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*The use of the modifier “model” in the document and associated commentary is not intended to imply that the document satisfies all legal requirements. While based on current developments in the continuing evolution of land conservation law, practice and documentation, neither the Connecticut Land Conservation Council, Rhode Island Land Trust Council, their funders, officers, directors, employees, contractors, agents or other representatives, nor the members of the Connecticut Model Conservation Easement Working Group and the Rhode Island Model Conservation Easement Working Group guarantee the qualification of this model conservation easement document under federal, state and local law. Neither these publications nor their release are intended to impart definitive legal, accounting or tax planning advice. Because of the complexity of the subject matter and the conditions of these documents’ release, anyone intending to use or apply this sample document or the related commentary should retain the services of competent professional counsel.*

**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.**

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**After recording, please return to:**

Grantee or Grantee’s attorney]

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## **[RHODE ISLAND MODEL] CONSERVATION EASEMENT**

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 Rhode Island Non Profit 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 City/Town of [\_\_\_\_\_], County of [\_\_\_\_\_], and State of Rhode Island, 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 city/town where the Protected Property is located.]

[ALTERNATIVE 1: WHERE LAND TRUST IS THE GRANTEE][ B. Grantee is a publicly-supported tax exempt, Non Profit Corporation incorporated under the laws of the State of Rhode Island, 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 pursuant to the laws of the State of Rhode Island, and in particular Title 34, Chapter 39 and Title 45, Chapter 36 of the General Laws of Rhode Island, as amended, 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.]

[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, ecological,] 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 Rhode Island 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" and/or "Preservation Restriction" under Title 34, Chapter 39 and/or "Open Space" under Title 45, Chapter 36 of the General Laws of Rhode Island, as amended, 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.]**

**SCENIC ENJOYMENT:**

E. Preservation of the Protected Property is for the scenic enjoyment of the general public and will yield a significant public benefit in accordance with Section 170(h)(4)(A)(iii)(I) of the Code. Specifically, the Protected Property is situated on and prominently visible from **[specify view characteristics and identify public ways, public areas etc.]**

**HABITAT PRESERVATION:**

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

**[specifically, the Protected Property is in Rhode Island's Conservation Opportunity Areas identified as habitat for species of greatest conservation need as listed in the Rhode Island Wildlife Action Plan (Cite any federal, state, or local lists) 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]**

G. The Protected Property abuts [is adjacent to][is in close proximity to][is contiguous to] property owned by **[Grantee/Town/State of Rhode Island/Other Conservation groups/Other Land Trusts 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.

#### **OUTDOOR RECREATION AND EDUCATION:**

H. This Conservation Easement preserves “land areas for outdoor recreation by, or for the education of, the general public” in accordance with Section 170(h)(4)(A)(i) of the Code. Specifically **[elaborate]**:

#### **WATER QUALITY PROTECTION:**

I. The Protected Property is traversed by a watercourse **[elaborate]** and its protection affords an ecologically important buffer for the protection of water quality and habitat in accordance with Section 170(h)(4)(A)(ii) of the Code.

#### **PUBLIC POLICY:**

J. The preservation of the Protected Property 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:

(1) in 1965, the Rhode Island General Assembly enacted provisions for Cities and Towns to preserve and protect Open Spaces in coordination with the RI Department of Environmental Management in Title 45, Chapter 36 of the Rhode Island General Laws.

(2) in 1976, the Rhode Island General Assembly enacted Title 34 Chapter 39 of the Rhode Island General Laws which provides special legal status and authorizes the creation and enforcement of conservation restrictions and preservation restrictions whose purpose is to retain land or water areas “predominantly in its natural, scenic. or open condition, or in agricultural, farming, open space, wildlife, or forest use;” and

(3) the Protected Property has been specifically designated on the Open Space Plan/Comprehensive Community Plan of the City/Town of [\_\_\_\_\_ as \_\_\_\_\_]; and

(4) 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, scenic and recreational resource]**; and)

(5) The Rhode Island Local Open Space Grant Program provides funding for the protection of species of greatest conservation need and their habitat, as listed in the Rhode Island Wildlife Action Plan which species have been observed on or about the Protected Property, including: [\_\_\_\_\_]

(6) **[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.]**

**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]** and as an absolute and unconditional **[gift/grant]**, 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.** It is the purpose (“**Purpose**”) of this Easement:

A. to assure that the Protected Property will be retained forever predominantly in its natural, scenic, [agricultural,][forested,] [ecological,] [undeveloped or current] and open space condition for the protection of the Protected Property’s Conservation Values; and

B. to protect any rare plants, animals, or plant communities on the Protected Property and to protect the ecological qualities of the Protected Property; and

C. to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values 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 Easement. Any permitted uses reserved to Grantor must be carried out in a manner that is consistent with the Purpose of this Easement.

**2. DEFINITIONS. [READ CAREFULLY AND EXCLUDE ITEMS AND PARTS**

**OF DEFINITIONS AS REQUIRED – Add relevant definitions if any optional sections have been added to the Easement]** The following definitions apply throughout this Easement. 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.X **“Baseline Report”** sometimes referred to as **“Baseline Documentation”** is defined in Paragraph 19.10.

2.X **“Best Management Practices”** unless a specific set of practices is otherwise indicated, 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.X **“Code”** is defined in the Recitals.

2.X **“Conservation Values”** are defined in the Recitals.

2.X **“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.X **“Grantee”** is defined in the first paragraph of this Easement and includes the initial Grantee.

2.X **“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.X **“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.X** **“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.X** **“Pesticide”** includes, but is not limited to, insecticides, fungicides, rodenticides, biological agents and herbicides, or other potentially harmful substances or by-products thereof.

**2.X** **“Purpose”** is defined in Paragraph 1 hereof.

**2.X** **“Qualified Natural Resource Professional”** is a certified professional forester, forest ecologist, wildlife biologist, soil scientist or agricultural specialist with substantial training and expertise, and any necessary certifications, in the relevant environmental sciences.

**2.X** **“Structure”** means anything constructed or erected, the use of which requires permanent location on, above or under the ground, or attachment to something having a permanent location on, above or under the ground. This includes, but is not limited to: dwellings and buildings.

**2.X** **“Subdivision” or “Subdivide”** shall mean creating a separate legal lot, or adding, or setting off, or separating, any portion of the Protected Property either as a separate lot of any nature, adding to another lot, or using or assigning development rights associated with the Protected Property to another property; that is separating any portion of the Protected Property from any other portion of the Protected Property.

**3. LIMITATIONS AND PROHIBITED USES.** In order to carry out the Purpose, and subject to the Retained 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 [Provided, however, that such restrictions Limitations and Prohibited Uses shall not apply to the Reserved Residential Area, which is subject to separate provisions as set out in the paragraph related to the Reserved Residential Area]:

**3.1** **Subdivision.** The Protected Property shall together constitute one entire and undivided parcel of land and so shown on Schedule A attached hereto notwithstanding that said Protected Property may have previously be described as one or more parcels of land and may need to combined into one single parcel. The Protected Property shall only 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; provided, however, that with prior approval from Grantee, Grantor may convey any portion of the Protected Property to any organization or government entity that would qualify as an eligible assignee in accordance with this Easement. Any portion of the Protected Property conveyed pursuant

to this provision shall remain subject to this Easement in all respects.

**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 or lot coverage, set-backs and frontage requirements, under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by the Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise. Nothing herein contained shall be construed to prevent Grantor from using any of the Protected Property as property qualifying for open space, forest or farmland for tax purposes under applicable statutes and laws, including but not limited to the Rhode Island Farm, Forest, and Open Space Act, Title 44, Chapter 27, of the General Laws of Rhode Island, and the regulations promulgated thereunder.

**3.3 Prohibited Structures and Other Improvements.** There shall be no construction, re-construction, modification, other change to, or placing, or re-placing of any building, structure, or other improvements, tennis or other recreational court, landing strip, mobile home, swimming pool, crypt, wall, fence or sign (other than those reasonably required by Grantor for appropriate management), billboard or advertising material, asphalt or concrete pavement, parking area, road, billboard or other advertising display, antenna, utility or other pole, tower, conduit, culvert, line, electric light, solar array, windmill, or any other temporary or permanent Structure or facility on, under or above the Protected Property except as provided in **Paragraph 4.**

**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.**

**3.5 Changes to Vegetation.** There shall be no removal, destruction or cutting of trees, shrubs or plants, or planting of non-native species with invasive characteristics, introduction of non-native animals, grazing of domestic animals, or disturbance or change in the natural habitat except in connection with the removal or the pruning of dead, damaged, diseased, or live trees and brush that pose a threat to safety or Structures; or except as provided in Paragraph 4.

