

CONSERVATION RESTRICTION
(Grassi 71.06 Acres)

This **DEED OF CONSERVATION RESTRICTION** made this 20th day of April, 2001, by and between **Anthony P. Grassi** and **Sally S. Grassi** of Wilton, Connecticut, hereinafter called the "Grantors", and **the Town of Wilton** and **the Wilton Land Conservation Trust**, and their respective successors and assigns, hereinafter called the "Grantees" as tenants in common .

W I T N E S S E T H:

WHEREAS, the Grantors are the owners 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, which property is located in the Town of Wilton, County of Fairfield, and State of Connecticut. The Protected Property is comprised of 71.06 acres, more or less, and is more particularly described in Schedule A attached hereto and incorporated by this reference.

WHEREAS, the **Town of Wilton**, hereinafter individually called the "Town", is a governmental unit described in Section 170(b)(1)(A)(v) of the Internal Revenue Code of 1986, as amended, hereinafter referred to as the "Code", and is a qualified organization under Section 170(h) of the Code to receive qualified conservation contributions; and

WHEREAS, the **Wilton Land Conservation Trust**, the "Land Trust" having an address at P.O. Box 77, Wilton, Connecticut 06897, is a publicly-supported, tax-exempt non-profit organization and a qualified organization under 501(c)(3) and 170(h) of the Code, whose primary 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; and

WHEREAS, Fairfield County has in recent years come under increasing development pressure, and such development destroys or otherwise seriously impacts the natural resources, scenic beauty, agricultural and open and wooded character of the area; and

WHEREAS, the loss of open lands has been particularly prevalent in recent years in Fairfield County; and

WHEREAS, the Protected Property possesses significant natural, scenic and open space values of great importance to Grantors and the People of Wilton, County of Fairfield, and State of Connecticut; and

NOW, THEREFORE, the Grantors, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions, restrictions and easements herein contained and as an absolute and unconditional grant, do hereby give, grant, bargain and convey unto the Grantees 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, other than those portions constituting Reserved Residential Areas, will be retained forever predominantly in its natural, scenic, forested, or open space condition, to encourage the use of the Protected Property for agricultural purposes 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. Grantors intend 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.

2.0 Prohibited Uses. The prohibited uses and reserved rights for the Protected Property are based on Grantees' evaluation of the conservation values of the Protected Property and Grantors' goals and objectives to continue limited private use and enjoyment of the Protected Property while ensuring that the conservation values of the Protected Property are protected in perpetuity.

The Grantors and the Grantees agree that the Reserved Residential Areas, as defined in Paragraph 4.0 and more particularly shown on a map entitled "Easement Schedule "B" Prepared for Anthony Grassi, 240 Millstone Road, Wilton, Connecticut by Land-Tech Consultants, Inc. Environmental Scientists and Engineers" dated 1/23/01 and recorded on the Wilton Land Records as Map number 5267 and hereafter referred to as "Schedule B", are located in an area of the Protected Property where future lawfully permitted activities, improvements, or disturbance will generally pose no threat to and are not inconsistent with the conservation values of the Protected Property or the Purpose of this Conservation Restriction.

Any division of the Protected Property or any division of the title to the Protected Property in the form of condominium or cooperative form of ownership is hereby prohibited except as follows: the Protected Property is currently divided into two lots roughly defined as the southern half (owned by Anthony P. Grassi) and the northern half (owned by Sally S. Grassi) of the Protected Property and hereafter referred to as the "Existing Lots", as shown on Schedule B. Grantors may divide the Protected Property further into one (1) lot of up to three acres plus access thereto, hereafter referred to as the "3 Acre Reserved Lot". If at any time the two Existing Lots are merged under zoning law, they may not thereafter be divided, subject to the right to create the 3 Acre Reserved Lot aforesaid. The 3 Acre Reserved lot (plus access) shall constitute a three acre Reserved Residential Area referred to in Paragraph 4.0 hereafter. Any further division of the Protected Property is prohibited. The purpose of this provision is to keep each Existing Lot in single ownership, or to keep the whole of the non-Reserved Residential Area of

the Protected Property if such Existing Lots are merged in single ownership, with the existing house area included therein.

Any activity on or use of the Protected Property inconsistent with the purpose of this Conservation Restriction is prohibited. In addition, except as provided in Paragraphs 3, 4 and 5 below and without limiting the generality of the foregoing, the following activities, acts or uses are expressly prohibited on, over or under the Protected Property:

2.1 *Prohibited Uses Within The Reserved Residential Area(s)*: The Grantors' activities shall be conducted in a manner designed to prevent runoff, erosion, sedimentation, or drainage flows that would have an adverse impact on the Protected Property or be inconsistent with the Purpose of this grant of Conservation Restriction.

