

## CONSERVATION EASEMENT

**THIS CONSERVATION EASEMENT** is entered into as of October 17, 2014 by and between **APPLE ORCHARD LLC** (“Grantor”) and **THE CONNECTICUT FOREST AND PARK ASSOCIATION INCORPORATED**, a Connecticut Nonstock Corporation (“Grantee”), with respect to the property described below and the following recited facts:

A. Grantor is the owner in fee simple of a parcel of land, which consists of 40 acres, more or less, in the Town of Bloomfield, Connecticut, on the west side of Simsbury Road and Mountain Road shown and delineated as “LAND TO BE CONVEYED FROM APPLE ORCHARD LLC TO THE DEPARTMENT OF ENERGY & ENVIRONMENTAL PROTECTION STATE OF CONNECTICUT AREA = 39.95 ACRES” on a plan titled, “PROPERTY SURVEY PREPARED FOR THE DEPARTMENT OF ENERGY & ENVIRONMENTAL PROTECTION STATE OF CONNECTICUT OF LAND OF APPLE ORCHARD LLC SIMSBURY ROAD CT. ROUTE #185 MOUNTAIN ROAD BLOOMFIELD CONNECTICUT SCALE 1”=100’ NOVEMBER 2013 SHEET 1 OF 1 REV. 5-16-2014” to be filed with the Bloomfield Town Clerk (the “Map”), and more particularly bounded and described on Schedule A attached to this agreement (the “Protected Property”).

B. Grantee is an organization that is devoted to the conservation of land and natural resources, is a publicly-supported non-profit organization incorporated under the laws of the State of Connecticut, is a tax exempt public charity under Section 501(c)(3) of the Internal Revenue Code of 1986 (the “Code”) and is not a private foundation under Section 509(a)(2) of the Code. Grantee has received a determination letter from the Internal Revenue Service, on file

I CERTIFY THIS TO BE A TRUE COPY OF THE  
DOCUMENT RECORDED IN THE BLOOMFIELD  
LAND RECORDS. DATED AT BLOOMFIELD, CT.  
THIS 31 DAY OF December 2014

*Matt W. Asst Town Clerk*

Conveyance Tax Received  
Exempt State of Connecticut  
Exempt Town of Bloomfield

*Marguerite Phillips*  
Town Clerk of Bloomfield

at the offices of Grantee, establishing this federal tax status and is aware of no notices or facts to the contrary.

C. Grantee is a "qualified conservation organization," as that term is defined in Section 170(h) of the Code and the regulations (the "Treasury Regulations") thereunder.

D. The Protected Property possesses important natural and scenic features and consists of open space, farmland, and hilltop meadow land of great beauty that is worthy of conservation.

E. Preservation of the Protected Property is for the scenic enjoyment of the general public and will yield a significant public benefit because the Protected Property affords a panorama of hilltops and woodlands, and will be open to the public for park use, hiking, camping, and passive recreational activities that do not interfere with the other conservation values of the property.

F. The preservation of the Protected Property's open space (including farmland and forest land) through this conservation easement is pursuant to clearly delineated federal, state and local governmental conservation policies and will yield a significant public benefit, specifically:

1. In 1963, the Connecticut General Assembly declared "that it is in the public interest to encourage the preservation of farmland, forest land and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the state, to conserve the state's natural resources and to provide for the welfare and happiness of the inhabitants of the state" (P.A. 490, 1; C.G.S. Section 12-107a); and

2. In 1971, the Connecticut General Assembly passed Public Act 173 (C.G.S. Sections 47-42a through 47-42c) that authorizes the creation and enforcement of conservation

restrictions, "whose purpose is to retain land or water areas predominantly in their natural, scenic, or open condition or in agricultural farming, forest, or open space use;" and

3. The Protected Property is designated as open space in the Future Land Use Plan of the 2010 Bloomfield Plan of Conservation and Development ("POCD") (p. 111) which states, "In essence the Future Land-use Plan is a statement of what Bloomfield of tomorrow should look like upon implementation of the strategies in the Plan" (p. 110); and

4. The Protected Property is part of the Open Space and Greenway Vision Plan shown on said POCD (p. 37) as current Managed Open Space and the said POCD recommends "[d]eveloping a strategy to identify and then convert these lands into dedicated open space... including "facilitating the process of having conservation easements placed on the property..."(p.40).

