

**CONSERVATION AND PUBLIC RECREATION
EASEMENT AND AGREEMENT**

10401

WESTSIDE OF TOWN FARM ROAD - OPEN SPACE (FISHER FARM - PARCEL B) OSWA-144

RECEIVED

MAY 14 2009

CONNECTICUT
SITING COUNCIL

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, The Town of Farmington holds title to 47.059 ± acres of real property, formerly of Fisher Family Properties a Connecticut limited partnership of Farmington, Connecticut.

WHEREAS, in addition to its value as a natural area, said property is also a scenic resource of the State of Connecticut and can provide access to regionally significant water related recreational opportunities for the general public;

WHEREAS, the preservation of the above mentioned land and water resources will yield a significant public benefit for passive recreation and open space protection;

WHEREAS, the anticipated use of the land by the Town of Farmington is consistent with the DEP's conservation and preservation interests, and the Town of Farmington has a shared interest with DEP in seeing that these conservation-minded practices continue;

WHEREAS, the State of Connecticut has established The Protected Open Space and Watershed Land Acquisition Grant Program to provide grants to municipalities and nonprofit conservation organizations to acquire land or permanent interests in land for open space and watershed protection and to water companies, as defined in Connecticut General Statutes (CGS) Section 25-32a, to acquire and protect land which is eligible to be classified as Class I or Class II land, as defined in CGS Section 25-37c, after acquisition;

WHEREAS, all lands or interests in land acquired under The Protected Open Space and Watershed Land Acquisition Grant Program shall be preserved in perpetuity predominantly in their natural and scenic and open condition for the protection of natural resources while allowing for recreation consistent with such protection and, for lands acquired by water companies, allowing for the improvements necessary for the protection or provision of potable water;

WHEREAS, a permanent conservation easement, as defined in CGS Section 47-42a, shall be executed for any property purchased with grant funds through The Protected Open Space and Watershed Land Acquisition Grant Program and which conservation easement shall provide that the property shall remain forever predominately in its natural and open condition for the specific conservation, open space or water supply purpose for which it was acquired;

WHEREAS, the conservation easement shall be in favor of the State acting through the Commissioner of Environmental Protection.

WHEREAS, such conservation easement shall include a requirement that the property be made available to the general public for appropriate recreational purposes, the maintenance of which recreational access shall be the responsibility of the grantor.

WHEREAS, the Town of Farmington and the State of Connecticut agree that limited public recreation on said property can be provided without significant impact to the natural resources on said property, conservation of those resources having been the primary reason for its acquisition by the Town of Farmington;

NOW, THEREFORE, the TOWN OF FARMINGTON a municipal corporation having its territorial limits within the County of Hartford and State of Connecticut, (the "Grantor"), for One Dollar and other good and valuable consideration received to its full satisfaction of the STATE OF CONNECTICUT, a sovereign, (the "Holder") and in consideration of the mutual covenants, terms, conditions and restrictions herein contained, GRANTOR, its successors and assigns, do hereby give, grant, bargain, sell, convey and confirm in perpetuity unto the HOLDER and its successors or assigns forever with Warranty Covenants, a Conservation and Public Recreation Easement in perpetuity, of the nature and character and to the extent hereinafter set forth, over property situated in the Town of Farmington, County of Hartford, State of Connecticut, (the "Protected Property"), as described in Schedule A.

1. Purpose. It is the purpose of this Conservation and Public Recreation Easement to assure that the Protected Property will be retained forever predominantly in its natural, scenic, forested, and/or open space condition, and to provide opportunities for public recreation on the Protected Property, while preventing any use of the Protected Property that will significantly impair or interfere with the conservation values or interests of the Protected Property, described above. It is the intent of this easement that any management activities or alterations of the natural landscape or provision for access or recreation shall be consistent with the conservation purposes above.

