect to the Protected Property as may be necessary or appropriate, 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 as described below.
- 4.3 Enforcement. The right to prevent any activity on or use of the Protected Property that is in violation of the terms of this Conservation 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 this Conservation Easement. Grantee shall give its permission only if it reasonably determines that such activities (1) do not violate the purpose of this Conservation Easement and (2) either enhance or do not impair any significant conservation interests 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 Conservation Easement or to allow any new residential, commercial or industrial structures or any new commercial or industrial activities not provided for above.

5. Access. The parties agree to permit the public the right to use the Protected Property for passive recreational activities that are not inconsistent with the purposes of this Conservation Easement, including without limitation walking, hiking, and wildlife observation. The Grantor retains the rights to reasonably designate portions of the Property for such access including without limitation for safety concerns and in order to not unreasonably interfere with any permitted uses by the Grantor or its tenants or designees under Section 3.3 and/or 3.4 and/or 3.7.

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.

7. Taxes. The Grantor agrees to pay any real estate taxes or other assessments levied on the Protected Property. If the Grantor becomes delinquent in payment of said taxes or assessments, such that a lien created against the land is to be executed upon, the Grantee, at its option, shall, after written notice to the Grantor, have the right to take such other actions as may

be necessary to protect the Grantee's interest in the Protected Property and to assure the continued enforceability of this Conservation Easement.

8. Development Rights. The Protected Property and any portion thereof shall not be included as part of the gross area of other property not subject to this Conservation 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 which have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferrable development rights scheme or cluster development arrangement or otherwise

9. Intentionally Omitted.

10. Grantee's Remedies. In the event that the Grantee becomes aware of a violation of the terms of this Conservation Easement, the Grantee shall give notice of such violation to the Grantor, or to the then-owner of the Protected Property at Grantor's last known post office address or the address of the then-owner of the Protected Property, via certified mail, return receipt requested, and request corrective action sufficient to abate such violation and restore the Protected Property to substantially the condition it was in as of the date of the Conservation Easement (or with only such modifications as are permitted hereby. Failure by the Grantor to cause discontinuance, abatement or 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 Conservation Easement; to require the restoration of the Protected Property to its previous condition; and to enjoin such non-compliance by temporary or permanent injunction in a court of competent jurisdiction

10.1 Emergency Enforcement. If Grantee, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant 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 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 Conservation Easement by any prior failure to act.

10.3 Violations Due to Causes Beyond Grantor's Control. The Grantee shall not 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 Conservation Easement caused by unauthorized wrongful acts of third persons, the Grantee may take action against such third persons to enforce any rights of the Grantee under this Conservation Easement and to pursue such remedies against such third persons which are necessary or incidental to the protection of the property which is the subject to this Conservation Easement. .

10.4 Standing. By virtue of Grantee's acquisition of rights under this Conservation Easement, it shall be entitled, at its option, to standing before appropriate courts of law to pursue remedies or other matters which are necessary or incidental to the protection of the property which is subject to this Conservation Easement.

11. Parties Subject to Easement. 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.

13. Merger. The Grantor and Grantee agree that the terms of this Conservation 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 Grantee will only transfer or assign the easement it holds under this indenture to 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 operated 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 any such transfer or assignment to such an organization 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. Effect. The conveyance of this Conservation Easement by the Grantor to the Grantee shall not relieve Grantor of the obligation and responsibilities 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 Conservation Easement.

16. Miscellaneous Provisions.

16.1 Severability. If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation 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.

16.2 Successors and Assigns. The term "Grantor" shall include the Grantor and its successors and assigns and the heirs, executors, administrators, successors and assigns of the foregoing 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 the Conservation Commission of the Town of Easton and its successors and permitted assigns as herein provided the heirs, executors, administrators, successors and assigns of the foregoing.

16.3 Re-recording. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement. Without limiting the foregoing, the Grantor agrees to execute any such reasonable and appropriate instruments consistent with the terms and conditions of this Conservation Easement, upon request.

16.4 Captions. The captions herein have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.

16.5 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.

16.6 Notices. Any notices required in this Conservation 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: _____.

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

IN WITNESS WHEREOF, the Grantor has executed and sealed this document the day and year first above written.

Witness:

Grantor:

Town of Easton, Connecticut

Witness:

Grantee:

Conservation Commission of the Town
of Easton, Connecticut

By:
Its:

STATE OF)
) SS.
COUNTY OF)

On this ____ day of _____, 2022, before me personally appeared _____, to me personally known, who, being by me duly sworn did say that ___ is the _____ of the _____ named in the foregoing instrument; and acknowledged said instrument to be the free act and deed of said _____.

Notary Public
My Commission Expires:

STATE OF)
) SS.
COUNTY OF)

On this ____ day of _____, 2022, before me personally appeared _____, to me personally known, who, being by me duly sworn did say that ___ is the _____ of the _____ named in the foregoing instrument; and acknowledged said instrument to be the free act and deed of said _____.

Notary Public
My Commission Expires: