

CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT is made this _____ day of _____, 2011, by and between the Town of Westerly, having its principal office at 45 Broad Street, Westerly, Rhode Island (hereinafter referred to as "Grantor") and the STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, acting by and through the DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, having its principal office at 235 Promenade Street, Providence, Rhode Island, and the (hereinafter collectively referred to as "Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property described as that certain parcel of land located on the westerly side of Canal, in the Town of Westerly, County of Washington, State of Rhode Island, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Premises"); and

WHEREAS, the Premises possesses open, natural, scenic, agricultural, ecological, archeological, historic and educational value; and

WHEREAS, Grantor and Grantee recognize the value and special character of the Premises and acknowledge a common purpose to conserve the values of the Premises, and to conserve and protect the special plant and animal populations on the Premises, and to prevent its use or development for any purpose or in any manner that would conflict with the maintenance of the Premises, in its current, natural, scenic and open condition; and

WHEREAS, Grantor, as owner of the Premises, intends to convey to Grantee the right to preserve and protect the conservation values of the Premises in perpetuity.

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein and in consideration of One Hundred Thirty Seven Thousand Five Hundred DOLLARS (\$137,500.00) paid by Grantee to Grantor, the receipt and sufficiency of which is hereby acknowledged and 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, Grantor hereby voluntarily grants and conveys unto Grantee a Conservation Easement in perpetuity over the Premises, of the nature and character, and to the extent hereinafter set forth.

1. Purpose. It is the purpose of this Conservation Easement to assure that the Premises shall be retained forever in its open, natural, scenic, agricultural, ecological, or educational condition and to prevent any use of the Premises that will significantly impair or interfere with the conservation values of the Premises. Grantor intends that this Conservation Easement will confine the use of the Premises to a Conservation Area and such uses as are consistent with the purpose of this Conservation Easement and the Management Plan developed by Grantor (hereinafter referred to as the "Management Plan"), which Management Plan sets forth specific procedures by which the Premises shall be maintained including, but not limited, to the adequate maintenance of the Premises to preserve the natural values, public access and other matters as may be required for the preservation of the Premises. Grantor shall have the right from time to time to amend the Management Plan. Any such amendment must be approved by the State of Rhode Island, Natural Heritage Preservation Commission.
2. Rights of Grantee. To accomplish the purpose of this Conservation Easement, the following rights are conveyed to Grantee by this Conservation Easement:
 - a. To preserve and protect the conservation values of the Premises;
 - b. To enter upon the Premises at all reasonable times and, if necessary, across other lands owned by Grantor adjacent to the Premises in order to: (i) monitor and inspect Grantor's or its successors or assigns compliance with the covenants and purposes of this Conservation Easement, (ii) enforce the terms of this Conservation Easement, (iii) take any and all actions as may be necessary or appropriate, with or without order of court, to remedy or abate violation hereof; and (iv) after prior notice to Grantor, its successors or assigns, to observe and study nature, make scientific and educational observations and studies in such manner as will not disturb the quiet enjoyment of the Premises by Grantor.
 - c. To prevent any activity or use of the Premises that is inconsistent with the purpose of this Conservation Easement and the Management Plan.
 - d. To require restoration of such areas or features of the Premises that may be damaged by any inconsistent activity or use, pursuant to section 5 hereof.

- e. To allow public access to the parcel for passive recreational uses, including hiking, and for educational purposes as set forth in the Management Plan.
3. Prohibited Uses. Any activity on or use of the Premises inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
 - a. The subdivision or development of the Premises or the disturbance or change in the natural habitat in any manner.
 - b. The placement or construction of any buildings, structures, or other improvements of any kind including without limitation, camping accommodations or mobile homes, fences, signs, billboards or other advertising material, tennis courts, swimming pools, asphalt driveways, roads, parking lots, utility poles, towers, conduits, or lines or other structures, other than those structures currently on the Premises and as may be permitted pursuant to the Management Plan. No commercial or industrial activity of any kind shall be permitted on the Premises.
 - c. Any ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, or any building or roads or change in the topography of the land in any manner except the maintenance of existing foot trails.
 - d. Any removal, destruction or cutting of trees or plants or planting of trees or plants (except as is necessary to maintain the Premises and to construct foot trails) use of fertilizers, spraying with biocides, introduction of non-native animals, except as may be set forth in the Management Plan.
 - e. The dumping or storing of ashes, trash, garbage, wastes, refuse, debris, or other unsightly or offensive material, and the changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall any activities be conducted directly on the Premises, or on adjacent property which could cause erosion or siltation on the Premises.
 - f. The manipulation or alteration of natural ponds, water courses, lake shores, marshes or other surface or subsurface water bodies, or activities which would be detrimental to water purity or to the protection of the watershed, which includes the subject property, or which could alter natural water level and/or flow.
 - g. The operation of snowmobiles, dunebuggies, motorcycles, all-terrain vehicles, or any other types of motorized vehicles, except such motorized vehicles as are necessary for the maintenance of the Premises or to protect the Premises during an emergency.
 - h. The hunting or trapping of animals except as set forth in the Management Plan.
 4. Reserved Rights. Grantor reserves for itself, its heirs, successors and assigns, the following

reserved rights provided, however, that the exercise of such rights will not interfere with or have an adverse impact on, the essential natural, open and scenic quality of the Premises:

- a. To use the Premises for all purposes not inconsistent with this Conservation Easement and the Management Plan.
- b. To sell, give or otherwise convey the Premises or any interest in the Premises, provided such conveyance is subject to the terms of this Conservation Easement and the Management Plan.

5. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Conservation Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or injury to any conservation values protected by this Conservation Easement, including damages for the loss of scenic, aesthetic, water resource protection or environmental values, and to require the restoration of the Premises to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Premises. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Premises, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement, and Grantor agrees that if Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate, that Grantee shall be entitled to the injunctive relief

described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Premises resulting from any causes beyond Grantor's control, including, without limitation, fire, flood, storm, or earth movement.

- 5.1 Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, costs of suit and attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Easement, shall be borne by Grantor.
- 5.2 Grantee's Discretion. Enforcement of the terms of this Conservation Easement shall be at the sole discretion of Grantee, and any forbearance or delay by Grantee to exercise its rights under this Conservation Easement, in the event of any breach of any term of this Conservation Easement by Grantor, shall not be deemed or construed to be a waiver by Grantee of such terms or of any subsequent breach of the same of any other term of this Conservation Easement or any of Grantee's rights under this Conservation Easement.
- 5.3 Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.
6. Access. The rights of access to any portions of the Premises are as set forth in the Management Plan.
7. 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 Premises,

including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Premises free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

- 7.1 Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Premises by competent authority, and shall furnish Grantee with satisfactory evidence of payment upon request.
- 7.2 Hold Harmless. Grantor shall defend, hold harmless, indemnify, and defend Grantee and its directors, officers, employees, agents, contractors and the heirs, personal representatives, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, including bodily injury or death, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with bodily injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Premises, regardless of cause.
8. Assignment. This Conservation Easement is transferable, but Grantee may assign its rights and obligations under this Conservation Easement only to an organization authorized to acquire and hold conservation easements under R.I. General Laws 34-39-1 et seq. (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.
9. Subsequent Transfers. Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. Grantor must obtain the written approval of Grantee of any such transfer. Notwithstanding anything

contained herein to the contrary, Grantor shall not convey any portion or all of the Premises without first giving Grantee a ninety (90) day option within which to purchase or otherwise acquire the Premises on the same terms and conditions on which the Grantor is willing to make a sale or disposition to any other party. Upon receipt from any other party of an offer for Grantor to sell or otherwise grant an interest in the Premises, Grantor shall promptly notify Grantee in writing by certified mail of said terms and conditions and submit in writing any bona fide offer acceptable to Grantor which Grantor may have received. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

10. Condemnation. If the Premises is taken in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to Fifty (50%) percent of any such condemnation award paid to Grantor.

11. General Provisions.

- a. Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Premises.
- b. 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.
- c. Rhode Island law. This Conservation Easement shall be and is deemed to be a conservation restriction under the laws of the State of Rhode Island only, and shall be construed and given effect in accordance with the laws of the State of Rhode Island and not otherwise.
- d. Severability. If any provision of this Conservation Easement or the application hereof to any person or circumstance shall be to any extent invalid or unenforceable, the remainder of this Conservation Easement and the application to persons or circumstances other than those as to which it is invalid or unenforceable shall not be effected thereby, and each term and provision of this Conservation Easement shall be valid and enforceable to the fullest extent permitted by law.
- e. Waiver. No consent or waiver, express or implied by either party to or of any breach in the performance by the other party of its agreements hereunder shall be construed

as a consent or waiver to or of any breach in the performance by such party of the same or any other agreement. The failure on the part of either party to complain of any such action or inaction on the part of the other or to declare the other in default, no matter how long such failure may continue, shall not be deemed to be a waiver by either party of any of its rights hereunder.

- f. Construction. This Conservation Easement shall not be construed, without regard to any presumption or other rule requiring construction, against the party causing this Conservation Easement to be drafted.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

WITNESS:

TOWN OF WESTERLY

By: _____
Steven T. Hartford, Town Manager

STATE OF RHODE ISLAND,
DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT

By: _____
Janet L. Coit, Director

Approved this _____ day of _____, 2011 by the State Properties Committee.

Approved as to Terms

and Conditions:

Chairman, State Properties Committee

Approved as to Form:

Attorney General

Approved as to Substance:

Director of Administration

Approved:

Public Member, State Properties Committee

Approved:

Public Member, State Properties Committee

STATE OF RHODE ISLAND
COUNTY OF

In _____, in said County and State, on the _____ day of _____, 2011, before me personally appeared Steven T. Hartford, Town Manager, of the TOWN OF WESTERLY, to me known and known by me to be the party executing the foregoing instrument for and on behalf of the TOWN OF WESTERLY and he acknowledged said instrument by him executed to be his free act and deed, his free act and deed in his capacity as aforesaid, and the free act and deed of the TOWN OF WESTERLY.

Notary Public
My Commission Expires: _____

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence, in said County and State, on the _____ day of _____, 2011, before me personally appeared Janet L. Coit, the Director of the STATE OF RHODE ISLAND, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, to me known and known by me to be the party executing the foregoing instrument for and on behalf of the STATE OF RHODE ISLAND, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT and she acknowledged said instrument by her executed to be her free act and deed, her free act and deed in her capacity as aforesaid, and the free act and deed of the STATE OF RHODE ISLAND, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

Notary Public
My Commission Expires: _____

Return original Conservation Easement to:
State of Rhode Island
Department of Environmental Management
Office of Legal Services
235 Promenade Street
Providence, RI 02908

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Rev. 09

Exhibit "A"

Insert Land Description