**G.** The area in which the Protected Property is located is now subject to, and is expected to continue to be subject to, significant development pressure and Grantor and Grantee wish to prevent such development from occurring on the Protected Property.

**H.** Grantor and Grantee recognize the natural, scenic, and aesthetic character of the Protected Property and have the common purposes of conserving the Protected Property and the animal and plant populations residing on it and of restricting the use or development of the Protected Property as set forth in this document, and intend to further those purposes by conveyance to Grantee of a conservation easement (the "Easement") on, over, and across the Protected Property.

**I.** The open space, scenic, agricultural and historic resources of the Protected Property recited in paragraphs D through H above are collectively referred to herein as the

"**Conservation Values**" of the Protected Property and are documented in a report to be kept on file at the offices of Grantee, with copies provided to Grantor (hereinafter referred to as the "**Baseline Report**"). The parties agree that the Baseline Report provides an accurate representation of the Protected Property at the time of this Easement which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement.

J. Grantor intends that the Conservation Values of the Protected Property be preserved and maintained, and Grantor intends to convey to Grantee hereby the right to preserve and protect the Conservation Values of the Protected Property in perpetuity.

NOW, THEREFORE, Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained and as a gift, does hereby give, grant, bargain, and convey to Grantee a conservation easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth, together with an easement of access and right of way across other land now of Grantor, more particularly bounded and described in Schedule B attached hereto, as reasonably necessary for the specific purpose of access to the Protected Property for monitoring the Protected Property, and administering, performing and enforcing Grantee's rights and obligations under this Conservation Restriction.

#### ARTICLE 1. PURPOSE

It is the purpose of this Easement ("Purpose") to assure, first, that the Protected Property will be retained forever as park land open to the public, with the opportunity for unspoiled vistas of the Protected Property and the surrounding land, available for hiking, camping as defined

herein, passive recreation and other park uses and, second, in order to make the Protected Property a more enriching and valuable park, that the Protected Property be retained predominantly in its natural and open space condition, with protection for any rare, endangered, or threatened plants or animals within. Also, there is to be no use of the Protected Property that will impair or interfere with the Conservation Values or interests of the Protected Property described above. This Easement will confine the use of the Protected Property to activities consistent with the Purpose of this Easement.

## ARTICLE 2. DEFINITIONS:

A. "Agricultural Activities," "Farm" and "Farming" means:

(1) The cultivation of the soil, including the creation, restoration, and/or maintenance of fields, grasslands, coverts, or meadows for commercial and/or non-commercial agricultural activities permitted in subparagraph (2) below or for wildlife management purposes, including by way of example and not limitation: (a) clearing forest trees and other growth for the purposes set forth above; (b) preparing land for agricultural or open meadow use; (c) planting, seeding, and re-seeding agricultural crops permitted in subparagraph (2) below, but not species with known invasive characteristics, (d) trimming and cutting brush and trees in order to maintain clear borders around or paths within such areas; and (e) other similar uses upon written request to the Grantee, in Grantee's sole discretion. Any commercial activity shall, however, be in furtherance of the Conservation Values promoted by this Easement.

(2) The cultivation, raising, production, harvesting, or sale only of hay, fruits, tree products and non-timber forest products, including, but not limited to, apples, peaches,

grapes, cherries, nuts, berries, mushrooms and maple syrup or maple sugar, but no other crops and no livestock.

(3) Agricultural Activities shall also include the following associated uses which are customary, supportive and agriculturally compatible uses in Connecticut:

- (a) composting and other soil enhancement activities; and
- (b) construction, maintenance and use of Temporary Agricultural Structures that are not habitable by humans, including without limitation pole sheds and run-in sheds, to be used for Agricultural Activities, constructed on vertical poles, posts, or concrete tubes, but without full footings, a foundation, or any facilities requiring a septic or other underground waste disposal system, and which only requires minor grading, but not excavation, of the land. Provided however, that the total combined footprint of roofed temporary agricultural structures under this paragraph shall not exceed 1,000 square feet.

Any Agricultural Activities shall be accomplished in accordance with best management practices and shall enhance, and not interfere with, the use of the Protected Property as a Park.

B. "Camping" means only activities and programs that allow youths under age 18, together with a reasonable number of supervising adults, to enjoy nature while staying one or more nights out of doors, including the use of tents but excluding the use of (i) tent platforms or other similar structures; (ii) cabins or other similar fully enclosed structures; (iii) fires outside of designated fire pits; and (iv) motorized recreational vehicles.

