

CONSERVATION RESTRICTION

This DEED OF CONSERVATION RESTRICTION made this ___ day of _____,
_____.

WITNESSETH:

WHEREAS, Community Land Trust in the Southern Berkshires, Inc. a non- profit corporation organized under the laws of the Commonwealth of Massachusetts, having its principal office at 140 Jug End Road, South Egremont, Massachusetts 01258, hereinafter called the "Grantor," is the owner in fee simple of certain real property which is located in South Egremont, Massachusetts, hereinafter called the "Property," which has ecological, scientific, agricultural, and aesthetic value in its present state as a natural area and agricultural area which has not been subject to development or exploitation, which property is more particularly described in Exhibit A attached hereto and incorporated herein by this reference, and which property is shown on a Plan entitled "Plan of Land in Egremont, Massachusetts Surveyed for the Nature Conservancy May 4, 1999 Accord Engineering and Surveying, Inc., Great Barrington, Massachusetts" and recorded with the Berkshire Southern District Registry of Deeds; and

WHEREAS, THE NATURE CONSERVANCY, hereinafter called the "Grantee," is a non-profit corporation incorporated under the laws of the District of Columbia as a tax exempt public charity under Section 501 (c)(3) and 509 (a)(1) of the Internal Revenue Code, qualified under section 170(h) of the Internal Revenue Code to receive qualified conservation contributions, having its headquarters at 4245 N. Fairfax Drive, Arlington, Virginia 22203-1606 and a local address at P.O. Box 268, Sheffield, Massachusetts, 01257, whose purpose is to preserve natural areas for scientific, charitable, educational, and aesthetic purposes; and

WHEREAS, the Property forms a critical part of a significant natural area which qualifies as a "relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder, and whereas this fact has been recognized by the designation of the Karner Brook watershed within which the Property lies as an "Area of Critical Environmental Concern" by the Massachusetts Executive Office of Environmental Affairs; and

WHEREAS, the Property abuts and provides critical buffer to other land conserved by the Massachusetts Division of Fisheries and Wildlife and The Nature Conservancy (collectively the "Jug End Wetlands preserved area"), which land supports populations of several species listed by the Commonwealth of Massachusetts' Natural Heritage and Endangered Species Program as endangered, threatened, or of special concern; and

WHEREAS, the Property possesses important agricultural value because a significant portion of the property contains Hero loam (HeA) soils, which have been identified by the U.S. Department of Agriculture (USDA) as prime farmland, and whereas only 8 percent of the land area in Berkshire County is considered prime farmland under the USDA criteria; and

WHEREAS, overall the Property possesses significant ecological, wildlife, scientific, natural, aesthetic, agricultural, and open space values (collectively, "conservation values") which reflect the unique character of the Town of Egremont, Berkshire County, and the Commonwealth of Massachusetts; and

WHEREAS, the specific conservation values of the Property are documented in a report on file at the offices of the Grantee and incorporated herein by this reference ("Baseline Documentation"), which consists of documentation that the parties agree provides, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein and pursuant to the laws of the Commonwealth of Massachusetts and in particular Sections 31-33 of Chapter 184 of the General Laws, Grantor hereby voluntarily grants and conveys to Grantee and the respective successors and permitted assigns of Grantee, with Quitclaim Covenants, a Conservation Restriction in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

I. Purpose

It is the purpose of this Conservation restriction to assure that the property will be retained forever predominantly in its natural and open condition, to protect any rare plants, animals, or plant communities on the Property or on other properties within the Jug End Wetlands preserve area; to prevent any use of the Property that will significantly impair or interfere with the conservation values or interests of the Property or of other properties within the Jug End Wetlands preserved area; and to promote environmentally sound agriculture and horticulture. Grantor intends that this Conservation restriction will confine the use of the Property to such activities as are consistent with the purpose of this Conservation restriction.

II. Prohibited Acts and Uses, Exceptions Thereto, and Permitted Uses

A. Prohibited Acts and Uses. Subject to the exceptions set forth in sub - paragraph B, below, the following acts and uses are prohibited on the Property:

1. Constructing or placing of any building, tennis court, landing strip, mobile home, swimming pool, fence, asphalt or concrete pavement, sign, billboard or other

advertising display, antenna, utility pole, tower, conduit, utility line, permanent lighting, parking lot, or any other temporary or permanent structure or facility on, above or below the Property.

2. Mining, excavating, dredging or removing from the Property of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit, and constructing, bulldozing, excavating or drilling of dikes, ditches, holes, swells or other alterations in the natural topography of the Property.

3. Placing, filling, storing or dumping on the Property of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, chemicals (including but not limited to oil, fertilizers, insecticides, herbicides, or any other toxic or hazardous substance as defined under applicable federal or state law) or other substance or material whatsoever or the installation of underground storage tanks.

4. Pollution, alteration, depletion, diversion, channelization, damming, draining, or extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water, or any other water bodies.

5. Operating of motorized or mechanical vehicles, including but not limited to off-road vehicles, snowmobiles, trail bikes or all-terrain vehicles.

6. The construction of any new roads on the Property.

7. Purposefully introducing non-native species of plants and animals determined to be invasive or otherwise detrimental to the ecology and biodiversity of the adjoining Jug End Wetlands preserve, as determined by Grantee.

8. The subdivision of the Property except for the purposes of protecting any portion of the Property through fee ownership by a conservation group or agency or through other ownership approved by the Grantee. The Property or any portion thereof shall not be included as part of the gross area of other property not subject to this Conservation Restriction for purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulation or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by this Conservation Restriction shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

9. Any other use of the Property or activity which would materially impair significant conservation interests unless necessary for the protection of the conservation interests that are the subject of this Conservation Restriction.

B. Permitted Uses. The following acts and uses, including those prohibited in Section II.A, are permitted, subject to the provisions of all applicable federal, state, and local laws and regulations:

1. Agricultural activities, including but not limited to the raising of crops and foods for animals and human consumption; u-pick gardens, community gardens; the raising of trees and nursery products, subject to the prohibition on invasive plants set forth in paragraph II.A.8, above; and the grazing or pasturing of animals. Provided, however, that within the area on the Plan labeled as "Buffer Area" the only agricultural activities that shall be permitted without express written consent of the Grantee are the planting and mowing of grass or hay, including such tillage operations as may be necessary for the establishment of a suitable perennial hay crop, and the establishment and selective harvesting of native species and trees, including fruit and nut trees, all such agricultural and horticultural activities within the Buffer Area to be undertaken without the use of any chemicals without the express written consents of the Grantee. All such agricultural activities on the Property shall be conducted in accordance with a Land Management Plan entered into by the Grantor and its intended Lessee of the Property and to be approved in writing by Grantee, the purpose of said plan being to promote sustainable and environmentally sound agriculture. Said Land Management Plan shall be maintained in counterpart copies in the files of the Grantor and Grantee and may be revised by Grantor from time to time, with Grantee to approve any changes pertaining to the Property in writing, such consent not to be unreasonably withheld.

2. The maintenance, improvement, and replacement of all or a part of the existing barn, sheds, and other outbuildings on the Property, provided that any replacement structures shall not exceed in size the total square footage of the combined footprint of the existing barn, sheds, and other outbuildings, as documented in the Baseline Documentation. Permitted uses of the barn, sheds, and other outbuildings permitted herein are storage, shelter for animals, growing of plants, value-added processing of farm raised products, retail sale of agricultural products, and other agricultural activities, as well as educational and community-based activities, including classes, meetings, agro-tourism, and similar activities. None of the structures permitted hereunder shall be used as a permanent dwelling for persons not involved in agricultural pursuits. No structures other than fences, as provided for below, shall be permitted in the Buffer Area.

3. The construction of new greenhouses, sheds, and other agricultural outbuildings, for agricultural use only, on that portion of the Property that is both outside the Buffer Area and also east of a line running northwesterly from the north east corner of the area labeled as "Residential Area" on the Plan, along the same course as the easterly boundary of said Residential Area, to the northerly boundary of the property with land of the Commonwealth.

Provided, however, that such greenhouses, sheds, and other agricultural

outbuildings shall be allowed within the area west of the above-described line to the extent that they are replacement structures within the terms of paragraph II.B.2, above. Any new greenhouses, sheds, and other agricultural outbuildings shall not exceed 15,000 square feet in total for structures without foundations or other permanent understructures and 3,000 square feet total for structures with foundations or other permanent understructures.

4. The use or storage of any quantities of fertilizers, insecticides, herbicides, and other chemicals including toxic chemicals, of the kind and quantity ordinarily used as part of a small farm operation, the use and storage of any such toxic chemicals to be specified in the Land Management Plan, provided that such chemicals shall not be used or stored within the Buffer Area.

5. The creation and maintenance of compost, manure, leaf, and other organic refuse piles and log piles on the Property in conjunction with the agricultural use of the Property, provided that such piles are outside the Buffer Area.

6. The installation, maintenance, repair, replacement, removal and relocation of electric, gas, and/or water facilities (including utility lines, pressure tanks, pumps, etc.), wells for domestic water and agricultural use, public sewer lines and/or other public or private utilities, including telephone and other communication services, over or under the Property for the purpose of providing electrical, gas, water, off-site sewer and other utilities to the Property for agricultural uses or for the use of the area labeled as "Residential Area" on the Plan. This paragraph shall not include the right to place on-site septic systems on the Property other than self-contained composting toilets or other non-effluent producing systems.

7. The construction and maintenance of unpaved trails, tracks and farm roads not to exceed 20 feet in width on the Property and the construction and maintenance of an unpaved driveway and parking area around the existing or replacement barn or elsewhere on the Property to access a farmstand or other retail agricultural operation and attendant uses permitted under paragraph II.B.2, above.

8. The construction, maintenance and improvement of sight-pervious fences, including electric fences, that define the Property boundary and/or the boundary of the Buffer Area or which are designed to fence in livestock or to exclude agricultural predators, and the placement of gates on the Property, provided that both the Grantor and the Grantee shall have keys to any locked gate.

9. Use of vehicles on the Property for land management and agricultural purposes, including access by and parking of vehicles attendant to the uses permitted under paragraph II.B.2, above, and for emergency and safety purposes.

10. Erection of signs by Grantor or Grantee identifying the name and ownership of the Property, advertising any farmstand or other permitted activity, and/or to

educate the public about the conservation and agricultural values protected and any limitations relating to public access.

11. Rare species and natural community management by Grantee or Grantee's designee, including the removal of exotic or invasive species, trapping, prescribed burning, vegetation management in the wetlands and other management activities, all such activities to be undertaken in accordance with Grantee's management policies and practices and in consultation with and with prior written notice to the Grantor so as to avoid any disturbance to permitted agricultural activities. Prescribed burning shall require Grantor's written permission if performed by the Grantee.

12. Hunting and trapping in accordance with all applicable laws and regulations.

13. All acts and uses not prohibited by paragraphs II.A above, or by this subparagraph B are permissible, provided they are consistent with the purpose of this Conservation Restriction.

C. Discretionary Consent. Grantee's consent for activities otherwise prohibited under paragraphs II.A or B, above, may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the activities prohibited in paragraph II. A or B are deemed desirable by Grantor and Grantee, Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such request for permission shall be in writing. Grantee may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate the purpose of this Conservation Restriction and (2) either enhance or do not impair any significant conservation interests associated with the Property. Notwithstanding the foregoing, the Grantee and Grantor have no right or power to agree to any activities that would result in the termination of this Conservation Restriction under the requirements of Massachusetts General Laws Chapter 184, Sections 31-33. Under no circumstances shall any additional residential, commercial, or industrial structures or any commercial or industrial activities not otherwise allowed herein be allowed on the property.

III. Grantee's Rights and Legal Remedies.

To accomplish the purpose of this Conservation Restriction, the following rights are conveyed to Grantee:

A. Access for Inspection. The right to enter the Property at all reasonable times upon 12 hours advance notice in person, by telephone, or by facsimile for the purposes of (a) inspecting the Property to determine if the Grantor is complying with the covenants and purposes of this Conservation Restriction; (b) enforcing the terms of

this Conservation Restriction; (c) taking any and all actions with respect to the Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof.

B. Monitoring and Management. The right, but not the obligation, to monitor and manage for the condition and continued survival and quality of rare plant and animal populations, plant communities, and natural habitats on the Property or within the Jug End Wetlands preserved area, as further set forth in paragraph II.B.11 above.

C. Legal and Injunctive Relief. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Property to its condition prior to the time of the injury complained of (it being agreed that the Grantee may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee.

D. Reimbursement of Costs of Enforcement. The Grantor, and thereafter the successors and assigns of the Grantor covenant and agree to reimburse the Grantee for all reasonable costs and expenses (including without limitation counsel fees) incurred in enforcing this Conservation Restriction or in remedying or abating any violation thereof should Grantee be successful in any suit to enforce the terms of this conservation restriction.

E. Grantee's Liability. By its acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Property or for actions and uses of the Grantor on the Property. Grantee assumes all liability, however, for its agents and invitees on the Property, including on any associated rights of way.

F. Severability Clause. If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.

G. Non-Waiver. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

IV. Public Access

The Conservation Restriction hereby conveyed does not grant to the general public, or to any other person any right to enter upon the Property except the Grantee's access rights under paragraph III. A and B, above.