**3.6 Pesticides.** There shall be no use or disposal of Pesticides on the Protected Property except as provided in Paragraph 4 or as approved in writing by Grantee.

**3.7 Trash.** There shall be no storage, placing, filling or dumping of ashes, trash, vehicles or vehicle parts, debris, junk, 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. The preceding restriction shall not apply to

the aboveground presence, use or storage on the Protected Property of small quantities of the aforementioned substances that are generally recognized to be appropriate to normal residential use.

**3.8 Pollution and Alteration of Water Resources.** There shall be no 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**. There shall be no pollution or activities that result in pollution.

**3.9 Recreational Vehicles [ADD IF APPLICABLE: and Horseback riding].** There shall be no operation of [snowmobiles], dune buggies, motorcycles, bicycles, all-terrain vehicles, hang gliders, aircraft (other than drone use by Grantee for monitoring purposes), helicopters, jet skis, motorized boats or any other types of mechanized [land based][motorized] recreational vehicles except as provided in **Paragraph 4** below. [There shall be no horseback riding.]

[Option: if use of 26 USC 2031(c) estate tax exemption is sought (see Commentary) ]**3.10 Commercial Recreational Activities.** There shall be no commercial or industrial recreational activities or uses of the Protected Property other than [Agricultural Activities and][ *de minimis* commercial recreational activities as defined in accordance with Section 2031(c) of the Code.]

**3.11 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, 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**.

**4. GRANTOR'S RETAINED RIGHTS AND PERMITTED USES.** 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. 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. Grantor represents and covenants that the Protected Property is not currently subject to a mortgage or lease having priority over this Conservation Easement. (See Section 14 for coordination of notices.)

**4.2 Existing Structures.** Grantor retains the right to maintain such Structures as currently exist on the Protected Property, if any, **[as shown at Exhibit \_\_ hereof] [or, in the Baseline Report] [which Structures may be repaired or replaced, but not expanded, on the same site by like Structures used for the same or similar purposes.]** Existing stone walls **[as shown at Exhibit \_\_ hereof or in the Baseline Report]** may be maintained, replaced or repaired utilizing only dry-laid field stone construction, although the interior layers may be mortared to maintain the integrity of the wall or prevent the unauthorized removal of stones. No stones from walls, forest floor, or any other location may be removed from the Protected Property.

**4.3 Outdoor Recreational Activities.** **[If no estate tax deduction sought per beginning of section and if a commercial recreational activity such as golf course is involved, the appropriate, and most likely substantial changes would need to be made.]** Grantor retains the right to engage in non-commercial outdoor recreational activities (“Outdoor Recreational Activities”) that do not (a) require development of, or the construction of Structures or other facilities or improvements described in **Paragraph 3.3** on the Protected Property (b) involve the recreational use of motorized vehicles **[except snowmobiles]**, (c) impair the Conservation Values protected by this Easement, (d) have a significant impact on soils or cause siltation and erosion of the Protected Property or (e) interfere with the Purpose. Such non-commercial outdoor recreational activities include, but are not limited to, camping, walking, hiking, running, fishing, **[shooting, hunting,]** cross country skiing, wildlife observation, ecological education, **[horseback riding and equestrian activities,]** snowshoeing, and similar uses **[Provided however, that horseback riding and equestrian activities may be conducted for commercial or non-commercial purposes.]** All permitted Outdoor Recreational Activities 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 or significantly impair the Purpose of this Easement.

**4.4 Signs.** Grantor retains the right to place signs identifying the Protected Property and to post all or a portion of the Protected Property about permitted uses and against trespass, hunting or prohibited uses.

**4.5 Habitat Enhancement.** Grantor retains the right to improve wildlife habitat through the creation and placement of improvements, including but not limited to bird houses, brush piles, sunning logs, planting of specific habitat vegetation, to temporarily erect fences to exclude deer and other animals for the purpose of protecting habitat from browse, and to conduct other habitat enhancement activities with written approval of Grantee or as recommended by a Qualified Natural Resource Professional who is approved by Grantee.

#### **4.6 Invasive Species Removal and Pesticide Use.**

(a) Grantor retains the right to remove, destroy, cut or control Invasive Species or species which are a threat to the health of humans, animals or native species of flora and fauna. Grantor retains the right to use Pesticides for such purposes, including the use of Pesticides to treat non-native insects, fungi, parasites, Invasive Species and other organisms that attack native species of flora and fauna or threaten the natural ecological communities on or adjacent to the Protected Property.

