

Draft of Model Conservation Easement for Columbia

This indenture made this _____ day of _____, 20____ by and between _____ of the Town of _____, County of _____, State of _____ (hereinafter called "GRANTOR") , and the Town of Columbia, a municipal corporation under the laws of the State of Connecticut and the Charter of the Town of Columbia (hereinafter called "GRANTEE")

Witnesseth:

WHEREAS the purpose of a Conservation Easement is to protect in perpetuity significant natural and/or historic features and to minimize the environmental impact of activities associated with land development within the Town of Columbia; and

WHEREAS the purpose the Conservation Easement on the property described below is in particular to :

varies with each easement

WHEREAS the GRANTOR is the owner in fee simple of certain real property in the Town of Columbia, County of Tolland, and State of Connecticut, hereinafter called the "Conservation Easement Area", and described in Schedule A and delineated on a certain map entitled _____ to be filed with the Town Clerk of the Town of Columbia and a copy of which is attached as Schedule B; and

WHEREAS the GRANTEE has determined that the conservation of the Conservation Easement Area can best be accomplished if the GRANTOR provides the GRANTEE with a conservation easement over, across, upon, and below the Conservation Easement Area with the conditions and covenants set forth below; and

WHEREAS the GRANTOR is willing, in consideration of one(1) dollar and other good and valuable considerations, receipt of which is hereby acknowledged, including a desire to conserve and protect the fauna, flora, and hydrologic/geologic features and natural beauty of the property for posterity, to grant to said GRANTEE the Easement and Covenants as hereinafter stated concerning the Conservation Easement Area, thereby providing for its maintenance and conservation;

NOW, THEREFORE, the GRANTOR, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions, and restrictions herein contained, does hereby give, grant, bargain, sell, and convey with quit claim covenants unto the GRANTEE, its successors and assigns forever, a Conservation Easement in perpetuity over the defined Conservation Easement Area, of the nature and character and to the extent hereinafter set forth. All terms, covenants, and conditions contained herein are deemed to run with the land.

I. Rights of the GRANTEE

A. The right to preserve and protect the Conservation Easement Area

B. The right to enter (following at least one week's notice for routine inspections, or other reasonable notice in time of a violation in progress, to the current GRANTOR or occupant) the Conservation Easement Area at all reasonable times, and if necessary, harmlessly cross the other lands of the GRANTOR , for purposes of:

1. Inspecting the Conservation Easement Area to determine if the GRANTOR, his

successors or assigns, is complying with the covenants and purposes of this Easement;

2. Enforcing the terms of this Conservation Easement agreement;
3. Taking any and all actions with respect to the Conservation Easement Area as may be necessary and appropriate, with or without order of the court, to remedy or abate violations hereof;
4. Inspecting, maintaining and/or replacing boundary markers of the Conservation Easement Area

C. The right to enforce by proceedings at law or in equity the covenants contained herein and to seek, among other things, the following relief.

1. Restoration of any portion of the Conservation Easement Area altered or disturbed after the date of this grant without the GRANTEE's written consent. Such restoration may include: planting with trees, shrubs or other vegetation acceptable to the GRANTEE; removal of debris, trash, or other waste discarded or fill materials deposited; removal of buildings, signs, or other structures; emplacement and maintenance of erosion and sediment controls; and installation or replacement by a land surveyor of boundary identification markers. THE GRANTEE shall be entitled to require the GRANTOR or his/her successors or assigns to have a qualified professional prepare plans for any such restoration where such professional advice is deemed necessary.

2. Damages for any costs of restoration borne by the GRANTEE. In the event that the GRANTEE is successful in such legal or equitable proceedings, it shall be entitled to reimbursement from the GRANTOR, or his/her successors or assigns, for all the GRANTEE's costs for such proceedings, including attorney's fees.

3. Nothing herein shall be construed to entitle the GRANTEE to institute any enforcement proceedings against the GRANTOR for any changes to the Conservation Easement Area due to causes beyond the GRANTOR's control, such as changes caused by fire, flood, or storms, or by the actions of a third party unknown to the GRANTEE.

4. Any delay by the GRANTEE, its successors or assigns, in acting to enforce any restrictions or exercise any rights under this agreement shall not constitute a defense for violations by the GRANTOR or failure to cure such violations in the manner described in this section.

II. Covenants *These may vary with the particular purpose of the easement and the resources to be protected but should in general include the following*

1. There shall be no placement or construction of structures of any kind, including but not limited to: buildings (temporary or permanent), docks, decks, or gazebos, sewage disposal systems, wells, drainage systems, underground tanks, roads, driveways, mobile homes, fences or walls, signs, billboards or other advertising.

2. There shall be no dumping, storing, or placing of soil or other substances and materials, no storage or disposal of vehicles, vehicle parts, or waste of any kind.

3. There shall be no topographic changes: no ditching, draining, diking, dredging, tilling, excavating, mining or drilling, or filling. There shall be no removal of soil, sand, gravel or rock.

4. There shall be no removal or destruction of trees, shrubs, or other vegetation; destruction of wildlife or its habitat, application of poisons, pesticides, herbicides or fertilizers; grazing of domestic animals; burning. There shall be no landscaping or additional plantings made to the easement area.

5. There shall be no operation of motor vehicles including but not limited to snowmobiles, motorcycles, or all terrain vehicles.

6. There shall be no alterations to watercourses or wetland areas within the easement, nor shall there be any activities detrimental to drainage, flood control, surface or ground water quality, erosion control, wildlife, and the natural condition of land or water.

7. There shall be no removal or disturbance of the easement boundary markers

III. Reserved Rights

A. The GRANTOR herein reserves the right to make use of the Conservation Easement Area for any and all purposes which are in keeping with the stated intent and purpose of this Conservation Easement Agreement and which shall in no way endanger the maintenance and conservation of the Conservation Easement Area in its natural state.

B. The GRANTOR reserves the right to be notified in writing of any failure by GRANTOR to comply with the terms of this agreement. The GRANTEE must in this notice provide evidence of the non-compliance and establish the appropriateness of the cure. The GRANTOR shall have to right to have thirty (30) days from the receipt of said notice to cure said failure or to show in proceedings at law why such cure is not equitable.

Only if the GRANTOR fails to carry out such cure within those thirty (30) days does the GRANTEE have the right to cure said failure and charge the actual costs to the GRANTOR, which costs the GRANTOR agrees to pay within thirty (30) days of receiving written notice of such costs from the GRANTEE, unless GRANTEE has proven in proceedings at law that such costs are inequitable.

C. The GRANTOR reserves the right to sell, give or otherwise convey the Conservation Easement Area or any portion thereof, provided such conveyance is subject to the terms of this Easement and all applicable requirements of the Town of Columbia and the State of Connecticut.

(additional rights may be retained by the GRANTOR dependent on the needs of the grantor)

IV. Discretionary Consent Grantee's consent for activities otherwise prohibited in the covenants/restrictions listed above in Section II may be given under the following conditions and circumstances. If owing to unforeseen circumstances, any of the prohibited activities listed in paragraphs 1-7 of Section II Covenants are deemed desirable by the Grantor or Grantee, grantee may, in its sole discretion, give permission for such activities, subject to the following limitations.

A. Such requests for permission shall be in writing and shall describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the purpose of this Conservation Agreement.

B. Grantee may give permission only if it determines, that such activities
1)do not violate the purpose of the Conservation Agreement
2) either enhance or do not impair any significant conservation interests associated with the protected property.

C. The Grantee must reply in writing to the written request of the Grantor within 30 days, giving consent, denial, or a request for further information. If a denial, the Grantee must give reasons for such denial.

Notwithstanding the foregoing, the Grantee and Grantor have no right or power to agree to any activities that would result in termination of this Conservation Restriction or to allow any structures or activities not provided for in the list of Grantee's rights, Grantor's Rights, and Covenants.

V. Public Access

Nothing contained in this Conservation Easement Agreement shall give or grant to the public a right to enter upon or use the Conservation Easement Area or any part thereof which no such right existed for the public immediately prior to the execution of this Easement.

VI. Subsequent Transfers

A. The GRANTOR further covenants and agrees to incorporate the terms of this easement in any deed or legal instrument by which any interest in all or part of the Conservation Easement Area is divested, including without limitation, a leasehold interest. Failure of said GRANTOR to provide such notice shall not impair the validity of this easement or limit its enforceability in any way.

B. The GRANTOR further covenants and agrees to give written notice by certified mail to the Columbia Town Clerk of the transfer of any interest in the Conservation Easement Area at least ten(10) days prior to the date of such transfer. Failure of said GRANTOR to provide such notice shall not impair the validity of this easement or limit its enforceability in any way. Copies of this notice shall also be sent to the Chairperson of the Planning and Zoning Commission and the Chairperson of the Conservation Commission.

VII. Other Provisions

A. The GRANTOR agrees to pay any real estate taxes or other assessment levied by competent authorities on the Conservation Easement Area.

B. The GRANTEE shall have no liability or responsibility whatsoever to GRANTOR or other persons with respect to operation, upkeep, management, and maintenance of the Conservation Easement Area, nor shall GRANTEE be obliged to obtain any form of insurance coverage with respect to the Conservation Easement Area.

C. If any provision of this conservation easement agreement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of the easement and application of such provisions to persons or circumstances other than those found invalid, shall not be affected thereby.

VIII. Title The Grantor is the sole owner of the Conservation Easement Area in fee simple, and has the right to enter this Conservation Easement Agreement and to grant and convey this Easement. The Conservation Easement Area is free and clear of all liens and encumbrances, including, but not limited to, any mortgages not subordinated to the Easement.

TO HAVE AND TO HOLD the said conservation agreement unto the said GRANTEE, its successors and assigns forever.

IN WITNESS WHEREOF, the grantor had executed and sealed this document the day, month, and year first above written.

Witness:

Grantor

Grantee

STATE OF

COUNTY OF

date _____

Personally appeared, signed the foregoing instrument, and acknowledged the same to be their free act and deed, and the free act and deed of said partnership, before me.

Commissioner of the Superior Court/ Notary Public

My Commission expires:

Note: The terms of this model easement are subject to modification, on a case-by-case basis, to address special property-owner requests.