2. Development Rights and Restrictions. No building, residential dwelling, structure, parking lot, driveway, road or other temporary or permanent structure or improvement requiring construction shall be placed upon the Protected Property except as provided hereinbelow, the following reservations to be consistent with the conservation and public recreation purposes above:

- a) Grantor reserves the right to maintain existing unpaved driveways, footpaths and other minor surface alterations; to excavate and fill as necessary to accomplish permitted building, recreational and silvicultural activities, and to construct, maintain and reconstruct additional unpaved footpaths or minor, roofless rustic improvements necessary or appropriate to assure safe passage, prevent erosion, or to enhance or protect the natural habitat.
- b) All rights reserved herein by the Grantor may only be exercised subject to all applicable governmental permits and approvals required by law. Nothing herein shall commit the Holder to grant any such approval or permit.
- c) Grantor reserves the right to manage and monitor the Protected Property for rare and endangered species, such activities including, but not limited to:
 - 1) The rerouting or closing of trail segments or public access points that pose a substantial threat to protected species, provided that a system of public access trails remains open to the public at all times;
 - 2) The right to grant access to the site for research;
 - 3) Use of the property for educational and outreach purposes, including limited attendance walks and on-site stewardship training programs.

Grantor agrees that the activities or uses contemplated above shall not unreasonably interfere with the use of the Protected Property by the general public. All rights not specifically granted are hereby reserved by Grantor.

3. Provision of Public Recreation. The Grantor agrees to allow the public access to the Protected Property for passive recreational purposes and to use such trails or other facilities as they may exist or be developed, or where such use is permitted by the Department of Health on Class I and Class II Watershed Land. The public shall be defined as any resident of any municipality, state, country or nation. The Grantor may develop passive recreational facilities and support facilities for those passive activities on the Protected Property if none exists. Passive recreation shall be defined as recreational trail usage (non-motorized), recreational activities which do not require a formalized delineated playing field or area, picnicking, fishing, hunting, non-motorized boating and environmental education.

4. Other activities. No commercial, industrial, quarrying, or mining activities are permitted on the Protected Property.

5. Water Protection and Waste Disposal. The use of chemical herbicides, pesticides, fungicides, fertilizers and other agents must be limited to prevent any demonstrable adverse effect on wildlife, waters, and other important conservation interests to be protected by this Easement.

It is forbidden to dispose of or to store rubbish, garbage, debris, abandoned equipment, parts thereof, or other unsightly, offensive, toxic or hazardous waste material on the Protected Property except that vegetative waste may be composted, and other waste generated by permitted uses on the Protected Property may be stored temporarily in appropriate containment for removal at reasonable intervals, subject to all applicable local, state, and federal laws and regulations.

The Grantor covenants and represents that, to the best of Grantor's knowledge, no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that there are not now any underground storage tanks located on the Protected Property.

6. Costs and Taxes. Grantor acknowledges that the Holder has no possessory rights in the Protected Property, nor any responsibility or right to control, maintain, or keep up the Protected Property. Grantor is responsible to pay and discharge when due all property taxes and assessments and to avoid the imposition of any liens that may impact Holder's rights hereunder. Grantor is responsible for all costs and responsibility of ownership, control, operation, maintenance, and upkeep of the Protected Property and will, to the fullest extent permitted by law, defend, release, relieve, hold harmless, and indemnify Holder, its officers, directors, agents, and employees therefrom and from any claims for damages which arise therefrom, except for harm caused by the negligent act or misconduct of Holder, or as may arise out of its workers' compensation obligations. This provision shall not be construed as a waiver of sovereign immunity.

Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), and shall furnish Holder with satisfactory evidence of payment upon request. In order to assure the continued enforceability of this Conservation Easement, Holder is authorized but in no event obligated to make or advance any payment of taxes, upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the lesser of two (2) percentage points over the prime rate of interest from time to time announced by Chemical Bank of New York or the maximum rate allowed by law. Holder shall have the right to place a lien on property of the Grantor in the event that the payment is not reimbursed to Holder within thirty (30) days.

7. Subdivision Limitation and Subsequent Transfers. The Protected Property must remain as an entity in a single ownership, and may not be divided, subdivided, partitioned or otherwise separated into parcels or lots.

Grantor agrees that the terms, conditions, restrictions, and purposes of this grant or reference thereto will be inserted by Grantor in any subsequent deed or other legal instrument by which the Grantor divests either the fee simple title or possessory interest in the Protected Property, and Grantor further agrees to notify Holder or any pending transfer at least thirty (30) days in advance.