C "Forestry Activities" means planting, growing, spraying, pruning, or cutting of live or dead trees or other removals of live or dead trees, in accordance with generally accepted forestry practices and best management practices.

D "Hazardous Material" means any petroleum, petroleum product, fuel oil, waste oils, explosive, reactive material, ignitable material, corrosive material, hazardous chemical, hazardous waste, hazardous substance, extremely hazardous substance, toxic substances, toxic chemical, radioactive material, infectious material and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

E. "Park" or "Parkland" means an area of open space provided for recreational use by the public in its natural or semi-natural state, or planted, and is set aside for human enjoyment or for the protection of wildlife or natural habitats. It may consist of rocks, soil, water, flora and fauna and grass areas, but may also contain buildings permitted by this Easement. Park purposes do not include construction or placement of swimming pools or any permanent or temporary playing field, course, or court for recreational activities including, but not limited, to: golf, tennis, soccer, football, hockey, baseball, and/or basketball.

F. "Path" shall mean a route suitable for foot traffic that connects features of the Protected Property.

G. "Purpose" shall mean the purpose set forth in Article 1 hereof.

H. "Recreational Activities" and "Public Passive Recreational Uses" mean low-impact, non-developed uses consistent with the Purpose set forth above, such as exercise, sporting, and non-motorized recreational activities that are predominantly outdoor in nature,

including but not necessarily limited to walking, hiking, running, cross-country skiing, snow shoeing, and similar activities. Recreational Activities and Public Passive Recreational Uses do not include horseback riding or hunting for recreational purposes, except as permitted in paragraph G of Article 3, or the construction or placement of swimming pools or any permanent or temporary playing field, course, or court for recreational activities including, but not limited, to: golf, tennis, soccer, football, hockey, baseball, and/or basketball.

I. "Trail" shall mean a route suitable for hiking.

J. "Wood Road" or "Farm Road" means a passable roadway, surfaced with permeable, natural such as stone, gravel or wood chips (except where used subsurface to stabilize a road bed or temporarily to stabilize a road bed) materials, suitable for Park maintenance equipment and uses reasonably related to the activities permitted to Grantor hereunder.

### ARTICLE 3. RESTRICTIONS ON USE

In order to accomplish, safeguard, and promote the Purpose of this Easement set forth in Article 1 above, Grantor hereby declares and covenants that the following restrictions are hereby imposed and shall apply forever to, on, over, and across the Protected Property:

A. No industrial or commercial activities shall be conducted or permitted in the Protected Property, except that Park and Public Passive Recreational Uses, together with (i) Farming and Forestry that enhance Park and Public Passive Recreational Uses and (ii) other activities reasonably related to Park and Public Passive Recreational Uses, shall be allowed as provided in the permitted uses stated in Article 4.



B. No signs, billboards, or structures shall be placed, erected, or maintained on the Protected Property excepting a reasonable number of signs, not to exceed nine (9) square feet each without approval of the Grantee, to be located on the Protected Property and only for the following purposes:

- (1) To state the name of the Protected Property, or any portion of it;
- (2) To state facts regarding the environmental or conservation values of the Protected Property to visitors;
- (3) To deter access to the Protected Property by trespassers;
- (4) To mark Trails; and
- (5) To provide other notices related to the Protected Property.

C. No quarrying, excavation, depositing, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials from the Protected Property shall occur, except in connection with an activity or construction permitted herein and provided that any soils removed shall be done so on a limited, local and temporary basis and are completely replaced with comparable soil from other than the Protected Property.

D. No mining or removal of groundwater from the Protected Property shall occur, except as may be required for agricultural, camping, and park uses as permitted herein.

E. No depositing, dumping, or abandoning of any Hazardous Material, solid wastes, junk, liquid wastes, or chemical substances on, in or over the Protected Property shall occur, excepting:

(1) Subsurface disposal of effluent from facilities providing water and septic waste disposal facilities, or other utility services necessary to serve the permitted uses and structures or improvements permitted hereunder; and

(2) The lawful application of herbicides, pesticides, fungicides, and fertilizers utilizing best management practices and in accordance with Agricultural or Forestry purposes otherwise permitted under this Easement, but not the dumping or abandoning of, biological and chemical substances.

F. No building, structure, improvement, mobile home, tower, telecommunication tower, asphalt or concrete pavement or facility shall be constructed, repaired, remodeled, reconstructed, or maintained on, under or above the Protected Property, except to the extent expressly authorized in Article 4 below. It is intended that within a reasonable time following the transfer of title to the Protected Property to the State of Connecticut or an instrumentality thereof, the houses near the southern end of Cider Hill Road as of the date of this Easement shall be demolished by the State of Connecticut. These residential structures may not be repaired, remodeled, reconstructed or replaced.

G. No hunting, trapping, or other collection of flora or fauna, excepting:

(1) Cutting and removal of trees and vegetation solely to the extent necessary to maintain the Protected Property consistent with best Park, Forestry and Agricultural practices; and

(2) Pest abatement procedures and management of excessive fauna populations consistent with best practices in Park and Forestry management.

(3) Hunting and trapping only in order to: (i) prevent the over population of a species, (ii) maintain the health and diversity of flora and fauna on the Protected Property, and (iii) remove nuisance animals. Any such trapping or hunting of species shall require the prior approval of the Grantee in its reasonable discretion. No shooting ranges shall be permitted on the Protected Property.

H. No motorized vehicle traffic, excepting:

(1) Vehicles required for the maintenance and monitoring of the Protected Property and the Paths and Trails on it;

(2) Mobility devices for use by those with mobility impairments powered by electricity or another means that produces a similarly low level of noise or as otherwise may be required by law; and

(3) Vehicle traffic conducted by a governmental entity for a public purpose or a charitable organization described in Section 501(c)(3) of the Code as part of its charitable activities, provided that vehicle traffic for purposes of public access shall be restricted to existing motorized vehicle roadways.

(4) As reasonably necessary in connection with permitted Park, Forestry and Agricultural activities, automobiles, light trucks, off-road vehicles (but not snowmobiles or motorcycles), forestry equipment, emergency and rescue vehicles, maintenance equipment and other equipment. Notwithstanding the foregoing, the right to use all-terrain vehicles and other off-road vehicles shall not be construed to include their use by the general public or for general recreational purposes, as distinguished from oversight and management of the Protected Property or the reasonable exercise of activities permitted to Grantor on the Protected Property.

- I. No parking of motorized vehicles, excepting as specifically permitted in Article 4.
- J. No horseback riding.
- K. No camping activities other than those specifically defined in Article 2.

ARTICLE 4. PERMITTED USES

The parties hereby declare and covenant that the following uses are hereby permitted to Grantor and the public on the Protected Property, subject to the limitations contained herein:

A. Park and Recreational activities that do not impair the Purpose of this Easement, specifically including:

(1) Camping activities specifically defined in Article 2;

(2) Public Passive Recreational Uses, subject to Grantor's right to restrict public access to reasonable times of day and to restrict access to the Protected Property in order to preserve the Conservation Values of the Protected Property that would be likely to be disturbed by public access or in order to respond to emergency conditions; and

(3) Observing, identifying, photographing, drawing, painting, and recording plants and animals in their natural habitats, provided that no such activity shall involve the use of toxic substances or equipment that generates noise, fumes or light to a degree that impairs the Conservation Values of the Protected Property.

B. Farming and Forestry Activities in a manner consistent with best management practices that enhance the primary use of the Protected Property as a Park.

C. The placement, emptying, maintenance, and replacement of trash receptacles for the purpose of trash disposal and deterring litter.

D. The posting of signs in accordance with Article 3, paragraph B of this Easement.

E. Cutting, trimming, and planting as necessary to maintain the Protected Property in suitable condition for a Park and to preserve or enhance views in a manner consistent with the Purpose of this Easement.

F. The construction and maintenance of structures, as set forth below, and Paths and Trails as reasonably required for Park purposes, and the demolition of existing structures, with or without replacement, as reasonably required for Park purposes.

(1) Paved and unpaved parking areas, limited to the following areas of the Protected Property, may be constructed:

(a) In the portion of the Protected Property along Mountain Road, extending westward from Mountain Road not to exceed 400 feet by 400 feet, provided that the total area used for parking at any time within that portion of the Protected Property shall not exceed one-half (1/2) acre; and

(b) In the southwest corner of the Protected Property consisting of an approximately square area with sides not to exceed 500 feet per side and including the area containing the structures labeled "House" "Building" and southernmost "Cabin" near the southern end of Cider Hill Road and shown on the Map, provided that the total area used for parking at any time within that corner of the Protected Property shall not exceed one-half (1/2) acre.

(2) Cider Hill Road may be paved.

(3) Paths and Trails and related structures reasonably required to facilitate access to and enjoyment of the Protected Property by persons with mobility, visual, or other

impairments may be constructed. In addition, Grantee shall have the right, at its sole expense, to construct a Public Passive Recreational Trail with a width and tread path consistent with paragraph I below in this Article 4 and sited in a manner reasonably acceptable to Grantor, for the purpose of linking the Protected Property to the Metacomet Trail.

(4) Toilet facilities may be constructed as reasonably required for Park or Recreational Uses.

(5) Other structures for Park and Public Passive Recreational Uses, and related Agricultural uses, may be constructed upon written approval of Grantee, which may be granted, conditioned, or denied in Grantee's sole discretion. Any structures so constructed shall be located in the portions of the Protected Property in which parking is permitted under subparagraph (1) above in this paragraph F; shall be sized and sited so as not to interfere with views of the Protected Property and its surroundings; and shall not include any housing or similar dwellings. Notwithstanding the foregoing, however, Temporary Agricultural Structures as provided in Article 2 paragraph A may be constructed in other areas of the Protected Property in Grantee's sole discretion.

G. Archaeological excavation or exploration, consistent with sound archaeological practices, provided that such activities do not interfere with the predominant use of the Protected Property as a Park and that Protected Property can be restored and is restored to original condition promptly following the completion of such activities.

H. The selling, giving, mortgaging, leasing, or otherwise conveying of the Protected Property subject to the terms of this Easement.

I. The right to construct, relocate on site, repair, maintain, and use paved or unpaved Paths, Trails, Wood Roads, stone walls, bridges, culverts, gates and fences in furtherance of the activities permitted herein only, and the right to utilize motorized vehicles in performing such activities. However, the use of any on-site materials must be done in a manner that is limited in scope and impact consistent with furthering the Purpose of this Easement. Paving shall not be done with asphalt, macadam, oil and stone, concrete or similar materials, but only with materials permitted for Wood Roads. Paths and Trails shall be a tread width suitable for foot and wheelchair traffic but not for motorized vehicle roadways, and in no event shall exceed 10 feet in width.

#### ARTICLE 5. LIMITATION ON SUBDIVISION OF PROPERTY

No subdivision of the Protected Property shall take place, except with the prior written approval of Grantee.

#### ARTICLE 6. NOTICE AND APPROVAL

Grantor, prior to performing or permitting any activity described in this Easement which requires prior written approval of Grantee pursuant to the Treasury Regulations, including without limitation Treasury Regulations Section 1.170A-14(g)(5)(ii) (which applies to the exercise of reserved rights by Grantor “which may impair the conservation interests associated with the property”), hereby agrees to submit to Grantee, for review and approval, the required information in writing. 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.

Grantee agrees in such cases to review Grantor's proposal and to acknowledge, execute, and deliver to Grantor a written instrument granting approval or stating the reason for denial within ninety (90) days of written request and submission of the required information from Grantor. In the event that Grantee fails to respond to Grantor's written request within ninety (90) days, approval shall be deemed granted on the ninetieth (90th) day after submission of the request. Following approval of the proposal, Grantor, or its successors or assigns, shall have five (5) years from the date of approval to complete approved actions. If a previously approved action is not completed within five (5) years, Grantor shall re-submit the request to Grantee, for review and approval, according to the procedures described in this Article.

#### ARTICLE 7. ENFORCEMENT AND ACCESS RIGHTS OF GRANTEE

Grantee shall have the right to enter upon the Protected Property, and in order to do so to exercise its rights of access over and across the land identified in Schedule B, at reasonable times of the day and with reasonable notice to Grantor for the purposes of inspecting the property, determining compliance with and enforcing this Easement, to perform any actions permitted to Grantee hereunder, or taking any and all actions with respect to the Protected Property, as may be necessary or appropriate, with or without order of the court, to remedy or abate any violation hereof.

If a breach of this Easement by Grantor or by a third party comes to the attention of Grantee, Grantee must notify Grantor in writing of such a breach. Grantor shall have thirty (30) days after receipt of such notice to undertake actions, including restoration of the Protected Property, that are reasonably calculated to correct the breach.



