

**DEED OF CONSERVATION RESTRICTION**

This **DEED OF CONSERVATION RESTRICTION** made this 6<sup>th</sup> day of July 1999, by and between **The Nature Conservancy of Connecticut, Inc.**, a Connecticut nonprofit corporation, having its headquarters at 55 High Street, Middletown; Connecticut 06457, hereinafter called the Grantor, and **The Berlin Land Trust**, a Connecticut nonprofit corporation, having its headquarters at P.O. Box 8278, Berlin, Connecticut 06037, hereinafter called Grantee.

## WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property, hereinafter called the "Protected Property," which has ecological, scientific, educational and aesthetic value in its' present state as a natural area which has not been subject to development or exploitation, which property is located in the Town of Southington, County of Hartford, Connecticut, and is more particularly described in Exhibit A attached hereto and incorporated by this reference.

WHEREAS, Grantee is a tax-exempt public charity under Sections 501( c)(3) and 509(a)(1) of the Internal Revenue Code, qualified under Section 170(b) of the Internal

Revenue Code to receive qualified conservation contributions, whose purpose is to preserve natural areas for scientific, charitable, educational and aesthetic purposes; and

WHEREAS, the Protected Property is a significant natural area which qualifies as a "... relatively natural habitat of fish, wildlife, or plants or similar ecosystem" as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder; specifically the Protected Property is part of a traprock ridge system, a unique natural community;

WHEREAS, the Protected Property is for the scenic enjoyment and recreational use by the general public and will yield a significant public benefit;

WHEREAS, the specific conservation values of the Property are documented in an Easement Documentation Report, prepared by Grantee (in conjunction with and approved by Ragged Mountain Foundation, Inc., a Connecticut nonprofit corporation currently managing the Protected Property) and signed and acknowledged by the Grantor, establishing the baseline condition of the Protected Property at the time of this grant and including reports, maps, photographs, and other documentation; and

WHEREAS, the Grantor and Grantee have the common purpose of conserving the above-described conservation values of the Protected Property in perpetuity; and

WHEREAS, the State of Connecticut has authorized the creation of Conservation Restrictions pursuant to Connecticut General Statutes, Sections 47-42a through 47-42c,

and Grantor and Grantee wish to avail themselves of the provisions of that law;

NOW, THEREFORE, the Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained and as an absolute and unconditional gift, does hereby give, grant, bargain, sell and convey unto the Grantee a Conservation Restriction in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth.

1. Purpose. It is the purpose of this Conservation Restriction to assure that the Protected Property will be retained forever predominantly in its natural, scenic condition, to preserve the recreational uses currently enjoyed thereon and permitted under this Conservation Restriction, to protect rare plants, animals, or plant communities on the Protected Property, and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values or interests of the Protected Property described above. Grantor intends that this Conservation Restriction will confine the use of the Protected Property to such activities as are consistent with the purpose of this Conservation Restriction.

2. Prohibited Uses. Any activity on or use of the Protected Property inconsistent with the purpose of this Conservation Restriction is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited except as provided in paragraph 3 below or as otherwise deemed not inconsistent with the conservation values of the Protected Property and permitted by

Grantee in accordance with Section 4.4 below:

2.1 Except as mutually agreed upon by Grantor and Grantee, and otherwise not inconsistent with the conservation values set forth herein, there shall be no constructing or placing of any building, tennis or other recreational court, landing strip, mobile home, swimming pool, fence or sign (other than those fences or signs required by Grantor for appropriate management), asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, sodium vapor light or any other temporary or permanent structure or facility on or above the premises.

2.2 There shall be no ditching, draining, diking, filling, excavating, dredging, mining, drilling, or building of roads; no removal of topsoil, sand, gravel, rock, minerals or other natural materials, and no change in the topography of the land in any manner which is inconsistent with the conservation purposes set forth herein, except that Grantor shall have the right to use any such materials on the Protected Property for permitted on-site uses.

2.3 There shall be no removal, destruction, or cutting of trees, shrubs or plants; no removal or harming of native animals; no introduction of nonnative trees, shrubs, plants or animals (including grazing and domestic animals); no use of fertilizers; and no disturbing of or changing the natural habitat in any manner on the Protected Property.

2.4 There shall be no use of pesticides or biocides, including but not limited to

insecticides, fungicides, rodenticides, and herbicides, and no use of devices commonly known as "bug-zappers".

2.5 Except for day-use trash receptacles, there shall be no storage or dumping of ashes, trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks in, on, or under the Protected Property; there shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on the Protected Property or on adjacent property if owned by Grantor which could cause erosion or siltation on the Protected Property. Grantor shall remove trash from any trash receptacles on the Protected Property.

