

## CONSERVATION RESTRICTION AGREEMENT

This Conservation Restriction Agreement is made by and between Richard W. Carroll of King George, Virginia and Lynn Rae Carroll of Albuquerque, New Mexico, hereinafter referred to as the Grantors, and the Cheshire Land Trust, Inc., a nonprofit Connecticut corporation having its principal place of business at Cheshire, Connecticut, hereinafter referred to as the Grantee. The following Conservation Restriction is granted in accordance with Connecticut General Statutes Sections 47-42a through 47-42c.

### I. PRELIMINARY STATEMENT

- A. The Grantors are owners of a certain parcel of land consisting of approximately 12.6 acres located on the east side of South Brooksvale Road in the Town of Cheshire, Country of New Haven, and State of Connecticut, which parcel is more particularly described in Schedule A which is attached hereto and made part hereof, and is shown as Areas "A," "B," and "C" on a survey map entitled "-----  
-----" A photo-reduced copy of this "Conservation Restriction Map" is attached hereto as Exhibit A and made part hereof. The original map is recorded as map # ----- at the Cheshire, Connecticut Town Clerk's Office.
- B. The Grantors wish to grant a Conservation Restriction on the parcel referred to in Paragraph A above (hereinafter the "Property").
- C. Most of the Property consists of open space land; primarily woods, brooks, overgrown fields, plants of various types, and wetlands at the perimeter. According to the *Soil Survey of New Haven County*, most of the soils on the Property are nearly level to gently sloping silt loams that are highly favorable for agriculture. The property has been utilized for agricultural farming, raising turkey and chicken and raising cattle and horses.
- D. The Property has been owned by the same family since 1944. Before this, the property was used as a hunting ground and rural retreat for many Yale University professors.
- E. The Property is seen regularly and frequently by the public from its frontage along South Brooksvale Road. This unspoiled landscape is unusual because of the rapid conversion of rural scenery, farmland, and open space in the region to residential development.
- F. The brook passing through the Property originates at Bethany Mountain, as part of the Town of Bethany, Connecticut Aquifer, and a portion of the brook and its associated wetlands are regulated as protected wetland areas under the *Inland Wetlands and Watercourses Regulations of the Town of Cheshire*.
- G. Restriction of the Property will help to protect the general visual appearance of the Town of Cheshire, one of the stated purposes of the *Zoning Regulations, Town of Cheshire, Connecticut*, Section 11.5.
- H. This conservation Restriction is in furtherance of the following clearly delineated Town, State, and Federal policies.
1. In 1977, the Town of Cheshire adopted an official *Plan of Development* which has as explicit community goals, among others:

- To maintain the unique character of the Town which has been achieved over time and which should be preserved and enhanced;
  - To strike a balance between man and nature...so that areas to be used for development of any type are in harmony with the environment, taking special care in using our limited natural resource land;
  - To provide for the preservation, acquisition, and development of lands, necessary for the recreational and open space needs of the Town of Cheshire in appropriate locations; and
  - To encourage the conservation and retention in active production of the prime agricultural lands in the Town.
2. The *Plan of Development* specifically states that "...tilled fields, pastures, and hayfields lend charm and serenity to our suburban environment while providing a valuable link to our past. Once these are developed, they are lost forever." ("Physical Features and Environmental Considerations Chapter")
  3. The "Recreation/Open Space Plan Chapter" (1975) of the *Plan of Development* recommends the protection of significant open space and "The preservation of significant natural and manmade features and scenic views."
  4. In 1963, the Connecticut General Assembly, in enacting a program of property tax relief for farmland, declared "that it is in the public interest to encourage the preservation of farmland, forest land and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the state, to conserve the state's natural resources and to provide for the welfare and happiness of the inhabitants of the state" (P.A. 490, 1; C.G.S. Section 12-107a). The Property is being farmed and is assessed for local taxation as farmland in accordance with P.A. 490.
  5. In 1971, the Connecticut General Assembly passed Public Act 173 (C.G.S. Sections 47-42a through 47-42c) that authorizes the creation and enforcement of conservation restrictions, "whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural farming, forest or open space use." It is the purpose of this Conservation Restriction Agreement to fulfill the conservation purposes of C.G.S. 47-42a.
  6. In 1978, the Connecticut General Assembly found that unless there is a statewide agricultural preservation program, "remaining agricultural land will be lost to succeeding generations and that the conservation of certain arable agricultural land and adjacent pastures, woods, natural drainage areas and open space areas is vital for the well-being of the people of Connecticut." As a consequence of the General Assembly enacted in the state program for the preservation of agricultural lands through the purchase of development rights (P.A. 78-232; C.G.S. Chapter 422a, Section 22-26aa through 22-26ii).
  7. In 1981, the Congress of the United States adopted the Farmland Protection Policy Act, P.L. 97-98, Title XV, Subtitle I, Sections 1539, et seq., 7 U.S.C. Sections 4201, et seq., declaring it national policy "to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and provide programs and policies to protect farmland."

