



CITY OF AMESBURY  
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AMESBURY CITY CLERK

SPONSORED BY:

C. Kenneth Gray, Mayor

BILL No. 2019- 72

**An Order** to Approve and Accept a Conservation Restriction on Property off South Hampton Road, Amesbury, and to Authorize the Mayor and the City Council President to Execute said Conservation Restriction on Behalf of the City of Amesbury

**Summary:** Jocelyn Van Bokkelen, Trustee of the Jocelyn Van Bokkelen Revocable Trust, is granting a conservation restriction on approximately 17.3 acres of land located off South Hampton Road, in Amesbury, north of the Powwow River, and being the rear portion of Heron Pond Farm, to Essex County Greenbelt Association, Inc. Massachusetts General Laws Chapter 184, Section 32 requires that in the case of a conservation restriction held by a charitable corporation, the Mayor and the City Council must approve and accept the conservation restriction.

**Be it Ordered by the City Council of the City of Amesbury assembled, and by the authority of the same, as follows:**

The City Council of the City of Amesbury hereby approves and accepts a conservation restriction on approximately 17.3 acres of land off South Hampton Road, Amesbury, being Tax Map 11, Lot 1, from Jocelyn Van Bokkelen, Trustee of the Jocelyn Van Bokkelen Revocable Trust to Essex County Greenbelt Association, Inc., in accordance with Massachusetts General Laws Chapter 184, Section 32, and authorizes the Mayor and the President of the City Council to execute the conservation restriction on behalf of the City of Amesbury.

## Evan Kenney

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**From:** Gioia, John (ENV) <john.gioia@state.ma.us>  
**Sent:** Tuesday, August 13, 2019 11:28 AM  
**To:** barassot@amesburyma.gov; Katharine L. Klein; Evan Kenney  
**Cc:** Vanessa Johnson-Hall; Maggie Brown; Pires, Denise (ENV)  
**Subject:** City Council Approval of Conservation Restrictions - Amesbury CR #13 Ref. #16664  
**Attachments:** Bernardston CLTC #0304 recorded.pdf; Gloucester CR #34 recorded.pdf; Book 56898 Page 47\_CR for Fowler Gorge.pdf

Hello All –

I have been working with Vanessa Johnson-Hall and Maggie Brown from Essex County Greenbelt Association on the review of a conservation restriction off South Hampton Road in Amesbury. I understand that there is some question as to whether the City Council must approve of the conservation restriction. MA General Laws Chapter 184 Section 32 states that conservation restrictions must be approved “...*by the mayor, or in cities having a city manager the city manager, and the city council of the city...*”. I have attached a few recent examples of recorded CRs from various cities across the Commonwealth showing how each have gone about inserting the City Council approval in the CR. This Amesbury CR will need to be approved by the Mayor and the City Council before being returned to EEA for final review by Secretary Theoharides.

Let me know if you have any questions.

Regards,

--

John Gioia  
Conservation Restriction Reviewer  
Executive Office of Energy and Environmental Affairs  
Division of Conservation Services  
100 Cambridge Street, Suite 900  
Boston, MA 02114  
Phone: (617) 626-1138  
[John.Gioia@mass.gov](mailto:John.Gioia@mass.gov)



*The Commonwealth of Massachusetts*  
*Executive Office of Energy and Environmental Affairs*  
*100 Cambridge Street, Suite 900*  
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Charles D. Baker  
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Karyn E. Polito  
LIEUTENANT GOVERNOR

Matthew A. Beaton  
SECRETARY

Tel: (617) 626-1000  
Fax: (617) 626-1181  
<http://www.mass.gov/eea>

April 22, 2019

Vanessa Johnson-Hall  
Assistant Director of Land Conservation  
Essex County Greenbelt Association  
82 Eastern Ave  
Essex 01929-

**Re: Draft Conservation Restriction Approved**

*CR Reference No.:* 16664

*CR Number:* AMESBURY #013

*CR Address:* off South Hampton Road

*Town:* AMESBURY

Dear Vanessa:

Please find attached to this email, a copy of the approved conservation restriction that has been reviewed by EEA legal and cleared for local signatures. Do not make any substantive changes to this approved draft without informing us as any further changes will need to be reviewed. Minor changes such as formatting or to correct typos or misspellings do not require notification.

Please proceed with obtaining local signatures and those of the Grantor and Grantee. Once obtained, please return one fully executed CR, in hard copy, to me (you may keep the original signature pages and provide copies), along with a pre-paid label or pre-stamped and addressed envelope for return mailing, for final legal review. Missing dates, un-notarized signatures, and other inconsistencies on signature pages or missing exhibits can delay this final review, so please ensure the final signature pages and exhibits are complete. The CR will then be left with Secretary Beaton for his final approval and signature. We cannot guarantee a specific timeline for this final review process.

I look forward to finalizing this. Please remember to use to our internal CR Reference Number and CR Number in all correspondence or inquiries.

Sincerely,  
John Gioia  
*Conservation Restriction Reviewer*  
Division of Conservation Services  
100 Cambridge Street, Suite 900  
Boston, MA 02114

May 30, 2019

John Lopez, Conservation Agent  
Kinsey Boehl, Chair, Conservation Commission  
City of Amesbury  
62 Friend Street  
Amesbury, MA 01913

(VIA EMAIL)

RE: Van Bokkelen Conservation Restriction

Dear Kinsey and John,

I am writing to request to appear before the Conservation Commission to present the Van Bokkelen Conservation Restriction (CR) for the purposes of requesting that the Conservation Commission a) sign a Municipal Certification stating the conservation values being protected by the CR, and b) vote to recommend that the Conservation Restriction be signed by the Mayor and City Council.

The Van Bokkelen CR is being donated to Greenbelt on 17.3 acres of land in Amesbury, just north of the Powwow River. This land is the rear portion of Heron Pond Farm, and accessed from South Hampton Road in South Hampton, NH. The Conservation Restriction protects not only rich, farmland soils, but nearly 2,000 feet of little-disturbed riparian habitat along the Powwow River, the source for Amesbury's drinking water. Protecting this land from development, including the woodlands along the Powwow, will help to maintain the water quality of Amesbury's drinking water, as well as preserve critical wildlife habitat along and in the river.

While the Conservation Restriction will be held by Greenbelt, and be permanently tied to the land, the land itself will remain privately-owned and managed. Greenbelt's role, as holder of the CR, is to ensure the CR is always upheld, and that the only use of the property will be for farmland, forest management, and passive recreational purposes.

All conservation restrictions in Massachusetts are required by MGL Chapter 184 Section 31-33 to be signed by the municipality in which the CR resides in order to become perpetual. The first step is typically to present the CR to the Conservation Commission for review. The purpose of the municipality's signature is an acknowledgement that the conservation restriction is preserving conservation values of significant public benefit. The City is not acquiring an interest in the property by signing the CR.

The Van Bokkelen Conservation Restriction has been approved for local signatures by the Executive Office of Energy and Environmental Affairs (EEA), which includes review by EEA's legal department. I have attached the EEA signature authorization letter, a copy of the Conservation Restriction and the Municipal Certification, and maps showing the subject property.

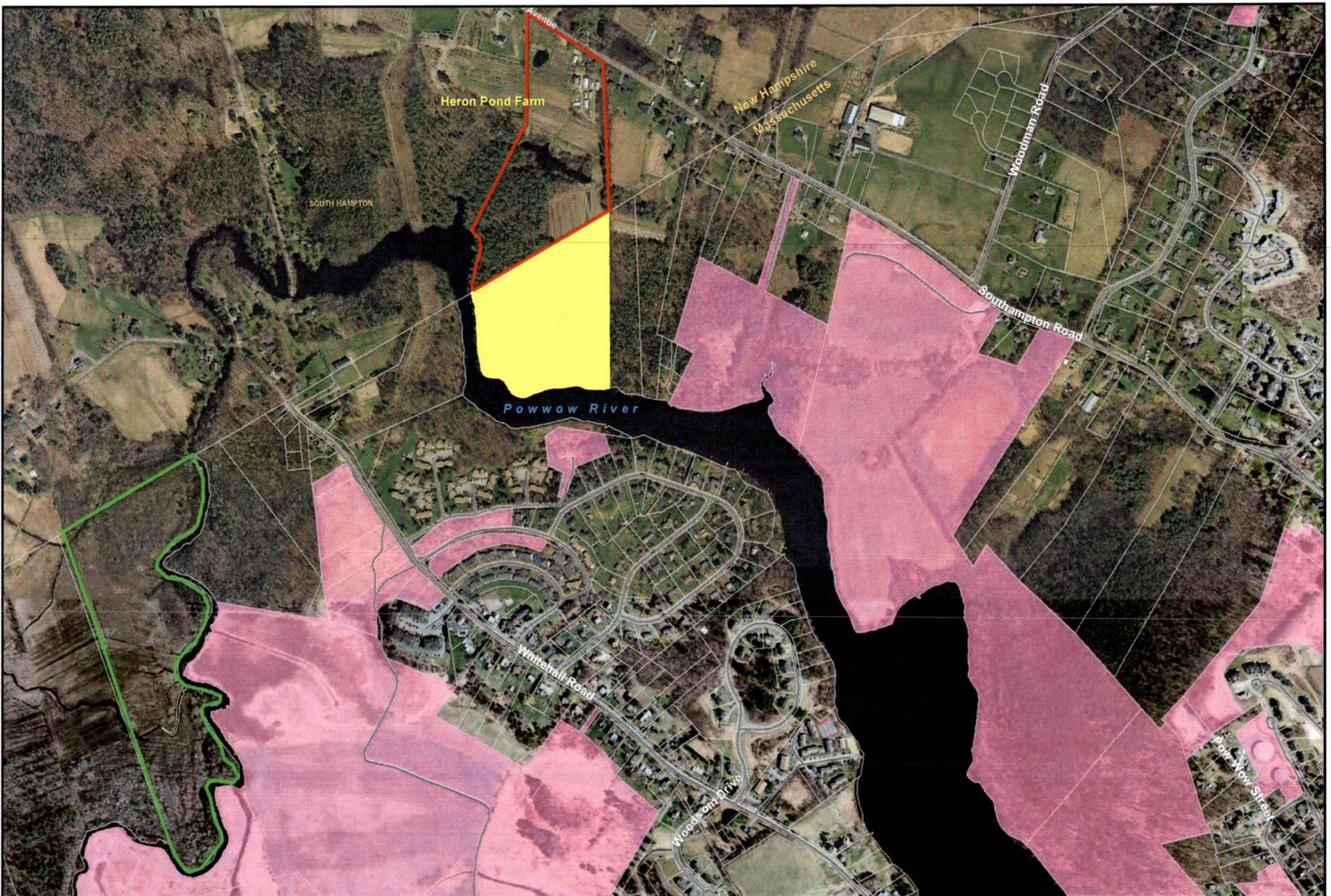
Please let me know when I may present this to the Conservation Commission. Don't hesitate to contact me with any questions.

Thank you,

Vanessa Johnson-Hall  
Assistant Director of Land Conservation

Conserving local farmland, wildlife habitat, and scenic landscapes since 1961.





- Heron Pond Farm - MA
- Heron Pond Farm - NH
- Town of Amesbury
- Greenbelt CRs

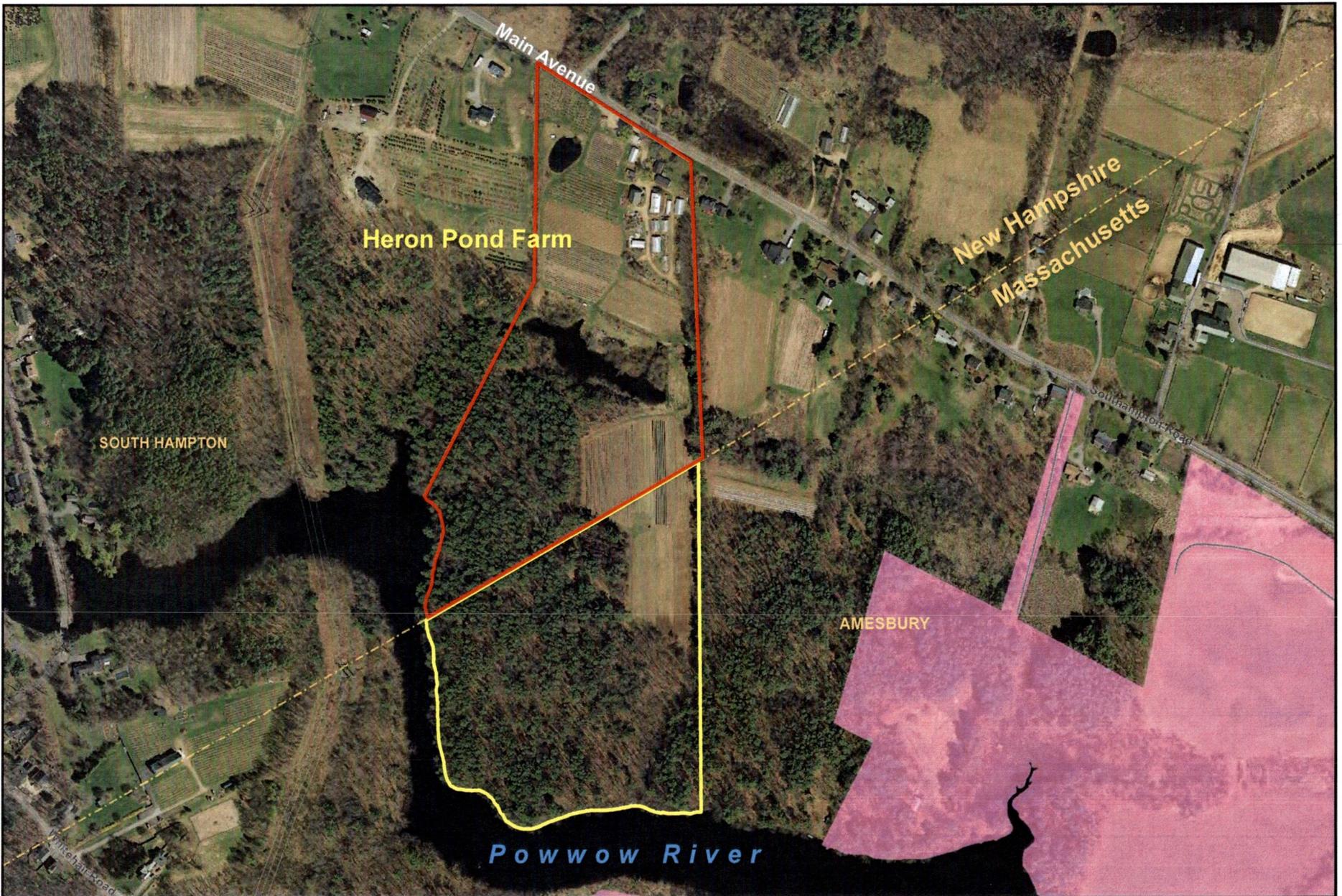


**Van Bokkelen CR, Amesbury**  
**17.3 acres (MA portion)**



MA 2008 Orthophotos from MassGIS. 1:5,000.  
 NH 2010-11 Orthophotos from NH GRANIT.  
 Boundaries are approximate, based primarily on assessor's data.  
 Map produced by Essex County Greenbelt  
 1.12.15

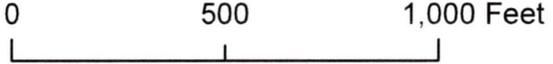




- Heron Pond Farm - NH
- Heron Pond Farm - MA
- Town of Amesbury



**Van Bokkelen CR, Amesbury**  
**17.3 acres (MA portion)**



MA 2008 Orthophotos from MassGIS. 1:5,000.  
 NH 2010-11 Orthophotos from NH GRANIT.  
 Boundaries are approximate, based primarily on assessor's data.  
 Map produced by Essex County Greenbelt  
 1.12.15



Address of Premises: Amesbury, off South Hampton Road, South Hampton, NH

**GRANTOR:** Jocelyn Van Bokkelen Revocable Trust  
**GRANTEE:** Essex County Greenbelt Association, Inc.  
**FOR GRANTOR'S TITLE SEE:** Essex County Registry of Deeds at Book 32233, Page 482.

### CONSERVATION RESTRICTION

JOCELYN VAN BOKKELEN of 96 Woodman Road, South Hampton, Rockingham County, New Hampshire, 03827, as Trustee of the JOCELYN VAN BOKKELEN REVOCABLE TRUST, and not individually, u/d/t April 2, 2001 and recorded herewith in the Essex Registry of Deeds at Book \_\_\_\_ Page \_\_\_\_\_, being the sole owner, for my successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, hereby grants, with quitclaim covenants, to ESSEX COUNTY GREENBELT ASSOCIATION, INC., a Massachusetts not for profit corporation having its principal office at 82 Eastern Avenue, Essex, Essex County, Massachusetts 01929, and its permitted successors and permitted assigns (hereinafter "Grantee"), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on all that portion of land that is located in the Town of Amesbury, Essex County, Massachusetts containing 17.3 acres (the "Premises"), which Premises is shown as Tax Map 11 Lot 1 on a plan of land entitled "Plan of Land in South Hampton NH Tax Map 2 Lot 65 and Amesbury MA Tax Map 11 Lot 1 as drawn for Jocelyn Van Bokkelen" by Paul F. Nichols, PE, LLS, dated September 20, 2013, and recorded at the Essex South District Registry of Deeds in Plan Book 447, Plan No. 58 (the "Plan"), a reduced copy of which is attached hereto as Exhibit A.

#### I. PURPOSES

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

The conservation values include the following:

- A. **Open Space Protection.** The Premises is near over 130 acres of protected open space owned and managed by the Town of Amesbury, specifically Battis Farm and Powwow Hill, and the protection of the Premises contributes to the ecological viability and scenic values of these and nearby lands.

- B. Flood Protection.** A portion of the Premises lies within the 100-year floodplain of the Powwow River. The protection of this floodplain will ensure the continued availability of this flood storage during major storm events.
- C. Farmland Soils.** The entire Premises is mapped by the USDA Natural Resources Conservation Service as having soils designated Prime Farmland Soils and Farmland Soils of Statewide Importance, and thus this Conservation Restriction supports a significant farmland resource; approximately 2 acres of the Premises are currently cultivated in row crops.
- D. Habitat.** The Premises contains a wide diversity of wildlife habitat, including wetlands, upland forest, and approximately 1,850 feet of riverbank along the Powwow River, all used by a variety of wildlife species, including but not limited to migrating songbirds and birds of prey such as bald eagles and osprey. The Powwow River is designated as BioMap2 Core Habitat for Species of Conservation Concern and Aquatic Core, and its associated riparian corridor Critical Natural Landscape for Upland Buffer of Aquatic Core, as well as Priority Habitat, all as defined by the Massachusetts Natural Heritage and Endangered Species Program. The protection of this riparian corridor through the Conservation Restriction will help preserve these critical habitats. *BioMap2*, published in 2010, 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. *BioMap2* is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan.
- E. Water Quality.** The Powwow River supplies drinking water for the City of Amesbury; in addition, it is a major tributary to the Merrimack River, whose watershed was designated by the U.S. Forest Service in 2010 as the most threatened in the nation in terms of projected loss of private forest land over the next 20 years. The protection of wetlands and the riparian corridor of the Powwow River on the Premises will ensure their continued availability for floodwater storage during major storm events and help further the protection of drinking water supplies. Further, protection of the forested riparian corridor will help maintain water quality for public drinking water, and will help maintain water quality critical to cold water fisheries.
- F. Working Farmland and Forest Land.** The Premises is part of a larger parcel accessed from New Hampshire that has been operated as a family-owned vegetable farm for over 50 years. The Conservation Restriction will ensure that the open fields and forests contained on the Premises will be permanently available for economically productive agriculture and forestry that is consistent with the protection of other conservation values present on the Premises.
- G. Scenic Landscape.** The Premises is part of a highly scenic landscape visible from Route 107A in South Hampton, New Hampshire, a public way, as well as by members of the public from the Powwow River, which is frequented by recreational paddlers and anglers;
- H. Consistency with Clearly Delineated Federal, State, or Local Governmental Conservation Policy.** Protection of the Premises furthers Objective 2 of the City of Amesbury’s Draft Open Space and Recreation Plan 2012-2019, to “Provide for the protection, Preservation and Enhancement of all Water Resources within the Community” and Objective 4, to “Preserve Existing Open Space Land for Conservation, Agricultural, Wetland Protection and Recreational Opportunities.”

- I. Baseline Documentation Report.** These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

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

- A. Prohibited Acts and Uses.** Subject to the exceptions set forth herein, 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. Constructing, placing or allowing to remain any temporary or permanent building, structure, facility, or improvement, including but not limited to tennis courts, landing strips, mobile homes, swimming pools, asphalt or concrete pavement, signs, fences, billboards or other advertising displays, antennae, utility poles, towers, solar panels, solar arrays, conduits, lines or other temporary or permanent structures, facilities, or improvements on, above or under the Premises;
  2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
  3. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;
  4. Cutting, removing or otherwise destroying trees, grasses or other vegetation;
  5. Planting, broadcasting, placement, disposal, transfer, destruction, composting, dumping, or otherwise preventable introduction of “Invasive” plant species or any other nuisance or disease carrying species, as defined in *A Guide to Invasive Plants in Massachusetts* (Somers P. et al. 2006) or as amended or contained in a similar professionally acceptable publication available in the future;
  6. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
  7. Use, parking or storage of vehicles including cars, trucks, motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired;

8. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
9. The use of the Premises for business, residential or industrial use, or for more than *de minimis* commercial recreation as defined in Section 2031(c) of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder or any successor statute or regulation;
10. The disruption, removal, or destruction of the stone walls on the Premises;
11. Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values.

**B. Reserved Rights and Exceptions to Prohibited Acts and Uses.** The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not impair the conservation values or purposes of this Conservation Restriction.

1. Vegetation Management. The selective minimal removal, pruning and cutting of vegetation to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including farm and woods roads, fence lines, and fields; and the right to plant and maintain native vegetation;
2. Forestry and Cutting. Conducting or permitting others to conduct sound silvicultural uses of the Premises, including the right to commercially harvest forest products (as such term may be defined from time to time in General Laws, Ch. 61, Sec. 1, or successor law) and the establishment of new woods roads in accordance with prudent and sound silvicultural practices that conform at least to the minimum standards set forth in the Massachusetts Forest Cutting Practices Act (General Laws, Ch. 132, or its successor) and carried out pursuant to a Forest Stewardship Plan.
  - a. Before any harvest of forest products occurs on the Premises, Grantor shall submit a Forest Stewardship Plan to the Grantee, the Massachusetts Department of Conservation and Recreation (or appropriate successor agency) and to any other required state agencies for their approval. The Forest Stewardship Plan shall be prepared by a forester licensed through the Massachusetts Department of Conservation and Recreation in conformance with the "Directions for the Preparation of the Chapter 61 Forest Management Plans and Forest Stewardship Plans" and such statutes, regulations and directions in effect at the time of the approval of said Forest Stewardship Plan. The Forest Stewardship Plan shall include provisions designed to minimize soil erosion, conserve surface and groundwater quality, scenic views, wildlife habitat, and to protect the conservation values of this Conservation Restriction.
  - b. The Forest Stewardship Plan shall be effective for a ten (10) year period and shall be resubmitted once every ten (10) years as necessary if additional timber harvests occur. All cutting plans and designated access routes shall avoid any stone structures or historical and cultural resources and shall be reasonably required to prevent any damage thereto. All cutting operations shall be supervised by a licensed forester;

3. Harvesting Wood for Personal Use: The cutting of trees to provide non-commercial forest products, such as firewood, for personal use, but not for sale, is permitted without a Forest Stewardship Plan, provided not more than 10 cords of wood are harvested during any consecutive twelve-month period;
4. Invasive and Nuisance Species Management. The removal of non-native, nuisance or invasive species of flora or fauna, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality. For the purposes of this Conservation Restriction, the terms “non-native” or “invasive species” shall be defined as a species that is non-native or alien to the ecosystem under consideration, or which is likely to cause economic or environmental harm (including crowding out native species) or harm to human health;
5. Habitat Restoration. With the prior written permission of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species of flora or fauna;
6. Farming. The cultivation, maintenance and harvesting of crops, orchards, trees, flowers and hay; the installation, use, maintenance and storage, of irrigation equipment; the construction and maintenance of fences necessary in connection therewith and not otherwise inconsistent with the purposes of this Conservation Restriction; beekeeping; and the grazing of livestock; (collectively, “Agricultural Activities”), provided:
  - a. All Agricultural Activities shall be in accordance with best agricultural and water quality conservation practices as recommended by the USDA Natural Resources Conservation Service or its successor agency, and shall not materially impair the Conservation Purposes of this Restriction;
  - b. Said Agricultural Activities are only permitted to occur within areas cleared as of the date of this Conservation Restriction provided, however, that expansion of existing farm fields into non-wetland areas and areas outside of a 300-foot buffer zone from the Powow River’s top-of-bank (the “Riparian Buffer”) may be permitted with prior written approval of the Grantee;
  - c. In the event Grantor requests to expand existing farm fields, or in the event of a change in the type of farming operation, which as of the date of this grant consists of crop production; Grantee may require a farm conservation plan acceptable to the Grantee, such as a USDA Natural Resources Conservation Service (NRCS) Farm Conservation Plan (hereinafter “Farm Plan”), prepared for the Premises, and approved by Grantee and the NRCS Westford Field Office or its successor agency. To request assistance from the NRCS Westford Field Office, Grantor should send a request in writing to the NRCS Westford Field Office, 319 Littleton Road, Westford, MA 01886, or call the district Conservationist at 978-692-1904 and request assistance with a Farm Plan. The Farm Plan shall be developed in accordance with best agricultural and conservation practices as recommended by the NRCS or its successor agency, and shall make all reasonable efforts not to materially impair the Conservation Values of this Conservation Restriction, and shall, at a minimum, address the following: (1) establish wetland buffers and/or filter strips to prevent adverse impacts to the water quality of existing wetlands and waterways; (2) 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 of the Premises;

- d. For the purposes of this Conservation Restriction, "Agricultural Activities" shall not be deemed to include the following: industrial-scale processing and packaging, industrial-scale feedlot activities, industrial-scale poultry, swine, beef or other meat processing plants, sod farming, or industrial-scale composting.
7. Temporary Agricultural Structures. The construction, maintenance, repair and replacement of temporary structures and improvements directly related to or in support of Agricultural Activities as defined above, including but not limited to structures such as fencing, hayracks, jumps and watering troughs; and, with prior written approval of the Grantee, which approval shall be to ascertain consistency with these terms and shall not be unreasonably withheld, the construction, maintenance, repair and replacement of up to a total of two (2) utility sheds, "run-in" shelters, or other three-sided shelters, and the like, provided that any such structure shall not have a total footprint in excess of two-hundred (200) square feet, and further provided that said temporary structures shall not reside within the Riparian Buffer. For the purposes of this Conservation Restriction, the term "temporary" shall mean any improvement without a foundation that can be constructed or removed without any significant disturbance of the soil;
8. Barns and Other Permanent Agricultural Structures. With prior written approval of the Grantee, which approval shall not be unreasonably withheld, the construction of new structures, as well as any associated utilities, for Agricultural Activities or otherwise consistent with the conservation values and purposes of this Conservation Restriction, provided that the total cumulative footprint of all said structures shall not exceed eight-hundred (800) square feet, and further provided that any such structures shall not reside within the Riparian Buffer;
9. Utilities. The use, maintenance, repair and replacement of existing water and electricity lines on the Premises for Agricultural Activities;
10. Wind Turbine. With prior approval of the Grantee, which approval shall not be unreasonably withheld, the construction, repair, replacement and maintenance of a wind turbine solely to serve the power needs of Agricultural Activities on the Premises, including but not limited to water pumps, and the underground installation of any associated utility lines, provided that no feasible alternative site exists on Grantor's adjacent land shown on the Plan as the land situated in South Hampton, NH;
11. Solar Panels. With prior notice to the Grantee, the installation of solar panels mounted either on permitted structures or on the ground, provided said solar panels are exclusively for providing power for Agricultural Activities on the Premises or to provide power other structures permitted in this Section II(B).
12. Dock. With prior written permission of the Grantee, the installation, construction, use, maintenance, and repair of a small dock to facilitate and support the uses permitted herein, including passive recreation;
13. Passive recreation. Hiking, horseback riding, cross-country skiing, picnicking, non-motorized boating, fishing, trapping, hunting, snowshoeing, bicycling, wildlife observation and nature study, and other passive, non-motorized, and noncommercial outdoor recreational

and educational activities consistent with the purposes and conservation values of this Conservation Restriction;

14. Trails. With prior approval from the Grantee, the construction of new trails, or the relocation or alteration of existing trails, provided that any construction, relocation, or alteration results in trails that are no wider than eight (8) feet wide;
  15. Motorized Vehicles. The use, parking and storage of vehicles, machinery, and other equipment as necessary for permitted activities, such as Agricultural Activities and Forestry;
  16. Woods and Farm Roads. The use, maintenance and replacement of the existing farm and woods roads in substantially their present width and location and, with prior permission of the Grantee, the relocation of woods roads, however under no circumstances shall any said roads be surfaced with impermeable material;
  17. Composting and Brush Piles. The stockpiling, composting, and burning of stumps, tree and brush limbs and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not have a deleterious impact on the purposes (including scenic values) of this Conservation Restriction;
  18. Signage. The erection, maintenance and replacement of a minimal number of signs with respect to hunting, trespass, trail access, identity and address of the occupants, sale of the Premises, the location of boundary lines, the Grantee's interest in the Premises and the protected conservation values;
  19. Archeological Activities. The conduct of archaeological activities following submission of an archaeological field investigation plan and its approval in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission or appropriate successor official;
  20. Other Activities. Such other non-prohibited activities or uses of the Premises may be permitted with the prior approval of the Grantee provided that the Grantee has made a finding, such finding to be documented in writing and kept on file at the office of the Grantee, that such activities are consistent with the Reserved Rights or, as applicable, are included in an approved Forest Stewardship Plan, do not impair the conservation values and purposes of this Conservation Restriction, and, where feasible, result in a net gain in conservation value of the Premises.
- C. Best Management Practices.** Prior to exercising any right reserved by Grantor under Section II, Paragraph B that may result in more than *de minimis* surface alterations, the Grantor shall consult, if available, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency such as the USDA Natural Resources Conservation Service (NRCS) through its Massachusetts Field Office Technical Guide, Dept. of Conservation and Recreation (DCR), the Mass. Dept. of Agricultural Resources, or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).
- D. Permits, Regulations, Laws.** The exercise of any right reserved by Grantor under this Section II, Paragraph B shall be in compliance with then-current building, zoning, planning, and conservation regulations, bylaws, or ordinances applicable to the Premises, the Wetlands Protection Act (MGL Chapter 131, Section 40), and all other applicable federal, state and local

laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth of Massachusetts takes any position whether such permit should be issued.

**E. Notice and Approval.**

1. Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.
2. Subject to any applicable law or regulation, failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, and the activity will not impair the conservation values or purposes of this Conservation Restriction. Where Grantee's written approval or finding is required, this Section II(C)(2) shall not apply.

**III. LEGAL RIGHTS AND REMEDIES OF THE GRANTEE**

- A. Legal and Injunctive Relief.** The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.
- B. Reimbursement of Costs of Enforcement.** 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.
- C. Boundary Disputes.** 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.
- D. 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.

- E. 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.
- F. 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.
- G. Actions to Prevent or Remedy Violations.** The Grantee shall have the right to take appropriate actions to prevent, abate, or remedy violations of this Conservation Restriction, including violations by non-parties.

#### IV. ACCESS

- A. Access by the Grantee.** The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines. With prior notice to the Grantor, the Grantee shall have the right to erect and from time to time replace, at appropriate locations near the boundaries of the Premises, suitable signs identifying the Grantee as the holder of this Conservation Restriction.

#### V. EXTINGUISHMENT

- A. Termination only by Judicial Proceeding and Grantee's Right to Recover Proportional Value.** 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 Commonwealth of Massachusetts Secretary of the Executive Office 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 Paragraph V(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 purpose set forth herein.
- B. Proceeds.** Grantor and Grantee agree that the grant of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction bears to the value of the unrestricted Premises at that time and represents all land development rights associated with the Premises, except as such rights may have been specifically retained pursuant to this Conservation Restriction. Such proportionate value of the Grantee's property right shall remain

constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements.

- C. Grantor/Grantee Cooperation Regarding Public Action.** Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph V(B) above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

## **VI. DURATION & ASSIGNABILITY**

- A. Running of the Burden.** The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable in perpetuity against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises, by the Grantee, its successors and assigns acting by and through its duly designated officers, directors, employees or agents as holders of this Restriction.
- B. Execution of Instruments.** The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.
- C. Assignability; Running of the Benefit.** The benefits of this Conservation Restriction shall run to the Grantee, shall be deemed to be in gross and shall not be assignable by the Grantee, except the Grantee and its successors and assigns shall have the right to assign all or a portion of its right, title and interest hereunder to a "Qualified Organization" as defined in Section 170(h)(3) of the Internal Revenue Code provided that such assignee shall also be an eligible grantee of a conservation restriction as set forth in Chapter 184, Section 32 of the General Laws of Massachusetts, that such assignee is not an owner of the fee in the Premises, and provided further that, as a condition of such assignment, the assignee is required to hold this Conservation Restriction and enforce its terms for conservation purposes and ensure that the purposes of this Conservation Restriction continue to be carried out. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **VII. SUBSEQUENT TRANSFERS**

- A. Reference to Conservation Restriction in Future Deeds and Required Notification of Transfers.** The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which divests any interest in all or a portion of the Premises, including any leasehold interest or option, and to notify the Grantee in writing not less than thirty (30) days prior to the execution of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will

comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

- B. Termination of Rights and Obligations.** The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

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

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

#### **IX. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

#### **X. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General laws of Massachusetts. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of the Executive Office of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Essex Registry of Deeds.

#### **XI. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Essex County Registry of Deeds.

#### **XII. NOTICES**

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

To Grantor: Jocelyn Van Bokkelen  
96 Woodman Road  
South Hampton, New Hampshire 03827

Or, if the above-named party is no longer the Grantor, the then-current owner on-file with the Amesbury Assessor

To Grantee: Essex County Greenbelt Association, Inc.  
ATTN: Director of Stewardship  
82 Eastern Ave.  
Essex, MA 01929  
Phone: 978-768-7241

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

### **XIII. GENERAL PROVISIONS**

- A. Controlling Law.** The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- B. Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Chapter 184, Sections 31, 32, and 33 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. Severability.** If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.
- D. Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

### **XIV. AFFIRMATIVE COVENANTS OF THE GRANTOR**

- A. Payment of Taxes.** The Grantor shall pay before delinquency all taxes, assessments, betterments, liens, fees and charges levied on or assessed against the Premises by any federal, state, or local government authority or other competent authority or entity (collectively "taxes"), and shall furnish the Grantee with satisfactory evidence of payment upon request.
- B. Subordination of Mortgage.**

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

- C. **Adverse Possession.** The Grantor represents and warrants that to the best of her knowledge no person has occupied or used the Premises without the Grantor's permission or has openly claimed ownership of the Premises as against the Grantor or the Grantor's predecessors in title or has conducted continuous activities or uses on the Premises (such as, but not limited to, logging, camping or similar uses). The Grantor agrees that if any such activity is observed now or in the future, the Grantor shall immediately notify the Grantee and shall cooperate with the Grantee to notify such persons of their wrongful entry onto the Premises.

#### XIV. MISCELLANEOUS

- A. **Pre-existing Public Rights.** Approval of this Conservation Restriction pursuant to Chapter 184, Section 32 of the Massachusetts General Laws by any municipal officials and by the Secretary of the Executive Office of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.
- B. **Homestead.** The Grantor 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 Chapter 188 Section 10(e) of the Massachusetts General Laws.
- E. **Representations of the Grantee.** The Grantee represents that it is a not for profit corporation, that it has a perpetual existence, that it is organized and operated for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and for other charitable, scientific and educational purposes, that it has both the necessary funds and commitment to hold this Conservation Restriction exclusively for conservation purposes in perpetuity and to enforce its terms, that it is a "Qualified Organization" as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and that it is an eligible donee of a conservation restriction as set forth in Chapter 184, Section 32 of the General Laws of Massachusetts, as amended.
- F. **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.
- G. **Signature Pages and Exhibits.** Attached hereto and incorporated herein by reference are the following:

Grantor: Jocelyn Van Bokkelen Revocable Trust  
Grantee: Essex County Greenbelt Association, Inc.  
Approvals of Amesbury City Council and Mayor  
Approval of the Secretary of the Executive Office of Energy and Environmental Affairs  
Exhibit A: Reduced Copy of Plan of Premises

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2019,

JOCELYN VAN BOKKELEN REVOCABLE TRUST

\_\_\_\_\_  
Jocelyn Van Bokkelen, Trustee

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2019, 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 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**

This Conservation Restriction from Jocelyn Van Bokkelen, as Trustee of the Jocelyn Van Bokkelen Revocable Trust was accepted by Essex County Greenbelt Association, Inc. this \_\_\_\_ day of \_\_\_\_\_, 2019.

ESSEX COUNTY GREENBELT ASSOCIATION, INC.

By: \_\_\_\_\_  
Name: Katherine Bowditch  
Title: President  
Hereunto duly authorized

By: \_\_\_\_\_  
Name:  
Title:  
Hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2019, 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 proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

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

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2019, 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 proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

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

**APPROVAL OF CONSERVATION RESTRICTION BY MAYOR OF AMESBURY AND  
AMESBURY CITY COUNCIL**

I, Mayor Ken Gray, the undersigned, being the Mayor of the City of Amesbury, Essex County, Massachusetts, pursuant to a vote taken by the Amesbury City Council at a meeting duly held on \_\_\_\_\_, 2019, hereby approve and grant the foregoing Conservation Restriction from Jocelyn Van Bokkelen Revocable Trust to Essex County Greenbelt Association, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

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

Name: \_\_\_\_\_

Its: Mayor, duly authorized

**COMMONWEALTH OF MASSACHUSETTS**

Essex County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared KENNETH GRAY proved to me through satisfactory evidence of identification which was personal knowledge 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 as Mayor of the City of Amesbury.

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

My Commission Expires:

**VOTE OF AMESBURY CITY COUNCIL**

I, Matthew Einson, President of the City Council of the City of Amesbury hereby certify that at a meeting duly held on \_\_\_\_\_, 2019 the City Council voted to approve and grant the foregoing Conservation Restriction from Jocelyn Van Bokkelen Revocable Trust to Essex County Greenbelt Association, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

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

Name: \_\_\_\_\_

Its: City Council President, duly authorized

**COMMONWEALTH OF MASSACHUSETTS**

Essex County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared MATTHEW EINSON, proved to me through satisfactory evidence of identification which was personal knowledge to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as City Council for the City of Amesbury.

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

My Commission Expires:

**APPROVAL BY SECRETARY OF THE EXECUTIVE OFFICE OF ENERGY AND  
ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from from Jocelyn Van Bokkelen, as Trustee of the Jocelyn Van Bokkelen Revocable Trust, to Essex County Greenbelt Association, Inc. has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
KATHLEEN A. THEOHARIDES  
Secretary of the Executive Office of Energy and  
Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this \_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared KATHLEEN A. THEOHARIDES, 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.

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