2.6 There shall be no pollution, alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall there be activities conducted on the Protected Property or on adjacent property if owned by Grantor, which would be detrimental to water purity, or which could alter natural water level and/or flow in or over the Protected Property.

2.7 There shall be no horsebackriding, .and no operation of mountain or other bicycles, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, hang gliders, aircraft, jet skis, motorized boats or any other types of mechanized vehicles.

2.8 There shall be no parking of motorized vehicles on the Protected Property

except for land management purposes. There shall be no construction of a parking lot, of any size, on the Protected Property.

2.9 There shall be no use of bolts for rock climbing on the Protected Property, except as provided in 3.6.

2.10 There shall be no commercial use of the Protected Property, except that guided tours and classes for which fees are charged shall be permitted, provided that such tours and classes shall be limited to no more than six persons at any one time. Any such commercial use shall be subject to local, state and federal regulations.

2.11 The Protected Property may not be divided, partitioned, or subdivided, nor conveyed except in its current configuration as an entity.

2.12 The Protected Property and any portion thereof shall not be included as part of the gross area of other property riot subject to this Conservation Restriction for the purposes of determining density, lot coverage, or open space requirement under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by this Conservation Restriction shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise; provided, however, that with prior written permission of the Grantee, this paragraph shall not preclude such transfer of development rights resulting from the

destruction or demolition of any existing residential building on the Protected Property.

3. Grantor's Reserved Rights. The Grantor hereby reserves the following rights, which rights may be exercised by Grantor without the consent of Grantee unless expressly required herein:

3.1 The right to undertake or continue any activity or use of the Protected Property not prohibited by this Conservation Restriction.

3.2 The right to construct, maintain, repair and replace bulletin boards and kiosks as determined by Grantor to be necessary or desirable for management and information purposes.

3.3 The right to maintain all existing trails on the Protected Property, and, in the event that all existing access trails to the rock-climbing areas located on the Protected Property become unusable, the right to construct and maintain a new trail providing equivalent access to such areas. All other construction of new trails shall be subject to the consent provisions of subsection 4.4.

3.4 The right to sell, give, mortgage, lease or otherwise convey the Protected Property, provided such conveyance is subject to the terms of this Conservation Restriction and written notice is provided to Grantee in accordance with paragraph 17.6 below. Grantor hereby notifies Grantee of its intended transfer of the Protected Property to the Ragged Mountain Foundation, Inc.

3.5 The right to plant and otherwise grow, trim and maintain native trees and plants, and to cut and remove diseased trees, shrubs or plants and to cut firebreaks; provided however that prior to the performance of any material landscaping, Grantor shall provide Grantee with written notice of the plans for such landscaping and Grantee shall have the right to submit comments to Grantor regarding such plans. Grantor agrees to consider in good faith any comments submitted by Grantee prior to performing any material landscaping projects. Grantor shall not be obligated to provide Grantee with prior notice of plans for emergency firebreaks.

3.6 The right to take action necessary to prevent the erosion of any slope on the Protected Property, and to protect public health and safety, including the replacement of bolts previously placed on the climbing routes located on the Protected Property.

3.7 The right to use and allow the Protected Property to be used for hiking, rock climbing, walking, nature study and other similar activities, directly incidental to the recreational or other uses of the Property expressly permitted hereunder; provided, however, that except as specifically permitted in this Section 3 , no additional improvements may be constructed in connection with the uses permitted under this paragraph.

4. Grantee's Rights. To accomplish the purpose of this Conservation Restriction, the following rights are conveyed to Grantee by this Conservation

Restriction:

4.1 Preservation of Conservation Values. The right to preserve and protect the conservation values of the Protected Property.

4.2 Right of Entry. The right to enter the Protected Property at all reasonable times and with prior notice and, if necessary, across other lands retained by the Grantor, for the purposes of: (a) inspecting the Protected Property to determine if the Grantor is complying with the covenants and purposes of this Conservation Restriction; (b) enforcing the terms of this Conservation Restriction; (c) taking any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof; and (d) making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by the Grantor.

4.3 Enforcement. The right to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Conservation Restriction and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use pursuant to paragraph 9.

