

COMMENTARY TO THE MODEL GRANT OF AGRICULTURAL CONSERVATION RESTRICTION

The Model Grant of Agricultural Conservation Restriction (the “Model”) was developed by the American Farmland Trust (AFT), Connecticut Farmland Trust (CFT), Connecticut Land Conservation Council (CLCC), and several other project partners including the Connecticut Department of Agriculture. The project was made possible through a grant from the Connecticut Agricultural Viability Grants Program, funded by the Community Investment Act. The funding for CLCC's participation in the project was generously provided in part by the Geoffrey C. Hughes Foundation. The Steering Committee included: Cris Coffin (New England Director, American Farmland Trust); Jennifer Dempsey (Director, American Farmland Trust’s Farmland Information Center), AFT consultant Kip Kolesinskas, Joseph Dippel (Director CT Farmland Preservation Program), Lance Shannon (CT Farmland Preservation Program), Amy Paterson, Esq. (Executive Director CLCC), Lisa Bassani (Project Director, Working Lands Alliance), Elisabeth Moore (Director of Conservation, Connecticut Farmland Trust, Inc.), Catherine Rawson, Esq. (Executive Director, Weantinoge Heritage Land Trust), Connie Manes (Executive Director, Kent Land Trust), Linda Francois, Esq. (Cooper, Whitney, Cochran & Francois), and with the assistance of Joan Nichols (CT Certified Forester and Director of Member Relations and Community Outreach, Connecticut Farm Bureau Association), Timothy Abbott (Director, Litchfield Hills Greenprint Collaborative, Housatonic Valley Association) and Stephen Broderick (former Forest and Program Director, Goodwin Forest Conservation and Education Center). Linda Francois was the editor. Not all participants agreed with all portions of the final documents.

The Need for the Model

Connecticut’s farmland is not just valuable open space, but vitally important to the state’s growing and evolving \$3 billion agricultural sector. As the land protection movement has evolved, land protection entities and conservation practitioners are increasingly cognizant that standard open space conservation restrictions do not always adequately or appropriately protect agricultural uses. The Model is intended to broaden ideas about conservation restriction terms as applied to working lands and help drafters avoid some of the pitfalls of older formats.

This Model is not intended to be the only way that an agricultural conservation restriction may be appropriately drafted. Further, this Model is not intended as an exhaustive source of terms and approaches. The purpose of this effort is to define an approach that is generally recommended for Connecticut, to educate about agricultural needs and to provoke thoughtful negotiation and drafting of agricultural conservation restrictions. Conservation restrictions should be drafted with the specific property being protected in mind, its intended uses and conservation values, as well as with careful consideration of the capacity, procedures and mission of the land protection entity which will hold the restriction.

The Model, and the Commentary, should not be construed or relied upon as legal advice or legal opinion regarding any specific facts or circumstances. It is not a substitute for representation of competent counsel. The Model is based on the current state of the law, but laws and their interpretation can change, and indeed this area of the law is rapidly evolving and is filled with gray areas. The parties, both land protection entity (Grantee) and landowner (Grantor), should each seek competent counsel before entering into a conservation restriction. The Model is a template that should be revised and modified, and sections added or omitted, to meet the particular needs of the property and the parties. All such modifications and factual differences have the potential to affect the interpretation and enforceability of the document. And although the parties are, hopefully, working toward the same goal of protecting the agricultural use of a property, they still may have very different interests in how that should be done. Accordingly, Grantor and Grantee should be separately represented.

Organizations considering holding conservation easements (known in Connecticut as conservation restrictions) should be aware of the Standards and Practices of the Land Trust Alliance, which are intended to be the ethical and technical guidelines for the responsible operation of a land trust. Standard 9, Practice A states: “The land trust obtains a legal review of every land and easement transaction, appropriate to its complexity, by an attorney experienced with real estate law.” This is a recognition that a smart investment in legal services from the start in drafting and reviewing an easement could save many times that amount in litigation or stewardship costs, or missed opportunities for years to come. Above all, it should be remembered that a conservation easement is perpetual.

A Model (Open Space) Conservation Easement for Connecticut is also being prepared and will be available in the near future. That Model (Open Space) Conservation Easement may be appropriate where protection of farmland is not the primary purpose of a restriction. However, where the primary purpose of a conservation easement is the protection of farmland for future agricultural use, this Model is preferred, as it reflects conditions specific to agricultural use and provides the flexibility necessary for farm operations to meet evolving agricultural practices and market demands.

Conservation Restrictions and Use of the Model: In General

“Conservation easements” (the general American legal term for a legal agreement that a property owner makes to protect the conservation interests of the particular piece of land, the terms of which “run with the land” despite changes in ownership), which also may be called Qualified Conservation Contributions (IRS terminology for conservation easements that may be eligible for deductions), are, in Connecticut, called “Conservation Restrictions” by statute. Connecticut General Statutes C.G. S. 47-42a states:

"Conservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein,

including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land 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.

Accordingly, whatever the document is called, its import is the same under Connecticut law. We will generally call the form “the Model”, and the document created with it a conservation restriction. The “Model” uses the term “Grant” to denote that it is the original transfer by deed of a conservation restriction. The term “easement” is utilized as little as possible to avoid confusion with the more common interpretation of the term to mean a right of way, also known as an “easement appurtenant” that imposes a use on one property to benefit another property. Many federal programs, however, use the term “conservation easement.”

Understanding the nature and composition of conservation restrictions makes them much more readable and sensible. It is said that when a party owns land it owns a bundle of rights, much like a “bundle of sticks”. One stick may be the right to walk on the property, another to build on it, another to farm it, another to have guests etc. When a conservation restriction is granted, the landowner transfers to the land trust some of those sticks (rights). For example, the conservation restriction held by the land trust may restrict the right to subdivide the property. This does not mean that the land trust has been granted the right to subdivide the property, it more appropriately means that the owner has given the subdivision stick to the land trust. In the future if the landowner or a successor seeks to subdivide the property, the land trust can hold up the pieces of stick and say “you cannot do that, we have the stick”.

Generally, as to the landowner, the conservation restriction is a “negative” conservation restriction that prohibits the landowner from doing certain things. In some cases, the land protection entity is given affirmative rights, such as the right to have a public trail on the property or to mow the fields, and always, the right to enforce the conservation restriction. The rights retained by the landowner may be conditioned (such as requiring that agricultural activities be pursued only in accordance with a Conservation Plan). The standard technique of prohibiting uses which would impair the ability to use the property for agriculture, and thus keeping the land available for agricultural use, is not always sufficient to keep the land in actual farming. The Model includes some tools that are aimed at affirmatively requiring farming (see discussion of the Affirmative Farming Covenant and the Option and Right to Purchase). These are cutting edge provisions in Connecticut.

Numerical limitations in the document (as to Footprint etc.) should each be reviewed for applicability to the particular circumstances. In some cases blanks have been left in the Model. Consideration was given to putting a “generic” number in all blanks, but it was decided that this would lead to more errors, not less. We have put a “#” sign in front of all blanks which should help avoid omissions. The drafter should do a global “find” for “#” which will locate such blank spaces.

Types of Conservation Restrictions

Conservation Restrictions can vary depending upon the resource protected. There are three basic types of Conservation Restrictions: “forever wild”; hybrids with specific uses reserved to the grantor, and working lands (farmland) conservation restrictions. A further division is donated and partial donation (“bargain sale”) conservation restrictions, and purchased conservation restrictions. This Model is intended only for the protection of working lands, whether donated or purchased.

THE MODEL PROVISIONS:

THE INTRODUCTORY PARAGRAPH

The conservation restriction document starts by setting forth the parties with enough particularity that they will not be confused with other persons or entities. The Grantor is the owner of the property that is giving up the rights. Importantly, the term “Grantor” also includes all successors to the original Grantor. The Grantee, sometimes known as the Holder, is the recipient of those rights, or as discussed above, the enforcer of the conservation restriction, and this term also includes successors to the Grantee if the Grant is assigned or otherwise transferred to another holder. Some Models refer to the parties as the Owner and Holder, but since Grantor and Grantee are the standards in Connecticut, we have retained those terms.

A title search should be completed early in the conservation restriction process in order to determine that the stated Grantor is truly the owner of the property with full and complete right to legally convey away interests in the property. A conservation restriction is a conveyance of an interest in real property. If there are mortgages or liens on the property, they must be “subordinated” (made lower in priority) to the conservation restriction so that the conservation restriction cannot be terminated by a foreclosure of those mortgages or liens. This is both an IRS requirement for deductibility, and a sensible requirement for protection of the perpetual nature of the conservation restriction.

RECITALS

The conservation restriction document then moves on to the Recitals, often known as the “Whereas Clauses” and sometimes referred to as the Premises or Preamble. The Recitals set forth the facts and circumstances which explain the reasons on which the transaction is based. The Recitals section performs a number of important functions.

The Recitals each start with the term “Whereas” and are generally a series of phrases set off by semicolons and linked with “and”. The use of “Whereas” is not required, but it serves to clarify that the stated fact or circumstance is a basis for the document, it makes it easy to identify the section of the document you are in, its traditional nature lends credibility to the document, and the vast majority of conservation restrictions in Connecticut have utilized this format.

The initial Recitals describe the property to be protected. In accordance with general drafting practice, the Model calls the property to be protected by the Conservation Restriction the “Protected Property”. This allows, if necessary, the “Property” to be the larger land when only a portion is to be protected. The Grantor may own a larger piece of property than the Protected Property. The Protected Property does not have to be the entire building lot or legal parcel. Placement of a conservation restriction on a portion of the property does not constitute a subdivision. The Protected Property term includes reserved residential areas or Farmstead Building Areas that are included in the conservation restriction but are subject to less stringent or differing restrictions. The first Recitals paragraph will reference the legal description of the Protected Property, which is attached as Schedule A. If the property description cuts out portions owned by Grantor of the conservation restriction, those portions are NOT part of the Protected Property and legally cannot be limited by the conservation restriction as they are outside the restricted property.

The second Whereas Clause identifies the Grantee’s capacity to receive the conservation restriction. Alternative clauses identify either a governmental unit or a land protection entity. Generally throughout this commentary we will assume that the Grantee is a land trust. Old legal principles disfavored perpetual restraints on the use of property, especially if the restraint was not in favor of an adjacent property. Connecticut General Statutes § 47-42b made conservation restrictions enforceable if held by a “governmental body or by a charitable corporation or trust whose purposes include conservation of land or water areas”. It is therefore essential that the conservation restriction be held by an eligible entity.

The Recitals then go on to set forth the significant conservation values the conservation restriction will protect. These clauses tell everyone who may have to interpret the document - land trust personnel, landowners, and judges - why protection of this land is important and what specifically is so important about it. This group of recitals, which may be many paragraphs, forms the basis for the specific terms of the document (although the terms should be clear without reference to the Whereas clauses). These clauses are the place to convince people of the value of protecting this land. These should not be clauses full of generalizations without specific information on the property. The drafter should remove or qualify inapplicable “whereas clauses” and add as much detailed information about the specific conservation interests of the property to be protected as possible to the remaining clauses..

The Model breaks conservation interests to be protected by the Grant into three main groups. The first group is a description of the agricultural conservation interests of the Protected Property. The second and third groups discuss how protection of the agricultural use is consistent with public policy and may be relevant to habitat protection. this language performs the function of justifying any tax deduction that may be sought for donating the conservation restriction. The federal Internal Revenue Service recognizes only four “Conservation Purposes”. This is known as the “Conservation Purposes Test” and is set forth in the Internal Revenue Code regulations §1.170A-14(d). Only

conservation purposes in the Conservation Purposes Test are valid reasons for a deduction. This does not mean you should omit other purposes for which the property is valuable from a conservation perspective, but in order for the Grantor to appropriately claim a deduction, the restriction must promote the relevant purposes that the IRS would recognize. The four IRS recognized Conservation Purposes are:

1. The preservation of land area for outdoor recreation by, or the education of, the general public. THIS PURPOSE IS INTENTIONALLY NOT INCLUDED IN MODEL. This purpose is not met unless the recreation and education is for the substantial and regular use of the general public. Public access presents challenges for farm properties because of food and farm safety concerns and is typically not included in agricultural conservation restrictions. Accordingly, the Model does not have this as part of its template. If applicable, the drafter should consider adding it.

2.a The preservation of certain open space (including farmland and forest land) pursuant to a clearly delineated federal, state, or local governmental conservation policy that will yield a significant public benefit. This is the conservation purpose used most often to validate a charitable deduction of an agricultural conservation restriction. PROTECTION OF FARMLAND, WITHOUT MORE, IS NOT AN IRS RECOGNIZED CONSERVATION PURPOSE. The conservation restriction must be in furtherance of a clearly delineated governmental policy that will yield a significant public benefit. There are many federal, state and local policies that support the protection of farmland and conservation lands. However, a general policy is only the start of the inquiry; facts must be established to show that the specific property being protected falls directly within the policy. General policies may be cited, but policies that specifically reference the Protected Property as worthy of protection are optimal. Examples of such specific policies include town plans of conservation and development and open space plans. If the plans do not specifically reference the Protected Property, the parties may seek a specific certification or resolution from the relevant municipal agency that the property is worthy of protection for conservation purposes (See Reg. §14(d)(4)(iii)(A)). An additional way to show that the preservation of the Protected Property fulfills a government farmland protection policy is to establish facts clearly placing the property within the policy. Agricultural conservation restrictions should reference the % of prime and important agricultural soils or other relevant facts to establish the importance of the property for the agricultural purpose in the governmental policy.

If funding for the purchase of the conservation restriction is being provided by a farmland preservation program, this should be indicated in the Recitals, particularly as it shows that preservation is pursuant to governmental policy. Each such program has its own language requirement for the agricultural conservation restriction, some of which may differ from those in this Model; if using funding from such a program, you will need to include those requirements in the restriction..

2b. An alternative part of the IRS recognized open space preservation purpose is that the donation be for the scenic enjoyment of the general public and will yield a significant public benefit. THIS IS INTENTIONALLY NOT INCLUDED IN THE MODEL. The

Model does not include scenic enjoyment in the template because the opportunity for conflict with agricultural uses is too high. Putting up a barn that blocks a view could be seen as a conflict, and although the purpose clause puts the agricultural purpose first in priority, including scenic enjoyment as conservation purpose in the Model would confuse and create conflict. Many of us find barns beautiful and livestock lovely, but others with less affinity for working landscapes may not. A drafter with thoughtful consideration of the particular property and careful drafting may nevertheless wish to add scenic enjoyment as a conservation purpose.

3. The protection of a relatively natural habitat of fish, wildlife, or plant, or similar ecosystem is recognized as a Conservation Purpose by the IRS. Access is not mandatory for this Conservation Purpose. Agricultural properties often provide important habitat for grassland birds, raptors, and other species of greatest conservation need. The known presence of such species or endangered habitat should be documented for inclusion of this Conservation Purpose. Although the Purpose Clause clearly sets up agricultural uses as the first priority of the conservation restriction, consideration should be made whether the agricultural activities that are allowed or promoted will compromise the protection of the habitat being protected. If the agricultural activities will put that habitat at risk, it may be advisable not to include habitat protection in the recitals, despite the prioritizing of the Purpose of the conservation restriction in Paragraph 1 (see discussion of Paragraph 1 below). Conversely, often the agricultural activities are the reason the important wildlife habitat is present. In such case the drafter may choose whether to recite them in the conservation restriction and even if not recited, address them in the Conservation Plan.

The Connecticut Department of Energy and Environmental Protection (DEEP) website contains a useful listing of species and habitats of greatest conservation need. DEEP has policies to finance and encourage protection of these species and habitats; accordingly, presence of such species and habitats on the property also indicates the third Conservation Purpose above.

4. Historic Preservation. THIS IS INTENTIONALLY NOT INCLUDED IN THE MODEL. The last conservation purpose recognized by the IRS to justify a deduction is the “preservation of an historically important land area or a certified historic structure...” This test is very restrictive. The Protected Property must be national register criteria land, or a building listed in the National Register or located in a registered historic district and certified by the Secretary of the Interior of historic significance to the district. Special rules may apply. Accordingly, this conservation purpose is rarely applicable and has been omitted from the Model. A reference to the historic nature of a farm can always be made to show its importance to the community and the reason, from the perspective of the parties, for any particular restrictions protecting the historic nature of the farm.

It is important to reiterate that the IRS recognized conservation purposes are not the only conservation purposes. A deduction for the donor is not the purpose of a conservation restriction. Other important conservation interests that are to be protected by the conservation restriction should not be ignored even if not recognized by the IRS. Also,

there is no requirement that IRS recognized conservation purposes be stated in the document, only that the conservation restriction meet them. Most practitioners, however, believe it is a wise practice for the conservation restriction document to clearly state how the easement meets the Conservation Purposes Test.

Conservation Values

Of great importance in the Recitals is the description of the term “Conservation Values.” The term Conservation Values is a term of art that is the collective term, or a short-hand, for all the wonderful reasons you are protecting the land - its agricultural, historic, ecological resources, and its importance from a public policy perspective and to the community. Conservation Values are defined in the Recitals, and should be further documented in the Baseline Report.

Baseline Report

The Recitals reference the documentation of the Conservation Values by a collection of information known as the Baseline Report (also known as the Baseline Documentation Report). This report is more particularly described in Paragraph 8 of the conservation restriction and later in this Commentary in reference to Paragraph 8.

THE GRANTING CLAUSE

This is the formal clause where the transfer of property rights occurs. The agreement must have “consideration” or the contract is unenforceable. Consideration is the legal price, reason or motive for entering the contract. Without consideration, the contract is unenforceable. Connecticut law recognizes that a contract is not unenforceable merely because the consideration is inadequate or disproportionate, and an exchange of promises is sufficient consideration.

The Granting Clause also states the statutory authority for the transfer (the conservation restriction statutes), the particular nature of the interest conveyed, and that it is intended to be construed as a charitable use. Under Connecticut law, C.G.S. Section 3-125, the Attorney General “shall represent the public interest in the protection of any gifts, legacies or devises intended for public or charitable purposes.” Further, Connecticut law, C.G.S. Section 47-42c, empowers the Attorney General “to enforce the public interest” in conservation restrictions. Thus, even when the conservation restriction is not a gift, but a fair market value purchase, it would be enforceable by the Attorney General and Connecticut law would likely be construed to consider it a charitable use for the public benefit.

There are pros and cons to a conservation restriction being categorized as a charitable uses. The operative principle of charitable trust law is that the grantor’s expressed and implied intent be honored. The advantage of this status includes that the Attorney General is empowered to enforce the terms of the restriction and the land trust may thus have an ally in protecting the property. The donor similarly has increased certainty that their wishes will be carried out. The disadvantages of charitable use status

include that the Attorney General can interfere in the management of trust lands and there are limits on the power to amend. For this reason, it is quite important to have discretionary consent and amendment clauses. They clearly establish the intent of the donor to grant to the land trust the power to manage the details of the conservation restriction as long as they do not have a net negative effect on the conservation purposes of the Grant.

1. THE PURPOSE

The Purpose Clause is set forth in Paragraph 1. The Purpose is the heart of the document. It is the standard by which all things are measured (this should not be confused with the elements of the Conservation Purposes Test recognized by the IRS, previously discussed in relation to the Recitals.) In the Model, the primary and overriding purpose is “to protect the agricultural soils, current and future agricultural viability, and agricultural productivity of the Protected Property in perpetuity. No activity that may significantly impair the actual or potential use of the Protected Property for agricultural production shall be permitted.” Uses are measured by this and decision-making throughout the document is limited by it. Land Trust Alliance Standards and Practices, charitable trust law, and land trust internal policies and procedures often refer to the Purpose for direction.

The Purpose also contains the following qualification: “To the extent that the preservation and protection of the additional Conservation Values of the Protected Property referenced above are consistent with the primary purpose of protecting the agricultural soils, current and future agricultural viability, and agricultural productivity of the Protected Property in perpetuity, it is also the purpose of this Grant to protect those additional Conservation Values”. This document, then, seeks to protect other Conservation Values, but only to the extent they do not conflict with the agricultural purpose. This is not structured like an open space conservation restriction with multiple purposes to be weighed in decision making. The Purpose of the Model is intentionally prioritized.

2. DEFINITIONS

The Purpose is followed by a Definitions section. Defined terms are capitalized throughout the document. The Definitions may be referred to whenever the term is used in the document. In the Model, the definitions are broadly worded and are limited elsewhere in the document. Though a term may include a number of uses, the particular paragraph that uses that term may substantially limit its applicability. For example, Forestry Activities are defined very broadly, but certain Forestry Activities require a Forest Management Plan and some may be prohibited altogether. Drafters should delete definitions which are not applicable to their specific document and be careful about unqualified references to the broad definitions.

The Definitions section is put early in the document so that it is easy to find and performs something of a Table of Contents function. An alternative is to put it later in the

document, much like a glossary or index. Some documents have no Definitions paragraph but contain the Definitions within the primary or first paragraph referring to the term, with internal cross references whenever the term is used. Although these are valid approaches, the use of cross referencing is a frequent source of errors, since as revisions to the documents are made, cross references may be overlooked. The Model is a hybrid of these techniques. In the Model, many definitions are included in the main paragraph that they relate to and the Definitions paragraph merely cross-references where the definition is located. This centralizes where cross reference checking is required and is intended to minimize the number of times flipping pages to the Definition paragraph is needed. Wherever possible, the Model uses a defined term in the body of the document, to minimize the need for numerical cross reference checking. A drafter should do a global search for the term “paragraph” at the final revision to check the paragraph references.

The definitions:

2.1 “Agriculture and Agricultural Activities”. This definition takes the current statutory definition terms of Connecticut General Statutes Paragraph 1-1q and places them into the more categorized definition that has appeared in many agricultural land trust templates. Flexibility is added to the definition directly in paragraph 2.1 (b)(x) by allowing the land trust to add similar uses and commodities in Grantee’s sole discretion. The definition includes some associated activities, such as the storage, primary processing and direct sale of agricultural products. Paragraph 2.1(c)(i) is intended to put some limits on these associated activities while recognizing that, to improve profitability and/or meet consumer demand, farms may store, process or sell farm products grown or produced elsewhere. The paragraph envisions a requirement that limits the sale and processing of crops to those “principally” grown onsite. In its Farmland Preservation Program, the Connecticut Department of Agriculture defines principally in this context as “more than 50%”. However, the landowner may seek, and land protection entity may wish to consider, a lower standard depending on the factual circumstances and type of agricultural activity occurring on the specific property. A similar analysis should be done for 2.1(c)(ii).

Forestry Activities have been separated from Agricultural Activities, because they require different types of management plans and the land trust may wish to apply particular standards for lumbering and forest management. It is particularly important, however, that though governed by differing provisions, the definition of Agricultural Activities include Forestry Activities, so that Forestry Activities are protected by the primary Purpose. Further definitions are:

- 2.2 “Approval” is a capitalized term used throughout the Grant to define the standard decision making process of the Grantee.
- 2.3 “Baseline Report”
- 2.4 “Best Management Practices”
- 2.5 “Clear, Clearing and Clear Cutting”
- 2.6 “Code” is defined on page 1.

- 2.7 “Conservation Plan”
- 2.8 “Conservation Values”
- 2.9 "Environmental Laws"
- 2.10 “Farm”
- 2.11 “Farm Road”
- 2.12 “Farmstead Building Area”
- 2.13 “Footprint”
- 2.14 "Forestry Activities"
- 2.15 “Forest Management Plan”
- 2.16 “Grantee”
- 2.16 “Grantor”
- 2.17 “Hazardous Materials"
- 2.18 “Invasive Species”
- 2.19 “Notice”
- 2.20 “Purpose”
- 2.21 "Passive Recreational Activities"
- 2.22 “Regulations”
- 2.23 “Rural Enterprises”
- 2.24 “Structure Limitations”
- 2.25 “Temporary Agricultural Structure”
- 2.26 “Water Rights”

3. PROHIBITED USES

Novice readers of conservation restrictions are often bewildered by their structure. There are several types of structures in use, but we have adopted the standard of practice in Connecticut. Conservation restrictions in Connecticut are perpetual; as such, it is nearly impossible to predict all the different ways that the future may bring for destroying the Conservation Values of the Protected Property. Accordingly, the initial standard for prohibited uses as stated in Article 3 is that “Any activity on or use of the Protected Property inconsistent with the Purpose of this Grant is prohibited...” The standard for use is whether the activity is inconsistent with the Purpose; if it is, the landowner cannot do it; if it is consistent, he or she may.

Parties, typically prefer things to be more particularly set out. Accordingly, because this standard is subject to wide interpretation, Article 3 goes on to prohibit all manner of possible conflicting activities (the Prohibited Uses) EXCEPT AS PERMITTED in the Grantor’s Reserved Rights (contained in paragraph 4). Thus, Paragraph 4, the Grantor’s Reserved Rights, is the most important and variable part of any conservation restriction. Once the interaction between the Purpose, Prohibited Uses and Reserved Rights is understood, the document becomes more comprehensible. Despite the inclusion of the “Except as permitted...” qualification in the opening paragraph(s) under Prohibited Uses, persons unfamiliar with the structure still have difficulty digesting that the prohibitions are qualified by the Retained Rights; accordingly, we have repeated this concept generically in all applicable clauses in the Prohibited Uses section even though

duplicative. Some drafters will list specific exceptions in each prohibited use paragraph, but this makes errors of omission and inconsistency more probable.

3.1 Subdivision. This provision prohibits the division of the Protected Property consistent with the Purpose. Certain exceptions are listed which are likely to promote the Purpose.

3.2 Use for Development. This provision prohibits the stacking of development on other property due to the preservation of the Protected Property.

3.3 Prohibited Structures. This broad provision prohibits structures unless otherwise permitted.

3.4 Changes in Topography and Mining. This broad provision prohibits all manner of changes in topography except as otherwise permitted. Agricultural uses are allowed as a Retained Right. CT Department of Agriculture easements and the Internal Revenue Code may require that areas for extraction of soil or minerals be located outside of the Protected Property. A drafter may therefore wish to cut sand or gravel “borrow” pits out of the property to be protected by the restriction.

3.5 Divesting of Water Rights. This provision prohibits the owner from giving up water rights and thus limiting the viability of agricultural uses.

3.6 Trash. This provision prohibits dumping and storage of trash and toxic substances on the property. Composting, however, is an allowable agricultural activity. Composting requires a variety of organic material, and often farms will mix organic materials produced on farm with those produced elsewhere. As the Model suggests, the landowner and land protection entity should consider language that allows for some compost material to come from off-site.

3.7 Non-permitted Commercial and Industrial Uses. This broad provision prohibits other types of commercial and industrial uses.

3.8 Changes to Vegetation. This provision prohibits removal, destruction, or cutting of trees over 2” or introduction of invasive plants and animals.

3.9 Pesticides. This provision limits the use and disposal of herbicides, insecticides, fungicides, or other potentially harmful substances except for agricultural or forestry uses, or for certain other limited uses.

3.10 Alteration of Water Resources. This provision is intended to protect water resources from pollution, sedimentation and alteration.

3.11 Recreational Vehicles. This provisions broadly prohibits recreational vehicles unless otherwise allowed. An optional section may be added for qualification for estate tax reduction under the Code.

3.12 Subsequent Encumbrances Contrary to Purpose. This paragraph prohibits the Grantor from placing an additional conservation restriction on the property that would prohibit or impair the purpose of the Agricultural Conservation Restriction. That is, the owner may not convey a “forever wild” conservation restriction prohibiting agricultural uses over the property, or similar restriction contrary to the Purpose of this Grant.

4. GRANTOR’S RESERVED RIGHTS

Paragraph 4 reserves to the Grantor “... any other rights not inconsistent with the Purpose of this Grant and not specifically prohibited or limited by this Grant.” It goes on to specifically enumerate the most important and known of those rights, including the right of Agricultural Activities.

4.1 Mortgage and Convey. This clarifies that Grantor retains the normal right to convey the property unless subject to the Right to Purchase.

4.2 Agricultural Activities. Agricultural Activities are discussed in a number of the reserved rights clauses. In 4.2, the landowner reserves the general right to agricultural activities, so long as those activities are done in accordance with a conservation plan. A conservation plan is a written record that addresses the planned management of the property and the conservation practices and systems that will be used, developed and maintained to protect its agricultural resources. The plan can be prepared by either the U.S. Department of Agriculture’s Natural Resources Conservation Service (NRCS) or by a qualified conservation professional approved by the land protection entity.

4.3 Forestry Activities. This section divides Forestry into Personal Use and Commercial Use. Drafters may wish to include a cord limit for personal use, but personal use of a farm can vary widely as farmers may be heating many agricultural buildings. Drafters should consider the substantial difficulty in monitoring the quantity of actual personal use. Commercial use is required by the Model to have a written Forest Management Plan (FMP). In Connecticut, only Certified Foresters may make forest management recommendations and write Forest Management Plans. The Model requires supervision of activities pursuant to the FMP by a Certified Forester. In regard to harvesting of commercial forest products, having a Certified Forester supervising the job may be even more important than having a Forest Management Plan. An excellent plan may be written, but if any logger with no forestry education can actually then select the trees to be harvested, the plan can quickly become irrelevant or even a sad story.

In this regard, the drafter may wish to insert a definition of high-grading and a prohibition on its use. An example of such language would be “The practice known as “high-grading”, in which substantially all trees in a treatment area above a certain diameter limit are harvested, leaving only poor specimens and younger size classes for forest regeneration, is not a Best Management Practice and is expressly prohibited under any Forest Management Plan.”

The drafter may want to impose other requirements and goals for the Forest Management Plan. These vary greatly and the Model gives only basic suggestions. “Sustainable” when it comes to a Forest Management Plan is dependent on what the objective is and what the resource is. The objective may be as different at sustaining income from harvesting, or creating and maintaining upland game bird habitat. (The definition of Agricultural Activities includes wildlife habitat management.) the Model does not require that.

The Forest Management Plan is required to be approved by the land trust, but many land trusts may not feel that they have the expertise to fully review a plan. They should, however, be able to review the plan to make sure its goals are consistent with the Purpose of the Conservation Restriction, protection of its Conservation Values and its Forestry terms.

4.4 Passive Recreational Activities. This paragraph allows Passive Recreation Activities which are defined therein. An optional section allows motorized non-commercial recreational uses. If the option is included, “Passive” should be removed from the caption and the definition and both revised to be more inclusive.

4.5 Rural Enterprises. The Model includes the right to operate Rural Enterprises within the Farmstead Building Area, incidental and subordinate to the primary use of the Protected Property for Agricultural, Forestry and residential purposes. Rural Enterprises are defined as ancillary business or home occupations that support the financial viability of the use of the Protected Property for agriculture, and the Model provides an illustrative list. Structures related to Rural Enterprises are limited by the Structures Limitations set forth in 4.10.

4.6 Operate Necessary Vehicles. This section allows motorized vehicles for permitted uses. Some land trusts may wish to exclude some of these vehicles, particularly motorcycles, as they may cause erosion. Motorcycles may, however, be legitimately used in agriculture. Some farmers, for example, use motorcycles to herd cows.

4.7 Trails and Farm Roads. Impervious surfaces are disfavored and new surfaced vehicular roads subject to Approval.

4.8 Use of Water Resources. Certain of these activities require a Conservation or Farm Management Plan. If Aquaculture is involved, prior Approval of the Grantee in its sole discretion, is required particularly because the activity may involve detrimental impacts such as removal or inundating of agricultural soils.

4.9 Erosion Control. Erosion Control activities may be conducted as part of a Conservation Plan or Forest Management Plan in furtherance of Agricultural Activities and/or Forestry Activities.

4.10 Allowed Structures and Improvements (“Structure Limitations”). This section is very important. The Model takes the Connecticut Farmland Trust approach of defining and separating the types of structures that are permitted and having separate limitations for the different categories and separate types of approvals. The aim of this configuration is to give a degree of certainty to farmers as to what is allowed and where, and to minimize review whenever reasonably possible; but also to have high review standards for structures and uses which conflict with or have the potential to threaten the Purpose.

All permitted structures, both agricultural and otherwise, are set forth in 4.10. See the Commentary’s decision-making grids for structure approvals (Appendix A and Appendix B). A graduated level decision-making matrix is set up. Structures that may be built without approval (ex. fences and walls, temporary agricultural structures within Farmstead Building Area), structures that require notice to the land trust so that the land trust can check that they are truly allowed (ex: replacement of existing residential structure on same Footprint), structures that require land trust standard Approval pursuant to paragraph 9 in the land trust’s reasonable discretion (ex. new permanent agricultural structures within the Farmstead Building Area) and a higher level approval subject to the specific structure paragraph requirements in the land trust’s sole discretion (ex: farm support housing outside of any cap). If they relate to agricultural uses, the sole discretion approval may not be unreasonably withheld.

The Model contains a provision for a Farmstead Building Area. This is the area where most if not all permitted structures are to be located. The function of the Farmstead Building Area is to group permitted structures in an area which makes sense from a farming perspective.

A dichotomy is set up regarding structures in and out of the Farmstead Building Area. Farming structures inside the Farmstead Building Area are favored; structures outside the Farmstead Building Area are not. A major difference between agricultural conservation restrictions and other conservation restrictions is the recognition that farming does require structures – whether to grow food or nursery product; house livestock or farm equipment, wash, process or store products or engage in retail sales. The Model lists a variety of structures, not all of which may be needed for any particular property.

A Farmstead Building Area may be inappropriate for a property where farm buildings are spread out or anticipated to be spread out, where the property is large – or small – or the terrain not conducive to grouping of structures. A DRAFTER MAY WISH, INSTEAD OF INCLUDING A FARMSTEAD BUILDING AREA, TO RELY ON AN OVERALL IMPERVIOUS SURFACE LIMITATION, SEPARATE STRUCTURE LIMITATIONS, MULTIPLE FARMSTEAD BUILDING AREAS, EXCLUSION AREAS OR SIMPLY THE DISCRETION OF THE GRANTEE TO APPROVE STRUCTURES CONSISTENT WITH THE PURPOSE.

- (a) Fences and walls. Do not require Notice or Approval of the Grantee.

(b) Existing Permanent Agricultural Structures and Improvements. These structures are favored, particularly in the Farmstead Building Area, and somewhat less favored outside of it.

(c) Temporary Agricultural Structures, unless they have utilities, may be built on the Protected Property without prior Notice or Approval of Grantee. A Footprint limit may be imposed as these structures, individually or in the aggregate, as they may be quite large.

(d) New Permanent Agricultural Structures & Agricultural Improvements These structures are also divided into those located inside the Farmstead Building Area and those located outside it.

(e) Existing Residential Dwelling. The Model seeks to limit the size of residential uses on the Protected Property. Particularly elaborate residential uses drive up the cost of property and make it less affordable for farming uses.

(f) New Residential Dwelling. If a new residential dwelling is anticipated, care should be taken to specifically define its size and location and access. This paragraph is subject to extensive modification to define that use.

(g) Farm Support Housing. This is another category which requires careful consideration and limitation due to its potential to be easily altered into additional non-agricultural residential dwellings which negatively impact the Purpose and affordability of the property for farming. No Farm Support Housing may be created outside of the Farmstead Building Area. Subdivision of Farm Support Housing is prohibited.

(h) Utility Services and Septic System. Utility services in the Farmstead Building Area and existing driveway are permitted without review.

(i) Rural Enterprises Improvements. Rural enterprises may contribute to the financial viability and stability of a farm and are therefore permitted, but this category has the potential to negatively impact the Purpose and is thus subject to the sole discretion standard.

(j) Ancillary Improvements. Since many structures are prohibited under the Prohibited Uses, this provision makes it clear that de minimis structures are permitted and review is unnecessary unless over the specified cap.

(k) Commercial Renewable Energy, Advertising and Communications. Like Rural Enterprises Improvements, these structures may contribute to the financial viability and stability of a farm and the land trust may choose to include them as approvable, but this category has the potential to negatively impact the Purpose including the non-agricultural Conservation Values, and is thus subject to the highest level of review and discretion.

5. AFFIRMATIVE RIGHTS OF GRANTEE

This paragraph sets forth the general enforcement rights of the land trust, including the right to enter the property for appropriate purposes. These are “affirmative” rights in that they are not just restrictions on use.

6. IMPERVIOUS SURFACE LIMITATION

The Model contains an Impervious Surface Limitation provision. All structures, even if allowed under Paragraph 4, are subject to this cap. Care should be taken to not set this limitation too small. It is intended to be an outside limit. And indeed, in many cases it would be appropriate to remove the limitation altogether. As previously stated, when it comes to agriculture, agricultural structures are a necessity. The CT Farmland Preservation Program typically includes in its conservation restriction an Impervious Surface Limitation of 5% typical figure under the Agricultural Conservation Easement Program formerly known as the Federal Ranchland Protection Program is up to 2% of the Protected Property with a waiver to 5% of the Protected Property. The reasonableness of the figure is highly dependent on the size and configuration of the property and uses to be promoted under the Purpose. The Impervious Surface Limitation is a two edged sword. It can serve to clearly limit excessive buildings – particularly those of dubious agricultural value – but it also can place undue restriction on legitimate agricultural uses. Care should be taken to also further refine the definition of impervious, particularly as regards hoop houses, which by some programs or documents may be considered temporary and permeable, whereas greenhouses would be considered the opposite. The Model leaves their categorization to the sole discretion of the land trust.

To minimize stewardship issues from the outset, the Baseline Report should establish the percentage of Impervious Surface and its composition at the time the conservation restriction is executed. After that, stewardship involves simple subtraction or addition for the computation of Impervious Surface and the Structure Limitation categories.

7. ONGOING RESPONSIBILITIES OF GRANTOR AND GRANTEE and 7.3 Affirmative Farming Covenant

Paragraph 7 clarifies that the owner of the property still has the basic legal responsibilities for its care and maintenance, and compliance with laws; however, the Model inserts at 7.3 an Affirmative Farming Covenant that recognizes that a landowner, for a variety of reasons, may choose to cease conducting commercial Agricultural Activity on the Protected Property for a period of time. The landowner is required to maintain the property in its open and agricultural condition by cutting the open areas at least once a year. If the landowner fails to do so, the land protection entity has the right, but not the obligation to do so itself, to preserve the property’s availability for future agricultural use. Grantee is entitled to keep any proceeds from haying, or to require reimbursement of such expenses by Grantor. The expense of reclaiming fields long gone fallow is a substantial impediment to agricultural use. This provision is aimed at preventing such neglect. A land trust may wish to consider the more assertive provision

as used by the Peconic Land Trust, which provides for the right of the Grantee to restore and prepare the property for farming at Grantor's expense and to lease the property for farming for a period of not less than five(5) years. Particularly for a purchased conservation restriction, the justifiable desire of the Grantee to insure that the property remains in farming should be understandable to a Grantor.

8. BASELINE REPORT

The Recitals are only the first step in documenting a conservation restriction of any kind. The IRS and best practices require that the conservation interests of the Protected Property be documented in a Baseline Report and certified by the parties. The Baseline Report (often called the Baseline Documentation Report or Baseline), first referred to in the Recitals, is a set of documents establishing the condition of the property at the time of the execution of the Conservation Restriction. The Baseline Report can be used to document the condition of the property for enforcement purposes and to immortalize the intent of the parties and the document. The Baseline Report informs the owner and the land trust what is being protected. This document should not be, though often is, just a dry recital of the ecologically relevant facts and the location of existing structures. It should also try to convey the human history that informs the preservation of the land. It may constitute the only facts available many years in the future to say why preservation of the land is important from a human perspective and the intent of the donor. It may be the one thing that convinces a judge faced with the current human individual landowner and an institutional land trust, of the value of continuing to uphold an age old document.

It is important that the Baseline Report document the structures that exist on the Protected Property at the time of the grant, both to perform the function of establishing what constitutes the existing structures, but also to establish their baseline size. Thereafter changes in structure size and impervious surface coverage etc. need only be incrementally calculated for monitoring and approvals.

One further word about the Baseline Report: The Baseline Report is seldom recorded in the land records. Indeed, it may not be in a form that is recordable. As the Baseline Report is a separate document, the conservation restriction expresses that it is "incorporated by reference" in the deed. However, as a separate unrecorded document it is subject to being lost over time. It also may become less relevant over time as the condition of the property changes. Further, it is separate from the "four corners" of the conservation restriction and reliance on it is subject to the argument that it should not be used to interpret the conservation restriction, the conservation restriction should speak for itself. Accordingly, practitioners should not rely wholly on the Baseline Report for important information about interpretation of the conservation restriction. The conservation restriction should stand by itself (or with recorded maps particularly referenced in the conservation restriction) on important issues, including the location of building areas.

9. APPROVALS

Paragraph 9 contains the standards for Notice and Approvals. If only Notice and not Approval is required for a particular activity, Approval of the land trust is not required prior to action. The standard Approval uses a standard of reasonable discretion, but if the particular paragraph under which Approval is sought requires a higher standard, the higher standard applies. Approvals of Agricultural structures, even if subject to the higher standard, are qualified in that they may not be unreasonably withheld. This is intended to provide a level of comfort to the farmer and protect the farming use.

The Model sets forth an assumed Approval if no response is made to a request within the time frame set in the document and the proposed action is not inconsistent with the Purpose of the conservation restriction. Although Grantors appreciate the certainty of such a provision, consideration should be given whether to include this automatic approval paragraph based on the land trust's capacity to respond in an expeditious fashion. Drafters may wish to consider a contrary provision that assumes a denial of approval after the time frame. The requirement that the request to the land trust state the time limitation puts the land trust on notice that this conservation restriction contains this condition and prompt attention is required. The steering committee was of the opinion that although the 120 day time frame might be considered excessive in some cases (the land trust can always act more expeditiously), in most cases the land owner has been planning construction for some time. A different time frame, or no time frame may be negotiated.

Discretionary Consent puts flexibility in the hands of the land trust to deal with unanticipated issues that arise over time that are not inconsistent with the Purpose. This provision validates administrative discretion in the hands of the Grantee.

10. PUBLIC ACCESS

Paragraph 10 qualifies that no public access is granted. It would be unusual for a working lands property to include public access unless it were a purchased conservation restriction. Accordingly, the Model does not include public access as part of its template. If access is intended, the drafter should include appropriate language describing the access and any limitations –location, timing, purposes, etc., and how it will be managed to be consistent with the Purpose.

11. ASSIGNMENT

This paragraph sets forth the assignable nature of the conservation restriction, appropriate holders of the conservation restriction and filing requirements. Some parties may wish to designate an appropriate back up Grantee here.

12. TRANSFER OF PROPERTY

This paragraph emphasizes that the restrictions carry over to the new owner if the property is transferred, and that reference to the conservation restriction should be put in the transferring document, with prior notice to the land trust before the conveyance. The purpose of the prior notice is so the land trust can make sure that the transferee is aware of the restrictions on the property and can perform appropriate monitoring of the new owner.

13. AMENDMENT

It is absolutely essential that all conservation restrictions contain an amendment clause. An amendment clause makes it clear that the conservation restriction is intended to be a living document that may change, consistent with the Purpose. It states who has authority to make such amendments and under what conditions. An amendment clause is not, however, a license to modify an conservation restriction in a way that is inconsistent with the Purpose, to allow a private benefit (that is not incidental to a greater public benefit), or to violate charitable trust laws (these require, in brief, adherence to the charitable purpose of the charitable use). Land Trusts that hold conservation easements should have amendment policies to guide their decision-making on these matters. The 2007 Land Trust Alliance report *Amending Conservation Easement: evolving Practices and Legal Principles* is a useful resource in formulating such a policy.

14. EXTINGUISHMENT AND CONDEMNATION

Because the conservation restriction is a perpetual grant of an interest in real property, if the conservation restriction is taken by eminent domain or otherwise extinguished, the land trust is entitled to the fair value of its interest. This is an IRS requirement and it is also a sensible requirement to compensate the land trust. This also particularly protects the conservation restriction because without it, a subsequent landowner would have a particularly strong interest in trying to terminate, or assisting others to terminate the conservation restriction by eminent domain or otherwise. Original grantors of conservation restrictions generally have a strong conservation ethic; subsequent landowners may not have a similarly strong belief in the Purpose of the conservation restriction.

