

GRANTOR: Merry Farm LLC; Casey Blum and Daniel Ian Ridgeway

GRANTEE: XXXXXXXXXXXXXXXX

ADDRESS OF PREMISES: 140 Merry Farm Road, West Tisbury, MA 02575

FOR GRANTOR'S TITLE SEE: Dukes Co. Registry of Deeds at Book 01629, Page 128 FOR

GRANTOR'S PLAN SEE: Dukes Co. Registry of Deeds at Plan Book 19 Page 129

GRANT OF CONSERVATION RESTRICTION

I. STATEMENT OF GRANT

MERRY FARM LLC, with a registered office address at 15 Crowell Lane, West Tisbury MA 02575, and a mailing address of c/o Jeffrey Byrne DuBard, Manager, 301 South Gate Road, Vineyard Haven MA 02568, and,

CASEY BLUM and DANIEL IAN RIDGEWAY, as joint tenants and not tenants in common, with an address at 138 Merry Farm Road, West Tisbury MA 02575 and a mailing address of P.O. Box 1233, Vineyard Haven MA 02568, **as their interests may appear**, being the sole owners of the Premises as defined herein, for their successors and assigns

("Grantors"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant, with QUITCLAIM COVENANTS, to the **Town of West Tisbury**, acting through its duly appointed Conservation Commission ("Grantee"), **IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION and AGRICULTURAL PURPOSES**, the following Conservation Restriction on land located in West Tisbury, Dukes County, containing a 6.16-acre portion of a 7.17- acre property (the "Premises"), which Premises is more particularly described in Exhibit A and shown in the attached reduced copy of a survey plan in Exhibit B.2, both of which are incorporated herein and attached hereto.

II. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purposes of this Conservation Restriction ("Purposes") are to ensure that the Premises will be maintained in perpetuity in its natural, scenic, or open condition, available for both agricultural use and passive outdoor recreational use, and to prevent any use or change that would materially impair the Conservation Values (as defined below).

Permit Requirement. This Conservation Restriction is required by the Permanent Open Space Restriction and Covenant issued by the West Tisbury MA Planning Board on April 27, 2023, and recorded in the Dukes County Registry of Deeds in Book 1653 Page 302.

The Conservation Values protected by this Conservation Restriction include the following:

- Open Space. The Premises contributes to the protection of the scenic and natural character of the Town of West Tisbury and will integrate into the abutting 18+ acre Wompesket Preserve owned by the Martha's Vineyard Land Bank Commission.
- Soils and Soil Health. The Premises includes a majority of Farmland Soils of Statewide Importance (Moshup), as identified by the USDA Natural Resources Conservation Service. The protection of the Premises will promote healthy soils and healthy soils practices as such terms are defined in Chapter 358 of the Acts of 2020, which added definitions of these terms to Section 7A of Chapter 128 of the Massachusetts General Laws.

Working Farmland. The protection of the Premises will ensure that the open fields contained on the Premises will be permanently available for agriculture that is consistent with the Purposes. Additionally, the Commonwealth of Massachusetts adopted Chapter 277 of the Acts of 2010 to create a Massachusetts Food Policy Council to develop recommendations to advance *inter alia* the following food system goals for the Commonwealth, including: (A) increased production, sales and consumption of Massachusetts-grown foods; . . . (C) the protection of the land and water resources required for sustained local food production; and, (D) the training, retention and recruitment of farmers and providing for the continued economic viability of local food production, processing and distribution in the Commonwealth.

- Preservation of NHESP-designated Priority Habitat. The Premises are situated almost wholly within an area identified by Natural Heritage and Endangered Species Program (NHESP) as "Priority Habitat of Rare Species." Said Priority Habitat-designated areas support the best remaining examples of the Commonwealth's biodiversity and represent high priorities for preservation. Activities that may result in a "take" of rare species on the Premises are prohibited without a permit from NHESP.
- Wetlands. The freshwater pond and bordering vegetated wetlands on the Premises provide valuable habitat for a diverse array of wildlife species as well as provide the many other public benefits of wetlands protection recognized by the Commonwealth of Massachusetts (Section 40 of Chapter 131 of the Massachusetts General Laws).
- Biodiversity. The Premises is designated as BioMap Critical Natural Landscape as defined by the Massachusetts Natural Heritage and Endangered Species Program. BioMap, published in 2010 and updated in 2022, which was designed to guide strategic biodiversity conservation in Massachusetts over the next decade 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. *BioMap* is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan. The morainal ridge running parallel to the shore of West Tisbury serves a Large Landscape Block of rare species habitat.

- Historical and Cultural Values. Permanent protection of the Premises with this Conservation Restriction will preserve the historical and cultural attributes of this land in perpetuity. The Grantor recognizes the impacts of human presence on this and neighboring lands, and seeks to preserve, and conserve in perpetuity the ecological, historic, and cultural conservation values that this land possesses. Takemmy is an important cultural landscape for the first people of Noepe not far from the former indigenous village of Deep Bottom. Locale and features of the Premises are consistent with the purposes of the Grantee, to protect traditional cultural landscapes, which include the flora and fauna that have a unique historical meaning and value to the Native American community. In addition, the Premises is a portion of the historic Rainbow Farm operated by the Douglass family for many years on the 200-foot high morainal ridge.

III. PROHIBITED and PERMITTED ACTS AND USES

A. Prohibited Acts and Uses

The Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

1. Structures, Improvements, and Facilities. Constructing, placing, or allowing to remain any temporary or permanent structure or facility including without limitation any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, graveled area, road, sign, fence, gate, billboard or other advertising, antenna, utilities or other structures, utility pole, tower, wind turbine, solar panel, solar array, conduit, line, septic or wastewater disposal system, storage tank, or dam;
2. Extractive Activities/Uses. Mining, excavating, dredging, withdrawing, or removing soil, loam, peat, gravel, sand, rock, surface water, ground water, or other mineral substance or natural deposit, or otherwise altering the topography of the Premises;
3. Disposal/Storage. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings, liquid or solid waste or other substance or material whatsoever;
4. Adverse Impacts to Vegetation. Cutting, removing, or destroying trees, shrubs, grasses or other vegetation;

5. Adverse Impacts to Water, Soil, and Other Features. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, natural habitat, archaeological conservation, or ecosystem function;
6. Introduction of Invasive Species. Planting or introducing any species identified as invasive by the Massachusetts Invasive Plant Advisory Group or identified as invasive in such recognized inventories as the Massachusetts Introduced Pests Outreach Project, the Northeast Aquatic Nuisance Species Panel, or other such inventories, and any successor list as mutually agreed to by Grantor and Grantee;
7. Motor Vehicles. Using, parking, or storing motorized vehicles, including motorcycles, mopeds, all-terrain vehicles, off-highway vehicles, motorboats or other motorized watercraft, snowmobiles, launching or landing aircraft, or any other motorized vehicles, acknowledging that vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) may have a legal right to enter the Premises, and excluding farm vehicles used in connection with activities described in III(B)(12) below;
8. Subdivision. Subdividing or conveying a part or portion of the Premises (as compared to division and conveyance of the Premises in its entirety which shall be permitted), it being the Grantors' and Grantee's intention to maintain the entire Premises under no more than four (4) ownerships;
9. Use of Premises for Developing Other Land. Using the Premises towards building or development requirements on this or any other parcel;
10. Adverse Impacts to Stone Walls, Boundary Markers. Disrupting, removing, or destroying stone walls, granite fence posts, or any other boundary markers;
11. Festivities. Use of the Premises for parties, events, or a wedding venue, for which any compensation, in cost or in kind, is rendered;
12. Other Uses. Using the Premises for residential or industrial purposes; Using the Premises for any commercial purposes, other than agriculture, that are inconsistent with the Purposes or that would materially impair the Conservation Values, or for any other uses or activities that are inconsistent with the Purposes or that would materially impair the Conservation Values.

B. Permitted Acts and Uses

Notwithstanding the Prohibited Acts and Uses described in Paragraph III.A, the Grantor may conduct or permit the following acts and uses on the Premises, provided they do not materially impair the Purposes and/or Conservation Values. In conducting any Permitted

Act and Use, Grantor shall minimize impacts to the Conservation Values to ensure any such impairment thereto is not material.

1. Cultural Practices on Lot 1 only. The right for the Owner of Lot 1 and Grantee to allow access to Lot 1 of the Premises to local indigenous groups for cultural land ceremonial uses that are consistent with the Conservation Restriction's conservation values. Cultural practices are defined for the purposes of this Conservation Restriction, as including traditional spiritual ceremonies, seasonal celebrations, offerings, and cultural/education/ interpretation. With the written approval of Grantor, Grantee or Indigenous persons designated by Grantee may harvest plant-life using sustainable methods, including regrowth and replanting, for traditional cultural practices and noncommercial purposes, in areas not used at the time for managed agriculture pursuits. Harvesting may be conducted only using hand tools and in traditionally customary quantities. Harvest shall not occur in areas that have undergone ecological restoration until more than five years after restoration is completed.
2. Cultural Respect Easement. The right of Owner of Lot 1 and Grantee, by mutual agreement, to negotiate and record Cultural Respect Easement(s), or other similar documents with Federal and/or State-Recognized Tribes or indigenous 501(c)(3) conservation organizations enabling the uses described in Section III.B.1 hereinabove.
3. Vegetation Management.
 - a. The removal of dead, diseased, dangerous, or injured trees; and,
 - b. In the event that the Premises is not being used for agricultural purposes in any given year, the right and obligation of the Grantor to mow, cut, prune and graze the Premises to maintain its condition as shown in the Baseline Report, and all as documented in the Baseline Report to prevent open fields from succeeding to woody vegetation. Grantor shall mow the Premises annually in order to prevent the growth of woody vegetation, failing which the Grantee, or its agent, shall, at Grantee's sole risk and cost and no more frequently than once in any one twelve-month period, have a reasonable right of access to and across the Premises for the purpose of conducting such mowing. Any mowing by either Grantor or Grantee shall be conducted only between October 1 and April 1 in order to allow birds and invertebrates to maintain ground nests and the heads of field grasses to develop and spread.
4. Non-native, Nuisance, or Invasive species. Removing non-native, nuisance, or invasive species, interplanting native species, and controlling species in a manner that minimizes damage to surrounding, non-target species and preserves water quality.

5. Composting. Stockpiling and composting stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises, but not in or within one hundred (100') feet of any wetland.
6. Natural Habitat and Ecosystem Improvement. With prior written approval of the Grantee, conducting measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, ecosystem function, or rare or endangered species including planting native trees, shrubs, and other vegetation.
7. Trails. The right of Grantors to mow and maintain a foot trail not to exceed six (6') feet in width around the perimeter of the Premises at any time of year.
8. Signs. Constructing, installing, maintaining, and replacing signs and informational kiosks with respect to the Permitted Acts and Uses, the Purposes, the Conservation Values, trespass, hunting, public access, identity and address of the Grantor, sale of the Premises, the Grantee's interest in the Premises, boundary and trail markings, any gift, grant, or other applicable source of support for the conservation of the Premises.
9. Use of Pesticides. The Grantor reserves the right to use pesticides, designed and applied to affect the target species and minimize impact to adjacent non-target species, preferably applied by hand. Any employment of pesticides for agricultural or other permitted uses will be in conformance with best management practices.
10. Right to Conduct Agricultural Activities on Entirety of Premises. The Grantors reserve the right to conduct Agricultural Activities, as described more fully below in Section III. B(11), on the entirety of the Premises. The Grantors further reserve the right to conduct clearing of vegetation necessary to render the entire Premises available for Agricultural Activities. Currently, a majority of the Premises is not used for Agricultural Activities.
11. Agricultural Activities.
 - a. Permitted Activities. "Agricultural Activities" are collectively defined as "Animal Husbandry" and "Horticulture," defined below:
 - i. Animal Husbandry. Raising animals, including but not limited to dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, and bees, for the purpose of using, consuming, or selling such animals or a product derived from such animals in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for use, consumption, or market.
 - ii. Horticulture. Raising fruits, vegetables, berries, nuts, and other foods for human consumption, feed for animals, flowers, all for the purpose of selling such products in the regular course of business; or when

primarily and directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising such products and preparing them for use, consumption, or market. In no event shall marijuana or other non-nutritional products be cultivated on the Premises except for crops or materials related to clothing.

- b. Requirement to Follow Best Agricultural Practices. Agricultural Activities shall be conducted in a manner consistent with generally accepted best management practices for sustainable farming as those practices may be identified from time to time by appropriate governmental or educational institutions such as the USDA Natural Resources Conservation Service (NRCS), UMass Extension, Northeast Organic Farming Association (NOFA), Massachusetts Department of Agricultural Resources, and the like, (collectively, “Best Agricultural Practices”) and in a manner that promotes healthy soils and healthy soil practices, as such terms are defined in Chapter 358 of the Acts of 2020, which added definitions of these terms to Section 7A of Chapter 128 of the Massachusetts General Laws (“Healthy Soils and Practices”), and in a manner that does not hinder the ability of future generations to engage in Agricultural Activities on the Premises.
- c. Requirement for a Farm Conservation Plan. Agricultural Activities shall require a farm conservation plan, such as an NRCS Conservation Plan (“Farm Conservation Plan”), prepared for the Premises, and approved in writing by the Grantee and, if required, by the Massachusetts Natural Heritage and Endangered Species Program under the Massachusetts Endangered Species Act. The Farm Conservation Plan shall be developed in accordance with generally accepted Best Agricultural Practices, and shall, at a minimum, address the following:
- i. the areas, types and practices for various crops and livestock;
 - ii. establish wetland buffers and/or filter strips to prevent adverse impacts to the water quality of existing wetlands and waterways;
 - iii. in the event animal husbandry activities are proposed, establish and govern the type and number of each type of animal unit permitted on the Premises, and analyze the pasturage potential of the Premises and establish and govern the cycling of pasturage, and any other measures necessary to ensure the carrying capacity of the Premises is not exceeded in order to protect water quality, prevent soil erosion, and otherwise protect the Conservation Values; and
 - iv. describe how Agricultural Activities will maximize soil and water conservation, and promote Healthy Soils and Practices.
 - v. In the event of a deviation from the “USDA Certified Farm Conservation Plan,” the Grantor shall consult with a regional office of the United States Department of Agriculture Natural Resources

Conservation Service for their Resource Management Systems standards and specifications.

- d. Agricultural Structures and Improvements. Constructing and maintaining structures and improvements to conduct Agricultural Activities, provided:
- i. The total footprint (as defined herein) of all permanent structures and any temporary structures (as defined below) that have a roof shall not exceed two percent (2%) of the total area of the Premises in the aggregate. For the purposes of this Conservation Restriction, the term “footprint” shall mean that measurement encompassing the enclosed ground floor area, as measured from the exterior, at the point of contact with the ground.
 - ii. Grantor must obtain prior written approval from the Grantee for the following improvements:
 1. Wells, including but not limited to artesian wells, and any irrigation structures that require subsurface installation;
 2. Hoop-houses (also known as “high tunnels”), and barns;
 - iii. The following improvements are permitted without prior approval from the Grantee:
 1. Temporary Structures. Constructing, using, maintaining, repairing, and/or replacing temporary structures and improvements directly related to or in support of Agricultural Activities, including, but not limited to, fencing, hayracks, “run-in” shelters or other three-sided shelters, and the like. For the purposes of this Conservation Restriction, the term “temporary” shall mean any improvement without a foundation that can be constructed or removed without significant disturbance of the soil.

12. Right to Lease the Premises for Agricultural Uses. The Grantors reserve the right to lease all or part of the Premises to a third party to conduct Agricultural Activities as defined in Section III. B(11) above. All leases for Agricultural Activities shall incorporate the terms of this Conservation Restriction and be limited by its prohibitions and benefitted by its reserved rights. No more than one lease shall be granted at any one time. Additionally, all such future leases shall comply with Article 97 of the Amendments to the Massachusetts Constitution, if applicable. Grantors shall issue in writing a report on the current status of any lease upon demand of the Grantee.

13. Use of the Premises for Non-Agricultural Activities. In the event that the Grantors decide not to continue previously-conducted Agricultural Activities as defined in Section III.B(11), Grantors in consultation with Grantee shall prepare and deliver within eighteen (18) months from the date of notice from Grantors to Grantee, a conservation plan to restore the Premises to native wildlife habitat(s) with the

majority of the Premises to be kept open, by mowing, clearing, or grazing as meadow/grassland habitat, a dwindling native habitat type on Noepe, or a cover crop that anticipates a possible re-establishment of Agricultural Activities on the Premises as defined in Section III. B(11).

14. All structures used for Agricultural Activities as defined in Section II. B(14) shall be secured for possible future use. Said structures shall be removed if no longer needed to support Agricultural Activities or if too costly to maintain.
15. Outdoor Passive Recreational Activities. By the Grantors and its invitees, the right to conduct hiking, horseback riding, cross-country skiing, hunting, fishing, and trapping to remove nuisance wildlife, 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.

C. Site Restoration

Upon completion of any Permitted Acts and Uses, any disturbed areas shall be restored substantially to the conditions that existed prior to said activities, including with respect to soil material, grade, and vegetated ground cover.

D. Compliance with Permits, Regulations, Laws

The exercise of any Permitted Acts and Uses under Paragraph III.B shall be in compliance with all applicable federal, state and local laws, rules, regulations, zoning, and permits, and with the Constitution of the Commonwealth of Massachusetts. The inclusion of any Reserved Right requiring a permit, license or other approval from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit, license, or other approval should be issued.

E. Notice and Approval.

1. Notifying Grantee. Whenever notice to or approval by Grantee is required, Grantors shall notify or request approval from Grantee, by a method requiring proof of receipt, in writing not less than sixty (60) days prior to the date Grantors intend to undertake the activity in question, unless a different time period is specified herein. The notice shall:
 - a. Describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity;
 - b. Describe how the proposed activity complies with the terms and conditions of this Conservation Restriction, and will not materially impair the Purposes and/or Conservation Values;

- c. Identify all permits, licenses, or approvals required for the proposed activity, and the status of any such permits, licenses, or approvals.
 - d. Describe 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 and Conservation Values.
2. Grantee Review. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantors' request. Grantee's approval shall only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require Grantors to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.
3. Resubmittal. Grantee's failure to respond within sixty (60) days of receipt shall not constitute approval of the request. Grantors may subsequently submit the same or a similar request for approval.

IV. INSPECTION AND ENFORCEMENT

A. Entry onto the Premises

The Grantors hereby grant to the Grantee, and 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.