4.4 Discretionary Consent. Grantee's consent for activities otherwise prohibited under paragraph 2 above, or for any activities requiring Grantee's consent under paragraph 3 above, may be given under the following conditions and

circumstances. Grantor shall submit a written proposal for such activities to Grantee in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Conservation Restriction, and Grantee shall have 90 days after receipt of Grantor's proposal in which to respond to Grantor in writing. If Grantee fails to respond in writing (which response shall include reasons for denial of Grantee's consent in the event Grantee's consent is denied) within such 90-day period, Grantee's consent shall be deemed given. Grantee shall use reasonable discretion in its evaluation of Grantor's proposal and Grantee may give permission for such activities, subject to the limitations herein, only if it determines, in its reasonable discretion, that such activities (1) do not violate the purpose of this Conservation Restriction and (2) either enhance or do not impair any significant conservation interests associated with the Protected Property. Notwithstanding the foregoing, the Grantee and Grantor have no right or power to agree to any activities that would result *in* the termination of this Conservation Restriction or to allow any residential, commercial or industrial structures or any commercial or industrial activities not provided for above.

5. Access. Grantor agrees that the property shall remain open to the general public for recreational purposes subject to reasonable restrictions on the use of the Protected Property as may be necessary or desirable to protect its conservation values.

6. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and

maintenance of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage, Grantor shall keep the Grantee's interests in the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor.

Grantor agrees to release, hold harmless, defend and indemnify Grantee from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which Grantee may suffer or incur as a result of or arising out of the activities of Grantor or third parties on the Protected Property. Grantee agrees to release, hold harmless, defend and indemnify Grantor from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which Grantor may suffer or incur as a result of or arising out of the activities of Grantee on the Protected Property.

7. Taxes. The Grantor agrees to pay any real estate taxes or other assessments (collectively, "Taxes") levied on the Protected Property. If the Grantor fails to pay any Taxes when due and is not contesting such Taxes in good faith, such that a lien created against the land is to be executed upon, the Grantee shall have the right but not the obligation, 30 days after written notice to the Grantor, to (a) purchase and acquire the Grantor's interest in the Protected Property by paying funds to discharge the lien or delinquent Taxes, or (b) take such actions as may be necessary to protect the Grantee's interest in the Protected Property and to assure the continued enforceability of

this Conservation Restriction.

8. Title. The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Protected Property in fee simple and has good right to grant and convey the aforesaid Conservation Restriction; that the Protected Property is free of any mortgages not subordinated to this Conservation Restriction, and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Restriction.

9. Remedies. If either Grantee or Grantor (as applicable, the "Non-Defaulting Party") has reason to believe the other party (the "Defaulting Party") has breached any of its obligations under this Deed, the Non-Defaulting Party shall immediately notify the Defaulting Party in writing of the nature of the alleged violation. Upon receipt of this written notice, the Defaulting Party shall either (a) cure such, or (b) provide a written explanation to the Non-Defaulting Party of the reason why the alleged breach should be permitted. If the explanation described in clause (b) above is provided, or the breach cannot be cured within a reasonable time period, both parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. The Defaulting Party shall discontinue any activity which could increase or expand the alleged breach during the mediation process. Should mediation fail to resolve the dispute within 90 days of the Non-Defaulting Party's notice

to the Defaulting Party of the alleged breach, the parties may take appropriate legal action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, the Non-Defaulting Party may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction to require the Defaulting Party to restore the Protected Property to its condition prior to the breach. If either party commences any legal action to enforce this Conservation Restriction, any reasonable costs incurred by the prevailing party in such action in connection with enforcing the terms of this Conservation Restriction, including, without limitation, any reasonable costs of suit and reasonable attorneys' fees, shall be borne by the non-prevailing party.

9.1 Emergency Enforcement. If a Non-Defaulting Party, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the property, such Non-Defaulting Party may pursue its remedies under this paragraph with notice to the Defaulting Party, however without waiting for the period for cure to expire.

9.2 Failure to Act or Delay. Neither Grantor nor Grantee waives or forfeits the right to take action as may be necessary to insure compliance with this Conservation Restriction by any prior failure to act and both Grantor and Grantee hereby waive any defense of laches with respect to any delay by the other party, or its successors or assigns, in acting to enforce or exercise any rights under this Conservation Restriction.

9.3 Violations Due to Causes Beyond Grantor's Control. Nothing herein shall

be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm, earthquake or unauthorized wrongful acts of third persons. In the event of violations of this Conservation Restriction caused by unauthorized wrongful acts<sup>1</sup> of third persons, at Grantee's option, Grantor agrees to assign its right of action to Grantee, to join in any suit, and/or to appoint Grantee its attorney-in-fact for the purposes of pursuing enforcement action.

10. Parties Subject to Conservation Restriction. The covenants agreed to and the terms, conditions, and restrictions imposed by this grant shall not only be binding upon the Grantor but also its lessees, agents, personal representatives, successors and assigns, and all other successors to Grantor in interest and shall continue at a servitude running in perpetuity with the Protected Property.