2.2 *Prohibited Uses Within Remaining Areas of the Protected Property*. Except as expressly permitted in Paragraphs 3, 4 and 5 below or to bring utilities to the Reserved Residential Areas, on the remainder of the Protected Property, which is to mean the remainder after exclusion of the Reserved Residential Areas ("the Non-Reserved Residential Area"):

(a) ***Prohibition of Structures***: There shall be no constructing or placing of any building, tennis or other recreational court, swimming pool, landing strip, mobile home, fence or sign (other than those required by Grantors or Grantees for appropriate management), parking area, asphalt or concrete pavement, billboard or other advertising display, antenna, satellite dish, utility pole, tower, conduit, line, sodium vapor light or any other temporary or permanent structure or facility on, under, or above the Non-Reserved Residential Area.

(b) ***Prohibition of Earth Altering Activities***: There shall be no ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, nor any building of roads or change in the topography of the Non-Reserved Residential Area in any manner.

(c) ***Changes to Vegetation***: There shall be no removal, destruction, or cutting of trees, shrubs, or plants, or planting of non-native species with invasive characteristics, or disturbance or change in the natural habitat.

(d) ***Limitations on Pesticide Use***: There shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides except as consented to in writing by Grantees, said consent not to be unreasonably withheld in the light of particular infestations which may from time to time arise.

(e) ***Prohibition of Toxic or Hazardous Conditions***: There shall be no storage, placing, filling, or dumping of ashes, trash, garbage, unregistered vehicles or vehicle parts, debris, junk,

or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks in, on, or under the Non-Reserved Residential Area.

(f) Protection of Water Quality: There shall be no pollution or sedimentation of surface water, natural watercourses, wetlands, ponds, or any other water bodies, and there shall be no activities that shall have an adverse impact on water purity or natural water levels and /or flow.

(g) Motorized Recreational Vehicles: There shall be no operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or any other types of motorized recreational vehicles.

2.3 Insulation from Other Activities: The Protected Property and any portion thereof shall not be included as part of the gross area of other property not subject to this Conservation Restriction for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that 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.

3.0 Grantors' Reserved Rights. The Grantors hereby reserve the following rights:

3.1 Reserved Rights: The right to undertake or continue any activity or use of the Protected Property not prohibited by this Conservation Restriction and not inconsistent with the Purpose of the Conservation Restriction. Grantees acknowledge having reviewed Grantors' reserved rights set forth in Paragraphs 3 and 4 hereof and agree that the exercise of such rights is not inconsistent with the Purpose of this Conservation Restriction.

3.2 Convey Subject to Covenant: 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 in all respects.

3.3 Existing Structures: The right to maintain such structures as currently exist on the Protected Property, including the existing underground propane and oil tanks, underground utilities and well, and on the Non-Reserved Residential Area to replace the existing well and septic system, but only if Grantor determines that replacement within the 8 Acre Reserved Residential Area defined in Paragraph 4.0, is not possible or is impracticable, and provided further that in the reasonably exercised judgment of the Town of Wilton and the Wilton Land Conservation Trust location outside the Reserved Residential Area will not adversely impair the conservation values of the Protected Property. Grantors shall give notice to Grantees prior to replacing the septic system or well in the Non-Reserved Residential Area under this Paragraph 3.3. Grantee shall approve or disapprove the relocation in writing within ten (10) days and failure to respond shall be deemed an approval.

3.4 Trails. The right to create, maintain and use unpaved woods roads and horse or foot trails with permeable materials, including but not limited to sand, gravel, shell, rock, or crushed stone and including foot and equestrian bridges, culverts and conduits on or over wetlands and watercourses and “jumps” for equestrian use, in furtherance of the limited activities and uses reserved to the Grantors herein. All such activity shall be conducted in a manner designed to minimize erosion or sedimentation of the Protected Property.

3.5 Forest Management. The right to, for personal use only and not for commercial purposes, cut, plant, cultivate and harvest timber but not to clear-cut except as provided in Paragraph 3.7, together with the right to use motorized vehicles, only as necessary for such operations, provided that such activities are carried out in accordance with generally accepted forestry practices. All such activity shall be conducted in a manner designed to minimize erosion or sedimentation of the Protected Property.

3.6 Selective Cutting. The right to selectively cut or clear vegetation for habitat creation or protection, forestry management, unpaved trail and road maintenance, removal or cutting of invasive species, the preservation of vistas, or otherwise to preserve the present condition of the Protected Property including the routine mowing, seeding, haying, baling or otherwise maintaining the existing open areas.

3.7 Farm, Agricultural and Wildlife Management Activities. The right to perform agricultural activities, and to create, restore, and/or maintain fields, grasslands, pasture, coverts, or meadows for commercial and/or non-commercial farm, nursery, agricultural or wildlife management purposes including by way of example and not limitation, the right to: (i) except within wetland areas, clear forest trees and other growth for the purposes set forth above, provided that clearing shall be limited to areas of the Protected Property that do not exceed a 20% slope; (ii) prepare land for agricultural, pasture, garden, or open meadow use; (iii) plant, seed, and re-seed agricultural crops (including, by way of illustration, grasses, grains, orchards, grapevines, and nursery stock), but not species with known invasive characteristics, (iv) trim and cut brush and trees in order to maintain clear borders around or paths within such areas; (v) construct or clear fences or walls in and around such areas; (vi) eliminate pests, weeds, and invasive species with controls and methodologies compatible with certified and acceptable organic farming practices.

3.7.1 Agriculture Defined. The term “agriculture” or “agricultural activities” means the production of plant and animal products for domestic or commercial purposes, including animal husbandry, floriculture and greenhouse products, raising of fruits and vegetables of all kinds, orchardry, aquaculture, bees and apiary products, nursery, silviculture, the private or commercial stabling of animals, maintaining a riding stable including indoor and outdoor riding rings, and

the processing and storage of agricultural products predominantly grown, produced or raised on the Protected Property; but shall not include industrial processing or packaging.

3.7.2 Associated Agricultural Activities. Agricultural activities shall also include the following associated uses which are customary, supportive and agriculturally compatible uses in Connecticut:

a. The direct sale to the public of agricultural products predominantly grown, produced or raised on the Protected Property.

b. Structures contributing to the production, primary processing, direct marketing and storage of agricultural products produced principally on the Protected Property, including by way of example and not limitation, barns and greenhouses.

c. Structures associated with the production of energy for non-commercial use including wind, solar, hydroelectric, methane, wood and fossil fuel system, and structures and facilities for the storage and treatment of animal waste.

d. The provision of services or production and sale by persons in residence, of incidental agricultural goods, services, supplies and repairs and/or the conduct of traditional trades and the production and sale of home occupation goods, arts and crafts, so long as these uses remain incidental to the agricultural and open space character of the Protected Property and are limited to occupying residential and/or principally agricultural structures of the Property.

e. Structures and facilities associated with irrigation, farm pond impoundment, and soil and water conservation.

f. Use of, and indoor or outdoor storage of motorized or non-motorized vehicles necessary to the agricultural activities permitted under this Paragraph 3.7. This shall not be interpreted to permit the long-term outdoor deposition of non-functioning vehicle bodies or unserviceable equipment.

g. Lawful on-site disposal of animals and agricultural products raised or housed on the Protected Property pursuant to permitted activities.

h. Utilities to the agricultural structures described herein, including lighting, water, power, and telephone. Vehicular access to the agricultural structures shall be of minimum width and unpaved in order to involve limited disturbance to the Protected Property. Parking for such facilities shall be similarly contained and restricted. Access to the 3 acre Reserved Residential Area may also occur over the unpaved farm road north and east of the existing pool and poolhouse as shown on the Baseline Documentation Report and on Schedule B.

i. Other similar uses considered upon written request to the Grantees, in Grantees' sole discretion.

3.7.3 Structure Limitations. Other than small structures allowable under subparagraph 3.7.3c, below, no structures allowed under this Paragraph 3.7 may be located south and east of the existing barn as shown in the Baseline Documentation Report and Schedule B attached hereto. No structures under this Paragraph 3.7 shall exceed an average roof height of 35 feet. All

structures as specified in this Paragraph 3.7 through 3.7.3. shall be limited to the existing structures and the new structures permitted as follows in this Paragraph 3.7.3.

On the Protected Property, in addition to the existing structures, there shall be allowed the following agricultural structures:

a. one covered indoor riding ring not to exceed 120' x 220' to be located in an area shown on Schedule B attached hereto. The exterior of said structure shall be sided with natural materials such as, but not limited to, wood or stone;

or

a green house or greenhouses not exceeding 2500 sq. feet in the aggregate to be located in an area shown on Schedule B attached hereto; and

b. One barn not to exceed 5000 sq. feet to be located in an area shown on Schedule B attached hereto. Said barn to be constructed in a way which is designed to blend into the landscape, and the exterior of said structure shall be sided with natural materials such as, but not limited to, wood or stone; and

c. Additional agricultural structures (run in sheds, well house, pole sheds, etc.) not to exceed an aggregate square footage of 1500 sq. feet. The area covered by equestrian jumps and fences shall be exempt from this limitation.

To the extent that structures are created under Paragraph 3.7.3.a and 3.7.3.b they shall not be created under 4.1(b) as accessory buildings and vice versa, such that the Protected Property shall contain only one additional barn (in addition to the existing barn), and one covered riding ring or one greenhouse or greenhouses not exceeding 2500 square feet.

3.7.4 Sound Practices. Agricultural lands shall be managed in accordance with sound soil and water conservation practices in a manner which will not destroy or substantially and inevitably diminish the productive capability of the Property or water quality. However there shall be no limitations or prohibition on any agricultural production or farming methods. An adequate buffer of high grasses, shrubs, or trees should generally be maintained between the permitted activity and adjacent slopes, wetlands, and watercourses on the Protected Property in order to ensure the preservation of the quality thereof and to protect the Purpose of the Conservation Restriction. Controls over pests, weeds and invasive species for bona fide agricultural purposes should be undertaken in accordance with law, compatible with certified and acceptable organic farming practices, and in light of the actual needs of the crops or cover being grown at any time and the slope, filtration, and run-off characteristics of the site. The use of fields or wooded areas as pasture for animals shall be managed to prevent erosion and sedimentation of the Protected Property and limited in extent so as to prevent detrimental levels of animal waste.

3.8 Outdoor Recreational Activities The right to engage in outdoor recreational activities, including, by way of example and not limitation, walking, horseback riding, cross country skiing, and camping, but not involving the recreational use of motorized vehicles.

3.9 Non-Agricultural Accessory Structures. In addition to the structures permitted under Paragraph 3.7, the right to construct and place temporary accessory structures, to accomplish the activities permitted to the Grantors under this restriction, including construction and placement of (a) roosting, watering, and nesting shelters for wildlife; (b) fences, benches, observation blinds, interpretive and directional signs, tent platforms or portable shed; and (c) accessory structures, including, by way of example, gazebos used for private non-commercial recreational purposes. No such structures will contain foundations, full footings or any facilities requiring a septic or other underground waste disposal system. The total area coverage of all structures constructed under this Paragraph should not exceed 500 square feet.

3.10 Necessary Vehicles. As reasonably necessary in connection with permitted uses, management, and protection of the Protected Property, the right to bring on the Protected Property and operate automobiles, light trucks, off-road vehicles (but not motorcycles), farm equipment, forestry equipment, emergency and rescue vehicles, maintenance equipment, and other vehicles and equipment.

3.11 Compost. The right to compost or burn vegetative, animal and forest waste deriving from activities and uses permitted on the Protected Property by this Conservation Restriction.

3.12 Pond Maintenance. The right to maintain the brook and maintain the existing pond at its current size. Such right shall include but not be limited to dredging of the pond, dam maintenance, repair, or replacement, and maintenance and stabilization of brook banks with natural materials and treatment of invasive flora or fauna.

4.0 Reserved Residential Areas. Notwithstanding any other provisions herein to the contrary, and subject to zoning laws and other governmental laws and regulations, Grantors reserve the right to create, sell or transfer on the Protected Property one three Acre Reserved Residential Area for the construction of a single residential Dwelling Unit (as hereinafter defined) and Accessory Buildings (as hereinafter defined), and maintain one "8 Acre Reserved Residential Area" of approx. 8.34 acres containing the existing Dwelling Unit and Accessory buildings (as hereinafter defined) as shown in the Baseline Documentation and on Schedule B, and to provide access and utilities thereto. All improvements for each such Dwelling Unit and its Accessory Buildings, exclusive of access drive for the 8 Acre Reserved Residential Area defined under Paragraph 4.2, and utilities shall be located within a contiguous area not to exceed the specified acreage. The 3 Acre Reserved Residential Area exclusive of access drive shall be located within an area identified in the Baseline Documentation and Schedule B to the north of

the driveway to the existing house. The 3 Acre Residential Area may not be merged and subdivided further, but may be sold or transferred as an individual lot.

At the time Grantors make use of the site location of the 3 Acre Reserved Residential Area, Grantors shall provide Grantees with a plan showing the location of the final boundaries of such area and location of dwelling unit and accessory buildings, if known. Such plan shall also show all mitigating measures necessary to ensure that the construction activities will not have an adverse impact on the purpose of this Conservation Restriction. Upon request of Grantors, the Grantees shall provide certification that the location of the three Acre Reserved Lot is in compliance with this Conservation Restriction.

4.1 Definitions. The following definitions apply for purpose of this Paragraph:

(a) **"Dwelling Unit"** means a structure or self-contained portion thereof designed as a single-family dwelling (including associated wells and septic systems). A Dwelling Unit may include household guest and employee quarters and a home occupation or professional offices for the occupant as allowed by law and may have Accessory Buildings as hereinafter defined.

(b) **"Accessory Building"** means other buildings, structures, and improvements customarily incidental and subordinate to the principal building. Such buildings may include or contain separate guest and employee quarters, studios, workshops, swimming pools, tennis courts, solar panels, flagpoles, gazebos, barns, stables, and other buildings and facilities for forestry and agriculture activities for the personal use of the Grantors and others on the Protected Property, improvements for fresh water supply, utilities, and communication, satellite dishes, septic waste disposal facilities, outbuildings, garages, and outdoor furniture and ornaments, all as allowed by law. Utilities shall include, but not be limited to gas, electricity, telephone and cable services. Barns, stables and other agricultural Accessory Buildings permitted in the 8 Acre Reserved Residential Area shall be subject to the aggregate and structure limitations for agricultural structures set forth in Paragraph 3.7.3.a and 3.7.3.b, such that the Protected Property shall contain, whether located in the 8 Acre Reserved Residential Area or in the Non-Reserved Residential area, only one barn additional to the existing barn, and one covered riding ring or one greenhouse or greenhouses not exceeding 2500 square feet.