8. Miscellaneous.

- a) Grantor represents that as of the date of this grant there are no liens or mortgages outstanding against the Protected Property. The rights of the Holder to enforce the terms, restrictions and covenants created under this easement shall not be extinguished by foreclosure of any mortgage or any publicly or privately placed lien, regardless of any subsequently placed mortgage or lien.
- b) If any provision(s) of this Conservation and Public Recreation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation and Public Recreation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.
- c) Any uncertainty in the interpretation of this Conservation and Public Recreation Easement should be resolved in favor of conserving the Protected Property in its natural and scenic state.
- d) If this Easement is extinguished by court order, or the powers of eminent domain, the proceeds of any taking or sale of the unrestricted property shall be divided between Grantor and Holder in the same proportion as the value of their respective interests, so calculated, as of the date of this grant, excepting any part of such proceeds attributable to improvements to the Protected Property made after the date of this grant. Holder will use such proceeds for its conservation purposes.

9. Remedies and Enforcement.

- a) This Conservation and Public Recreation Easement granted hereby constitutes a conservation restriction on the Protected Property in favor of the Holder and its successors and assigns pursuant to CGS Section 47-42a, as amended. Pursuant to CGS Section 47-42b, as amended this Conservation and Public Recreation Easement shall not be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land. Pursuant to CGS Section 47-42c, this Conservation and Public Recreation Easement may be enforced by injunction or proceedings in equity, or in any other manner permitted by law. It is further agreed by the parties that the Public Recreation Easement granted hereby may be enforced at law or in equity.
- b) The failure or delay of the Holder, for any reason whatsoever, to enforce this Conservation and Public Recreation Easement shall not constitute a waiver of its rights and Grantor hereby waives any defense of laches, prescription, or estoppel.
- c) Grantor is not responsible for injury to or change in the Protected Property resulting from "acts of God" so called, such as, but not limited to, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. If a Court (or other decision maker chosen by mutual consent of the parties) determines that this Conservation and Public Recreation Easement has been breached, Grantor will reimburse Holder for any reasonable costs of enforcement, including court costs, reasonable attorneys' fees, and any other payments ordered by such Court.
- d) The terms and conditions of said easement hereinabove set forth shall be binding upon and inure to the benefit of the Holder and its successors or assigns. However, said Conservation and Public Recreation Easement shall not entitle the Holder or its successors or assigns to any right of entry or use of the Protected Property except as provided herein and for periodic inspections in a reasonable manner and at reasonable times to ensure compliance with the conservation and recreation purposes above.
- e) The captions herein have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.

10. Notices. Any notice to Holder required hereunder must be made by certified mail, return receipt requested, addressed to:

State of Connecticut
Department of Environmental Protection
Office of the Commissioner
79 Elm Street
Hartford, CT 06106

or such other address as may be furnished in writing.

Any notice to Grantor required hereunder must be made by certified mail, return receipt requested, addressed to each of the following:

Town of Farmington
Town Hall
1 Monleith Drive
Farmington, CT 06032-1053

or such other address as may be furnished in writing.

Any notices to Holder or requests for Holder consent, required or contemplated hereunder, must include, at a minimum, sufficient information to enable the Holder to determine whether proposed plans are consistent with the terms of this Conservation and Public Recreation Easement and the conservation and recreation purposes hereof.

TO HAVE AND TO HOLD the above granted and bargained Conservation and Public Recreation Easement unto the said Holder and its successors and assigns forever.

AND THE GRANTOR, its successors and assigns does COVENANT with the Holder that it will WARRANT AND DEFEND the Protected Property to the said Holder and its successors and assigns forever, against the lawful claims and demands of all persons claiming by, through or under it.

IN WITNESS WHEREOF, the parties hereto have set their hands.

TOWN OF FARMINGTON

WITNESS

Signature

Name in print

Kathleen A. Eagen 2-27-03
Date

Erica L. Pierson
Name

Kathleen A. Eagen
Town Manager
Duly Authorized

Lee A. Becturk
Name

STATE OF CONNECTICUT)
COUNTY OF HARTFORD)

SS. TOWN OF FARMINGTON



The foregoing instrument was acknowledged before me this 27th day of February, 2003 by Kathleen A. Eagen, Town Manager, Town of Farmington, County of Hartford and State of Connecticut.