- I. Despite the governmental policies enumerated above, the Property lies in an area subject to heavy development pressures that threaten the open, rural, scenic, and agricultural nature of the area. The construction of Interstate 84 and the improvement of State Route 8 to interstate standards have made the Town of Cheshire into a “bedroom community” for the metropolitan areas of New Haven, Waterbury, Hartford, and Bridgeport. As a result, land prices have risen dramatically in the past ten years, placing development pressure on farmland and open space land.
- J. The Cheshire Land Trust, Inc., the Grantee, a nonprofit, tax-exempt corporation organized and existing under the laws of the State of Connecticut, is a tax-exempt corporation organized and existing under the laws of the state of Connecticut, is a tax-exempt charitable organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (“the Code”), and is a “qualified organization” under Section 170(h) of the Code. The purposes of the Land Trust include “the preservation of natural resources of the State of Connecticut, including water resources, marshland, swamp, woodland, and open spaces, and to the plant and animal life therein and the preservation of unique historic and scenic sites.” To carry out its purposes, the Land Trust has the power to acquire real property and interests in real property, as well as the legal power and financial ability to enforce conservation restrictions granted to it.
- K. The Grantee has determined that acquisition of a Conservation Restriction on the Property will promote its charitable purposes of protecting areas of rural, scenic, agricultural, watershed, and natural resource value in the Town of Cheshire.
- L. The Grantors share the land conservation goals of the Grantee and desire to ensure that the rural, scenic, agricultural, and ecological characteristics of the property will be preserved for the benefit of future generations.
- M. The parties desire to preserve the character of the Property in perpetuity by entering in to a Conservation Restriction Agreement pursuant to the provisions of C.G.S. Section 47-42a.

## II. GRANT AND AGREEMENT

NOW, THEREFORE, as an absolute gift and in further consideration of the covenants, terms, and conditions hereafter set forth, the Grantors hereby grant and convey unto the Grantee and its successors and assigns, in perpetuity, a conservation restriction on, across, and over the Property, of the nature and character and to the extent hereafter set forth. In consideration of the grant of this Conservation Restriction, the Grantee hereby agrees to use its best efforts to enforce this agreement according to the intent of the parties hereto and in accordance with the following terms and conditions. All obligations, covenants, and restrictions imposed upon Grantors and all rights reserved by Grantors herein shall also apply to their personal representatives, heirs, successors, and assigns.

### A. RESTRICTIONS AND PERMITTED USES

The property may be used only as permitted by the restrictions herein. For purposes of this Conservation Restriction, different portions of the Property shall be subject to restrictions appropriate to their present and future uses. These portions of the Property are shown as Areas “A,” “B,” and “C” on the Conservation Restriction Map. Areas A, B and C may be used for passive recreation. As used herein, the term “passive recreation” shall include walking, hiking, skiing, horseback riding, fishing, and similar recreational activities that do not involve the erection of permanent structures or other disturbance to the land, animals, and vegetation thereon and shall exclude hunting and the use of motorized recreational vehicles such as snowmobiles and all-terrain vehicles. Areas A and B may be used for agricultural, horticultural, animal husbandry, equestrian, forestry, and related purposes compatible with the rural and agricultural character of the Property. **The restrictions herein shall not apply to structures pre-existing these restrictions. Said pre-existing structures may be maintained, but not further improved. When said structures meet their natural demise, they shall not be re-built.**

1. **Area A** may include the construction of one single-family dwelling having no more than 10,000 square feet of interior living space. Said dwelling shall be contained in a single structure. In addition to this dwelling, a single, multi-car detached garage containing a footprint of no more than 2,000 square feet may be constructed. Customary improvements associated with farm use, such as stables, barns, sheds, and fences, may be located, repaired, improved, or reconstructed in Area A. Nothing herein shall prevent the installation of a pool in Area A and a cabana structure ancillary thereto (having no more than 1,500 square feet of interior space). Only the single-family dwelling may contain interior living space. Area A may include a single asphalt driveway no more than 14’ in width and may contain crushed stone walkways and driveways as necessary or desired for all other outbuildings. Exterior lighting as desired may be installed in Area A.
2. **Area B** may be used for the purposes specifically allotted to it in paragraph II, A, above. No structures other than agricultural fencing, and a horse riding “ring” shall be placed in Area B, aside from a single asphalt driveway of no more than 14’ feet in width to service the single-family dwelling located in Area A. Exterior

lighting as desired may be installed in Area B. No chemical pesticides may be used in Area B.