4.2 Access and Utilities to Reserved Residential Areas. Grantors reserve the right to construct, improve, and maintain a private driveway to the existing dwelling house within the existing driveway corridor as shown on the Baseline Documentation Report and to maintain the existing private roads to the permitted Accessory Buildings within the 8 Acre Reserved Residential Area as shown in the Baseline Documentation Report. Grantors reserve the right to bring utilities to the permitted Dwelling Units and Accessory Buildings across the Non-Reserved Residential Area, including connection to the existing well. In addition to the existing driveway to the 8 Acre Reserved Residential Area, driveway access to the 8 Acre Residential Area will also be allowed from Tito Lane.

If the 3 acre Reserved Residential Area is fixed in a location abutting the 8 Acre Reserved Residential Area (see Schedule B), then access to the 3 Acre Reserved Residential Area may be across the 8 Acre Reserved Residential Area and the 8 Acre Reserved Residential Area's access to Millstone Road; otherwise, access will be direct to Tito Lane.

Notwithstanding any other provisions in this Conservation Restriction to the contrary, the existing driveway access to the existing residence may continue to be paved and may be repaved. Any access from the existing residence directly onto Tito Lane may be paved. Any access directly from a residential structure on the 3 Acre Reserved Residential Area onto Tito Lane may be paved. No other interior driveways, roads, parking lots or trails shall be paved with non-permeable materials.

5.0 Grantees' Rights and Responsibilities. To accomplish the purpose of this Conservation Restriction, the following rights are conveyed to Grantees by this Conservation Restriction:

5.1 Preserve and Protect. The right and responsibility to preserve and protect the conservation values of the Protected Property.

5.2 Public Access and Trails. The right to establish, maintain, and manage a multiple purpose passive recreational trail up to 8 feet in width for pedestrian and equestrian use on the Protected Property after sunrise and prior to sunset. No motorized vehicles shall be permitted on said trail except as necessary for proper creation, management and maintenance thereof. Any such trail shall not exclude equestrians and shall be located so as not to interfere with agricultural activities. It shall be the responsibility of Grantees to fence off any such trail from existing pastures that it may traverse. Use of equestrian jumps, if any, by members of the public shall be at the discretion of and under such terms and conditions as may be set by Grantors.

Grantees may locate the trail as follows: The trail entrance may be located on Tito Lane near its junction with Millstone Road. The trail may then cross the stream and loop westerly around the existing barn, cross the driveway which serves the 8 acre Reserved Residential area, proceed northerly to the northern edge of the Protected Property, and then continue the loop easterly and southerly then exit onto Tito Lane. The approximate location for this loop trail shall be shown on the Schedule B. Parking for four vehicles shall be located on the Town Property along Tito Lane as shown in the Baseline Documentation Report and Schedule B. To the extent to which Grantees determine this is not feasible in their sole discretion, the Grantees have the right to create and maintain a parking area off Tito Lane designed for the parking of no more than four vehicles as shown on the Baseline Documentation Report and Schedule B. Such parking area shall not be paved with any non-permeable materials.

Grantees may blaze trails with paint in accordance with the Appalachian Trail Conference Marking Standard (adopted October 1979). Grantees may place one trail sign at

a trail entrance on Tito Lane referred to above. No such sign shall exceed 18" by 30". Additional signs may be erected as mutually agreed by Grantors and Grantees.

5.3 Right of Entry. The right to enter the Protected Property (without the right to enter structures) at all reasonable times for the purposes of: (a) inspecting the Protected Property; (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; (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 Grantors; and (e) monitoring and management as described below.

5.4 Monitoring and Management. The right, but not the obligation, to monitor the condition of plant and animal populations, plant communities, and natural habitats on the Protected Property. The Grantees shall have the right to mow, plant, hay, seed, remove invasive species, remove dead, diseased, or damaged trees etc. in the existing southern open area between the east branch of the Comstock Brook, Tito Lane and Millstone Road, shown on Schedule B in order to protect the scenic views from Millstone Road and the southern end of Tito Lane. Grantees shall also have the right to maintain the brook and the existing pond at their current size and location; including, by example, and not by way of limitation, dredging, dam maintenance, repair or replacement, and maintenance and stabilization of brook banks with natural materials.

5.5 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 10 hereof.

5.6 Discretionary Consent. Grantees' consent for activities otherwise prohibited under Paragraph 2 or 3 above, or for any activities requiring Grantees' consent, may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the activities listed in Paragraph 2 are deemed desirable by Grantors and Grantees, Grantees may, in their sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission, and permission for activities requiring Grantees' consent under Paragraph 3, shall be in writing and shall describe the proposed activity in sufficient detail to allow Grantees to judge the consistency of the proposed activity with the purpose of this Conservation Restriction. Grantees may give their permission only if they determine, in their sole 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 Grantees and Grantors 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, subject to the provisions of

Paragraph 14. Any consent or approval by Grantees under this Paragraph 5.6 shall not be effective unless executed in writing by both the Land Trust and the Town.

6.0 Costs and Liabilities. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, upkeep and maintenance of the Protected Property. Grantors shall not be liable for the expenses of Grantees' management activities which do not constitute corrective action as set forth in Paragraph 10. Grantors shall keep the Grantees' interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantors. Grantors agree to release, hold harmless, defend and indemnify Grantees from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which Grantees may suffer or incur as a result of or arising out of the activities of Grantors on the Protected Property. Grantees agree to release, hold harmless, defend and indemnify Grantors from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which Grantors may suffer or incur as a result of or arising out of the activities of the Grantees, or the general public in use of the trails on the Protected Property.

7.0 Taxes. Grantors 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 Grantees with satisfactory evidence of payment upon request.

8.0 Title. The Grantors covenant and represent that the Grantors are the sole owners and are seized of the Protected Property in fee simple and have good right to grant and convey the aforesaid Conservation Restriction; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Conservation Restriction, and that the Grantees shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Restriction.

9.0 Hazardous Waste. The Grantors covenant and represent that to their 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, prior to or during the terms of their ownership, and that there are not now any underground storage tanks outside the 8 Acre Reserved Residential Area located on the Protected Property.

Grantors shall hold harmless, indemnify, and defend Grantees and Grantees' members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, arising from or in any way connected with the presence or release of any hazardous material or substance of any kind on the Protected Property. Grantors agree to defend any claim made against the Grantees arising from or in any way connected with the presence or release of any hazardous material or substance of

any kind on the Protected Property. This Paragraph 9.0 shall not apply in the case of any hazardous material or substance in any manner placed on the Protected Property by Grantees or Grantees' representatives or agents or in connection with unauthorized acts of third parties. In such cases, the Grantees agree, consistent with Paragraph 6.0 herein, to release, hold harmless, defend and indemnify Grantors from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which Grantors may suffer or incur as a result of or arising out of the activities of the Grantees, or the general public in use of the trails on the Protected Property.

10.0 Grantees' Remedies. In the event that the Grantees become aware of a violation of the terms of this Conservation Restriction, the Grantees shall give notice to the Grantors, at Grantors' last known post office address, of such violation via certified mail, return receipt requested, and request corrective action sufficient to abate such violation and restore the Protected Property to its previous condition at the time of this grant. Grantors agree that the Baseline Documentation Report shall be deemed to provide objective information concerning the Protected Property's condition at the time of this grant. Failure by the Grantors to cause discontinuance, abatement or such other corrective action as may be requested by Grantees within thirty (30) days after receipt of such notice shall entitle Grantees to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Conservation Restriction; to require the restoration of the property to its previous condition; to enjoin such non-compliance by ex-parte temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any damages arising from such non-compliance. Such damages, when recovered, shall be applied by the Grantees to corrective action on the Protected Property unless, in their sole discretion, it is not reasonable to do so. If such court determines that the Grantors have failed to comply with this Conservation Restriction, Grantors shall reimburse Grantees for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court.

10.1 Emergency Enforcement. If Grantees, in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantees may pursue their remedies under this Paragraph without prior notice to Grantors or without waiting for the period for cure to expire.

10.2 Failure to Act or Delay. The Grantees do not waive or forfeit the right to take action as may be necessary to insure compliance with this Conservation Restriction by any prior failure to act and Grantors hereby waive any defense of laches with respect to any delay by the Grantees, their respective successors or assigns, in acting to enforce any easement or exercise any rights under this Conservation Restriction.

10.3 Violations Due to Causes Beyond Grantors' Control. Nothing herein shall be construed to entitle the Grantees to institute any enforcement proceedings against the Grantors

for any changes to the Protected Property due to causes beyond the Grantors' control, such as changes caused by fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons. In the event of violations of this Conservation Restriction caused by unauthorized wrongful acts of third persons, at Grantees' option, Grantors agree to assign their right of action to Grantees, to join in any suit, and/or to appoint Grantees their attorney-in-fact for the purposes of pursuing enforcement action. No Grantor shall be liable for the acts of any other Grantor for violations relating to a separate part of the Protected Property held by the said violating Grantor.

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

12. Subsequent Transfers. The Grantors agree that the terms, conditions, restrictions, easements and purposes of this grant or reference thereto will be inserted by Grantors in any subsequent deed or other legal instrument by which the Grantors divest either the fee simple title or possessory interest in the Protected Property; and Grantors further agree to notify Grantees of any pending transfer at least thirty (30) days in advance.

13. Merger. The Grantors and Grantees agree that the terms of this Conservation Restriction shall survive any merger of the fee and Conservation Restriction interest in the Protected Property.

14. Amendment. (1) In the event that the property is affected by unusual and unforeseen circumstances and conditions, Grantors and Grantees by mutual consent may amend this Restriction; provided that the amendment is not inconsistent with the conservation purpose of this Restriction; will not result in a net degradation of the conservation values of the property; will not affect the enforceability of the Restriction; and is accomplished in compliance with any applicable state statute and with Section 170(h) of the Code. Any such amendment shall be recorded in the official land records where the Protected Property is located.

(2) Nothing herein prevents the Grantors and Grantees by mutual consent from making minor modifications between the boundaries of the Protected Property and any adjacent land owned by Grantors or Grantees should it prove to be necessary and appropriate to do so because of the presence of natural features and limitations. Any such adjustments may not impair the purposes, value, or enforcement of this Conservation Restriction as stated in Section 14(1), and any party's consent thereto shall not be unreasonably withheld by the other party.

15. Assignment. The parties hereto recognize and agree that the benefits of this Restriction are in gross and assignable, and the Grantees hereby covenant and agree that in the event they transfer or assign the Restriction they hold under this indenture, the organization

receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Code (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 Code. The Grantees also covenant and agree that the terms of the 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.

The Grantees further covenant and agree that in the event of the dissolution of the Land Trust or its successor hereunder or if such Land Trust or its successor at any time could not become an assignee hereof under the terms of the immediately preceding Paragraph, then the benefits and responsibilities of such Land Trust or its successor under this Conservation Restriction shall be offered to the Nature Conservancy of Connecticut, with offices currently in Middletown, Connecticut, as assignee, or if the Nature Conservancy of Connecticut shall decline such assignment (no commitment to accept such assignment being implied hereby), to such other qualified conservation organization as the Nature Conservancy of Connecticut may direct and which agrees to become such assignee.

16. Extinguishment. The Grantors hereby agree that at the time of the conveyance of this Conservation Restriction to the Grantees, this Conservation Restriction gives rise to a real property right, immediately vested in the Grantees. The measure of the fair market value of this Conservation Restriction for the purpose of calculating relative compensation in the event of extinguishment is the fair market value of the entire Protected Property including both the Conservation Restriction and the underlying fee retained by the Grantors, less the fair market value of the retained underlying fee only, as of the time of this conveyance.

The relative percentage of value that the Restriction and the underlying fee each bear to the value of the entire Protected Property are to remain constant over time. At the time of the conveyance the appraised proportionate value of the conservation restriction to the appraised fair market value of the property as a whole is 52.1%. When a change in conditions takes place which makes impossible or impractical any continued protection of the Protected Property for conservation purposes, and the easements contained herein are extinguished by judicial proceeding, the Grantees, upon a subsequent sale, exchange or involuntary conversion of the Protected Property, shall be entitled to their fixed relative percentage of value of the entire Protected Property. The Grantees shall use their share of the proceeds in a manner consistent with the conservation purposes of the original contribution.

17. 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 easements imposed by this Conservation Restriction, the Grantors and Grantees 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 Grantees' and Grantors' interests, and Grantees'

proceeds shall be used as specified in Paragraph 16 above. All expenses incurred by the Grantors and the Grantees in such action shall be paid out of the recovered proceeds.

18. Miscellaneous Provisions.

18.1 Severability. If any provisions of this Conservation Restriction or the application thereof to any person or circumstance 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.

18.2 Successors and Assigns. The term "Grantors" shall include all Grantors and all Grantors' 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 "Grantees" shall include the Town of Wilton and the Wilton Land Conservation Trust, and their respective successors and assigns. While title is herein conveyed to Grantees as tenants in common, the rights and interests described in this Grant, including enforcement of the conservation easement and restrictions, may be exercised by the Grantees collectively, or by any single Grantee individually, provided that court enforcement action by a single Grantee shall foreclose action on the same issue(s) by the other Grantee who shall be bound by the final determination.

18.3 Re-recording. The Grantees are authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; for such purpose, the Grantors appoint the Grantees its attorneys-in-fact to execute, acknowledge and deliver any necessary instrument on its behalf. Without limiting the foregoing, the Grantors agree to execute any such instruments upon request.

18.4 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.

18.5 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.

18.6 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:

Grantors: **Anthony P. Grassi and Sally S. Grassi**
240 Millstone Road
Wilton, Connecticut 06897.

Grantees: **First Selectman**
Town of Wilton
238 Danbury Road
Wilton, Connecticut 06897

Wilton Land Conservation Trust,
P.O. Box 77
Wilton, Connecticut 06897.

18.7 Governmental Regulations Not Affected. Nothing in this Deed of Conservation Restriction shall be considered to modify, limit the force of or otherwise effect any applicable public law, ordinance or governmental regulation governing the use of the Protected Property.

TO HAVE AND TO HOLD the said Conservation Restriction unto the said Grantees, the Town of Wilton and the Wilton Land Conservation Trust, and unto their respective successors and assigns, to it and their own proper use and behoof.

IN WITNESS WHEREOF, the Grantors have executed and sealed this document the day and year first above written.

WITNESS:

Patricia M.P. Sesto →
and James
Patricia M.P. Sesto →
and James →

GRANTORS:

Anthony P. Grassi
Anthony P. Grassi

Sally S. Grassi
Sally S. Grassi

WITNESS:

Patricia M. P. Santo

Linda P. Francois

Linda P. Francois

WITNESS:

Susan R. Bennett

Susan R. Bennett

Linda P. Francois

Linda P. Francois

GRANTEES,

TOWN OF WILTON

By Paul F. Hannah, Jr.

Paul F. Hannah, Jr.

Its First Selectman

Duly Authorized

WILTON LAND

CONSERVATION TRUST

By Thomas M. Sinchak

Thomas M. Sinchak

Its Secretary

Duly Authorized

STATE OF CONNECTICUT)

) ss. at Wilton

April 20, 2001

COUNTY OF FAIRFIELD)

On this the 20th day of April, 2001, before me personally appeared **Anthony P. Grassi** to me personally known, who, being by me duly sworn, did depose and say that she is the person named in the foregoing instrument, and acknowledged said instrument to be her free act and deed.

In Witness Whereof, I hereunto set my hand and official seal.

Linda P. Francois

Linda P. Francois

Commissioner of Superior Court

STATE OF CONNECTICUT)

) ss. at Wilton

April 20,, 2001

COUNTY OF FAIRFIELD)

On this the 20th day of April, 2001, before me personally appeared **Sally S. Grassi** to me personally known, who, being by me duly sworn, did depose and say that she is the person named in the foregoing instrument, and acknowledged said instrument to be her free act and deed.

In Witness Whereof, I hereunto set my hand and official seal.


Linda P. François

Commissioner of Superior Court

STATE OF CONNECTICUT)

) ss. at Wilton,

April 20, 2001

COUNTY OF FAIRFIELD)

On this the 20th day of April, 2001, before me personally appeared Paul F. Hannah, Jr., to me personally known, who, being by me duly sworn, did say that he is the First Selectman of the **Town of Wilton**, the corporation named in the foregoing instrument; and acknowledged said instrument to be the free act and deed of said corporation.

In Witness Whereof, I hereunto set my hand and official seal.


Linda P. François

Commissioner of Superior Court

STATE OF CONNECTICUT)

) ss. at Wilton

April 18, 2001

COUNTY OF FAIRFIELD)

On this the 18th day of April, 2001, before me personally appeared Thomas M. Sinchak, to me personally known, who, being by me duly sworn, did say that he is the Secretary of the **Wilton Land Conservation Trust**, the corporation named in the foregoing instrument; and acknowledged said instrument to be the free act and deed of said corporation.

In Witness Whereof, I hereunto set my hand and official seal.


Linda P. François

Commissioner of Superior Court

SCHEDULE A

Property Description: Millstone Road, Wilton (Grassi)

ALL THOSE CERTAIN pieces or parcels of land, with the buildings thereon, situated in the Town of Wilton, County of Fairfield and State of Connecticut, and shown and designated as "Parcel 'A'" and as "Parcel 'B'" on a map entitled "Map Prepared for Ernest J. & Vincent J. Tito, Wilton, Connecticut, Total Area = 81.778 Ac." Certified "Substantially Correct" Henricis' New Canaan, Ridgefield & Bethel, Conn. Class A-2 Survey date April 25, 1968, June 20, 1968 Robert M. Henrici L.S. #6089 which map is on file in the office of the Town Clerk of Wilton as Map No. 2761, reference thereto being made for a more particular description of the said premises.

Said premises are conveyed subject to the following:

1. Effect, if any, of notes and/or notations appearing on said Map No. 2761.

SCHEDULE B

That certain map entitled "Easement Schedule "B" Prepared for Anthony Grassi, 240 Millstone Road, Wilton, Connecticut by Land-Tech Consultants, Inc. Environmental Scientists and Engineers" dated 1/23/01 and recorded on the Wilton Land Records as Map number 269.

WHEREAS, preservation of the Protected Property is for the scenic enjoyment by the general public and will yield a significant public benefit, specifically, the Protected Property is situated on and prominently visible from Millstone Road and Tito Lane, town roads, and protects 50% of the frontage on Tito Lane, a town designated scenic road;

WHEREAS, the preservation of the Protected Property is for outdoor recreation by , or the education of , the general public, more specifically, the Protected Property will contain public recreational trails; and

WHEREAS, the Town of Wilton encourages and is interested in increasing the availability of public recreational trails in the community; and

WHEREAS, the Protected Property is directly across Tito Road, a town road, from property currently owned and preserved by the Wilton Land Conservation Trust as public open space land; and

WHEREAS, the Wilton Land Conservation Trust owns abutting land to the west of the Protected Property, and the Town of Wilton holds a conservation easement on land also abutting the Protected Property to its west; and

WHEREAS, preservation of the Protected Property is pursuant to federal, state and local governmental conservation policy and will yield a significant public benefit, specifically, in recognition of the importance of the Protected Property as an ecological, scenic and recreational resource, and

WHEREAS, the Property has been specifically designated on the Wilton Town Plan of Conservation and Development as First Priority Open Space; and

WHEREAS, the specific conservation values of the Property are documented in a Baseline Documentation Report, prepared by Grantees and signed and acknowledged by the Grantors, 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 Grantors and Grantees 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 Grantors and Grantees wish to avail themselves of that law;