15. RE-RECORDING

Although Connecticut now has a special law, C.G.S. §47-33h (2001), which makes conservation restrictions perpetual even if they fall outside the normal 40+ year scope of a title search, a conservation restriction holder may wish to re-record a conservation restriction so that it does appear within title searches. This would put purchasers of the Protected Property on actual notice of the restriction.

16. INTERPRETATION

This sets forth the rules for interpreting the document.

17. SUCCESSORS/CO-HOLDERS.

This reiterates that the restriction is binding on all successors in interest and “runs” with the ownership of the property.

18. SEVERABILITY

This standard clause clarifies that if any one provision is invalid, the whole document does not become invalid.

19. NOTICES

This sets forth the parties mailing addresses and establishes that modern forms of electronic notice are permitted. Because notice may be accomplished by courier, actual residential addresses, if different, should be included.

20. GRANTOR’S TITLE WARRANTY

By this paragraph, the Grantor warrants they have good title to convey the conservation restriction and that all mortgages are subordinated. If there are mortgages or liens on the property, they must be subordinated (made lower in priority) to the conservation restriction so that the conservation restriction cannot be terminated by a foreclosure of those mortgages or liens. This is both an IRS requirement for deductibility, and a sensible requirement for protection of the perpetual nature of the conservation restriction. Strict IRS rules and case law govern the nature of the subordination. If a deduction is not being sought, a grantee may, after weighing the risks and benefits, choose to accept an easement without subordination of a mortgage.

21. GRANTOR’S ENVIRONMENTAL WARRANTY

Grantor, having the most knowledge of the Protected Property, here warrants to the land trust that there are no known environmental violations, and agrees to pay any expenses incurred by the land trust if there is a claim based on a spill of Hazardous Materials. Generally speaking, even if such a spill had occurred, the land trust would not be found liable regarding it, unless it had possession, custody and control of the Protected Property or had caused the spill.

22. NO EXTINGUISHMENT THROUGH MERGER. This paragraph clarifies the intent, that if the Grantee of the conservation restriction were also conveyed the ownership (fee) interest in the property, the restrictions contained in the Grant would still bind the land trust. Common law holds that if the owner of property metaphorically holds all the sticks of ownership, they merge together and any restrictions on use

disappear. Learned opinion differs from the common law on this when it comes to Conservation Restrictions. There is no definitive legal decision in Connecticut clarifying this point. IRS regulations require that conservation restrictions be perpetual, despite changes in ownership.

23. INDEMNIFICATION AND HOLD HARMLESS

This clause is highly negotiated but seldom applicable or controlling. It makes clear that the land owner continues to own the land and have control of it (unless there is a public access requirement) and in the normal course of ownership is liable for matters occurring on or about the property, unless caused by the land trust or its agents.

24. NO TAX ADVICE AND ACKNOWLEDGMENT OF DONATION

This paragraph clarifies that the land protection entity is not responsible for the donor receiving or not receiving a claimed deduction.

Further, Every gift over \$250 is required to be acknowledged in writing by the recipient, and such writing must include a statement that no goods or a service was received in consideration for the gift. The acknowledgement in the Model is not intended to replace that writing (usually a letter), but is intended to serve as a failsafe if such requirement is inadvertently overlooked.

25. COUNTERPARTS. It is often difficult to get all owners and the land trust in the same room at the same time to sign all necessary conservation restriction documents. This language verifies that the documents may be signed separately, and on different copies, and taken together constitute one document.

26. OPTION AND RIGHT TO PURCHASE. [IF THIS SECTION IS ADDED IT IS IMPORTANT TO NOTE ON THE TITLE OF THE RESTRICTION THAT IT CONTAINS A RIGHT TO PURCHASE]

Agricultural conservation restrictions are intended to protect land for the purpose of farming. By putting a conservation restriction on land, the property value is typically decreased and thus made more affordable for farmers, and certain inconsistent uses are prohibited. This does not guarantee, however, that the land will actually be farmed or that a bona fide farmer will be the buyer. Agricultural land trusts have been seeking ways to ensure that not only is the land protected, but that farming is ensured, or at least highly promoted, and the risk is minimized that the property will become an estate property or rural retreat no longer available to active, commercial farmers. Escalating concern from new and beginning farmers over lack of access to affordable farmland has heightened interest among land trusts and beginning farmer organizations around this issue. The Model addresses this concern by including an optional Option and Right to Purchase. This is a fairly recent innovation and has not been extensively examined by the courts, particularly in Connecticut. Rights to Purchase are not, however, new concepts in the

law and the more that they are drafted as consistent with established principles of real property law, the more likely they are to be enforced.

The option creates a Right of Purchase for the Grantee to buy the Protected Property if the property is being sold other than to Grantor's family or to a farmer. The process has several steps and several time frames that lead up to potential purchase by the land trust. The land trust may then convey to a farmer purchaser that it believes will continue the farming use of the land.

When appraising a donation of a conservation restriction that includes the Option and Right to Purchase, the appraiser valuing the tax deduction should carefully consider the effect of this provision on the residual value the Protected Property has after the conservation restriction is in place. Care should be taken to include typical purchase and sale agreement terms in the option section of the conservation restriction.

If this section is added it is important to note on the title of the document that it contains a right to purchase, to put title searchers and potential buyers on notice of this important limitation, as well as to negate any allegation that the signer was unaware of the provision.

More information about the Option can be found on American Farmland Trust's Farmland Information Center website, at www.farmlandinfo.org.

SIGNATURES

Connecticut requires the signature of all owners of the Protected Property with two witnesses to each signature. In addition, the signer(s) must acknowledge their signature(s) before an individual entitled to take oaths (a notary public, or Commissioner of the Superior Court aka Connecticut attorney). The notary may sign as one of the witnesses, but must sign again to take the oath. Acknowledgments should be revised if Grantors are not individuals to indicate the appropriate entity and capacity of the signer.

The Grantee must also sign the Grant, both to acknowledge its obligations under the Restriction, and also because Connecticut has a special law requiring that they do so. C.G.S. 47-6b states:

(b) Any deed or other instrument of conveyance by which an interest in real property, including, but not limited to, a conservation restriction or easement, is conveyed to a nonprofit land-holding organization on or after October 1, 2004, shall, in addition to other requirements of law, be signed by a duly authorized officer of such nonprofit land-holding organization to indicate acceptance of such interest by the nonprofit land-holding organization.

Any Grantor who fails to get the required signature can be liable for fines and unfair or deceptive trade practices penalties. A document missing the signature is not void, but

voidable. This law was passed because some Connecticut land trusts were being conveyed land or conservation restrictions without their knowledge or acceptance!