(b) Any such use of Pesticides shall be conducted in a manner reasonably designed to control the identified threat with the least possible damage to non-target species; for example, by use of the narrowest spectrum, least persistent, material appropriate for the target species, and in accordance with applicable law and Best Management Practices. All Pesticides shall be used in a directed-spray manner specifically targeting pests to minimize pesticide contact with non-target plants and animals unless:

- (i) applied by a licensed pesticide applicator with the prior approval of Grantee; or
- (ii) applied by a licensed pesticide applicator in accordance with a written forest and/or wildlife management plan prepared by a Qualified Natural Resource Professional, which plan must be approved in writing by Grantee; or
- (iii) with the prior approval of Grantee, pursuant to recommendations regarding the Protected Property by the Rhode Island Department of Environmental Management or other duly authorized governmental authority.

**4.7 Necessary Vehicles.** As reasonably necessary in connection with permitted uses, management, and protection of the Protected Property, Grantor retains the right to bring on the Protected Property and operate automobiles, light trucks, off-road vehicles (but not motorcycles), farm equipment, forestry equipment, emergency and rescue vehicles, maintenance equipment, and other vehicles and equipment.

***[INSERT ADDITIONAL RETAINED RIGHTS HERE – SEE ADDENDUM FOR OPTIONS]***

**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 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, including the use of drone aircraft, 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.

**5.2 Signs.** Grantee shall have the right to install and maintain signs on the boundary of the Protected Property or for referenced features such as trails within the property in furtherance of the rights and responsibilities of Grantee under this Easement and/or to provide information or instructions applicable to such uses and may include notice of protection by Grantee.

**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. [See Option for Public Access]

## **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 otherwise intends to undertake any activity or to exercise any right on 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 and may not commence until such approval has been obtained. 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, being the primary considerations with any doubt resolved in favor of such primary considerations. Grantee may establish reasonable conditions for the conduct of activities approved under this provision and may charge its costs for such determination whether or not approved.

[See commentary. If a charitable donation will be claimed, careful consideration will need to be given to whether such a provision is consistent with current IRS interpretation.]

### **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, and after compliance with all federal and state requirements, 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 in 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, 3.) result in **[a material improvement ][no negative net impact]** in the protection of important Conservation Values or ecological resources on the Protected Property, 4) will not affect the qualification of this Easement or the status of Grantee under any applicable laws, including but not limited to Title 34, Chapter 39 and Title 45, Chapter 36 of the General Laws of Rhode Island, as amended, or Section 170(h) of the Internal Revenue Code, and 5) shall have received Court approval if necessary pursuant to Section 34-39-5 G.L.R.I.. 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 Title 34, Chapter 39 and Title 45, Chapter 36 of the General Laws of Rhode Island, as amended, 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 and any approvals shall be subject to all applicable*

*federal and state laws and regulations including any Court approval that may be required pursuant to Section 34-39-5 G.L.R.I. In the event that any Court or governmental entity with jurisdiction makes a final determination that an otherwise approved activity is in violation of any provision of law or impacts the status of this Easement, then such approval shall be void in whole or in part as may be necessary to maintain this Conservation Easement in good standing or to avoid any detrimental action or determination by such Court or governmental entity.]*

## **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 mechanics liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor.

**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 lessees 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 if not caused or procured by Grantor, 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.

## **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 for 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 Grantee's Remedies 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, failure or delay 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, laches or estoppel of its rights to do so later.

**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 costs incurred by Grantee in enforcing or defending 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 the Grantor is responsible, including without limitation, costs and expenses of investigation, dispute management, negotiation, mediation and, if applicable, arbitration costs, settlement or suit and reasonable attorneys', expert's and consultant's fees, staff time and any fees and costs of restoration, remediation or other damage correction necessitated by any such action, and including the drafting of any related new conservation protection or enhancement documents, and other payments as may be ordered by such court or arbitrator. If Grantor ultimately prevails in a judicial enforcement action, each party shall bear its own costs.

**10.2 Non-Enforcement Costs.** Grantor acknowledges that its general operating funds and any stewardship endowment it may have do 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 this 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 this 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.