B. Legal and Injunctive Relief.

1. Enforcement. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain compensatory relief, and equitable relief against any violations, including, without limitation, injunctive relief and relief requiring restoration of the Premises to its condition prior to the time of the injury (it being agreed that the Grantee will have no adequate remedy at law in case of an injunction). 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.
2. Notice and Cure. In the event the Grantee determines that a violation of this Conservation Restriction has occurred and intends to exercise any of the rights described herein, the Grantee shall, before exercising any such rights, notify the Grantors in writing of the violation. The Grantors shall have thirty (30) days from receipt of the written notice to halt the violation and remedy any damage caused by it, after which time Grantee may take further action, including instituting legal proceedings and entering the Premises to take reasonable measures to remedy, abate or correct such violation, without further notice. Provided, however, that this requirement

of deferment of action for thirty (30) days applies only if Grantors immediately ceases the violation and Grantee determines that there is no ongoing violation. In instances where a violation may also constitute a violation of local, state, or federal law, the Grantee may notify the proper authorities of such violation.

3. Reimbursement of Costs and Expenses of Enforcement. Grantors covenant and agree to reimburse to Grantee all reasonable costs and expenses (including counsel fees) incurred by the Grantee in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof. In the event of a dispute over the boundaries of the Conservation Restriction, Grantors shall pay for a survey by a Massachusetts licensed professional land surveyor and to have the boundaries permanently marked.

C. Non-Waiver.

Enforcement of the terms of this Conservation Restriction shall be at the sole 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.

D. 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.

E. 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 Grantors for any injury to or change in the Premises resulting from natural causes beyond the Grantors' control, including but not limited to fire, flood, weather, climaterelated impacts, 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 Grantors and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

V. PUBLIC ACCESS

This Conservation Restriction does not grant any right of access and the Grantors retain their rights to prohibit access to the Premises, except:

1. access for the Grantee in accordance with Section IV.A for inspection and enforcement as noted above;

2. access for Indigenous persons in accordance with any Cultural Respect Easement as noted in Section III.B.1 above; all access for the exercise of the practices allowed under the Cultural Respect Easement(s) shall be limited to Lot .

VI. TERMINATION/RELEASE/EXTINGUISHMENT

A. Procedure.

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 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 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. Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth therein.

B. Proceeds.

Grantors and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is least equal to the proportionate value that this Conservation Restriction, determined at the time of the conveyance, bears to the value of the unrestricted property. Such proportionate value of the Grantee's property right shall remain constant. If any occurrence gives rise to an extinguishment or other release of this Conservation Restriction under applicable law, the affected party or parties of the Grantors and Grantee shall be reimbursed from the proceeds, once recovered, for their respective share of reasonable legal expenses, if any, associated with the recovery of said proceeds.

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 Grantors 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 Grantors and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the affected party or parties of the Grantors and the Grantee in accordance with Section 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 purposes of this grant.

D. 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 affected party or parties of the Grantors 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 Grantors and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantors and Grantee in accordance with Section VI.B and Section VI.C. 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 any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

VII. DURATION and 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 Grantors and the successors and assigns of the Grantors 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 Grantors, on behalf of themselves and their 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 Grantors and their 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 when all of the following conditions are met:

1. the Grantee requires that the Purposes continue to be carried out;
2. the assignee is not an owner of the fee in the Premises;
3. the assignee, at the time of the assignment, qualifies under and 26.U.S.C. 170(h), and applicable regulations thereunder, if applicable, and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws; and
4. the assignment complies with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VIII. SUBSEQUENT TRANSFERS

A. Procedure for Transfer

The Grantors agree 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 effective date of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. If the Grantors fail 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 Dukes County Registry of Deeds, and at the affected party or parties of the Grantors' expense, a notice of this Conservation Restriction.

B. Grantors' Liability

The Grantors 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.

IX. ESTOPPEL CERTIFICATES

Upon request by the affected party or parties of the Grantors, the Grantee shall, within thirty (30) days execute and deliver to the Grantors any document, including an estoppel certificate, which certifies the Grantors' compliance or non-compliance with any obligation of the Grantors contained in this Conservation Restriction.

X. 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 Grantors agree 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 following the terms set forth in Section VII.C to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

XI. AMENDMENT

A. Limitations on Amendment

Grantors and Grantee may amend this Conservation Restriction only to correct an error or oversight, clarify an ambiguity, maintain or enhance the overall protection of the Conservation Values, or add real property to the Premises, provided that no amendment shall:

1. affect this Conservation Restriction's perpetual duration;
2. be inconsistent with or materially impair the Purposes;
3. affect the qualification of this Conservation Restriction as a "qualified conservation contribution" or "interest in land" under any applicable laws, including 26 U.S.C. Section 170(h), and related regulations;
4. affect the status of Grantee as a "qualified organization" or "eligible donee" under any applicable laws, including 26 U.S.C. Section 170(h) and related regulations, and Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws; or
5. create an impermissible private benefit or private inurement in violation of federal tax law, as determined by an appraisal, conducted by an appraiser selected by the Grantee, of the economic impact of the proposed amendment; or
6. alter or remove the provisions described in Section VI (Termination/ Release/ Extinguishment); or
7. cause the provisions of this Section XI to be less restrictive; or
8. cause the provisions described in Section VII.C (Running of the Benefit) to be less restrictive.

B. Amendment Approvals and Recording

No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantors, approved by the Town of West Tisbury and by the Secretary in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, and recorded in the Dukes County Registry of Deeds.

XII. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantors 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 Dukes County Registry of Deeds.

XIII. 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 Grantors: Merry Farm LLC (Lots 1, 2 and 4)
301 South Gate Road
Vineyard Haven MA 02568

Casey Blum & Daniel Ian Ridgeway (Lot 1-A)
P.O. Box 1233
Vineyard Haven MA 02568

To Grantee: XXXXXXXXXXXX

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.

XIV. 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 order to effect the Purposes and the policy and purposes of Sections 31, 32, and 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 Purposes 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 provisions of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement

This instrument sets forth the entire agreement of the Grantors and Grantee 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.

XV. BASELINE DOCUMENTATION REPORT

The Conservation Values, as well as the natural features, current uses of, and existing improvements on the Premises, such as, but not limited to, trails, woods roads, structures, meadows or other cleared areas, agricultural areas, and scenic views, as applicable, are described in a Baseline Documentation Report (“Baseline Report”) titled “*Rainbow Farm (140 Merry Farm Road), West Tisbury MA Conservation Restriction Baseline Report*”, dated _ prepared by Grantee with the cooperation of the Grantors, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantors 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 serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein, and (iv) may be supplemented as conditions on the Premise change as allowed over time. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant in addition to the Baseline Report.

XVI. MISCELLANEOUS

A. 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, 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. Release of Homestead

The Grantors hereby release, agree to waive, subordinate, and release any and all Homestead rights pursuant to Chapter 188 of the Massachusetts General Laws 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 Section 10(e) of Chapter 188 of the Massachusetts General Laws.

C. No Surety Interest

The Grantors shall record at the Dukes County Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any 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. Executory Limitation

If Grantee shall cease to exist or to be qualified to hold conservation restrictions pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, or to be qualified organization under 26 U.S.C. 170(h), and applicable regulations thereunder, if applicable, and a prior assignment is not made pursuant to Paragraph VII, then Grantee's rights and obligations under this Conservation Restriction shall vest in such organization as a court of competent jurisdiction shall direct pursuant to the applicable Massachusetts law and with due regard to the requirements for an assignment pursuant to Paragraph VII.

E. Prior Encumbrances

This Conservation Restriction shall be in addition to and not in substitution of any other restrictions or easements of record affecting the Premises.

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

Signature pages:

Grantor: Merry Farm LLC, Jeffrey Byrne DuBard, Mgr.

Grantor: Casey Blum & Daniel Ian Ridgeway

Grantee Acceptance: Town of West Tisbury Conservation
Committee

Approval of West Tisbury Select Board

*Rainbow Farm (140 Merry Farm Road),
West Tisbury MA Conservation Restriction*

Approval of the Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts.

Exhibits:

Exhibit A: Legal Description of Premises

Exhibit B.1: Reduced Copy of Recorded Plan of Record of Premises

Exhibit B.2: Reduced Copy of Sketch Plan of Restriction

WITNESS my hand and seal this ____ day of _____, 2023,

GRANTOR:

Jefrey Byrne DuBard, Manager
Merry Farm LLC

COMMONWEALTH OF MASSACHUSETTS

Dukes, ss:

On this ____ day of _____, 2023, before me, the undersigned notary public, personally appeared Jefrey Byrne DuBard, 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 he signed it voluntarily for its stated purpose on behalf of Merry Farm LLC.

Notary Public
My Commission Expires:

WITNESS our hands and seals this ____ day of _____, 2023,

GRANTOR:

Casey Blum

Daniel Ian Ridgeway

COMMONWEALTH OF MASSACHUSETTS

Dukes, ss:

On this day of _____, 2023, before me, the undersigned notary public, personally appeared Casey Blum and Daniel Ian Ridgeway, and proved to me through satisfactory evidence of identification which was _____ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

ACCEPTANCE OF GRANT

The foregoing Conservation Restriction from Merry Farm LLC and Casey Blum and Daniel Ian Ridgeway was accepted by the XXXXXXXXXX . this _____ day of _____, 2023.

APPROVAL OF TOWN OF WEST TISBURY SELECT BOARD

The undersigned, Chair of the Select Board of the Town of West Tisbury, hereby certifies that at a public meeting duly held on _____, 2023, the Select Board voted to approve the foregoing Conservation Restriction from Merry Farm LLC Casey Blum and Daniel Ian Ridgeway to the XXXXXXXXXX in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

**TOWN OF WEST TISBURY
SELECT BOARD**

Skipper Manter, Chair.

Cynthia Mitchell

Jessica Miller, Vice Chair

COMMONWEALTH OF MASSACHUSETTS

Dukes, ss:

On this day of _____, 2023, 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 on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Select Board Chair.

Notary Public
My Commission Expires:

**APPROVAL OF SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS OF
THE COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from Merry Farm LLC and Casey Blum and Daniel Ian Ridgeway to the XXXXXXXX has been approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

11/2/2023

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:

EXHIBIT A

Description of the Premises

The Premises subject to this Conservation Restriction is a portion of the land shown on the plan of record (Plan Book 19 Page 161; the "Plan"; see Exhibit B.1 following) located in the Town of West Tisbury, Dukes County, Commonwealth of Massachusetts:

TRACT ONE:

That hatched portion of the Plan showing as Conservation Restriction on Lots 1, 2 and 4 , containing a total of XX± acres, shown on a plan of land entitled, "Sketch Plan showing Conservation Restriction prepared for Merry Farm LLC, etc. (*being prepared now*), a reduced copy of which is attached hereto as Exhibit B.2.

For title, see Deed Book 1629 Page 128 in Dukes County Registry of Deeds. Street Address: 140 Merry Farm Road, West Tisbury MA 02575

TRACT TWO:

11/2/2023

*Rainbow Farm (140 Merry Farm Road),
West Tisbury MA Conservation Restriction*

That hatched portion of the Plan showing as Conservation Restriction on Lots 1-A, containing a total of XX± acres, shown on a plan of land entitled, “Sketch Plan showing Conservation Restriction” prepared for Merry Farm LLC, etc, a reduced copy of which is attached hereto as Exhibit B.2

For title, see Deed Book 1652 Page 1048 in Dukes County Registry of Deeds.

Street Address: 138 Merry Farm Road, West Tisbury MA 02575

EXHIBIT B.1

Reduced Copy of Plan of Record of Premises

For official full size plan, see Dukes County Registry of Deeds Plan Book 19 Page 161

EXHIBIT B.2

Sketch of Premises