Thomas Boyko
~~Commissioner of the Superior Court~~
Notary Public
My Commission Expires 2/5 10/31/07

The foregoing Conservation Easement is accepted this 15th day of May, 2003 by David K. Lefl, Deputy Commissioner, Department of Environmental Protection, Pursuant to Connecticut General Statute 7-131d(e).

STATE OF CONNECTICUT

WITNESS

Signature

Name in print

David K. Lefl 5/15/03
Date

Jill Carr
Name

Deputy Commissioner
Department of Environmental Protection

DAVID D. STUBBS
Name

STATE OF CONNECTICUT)
COUNTY OF HARTFORD)

SS. CITY OF HARTFORD



The foregoing instrument was acknowledged before me this 15th day of May, 2003, by David K. Lefl, Deputy Commissioner, Department of Environmental Protection, State of Connecticut for the State of Connecticut.

John N. Eberly
~~Commissioner of the Superior Court~~
Notary Public
JOHN N. EBERLY
My Commission Expires AUG 31, 2005

STATUTORY AUTHORITY
Connecticut General Statutes
Section 7-131d(e)

APPROVED AS TO FORM
Richard Blumenthal
Attorney General
William B. Gundling
By: William B. Gundling
Associate Attorney General
6/11/03

SCHEDULE A

The land upon which permanent conservation will be placed by the Town of Farmington is described further by means of the following property description.

A certain piece or parcel of land with improvements thereon located on the westerly side of Town Farm Road in the Town of Farmington, County of Hartford, State of Connecticut and being more particularly shown as Parcel B on a map entitled, "Resurvey Map Land owned by Fisher Family Properties Town Farm Road Farmington, Connecticut Scale 1"=120' August 2001 Hodge Surveying Associates, P. C." Francis A. Richard, L.S. Said piece or parcel of land contains 47.059 Acres and is more particularly bounded and described as follows:

Beginning at a point located on the westerly highway line of Town Farm Road said point marking the northeasterly corner of the land herein described and the southeasterly corner of Lot 27 as shown on the above referred to map, said point being located one hundred twenty-seven and seventy-two hundredths (127.72) feet northerly of a highway monument; thence running in a general southerly direction on a curve to the right having a radius of one thousand eight hundred twenty-seven and sixty-seven hundredths (1827.67) feet for a distance of one hundred twenty-seven and seventy-two hundredths (127.72) feet to a highway monument; thence running S 07° 58' 54" W three hundred seventy-one and nine hundredths (371.09) feet to a point; thence running in a general southerly direction on a curve to the left having a radius of two thousand thirty and twenty-two hundredths (2030.22) feet for a distance of four hundred three and sixty-five hundredths (403.65) feet to a point; thence running S 03° 24' 36" E three hundred nineteen and thirty-five hundredths (319.35) feet to a highway monument; thence running in a general southerly direction on a curve to the right having a radius of one thousand four hundred ninety-three and four hundredths (1493.04) feet for a distance of eighty-five and twenty-one hundredths (85.21) feet to a point marking the northeasterly corner of land now or formerly Loren S. & Wendy M. Chase; thence S 80° 47' 19" W seven hundred twenty-seven and thirty-three hundredths (727.33) feet to a point marking the southeasterly corner of land now or formerly Barbara K. Johansen; thence N 17° 03' 17" W two thousand five hundred fifty-two and seventy-one hundredths (2552.71) feet to a Town line monument; thence running S 80° 28' 08" E along the Avon/Farmington Town line seven hundred sixty and fifty hundredths (760.50) feet to a point; thence running S 81° 15' 07" E one hundred twenty four and sixty-one hundredths (124.61) feet to a point marking the northwesterly corner of Lot 27 as shown on the above referred to map; thence running S 04° 11' 45" W one hundred fifty and twelve hundredths (150.12) feet to a point; thence running S 04° 20' 01" E fifty-four and thirty hundredths (54.30) feet to a point; thence running S 12° 43' 44" E forty-five and ninety hundredths (45.90) feet to a point; thence running S 16° 59' 22" E sixty-three and forty-nine hundredths (63.49) feet to a point; thence running S 20° 43' 40" E seventy and ninety-one hundredths (70.91) feet to a point; thence running S 82° 20' 13" W two hundred fifty-eight and twenty-four hundredths (258.24) feet to a point; thence running S 16° 56' 05" E two hundred forty-five and thirty hundredths (245.30) feet to a point; thence running N 71° 55' 08" E two hundred fifty-seven and fifty-one hundredths (257.51) feet to a point; thence running S 18° 03' 07" E thirty-eight and thirty hundredths (38.30) feet to a point; thence running N 81° 35' 33" E one hundred eighty-one and thirty-five hundredths (181.35) feet to a point; thence running S 61° 07' 02" E eighty-one and eighty-three hundredths (81.83) feet to a point; thence running S 41° 30' 35" E ninety-eight and forty-four hundredths (98.44) feet to a point; thence running S 25° 47' 45" E two hundred sixty-two and eighty-seven hundredths (262.87) feet to a point; thence running N 65° 35' 33" E one hundred five and sixty-two hundredths (105.62) feet to point of beginning.