3. **Area C** (unless otherwise stated herein) is intended for passive recreation only. Dead trees and vegetation may be removed only to allow for passive recreation. A single asphalt driveway of no more than 14' feet in width to service the single family dwelling located in Area A may be installed. No forestry or other activities not specifically stated herein shall take place in Area C. No chemical pesticides may be used in Area C. In addition to that stated herein relative to Area C, a single wooden footbridge no more than 10' in width (with concrete footings at the base only) may be constructed and maintained to cross the existing stream that crosses this area.
4. Any agricultural or land management activity on the Property shall be performed in accordance with sound agricultural and land management practices to minimize erosion and impacts on ecological systems and natural resources. In the event that forest management shall be performed on the property, it shall be performed in accordance with forestry practices and guidelines promulgated by the Society of American Foresters and the U.S. Forest Service, pursuant to a forestry plan prepared by a qualified professional forester and approved by the Grantee.
5. There shall be no dumping or accumulation of trash, garbage, or other waste, oil and its by-products, toxic materials, or other unsightly or offensive material on the Property, with the exception of agricultural and forestry products or by-products and normal household waste generated on adjoining land of the Grantors. These shall be handled in a manner consistent with public health and safety laws and regulations, as well as sound agricultural and land management practices, to protect the visual and aesthetic values of the Property, wildlife habitat, and any rare or endangered species. No pesticide, herbicide, or other chemical treatment for land, vegetation, or animals shall be used unless its use is legal, necessary for landscape management or agriculture, and not harmful to any source of drinking water.
6. All structures permitted herein shall be located and constructed to cause minimal interference with public scenic enjoyment, existing topography, vegetation, agricultural and forest productivity, and wildlife, and shall not interfere with the conservation purposes of this Conservation Restriction.
7. There shall be no residential, commercial, or industrial activities conducted on the Property except as described herein.
8. There shall be no sale or collection of wild plants for commercial purposes.

## B. RESERVED RIGHTS

1. Grantors reserve all rights with respect to the Property or any part thereof, including without limitation the right of exclusive use, possession, and enjoyment of the Property or any part thereof and the right to sell, transfer, lease, mortgage, or otherwise encumber the Property or any part thereof, as owner, subject to the restrictions and covenants set forth in this Conservation Easement. Nothing herein shall be construed as a grant to the general public of any right to enter upon

any part of the Property, nor for Grantee to identify or otherwise mark the property with signs.

### C. ADDITIONAL COVENANTS

This Conservation Restriction shall be subject to the following additional provisions.

1. This Conservation Restriction Agreement shall be deemed to be a “conservation restriction” as defined by Connecticut General Statutes, Section 47-42a. The parties hereto agree that monetary damages would not be an adequate remedy for breach of any of these terms, conditions, or restrictions, and therefore, in the event that the Grantors violate or breach any of these terms, conditions, or restrictions, the Grantee, or its successors or assigns, may, after notice to the Grantors addressed to them at their last known post office address, institute a suit to enjoin such violation by *ex parte*, temporary or permanent injunction, and to require the restoration of the Property to its condition at the date of the conveyance of the property interests conferred by this Conservation Restriction. The Grantee shall also have the right to enforce by action at law or in equity the restrictions and covenants herein contained. All reasonable costs incurred by the Grantee, its successors and assigns, to enforce the restrictions and covenants contained herein, including attorneys’ fees and costs of repair and restoration of the land to its open space character, shall be charged to the Grantors against whom a judgment is entered by a court of competent jurisdiction. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantors for any changes in the Property due to causes beyond the Grantors’ control, such as changes caused by fire, floods, storm, or the unauthorized wrongful acts of third persons. Any delay by the Grantee in enforcement of any restriction or right under this instrument shall not constitute a waiver of such restriction or right, and the Grantors hereby waive any defense of laches with respect to any delay by the Grantee, its successors, or assigns, in acting to enforce any restriction or exercise any right under this instrument.
2. The Grantors shall notify the Grantee in writing prior to exercising any reserved right, which may have an adverse impact on the conservation interests associated with the property interest conveyed by this Conservation Restriction.
3. The Grantee, its representative, designee, successor, or assigns, shall have the right to enter the Property, at reasonable times with reasonable notice, two times per year for the purpose of inspecting said property to determine if the Grantors are complying with the terms, conditions, restrictions, and purposes of this instrument. The Grantee shall inspect the Property at least once per year.
4. The Grantee may assign its rights under this instrument to any State or Federal agency charged with responsibility for conservation of natural or farm areas, or to a nonprofit, tax exempt conservation organization, provided that, at the time of such transfer or assignment, the transferee or assignee is a “qualified organization” as defined in Section 170(h)(3) or any successor provision of the Internal Revenue Code of the United States, and further provided that any such transfer or assignment shall require as a condition that the conservation purposes

of this Conservation Restriction Agreement continue to be carried out. If any assignee is dissolved, or abandons this Agreement or the rights of enforcement herein set forth, the rights of enforcement and all other rights created under this instrument shall revert to the Grantee.

5. If at any time it becomes impossible for the Grantee, its successors or assigns to ensure compliance with the restrictions and covenants contained herein, or if the Grantee shall cease to exist, its rights and duties hereunder shall become vested in another entity having similar purposes, qualifications, and capabilities to which such rights and duties may be awarded by a court of competent jurisdiction under doctrine of *cy pres* or similar exercise of equity jurisdiction, provided that at the time of such acceptance or award such entity is a qualified organization as described in Section 170(h)(3) of the Internal Revenue Code.
6. The Grantors further agree to hold the Grantee harmless against, and to indemnify it for, any liability resulting from injury to persons or damage to property arising out of any act or omission with respect to the use of the Property, lawful or otherwise, by any person, except for injury or damage proximately caused by the negligent or intentional acts of the Grantee or its agents.
7. If any provision of this Agreement or the covenants and restrictions contained herein shall be held to be unenforceable by a court of competent jurisdiction, this instrument shall be construed as if such provision had not been included herein. If any provision hereof is ambiguous or shall be subject to two or more interpretations, one or more of which would render such provision invalid or inconsistent with the conservation purposes of this Agreement, then such provision shall be given the interpretation that would render it valid and would be consistent with the conservation purposes of this instrument and with the requirements of Section 170(h)(3) of the Internal Revenue Code.
8. If a subsequent, unexpected change in the conditions of or surrounding the Property make impossible the continued use of the Property for the conservation purposes of this instrument, the restrictions hereby imposed by this instrument may be extinguished by judicial proceedings in a court of competent jurisdiction initiated jointly by mutual consent of the Grantors or their successors in interest and the Grantee or its successors in interests, provided that the proceeds of any subsequent sale or exchange of the property or any portion thereof shall be divided between the Grantors and the Grantee, or their respective successors, in proportion to the values of their respective rights in the Property in accordance with the terms of this Paragraph. The Grantors and the Grantee agree that the donation of this Conservation Restriction gives rise for purposes of this Paragraph to a property right, immediately vested in the Grantee with a fair market value that is at least equal to the proportionate value of this Conservation Restriction, determined at the time of the gift, in relation to the total value of the Property at that time. Such proportionate value of the Grantee's property right shall remain constant. If any change in conditions ever gives rise to extinguish or other release the Conservation Restriction under applicable law, then the Grantee, on a subsequent sale, exchange, or involuntary conversion of the Property, shall be entitled to a portion of the proceeds equal to such proportionate value; subject, however, to any applicable law which expressly provides for a different

disposition of proceeds. The Grantee shall use its share of such proceeds in a manner consistent with the conservation purposes of this instrument. Whenever all or part of the property or any interest is taken by public authority under power of eminent domain, or if all or any part of this Conservation Restriction is otherwise extinguished by act of public authority, then the Grantors and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All relates expenses incurred by the Grantors and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantors and the Grantee in shares equal to such proportionate value. The Grantee shall use it share of the proceeds in a manner consistent with the conservation purposes of this instrument.

9. The restrictions set forth herein shall run with the land in perpetuity and bind the Grantors, their personal representatives, heirs, successors, and assigns. The term "Grantors" shall apply to the Grantors, their personal representatives, heirs, successors, and assigns throughout Part II, Grant and Agreement, of this Conservation Restriction. The Grantors agree to incorporate the terms, conditions, restrictions, and purposes of this Agreement in any subsequent deed or other legal instrument by which they divest themselves of either fee simple title to, or their possessory interest in, the Property or any portion thereof. Such incorporation may be by reference to this Agreement as recorded in the Town of Cheshire Land Records.

10. The Grantors and Grantee hereby agree that the obligation to pay any real estate taxes or assessments levied by competent authorities on the Property and the obligation to maintain and insure the Property shall remain the responsibility of the Grantors herein, and not the responsibility of the Grantee or its successors and assigns.

On this the \_\_\_\_ day of February, 2002, the undersigned have hereunto set their hands and seals.

\_\_\_\_\_  
Lynn Rae Carroll, Grantor

\_\_\_\_\_  
Richard W. Carroll, Grantor

*Witnesses as to Lynn Rae Carroll and Richard W. Carroll:*

\_\_\_\_\_  
Signature  
Print Name\_\_\_\_\_

\_\_\_\_\_  
Signature  
Print Name\_\_\_\_\_