11. Subsequent Transfers. Upon any transfer of the Protected Property by Grantor, the transferee shall be deemed "Grantor" for all purposes hereunder.

12. Merger. The Grantor and Grantee agree that the terms of this Conservation Restriction shall survive any merger of the fee and easement interest in the Protected Property.

13. Assignment. The parties hereto recognize and agree that the benefits of this Conservation Restriction are in gross and assignable. Grantee may transfer or assign

the Protected Property to a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code; provided, however, that any such transfer or assignment shall be subject to the prior written approval of The Nature Conservancy of Connecticut, Inc. Grantee further covenants and agrees that the terms of any transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the contribution was originally intended to advance, and shall be deemed "Grantee" for all purposes hereunder.

14. Amendment. In the event that the property is affected by unusual and unforeseen circumstances and conditions, Grantor and Grantee by mutual consent may amend this Conservation Restriction; provided that the amendment is not inconsistent with the conservation purpose of this Conservation Restriction; will not result in a net degradation of the conservation values of the property; will not affect the enforceability of the easement; and is accomplished in compliance with any applicable state statute and with Section 170(b) of the Internal Revenue Code of 1954. Any such amendment shall be recorded in the official records where the Protected Property is located.

15. Extinguishment. If a change in conditions takes place which makes impossible or impractical any continued protection of the Protected Property for

conservation purposes, and the restrictions contained herein are extinguished by judicial proceeding, the Grantee, upon a subsequent sale, exchange or involuntary conversion of the Protected Property, shall be entitled to 50% of the proceeds. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in and defined under P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder.

16. Eminent Domain. Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Restriction, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of the Grantee's and Grantor's interests (as stated in Section 15 above), and Grantee's proceeds shall be used as specified above. All expenses incurred by the Grantor and the Grantee in such action shall be paid out of the recovered proceeds.

17. Miscellaneous Provisions.

17.1 Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Restriction 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.

17.2 Successors and Assigns. The term "Grantor" shall include the Grantor and Grantor's heirs, executors, administrators, successors and assigns and shall also mean the masculine, feminine, corporate, singular or plural form of the word as needed in the context of its use. The term "Grantee" shall include The Berlin Land Trust and its successors and assigns.

17.3 Re-recording. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; for such purpose, the Grantor appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any necessary instrument on its behalf without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.

17.4 Captions. The captions herein have been inserted solely for convenience of reference and are not a part of this Conservation Restriction and shall have no effect upon construction or interpretation.

17.5 Counterparts. The parties may execute this instrument in two or more counterparts, which shall in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall

be controlling.

17.6 Notices. Any notices required in this Conservation Restriction shall be sent by registered or certified mail to the following address or such address as may be hereafter specified by notice in writing: Grantor: The Nature Conservancy of Connecticut, Inc., 55 High Street, Middletown, Connecticut 06457. Grantee: The Berlin Land Trust, P.O. Box 8278, Berlin, Connecticut 06037.

18. The Nature Conservancy's Right to Obtain Grantee's Interest in this Conservation Restriction. In the event that The Nature Conservancy of Connecticut, Inc. ("Conservancy") conveys the fee interest in the Protected Property prior to the date which is two years from the date hereof, the Conservancy reserves the right, but not the obligation, within said two year period, to succeed to the Grantee's interest in this conservation restriction. In order to effectuate the vesting of such interest (if so elected by the Conservancy, in its sole discretion), the Conservancy shall record an affidavit with the Town Clerk of the Town of Southington, which shall state that said affidavit is made pursuant to the terms and conditions of this Section; and that the Grantee's interest in this Restriction has vested in the Conservancy. If the Conservancy does not record such an affidavit by the date which is two years from the date hereof, the Conservancy's rights reserved in this Section shall terminate. The rights reserved by the Conservancy in this section shall not run to the Conservancy's successors and assigns.

**TO HAVE AND HOLD** the said Conservation Restriction unto the said Grantee forever.

**IN WITNESS WHEREOF**, Grantor has executed and delivered this Deed of Conservation Restriction as of the date first set forth above.

**THE NATURE CONSERVANCY OF CONNECTICUT, INC.**

By: Denise Schlener  
Name: Denise Schlener  
Title: Executive Director

Acknowledged and Accepted this 9<sup>th</sup> day of July 1999,  
for the benefit of:

**THE BERLIN LAND TRUST**

By: Dennis Kern  
Name: Dennis Kern  
Title: President