Being bounded Northerly by the Avon/Farmington Town Line; Easterly, Northeasterly and Northerly by Lot 27; Easterly again by Town Farm Road; Southerly by land now or formerly of Loren S. & Wendy M. Chase and land now or formerly of Lee D. Pollock, in part by each; Westerly by land now or formerly of Barbara K. Johansen, land now or formerly of Peter Santagata, land now or formerly of James D. & Dorothy L. Gavalis, land now or formerly of Peter J. & Leonardo L. Bakof, land now or formerly Joseph R. & Kathleen E. Ornelas, land now or formerly Bruce L. & Suzanne J. Polsky, land now or formerly of Katrin Doane Goldfarb, land now or formerly of Peter L. & Lisa S. Fishman, land now or formerly of Susan R. Edelson, land now or formerly of Patricia A. McHugh, land now or formerly of Linda Powers Tomasso, land now or formerly of Richard F. & Julia D. Webb, land now or formerly of Frank J. & Joni D. Zaika, and land now or formerly of Susan L. Renert, in part by each.

Said property is subject to the following:

1. Eject, if any, of a right of way from E.W. Tiltonson and H.W. Tiltonson to American Telephone and Telegraph Company dated September 4 1904 and recorded in Volume 73 at Page 571 of the Farmington Land Records.
2. Slope rights granted the Town of Farmington in a Quit Claim from Staber Realty, Incorporated dated June 21, 1955 and recorded in Volume 124 at Page 138 of the Farmington Land Records.
3. Rights of others in and to the "Feeder Canal" and "Old Farmington Canal" as the same are shown on a map entitled "Map of Staber Old Farms Owned by Staber Realty Inc. Avon & Farmington Connecticut Scale 1"=200' June 1955" which map is recorded in the Office of the Farmington Town Clerk in Map Book 49 of Page 5 through 5C.
4. Agreement restricting use of property contained in a Warranty Deed from Stanley D. Fisher, Linda N. Fisher, Trustee, Stanley D. Fisher, Trustee, Diane Fisher and Louis Wawrzynowicz to Macy H. Battalini dated November 3, 1967 and recorded in Volume 186 at page 358 of the Farmington Land Records.
5. Notes and conditions shown on a map entitled "Resurvey Map Land Owned by Fisher Family Properties Town Farm Road Farmington, Connecticut Scale 1"=120' August 2001" prepared by Hodge Surveying Associates, P.C. filed with the Farmington Town Clerk on September 28, 2001 at 3:01 p.m. as Map 5283 in Cabinet 72.
6. Parcel B is subject to an easement in favor of Parcel A, as shown on the referenced map, for use, access, repair and maintenance of water pipes and related.

RECEIVED 10-30-23 AT 11:31 A.M.
RECORDED BY Paula B. Ray, PHD
TOWN CLERK