*[This paragraph may be of concern to some Grantors. See Commentary. 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 such 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; and Grantor further agrees to notify Grantee of any pending transfer at least thirty (30) days prior to the said transfer **[to be consistent with 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 and pursuant to Section 34-39-3 G.L.R.I. In the event of merger and to the extent necessary or prudent given the provisions of Section 34-39-3 and otherwise, (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 Rhode Island, if any, to re-instate 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 Paragraph and with the assignment provisions 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 including reference to said Section 34-39-3. Further, no deed, transfer, or assignment shall be effective if it will result in merger adversely affecting the terms of this Conservation Easement, until a like conservation easement has been granted to avoid any negative impact of merger. This provision survives the extinguishment of this 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 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. 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 including but not limited to Title 34, Chapter 39 and Title 45, Chapter 36 of the General Laws of Rhode Island, as amended, and Sections 170(h) and 501(c)3 of the Code,
- (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.
- (i) comply with Grantee's Amendment Policies
- (j) have obtained any and all approvals required by Section 34-39-5 of the General Laws of Rhode Island, as amended.

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. Any such amendment shall be subject to all applicable federal and state laws and regulations.

In the event that any Court or governmental entity with jurisdiction makes a final determination that an otherwise approved amendment is in violation of any provision of law or impacts the status of this Conservation Easement, then such amendment approval shall be void in whole or in part as may be necessary to maintain this Conservation Easement in good standing or to avoid any detrimental action or determination by such Court or governmental entity.

**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, 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. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Protected Property (or any other property received in connection with an exchange or involuntary conversion of the Protected Property) after such termination or extinguishment, and prior to the payment of any costs or expenses associated with such sale, Grantee shall be entitled to receive Grantee's percentage interest in the gross proceeds of such sale, exchange, or involuntary conversion of the Protected Property 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, as such percentage interest is determined under the provisions of this Paragraph.

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. Prior to any reimbursement of related expenses incurred by Grantor and Grantee, Grantee shall first be entitled to receive Grantee's percentage interest from the recovered proceeds in conformity with the provisions of this Paragraph (with respect to the allocation of proceeds). 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 Rhode Island as well as applicable federal laws and regulations. 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 federal and state law, including but not limited to Title 34, Chapter 39 and Title 45, Chapter 36 of the General Laws of Rhode Island, as amended, and Sections 170(h) and 501(c)3 of the Code, 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 and the schedules attached hereto set forth the entire agreement of the parties with respect to this Easement and supersede all prior discussions, negotiations, understandings, or agreements relating to this 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 Grantor 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 Purpose 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.

**20. 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.

**21. 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.

**22. 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 schedules, exhibits 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.

**23. RESIDENCY/RECORDING.** This transfer is such no R.I.G.L. § 44-30-71.3 withholding is required as the Grantor is a resident of the State of Rhode Island, as evidenced by Affidavit. (ALTERNATE LANGUAGE BASED ON GRANTOR – TBD; IF DONATION: “This transfer is by way of gift and therefore no R.I.G.L. § 44-30-71.3 withholding is required.”)

**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, for all purposes, and specifically in accordance with the provisions of of federal and state law including Title 34, Chapter 39 and Title 45, Chapter 36 of the General Laws of Rhode Island, as amended, and Sections 170(h) and 501(c)3 of the Code

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 this 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:

**Grantor**  
**[INSERT NAME]**

\_\_\_\_\_  
**[Print name of above signer]**

\_\_\_\_\_  
**[Print name of above signer]**

\_\_\_\_\_  
**[Print name of above signer]**

ACCEPTED:

Witness

**Grantee**  
**[INSERT NAME]**

\_\_\_\_\_  
[Print name of above signer]

By \_\_\_\_\_  
[insert name of signer]

\_\_\_\_\_  
[Print name of above signer]

Its [insert capacity of signer],  
duly authorized

STATE OF RHODE ISLAND  
COUNTY OF \_\_\_\_\_

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared [Name of Grantor], to me known and known by me to be the party executing the foregoing instrument and he/she acknowledged said instrument by him/her executed, to be his/her free act and deed.

Affix Seal:

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF RHODE ISLAND  
COUNTY OF \_\_\_\_\_

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_ to me known and known by me to be the party executing the foregoing instrument and he/she acknowledged said instrument by him/her executed, to be his/her free act and deed and the free act and deed of \_\_\_\_\_.

Affix Seal:

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**SCHEDULE A**

***Description of Property Subject to the Easement***