Failure by Grantor within such time period to correct a breach or submit a reasonable schedule for completion of such corrective action, as may be requested by Grantee, 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 of the Protected Property to its previous condition; and to enjoin such non-compliance by ex-parte temporary or permanent injunction in a court of competent jurisdiction. If such court determines that Grantor has failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, including court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court; provided, however, that while Grantor is the State of Connecticut or an instrumentality thereof, Grantor shall not be liable to Grantee for any attorneys' fees under this Easement. Grantor's cost of such corrections shall be paid by Grantor, provided that Grantor is determined to be responsible for the breach. Nothing herein shall be construed to entitle Grantee to institute any enforcement proceedings against Grantor for any changes to the Protected Property due to causes beyond Grantor's control, such as changes caused by fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons.

#### ARTICLE 8. MAINTENANCE AND ASSESSMENT OBLIGATIONS OF GRANTEE

Grantee shall be under no obligation to maintain the Protected Property, or any portion thereof or pay taxes or assessments thereon.

#### ARTICLE 9. STATEMENT OF COMPLIANCE AND NOTICES OF TRANSFER

A. Grantee agrees to provide, at reasonable intervals and on ninety (90) days written notice from Grantor, a written instrument from Grantee stating that Grantor is in compliance

with the terms and conditions of this Easement, or if Grantor is not in compliance with the terms and conditions of this Easement, stating what violations of this Easement exist.

B. Grantor shall notify Grantee in writing within ten (10) days following the consummation of any transfer, lease, or sale of the Protected Property, or any portion thereof.

C. Grantee shall notify Grantor in writing within ten (10) days following the consummation of any transfer of Grantee's rights hereunder.

#### ARTICLE 10. LIMITATION OF LIABILITY

A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

#### ARTICLE 11. EFFECT

The covenants agreed to and the terms, conditions, and restrictions imposed by this Easement shall not only be binding upon 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.

#### ARTICLE 12. ASSIGNMENT

The parties hereto recognize and agree that the benefits of this Easement are in gross and assignable, and Grantee hereby covenants and agrees that in the event it transfers or assigns the restriction it holds under this indenture, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Code and the Treasury Regulations promulgated thereunder and is organized and operated primarily for one of the

conservation purposes specified in Section 170(h)(4)(A)(i) through (iii) 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 of this Easement.

#### ARTICLE 13. AMENDMENT

In the event that the Protected Property is affected by unusual and unforeseen circumstances and conditions, Grantor and Grantee by mutual consent may amend this Easement; provided that the amendment is not inconsistent with the Purpose of this Easement; will not result in a net degradation of the Conservation Values of the Protected Property; will not affect the enforceability of the Easement; and is accomplished in compliance with any applicable state statutes and with section 170(h) of the Code. Any such amendment shall be recorded in the official land records where the Protected Property is located.

#### ARTICLE 14. 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, with a fair market value of the Easement as of the date of the conveyance that is at least equal to the proportionate value that this Easement at the time of the conveyance bears to the fair market value of the Protected Property as a whole at that time.

The proportionate value of Grantee's property rights shall remain constant. If a change in conditions takes place which makes impossible or impractical any continued protection of the Protected Property for conservation purposes, and the restrictions contained herein are

extinguished by judicial proceeding, Grantee, upon a subsequent sale, exchange or involuntary conversion of the Protected Property, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Easement. Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

#### ARTICLE 15. EMINENT DOMAIN

If all or part of the Protected Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Easement, Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of Grantee's and Grantor's interests, and Grantee's proceeds shall be used as specified above. All reasonable expenses incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds prior to such division.

#### ARTICLE 16. 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 of 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.

#### ARTICLE 17. SUCCESSORS AND ASSIGNS

The term "Grantor" shall include Grantor and Grantor's heirs, executors, administrators, successors and assigns and shall also mean the masculine, feminine, corporate, singular or plural

form of the word as needed in the context of its use. The term "Grantee" shall include The Connecticut Forest and Park Association Incorporated and its successors and assigns. Following any transfer of the entire interest in the Protected Property of Apple Orchard LLC subsequent to the date of this Easement, ELIZABETH AUERBACH SCHIRO shall have the right to enforce Grantee's performance of its obligations under this Easement during her lifetime, provided that such right shall be exercisable solely to require Grantee to protect the Conservation Values of the Protected Property and not to waive any restriction on the use of the Protected Property under this Easement.

#### ARTICLE 18. CAPTIONS

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

#### ARTICLE 19. COUNTERPARTS

The parties may execute this instrument in 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.

#### ARTICLE 20. NOTICES

Any notices required or permitted pursuant to this Easement shall be sent by registered or certified mail, or receipted courier service to the following address or such address as may be hereafter specified by notice in writing: