

**GRANTOR:** Hilltown Land Trust, Inc.  
**GRANTEE:** Town of Westhampton  
**ADDRESS OF PREMISES:** 0 Chesterfield Road,  
Westhampton, MA 01027  
**FOR GRANTOR'S TITLE SEE:** Hampshire County Registry  
of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_.

### **CONSERVATION RESTRICTION**

Hilltown Land Trust Inc, a non-profit charitable organization duly organized under the laws of the Commonwealth of Massachusetts and with an office at 332 Bullitt Road, Ashfield, MA 01330, and its successors and permitted assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, do hereby grant, with QUITCLAIM COVENANTS, for nominal consideration, to the **Town of Westhampton acting by and through its Conservation Commission** by authority of Section 8C of Chapter 40 of the Massachusetts General Laws, with an address of 1 South Road, Westhampton, MA 01027, its permitted successors and assigns ("Grantee"), IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in Westhampton, MA containing the entirety of a 145.5 acre parcel ("Premises"), which Premises is more particularly described in Exhibit A and shown in the attached reduced copy of a survey plan in Exhibit B, both of which are incorporated herein and attached hereto.

#### **I. PURPOSES:**

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values herein described ("conservation values").

The Premises was acquired with a Landscape Partnership grant from the Commonwealth of Massachusetts pursuant to Section 2 of Chapter 286 of the Acts of 2014, and therefore the Premises is subject to a Landscape Partnership Grant Program Project Agreement (“Project Agreement”) recorded at the Hampshire County Registry of Deeds at Book \_\_\_\_\_ Page \_\_\_\_\_.

**The conservation values include the following:**

- Open Space Protection. The protection of the Premises contributes to the preservation of the scenic and natural character of Westhampton and surrounding towns and will enhance the open-space value of nearby lands. The Premises abuts land across Chesterfield Road that is already conserved, including portions of the Brewer Brook Wildlife Management Area. In addition, it is part of a large block of protected and undeveloped land in Westhampton, Chesterfield, Williamsburg, and Northampton.
- Public Access. The protection of this land will guarantee public access for hiking, horseback riding, cross country skiing, fishing, hunting, wildlife viewing, education, and other non-motorized outdoor recreational activities.
- BioMap2. The entire 145.5- acre Premises is classified as BioMap2 Critical Natural Landscape, Landscape Block, noting a large area of high quality intact and predominately natural vegetation. This area provides habitat for wide-ranging native species, supports intact ecological processes, maintains connectivity among habitats, and enhances ecological resilience. The half mile of the Premises along Robert’s Meadow Brook is further classified as BioMap2 Aquatic Core, meaning it contains core habitat for fish and other species of conservation concern. BioMap2, published in 2010, is a classification of the Massachusetts Natural Heritage and Endangered Species Program that is designed to guide strategic biodiversity conservation in Massachusetts by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems.
- Climate Change Resilience. The property is noted for its climate change adaptation and resilience characteristics, particularly its soils and role in maintaining connectivity among intact wildlife habitat.<sup>1</sup>

These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report (“Baseline Report”) prepared for the Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury

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<sup>1</sup> The Nature Conservancy, Resilient and Connected Landscapes data, October, 2016.

Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may use any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

## **II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES**

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

Subject to the exceptions set forth in Section B of this Article II (Permitted Uses and Exceptions to Otherwise Prohibited Acts and Uses), the Grantor will neither perform nor allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, gravel covered area, sign, fence, billboard or other advertising display, antenna, utility pole, tower, solar panel, underground storage tank, solar array, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;
- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
- (6) Use, parking or storage of vessels or vehicles including motorcycles, mopeds, all-terrain vehicles, motorized trail bikes, boats, automobiles, trucks, or any other motorized vessels or vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired;
- (7) Division 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) The use of the Premises for business, residential or industrial use, or for more than *de minimis* commercial recreation;
- (9) The disruption, removal, or destruction of the stone walls on the Premises;
- (10) Intentionally planting or introducing any species prohibited by federal and/or state laws and regulations, such as species identified in the "Massachusetts Prohibited Plant List" published by the Massachusetts Department of Agricultural Resources, Division of Regulatory Services, or any successor list of similar character.
- (11) Using the Premises as a site for any sanitary sewage or other wastewater disposal system serving any residence or other structure, wherever located.
- (12) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would materially impair its conservation values.

**B. Permitted Uses and Exceptions to Otherwise Prohibited Acts and Use**

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 conservation values or purposes of this Conservation Restriction.

- (1) Vegetation Management. The selective minimal removal of brush, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including vistas, woods roads, fence lines, trails, and meadows.
- (2) Forestry and Cutting. Conducting or permitting others to conduct sound silvicultural uses of the Premises, including the right to commercially harvest timber and non-timber forest products (as such term may be defined from time to time in the Massachusetts General Laws Chapter 61, Section 1, or successor law), and the establishment of new woods roads, in accordance with prudent and sound silvicultural practices that conform at least to the minimum standards set forth in the Massachusetts Forest Cutting Practices Act (General Laws, Ch. 132, or its successor, hereinafter, the "FCPA"). When such harvest will be in excess of 12,500 board feet and/or twenty-five (25) cords in any consecutive twelve (12) month period, harvesting shall be carried out pursuant to a Forest Management Plan and a Forest Cutting Plan. The Forest Cutting Plan and Forest Management Plan shall be prepared by a forester licensed through the Massachusetts Department of Conservation and Recreation in conformance with the "Directions for the Preparation of the Chapter 61 Forest Management Plans" and such statutes, regulations and directions in effect at the time of the approval of said Plans. These plans shall be

submitted to the Grantee, the Massachusetts Department of Conservation and Recreation (or appropriate successor agency), and to any other state agencies as required by law, for their approval prior to the commencement of any timber harvest. The Plans shall include provisions designed to minimize soil erosion, conserve surface and groundwater quality, wildlife habitat, and to protect the conservation values of this Conservation Restriction.

The Forest Management Plan shall be effective for a ten (10) year period and shall be resubmitted once every ten (10) years as necessary if additional timber harvests will occur. All cutting plans and designated access routes shall avoid any stone structures or historical and cultural resources and shall be reasonably required to prevent any damage thereto. All cutting operations shall be supervised by a Massachusetts licensed forester that, when feasible, shall be the Massachusetts licensed forester who prepared the Forest Cutting Plan.

Harvesting for Personal Use: The cutting of trees, not to exceed 12,500 board feet or twenty-five (25) cords in any consecutive twelve (12) month period to provide non-commercial forest products for personal use is permitted provided that any such harvesting shall follow, if applicable, the required best management practices and the recommended guidelines pursuant to the Massachusetts Forestry Best Management Practices Manual (Catanzaro, Fish & Kittredge, 2013) and subsequent versions as may be approved by the Forestry Bureau.

- (3) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality.
- (4) Composting. The stockpiling and composting of stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not impair the conservation values (including scenic values) of this Conservation Restriction. No such activities will take place closer than one hundred (100) feet from any wetland, waterbody or stream. All exercise of this reserved right shall take into account sensitive areas and avoid harm to nesting species during nesting season.
- (5) Wildlife Habitat Improvement. With prior notice to the Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species.
- (6) Archaeological Investigations. The right to conduct archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only (a) after written notification to and approval by Grantee, and (b) in accordance with an archaeological field investigation plan prepared by or on behalf of the Grantor and

approved in advance of such activity, in writing, by the Massachusetts Historic Commission (“MHC”) State Archaeologist as required by Massachusetts General Laws. A copy of the results of any scientific investigation on the Premises is to be provided to the Grantee. Plans for restoration of the site of any archaeological activity shall be submitted to the Grantee in advance of restoration, and such restoration shall be conducted only in accordance with a plan approved by the Grantee.

Activities detrimental to archeological and historic resources, including but not limited to earth moving and the alteration of historic stone walls/cellar holes/features, shall not be deemed to be detrimental to archeological and historic resources if a description of the proposed activity and its location is submitted in writing (e.g., on a Project Notification Form) with a plan of land (or assessors map) and a USGS map with the Premises outlined thereon, to MHC and MHC issues a letter stating that the proposed activity is not within a resource area or is determined to not have an adverse effect on said resources. Grantor and Grantee shall make every reasonable effort to prohibit any person from conducting archaeological field investigation on the Premises, including metal detecting, digging, or artifact collecting, without approval of the MHC State Archaeologist (or appropriate successor official), and shall promptly report any such prohibited activity to the MHC State Archaeologist (or appropriate successor official). Grantor and Grantee shall include the prohibition against digging, artifact collecting, or metal detecting in any list of rules for visitors to the Premises.

- (7) Trails, Woods Roads, Fences, etc.
  - a. The marking, clearing, and maintenance of new and existing footpaths, footbridges, trails, fences, gates, stone walls, and permeable, unsurfaced woods and field that serve the public access and recreation purposes hereof. Any construction, relocation, or alteration of trails shall require prior notice to the Grantee and shall result in trails that are no wider than 5 feet unless such width is necessary to meet ADA accessibility specifications; and
  - b. The clearing of suitable areas for timber roads, landings and sorting yards in accordance with the Forest Management and Forest Cutting Plans (copies of which shall be furnished to the Grantee prior to the commencement of work) required by Article II(B)(2).
- (8) Signs. The erection, maintenance and replacement of signs with respect to trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, any gift, grant, or other applicable source of support for the conservation of the Premises, and the protected conservation values; Forestry, Agriculture, other reserved rights.
- (9) Outdoor Passive Recreational Activities. Fishing, boating, hiking, hunting, horseback riding, cross-country skiing, mountain biking and other non-motorized outdoor recreational activities that do not materially alter the landscape, do not degrade environmental quality, and do not involve more than minimal use for commercial

recreational activities. Grantor reserves the right to require hunters to notify Grantor before hunting on the Premises.

- (10) Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph B shall seek to minimize disturbance to the Conservation Values and other natural features within the Premises including Robert's Meadow Brook that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph B, any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Report.
- (11) Permits, Regulations, Laws. The exercise of any right reserved by Grantor under this Paragraph B shall be in compliance with zoning, the Wetlands Protection Act, and 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 does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.
- (12) Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph B shall follow, when available and if applicable, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

**C. Notice and Approval.**

Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than 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, Grantee shall grant or withhold approval in writing within 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 impair the purposes of this Conservation Restriction.

Subject to any applicable law or regulation, failure of Grantee to respond in writing within 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, the requested activity is not prohibited herein, and the activity will not impair the conservation values or purposes of this Conservation Restriction.

### **III. 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.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

#### **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 natural 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. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

#### **IV. ACCESS**

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 necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

The Grantor agrees to take no action to prohibit or discourage access to and use of the Premises by the general public, but only for daytime use and only as described in Section II(B)(9) provided that such agreement by Grantor is subject to the Grantor's reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the protection of the purposes and conservation values of this Conservation Restriction. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in Section II(B)(9). The Grantor's right to grant public access across the Premises is subject to the restrictions described in this Conservation Restriction. Any public use which is permitted by the terms of this Conservation Restriction constitutes permission to use the Premises for purposes described in the Massachusetts General Laws Chapter 21, Section 17C and the Grantor and Grantee hereto benefit from exculpation from liability to the extent provided in such section. The Grantee may require the Grantor to post the Premises against any use that may result in rutting or erosion or other damage to the natural resources of the Premises.

#### **V. EXTINGUISHMENT**

A. Impossibility: If circumstances arise in the future such as 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 a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantees, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with paragraph B below, subject, however, to any applicable law

which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantees shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

B. Proceeds. Grantor and Grantee agree that the donation 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. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements including the Landscape Partnership grant.

C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, 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 accordance with paragraph V. B. above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

## **VI. DURATION & ASSIGNABILITY**

A. Running of the Burden. The burdens 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.

B. 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; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, 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; that the Assignee is not an owner of the fee in the Property, and the Assignee, at the time of the assignment, qualifies under Section

170(h) 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 General Laws of Massachusetts. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

#### **VII. SUBSEQUENT TRANSFERS**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) days prior to the execution of such transfer. Failure to do any of the above 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 their 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.

#### **VIII. ESTOPPEL CERTIFICATES**

Upon request by the Grantor, the Grantee shall, within sixty (60) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

#### **IX. 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 a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

#### **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 Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Hampshire Registry of Deeds.

#### **XI. 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 General Laws have been obtained, and it has been recorded in a timely manner in the Hampshire County Registry of Deeds.

#### **XII. 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: Hilltown Land Trust, Inc  
332 Bullitt Road  
Ashfield, MA 01330

To Grantee: Town of Westhampton Conservation Commission  
1 South Road  
Westhampton, MA 01027

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

#### **XIII. 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 Chapter 184, Sections 31, 32, and 33 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.

#### **XIV. MISCELLANEOUS**

A. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to Chapter 184, Section 32 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.

B. Homestead. The Grantor attests that there is no residence on or abutting the Premises (including exclusions) that is occupied or intended to be occupied as a principal residence by a spouse, former spouse, or children of the grantor, or a spouse, former spouse, or children of a beneficiary of the trust, if Premises is owned by a trust.

C. Subordination. The Grantor attests that there is no mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

D. Attached hereto and incorporated herein by reference are the following:

#### Signature pages:

Grantor: Hilltown Land Trust

Grantee Acceptance: Westhampton Conservation Commission

Approval of Select Board of Town of Westhampton

Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:

Exhibit A: Legal Description of Premises

Exhibit B: Survey of Premises

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_  
Marie Burkart, Hilltown Land Trust Board President

\_\_\_\_\_  
Carol Klyman, Hilltown Land Trust Board Treasurer

THE COMMONWEALTH OF MASSACHUSETTS  
Hampshire County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed above, and acknowledged to me that he signed it voluntarily for its stated purpose.

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

**ACCEPTANCE OF GRANT BY TOWN OF WESTHAMPTON CONSERVATION COMMISSION**

We, the undersigned, being a majority of the Conservation Commission of the Town of Westhampton, Massachusetts, hereby certify that at a public meeting duly held on \_\_\_\_\_, 2018, the Conservation Commission voted to approve and accept the foregoing Conservation Restriction from Hilltown Land Trust, Inc. pursuant to M.G.L. Chapter 184 Section 32 and Chapter 40 Section 8C and do hereby accept the foregoing Conservation Restriction.

WESTHAMPTON CONSERVATION COMMISSION:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE COMMONWEALTH OF MASSACHUSETTS  
Hampshire County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed above, and acknowledged to me that he signed it voluntarily for its stated purpose.

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

**APPROVAL OF SELECT BOARD**

We, the undersigned, being a majority of the Select Board of the Town of Westhampton, hereby certify that at a public meeting duly held on \_\_\_\_\_, 2018, the Select Board voted to approve the foregoing Conservation Restriction from Hilltown Land Trust, Inc. to the Town of Westhampton acting by and through its Conservation Commission in the public interest pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

SELECT BOARD:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

THE COMMONWEALTH OF MASSACHUSETTS

Hampshire County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed above, and acknowledged to me that he signed it voluntarily for its stated purpose.

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

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
THE 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 from Hilltown Land Trust, Inc. to the Town of Westhampton acting by and through its Conservation Commission has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
MATTHEW A. BEATON  
Secretary of Energy and Environmental Affairs

THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned notary public, personally appeared MATTHEW A. BEATON, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed above, and acknowledged to me that he signed it voluntarily for its stated purpose.

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

**Exhibit A - Description of the Premises**

The Premises subject to this Conservation Restriction is the entirety of one parcel of land located in the Town of Westhampton, Hampshire County, Commonwealth of Massachusetts, containing a total of 145.5 acres, shown on a plan of land entitled Plan of Land in Westhampton (Hampshire CO.), MA prepared for Hilltown Land Trust, dated 10/18/18, prepared by Hilltown Land Surveys, 26 Main Street, Cummington, MA 01026, said plan recorded at the Hampshire County Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_, a reduced copy of which is attached hereto as Exhibit B.

Street Address: 0 Chesterfield Road, Westhampton, MA

**Exhibit B** - Reduced copy of a survey plan