

Revised Busa CR  
Version 2776.8 with further revisions by the Community Farming Committee  
Approved by the Community Farming Committee at its meeting on January 21, 2016.

Busa Farm, Lowell Street, Lexington, MA  
Middlesex South Registry District of the Land Court as Document No. 1519938

## CONSERVATION RESTRICTION

### **I. Grantor Clause:**

The Town of Lexington, having an address at 1625 Massachusetts Avenue, Lexington, Massachusetts 02420 ("Grantor"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the General Laws, hereby grants to the Massachusetts Farm Bureau Federation, a Massachusetts non-profit association having an address of [REDACTED], Massachusetts (the "Grantee"), in perpetuity and exclusively for conservation purposes, for consideration of one dollar (\$1) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described Conservation Restriction on those certain parcels of land located on Lowell Street, Lexington, Massachusetts, constituting approximately [REDACTED] acres, said parcels being shown as "2B", "3", and "4" on a plan entitled "Lowell Street, Lexington, Massachusetts Assessor's Map 20/Parcel 38 Subdivision Plan of Land Approval Not Required" prepared by GCG Associates, Inc. dated October 13, 2013, filed with the Middlesex South Registry of Deeds as Plan 108 of 2015, a copy of which is attached as Exhibit A (the "Premises"). For Grantor's title, see that certain deed filed with the Middlesex South Registry District of the Land Court as Document No. 1519938. See also Order of the Land Court to Withdraw from Registration dated July 17, 2014 and filed with the Middlesex South Registry District of the Land Court as Document No. 1676321 and noted on Certificate of Title No. 245506 and recorded with said Registry of Deeds at Book 63955, Page 12.

### **II. Purposes:**

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purpose of this Conservation Restriction is (a) to assure that the Premises will be maintained as agricultural, horticultural and farming property and/or in a scenic and open condition in perpetuity for conservation purposes and recreation purposes, and (b) to prevent any use or change that would materially impair or interfere with its agricultural, horticultural, farming conservation and preservation values. These values, all of which are in the public interest, include the following:

- a) The preservation of the Premises for agricultural, horticultural and farming use, including community farming, and associated educational purposes;

- b) The preservation of the Premises as open space and access to trails;
- c) The preservation of the ecological values of the Premises, including protection of water resources;
- d) The preservation of the scenic beauty and rural character of the Premises;
- e) The preservation of the archaeological, historic and cultural values of the Premises; and
- f) The preservation of prime agricultural soils, as preserving this soil supports, encourages and preserves agricultural and other uses that are integral to agriculture and history of the Premises and the Town of Lexington.

The Premises were acquired with Community Preservation Act funding (Chapter 44B of the General Laws of Massachusetts, as amended) from the Town of Lexington and shall be maintained in perpetuity for the purposes stated in Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts and shall be fully protected by all provisions of Article 97.

Therefore, in order to preserve the Premises in perpetuity as agricultural, horticultural and farming property and/or in natural, scenic, and open condition, the Grantor conveys to the Grantee a perpetual Conservation Restriction within the meaning of Chapter 184, Section 31 et seq. of the General Laws of Massachusetts, as amended.

### **III. Prohibited Acts and Uses, Exceptions Thereto, and Permitted Uses:**

#### **A. Prohibited Acts and Uses**

Subject to the reserved rights and exceptions set forth herein, including without limitation those set forth in Paragraph III.B, the Grantor will not perform or permit the following acts and uses which are prohibited on, above, and below the Premises:

1. Buildings, Structures, Facilities and Improvements. Except as otherwise provided in Article III.B. below, constructing, placing or allowing to remain any permanent building, tennis court, landing strip, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna/tower, utility pole/conduit, or other permanent structure or facility;
2. Excavating Soil, Mineral Resources, etc. Except as otherwise provided in Article III.B. below, mining, excavating, dredging or removing soil, loam, peat, gravel, sand, rock or other mineral resources or natural deposits or other processes such as hydraulic fracturing that might allow mining to or from adjacent properties;
3. Dumping of Refuse and Other Materials. Placing, filling, storing or dumping soil, grass

clippings, compost, yard debris or other substances on the ground or dumping or placing of refuse, trash, vehicle bodies or parts, rubbish, debris, junk, trash, solid or chemical waste or other substance or material whatsoever or the installation of underground storage tanks, except as provided in Paragraph III B.5 below for agricultural management reserved rights;

4. Cutting of Vegetation. Cutting, removing or otherwise destroying trees, grasses or other vegetation, except as provided in Paragraph III B.4 and 5 below;

5. Motorized Vehicles. Use, parking or storage of motorized vehicles of any kind, including but not limited to automobiles, motorcycles, mopeds, all-terrain vehicles, snowmobiles or any other motorized vehicles on the Premises, except as provided in Paragraph III.B.5(i) and 16 below;

6. Historical or Archaeological Resources. The disruption, removal, or destruction of any historical or archaeological resource, including but not limited to stone walls and granite fence posts;

7. Subdivision. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;

8. Commercial, Business, Residential or Industrial Uses. The use of the Premises for commercial, business, residential or industrial use, excluding active recreational use in accordance with Paragraph III.B.18 (b) below and also excluding use as a community farm as contemplated by and in accordance with Paragraph III. B. 5 below; and

**B. Reserved Rights and Exceptions**

All acts and uses not prohibited in Paragraph III.A above are permissible, provided that such acts and uses do not materially impair the purposes of this Conservation Restriction. The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not materially impair the purposes of this Conservation Restriction and further, with respect to active recreational use in accordance with Paragraph III.B.18(b) below, only upon the satisfaction of the conditions set forth in Paragraph III.B.18(a) below:

1. Existing Structures. Maintenance, repair, removal, replacement or relocation of any permanent or temporary structures or other improvements on the Premises as shown on that certain plan attached hereto as Exhibit B (the "Structure Plan") together with new structures or expansions of existing structures, including without limitation use of the office trailer currently on the Premises as offices for community farm operations and administration, provided, however that any replacements of said structures or improvements and any said new structures or expansions of existing structures shall be constructed (a) so that the total footprint of the said structures or improvements together with the said new structures or expansions of existing structures shall in no event exceed the existing footprint of the permanent or temporary structures or other improvements shown on the Structure Plan by more than fifty (50) percent and further

provided (b) that no such replacement structure or improvement or such new or expanded structure or improvement shall be constructed of on any of the areas marked as “Growing Fields” on the Structure Plan.

2. Recreational Activities. Biking, walking, hiking, horseback riding, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape and do not degrade environmental quality;

3. Educational Activities. Organized walks, educational programs, school field trips, farm tours, and other similar activities designed to promote an understanding of nature, conservation, agriculture and/or history;

4. Vegetation Management. In accordance with generally accepted agricultural and land conservation management practices, removing of brush, selective minimal pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, and regular mowing at least once a year to prevent reforestation; and the planting of native trees and shrubs and the mowing of grass;

5. Agricultural Management.

(a) clearing, mowing, and prescribed burning of vegetation;

(b) The planting, maintenance, cultivation, and harvesting of crops or fruit- or nut-bearing trees, together with soil preparation, conservation, and management activities commonly associated with such agricultural uses, including the plowing of agricultural fields and the addition of soil amendments, such as lime or compost (generated on or off the Premises);

(c) The raising and pasturing of livestock;

(d) The use of fertilizers, pesticides, herbicides, and fungicides, provided, however, that such agricultural chemicals are registered under Commonwealth of Massachusetts regulations and are used and stored in accordance and consistent with all pertinent federal, state, and local instructions, limitations, laws, zoning, rules, and regulations;

(e) The maintenance of piles of limbs, brush, manure, leaves, compost, and similar biodegradable material generated on the Premises, but not stumps, provided such piles are not placed in any wetlands and do not otherwise interfere with the conservation objectives of this Conservation Restriction (manure may not be stockpiled within any Protected Wetland Resource Areas, including Riverfront and wetland buffer zones);

- (f) The installation, maintenance, and removal of fences, including but not limited to electric fences consistent with community farming use, provided that said fences do not interfere with access to any public trails and paths on the Premises;
- (g) The digging or drilling and the maintenance, repair and replacement of water supply wells, together with the installation, construction, and placement of permanent underground and temporary aboveground pumps, conduits, hoses, and other equipment all as exclusively associated with agricultural irrigation on the Premises. Prior to commencing any new well, plans for the same shall be developed by the Grantor, after consultation with the Grantee, and with the Grantee's approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;
- (h) Marketing of agricultural products and related supplies and tools, educational materials and products;
- (i) Use of vehicles and other motorized equipment as necessary and convenient for the community farm and agricultural management activities contemplated herein, including but not limited to tractors, trucks, balers, spreaders and planters, and similar types of vehicles; and
- (j) Construction of, or addition to, stone walls and/or piles incidental to the removal of rocks from plowed areas.

6. Non-Native or Nuisance Species. The removal of non-native, nuisance or invasive species, the interplanting of native species, including but not limited to beaver management, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality and scenic vistas;

7. Soil Management. Excavation and removal from the Premises of soil, gravel or other mineral resources or natural deposits (a) as may be necessary or convenient for community farming use, (b) as may be incidental to the maintenance of trails, bikeways and access roads or (c) to maintain good drainage and hydrologic functioning of the Premises, provided that (i) such activities follow generally accepted soil conservation practices, (ii) such activities do not occur within protected wetland resource areas, or if they do, the activities receive required authorizations, and (iii) disturbed areas are re-vegetated with native plant materials; and only after Grantor consultation with Grantee and with the Grantee's approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;

8. Wildlife Habitat Improvement. Measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including but not limited to selective planting of native trees, shrubs and plant species, and avian nesting structures; and only after Grantor consultation with Grantee and with the Grantee's approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;

9. Livestock. Horse and other livestock use carried on in accordance with sound management practices (including without limitation, generally accepted water quality management standards) and uses accessory thereto, including without limitation run in sheds, riding areas, bridle paths and sight pervious (non chain-link) fencing). This right shall include, without limitation, the right to use equipment and vehicles as reasonably necessary for such purposes.

10. Archaeological Investigations. Archaeological activities, including but not limited to surveys, following submission of a Project Notification Form and its approval by the State Archaeologist/State Historic Preservation Office of the Massachusetts Historical Commission (or appropriate successor official); and only after Grantor consultation with Grantee and with the Grantee's approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;

11. Signs. The erection, maintenance and replacement of signs and kiosks by the Grantor or Grantee, identifying the Grantee as the holders of the Conservation Restriction and the Grantor as the owner of the Premises, necessary for the community farming use of the Premises, and educating the public about trail access, the protected conservation values and any rules pertaining to uses of the Premises;

12. Permitted Vehicles. Use of vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their lawful duties and trucks and other vehicles used for activities permitted by this Conservation Restriction, including community farming use, and motorized and non-motorized vehicles to assist the mobility of handicapped persons;

13. Utilities. The construction, use, maintenance and replacement of utilities, including the installation and maintenance of town-supplied water and sewer lines, to serve all allowed uses on the Premises, including without limitation a public bathroom facility; however, the repair or replacement of existing utilities in their current locations shall require prior notice to (but not approval of) Grantee, and new construction, expansion or relocation of utilities shall require Grantor consultation with Grantee and Grantee's approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;

14. Allowable New Structures. In addition to the structures described above in Paragraph III.B.1, allowable new structures may also include boardwalks, temporary portable toilets, benches, temporary agriculture structures such as greenhouses or high tunnels and any structures required by federal, state and local laws and regulations; and only after Grantor consultation with Grantee and with the Grantee's approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;

15. Cleanup of Oil and Hazardous Materials. Notwithstanding anything herein to the contrary, nothing in this Conservation Restriction shall restrict the right to conduct any and all reasonably necessary environmental response actions on the Premises to address the release or future release

of oil or hazardous materials on the Premises, provided that such response actions are conducted in compliance with all applicable federal and state laws and regulations;

16. Parking. The construction, use, maintenance, repair, replacement and removal of driveways and parking areas of the Premises consistent with community farming use, provided that prior to any construction for new driveways or parking areas, Grantor shall provide plans for the same for approval by Grantee as provided in Paragraph III.E;

17. Trails. The marking, clearing and maintenance of public access trails and paths; and

18. Active Recreation.

(a) The use set forth in Paragraph III.B.18 (b) below shall be permissible, within the meaning of this Article III. B, only upon the satisfaction of the following two conditions:

(i) Agricultural use of the Premises has been abandoned, such abandonment to be defined as eighty percent (80%) of the arable land on the Premises (shown on the Structure Plan as “Growing Fields”) not having had agricultural crops grown on it for three (3) successive years; and

(ii) Following such abandonment of agricultural use, a majority vote at a duly called Special or Annual Town Meeting approving the use of the Premises for active recreation in accordance with Paragraph III.B.18(b) below.

(b) The use of the Premises for active recreation defined as team or school sports, and the constructing of a parking lot, swimming pool, tennis court or other improvements in connection with said use.

### **C. Permitted Acts and Uses.**

All acts and uses not prohibited by subparagraphs A and B are permissible provided they do not materially impair the purposes or conservation values of this Conservation Restriction

### **D. Governmental Permits**

The exercise of any right reserved by Grantor under Paragraph III.B shall be in compliance with the following: (a) then current building, zoning, land use, planning and conservation bylaws, ordinances and regulations applicable to the Premises; (b) any variances or special permits applicable to the Premises; (c) the Wetlands Protection Act (Chapter 131, Section 40 of the General Laws of Massachusetts, as amended) and (d) all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency means only that the Grantor may have a right to request a permit; it does not mean that the Grantee or the Commonwealth of Massachusetts takes any position on whether such permit should be issued.

### **E. Notice and Approval**

Whenever notice to or approval by Grantee is required under the provisions of Paragraphs III.A or B, Grantor shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, the Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction. Failure of Grantee to respond in writing with a collective response in 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice.

#### **IV. LEGAL REMEDIES OF THE GRANTEE**

##### **A. Legal and Injunctive Relief**

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction. To the extent permitted by law, Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in good faith enforcement of this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof; provided, however, that Grantor shall not be obligated to reimburse Grantee for costs and expenses related to any such enforcement that Grantor successfully challenges as evidenced by a final, unappealed determination of a court of competent jurisdiction.

##### **B. Non-Waiver**

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

##### **C. Disclaimer of Liability**

By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

**D. Acts Beyond the Grantor's Control**

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes.

**V. ACCESS**

**A. Access by the Grantee**

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be reasonably necessary or appropriate to remedy or abate any violation hereof.

**B. Access by the Public**

The Grantor and the Grantee agree that the Grantor shall have the right to permit the general public access to the Premises for biking, walking, hiking, horseback riding, cross-country skiing and other non-motorized outdoor recreational activities on the established trails on the Premises, except during certain limited times of the year when such access would interfere with agricultural activities being conducted on the Premises, in which case limited public access must be posted on the Premises, including the dates during which such limitations or access prohibitions are in effect. The Grantor hereby reserves the right to alter the locations of established trails, provided that as so relocated, neither the conservation values of this Conservation Restriction nor access to and passage through the Premises is impaired. To the extent permitted by law, the Grantee hereby expressly disclaims any duty to maintain the Premises or warn persons who may enter upon the same. Pursuant to Chapter 21, Section 17c of the General Laws of Massachusetts, as amended, neither the Grantor nor the Grantee is liable to any member of the public for injuries to person or property sustained by such person while on the Premises in the absence of willful, wanton, or reckless conduct.

**VI. EXTINGUISHMENT**

**A. Termination by Judicial Proceeding Only**

If circumstances arise in the future which render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction under applicable law.

**B. The Grantee's Property Right in the Conservation Restriction; Value**

Grantor and Grantee agree that the grant of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, determined at the time of the gift, bears to the value of the unrestricted property at that time. Such proportionate value of the Grantee's property right shall remain constant.

**C. Grantee's Right to Recover Value of its Property Right**

If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds equal to the proportionate value set forth in Paragraph VI.B. All reasonable and directly-related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in such proportionate value, subject, however to the requirements of any gift, grant, or funding program or applicable law which expressly provides for a different disposition of the proceeds.

**D. Cooperation Regarding Public Action**

Whenever all or any part of the Premises or any interest therein is taken by the state or federal government by public authority under power of eminent domain, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in shares equal to the proportionate value set forth in Paragraph VI.B. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in such proportionate value, subject, however to the requirements of any gift, grant, or funding program or applicable law which expressly provides for a different disposition of the proceeds

**E. Grantee's Use of Proceeds**

Grantee shall use its share of any proceeds it receives pursuant to this Section VI to support its conservation mission.

## **VII. ASSIGNABILITY**

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances: As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; and the Assignee, at the time of the assignment, is a “Qualified Organization” as defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **VIII. SUBSEQUENT TRANSFERS**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises, including a leasehold interest, and to notify the Grantee within twenty (20) days of such transfer. Failure to do so shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable. The Grantor shall not be liable for violations occurring after his or her ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

## **IX. ESTOPPEL CERTIFICATES**

Upon a reasonable request by the Grantor, the Grantee shall, within thirty (30) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor’s compliance with any obligation of the Grantor contained in this Conservation Restriction or otherwise evidences the status of this Conservation Restriction.

## **X. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the

Secretary of Energy and Environmental Affairs and, if applicable, shall comply with the provisions of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Middlesex South District Registry of Deeds.

**XI. PUBLIC USE**

Grantor, Grantee and their successors and assigns shall have the benefit of Section 17C of Chapter 21 of the Massachusetts General Laws with respect to any person using the Premises for recreational, conservation, scientific, educational, environmental, ecological, research, religious or charitable purposes.

**XII. NON-MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title to, any part of the Premises without having first assigned this Conservation Restriction to ensure that merger does not occur.

**XIII. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded in the Middlesex South District Registry of Deeds. The Grantee shall record this instrument in timely manner in said Registry of Deeds.

**XIV. NOTICES**

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor:                   Town of Lexington  
                                      1625 Massachusetts Avenue  
                                      Lexington, MA 02420  
                                      Attention: Town Manager

To Grantee:                   [REDACTED]

or to such other address as any of the above parties shall designate from time to time by written notice to the other or that is reasonably ascertainable by the parties.

## **XV. GENERAL PROVISIONS**

### **A. Controlling Law**

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

### **B. Liberal Construction**

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Sections 31-33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

### **C. Severability**

If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

### **D. Entire Agreement**

This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

### **E. Pre-existing Public Rights**

Approval of this Conservation Restriction pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

### **F. Running of the Burden**

The burden of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

**G. Execution of Instruments**

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. Without limiting the foregoing, the Grantor and the Grantor's successors and assigns agree themselves to execute any such instruments upon request.

**H. Baseline Documentation**

In order to establish the present condition of the Premises and the conservation values thereon that are protected by this Conservation Restriction, so as to enable the Grantee to monitor future uses of the Premises and to assure compliance with the terms hereof, Grantee has prepared an inventory of the relevant features and conditions of the Premises (the "Baseline Documentation Report"), and Grantor and Grantee agree that the same is an accurate representation of the condition of the Premises as of the date of the execution of this Conservation Restriction. Verified originals of the Baseline Documentation Report will be deposited with the Grantor and in the permanent records of the Grantee. If the originals of said Baseline Documentation Report are subsequently destroyed by casualty or other circumstance, other evidence may be offered by the parties to establish the condition of the Premises as of the date of this Conservation Restriction.

No documentary stamps are required hereon because the Grantee is a municipality.

[Signatures to appear on next page.]



ACCEPTANCE OF



The above Conservation Restriction is accepted by the [redacted] as of this \_\_\_\_\_ day of \_\_\_\_\_, 2015.



By: \_\_\_\_\_

Name:

Title:

Hereunto duly authorized

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned notary public, personally appeared \_\_\_\_\_, \_\_\_\_\_, of the \_\_\_\_\_, proved to me through satisfactory evidence of identification which was  government-issued document bearing the signer's photographic image and signature  my personal knowledge of the principal's identity, to be the person whose name is signed on the preceding document, and acknowledged to me that she/he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires:

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the Town of Lexington has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2015

\_\_\_\_\_  
Name: Richard K. Sullivan Jr.  
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned notary public, personally appeared Richard K. Sullivan Jr., proved to me through satisfactory evidence of identification which was  government-issued document bearing the signer's photographic image and signature  my personal knowledge of the principal's identity, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**Exhibit A**  
**Plan of Premises**

**Exhibit B**  
**Plan of Existing Structures on Premises**

**Exhibit C**  
**Town Meeting Approval Vote**