

Grantor: 3MC LLC

Grantee: The Trustees of Reservations

Property Address: Land off of Watcha Path in vicinity of Big Homer Pond, West Tisbury, Massachusetts

Grantor's Title: 3MC LLC; Book 1511, Page 278 in Dukes County Registry of Deeds.

CONSERVATION RESTRICTION

3MC LLC, a Delaware limited liability company ("**3MC**"), having an address for purposes hereof at 115 Central Park West 7B, New York, NY 10023, for its successors and assigns (the "**Grantor**"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grants to THE TRUSTEES OF RESERVATIONS, a Massachusetts not-for-profit corporation, having a mailing address of 200 High Street, Boston, MA 02110, its permitted successors and assigns (the "**Grantee**"), with quitclaim covenants, for nominal consideration in perpetuity and exclusively for conservation purposes, the following described CONSERVATION RESTRICTION, on certain portions of Lot 1 containing approximately 12.5 acres, more or less, of land to be restricted in the Town of West Tisbury, County of Dukes, Commonwealth of Massachusetts, as shown and identified as "Preservation Area" on a Plan of Land in West Tisbury, Massachusetts entitled "OPEN SPACE PLAN, WEST TISBURY, MASS.", prepared by Schofield, Barbini & Hoehn, Inc., dated January 27, 2023 and recorded in the Dukes County Registry at Plan Book 19, Page 188 (the "**Open Space Plan**"), a reduced copy of which is in Exhibit A, incorporated herein and attached hereto (the "**Premises**"). The Grantor and the Grantee are bound by and subject to the terms and conditions of this Conservation Restriction.

The Premises are a portion of a 10-lot parcel of land containing approximately 172 acres. The 172-acre parcel is the subject of a Conservation and Management Permit ("**CMP**") issued to the Homer Watcha Trust and Gerald L. De Blois, by the Commonwealth of Massachusetts Division of Fisheries and Wildlife acting through the Natural Heritage and Endangered Species Program (the "**Division**"), recorded in the Dukes County Registry at Book 1482, Page 647, as it may be subsequently amended and duly recorded.

- 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 the Conservation Restriction is to assure that the Premises will be retained in perpetuity substantially in its natural, scenic, and vegetated condition as set forth herein and to prevent any use of the Premises that will impair or interfere with the Conservation Values of the Premises. This Conservation Restriction supersedes the Declaration of Restriction recorded on the Premises in the Registry at Book 1488, Page 65 only with respect to the portion of the property designated as Conservation Restriction Area #1. The conservation of the Premises will yield a significant public benefit for the following reasons:

- a. Wildlife & Habitat Protection: Conservation of the Premises will protect habitat used by a variety of wildlife including, but not limited to, the following species state-listed pursuant to the Massachusetts Endangered Species Act: Coastal Heathland Cutworm (*Abagrotis nefascia*), Barrens Dagger Moth (*Acronicta albarufa*), Gerhaerd's Underwing Moth (*Catocala herodias gerhardi*), Cow Path Tiger Beetle (*Cicindela purpurea*), Melsheimer's Sack Bearer (*Cicinnus melsheimeri*), Northern Harrier (*Circus cyaneus*), Sandplain Euchlaena (*Euchlaena madusaria*), Slender Clearwing Sphinx (*Hemaris gracilis*), Barrens Buckmoth (*Hemileuca varia*), Sandplain Heterocampa (*Heterocampa varia*), Pine Barrens Lycia (*Lycia ypsilon*), Coastal Swamp Metarranthis Moth (*Metarranthis pilosoria*), Spartina Borer Moth (*Photodes inops*), Pink Sallow Moth (*Psectraglaea carnosa*), Faded Gray Geometer (*Stenoporpia polygrammaria*), and Pine Barrens Zale (*Zale lunifera*).
- b. Nearby Natural Areas: The Premises are proximate to Big Homer's Pond to the north of the Atlantic Ocean, and include upland habitat for native wildlife and plant species and communities, including many species state-listed by the Division. The preservation and management of the Premises will protect and enhance these habitats. The Premises also borders or is located in close proximity to lands that have been permanently protected by the Trustees of Reservations and The Nature Conservancy as well as under the terms and conditions of the CMP.
- c. Scenic Landscape Preservation: The Premises comprise part of a scenic landscape. The open space conservation land protected under this Conservation Restriction is an important public resource. The preservation of the Premises, by prohibiting significant alterations to the natural character thereof, will further protect and enhance the area's scenic and open space attributes and the ecological value of the Premises and hundreds of acres of adjacent and nearby conservation land and open space.
- d. Water Quality Protection: Preserving and managing the natural environment will provide for groundwater recharge and protect wetland resource areas, including Big Homer's Pond.
- e. Furtherance of Government Policy: Protection of the Premises furthers the Town of West Tisbury policies with respect to open space and Division policies with respect to wildlife and land conservation. Portions of the Premises fall within an area designated as Priority Habitat for state-listed rare species by the Division.
- f. Massachusetts Endangered Species Act ("MESA"): This Conservation Restriction is granted pursuant to and in accordance with the requirements set forth in CMP No. 018-328.DFW, dated September 19, 2018., issued by the Division and recorded at Book 1482, Page 647, in the Dukes County Registry, as it may be subsequently amended and duly recorded with reference to CMP No. 018-328 and this Conservation Restriction, and incorporated by reference herein.
- g. Baseline Documentation Report and Survey ("BDRS"): These Conservation Values and public benefits are described in more detail in the Baseline Documentation

Report and Survey (“BDRS”), copies of which are to be kept on file at the office of the Grantee and incorporated herein by this reference. Grantor and Grantee agree that the purpose of the BDRS, which consists of maps, narratives, survey plans and aerial and ground photographs that portray the condition of the Premises at the time of the creation of the BDRS and immediately prior to recording of this Conservation Restriction, is to provide a baseline from which future changes to the Premises, whether natural or human-caused, can be measured including to objectively and accurately document natural or other uses, physical features, improvements, and trails and as they relate to the prohibited and permitted uses of the Premises. Notwithstanding, in the event that the BDRS is unavailable, or is determined to be inadequate for resolving any issue that may arise after the granting of this Conservation Restriction, other evidence may be used to show the condition of the Premises at either the time of the grant or some subsequent point in time.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, the Grantor and the Grantee voluntarily agree that the Conservation Restriction described herein is an appropriate means to ensure compliance with the CMP issued pursuant to MESA and achieve the community's open space goals and objectives, all of which thereby represent significant public benefits.

II. DEFINITIONS:

- a. Conservation Values: shall mean, without limiting the generality of the terms, those conservation attributes set forth above in Section I and as further described in the BDRS.
- b. Hazardous Material: shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as a pollutant, dangerous substance, toxic substance, hazardous waste, hazardous material, hazardous substance or contaminant under any applicable environmental law, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is now or hereafter regulated under any applicable environmental law, *provided, however*, that Hazardous Material shall not include any material that is naturally present in its naturally occurring form on the Premises.
- c. Pervious: shall mean built of materials consisting of unconsolidated minerals such as sand, dirt or gravel, or natural materials such as wood chips or grass.
- d. Structure: (whether or not said term is capitalized) shall mean anything constructed or erected which requires permanent or temporary location on, in, over or under the ground or permanent or temporary attachment to something which is erected or placed on the ground and designed, intended or arranged for the housing, shelter, enclosure and/or structural support of persons, animals or property of any kind, including but not limited to houses, mobile homes, tents, barns, sheds, greenhouses, treehouses, and other buildings of any kind; silos and cribs; swimming pools; playing

courts; outdoor riding rings; fences; pads; patios and decks; docks; bridges; roads; driveways and parking areas (whether surfaced with macadam, brick, paving stones, gravel, clay or other material); artificially surfaced walkways; solar panels; satellite dishes and antennae; signs and billboards; storage tanks; windmills and wind turbines; and water, sewer, power, fuel, gas and communication lines, other utility systems and related facilities.

- e. Passive Recreation: activities that are non-consumptive uses of resources and do not require prepared facilities like sports fields and pavilions. Passive recreation activities place minimal stress on the site's resources and are compatible with the Conservation Values. Examples include hunting, hiking, wildlife viewing, observing and photographic nature, picnicking, walking, bird watching, running/jogging, stargazing, swimming, boating, and fishing. Passive recreation excludes mountain bikes and use of motorized vehicles, unless specified herein.

III. PROHIBITED USES & RESERVED RIGHTS:

- a. Prohibited Uses: Except as to (i) reserved rights set forth in Section III(b) below; or (ii) permitted by the CMP, the Grantor shall not perform or permit others to perform the following acts or uses, which are prohibited, in, on, over or under the Premises:
 - i. Constructing, placing, or allowing to remain any Structure on, above, or below the surface of the Premises, except in accordance with the CMP as it may be subsequently amended and duly recorded; provided, however, that the old well, roads, and any other structures existing on, above, or below the surface of the Premises as of the date of the CMP may be maintained in place or, with prior written notice to the Grantee and the Division, removed.
 - ii. Mining, excavating, dredging or removing of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
 - iii. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree or other vegetation cuttings, waste or Hazardous Material, whether or not generated on the Premises, or the installation of underground storage tanks;
 - iv. Removing, cutting, pruning or destroying vegetation (native or non-native), including, but not limited to trees or plants, understory, grasses and ground covers, except in accordance with the CMP or as allowed in writing by the Grantee and Division;
 - v. The application or use on the Premises of fertilizers, fungicides, herbicides or pesticides in any quantity, except in accordance with the CMP or as allowed in writing by the Grantee and Division;

- vi. The intentional planting, release, cultivation, maintenance, or other activity that would result in the introduction of plant or animal species that pose a substantial risk of being invasive or are otherwise detrimental to the native plant and animal community on the Premises, as determined by the Division. A list of plant species deemed to be invasive, as of the time of this grant, is provided in the Massachusetts Prohibited Plant List, which is updated and maintained by the Massachusetts Department of Agricultural Resources;
- vii. Activities detrimental to drainage, flood control, erosion control, water or soil conservation, archaeological resources or the quality of ground water and wetlands;
- viii. Any commercial recreation, other business or industrial use;
- ix. Animal penning or grazing; holding horses, pets, livestock, or domestic animals within a paddock; horseback riding except on existing or permitted roads and paths; causing or permitting any domestic or livestock to be unattended or to roam or be at large on the Premises; and the storage or dumping of manure or other animal wastes; any agricultural use;
- x. The use, parking or storage of motorized vehicles, including, but not limited to, trucks, trail bikes, all-terrain vehicles, dune buggies, trailers, snowmobiles and motorized as well as non-motorized boats, except (a) as necessary by the police, fire fighters or other governmental agents in carrying out their lawful duties; (b) as necessary by any caretaker or private security personnel for purposes of monitoring and safeguarding the Premises; (c) for motorized wheelchairs or scooters or other vehicles used by physically challenged parties; (d) for purposes of vegetation management, habitat improvement, and viewshed pruning in accordance with the CMP or as allowed in writing by the Grantee and the Division; and (e) as necessary to access the Premises and surrounding property, using roads and driveways shown on the Open Space Plan or in locations otherwise permitted by the CMP or allowed in writing by the Grantee and the Division.
- xi. The disruption, removal, or destruction of any stone walls or granite fences or posts;
- xii. 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). No portion of the Premises may be used towards building or development requirements on the affected lots or any other parcel except as provided by the CMP or allowed in writing by the Division;
- xiii. No person may damage, disturb or remove any part or portion of the Premises or any real, natural, personal, cultural or historic resource thereon, except (a)

through hunting, fishing, or trapping where permitted and carried out in accordance with regulations issued by the Division of Fisheries and Wildlife subject to MGL Chapters 130, and 131 and 321 CMR, or other written authorization from the Division of Fisheries and Wildlife; or (b) in accordance with the CMP; and

- xiv. Any other use of the Premises or activity thereon which is inconsistent or interferes with, or that would materially impair the purposes or Conservation Values of this Conservation Restriction, unless necessary in an emergency for the protection of the Conservation Values that are the subject of this Conservation Restriction.
- b. Reserved Rights in the Premises: The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, provided they do not materially impair the Conservation Values or purposes of this Conservation Restriction.
- i. With prior written permission of the Grantee and Division, after consultation with and consistent with the advice of a professional biologist to ensure such use will not be detrimental to any state-listed species or other wildlife, the erection and maintenance and/or removal of sight-pervious, non-enclosing, wildlife friendly fences, such as wooden split rail or other open-faced fences, or low hedges of native plant species;
 - ii. The installation, maintenance, and/or removal of temporary or permanent boundary monuments, and the installation, maintenance, and/or removal of small informational signs, provided that such signage is consistent with the purposes of this Conservation Restriction and does not identify the location or existence of any specific state-listed species on the Premises, with the written permission of the Grantee and the Division;
 - iii. Non-commercial, passive recreational uses of the Premises such as by Grantor and/or Grantor's invitees, including without limitation nature study, birding, wildlife observation, picnicking, walking, jogging/running, cross-country skiing or snowshoeing, all on existing and proposed trails (shown on the Open Space Plan) or on new or improved trails in accordance with the CMP, and similar passive recreation activities, provided that such uses do not alter the topography, landscape, or environmental qualities of the Premises. Notwithstanding the definition of "passive recreation" at Section II(e), above, the use of mountain bikes and horseback riding on existing or permitted roads, trails and paths are specifically permitted.
 - iv. With prior written permission of the Grantee and Division, and/or in accordance with the CMP, the prevention, removal or control of hazardous trees, fire damage, poison ivy, oriental bittersweet, other invasive or exotic species, insect infestations, diseases, and other types of pests by methods, including but not limited to, selective pruning and cutting, the use of

motorized equipment or vehicles for vegetation management and habitat improvement, the use of spot-applied herbicides, fungicides and pesticides, and the interplanting of native species in a manner that minimizes damage to nearby non-target species and water quality;

- v. With prior written permission of the Grantee and Division and/or in accordance with the CMP, the selective trimming and cutting of trees and other vegetation, using handheld equipment such as chainsaws and loppers, to heights of no less than three (3) feet from the ground so as to maintain the ecological integrity of the native understory shrubland except in locations where lower heights are consistent with the currently maintained and managed vegetation as reflected in the CMP and/or shown in the BDRS, for the purpose of creating, maintaining or enhancing the viewsheds to provide views of the surrounding landscape, provided that such activities are undertaken with appropriate precautions to avoid impacts to state-listed species;
- vi. With prior written permission of the Grantee and Division and/or in accordance with the CMP, the preservation or maintenance of the present condition of the Premises, including vistas, woods roads, fence lines, roads, trails and paths by methods described in Section III(b)(iv), above;
- vii. With prior written permission of the Grantee and Division and/or in accordance with the CMP, the right to restore, maintain, enhance or otherwise manage biotic communities or habitats for native or rare species by means and methods that include, but are not limited to, application of herbicide, selective planting of native species, cutting, prescribed burning or removal of native vegetation, forestry, and modification of soils. Where the CMP requires habitat restoration, maintenance or enhancement of rare species habitat, no written permission shall be required from the Grantee. All habitat restoration, maintenance or enhancement of rare species habitat shall be done in accordance with the written permission of the Division, or applicable CMP requirements;
- viii. With prior written permission of the Grantee and Division and/or in accordance with the CMP, the composting of stumps, brush, limbs, and similar biodegradable materials as well as the temporary stockpiling of trees or soil originating on the Premises, provided that such composting and stockpiling is in locations where the presence of such activities will not materially impair the Conservation Values.
- ix. The marking, clearing, mowing or maintenance and/or use of all existing and proposed utility corridors, access roads, parking areas, footpaths and woods roads as shown on the Open Space Plan and/or described in the BDRS, in accordance with the CMP;

- x. With prior written permission of the Grantee and Division which shall take reasonable account of applicable engineering and construction constraints, the installation, maintenance repair and/or replacement of underground utilities and conduit, including without limitation for the provision of electrical service to existing and new residences and ancillary structures, provided that (a) existing grades are not altered, native vegetation is restored and maintained as functional habitat subsequent to construction or repairs; and (b) that any such activity is solely for the purpose of and strictly limited to extending and maintaining services to residences and ancillary structures located outside of the Premises on other areas shown on the Open Space Plan in Exhibit A, and provided that the extent of disturbance to native vegetation is avoided and minimized to the greatest extent practicable through assessment of alternative locations that avoid and minimize direct and indirect impacts to state-listed species and their habitats, and compliance with an operations and maintenance plan that is acceptable to the pertinent utility service provider(s) and approved in advance by the Division, in the reasonable exercise of its discretion;
- xi. With prior written permission of the Grantee and Division, the reconstruction and/or relocation of existing or future roads and paths to maintain adequate access for public health and safety reasons, or respond to, mitigate, or anticipate the imminent effects of climate change, including, but not limited to, rising sea levels or changing shorelines, provided that (a) abandoned roads or paths are restored to appropriate native habitat, unless otherwise approved by the Grantee and the Division; (b) the new road(s) and/or path(s) are no wider and no greater in area of non-pervious surface than those being replaced, and are constructed in a manner that avoids and minimizes disturbance to native soils and vegetation (e.g., using a pile-supported structure, if warranted, in lieu of importing and placing soils to stabilize the travel surface); and (c) the reconstructed and/or relocated roads and/or paths are sited to avoid and minimize direct or indirect impacts to state-listed species and their habitats;
- xii. All actions and activities required or authorized by the CMP, as the CMP may be subsequently amended and duly recorded with the Registry with reference to the CMP and this Conservation Restriction;
- xiii. Any work undertaken in conjunction with the reserved rights mentioned above in Section III(b) shall seek to minimize disturbance to the Premises. Upon completion of any site work performed in conjunction with Section III(b), any disturbed areas shall be restored substantially to match the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work.
- xiv. Archaeological investigations and activities, including without limitation surveys, excavation, and artifact retrieval conducted under the direction of a qualified organization or person, following submission of an archaeological field investigation plan and written approval thereof by (a) the State

Archaeologist of the Massachusetts Historical Commission, and in accordance with Massachusetts 950 CMR 70.00 with approval of the Grantee in consultation with Division; and (b) the Division in accordance with the requirements of MESA; and

- xv. Such other non-prohibited activities authorized by the CMP or requested by the Grantor and approved in writing by the Grantee and the Division based on a finding that the activity is consistent with, and does not materially impair the purposes of the CMP, the Conservation Restriction or the Conservation Values of the Premises.

The exercise of any right reserved by the Grantor under Section III(b) shall be in compliance with the applicable Zoning By-Laws of the Town of West Tisbury, and all other applicable federal, state, county and local laws, bylaws, rules and regulations, including, but not limited to Massachusetts Historic Commission regulations and local wetland conservation commission bylaws and regulations. The inclusion of any reserved right in Section III(b) requiring a permit from a public agency does not imply that the Grantee or the Division takes any position on whether such permit should be issued.

IV. ADDITIONAL PROVISIONS:

a. **NOTICE AND APPROVAL:**

Where Grantee and/or Division approval is specifically referenced and required under the provisions of this Conservation Restriction, Grantor shall request approval by Grantee and/or Division as appropriate. Such request shall be in writing and shall be sent by a method requiring proof of receipt and shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee or Division to make an informed judgment as to its consistency with this Conservation Restriction. Grantee or Division may require Grantor to submit additional information necessary to evaluate the proposed activity, including but not limited to requiring Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party. Grantee or Division shall grant or withhold approval in writing within sixty (60) calendar days of receipt of Grantor's request for such approval. Grantee's or Division's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity complies with this Conservation Restriction and shall not materially impair the Purpose or Conservation Values of this Conservation Restriction. In the case of withholding of approval, Grantee or Division shall notify Grantor in writing with reasonable specificity of the reasons for withholding of approval, and the conditions, if any, on which approval might otherwise be given. Failure of Grantee or Division to respond in writing within sixty (60) calendar days shall be deemed to constitute denial by Grantee or Division of the request as submitted. A deemed denial shall be treated by all parties as procedural, rather than substantive, and Grantor may re-submit the request for approval without prejudice.

Grantee's approval shall take into account the following criteria:

- (a) the extent to which use of the site and/or the proposed activity would destroy an

important habitat or would have a material adverse effect on the movement of wildlife;

- (b) the extent to which the use of the site and/or the proposed activity would impair the scenic qualities of the Premises that are visible from public roads and waterways;
- (c) in the case of any proposal with respect to which Grantee's approval is required to build new structures or roads, the extent to which the scenic quality of the Premises may be adversely impacted;
- (d) the extent to which the use of the site would impair water quality;
- (e) the extent to which the proposed activity or use of the site for the proposed activity would otherwise materially impair the Purpose or Conservation Values.

Grantor and Grantee shall cooperate and shall act in good faith to arrive at agreement in connection with any determinations that are necessary to be made by them (either separately or jointly.)

b. LEGAL REMEDIES OF THE GRANTEE:

i. Legal and Injunctive Relief.

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain compensatory relief, including without limitation, compensation for interim losses (i.e., ecological and public use service losses that occur from the date of the violation until the date of restoration), injunctive relief, 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.

The Conservation Restriction shall also be enforceable by the Commonwealth of Massachusetts acting through the Division; and does not limit in any manner the Division's authorities or duties under G.L. c. 131 and 131A et. seq. or the implementing regulations for such statutory provisions.

ii. 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.

iii. 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.

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

c. ACCESS:

The Grantor hereby grants to the Grantee and the Division, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice to the Grantor with ownership or control of the affected Premises or portion thereof 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.

Notwithstanding anything contained herein to the contrary and except as expressly provided in this Section IV(c), this Conservation Restriction does not grant to Grantee, to the Division, to the general public, or to any other person any right to enter upon the Premises.

d. EXTINGUISHMENT:

- i. 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 and the Division. 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 in accordance with Section IV(d)(ii) 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. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.
- ii. 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 bears to the value of the unrestricted property. Such proportionate value of the Grantee's property right will be determined as of the date of termination, release, or extinguishment.
- iii. 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 Section IV(d)(ii) – 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.

e. ASSIGNABILITY:

- i. 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.

- ii. 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.
- iii. 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:

Any assignment of all or any portion of this Conservation Restriction to any successor Grantee shall be subject to Grantor's written approval of such successor Grantee, which approval shall not be unreasonably withheld. 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.

f. 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 any recorded leasehold interest and to notify the Grantee within twenty (20) days of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. If the Grantor fails to 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, then the Grantee may record, in the applicable registry of deeds, or registered in the applicable land court registry district, and at the Grantor's expense, a notice 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.

g. ESTOPPEL CERTIFICATES:

Upon 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.

h. 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.

i. 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 and the CMP, shall not affect the perpetual duration of this Conservation Restriction, shall be approved in writing by the Secretary of Energy and Environmental Affairs and Division, 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 Registry.

j. EFFECTIVE DATE:

This Conservation Restriction shall be effective when the Grantor, the Grantee, and the Division 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 Registry.

k. 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 be served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: 3MC LLC

9 West 57th Street, 31st Floor
New York, New York 10019
Attn: Mark Vassallo

To Grantee: The Trustees of Reservations
464 Abbott Avenue
Leominster, MA 01453
Attn: CR Stewardship Program

To Division: Natural Heritage & Endangered Species Program
Massachusetts Division of Fisheries & Wildlife
Attn: Regulatory Review, CMP 018-328.DFW
1 Rabbit Hill Road
Westborough, MA 01581

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.

I. GENERAL PROVISIONS:

- i. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- ii. 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 Massachusetts General Laws Chapter 184, Sections 31-33. 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.
- iii. 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.
- iv. 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.

m. MISCELLANEOUS.

i. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 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.

ii. Homestead

The Grantor hereby releases, agrees to waive, subordinate, and release any and all Massachusetts General Law Chapter 188 Homestead rights it may have in favor of this Conservation Restriction with respect to any portion of the Premises affected by this Conservation Restriction, and hereby agrees to execute, deliver and/or record any and all instruments necessary to effectuate such waiver, subordination and release. In all other respects, the Grantor reserves and retains any and all Homestead rights, subject to this Conservation Restriction, pursuant to M.G.L. c. 188, Section 10(e).

iii. The Grantor agrees to subordinate all liens, mortgages, construction loans and home equity lines of credit to this Conservation Restriction.

iv. This Conservation Restriction may be executed in multiple counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same Conservation Restriction.

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

SIGNATURE PAGES:

Grantor

Grantee Acceptance

Approval by Select Board of the Town of West Tisbury

Approval of the Secretary of Energy and Environmental Affairs

Acknowledgement by the MA Division of Fisheries and Wildlife

EXHIBITS:

Exhibit A: Reduced Copy of Open Space Plan

WITNESS my hand and seal this 19 day of December, 2023,

GRANTOR

3MC LLC, a Delaware limited liability company



Name: Mark Vassallo

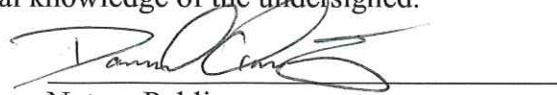
Title: Manager

STATE / COMMONWEALTH OF New York

Kings County, ss

December 19, 2023

Before me, the undersigned notary public, personally appeared Mark Vassallo, in his capacity as Manager of 3MC LLC, whose name is signed on the preceding document, and such person acknowledged to me that he signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, or personal knowledge of the undersigned.



Notary Public

My Commission Expires: 8/2/25



ACCEPTANCE OF GRANT

This Conservation Restriction from 3MC LLC was accepted by The Trustees of Reservations this _____ day of _____, 2023.

The Trustees of Reservations

K. Theoharides

Katie Theoharides
President, duly authorized

Brian Therrien

Brian Therrien
Treasurer, duly authorized

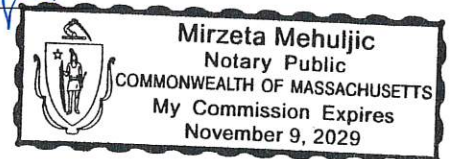
COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

On this 7 day of December, 2023, before me, the undersigned notary public, personally appeared Katie Theoharides, and proved to me through satisfactory evidence of identification which was driver's license to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Mirzeta Mehuljic

Notary Public
My Commission Expires:



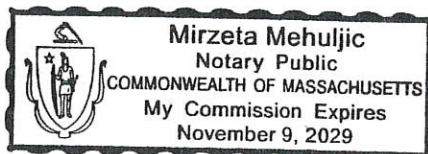
COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

On this 7 day of December, 2023, before me, the undersigned notary public, personally appeared Brian Therrien, and proved to me through satisfactory evidence of identification which was driver's license to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Mirzeta Mehuljic

Notary Public
My Commission Expires:



APPROVAL OF SELECT BOARD OF WEST TISBURY

We, the undersigned, being a majority of the Select Board of the Town of West Tisbury, hereby certify that at a public meeting duly held on _____, 2023, the Select Board voted to approve the foregoing Conservation Restriction from 3MC LLC to The Trustees of Reservations pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

SELECT BOARD:

Cynthia Mitchell, Chair

Skipper Mater

Jessica Miller

COMMONWEALTH OF MASSACHUSETTS

DUKES, ss:

On this _____ day of _____, 2023, before me, the undersigned notary public, personally appeared _____, _____, _____, and _____, and proved to me through satisfactory evidence of identification which was _____ to be the persons whose name are signed on the proceeding or attached document, and acknowledged to me that they 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 Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from 3MC, LLC to The Trustees of Reservations has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 2023

REBECCA L. TEPPER
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this _____ day of _____, 2023, before me, the undersigned notary public, personally appeared REBECCA L. TEPPER, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

ACKNOWLEDGEMENT BY THE MA DIVISION OF FISHERIES AND WILDLIFE

This grant of Conservation Restriction set forth above to the Trustees of Reservations by 3MC LLC is acknowledged accepted this _____ day of _____, 2023. The MA Division of Fisheries and Wildlife (Division) acknowledges the reserved rights and obligations of the Division set forth herein.

Name:

Date: _____

COMMONWEALTH OF MASSACHUSETTS

On this _____ day of _____, 2023, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was one of the following (check applicable box): a driver's license; a valid passport; personally known to be the person whose name is signed on the preceding or attached document; or other _____, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Director of the Commonwealth of Massachusetts Division of Fisheries and Wildlife.

Notary Public
My commission expires:

