



**Town of Hamilton  
Select Board  
Monday, December 4, 2023**

- Shawn Farrell, Chair
- Bill Wilson
- Caroline Beaulieu
- Tom Myers
- Bill Olson

7:00 PM  
Hamilton Town Hall, Memorial Room  
577 Bay Road, Hamilton, MA

**AGENDA**

**The Select Board will continue to utilize Zoom to allow for a hybrid meeting environment, to make the meetings more accessible:**

**Join Zoom Meeting**

<https://us02web.zoom.us/j/89028299177?pwd=YTFpdFIZRE5vdWU3bTNPYVV1WC85Zz09>

**Meeting ID: 890 2829 9177**

**Passcode: 125792**

**One tap mobile**

+13052241968,,89028299177#,,,,\*125792# US  
+13092053325,,89028299177#,,,,\*125792# US

**Dial by your location**

- +1 305 224 1968 US
- +1 309 205 3325 US
- +1 312 626 6799 US (Chicago)
- +1 929 205 6099 US (New York)

7:00 p.m.	Call to order - Memorial Room
<b>ANNOUNCEMENTS &amp; BOARD OPENINGS</b>	
	<p><b>Board and Committee openings:</b></p> <ul style="list-style-type: none"> <li>• Community Preservation Committee – 1 opening</li> <li>• Council on Aging - 2 associate openings</li> <li>• Finance and Advisory Committee - 1 associate opening</li> <li>• Historic District Commission - 2 openings for 3 year terms, 2 openings for 2 year terms (one must be a resident of the Historic District and one must be a resident Realtor)</li> <li>• Human Rights Commission - 1 opening</li> <li>• Planning Board - 1 associate opening</li> <li>• Zoning Board of Appeals – 1 Associate opening</li> </ul>
	<b>Public Comment (3 minutes on topics not already on the agenda)</b>

Items may be heard out of the listed order. The agenda items listed are those items which were reasonably anticipated by the Chair to be discussed at the meeting. Not all items listed on the agenda may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

**CONSENT AGENDA**

- Minutes of Select Board meeting October 30,2023

**AGENDA**

7:05 p.m.

- **Department Head Update** – Town Clerk Carin Kale for Election season - Discussion

7:30 p.m.

- Tax Classification and Tax Rate Setting with Chief Assessor Todd Laramie - Discuss and Vote
- Request for Select Board to ask Assessors to release unused Overlay in the amount of \$250,000 – Discuss and Vote
- Review of Conservation Restriction for 278, 280, 290 Cutler Road – Discuss and Vote
- Patton Pavilion Naming with the Friends of Patton Homestead - Discuss and Vote
- New Business
- Adjourn

**Cemetery Deed: #1260**



Town of Hamilton  
Select Board  
Meeting Minutes of October 30, 2023

Pursuant to the Open Meeting Law, MGL Chapter 30 A, §§ 18-25, written notice posted by the Town Clerk delivered to all Select Board members, a meeting of the Hamilton Select Board was posted for October 30, 2023 at 7pm in Memorial Hall, 577 Bay Road. This meeting was held in virtual/zoom format only.

The Select Board functions as the Chief Executive body of the Town. Its five members are elected to three-year terms with one or two seats up for election each year. The Board acts as the chief policy making body of the Town and directly supervises the activities of the Town Manager. The Select Board typically meets the first and third Monday evening at 7:00 p.m.  
Board members: Shawn Farrell (2024); William Olsen (2024); Caroline Beaulieu (2025); Thomas Myers; (2025); Bill Wilson (2026).

**Call to order:** *With a quorum present, Chair Farrell called the meeting to order at 7:00 PM, identified the meeting was being recorded and those present:* S. Farrell, Chair; T. Myers, B. Wilson, C. Beaulieu, Vice Chair (joined late); Not present: W. Olson, Clerk. Others present: Joseph J. Domelowicz Jr., Town Manager; Patrick Reffett, Director of Planning and Inspectional Services and others as noted.

- **Public Comment** – *There was none.*
- **Discussion with Town Counsel Amy Kwesell re: the recent filing of a Chapter 40B Project Eligibility Application for property at 133 Essex St. (Chebacco Woods) and disclosure of town's options and next steps**

The Town received notification from the State that a 40B affordable housing project is being proposed for 133 Essex St. This meeting is to understand the process and what the next steps are. Chair Farrell noted that the Town has until November 20 to submit comments on the application. The applicant filed an application with Mass Housing in order to get a Project Eligibility Letter (PEL), which confirms what is needed to file an application with the Hamilton Zoning Board of Appeals (ZBA) – that there is a limited dividend organization involved, they have site control, and there is evidence of funding. The State solicits comments/concerns from the municipality and conducts a site visit; usually this occurs within 30 days. Attorney Kwesell recommended sending the PEL to Town departments and boards so the Select Board can create a letter summarizing/compiling all the comments for submittal.

Once Mass Housing issues their PEL to the developer, the developer can file an application with the ZBA under the comprehensive permit statute, MGL Chapter 40B. Chapter 40B allows the ZBA to apply or waive rules and regulations of the Town, but the ZBA cannot waive state regulations, i.e. Title V or the Wetlands Protection Act. The Planning Board previously denied an application for 50 units at this site. The current proposal is for 59 condominiums in 32 buildings, with 44 market rate, age restricted (55+) units, plus 15 affordable units non restricted units. The affordable units will be placed on the State Subsidized Housing Inventory (SHI), which would help Hamilton reach the 10% affordable housing stock as required by the State.

Attorney Kwesell noted that the comments that typically come in from towns are regarding the buildability of the property in terms of wetlands and slopes, wastewater treatment, and traffic impacts. Regulations under MGL Chapter 40B specifically state that a Town is not allowed to consider school enrollment as a factor. Also, conditions that relate to the improvement of infrastructure off-site are usually not upheld.

The State Housing Appeals Committee (HAC) is where the developer goes to file an appeal their permit or conditions, even if they are approved with conditions they can appeal to HAC. The HAC generally does not rule in favor of municipalities. The State takes into account the extensive need for affordable housing that overrides everything else, and is a hard presumption to overcome.

The current application is not that different than the previous application that was denied, except for the affordable units. Attorney Kwesell noted public comments can be included in the response from the Town. The public is also able to weigh in at the ZBA meeting when the petition is reviewed.

The land disturbance is relatively the same as the previous application. Attorney Kwesell reviewed the application and noted that it is very thorough, she expects they will be issued a PEL prior to the end of the year. Under 40B, developers have more flexibility to ask for waivers. Marnie Crouch, Chair of the Planning Board noted she did not see that there were deed restrictions proposed in perpetuity for the affordable units, and she would expect to see that included.

- **Rudolph Pazano**, Essex St asked if local regulations do not apply? Attorney Kwesell clarified that the ZBA acts on behalf of other committees to consider local regulations with the exception of Title V and Wetlands. R.Pazano noted that there are noise regulations to be considered, and believes it will generate extreme levels of noise.
- **Rosie Kennedy**, Rust St asked when the pending amendment to the stormwater bylaw takes effect and if it will apply? Chair Crouch noted that if the new amendment is approved at Town Meeting, it becomes law once it is signed by the State Attorney General.

Chair Farrell noted that this is very early in the process, and thanked everyone for being involved.

**Adjourn:** *The Board voted unanimously to adjourn the meeting at 7:37PM.*

*Respectfully submitted by  
D. Pierotti, Recording Secretary,  
11/17/23.*

*The minutes were prepared from video.*

## Joe Domelowicz

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**From:** Carin Kale  
**Sent:** Wednesday, October 18, 2023 11:23 AM  
**To:** Joe Domelowicz  
**Cc:** Laurie Wilson  
**Subject:** Dec 4 SBd Agenda

Hi Joe! I would like to be on the agenda for the December 4 Select Board agenda to present an overview of the 2024 Election dates, both local and state. At that meeting I will announce the local elected positions that will be on the April 11 ballot. Nomination papers will be available Tuesday, January 16 and due back before February 22.

Thanks.  
Carin

*Carin A. Kale*

Town Clerk  
Notary

Town of Hamilton  
577 Bay Road  
P.O. Box 429  
Hamilton, MA 01936-0429  
978-468-5570 ext. 3

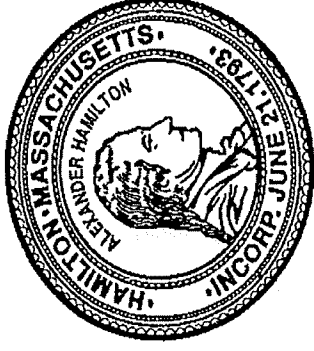
[www.hamiltonma.gov](http://www.hamiltonma.gov): Register to Vote [www.registertovotema.com](http://www.registertovotema.com)

**Town Hall hours: M, W, Th 8 – 4:30; Tues 8 – 6:30.**

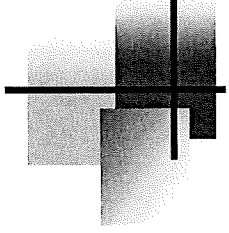


# TOWN OF HAMILTON

# TAX CLASSIFICATION



# FISCAL YEAR 2024



The purpose of the annual Public Hearing on Tax Classification is to record the Selectboard's vote on 4 classification options each having the potential to impact Hamilton's FY2024 tax rate. The 4 classification options are summarized as follows:

- **The determination of a discount factor of up to 25% for all land classified as Open Space.**
- The Board of Assessors has determined that there exist no vacant land parcels in Hamilton that meet the statutory definition of open space (chapter land is specifically excluded from open space qualification). Consequently, the adoption of an open space discount by the Selectboard would fail to provide any taxpayer benefit. For this reason the Board of Assessors recommends that the Selectboard vote no on the adoption of an Open Space Discount.



# Residential Exemption

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- **The determination of a Residential Exemption of up to 35% of the mean residential valuation.**
- Adoption of this exemption is typically found in communities with a high percentage of second home properties (ex. Nantucket) or communities with a high percentage of investor owned residential properties (ex. Cambridge). The exemption is designed to provide a measure of tax relief to owner occupants of residential property by shifting the tax burden to non-domiciled residential property owners. However, the overwhelming majority of Hamilton residential property owners consider their homes to be their principal residence. For this reason the Board of Assessors recommends that the Selectboard vote no on the adoption of a Residential Exemption.





# Small Commercial Exemption

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- **The determination of a Small Commercial Exemption of up to 10% of the valuation of eligible parcels.**
- This exemption is designed to provide a measure of property tax relief to owners of small business properties by shifting the tax burden to owners of larger commercial/industrial properties. The town of Hamilton simply lacks the diversity of commercial/industrial properties necessary for the effective implementation of this exemption. Consequently, the Board of Assessors recommends that the Selectboard vote no on the adoption of a Small Commercial Exemption.



# Residential Factor

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- **The adoption of a Residential Factor for the purpose of determining the percentage tax burden to be borne by each class of property.**
- Adoption of a Residential Factor by the Selectboard is required for the purpose of determining the percentage of the tax burden to be borne by each class of property. Adoption of a factor of "1.00" results in a single or uniform tax rate for all classes of property while adoption of any other factor will result in both a lower residential rate and higher commercial rate than would be realized under the uniform tax rate approach. Dual tax rate structures are typically found in municipalities with significant percentages of commercial, industrial, and personal property (CIP) valuation (ex. Beverly). However, only 4 percent of the total taxable valuation of Hamilton is comprised of CIP valuation. For this reason the Board of Assessors recommends that the Selectboard maintain a single tax rate by voting for a Residential Factor of 1.00.

# FY 2024 TAX RATE SUMMARY

<u>CLASS</u>	<u>VALUE</u>	<u>% SPLIT</u>
RESIDENTIAL	2,152,841,636	96%
COMMERCIAL	65,088,997	3%
INDUSTRIAL	2,098,000	0%
PERSONAL	<u>24,433,900</u>	<u>1%</u>
<b>TOTALS</b>	<b>2,244,462,533</b>	<b>100%</b>
FY2023 Total Value	2,010,367,569	
% Change	12%	
Average Single Family Valuation - 2024	797,860	
Average Single Family Valuation - 2023	713,728	
% Change	12%	
FY2024 Tax Levy	33,938,667	
Tax Rate New	\$15.12	
Tax Rate - 2022 (old rate)	\$16.34	
\$ Change in Average Single family Tax Bill	7%	
	\$402	

## Joe Domelowicz

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**From:** Wendy Markiewicz  
**Sent:** Monday, November 13, 2023 3:35 PM  
**To:** Joe Domelowicz; Todd Laramie  
**Subject:** Overlay  
**Attachments:** OL1.pdf

Hi Joe,

I have discussed with Todd the need to release overlay. He and Jane are in agreement. Please take a look at the financial policy that speaks to this and the OL-1 report attached, submitted to the DOR. I am suggesting we release \$150,000 at this time to use for approved capital improvements.

### ***D. Overlay Surplus***

***The overlay is a reserve the Town uses to offset uncollected property taxes and other unrealized revenue resulting from property tax abatements and exemptions.***

***At the conclusion of each fiscal year, the Board of Assessors will submit to the Town Manager and the Finance Director an update of the overlay reserve with data that includes, but is not limited to, the gross balance, potential abatement liabilities, and any transfers to surplus. If the balance exceeds the amount of potential liabilities, the Board of Selectmen may request that the Board of Assessors vote to declare those balances surplus and available for use in the Town's capital improvement plan or any other one-time expense.***

I am uncertain of the actual requirements by the Select Board to request this release. Todd did say he would put it in front of the Board of Assessors. Thoughts?

Thank you,

***Wendy M. Markiewicz***

Finance Director/Town Accountant  
Town of Hamilton  
577 Bay Road  
Hamilton, MA 01936  
[wmarkiewicz@hamiltonma.gov](mailto:wmarkiewicz@hamiltonma.gov)  
Office: 978-626-5215

SCHEDULE OL-1  
 OVERLAY WORKSHEET - Fiscal Year 2024

<u>Overlay Available</u>									
1. Overlay Balance as of 6/30/2023	584,153.78								
2. Overlay from FY 2024 (Tax Rate Recap Page 2 IId)	250,000.00								
3. Overlay Balance Available (Add lines 1 and 2)	<u>834,153.78</u>								
<u>Overlay Use</u>									
4. Overlay Transferred to Overlay Surplus after 7/1/2023	0.00								
5. Other Overlay Charges after 7/1/2023	0.00								
6. 5 year Average Abatements And Exemptions Granted thru 6/30/2023	191,733.25	FY 2023		FY 2021		FY 2020		FY 2019	
7. Overlay Balance Needed (Add lines 4 thru 6)	<u>191,733.25</u>	141,385.93		109,478.00		285,445.00		243,223.00	179,134.33
8. Overlay Balance Available in excess of Overlay Balance Needed (negative indicates a Shortfall) (subtract line 7 from line 3)	<u>642,420.53</u>								<u>5-year average FY 2019 to FY 2023</u> 191,733.25
<u>Potential Future Liabilities</u>									
9. Real Estate Tax Receivables as of 6/30/2023	267,626.60								
10. Personal Property Tax Receivables as of 6/30/2023	3,168.57								
11. Pending ATB or Court decision(s)	23,000.00								
12. Total Potential Future Liabilities	<u>293,795.17</u>								

Signatures

Accounting Officer

Wendy Markiewicz, Town Accountant/Dir of Finance , Hamilton , wmarkiewicz@hamiltonma.gov 978-626-5215 | 11/9/2023 1:41 PM

Comment: Wendy Markiewicz

Assessor

**SCHEDULE OL-1**  
**OVERLAY WORKSHEET - Fiscal Year 2024**

Jane Dooley, Assistant Assessor, Hamilton, jdooley@hamiltonma.gov 978-468-5574 | 11/9/2023 3:50 PM

Signatures

Documents

No documents have been uploaded.

## Joe Domelowicz

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**From:** Shawn Farrell  
**Sent:** Wednesday, November 29, 2023 9:13 AM  
**To:** Joe Domelowicz  
**Subject:** Fw: External Email Warning Request for approval of Conservation Restriction, Cutler Road  
**Attachments:** CR 17187 - Hamilton approved for local signature 11.17.23.pdf

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**From:** Chris LaPointe <chris@ecga.org>  
**Sent:** Monday, November 20, 2023 1:55 PM  
**To:** Shawn Farrell <sfarrell@hamiltonma.gov>  
**Subject:** External Email Warning Request for approval of Conservation Restriction, Cutler Road

Hi Shawn,

I would like to request the Town's review for approval of a Conservation Restriction over nearly 20 acres of land at 278, 280 and 290 Culter Road. The area is called out as a priority for protection in the most recent Open Space and Recreation Plan, and is an important part of the corridor between Pingree Woodlands and Appleton along Black Brook.

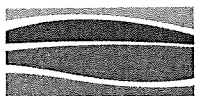
We would like to record the Conservation Restriction before the end of the year, and so I would like to request time on an upcoming Select Board Agenda as soon as is practical.

I am happy to provide a cover memo, but I attach the CR, which includes a plan, to this email.

Thank you, Shawn. Happy to answer any other questions you might have.

Chris

Christopher B. LaPointe  
Vice President, Conservation Operations  
Greenbelt | Essex County's Land Trust  
82 Eastern Avenue  
P.O. Box 1026  
Essex, MA 01929  
[chris@ecga.org](mailto:chris@ecga.org)  
(978) 768-7241 x118  
[ecga.org](http://ecga.org)



**Greenbelt**  
Essex County's Land Trust

**GRANTOR:** Joshua Lerner and Wendy Wood, trustees of 290 Cutler Realty Trust and 278 Cutler Realty Trust.

**GRANTEE:** Essex County Greenbelt Association, Inc.

**ADDRESS OF PREMISES:** 278, 280 & 290 Cutler Road, Hamilton, MA

**FOR GRANTOR'S TITLE SEE:** Southern Essex District Registry of Deeds at Book 25885, Page 49, Book 32996, Page 557, and Book 33648, Page 77.

## **GRANT OF CONSERVATION RESTRICTION**

### **I. STATEMENT OF GRANT**

Joshua Lerner and Wendy Wood, as the sole trustees of 278 Cutler Realty Trust, u/d/t July 14, 2006, recorded with the Southern Essex District Registry of Deeds (the "Registry") at Book 25885, Page 43, and as the sole trustees of 290 Cutler Realty Trust, u/d/t November 27, 2013, recorded with the Registry at Book 32996, Page 545, each with an address of 278 Cutler Road, Hamilton, Massachusetts 01929, being the sole owners of the Premises (as defined herein), constituting all of the owner(s) of the Premises, for our successors and assigns (collectively, "Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant, with QUITCLAIM COVENANTS, to Essex County Greenbelt Association, Inc., a Massachusetts not-for-profit corporation with an address of 82 Eastern Avenue, Essex, Massachusetts 01929, their permitted successors and assigns ("Grantee"), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in Hamilton, Massachusetts consisting of 19.664 acres more or less, covering portions of three abutting properties located at 278, 280, and 290 Cutler Road ("Premises"), which Premises is more particularly described in Exhibit A and shown in the attached reduced copy of a survey plan in Exhibit B, 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, and to prevent any use or change that would materially impair the Conservation Values (as defined below).

**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 Hamilton and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises abuts land already conserved, including Pingree



Woodlands Reservation owned by the Grantee, Harvard Forest owned by Harvard University, and Appleton Farms owned by The Trustees of Reservations.

- Soils and Soil Health. The Premises includes 8.1 acres of Prime 2 Forest Land soils, 1.2 acres of Statewide Important Forest Land soils, 6.7 acres of Prime Farmland, and 9.9 acres of Farmland of Statewide Importance as identified by the USDA NRCS. The USDA NRCS soils data is available through MassGIS (Bureau of Geographic Information). 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.
- Natural Community Systems. The Premises includes approximately one acre of deciduous swamp, a Priority Natural Vegetation Community identified by the Massachusetts Natural Heritage and Endangered Species Program (NHESP). The NHESP Priority Natural Vegetation Community data is available through MassGIS (Bureau of Geographic Information). Protection of this area will maintain the natural system along the Black Brook riparian corridor.
- Water Quality. The Premises has more than 1,300 feet of frontage on Black Brook, part of the Ipswich River watershed. Protection of the riparian corridor can help maintain water quality and water stress on the Ipswich River.
- Consistency with Clearly Delineated Federal, State, or Local Governmental Conservation Policy. Protection of the Premises furthers the Town of Hamilton Open Space and Recreation Plan Goal 1: Preserve by expanding the existing open space and scenic network between Appleton Farm and Pingree Woodlands Reservation, and Enhance Open Space and Scenic Qualities and Goal 2: Protect Water Resources by preserving the natural buffer along Black Brook.

### **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 and Improvements. Constructing, placing, or allowing to remain any temporary or permanent structure including without limitation any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, graveled area, roads, sign, fence, gate, billboard or other advertising, antenna, utilities or other structures, utility pole, tower, 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, except to maintain existing lawns, fields, and gardens as documented in the Baseline Report;
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;
8. Subdivision. Subdividing or conveying a part or portion of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted).
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. Residential or Industrial Uses. Using the Premises for residential or industrial purposes;
12. Inconsistent Uses. Using the Premises for commercial purposes 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. Vegetation Management. Maintaining vegetation, including pruning, trimming, cutting, and mowing, and removing brush, all to prevent, control, and manage hazards, disease, insect or fire damage, and/or in order to maintain the condition of the Premises as documented in the Baseline Report (see Paragraph XV.);
2. 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;

3. Composting. Stockpiling and composting stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises;
4. 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;
5. Indigenous Cultural Practices. With prior written notice to the Grantee, allowing indigenous peoples to:
  - a. Conduct cultural land ceremonial uses. Cultural practices are defined, for the purposes of this Conservation Restriction, as including traditional spiritual ceremonies, seasonal celebrations, offerings, and cultural, educational, and interpretive programming; and
  - b. Harvest plant-life for traditional cultural practices, using methods which, in the sole judgment of the Grantee, ensure sustainable populations of the harvested species within the Premises, including regrowth and replanting;
6. Archaeological Investigations. Conducting archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only in accordance with an archaeological field investigation plan, which plan shall also address restoration following completion of the archaeological investigation, prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historical Commission State Archaeologist (or appropriate successor official) and by the Grantee. A copy of the results of any such investigation on the Premises is to be provided to the Grantee;
7. Trails. Maintaining and constructing trails as follows:
  - a. Trail Maintenance. Conducting routine maintenance of trails, which may include widening trail corridors up to six (6) feet in width overall.
  - b. New Trails. With prior written approval of the Grantee, constructing new trails or relocating existing trails, provided that any construction or relocation results in trails that conform with the width limitations above.
  - c. Trail Features. With prior written approval of the Grantee, constructing bog bridging, boardwalks, footbridges, railings, steps, culverts, benching, cribbing, contouring, or other such features, together with the use of motorized equipment to construct such features;
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, public access, identity and address of the Grantor, sale of the Premises, the Grantee's interest in the Premises, boundary and trail markings, of the Premises;
9. Motorized Vehicles. Using motorized vehicles by persons with mobility impairments and as otherwise necessary for Permitted Acts and Uses herein.

10. Outdoor Passive Recreational and Educational Activities. Fishing, canoeing and other non-motorized boating, swimming, hunting, trapping, hiking, horseback riding, cross-country skiing, snowshoeing, ice-skating, nature observation, nature and educational walks and outings, outdoor educational activities, and other non-motorized outdoor recreational and educational activities;
11. Subdivision and Conveyance. The Grantor and Grantee acknowledge that the Premises consist of portions of three separate properties located at 278, 280, and 290 Cutler Road, Hamilton, Massachusetts that are currently owned by two separate entities. The Grantor agrees that it will not further subdivide the Premises without the Grantee's prior written approval; provided the Grantee shall not withhold, delay, or condition its approval in the event the Grantor seeks to adjust the boundary lines between the properties. Additional divisions may be requested solely for the purpose of conveying the underlying fee interests to a conservation organization. The Grantor shall have the right to transfer each of the three properties located at 278, 280, and 290 Cutler Road to one or more entities at the same time or at different times without the Grantee's prior written approval so long as the deed for each property is in compliance with Paragraph VIII.A.
12. Forest Management. The sustainable cutting of trees only for the Grantor's personal use, not to exceed 0.5 cords/acre/year or equivalent volume, provided that any such cutting complies with Massachusetts Bureau of Forest Fire Control and Forestry (the "Forestry Bureau") best management practices established in the Massachusetts Forestry Best Management Practices Manual (Catanzaro, Fish & Kittredge, University of Massachusetts, Amherst & DCR; 2013) and subsequent versions as may be approved by the Forestry Bureau.
13. Equestrian Activities. Equestrian activities shall be permitted without a Farm Conservation Plan (as defined below in Section III.B.14.), provided that said activities are limited to 45 horses on the Premises and do not impair the Conservation Values or the Purposes of this Conservation Restriction. With prior written approval of the Grantee, additional horses may be allowed as guided by a Farm Conservation Plan. "Equestrian Activities" are defined for the purposes of this Conservation Restriction to include commercial or non-commercial stabling, boarding, riding, training, exercising, pasturing, polo, breeding horses, fox hunting, and/or offering horseback riding lessons.
14. 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, donkeys, 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, trees, nursery or greenhouse products, and ornamental plants and shrubs, all for the purpose of selling such products in the regular course of business; or when primarily and directly used in raising forest products under a Forest Stewardship Plan designed to improve the quantity and quality of a continuous crop for the purpose of using, consuming, or selling these 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.
  - 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. The Farm Conservation Plan shall be developed in accordance with generally-accepted Best Agricultural Practices, and shall, at a minimum, address the following:
    - i. establish wetland buffers and/or filter strips to prevent adverse impacts to the water quality of existing wetlands and waterways;
    - ii. 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
    - iii. describe how Agricultural Activities will maximize soil and water conservation, and promote Healthy Soils and Practices.
15. Agricultural and Equestrian Structures and Improvements. Constructing and maintaining structures and improvements to conduct Agricultural and Equestrian Activities, provided:

- a. The total footprint (as defined herein) of all permanent structures and any temporary structures (as defined below) that have a roof shall not exceed 2,500 square feet in the aggregate. The current footprint of permanent structures on the Premises is 60 square feet. 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.
  - b. Grantor must obtain prior written approval from the Grantee for the following improvements:
    - i. Permanent structures with a foundation that cannot be constructed or removed without materially adverse disturbance of the soil, except the Grantor may construct concrete footings for run-in sheds and similar structures without the Grantee’s prior written approval.
  - c. The following improvements are permitted without prior approval from the Grantee:
    - i. 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, hoop houses (also known as “high tunnels”), 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;
16. Utilities. The replacement of existing utility lines, and with the Grantees’ approval the installation of new utility lines, from Cutler Road as necessary to service the Grantor’s adjacent unrestricted land at 278 and 290 Cutler Road or for activities permitted in this Conservation Restriction, provided any new utility lines shall be underground to the extent feasible.
17. Driveways. Use, repair, and replacement of the existing access driveways shown in the Baseline Report, provided that driveways are no wider than 20 feet.
18. Septic Systems and Wells. With prior written approval from the Grantee, which approval shall not be unreasonably withheld or delayed, and with a written determination from a qualified building professional that no feasible location for a well or septic system exists within the Grantor’s adjacent unrestricted land at 278 and 290 Cutler Road, using, maintaining, repairing, improving or relocating a well or septic system on the Premises. For purposes of this provision, a septic system or well located within the Grantor’s adjacent unrestricted land shall not be considered “unfeasible” merely because it is more costly to construct a septic system or well there as compared to a septic system or well located on the Premises.

**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 Permitted Act or Use 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, Grantor 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 Grantor intends 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 the Grantee's approval is required, the Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of the Grantor's request. The 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. The Grantee may require the Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.
3. Resubmittal. The Grantee's failure to respond within sixty (60) days of receipt shall not constitute approval of the request. The Grantor may subsequently submit the same or a similar request for approval.

#### **IV. INSPECTION AND ENFORCEMENT**

##### **A. Entry onto the Premises**

The Grantor hereby grants 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 Grantor in writing of the violation. The Grantor 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 the 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 the Grantor immediately ceases the violation and the 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. The Grantor covenants and agrees to reimburse to the Grantee all reasonable costs and expenses (including reasonable counsel fees) actually 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 this Conservation Restriction, the Grantor 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 the 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 Grantor for any injury to or change in the Premises resulting from natural causes beyond the Grantor's control, including but not limited to fire, flood, weather, climate-related 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 Grantor 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 to the general public and the Grantor retains its rights to prohibit access to the Premises by the general public.

**VI. TERMINATION/RELEASE/EXTINGUISHMENT**

**A. Procedure**

If circumstances arise in the future that render the Purposes impossible to accomplish, this Conservation Restriction can only be terminated, released, or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, or successor official ("Secretary"), and any other approvals as may be required by Section 32 of Chapter 184 of the Massachusetts General Laws.

**B. Grantor's and Grantee's Right to Recover Proceeds**

If any change in conditions ever gives rise to termination, release, or extinguishment of this Conservation Restriction under applicable law, then the 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 VI.C., 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. The Grantee shall use its share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

**C. Grantee's Receipt of Property Right**

Grantor 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 at least equal to the proportionate value that this Conservation Restriction, determined at the time of the conveyance, bears to the value of the unrestricted Premises. The proportionate value of the Grantee's property right as of the Effective Date (See Paragraph XII.) will be determined by an appraisal, which appraisal will be shared with Grantee. Such proportionate value of the Grantee's property right shall remain constant.

**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 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 VI.B. and Paragraph 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 Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

### **B. Execution of Instruments**

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. The Grantor, on behalf of itself and its successors and assigns, appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

### **C. Running of the Benefit**

The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except 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 Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than ten (10) 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 Grantor fails to reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, then the Grantee may record, in the applicable registry of deeds, or registered in the applicable land court registry district, and at the Grantor's expense, a notice of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **B. Grantor's Liability**

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.

## **IX. ESTOPPEL CERTIFICATES**

Upon request by the Grantor, the Grantee shall, within fifteen (15) 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 and such other information as reasonably requested by the Grantor.

## **X. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of this 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 following the terms set forth in Paragraph 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**

The Grantor 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 the 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 Paragraph VI (Termination/Release/Extinguishment); or
7. cause the provisions of this Paragraph XI to be less restrictive; or
8. cause the provisions described in Paragraph 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 the Grantee and Grantor, approved by the Town of Hamilton and by the Secretary in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, and recorded in the applicable registry of deeds or registered in the applicable land court registry district.

## **XII. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded in the applicable registry of deeds or registered in the applicable land court registry district.

## **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 Grantor: Josh Lerner and Wendy Wood  
Trustees of 290 Cutler Realty Trust and 278 Cutler Realty Trust  
278 Cutler Road  
South Hamilton, MA 01982

To Grantee: Essex County Greenbelt Association  
ATTN: Director of Stewardship  
82 Eastern Avenue  
Essex, MA 01929

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 Grantor and Grantee with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to this 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”) dated \_\_\_\_ \_\_, 2023 prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and included by reference herein. The Baseline Report (i) is acknowledged by the 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, (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, 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 Grantor hereby agrees 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 Grantor attests that there is no mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

**D. Executory Limitation**

If the 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 the 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. The following signature pages are included in this Grant:**

Grantor: Joshua Lerner and Wendy Wood, trustees of 290 Cutler Realty Trust and the 278 Cutler Realty Trust

Grantee: Essex County Greenbelt Association, Inc.

Approval of Town of Hamilton Select Board

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

**G. The following exhibits are attached and incorporated herein:**

Exhibit A: Legal Description of Premises

Exhibit B: Reduced Copy of Recorded Plan of Premises

[Signatures on Following Page]

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2023,

\_\_\_\_\_, duly authorized  
Joshua Lerner, Trustee of 290 Cutler Realty Trust  
and 278 Cutler Realty Trust.

\_\_\_\_\_, duly authorized  
Wendy Wood, Trustee of 290 Cutler Realty Trust  
and 278 Cutler Realty Trust.

THE COMMONWEALTH OF MASSACHUSETTS

Essex County, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Joshua Lerner, 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:

THE COMMONWEALTH OF MASSACHUSETTS

Essex County, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Wendy Wood, 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:

**ACCEPTANCE OF GRANT**

The foregoing Conservation Restriction from Joshua Lerner and Wendy Wood, Trustees of 290 Cutler Realty Trust and 278 Cutler Realty Trust, was accepted by Essex County Greenbelt Association, Inc. this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

By: \_\_\_\_\_  
Name: Katherine Bowditch  
Its: President, duly authorized

By: \_\_\_\_\_  
Name: Timothy Fritzingler  
Its: Treasurer, duly authorized

**THE COMMONWEALTH OF MASSACHUSETTS**

Essex County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Katherine Bowditch, as President of Essex County Greenbelt Association, Inc., and 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 s/he signed it voluntarily for its stated purpose in the aforesaid capacity, and further acknowledged the foregoing to be the free act and deed of Essex County Greenbelt Association, Inc.

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

**THE COMMONWEALTH OF MASSACHUSETTS**

Essex County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Timothy Fritzingler, as Treasurer of Essex County Greenbelt Association, Inc., and 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 s/he signed it voluntarily for its stated purpose in the aforesaid capacity, and further acknowledged the foregoing to be the free act and deed of Essex County Greenbelt Association, Inc.

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



**APPROVAL OF TOWN OF HAMILTON SELECT BOARD**

We the undersigned, being a majority of the Select Board of the Town of Hamilton, hereby certify that at a public meeting duly held on \_\_\_\_\_, 2023, the Select Board voted to approve the foregoing Conservation Restriction from Joshua Lerner and Wendy Woods, Trustees of 290 Cutler Realty Trust and the 278 Cutler Realty Trust, to Essex County Greenbelt Association, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

TOWN OF HAMILTON SELECT BOARD

\_\_\_\_\_  
Shawn M. Farrell, Chair

\_\_\_\_\_  
Carolyn Q. Beaulieu,  
Vice Chair

\_\_\_\_\_  
Bill Wilson

\_\_\_\_\_  
Thomas B. Myers

\_\_\_\_\_  
William A. Olson

THE COMMONWEALTH OF MASSACHUSETTS

Essex County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Shawn M. Farrell, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed in the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

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

THE COMMONWEALTH OF MASSACHUSETTS

Essex County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Carolyn Q. Beaulieu, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed in the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

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

My Commission Expires:

THE COMMONWEALTH OF MASSACHUSETTS

Essex County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Bill Wilson, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed in the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

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

My Commission Expires:

THE COMMONWEALTH OF MASSACHUSETTS

Essex County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Thomas B. Myers, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed in the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

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

My Commission Expires:

THE COMMONWEALTH OF MASSACHUSETTS

Essex County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared William A. Olson, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed in the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
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 approves the foregoing Conservation Restriction from Joshua Lerner and Wendy Woods, Trustees of 290 Cutler Realty Trust and the 278 Cutler Realty Trust, to Essex County Greenbelt Association, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
REBECCA L. TEPPER  
Secretary of Energy and Environmental Affairs

THE 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

### Legal Description of Premises

The land in Hamilton, Essex County, Massachusetts, containing 19.664 acres, more or less, shown as "Conservation Restriction Area Area = 102,787± S.F. 2.360± Acres", "Conservation Restriction Area Area = 563,000± S.F. 12.9± Acres", "Conservation Restriction Area Area = 48,081± S.F. 1.104± Acres", and "Conservation Restriction Area Area = 145,000± S.F. 3.3± Acres" as shown on a plan of land entitled "Plan of Land 278 & 290 Cutler Road Hamilton Property of 290 Cutler Realty Trust", Prepared by North Shore Survey Corporation, dated November 2, 2022, and recorded in the Essex Southern District Registry of Deeds at Plan Book \_\_\_ Page \_\_\_, being bounded and described therein as follows:

Beginning at a point on the westerly side of Cutler Road, at land of Candace King; thence running,

S 09°29'37" E	fifty and 99/100 (50.99) feet by Cutler Road, to a point; thence turning and running,
S 11°28'19" E	sixty one and 63/100 (61.63) feet by Cutler Road, to a point; thence turning and running,
S 15°48'59" E	thirty eight and 73/100 (38.73) feet by Cutler Road, to a point; thence turning and running,
S 22°57'39" E	fifty three and 27/100 (53.27) feet by Cutler Road, to a point; thence turning and running,
S 27°01'07" E	two hundred thirty four and 58/100 (234.58) feet by Cutler Road, to a point; thence turning and running,
S 25°11'07" E	one hundred ninety five and 41/100 (195.41) feet by Cutler Road, to a point; thence turning and running,
S 25°22'58" E	two hundred eighty four and 50/100 (284.50) feet by Cutler Road, to a point; thence turning and running,
S 21°42'16"	one hundred ninety six and 45/100 (196.45) feet by Cutler Road, to land of Harvard College; thence turning and running,
N 78°59'35" W	two hundred seventy five and 30/100 (275.30) feet by land of Harvard College to a point; thence turning and running,
S 52°54'48" W	three hundred twenty and 85/100 (320.85) feet by land of Harvard College to a point; thence turning and running,
N 34°07'50" W	one hundred ninety six and 37/100 (196.37) feet by remaining land shown as No. 278 Cutler Rd. to a point; thence turning and running,
S 64°37'02" W	about six hundred and six (606+/-) feet by remaining land shown as No. 278 Cutler Rd. to a point on Black Brook; thence turning and running,
Northerly	by Black Brook eleven hundred twenty (1120+/-) feet to land of Candace King; thence turning and running,

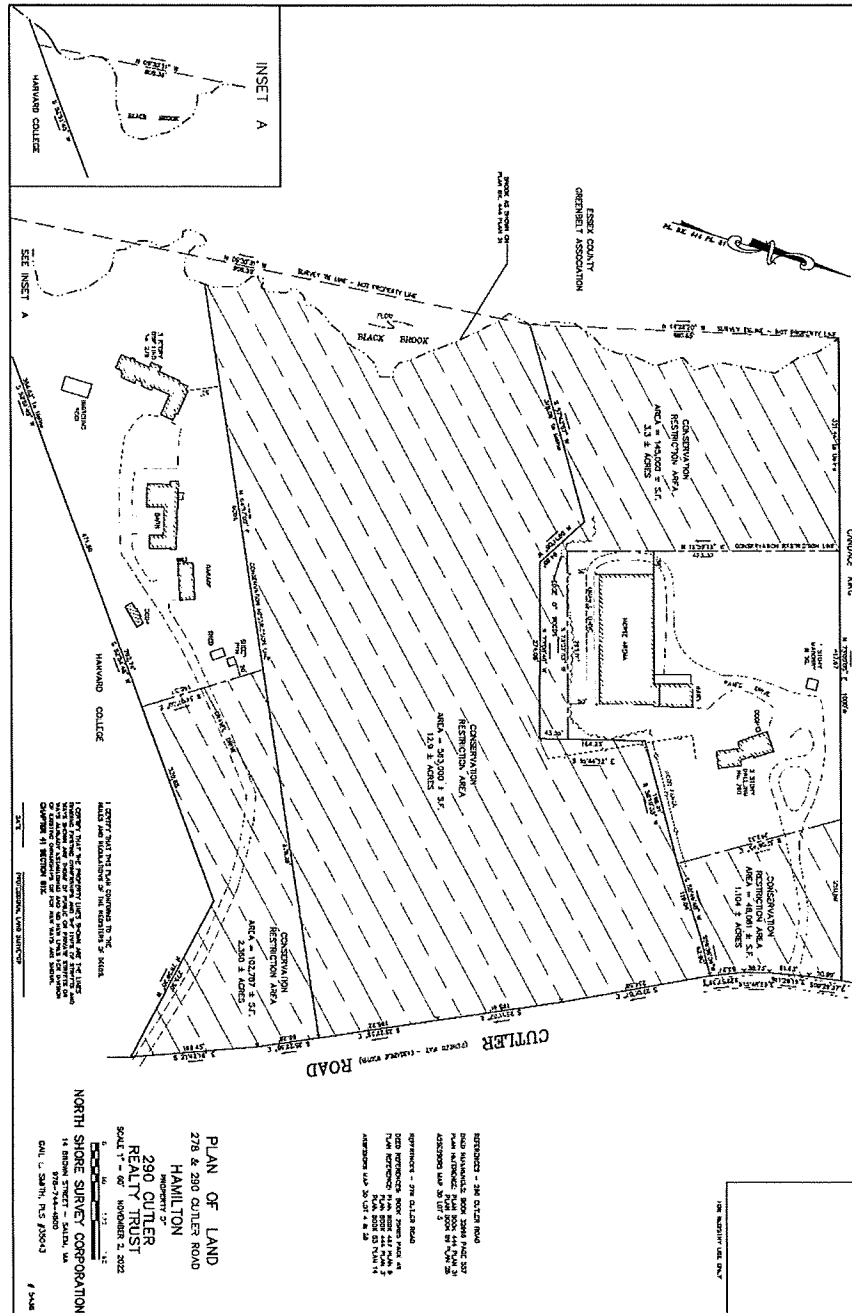
N 73°00'05" W three hundred thirty one (331+/-) feet by land of Candace King; thence turning and running,  
S 16°59'16" E four hundred twenty three and 32/100 (423.32) feet by remaining land shown as No. 290 Cutler Rd.; thence turning and running,  
N 73°07'53" E two hundred ninety three and 01/100 (293.01) feet by said No. 290 Cutler Rd. land; thence turning and running,  
N 15°44'32" W one hundred twenty and 88/100 (120.88) feet by said No. 290 Cutler Rd. land to a point; thence turning and running,  
N 58°19'33" E one hundred ninety six and 91/100 (196.91) feet by said No. 290 Cutler Rd. land to a point; thence turning and running,  
N 32°06'45" W two hundred sixty two and 33/100 (262.33) feet by said No. 290 Cutler Rd. land to a point at land of Candace King; thence turning and running,  
N 73°00'05" E two hundred fifty and 89/100 (250.89) feet by land of Candace King to the point begun at.

Said Conservation Restriction Area comprises 858,868 +/- square feet (19.664 +/- acres).

## EXHIBIT B

### Reduced Copy of Plan of Premises

For the full size plan please see Southern Essex District Registry of Deeds Plan Book \_\_\_\_, Plan \_\_\_\_.



November 30, 2023

Shawn M. Farrell, Chair  
Hamilton Select Board  
650 Asbury Street  
Hamilton, MA 01936

Re: Approval of Conservation Restriction from Trustees of 290 Cutler Road Realty Trust and 278 Cutler Road Realty Trust to Essex County Greenbelt Association, Inc.

Dear Mr. Farrell,



On behalf of Essex County Greenbelt Association, I would like to request that the Select Board review and approve a Conservation Restriction (CR) over 19.664 acres of land located at 278, 280 and 290 Cutler Road.

Greenbelt has been working with the landowner for some time on our mutual goal of protecting the majority of the subject properties. The land is on Cutler Road between Greenbelt's Pingree Reservation, Harvard Forest, and The Trustees' Appleton Farms Grassrides. With 1,300 feet of frontage on Black Brook, the land protects water quality and quantity in the Ipswich River Watershed.

Protection of this property is consistent with the Hamilton Open Space and Recreation Plan: Goal 1: Preserve by expanding the existing open space and scenic network between Appleton Farm and Pingree Woodlands Reservation, and Enhance Open Space and Scenic Qualities and Goal 2: Protect Water Resources by preserving the natural buffer along Black Brook. The property contains Prime Agricultural and Forest Soils, and a priority vegetation community identified by the Natural Heritage and Endangered Species Program – deciduous swamp. The restriction protects these and other natural resource values.

As you likely know, CRs must be approved by the Select Board of the municipality in which the land is located. This CR has been reviewed and approved by the Commonwealth of Massachusetts Division of Conservation Services, and subject to the Board's approval, is on track to be recorded before the end of December.

For your reference, I include the final draft of the CR, which includes a copy of the plan showing the areas to be restricted, as well as an aerial map showing the location of the property in context with other adjacent conserved land. If there are any questions, please feel free to reach out to me at 978-768-7241 x118 or [chris@ecga.org](mailto:chris@ecga.org).

Sincerely,

A handwritten signature in black ink that reads "Christopher B. LaPointe".

Christopher B. LaPointe  
Vice President, Conservation Operations

Protecting land and nature for you, our communities and the future

Essex County Greenbelt  
82 Eastern Avenue  
PO Box 1026  
Essex, MA 01929





978 768 7241  
[ecga@ecga.org](mailto:ecga@ecga.org)

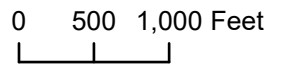
[ecga.org](http://ecga.org)



# Black Rock Farm, Hamilton



-  Subject Property (28.2 acres)
-  Greenbelt Properties
-  Greenbelt CRs
-  Other Protected





**GRANTOR:** Joshua Lerner and Wendy Wood, trustees of 290 Cutler Realty Trust and 278 Cutler Realty Trust.

**GRANTEE:** Essex County Greenbelt Association, Inc.

**ADDRESS OF PREMISES:** 278, 280 & 290 Cutler Road, Hamilton, MA

**FOR GRANTOR'S TITLE SEE:** Southern Essex District Registry of Deeds at Book 25885, Page 49, Book 32996, Page 557, and Book 33648, Page 77.

## **GRANT OF CONSERVATION RESTRICTION**

### **I. STATEMENT OF GRANT**

Joshua Lerner and Wendy Wood, as the sole trustees of 278 Cutler Realty Trust, u/d/t July 14, 2006, recorded with the Southern Essex District Registry of Deeds (the "Registry") at Book 25885, Page 43, and as the sole trustees of 290 Cutler Realty Trust, u/d/t November 27, 2013, recorded with the Registry at Book 32996, Page 545, each with an address of 278 Cutler Road, Hamilton, Massachusetts 01929, being the sole owners of the Premises (as defined herein), constituting all of the owner(s) of the Premises, for our successors and assigns (collectively, "Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant, with QUITCLAIM COVENANTS, to Essex County Greenbelt Association, Inc., a Massachusetts not-for-profit corporation with an address of 82 Eastern Avenue, Essex, Massachusetts 01929, their permitted successors and assigns ("Grantee"), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in Hamilton, Massachusetts consisting of 19.664 acres more or less, covering portions of three abutting properties located at 278, 280, and 290 Cutler Road ("Premises"), which Premises is more particularly described in Exhibit A and shown in the attached reduced copy of a survey plan in Exhibit B, 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, and to prevent any use or change that would materially impair the Conservation Values (as defined below).

**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 Hamilton and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises abuts land already conserved, including Pingree

Woodlands Reservation owned by the Grantee, Harvard Forest owned by Harvard University, and Appleton Farms owned by The Trustees of Reservations.

- Soils and Soil Health. The Premises includes 8.1 acres of Prime 2 Forest Land soils, 1.2 acres of Statewide Important Forest Land soils, 6.7 acres of Prime Farmland, and 9.9 acres of Farmland of Statewide Importance as identified by the USDA NRCS. The USDA NRCS soils data is available through MassGIS (Bureau of Geographic Information). 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.
- Natural Community Systems. The Premises includes approximately one acre of deciduous swamp, a Priority Natural Vegetation Community identified by the Massachusetts Natural Heritage and Endangered Species Program (NHESP). The NHESP Priority Natural Vegetation Community data is available through MassGIS (Bureau of Geographic Information). Protection of this area will maintain the natural system along the Black Brook riparian corridor.
- Water Quality. The Premises has more than 1,300 feet of frontage on Black Brook, part of the Ipswich River watershed. Protection of the riparian corridor can help maintain water quality and water stress on the Ipswich River.
- Consistency with Clearly Delineated Federal, State, or Local Governmental Conservation Policy. Protection of the Premises furthers the Town of Hamilton Open Space and Recreation Plan Goal 1: Preserve by expanding the existing open space and scenic network between Appleton Farm and Pingree Woodlands Reservation, and Enhance Open Space and Scenic Qualities and Goal 2: Protect Water Resources by preserving the natural buffer along Black Brook.

### **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 and Improvements. Constructing, placing, or allowing to remain any temporary or permanent structure including without limitation any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, graveled area, roads, sign, fence, gate, billboard or other advertising, antenna, utilities or other structures, utility pole, tower, 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, except to maintain existing lawns, fields, and gardens as documented in the Baseline Report;
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;
8. Subdivision. Subdividing or conveying a part or portion of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted).
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. Residential or Industrial Uses. Using the Premises for residential or industrial purposes;
12. Inconsistent Uses. Using the Premises for commercial purposes 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. Vegetation Management. Maintaining vegetation, including pruning, trimming, cutting, and mowing, and removing brush, all to prevent, control, and manage hazards, disease, insect or fire damage, and/or in order to maintain the condition of the Premises as documented in the Baseline Report (see Paragraph XV.);
2. 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;

3. Composting. Stockpiling and composting stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises;
4. 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;
5. Indigenous Cultural Practices. With prior written notice to the Grantee, allowing indigenous peoples to:
  - a. Conduct cultural land ceremonial uses. Cultural practices are defined, for the purposes of this Conservation Restriction, as including traditional spiritual ceremonies, seasonal celebrations, offerings, and cultural, educational, and interpretive programming; and
  - b. Harvest plant-life for traditional cultural practices, using methods which, in the sole judgment of the Grantee, ensure sustainable populations of the harvested species within the Premises, including regrowth and replanting;
6. Archaeological Investigations. Conducting archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only in accordance with an archaeological field investigation plan, which plan shall also address restoration following completion of the archaeological investigation, prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historical Commission State Archaeologist (or appropriate successor official) and by the Grantee. A copy of the results of any such investigation on the Premises is to be provided to the Grantee;
7. Trails. Maintaining and constructing trails as follows:
  - a. Trail Maintenance. Conducting routine maintenance of trails, which may include widening trail corridors up to six (6) feet in width overall.
  - b. New Trails. With prior written approval of the Grantee, constructing new trails or relocating existing trails, provided that any construction or relocation results in trails that conform with the width limitations above.
  - c. Trail Features. With prior written approval of the Grantee, constructing bog bridging, boardwalks, footbridges, railings, steps, culverts, benching, cribbing, contouring, or other such features, together with the use of motorized equipment to construct such features;
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, public access, identity and address of the Grantor, sale of the Premises, the Grantee's interest in the Premises, boundary and trail markings, of the Premises;
9. Motorized Vehicles. Using motorized vehicles by persons with mobility impairments and as otherwise necessary for Permitted Acts and Uses herein.

10. Outdoor Passive Recreational and Educational Activities. Fishing, canoeing and other non-motorized boating, swimming, hunting, trapping, hiking, horseback riding, cross-country skiing, snowshoeing, ice-skating, nature observation, nature and educational walks and outings, outdoor educational activities, and other non-motorized outdoor recreational and educational activities;
11. Subdivision and Conveyance. The Grantor and Grantee acknowledge that the Premises consist of portions of three separate properties located at 278, 280, and 290 Cutler Road, Hamilton, Massachusetts that are currently owned by two separate entities. The Grantor agrees that it will not further subdivide the Premises without the Grantee's prior written approval; provided the Grantee shall not withhold, delay, or condition its approval in the event the Grantor seeks to adjust the boundary lines between the properties. Additional divisions may be requested solely for the purpose of conveying the underlying fee interests to a conservation organization. The Grantor shall have the right to transfer each of the three properties located at 278, 280, and 290 Cutler Road to one or more entities at the same time or at different times without the Grantee's prior written approval so long as the deed for each property is in compliance with Paragraph VIII.A.
12. Forest Management. The sustainable cutting of trees only for the Grantor's personal use, not to exceed 0.5 cords/acre/year or equivalent volume, provided that any such cutting complies with Massachusetts Bureau of Forest Fire Control and Forestry (the "Forestry Bureau") best management practices established in the Massachusetts Forestry Best Management Practices Manual (Catanzaro, Fish & Kittredge, University of Massachusetts, Amherst & DCR; 2013) and subsequent versions as may be approved by the Forestry Bureau.
13. Equestrian Activities. Equestrian activities shall be permitted without a Farm Conservation Plan (as defined below in Section III.B.14.), provided that said activities are limited to 45 horses on the Premises and do not impair the Conservation Values or the Purposes of this Conservation Restriction. With prior written approval of the Grantee, additional horses may be allowed as guided by a Farm Conservation Plan. "Equestrian Activities" are defined for the purposes of this Conservation Restriction to include commercial or non-commercial stabling, boarding, riding, training, exercising, pasturing, polo, breeding horses, fox hunting, and/or offering horseback riding lessons.
14. 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, donkeys, 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, trees, nursery or greenhouse products, and ornamental plants and shrubs, all for the purpose of selling such products in the regular course of business; or when primarily and directly used in raising forest products under a Forest Stewardship Plan designed to improve the quantity and quality of a continuous crop for the purpose of using, consuming, or selling these 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.
  - 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. The Farm Conservation Plan shall be developed in accordance with generally-accepted Best Agricultural Practices, and shall, at a minimum, address the following:
    - i. establish wetland buffers and/or filter strips to prevent adverse impacts to the water quality of existing wetlands and waterways;
    - ii. 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
    - iii. describe how Agricultural Activities will maximize soil and water conservation, and promote Healthy Soils and Practices.
- 15. Agricultural and Equestrian Structures and Improvements. Constructing and maintaining structures and improvements to conduct Agricultural and Equestrian Activities, provided:

- a. The total footprint (as defined herein) of all permanent structures and any temporary structures (as defined below) that have a roof shall not exceed 2,500 square feet in the aggregate. The current footprint of permanent structures on the Premises is 60 square feet. 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.
  - b. Grantor must obtain prior written approval from the Grantee for the following improvements:
    - i. Permanent structures with a foundation that cannot be constructed or removed without materially adverse disturbance of the soil, except the Grantor may construct concrete footings for run-in sheds and similar structures without the Grantee’s prior written approval.
  - c. The following improvements are permitted without prior approval from the Grantee:
    - i. 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, hoop houses (also known as “high tunnels”), 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;
16. Utilities. The replacement of existing utility lines, and with the Grantees’ approval the installation of new utility lines, from Cutler Road as necessary to service the Grantor’s adjacent unrestricted land at 278 and 290 Cutler Road or for activities permitted in this Conservation Restriction, provided any new utility lines shall be underground to the extent feasible.
17. Driveways. Use, repair, and replacement of the existing access driveways shown in the Baseline Report, provided that driveways are no wider than 20 feet.
18. Septic Systems and Wells. With prior written approval from the Grantee, which approval shall not be unreasonably withheld or delayed, and with a written determination from a qualified building professional that no feasible location for a well or septic system exists within the Grantor’s adjacent unrestricted land at 278 and 290 Cutler Road, using, maintaining, repairing, improving or relocating a well or septic system on the Premises. For purposes of this provision, a septic system or well located within the Grantor’s adjacent unrestricted land shall not be considered “unfeasible” merely because it is more costly to construct a septic system or well there as compared to a septic system or well located on the Premises.

### **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 Permitted Act or Use 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, Grantor 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 Grantor intends 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 the Grantee's approval is required, the Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of the Grantor's request. The 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. The Grantee may require the Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.
3. Resubmittal. The Grantee's failure to respond within sixty (60) days of receipt shall not constitute approval of the request. The Grantor may subsequently submit the same or a similar request for approval.



#### **IV. INSPECTION AND ENFORCEMENT**

##### **A. Entry onto the Premises**

The Grantor hereby grants 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 Grantor in writing of the violation. The Grantor 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 the 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 the Grantor immediately ceases the violation and the 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. The Grantor covenants and agrees to reimburse to the Grantee all reasonable costs and expenses (including reasonable counsel fees) actually 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 this Conservation Restriction, the Grantor 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 the 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 Grantor for any injury to or change in the Premises resulting from natural causes beyond the Grantor's control, including but not limited to fire, flood, weather, climate-related 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 Grantor 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 to the general public and the Grantor retains its rights to prohibit access to the Premises by the general public.

#### **VI. TERMINATION/RELEASE/EXTINGUISHMENT**

##### **A. Procedure**

If circumstances arise in the future that render the Purposes impossible to accomplish, this Conservation Restriction can only be terminated, released, or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, or successor official ("Secretary"), and any other approvals as may be required by Section 32 of Chapter 184 of the Massachusetts General Laws.

##### **B. Grantor's and Grantee's Right to Recover Proceeds**

If any change in conditions ever gives rise to termination, release, or extinguishment of this Conservation Restriction under applicable law, then the 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 VI.C., 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. The Grantee shall use its share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

##### **C. Grantee's Receipt of Property Right**

Grantor 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 at least equal to the proportionate value that this Conservation Restriction, determined at the time of the conveyance, bears to the value of the unrestricted Premises. The proportionate value of the Grantee's property right as of the Effective Date (See Paragraph XII.) will be determined by an appraisal, which appraisal will be shared with Grantee. Such proportionate value of the Grantee's property right shall remain constant.

##### **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 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 VI.B. and Paragraph 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 Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

### **B. Execution of Instruments**

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. The Grantor, on behalf of itself and its successors and assigns, appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

### **C. Running of the Benefit**

The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except 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 Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than ten (10) 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 Grantor fails to reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, then the Grantee may record, in the applicable registry of deeds, or registered in the applicable land court registry district, and at the Grantor's expense, a notice of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **B. Grantor's Liability**

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.

## **IX. ESTOPPEL CERTIFICATES**

Upon request by the Grantor, the Grantee shall, within fifteen (15) 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 and such other information as reasonably requested by the Grantor.

## **X. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of this 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 following the terms set forth in Paragraph 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**

The Grantor 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 the 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 Paragraph VI (Termination/Release/Extinguishment); or
7. cause the provisions of this Paragraph XI to be less restrictive; or
8. cause the provisions described in Paragraph 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 the Grantee and Grantor, approved by the Town of Hamilton and by the Secretary in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, and recorded in the applicable registry of deeds or registered in the applicable land court registry district.

## **XII. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded in the applicable registry of deeds or registered in the applicable land court registry district.

## **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 Grantor: Josh Lerner and Wendy Wood  
Trustees of 290 Cutler Realty Trust and 278 Cutler Realty Trust  
278 Cutler Road  
South Hamilton, MA 01982

To Grantee: Essex County Greenbelt Association  
ATTN: Director of Stewardship  
82 Eastern Avenue  
Essex, MA 01929

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 Grantor and Grantee with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to this 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”) dated \_\_\_\_ \_\_\_\_, 2023 prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and included by reference herein. The Baseline Report (i) is acknowledged by the 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, (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, 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 Grantor hereby agrees 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 Grantor attests that there is no mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

**D. Executory Limitation**

If the 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 the 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.** The following signature pages are included in this Grant:

Grantor: Joshua Lerner and Wendy Wood, trustees of 290 Cutler Realty Trust and the 278 Cutler Realty Trust

Grantee: Essex County Greenbelt Association, Inc.

Approval of Town of Hamilton Select Board

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

**G.** The following exhibits are attached and incorporated herein:

Exhibit A: Legal Description of Premises

Exhibit B: Reduced Copy of Recorded Plan of Premises

[Signatures on Following Page]

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2023,

\_\_\_\_\_, duly authorized  
Joshua Lerner, Trustee of 290 Cutler Realty Trust  
and 278 Cutler Realty Trust.

\_\_\_\_\_, duly authorized  
Wendy Wood, Trustee of 290 Cutler Realty Trust  
and 278 Cutler Realty Trust.

THE COMMONWEALTH OF MASSACHUSETTS

Essex County, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Joshua Lerner, 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:

THE COMMONWEALTH OF MASSACHUSETTS

Essex County, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Wendy Wood, 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:



**ACCEPTANCE OF GRANT**

The foregoing Conservation Restriction from Joshua Lerner and Wendy Wood, Trustees of 290 Cutler Realty Trust and 278 Cutler Realty Trust, was accepted by Essex County Greenbelt Association, Inc. this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

By: \_\_\_\_\_  
Name: Katherine Bowditch  
Its: President, duly authorized

By: \_\_\_\_\_  
Name: Timothy Fritzingler  
Its: Treasurer, duly authorized

**THE COMMONWEALTH OF MASSACHUSETTS**

Essex County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Katherine Bowditch, as President of Essex County Greenbelt Association, Inc., and 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 s/he signed it voluntarily for its stated purpose in the aforesaid capacity, and further acknowledged the foregoing to be the free act and deed of Essex County Greenbelt Association, Inc.

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

**THE COMMONWEALTH OF MASSACHUSETTS**

Essex County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Timothy Fritzingler, as Treasurer of Essex County Greenbelt Association, Inc., and 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 s/he signed it voluntarily for its stated purpose in the aforesaid capacity, and further acknowledged the foregoing to be the free act and deed of Essex County Greenbelt Association, Inc.

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

**APPROVAL OF TOWN OF HAMILTON SELECT BOARD**

We the undersigned, being a majority of the Select Board of the Town of Hamilton, hereby certify that at a public meeting duly held on \_\_\_\_\_, 2023, the Select Board voted to approve the foregoing Conservation Restriction from Joshua Lerner and Wendy Woods, Trustees of 290 Cutler Realty Trust and the 278 Cutler Realty Trust, to Essex County Greenbelt Association, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

TOWN OF HAMILTON SELECT BOARD

\_\_\_\_\_  
Shawn M. Farrell, Chair

\_\_\_\_\_  
Carolyn Q. Beaulieu,  
Vice Chair

\_\_\_\_\_  
Bill Wilson

\_\_\_\_\_  
Thomas B. Myers

\_\_\_\_\_  
William A. Olson

THE COMMONWEALTH OF MASSACHUSETTS

Essex County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Shawn M. Farrell, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed in the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

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

THE COMMONWEALTH OF MASSACHUSETTS

Essex County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Carolyn Q. Beaulieu, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed in the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

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

My Commission Expires:

THE COMMONWEALTH OF MASSACHUSETTS

Essex County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Bill Wilson, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed in the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

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

My Commission Expires:

THE COMMONWEALTH OF MASSACHUSETTS

Essex County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Thomas B. Myers, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed in the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

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

My Commission Expires:

THE COMMONWEALTH OF MASSACHUSETTS

Essex County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared William A. Olson, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed in the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
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 approves the foregoing Conservation Restriction from Joshua Lerner and Wendy Woods, Trustees of 290 Cutler Realty Trust and the 278 Cutler Realty Trust, to Essex County Greenbelt Association, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
REBECCA L. TEPPER  
Secretary of Energy and Environmental Affairs