V. Easement Documentation Report

The Grantor agrees to sign and acknowledge a Property Condition Certification and an easement documentation report prepared by Grantee establishing the baseline condition of the Property at the time of this grant, as provided in Treas. Reg. 1.170A-14(g)(5).

VI. Costs and Liabilities

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the payment of all taxes or other assessments levied against the Property and maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any taxes and any work performed for, materials furnished to, or obligations incurred by Grantor.

VII. Extinguishment

A. Grantee's Receipt of Property Right. Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise for purposes of this paragraph to a real property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction determined at the time of this agreement bears to the value of the unrestricted Property at that time. Such proportionate value of the Grantee's property right shall remain constant.

B. Right of Grantee to Recover Proportional Value at Disposition. If any occurrence ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then the Grantee, on a subsequent sale, exchange, or involuntary conversion of the Property shall be entitled to recover a portion of the proceeds of such sale, exchange, or involuntary conversion equal to such proportionate value, subject, however, to any applicable law which expressly provides for a different disposition of proceeds.

C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Property or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action.

D. Allocation of Expenses upon Disposition. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and the Grantee as provided in paragraph VII.A above.

E. Continuing Trust of Grantee's Share of Proceeds of Conservation Restriction Disposition. The Grantee shall use its share of the proceeds in a manner consistent with the conservatism purposes of this grant.

VIII. Amendment

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of the Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of chapter 184 of the General Laws of Massachusetts, and any amendment shall be consistent with the purpose of this Conservation Restriction, and shall not affect its perpetual duration. Any such amendment shall be approved by the parties herein and shall be recorded in the official records of Berkshire County, Massachusetts.

IX. Assignability

Running of the Burden. The burdens of this Conservation Restriction shall run with the Property in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Property.

Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor on behalf of itself and its successors and assigns appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

Running of the Benefit. The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances and from time to time: 1. as a condition of any assignment, the Grantee requires that the purpose of this Conservation Restriction continue to be carried out, and 2. the assignee, at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the General Laws as an eligible recipient to receive this Conservation Restriction directly.

X. Subsequent Transfers

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including a leasehold interest.

XI. Miscellaneous

Approval of this Conservation Restriction pursuant to M. G. L. Chapter 184, Section 32 by any municipal official and by the Secretary of Environmental Affairs is not to be construed as representing the existence or non- existence of any pre-existing rights of the public in and to the Property, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

XII. No Merger

The Grantor and Grantee agree that the terms of this Conservation Restriction shall survive any merger of the fee and easement interest in the Property or any portion thereof.

XIII. Estoppel Certificates

Upon request by the Grantor, the Grantee shall within twenty (20) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

XIV. Effective Date

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded, or if registered land, it has been registered.

XV. Recordation

The Grantor shall record this instrument in timely fashion in the Berkshire Southern District Registry of Deeds.

IN WITNESS WHEREOF, COMMUNITY LAND TRUST IN THE SOUTHERN BERKSHIRES, INC. causes these presents to be signed, acknowledged and delivered by _____, its President, and _____, its Treasurer, this ___ day of _____.

COMMUNITY LAND TRUST IN THE SOUTHERN BERKSHIRES, INC.

By Its President

By Its Treasurer

ACCEPTANCE OF GRANT

The above Conservation restriction is accepted this ____ day of _____.

THE NATURE CONSERVANCY

_____ By Its Assistant Secretary

APPROVAL BY SELECTMAN

We, the undersigned, being a majority of the Selectman of the Town of Egremont, Massachusetts, hereby certify that we voted to approve the foregoing Conservation Restriction to THE NATURE CONSERVANCY pursuant to M. G. L. Ch. 184, 32 at a meeting held on _____.

SELECTMEN

Chairman _____

APPROVAL BY SECRETARY OF ENVIRONMENTAL AFFAIRS COMMONWEALTH OF MASSACHUSETTS

The undersigned, _____, Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to The Nature Conservancy has been approved in the public interest pursuant to M. G. L. Ch. 184, 32.

Date: _____

_____ Secretary of Environmental Affairs

LESSEE CONSENT AND APPROVAL

The undersigned, Lessees under a Lease Agreement with Community Land Trust in the Southern Berkshires, Inc., dated _____, 2____, Notice of which is recorded in the Berkshire Southern District Registry of Deeds in Book _____, Page _____, hereby consent to and agree o be bound by the foregoing Conservation Restriction from said Land Trust to The Nature Conservancy.

WITNESS, our hands and seals this 14th day of _____, 2____.

_____, Lessee

_____, Lessee