THE 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

### Legal Description of Premises

The land in Hamilton, Essex County, Massachusetts, containing 19.664 acres, more or less, shown as “Conservation Restriction Area Area = 102,787± S.F. 2.360± Acres”, “Conservation Restriction Area Area = 563,000± S.F. 12.9± Acres”, “Conservation Restriction Area Area = 48,081± S.F. 1.104± Acres”, and “Conservation Restriction Area Area = 145,000± S.F. 3.3± Acres” as shown on a plan of land entitled “Plan of Land 278 & 290 Cutler Road Hamilton Property of 290 Cutler Realty Trust”, Prepared by North Shore Survey Corporation, dated November 2, 2022, and recorded in the Essex Southern District Registry of Deeds at Plan Book \_\_\_\_ Page \_\_\_\_, being bounded and described therein as follows:

Beginning at a point on the westerly side of Cutler Road, at land of Candace King; thence running,

S 09°29'37" E	fifty and 99/100 (50.99) feet by Cutler Road, to a point; thence turning and running,
S 11°28'19" E	sixty one and 63/100 (61.63) feet by Cutler Road, to a point; thence turning and running,
S 15°48'59" E	thirty eight and 73/100 (38.73) feet by Cutler Road, to a point; thence turning and running,
S 22°57'39" E	fifty three and 27/100 (53.27) feet by Cutler Road, to a point; thence turning and running,
S 27°01'07" E	two hundred thirty four and 58/100 (234.58) feet by Cutler Road, to a point; thence turning and running,
S 25°11'07" E	one hundred ninety five and 41/100 (195.41) feet by Cutler Road, to a point; thence turning and running,
S 25°22'58" E	two hundred eighty four and 50/100 (284.50) feet by Cutler Road, to a point; thence turning and running,
S 21°42'16"	one hundred ninety six and 45/100 (196.45) feet by Cutler Road, to land of Harvard College; thence turning and running,
N 78°59'35" W	two hundred seventy five and 30/100 (275.30) feet by land of Harvard College to a point; thence turning and running,
S 52°54'48" W	three hundred twenty and 85/100 (320.85) feet by land of Harvard College to a point; thence turning and running,
N 34°07'50" W	one hundred ninety six and 37/100 (196.37) feet by remaining land shown as No. 278 Cutler Rd. to a point; thence turning and running,
S 64°37'02" W	about six hundred and six (606+/-) feet by remaining land shown as No. 278 Cutler Rd. to a point on Black Brook; thence turning and running,
Northerly	by Black Brook eleven hundred twenty (1120+/-) feet to land of Candace King; thence turning and running,

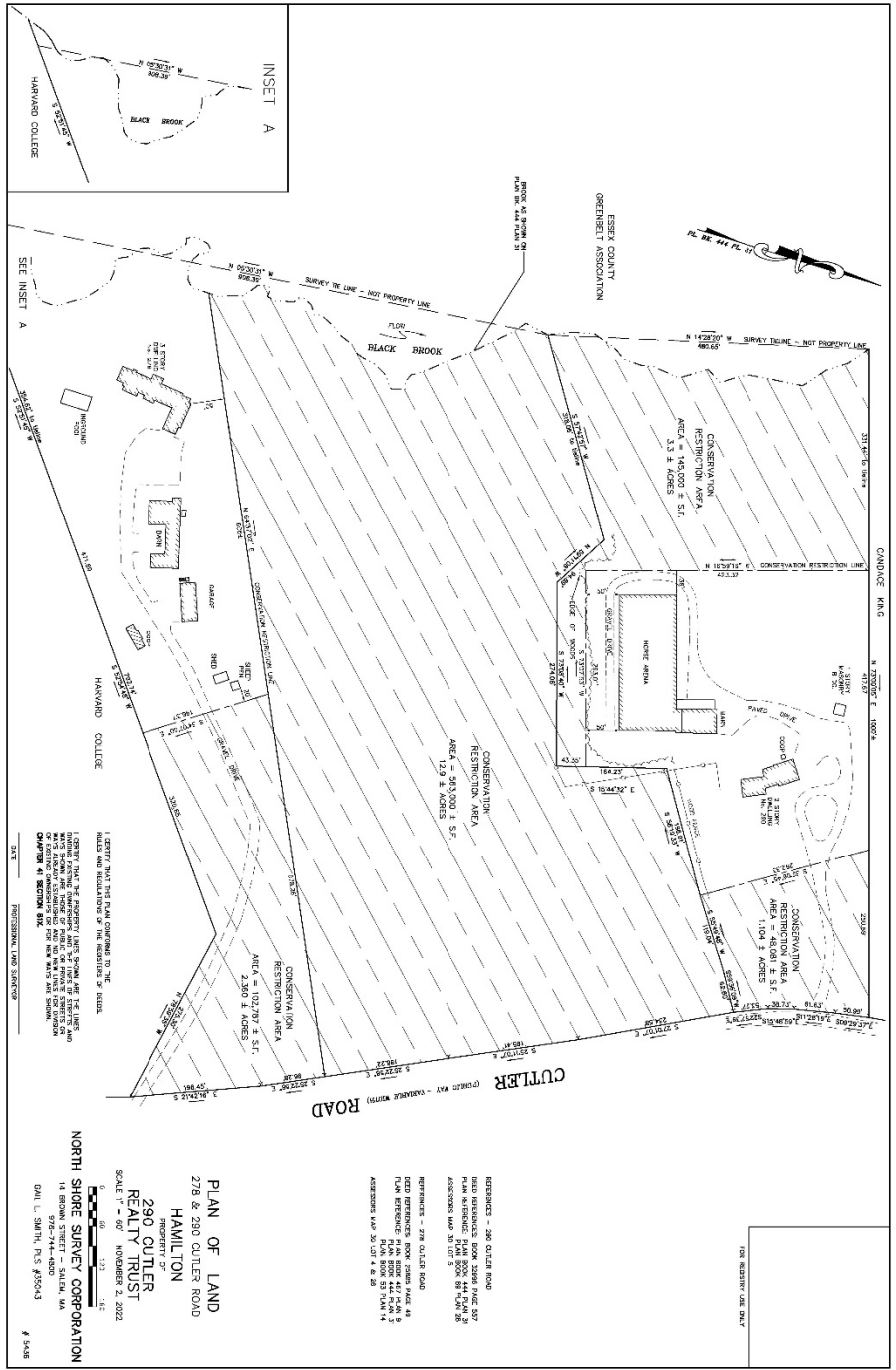
N 73°00'05" W three hundred thirty one (331+/-) feet by land of Candace King; thence turning and running,  
S 16°59'16" E four hundred twenty three and 32/100 (423.32) feet by remaining land shown as No. 290 Cutler Rd.; thence turning and running,  
N 73°07'53" E two hundred ninety three and 01/100 (293.01) feet by said No. 290 Cutler Rd. land; thence turning and running,  
N 15°44'32" W one hundred twenty and 88/100 (120.88) feet by said No. 290 Cutler Rd. land to a point; thence turning and running,  
N 58°19'33" E one hundred ninety six and 91/100 (196.91) feet by said No. 290 Cutler Rd. land to a point; thence turning and running,  
N 32°06'45" W two hundred sixty two and 33/100 (262.33) feet by said No. 290 Cutler Rd. land to a point at land of Candace King; thence turning and running,  
N 73°00'05" E two hundred fifty and 89/100 (250.89) feet by land of Candace King to the point begun at.

Said Conservation Restriction Area comprises 858,868 +/- square feet (19.664 +/- acres).

# EXHIBIT B

## Reduced Copy of Plan of Premises

For the full size plan please see Southern Essex District Registry of Deeds Plan Book \_\_\_\_, Plan \_\_\_\_.



## Joe Domelowicz

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**From:** Leandra DeFeo <leandramhd@gmail.com>  
**Sent:** Tuesday, October 31, 2023 10:22 AM  
**To:** Joe Domelowicz; Sean Timmons; Marc Johnson Ttc  
**Subject:** External Email Warning Patton Homestead Pavilion

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Good morning,

As FPH continues working on fundraising for the Patton Homestead Pavilion, two key ideas have surfaced that would greatly help our work.

1. The Joanne Holbrook Patton Pavilion

With Joanne's recent death and the immense impact she has had on this community, we think that naming the pavilion after her would be a fitting tribute. Additionally, it would help us fundraise because many knew Joanne and would like to honor her in this way. My question for you is what would it take for the town to approve this?

2. An architectural drawing/rendering of the actual pavilion

So far we've been working with a theoretical rendering of the pavilion, but having an image of what it will actually look like would be huge. People are more likely to donate when they know exactly what their money is going to.

We will be promoting the pavilion and selling hot drinks at the Iron Ox Pop Up Markets on Nov. 18 and Dec. 16. Would it be possible to have a decision on #1 and an architectural drawing for either of those dates? I know there is a lot going on in town government these days, so if there is anything I can do to help, please let me know.

All the best,  
Leandra DeFeo