



Town of Barnstable  
Town Council  
James H. Crocker Jr. Hearing Room  
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**TOWN COUNCIL MEETING AGENDA**  
**June 15, 2023**

**7:00pm**

**Councillors:**

Matthew Levesque  
President  
Precinct 10

Jennifer Cullum  
Vice President  
Precinct 13

Gordon Starr  
Precinct 1

Eric R. Steinhilber  
Precinct 2

Betty Ludtke  
Precinct 3

Nikolas Atsalis  
Precinct 4

Paul Cusack  
Precinct 5

Paul C. Neary  
Precinct 6

Jessica Rapp Grassetti  
Precinct 7

Jeffrey Mendes  
Precinct 8

Tracy Shaughnessy  
Precinct 9

Kristine Clark  
Precinct 11

Paula Schnepf  
Precinct 12

Administrator:  
Cynthia A. Lovell  
Cynthia.Lovell@  
town.barnstable.ma.us

The June 15, 2023 Meeting of the Barnstable Town Council shall be conducted in person at 367 Main Street 2<sup>nd</sup> Floor James H. Crocker Jr. Hearing Room, Hyannis, MA. The public may attend in person or participate remotely in Public Comment or during a Public Hearing via the Zoom link listed below.

1. The meeting will be televised live via Comcast Channel 18 or may be accessed via the Channel 18 live stream on the Town of Barnstable's website:  
<http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

2. Written Comments may be submitted to:  
<https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town Council/Agenda-Comment.asp>

3. Remote Participation: The public may participate in Public Comment or Public Hearings by utilizing the Zoom video link or telephone number and access meeting code:

Join Zoom Meeting <https://townofbarnstable-us.zoom.us/j/89778786120>  
Meeting ID: 897 7878 6120 US Toll-free 888 475 4499

**PUBLIC SESSION**

**1. ROLL CALL**

**2. PLEDGE OF ALLEGIANCE**

**3. MOMENT OF SILENCE**

**4. PUBLIC COMMENT**

**5. COUNCIL RESPONSE TO PUBLIC COMMENT**

**6. TOWN MANAGER COMMUNICATIONS (Pre-Recorded)**

**7. ACT ON PUBLIC SESSION MINUTES**

**8. COMMUNICATIONS - from elected officials, boards, committees, and staff, commission reports, correspondence and announcements**

**9. ORDERS OF THE DAY**

- A. Old Business**
- B. New Business**

**10. ADJOURNMENT**

**NEXT REGULAR MEETING: July 20, 2023**

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**Please Note:** The lists of matters are those reasonably anticipated by the Council President which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may be discussed to the extent permitted by law. It is possible that if it so votes, the Council may go into executive session. The Council may also act on items in an order other than as they appear on this agenda. Persons interested are advised that in the event any matter taken up at the meeting remains unfinished at the close of the meeting, it may be continued to a future meeting, and with proper notice.

**A. OLD BUSINESS (Public Hearing) (Roll Call Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-156**

**INTRO: 05/18/2023, 06/01/2023, 06/15/2023**

**2023-156 APPROPRIATION ORDER IN THE AMOUNT OF \$82,761,867 FOR THE PURPOSE OF FUNDING THE TOWN'S FISCAL YEAR 2024 BARNSTABLE PUBLIC SCHOOL DEPARTMENT BUDGET, AND TO MEET THIS APPROPRIATION THAT \$82,761,867 BE RAISED FROM CURRENT YEAR REVENUES, AS PRESENTED TO THE TOWN COUNCIL BY THE TOWN MANAGER**

**ORDERED:** That the sum of **\$82,761,867** be appropriated for the purpose of funding the Town's Fiscal Year 2024 Barnstable Public School Department Budget, and to meet this appropriation that **\$82,761,867** be raised from current year revenues, as presented to the Town Council by the Town Manager.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>05/18/2023</u>	<u>Referred to Public Hearing 06/01/2023</u>
<u>06/01/2023</u>	<u>Continued Public Hearing to 06/15/2023</u>

- Read Item
- Motion to Open Public Hearing
- Rationale
- Public Hearing
- Close Public Hearing
- Council Discussion
- Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call Majority Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-194  
INTRO: 06/01/2023, 06/15/2023**

**2023-194 APPROPRIATION ORDER IN THE AMOUNT OF \$155,000 FOR  
CONSULTANT SERVICES IN SUPPORT OF A LOCAL COMPREHENSIVE  
PLAN UPDATE**

**ORDERED:** That the amount of **\$155,000** be appropriated for the purpose of funding a consultant to facilitate comprehensive land use planning services in support of an update to the Town’s Local Comprehensive Plan; and that to fund this appropriation, **\$155,000** be provided from the General Fund Reserves.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>06/01/2023</u>	<u>Continue to a Public Hearing 06/15/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-194  
INTRO: 06/01/2023, 06/15/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Elizabeth Jenkins, Director of Planning & Development  
**DATE:** June 01, 2023  
**SUBJECT:** Appropriation order in the amount of **\$155,000** for consultant services in support of a Local Comprehensive Plan Update

**BACKGROUND:** A Local Comprehensive Plan Update is a way to interpret the community's vision and the values we seeks to protect. It is a way to anticipate, coordinate and balance policy decisions related to growth and development, infrastructure, the economy, and resource protection. The Town last updated its local comprehensive plan in 2010, with much of the research and community outreach occurring several years earlier. In the years since that update, the Town's capital infrastructure plans, identification of housing needs, and other factors have shifted dramatically. The Local Comprehensive Planning Committee, together with Planning & Development Department staff, is on track to complete the first phase of the plan update. A project that included crafting a narrative of existing conditions, broad community engagement and outreach, and the development of a collective vision statement for our future is near completion.

**ANALYSIS:** This request is for consultant services to complete the update to the Local Comprehensive Plan. Supported by Town staff and in cooperation with the Local Comprehensive Planning Committee, the consultant will assist with completion of the remaining portions of the plan, including the development of future land use map and associated narrative addressing, geographically, the desires of the community for land use, growth, preservation, and resource protection and enhancement for the Town of Barnstable and its seven villages. In addition, this phase will include updates to the other LCP chapters including natural resources, facilities and infrastructure, economic development, and culture, heritage, and design. The proposed scope includes continued community engagement and feedback on the plan, as well as engagement by multiple town departments and community partners. The Local Comprehensive Planning Committee voted on May 11, 2023 to support this request for funds.

**FISCAL IMPACT:** This is a one-time expenditure which will not be added to the Planning and Development Department's annual Operating Budget. Funding for these services will be provided from the General Fund Reserves which have a balance of \$20,709,593 after setting aside the amounts recently appropriated for the Fiscal Year 2024 Capital Improvement Program.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this appropriation order.

**STAFF ASSISTANCE:** Kate Maldonado, Assistant Director, Planning & Development; James Kupfer, Senior Planner; Kyle Pedicini, Community & Economic Development Planner

**B. NEW BUSINESS (First Reading) (Refer to Second Reading 07/20/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-196  
INTRO: 06/15/2023**

**2023-196 AMENDING THE ADMINISTRATIVE CODE, CHAPTER 241, ARTICLE III, MULTIPLE-MEMBER APPOINTIVE ORGANIZATION, § 241-44.5 LAND ACQUISITION AND PRESERVATION COMMITTEE**

**ORDERED:** That the Administrative Code, Chapter 241, Article III, Multiple-Member Appointive Organization, § 241-44.5 Land Acquisition and Preservation Committee, is hereby amended as follows:

**SECTION 1.** By changing the name of the “Land Acquisition and Preservation Committee” wherever it so appears to the “Open Space Committee”.

**SECTION 2.** By deleting Section B in its entirety and inserting the following new Section B in its place:

- B. Authorities and responsibilities.
1. The Open Space Committee shall be responsible for keeping the Open Space and Recreation Plan and the open space section of the Local Comprehensive Plan updated and current.
  2. The Open Space Committee shall review conservation restrictions and make recommendations for approval to the Town Council.
  3. The Open Space Committee may recommend parcels of land available for purchase or protection (a) to the Community Preservation Committee; or (b) to the Town Manager, if the funding will be from non-Community Preservation Act funds; provided that in making such recommendations, the Open Space Committee shall use as a guideline local and regional open space plans, master plans and the Local Comprehensive Plan.
  4. The Open Space Committee shall assist Town departments in the management of Land Bank lands acquired under the Land Bank Act in accordance with the Act and its provisions.
  5. A member of the Open Space Committee shall serve as the Town’s representative on the Santuit Preserve Management Committee.
  6. The Open Space Committee shall be responsible for implementing and promoting the approved Cape Cod Pathways Plan within the Town of Barnstable; including but not limited to promoting and advising on the Town’s Walking Library, which is accessible to the public online and details the various walks throughout the Town.
  7. The Open Space Committee shall educate the public about open space issues through speakers at meetings of the Open Space Committee.

8. Nothing in this section shall be construed to alter or change the responsibilities of the Community Preservation Committee as prescribed by law.”

**SPONSORS:** Councilor Jessica Rapp Grassetti, Precinct 7; Councilor Kristine Clark, Precinct 11

DATE	ACTION TAKEN
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- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-196  
INTRO: 06/15/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Councilor Jessica Rapp Grasseti; Councilor Kristine Clark  
**THROUGH:** Karen Nober, Town Attorney  
**DATE:** June 15, 2023  
**SUBJECT:** Amending the Administrative Code, Chapter 241, Article III, Multiple-Member Appointive Organization, § 241-44.5 Land Acquisition and Preservation Committee

This proposed amendment to the Administrative Code changes the name of the Land Acquisition and Preservation Committee to more accurately reflect its mission. The Committee's origins are in the Town's previous Open Space Committee, which recommended to the Town Council and Town Manager acquisition of land and appropriation of Land Bank funds. When the Land Bank was replaced by the Community Preservation Act (CPA), the Town Council created the Land Acquisition and Preservation Committee to represent the Town's open space interests.

Although most of the remaining provisions remain the same, this amendment makes the following additional changes:

The current language in § 241-44.5 B (1) (a) and (b) reads as follows:

- (a) The Land Acquisition and Preservation Committee shall recommend to the Community Preservation Board parcels of land available for acquisition.
- (b) The Land Acquisition and Preservation Committee, in conjunction with the Town Manager and the Town Council, will leverage non-CPA funding for purchase of additional land.

This language has been replaced with the proposed language in B (3) which provides:

- (3) The Open Space Committee may recommend parcels of land available for purchase or protection
  - (a) to the Community Preservation Committee; or
  - (b) to the Town Manager, if the funding will be from non-Community Preservation Act funds; provided that in making such recommendations, the Open Space Committee shall use as a guideline local and regional open space plans, master plans and the Local Comprehensive Plan.

The proposed language in B (6) keeps existing language and adds the following new language: "including but not limited to promoting and advising on the Town's Walking Library, which is accessible to the public online and details the various walks throughout the Town."

The proposed B (7) is new and adds the following language: "The Open Space Committee shall educate the public about open space issues through speakers at meetings of the Open Space Committee."

**FISCAL IMPACT:** None

**STAFF ASSISTANCE:** Karen Nober, Town Attorney

**B. NEW BUSINESS (First Reading) (Refer to Second Reading 07/20/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-197  
INTRO: 06/15/2023**

**2023-197 AMENDING THE ADMINISTRATIVE CODE, CHAPTER 241, ARTICLE III, MULTIPLE-MEMBER APPOINTIVE ORGANIZATION, § 241-38.A, HYANNIS WATER BOARD**

**ORDERED:** That the Administrative Code, Chapter 241, Article III, Multiple-Member Appointive Organization, § 241-38.A, is hereby amended by deleting “Hyannis Water Board” in the Section heading and in Section A, respectively, and inserting “Barnstable Municipal Water Supply Board” in place thereof.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
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- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-197**  
**INTRO: 06/15/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** June 15, 2023  
**SUBJECT:** Amending the Administrative Code, Chapter 241, Article III, Multiple-Member Appointive Organization, § 241-38.A, Hyannis Water Board

**BACKGROUND:** The Hyannis Water Board voted on May 16, 2023, to change its name to the Barnstable Municipal Water Supply Board. The Board's position is that because its mission includes water supply and water quality matters Town-wide, the new name is better reflective of its role. Section 241-38.A of the Barnstable Administrative Code established the Hyannis Water Board in 2006, by Town Council Order 2006-05.

**FINANCIAL IMPACT:** There is no fiscal impact resulting from this name change.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this order.

**STAFF ASSISTANCE:** Daniel W. Santos, P.E., Director of Public Works

**B. NEW BUSINESS (May be acted upon) (Roll Call Majority Vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-198  
INTRO: 06/15/2023**

**2023-198 RESOLVE APPROVING MARK S. ELLS’ OUTSIDE EMPLOYMENT WITH CAPE COD COMMUNITY COLLEGE**

**RESOLVED:** That, in accordance with Section 7 of the Employment Agreement between the Town of Barnstable and Mark S. Ells effective July 21, 2021, the Barnstable Town Council does hereby approve Mark S. Ells’ outside employment with Cape Cod Community College (the “College”) to allow him to continue teaching at the College for the period of July 1, 2023 through June 30, 2024.

**SPONSOR:** Matthew P. Levesque, Town Council President

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

**B. NEW BUSINESS (Refer to Public Hearing 07/20/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-199  
INTRO: 06/15/2023**

**2023-199 AMENDING THE CODE OF THE TOWN OF BARNSTABLE, PART I  
GENERAL ORDINANCES, CHAPTER 183, TO REMOVE THE INCOME  
LIMITATIONS FROM THE ELIGIBILITY REQUIREMENTS FOR THE  
SENIOR AND VETERANS PROPERTY TAX WORK-OFF ABATEMENT  
PROGRAMS**

**ORDERED:** That the Code of the Town of Barnstable, Part I General Ordinances, Chapter 183 Senior Citizen and Veterans Property Tax Work-Off Abatement Programs, be amended to remove the income limitations from the eligibility requirements as follows:

**SECTION 1.** By amending Section 183-2(A) by striking out paragraph (c) and re-lettering the existing paragraph (d) as new paragraph (c).

**SECTION 2.** By amending Section 183-2(B) by striking out paragraph (c) and re-lettering the existing paragraph (d) as new paragraph (c).

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-199  
INTRO: 06/15/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**DATE:** June 06, 2023  
**SUBJECT:** Amending the Code of the Town of Barnstable, Part I General Ordinances, Chapter 183, to remove the income limitations from the eligibility requirements for the Senior and Veterans Property Tax Work-Off Abatement Programs

**BACKGROUND:** The Town has had a Senior Property Tax Work-off Program in place since fiscal year 2009 and expanded it to include a Veterans Property Tax work-Off Program as of July 1, 2022. Currently there are three seniors and no veterans participating in the program. In order to expand the participation rate in the program it is proposed that the income limitations be removed from the ordinance.

**ANALYSIS:** These programs were originally put in place to provide financial assistance to low income seniors and veterans. The current participation rate is well below the cap of 20 set for the program and it is proposed that the focus shift from assisting low income property owners to one that allows for seniors and veterans to share their extensive knowledge and experience with town staff and provide them an opportunity to learn more about town operations. Speaking with community officials in the cities of Holyoke and Northampton they have structured their programs in this manner, matching individual experience and interest with associated town tasks, and it has been very successful.

The maximum abatement taxpayers may earn is \$1,500 per fiscal year under each program. Individuals cannot receive credit for their services at an hourly rate higher than the state's minimum wage rate. As of January 1, 2023, the minimum wage rate is \$15.00 per hour resulting in an individual having to work 100 hours to earn the maximum allowable abatement.

Taxpayers may earn abatements under the work-off programs in addition to any property tax exemptions they may be eligible for under other statutes, such as personal exemptions under G.L. Ch. 59 §5 or residential exemptions under G.L. Ch. 59 §5C. They may also defer the balance of their taxes under G.L. Ch. 59 §5 Clause 41A if they are eligible to do so. Additionally, seniors may be eligible for the State Senior Circuit Breaker Tax Credit. Participation in this tax work-off program may affect a taxpayer's eligibility under the State Circuit Breaker program if the tax work-off program reduces their tax liability to certain non-qualifying levels.

The Human Resources Division will certify to the Board of Assessors the hours of services performed by the taxpayer *before* the actual tax for the fiscal year is committed. The certification must state the amount actually earned as of that time. Services performed after that date is credited toward the next fiscal year's actual tax bill to the extent consistent with the program rules established by the town. A copy of the certification must also be given to the taxpayer before the actual tax bill is issued.

The amount of the property tax reduction earned by the taxpayer under these programs is not considered income or wages for purposes of *state* income tax withholding and workmen's compensation. However,

the United States Internal Revenue Service (IRS) has ruled that under current federal law the abatement amount is included in the taxpayer's gross income for both federal income tax and Federal Insurance Contribution Act (FICA) tax purposes. Participating seniors will receive a W2 under this program and the maximum employee's share of FICA taxes (\$111.75) will be paid by the Town resulting in a maximum potential federal taxable income to the participant of \$1,611,75.

Earned reductions must be applied to the ***actual*** tax bills for the fiscal year. The assessors must commit the full tax for the year and process the gross amount earned as certified by Human Resources for the taxpayer's volunteer services as an abatement to be charged against the town's overlay account. The taxpayer's actual tax bill, however, should only show a credit for the amount earned net of any federal withholdings. The municipal share of federal Social Security and Medicare taxes may also be charged to the overlay account.

**FISCAL IMPACT:** The amounts earned under the program are charged to the Town's overlay account (reserve for abatements and exemptions); similar to other exemptions granted. The cost would be dependent upon the number of participants, the amount of the maximum abatement granted and the treatment of FICA taxes. If the town has full participation of 20 individuals who earned the maximum \$1,500 then the charge to the town's overlay account will be \$34,590, which includes the tax abatement earned and FICA taxes, both employee (7.65%) and employer share (7.65%).

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this item.

**STAFF ASSISTANCE:** Mark A. Milne, CPA, Finance Director

**B. NEW BUSINESS (Refer to Public Hearing 07/20/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-200  
INTRO: 06/15/2023**

**2023-200 APPROPRIATION ORDER IN THE AMOUNT OF \$3,500,000 FOR PORTABLE CLASSROOMS AT BARNSTABLE COMMUNITY INNOVATION SCHOOL AND HYANNIS WEST ELEMENTARY SCHOOL**

**ORDERED:** That the amount of **\$3,500,000** be appropriated for the purpose of funding the acquisition, installation and other associated costs for portable classrooms at Barnstable Community Innovation School and Hyannis West Elementary School; and that to fund this appropriation, **\$3,500,000** be provided from the Capital Trust Fund.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-200  
INTRO: 06/15/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Sara Ahern, Superintendent of Schools  
**DATE:** June 15, 2023  
**SUBJECT:** Appropriation Order in the amount of **\$3,500,000** for portable classrooms at Barnstable Community Innovation School and Hyannis West Elementary School

**BACKGROUND:** Barnstable Community Innovation School and Hyannis West Elementary School are experiencing space constraints due to their school enrollment and specialized services. There are not enough classroom spaces to accommodate an expansion of specialized services such as English language development, Title I, special education services, interventions, enrichment (Gateway), the library, and specials (e.g. art, music, etc.). Although all elementary schools are experiencing space constraints to a degree, the Barnstable Public Schools initiated a plan in the spring of 2022 to install modular classrooms at the two most constrained schools. After the completion of the architectural design, the project was put out to bid in the spring of 2023. The BPS School Committee, at its June 7, 2023 meeting, accepted a bid from Aries Building Systems, LLC to construct and purchase 1 4-classroom modular unit at Barnstable Community Innovation School and 1 6-classroom modular unit at Hyannis West Elementary School. The School Committee also approved a motion to seek a supplemental appropriation from the Town Council for \$3,500,000 from the school savings account.

**ANALYSIS:** Construction is anticipated to begin in the fall for occupancy in the late fall. There is a possibility that up to \$1,000,000 may be available to offset this request through ESSER funding, however the Barnstable Public Schools must go through the appropriate approval process with the Department of Elementary and Secondary Education to secure that funding. Enrollment is expected to remain steady over the next decade, according to a population and enrollment forecast by McKibben Demographic Research, LLC that was completed in February 2023, so the need for this additional space is expected to be sustained. The purchase of 2 sets of modulars is an initial, mitigating step to address space constraints as part of an overall need to examine school facilities across the Barnstable Public Schools and develop a longer-term plan.

**FISCAL IMPACT:** The School Savings account balance is currently \$7.9 million; however, due to the end of the fiscal year approaching, no appropriations can be made from savings after June 30, 2023 until the Town's free cash is certified by the Department of Revenue. Certification is expected to happen in October which is too late for this project's implementation. It is proposed that the Capital Trust Fund initially provide the funding which will subsequently be reimbursed from the school savings account. A transfer from the savings account to the Capital Trust Fund will be brought forward to the Town Council after certification is received. The Town is projecting to generate \$6 million of savings at the close of Fiscal Year 2023 which will essentially replace the savings used for this project.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this Appropriation Order.

**STAFF ASSISTANCE:** Christopher Dwelley, Deputy Director for School Finance

**B. NEW BUSINESS (First Reading) (Refer to Second Reading 07/20/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-201  
INTRO: 06/15/2023**

**2023-201 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION**

**RESOLVED:** That the Town Council appoints the following individuals to a multiple-member Board/Committee/Commission: **Council on Aging:** John Jope, as a regular member to a term expiring 06/30/2024; **Human Services Committee:** Jennifer Hinckley-Needham, as a regular member to a term expiring 06/30/2024; **Recreation Commission:** Tony Lapolla, as a regular member to a term expiring 06/30/2026; **Zoning Board of Appeals:** Larry Hurwitz, as an associate member to a term expiring 06/30/2025

**SPONSORS:** Appointments Committee Members: Councilor Paula Schnepf, Chair; Councilor Tracy Shaughnessy; Councilor Jeffrey Mendes; Councilor Nikolas Atsalis; and Councilor Gordon Starr

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

**B. NEW BUSINESS (First Reading) (Refer to Second Reading 07/20/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-202  
INTRO: 06/15/2023**

**2023-202 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION**

**RESOLVED:** That the Town Council reappoints the following individuals to a multiple-member Board/Committee/Commission: **Comprehensive Financial Advisory Board:** Wendy Soloman, as a regular member to a term expiring 06/30/2026; **Land Acquisition and Preservation Committee:** Elissa Crowley, as a regular member to a term expiring 06/30/2026; Douglas Payson, as a regular member to a term expiring 06/30/2026; **Shellfish Committee:** Patricia Farinha, as a member holding a family permit, to a term expiring 06/30/2026; **Zoning Board of Appeals:** Denise Thorne-Johnson, as an associate member, to a term expiring 06/2026; Mark Hansen, as a regular member to a term expiring 06/30/2026

**SPONSORS:** Appointments Committee Members: Councilor Paula Schnepf, Chair; Councilor Tracy Shaughnessy; Councilor Jeffrey Mendes; Councilor Nikolas Atsalis; and Councilor Gordon Starr

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

**B. NEW BUSINESS (Refer to Public Hearing 07/20/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-203  
INTRO: 06/15/2023**

**2023-203 AMENDING THE CODE OF THE TOWN OF BARNSTABLE, PART I, GENERAL ORDINANCES, CHAPTER 168, SECTION 168-5, TO CONFORM TO CHAPTER D OF THE CODE OF THE CAPE COD COMMISSION REGULATIONS OF GENERAL APPLICATION**

**ORDERED:** That the Code of the Town of Barnstable, Part I, General Ordinances, Chapter 168 Regulatory Agreements be amended as follows:

**SECTION 1.** By amending Section 168-5(C) by deleting the last sentence thereof and replacing it with the following sentence:

When a waiver from zoning is allowed under a regulatory agreement, there shall be a vote of the Town Council recommending execution of the regulatory agreement by the same quantum of vote as would be required by M.G.L. Chapter 40A, Section 5 to amend the Zoning Ordinance of the Town to allow the development contemplated by such regulatory agreement. Prior to the Town Council taking such vote, the Planning Board, in consultation with the Town Attorney's Office, will determine the applicable voting threshold. If there is more than one type of zoning relief required for a project under a regulatory agreement, and a different quantum of vote is required for each type of relief, then the higher voting threshold will apply to the entire vote (i.e., two-thirds versus simple majority).

**SECTION 2.** By amending Section 168-5(E) by deleting the second sentence thereof and replacing it with the following sentence:

Prior to executing said regulatory agreement, the Town Manager shall obtain a majority vote of the Town Council to authorize the execution, unless the regulatory agreement authorizes a waiver from the Barnstable Zoning Ordinance, in which case the Town Manager shall obtain a vote authorizing execution of the regulatory agreement from the Town Council by the same quantum of vote as would be required by M.G.L. Chapter 40A, Section 5 to amend the Barnstable Zoning Ordinance to allow the development contemplated by such regulatory agreement.

**SPONSOR:** Matthew P. Levesque, President, Town Council

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-203**  
**INTRO: 06/15/2023**

## SUMMARY

**TO:** Town Council  
**THROUGH:** Kate Connolly, Assistant Town Attorney  
**DATE:** June 15, 2023  
**SUBJECT:** Amending the Code of the Town of Barnstable, Part I, General Ordinances, Chapter 168, Section 168-5, to conform to Chapter D of the Code of the Cape Cod Commission Regulations of General Application

**BACKGROUND:** Chapter 358 of the Acts of 2020 made changes to G. L. c. 40A, the state Zoning Act; most notably, it changed the required voting threshold for municipal legislative bodies to approve several categories of zoning changes from a two-thirds (“2/3”) supermajority to a simple majority. The Commonwealth’s stated goal in passing this law was to make it easier for municipalities to achieve the minimum vote for zoning changes with respect to housing. The stated intent behind the amendments to the Zoning Act was to remove the barriers to development of more housing throughout the state.

The Town’s authority to enter into regulatory agreements under Chapter 168 derives from the Cape Cod Commission regulations. When Chapter 168 was adopted by the Town in 2004, the 2/3 quantum of vote requirement for regulatory agreements that provided zoning relief matched the voting requirements applicable to all zoning amendments, as set forth in Section 5 of the Zoning Act. This quantum of vote requirement was also consistent with the language in Section 4(c) of “Chapter D” of the Cape Cod Commission’s Regulations, which states that “a development agreement that is inconsistent with local zoning shall require either a zoning amendment to remove the inconsistency or the development agreement shall be approved by the same entity and the same quantum of votes as would be required to amend the zoning bylaws of the Town.”

In light of the Commonwealth’s stated goals in amending the Zoning Act, whether to amend the Town’s regulatory ordinance to lower the voting threshold for regulatory agreements that provide certain types of waivers from zoning is an important policy issue for the Town. The Town must decide what is required in its own Ordinance in accordance with state law. The Town Council may decide that, notwithstanding the voting threshold changes to the Zoning Act, it wants to maintain the higher quantum of vote for regulatory agreements that provide zoning relief, in which case the Council has the authority to do so under the Town’s home rule powers, granted to municipalities by the Home Rule Amendment, Article 89 of the Massachusetts Constitution. A Town Council vote in the negative on this item would maintain the higher 2/3 quantum of vote requirement. In the alternative, the Town Council may decide it wants to lower the quantum of vote for regulatory agreements that provide certain types of zoning relief. A vote approving this item would result in a lower quantum of vote to a majority, consistent with the Cape Cod Commission regulations. It is also worth noting that if no changes are made to the Town’s ordinance on regulatory agreements, thereby keeping in place the higher voting threshold for agreements that provide zoning relief, the proponent still has the option to forego a regulatory agreement and seek a zoning amendment, in which case the lower voting thresholds would apply in certain circumstances.

**FISCAL IMPACT:** No fiscal impact

**STAFF ASSISTANCE:** Elizabeth Jenkins, Director of Planning and Development, Karen L. Nober, Town Attorney

**B. NEW BUSINESS (Refer to Second Reading 07/20/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-204  
INTRO: 06/15/2023**

**2023-204 ORDER AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AND EXECUTE A 99-YEAR LEASE WITH THE TRUSTEE OF THE PARKER LOMBARD TRUST FOR THE BUILDING KNOWN AS THE WEST BARNSTABLE TRAIN STATION AND THE LAND ON WHICH IT IS LOCATED**

**ORDERED:** That the Town Manager is hereby authorized to negotiate and execute on behalf of the Town a 99-year lease for the nominal rent of \$1.00 per year with the Trustee of the Parker Lombard Trust for the building known as the West Barnstable Train Station and the land on which it is located, on such other additional terms and conditions as may be determined by the Town Manager, including, but not limited to, public access and use requirements, repair and maintenance obligations and insurance obligations, subject to approval as to form by the Town Attorney; provided that such lease shall be subject to the approval of the Barnstable County Probate Court.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-204**  
**INTRO: 06/15/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Charles S. McLaughlin, Jr., Senior Counsel  
**DATE:** June 15, 2023  
**SUBJECT:** Order authorizing the Town Manager to negotiate and execute a 99-year lease with the trustee of the Parker Lombard Trust for the building known as the West Barnstable Train Station and the land on which it is located

**BACKGROUND:** The will of the late Parker Lombard left his farmland in West Barnstable in trust to the Town. The will instructed that the land should never be sold but instead should be used to generate income in support of the poor of the Town, and the Trust has been administered for that purpose since the mid-1700's. The will expressly provided that none of the land should ever be sold.

In the mid-1800's, the Selectmen, purporting to act on behalf of the Lombard Trust but without legal authority to do so, conveyed a parcel of land at the intersection of what is now Route 6A and Route 149 to the Cape Cod Railroad for purposes of building a railroad depot on the site. A depot structure was then built and subsequently re-built as the structure that now sits at that intersection. Without reciting the tortured title history to the land and building that followed, the Lombard Trustee and the Town legal staff concur that the Lombard Trust is the rightful owner of the land under the old railroad station as well as the owner of the depot building itself.

The depot building has begun to fall into serious disrepair and to stabilize the structure and prevent further deterioration will require the expenditure of perhaps \$700,000 or more. The Lombard Trustee does not believe that the Trust should bear that expense as it would limit the Trust's ability to attend to its primary function of providing financial aid to townspeople in need. The Trustee has proposed that the Town lease the lot and building from the Trust for the sum of \$1.00 per year and that the Town take over the maintenance and repair responsibilities for this historically significant structure which is an inherent part of the historic fabric of the Town and the Village.

If this lease is approved by the Council and then the Probate Court, the Town intends to seek approval of Community Preservation Act funds to repair the structure. CPA funding was previously approved for this purpose but the real estate title issues prevented title certification, thus blocking access to CPA funds. With the Town as an approved tenant, CPA funding will again be sought but this time by the Town as tenant. If approved by CPA and the Town Council, the funding would then be applied to the repair and reconstruction effort. The Trustee has agreed to seek separate Probate Court approval for the Trustee to place an historic preservation restriction on the structure, a necessary prerequisite to an historic preservation grant of CPA funds for such work.

**FISCAL IMPACT:** Upon passage of this item future improvements and annual maintenance will become the responsibility of the Town and the associated costs will need to be included in future capital and operating budgets. As the structure is of historical significance, capital improvements could be funded from the Community Preservation Fund.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this item.

**STAFF ASSISTANCE:** Charles S. McLaughlin, Senior Counsel, David Anthony, Property Manager

**B. NEW BUSINESS (Refer to Second Reading 07/20/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-205  
INTRO: 06/15/2023**

**2023-205 ORDER AUTHORIZING THE TAKING OF ROAD EASEMENTS BY EMINENT DOMAIN FOR SEWER AND WATER PURPOSES OVER CERTAIN PRIVATE ROADS IN CENTERVILLE AND HYANNIS KNOWN AS SUNRISE ROAD, LAURA ROAD, AURORA AVENUE, WEQUAQUET AVENUE, GREGOIRE CIRCLE, PORTION OF MIDWAY DRIVE, DACEY DRIVE, CRESTVIEW CIRCLE, REGATTA DRIVE, AND CROSBY ROAD**

**ORDERED:** That the Town Council hereby authorizes the Town Manager to purchase, take by eminent domain under chapter 79 of the General Laws of Massachusetts, or otherwise acquire for sewer and water purposes a perpetual easement through, under, across, and on the following described roads for the installation, operation, maintenance, repair, relocation, and replacement of sewer and water lines and infrastructure for the same and for all purposes for which such easements are commonly used in the Town of Barnstable:

SUNRISE ROAD, LAURA ROAD, AURORA AVENUE AND WEQUAQUET AVENUE, all as shown on Land Court Plan No. 35367A, Sheets 1 and 2; and

GREGOIRE CIRCLE and a portion of MIDWAY DRIVE, all as shown on a plan filed in the Barnstable County Registry of Deeds in Plan Book 147, Page 73; and

DACEY DRIVE, CRESTVIEW CIRCLE and REGATTA DRIVE, all as shown on Land Court Plan No. 36669C, Sheets 1 and 2, and as shown on a plan filed in the Barnstable County Registry of Deeds in Plan Book 505, Page 78; and

CROSBY ROAD as shown on a plan filed in the Barnstable County Registry of Deeds in Plan Book 389, Page 96.

Any trees, buildings, and other structures located within said roads are not included in this Order and the owners of the same may have a period of up to sixty (60) days after the recording of this Order of Taking to remove the same.

Betterments will be assessed for the associated sewer and water improvements made by the Town of Barnstable.

The names and addresses of the owners of said interests taken and their mortgagees as far as can be ascertained by the Town are as set forth on Exhibit A attached hereto, along with any awards, if any, for damages sustained by said owners.

**SPONSOR:** Mark S. Ells, Town Manager

DATE

ACTION TAKEN

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

# EXHIBIT A

<b>Parcel Number Street Address</b>	<b>Current Owner: Name &amp; Mailing Address</b>	<b>Award</b>
251-126 <u>718 Phinney's Lane</u>	Allen & Katherine Colvin 718 Phinney's Lane Centerville MA 02632	None
251125 <u>15 Wequaquet Ave</u>	Laura Silva 15 Wequaquet Ave Centerville MA 02632	None
251124 H00 251124 T00 <u>25 Wequaquet Ave</u>	Stanley Smith Tr Jayess Nominee Trust 21 Petipas Lane Randolph MA 02368	None
251123 <u>35 Wequaquet Ave</u>	Bruce Gladstone & Richard Bibeault 35 Wequaquet Ave Centerville MA 02632	None
251120 <u>732 Phinney's Lane</u>	Thomas Knapp, Tr 732 Phinney's Lane Realty Trust 331 Old Jail Ln Barnstable MA 02630	None
2511121 <u>16 Wequaquet Ave</u>	Richard & Maureen Mahoney PO Box 242 West Barnstable MA 02668	None
251142 <u>26 Wequaquet Ave</u>	Maxsuel Docarmo 216A Higgins Crowell Rd West Yarmouth 02673	None
2511122 H00 2511122 T00 <u>36 Wequaquet Ave</u>	Benjamin & Amy K. Guibal 36 Wequaquet Ave Centerville MA 02632	None

<b>Parcel Number Street Address</b>	<b>Current Owner: Name &amp; Mailing Address</b>	<b>Award</b>
251119 <u>5 Aurora Ave</u>	Barry Shore Tr Shore Investment Realty Trust  PO Box 845 Framingham MA 01701	None
251118 <u>15 Aurora Ave</u>	Gemma V. & Daniel Simson  15 Aurora Ave Centerville MA 02632	None
251141 H00 251141 T00 <u>25 Aurora Ave</u>	Cynthia Welsch-Kelly Tr Cynthia Welsch-Kelly Revocable Trust  25 Aurora Ave Centerville MA 02632	None
251115 <u>758 Phinney's Lane</u>	Colbey P. Harrington  758 Phinney's Lane Centerville MA 02632	None
251116 <u>16 Aurora Ave</u>	Katherine a. Jones Tr Katherine Jones Revocable Trust  16 Aurora Ave Centerville MA 02632	None
251117 <u>26 Aurora Ave</u>	Jessica Stoebel  26 Aurora Ave Centerville MA 02632	None
251114 <u>5 Laura Road</u>	Gretchen Golembewski  5 Laura Road Centerville MA 02632	None
251113 <u>13 Laura Road</u>	Kurt & Sheila Kiessling  43 Woodbrier Road West Roxbury MA 02132  13 Laura Rd Centerville MA 02632	None

<b>Parcel Number Street Address</b>	<b>Current Owner: Name &amp; Mailing Address</b>	<b>Award</b>
251112 <u>23 Laura Road</u>	Edward & Kathleen Flynn 23 Laura Road Centerville MA 02632	None
251110 <u>8 Laura Road</u>	William J. Jr & Michelle Corcoran 8 Laura Road Centerville MA 02632	None
251111 <u>22 Laura Road</u>	Barbara Turner 22 Laura Road Centerville MA 02632	None
251109 <u>790 Phinney's Lane</u>	Corey R. & Lauren C. Blair 103 Farrar Farm Rd Norwell MA 02061	None
251108 <u>19 Sunrise Road</u>	Karim Rizki 24 South Street #3 Medford MA 02155	None
251107 <u>806 Phinney's Lane</u>	Cailyn H. & Douglas B. Rood Tr, G & K Rood Irrevocable Trust 806 Phinney's Lane Centerville MA 02632	None
251106 <u>816 Phinney's Lane</u>	Kerry A. & Adam S. Cutler 816 Phinney's Lane Centerville MA 02632	None
251105 <u>18 Sunrise Road</u>	Matthew J. & Michelle J. Moynihan 18 Sunrise Road Centerville MA 02632	None
251103 <u>834 Phinney's Lane</u>	David S. Horgan 41 Baxter Neck Rd Marstons Mills MA 02648	None
251104 H00 251104 T00 <u>900 Phinney's Lane</u>	Job Dos Santos 129 Longview Drive Centerville MA 02632	None

<b>Parcel Number Street Address</b>	<b>Current Owner: Name &amp; Mailing Address</b>	<b>Award</b>
251104 H01 251104 T01  <u>0 Phinney's Lane</u>  (Rear of 888, 854, 844 Phinney's Lane And 18 Sunrise)	Lacey Prior & Guy Patston  PO Box 1073 Barnstable MA 02630	None
251104 H02 251104 T02  <u>0 Phinney's Lane</u>  (Rear of 26 & 25 Aurora and 36 & 35 Wequaquet)	Karim Rizki  13 Silverbrook Rd Boxford MA 01921	None
251104 H03 251104 T03  <u>0 Phinney's Lane</u>  (Rear of 23 Laura)	Edward & Kathleen Flynn  23 Laura Road Centerville MA 02632	None
251104 H04 251104 T04  <u>0 Phinney's Lane</u>  (Rear of 22 Laura and 19 Sunrise)	Karim Rizki  13 Silverbrook Rd Boxford MA 01921	None
251104 H05 251104 T05  <u>0 Phinney's Lane</u>  (Rear of 18 Sunrise/ Rear of 129 Longview)	Job Dos Santos  129 Longview Dr Centerville MA 02632	None
251104 H06 251104 T06  <u>0 Phinney's Lane</u>  (Rear of 18 Sunrise)	Job Dos Santos  129 Longview Dr Centerville MA 02632	None

<b>Parcel Number</b> <b>Street Address</b>	<b>Current Owner:</b> <b>Name &amp;</b> <b>Mailing Address</b>	<b>Award</b>
252065 <u>44 Midway Drive</u>	Dennis D. & Grace P. Theoharidis, Tr., Dennis D. & Grace P. Theoharidis Trusts  31 Bristol Street Dennis MA 02638	None
252066 <u>50 Midway Drive</u>	Brendan and Destiny Lee Edwards  50 Midway Drive Centerville MA 02632	None
252067 <u>58 Midway Drive</u>	Raymond Carlozzi 185 Timber Lane Marstons Mills MA 02648	None
252068 <u>78 Midway Drive</u>	Tadeu E. & Cleuzimere R. Andrade  47 Samoset Road Marstons Mills MA 02648	None
252069 <u>71 Midway Drive</u>	Justino Reis  PO Box 2641 Hyannis, MA 02601	None
252070 <u>63 Midway Drive</u>	Brenda Evans  63 Midway Drive Centerville MA 02632	None
252079 <u>53 Midway Drive</u>	Wallace DaSilva  53 Midway Drive Centerville MA 02632	None

<b>Parcel Number</b> <b>Street Address</b>	<b>Current Owner:</b> <b>Name &amp;</b> <b>Mailing Address</b>	<b>Award</b>
252078 <u>47 Midway Drive</u>	Heather Kay Scozzarella 47 Midway Drive Centerville MA 02632	None
252071 <u>39 Midway Drive</u>	Jennifer Lynn Johnson 39 Midway Drive Centerville MA 02632	None
252072 <u>31 Midway Drive</u>	Obed S. Woodson 31 Midway Drive Centerville MA 02632	None
273014 <u>89 Midway Drive</u>	Dimas A. Pleitez Tejada 89 Midway Drive Centerville MA 02632	None
273015 <u>73 Midway Drive</u>	Donna O'Hearn 73 Midway Drive Centerville MA 02632	None
252188 <u>21 Midway Drive</u>	Bernard T. Kilroy, Tr., Laurie Warren Trust 41 Overlea Drive Hyannisport MA 02647	None
273011 <u>14 Gregoire Circle</u>	Lyn A. Vazquez & Carol A. Stewart 14 Gregoire Circle Centerville MA 02632	None
273012 <u>20 Gregoire Circle</u>	Barnstable Housing Authority 146 South St Hyannis MA 02601	None
273013 <u>17 Gregoire Circle</u>	Gay Jane Maiolo 17 Gregoire Cir Centerville MA 02632	None
273007 <u>593 Old Strawberry Hill Rd</u>	Ricardo DeSouza 593 Old Strawberry Hill Rd Centerville MA 02632	None

<b>Parcel Number</b> <b>Street Address</b>	<b>Current Owner:</b> <b>Name &amp;</b> <b>Mailing Address</b>	<b>Award</b>
252051029 <u>10 Regatta Drive</u>	James R. Hamilton, Jr. & Elizabeth M. Hamilton  10 Regatta Drive Centerville MA 02632	None
252051026 <u>76 Regatta Drive</u>	Eugene J. Mahlstadt & Christine L. Mahlstadt  669 College Rd Farmington NY 11738	None
252051025 <u>96 Regatta Drive</u>	Edward Cotter and Janice Cotter  96 Regatta Drive Centerville MA 02632	None
252051032 <u>20 Dacey Drive</u>	Robert G. Doe & Silvia A. Doe as Trustees of the Doe Family Trust  20 Dacey Drive Centerville MA 02632	None
252051030 <u>25 Dacey Drive</u>	John H. Johnson & Virginia B. Johnson as Trustees of the Leonard-Johnson Family Trust  17 Cochituate St Natick MA 01760	None
252051031 <u>19 Dacey Drive</u>	John M. Callan & Gail E. Callan  19 Dacey Drive Centerville MA 02632	None
252183 <u>9 Dacey Drive</u>	Patrick F. Curley, Jr. and Mary L. Curley  9 Dacey Drive Centerville MA 02632  and Cynthia Lipsett 8 Townside Lane Walpole MA 02082	None
252184 <u>130 Regatta Drive</u>	Herbert M. DaSilva & Carol DaSilva, Tr DaSilva Family Realty Trust  130 Regatta Drive Centerville MA 02632	None

<b>Parcel Number Street Address</b>	<b>Current Owner: Name &amp; Mailing Address</b>	<b>Award</b>
252185 <u>129 Regatta Drive</u>	James E. Lloyd & Susan A. Lloyd Tr James Lloyd 2013 Trust  129 Regatta Drive Centerville MA 02632	None
252186 <u>115 Regatta Drive</u>	Kathrin Mann and Eric Manley  115 Regatta Drive Centerville MA 02632	None
252187 <u>103 Regatta Drive</u>	Matthew and Naomi Jean Kalliath  103 Regatta Drive Centerville MA 02632	None
252051024 <u>93 Regatta Drive</u>	Michael S. Crismond & Jennifer G. Crismond  93 Regatta Drive Centerville MA 02632	None
252051023 <u>20 Crestview Circle</u>	Doris M. Judge, Tr Doris Judge Revocable Trust Agmt  624 Lake Orchid Circle Vero Beach FL 32960	None
252051022 <u>30 Crestview Circle</u>	Karen Pim  30 Crestview Circle Centerville MA 02632	None
252051x01 0 Crestview Circle 252051x02 <u>0 Regatta Drive</u>	James Hamilton Edward Cotter Trustees Lake Isle Woods Open Space Trust  PO Box 357 Centerville MA 02632	None

<b>Parcel Number Street Address</b>	<b>Current Owner: Name &amp; Mailing Address</b>	<b>Award</b>
252051 021 <u>44 Crestview Circle</u>	Barry G. & Pauline T. Curtis, Tr Barry Revocable Trust  44 Crestview Circle Centerville MA 02632	None
252051 020 <u>54 Crestview Circle</u>	Linton & Cynthia Campbell  54 Crestview Circle Centerville MA 02632  Priscilla Campbell-Klock 1252 Hill Rd Littleton MA 01460 (Personal Representative)	None
252051 019 <u>64 Crestview Circle</u>	Thomas E. & Sandra Minchello  7 Ella Ave Wilmington MA 01887	None
252051 018 <u>70 Crestview Circle</u>	Rodriguez-Munoz, Andres, Tr. Sandra Russo Rodriguez 2005 Rev Trust  70 Crestview Circle Centerville MA 02632	None
252051 017 <u>72 Crestview Circle</u>	John Lynch Tr. Maxwell and Marley Living Trust dtd 1/18/2013  72 Crestview Circle Centerville MA 02632	None
252051 016 <u>67 Crestview Circle</u>	Hymie & Angela Rimer  67 Crestview Circle Centerville MA 02632	None

<b>Parcel Number Street Address</b>	<b>Current Owner: Name &amp; Mailing Address</b>	<b>Award</b>
252051 015 <u>55 Crestview Circle</u>	Marie E. & John A. McConnell  55 Crestview Circle Centerville MA 02632	None
252051 X13 252051 X14 <u>37 Crestview Circle</u>	Stacey A. Kennedy, Tr Olcott Family Irrevocable Trust  37 Crestview Circle Centerville MA 02632	None
252051 012 <u>9 Crestview Circle</u>	Patricia C. Sonntag  9 Crestview Circle Centerville MA 02632	None
252051 011 <u>67 Regatta Drive</u>	Patricia A. Wilcox  67 Regatta Drive Centerville MA 02632	None
252051 X09 252051 X10 <u>59 Regatta Drive</u>	Judith O. MacDonald, Tr Judith MacDonald Revocable Trust  59 Regatta Drive Centerville MA 02632	None
252051 X07 252051 X08 <u>51 Regatta Drive</u>	Mary Lou Fornicola  1609 Martin Rd Neptune NJ 07753	None
252051 006 <u>45 Regatta Drive</u>	Dennis & Alice Walezewski  Gary Walczewski Tr of the Dennis Walczewski Family Irrevocable Trust and as Tr of the Alice Walczewski Family Irrevocable Trust  45 Regatta Drive Centerville MA 02632	None

<b>Parcel Number</b> <b>Street Address</b>	<b>Current Owner:</b> <b>Name &amp;</b> <b>Mailing Address</b>	<b>Award</b>
252051 005 <u>35 Regatta Drive</u>	Andrea M. Cain 35 Regatta Drive Centerville MA 02632	None
252051 004 <u>21 Regatta Drive</u>	Norman F. & Marilyn A. Chalupka 21 Regatta Drive Centerville MA 02632	None
252051 003 <u>11 Regatta Drive</u>	David & Denise Heath 11 Regatta Drive Centerville MA 02632	None
252051 028 <u>30 Regatta Drive</u>	Marvin Hoovis 30 Regatta Drive Centerville MA 02632	None
252051 027 <u>50 Regatta Drive</u>	Petrina P. Fernandes 50 Regatta Drive Centerville MA 02632	None

<b>Parcel Number</b>	<b>Current Owner: Name &amp; Mailing Address</b>	<b>Award</b>
229125 <u>30 Crosby Road</u>	Kelly Ann Waugh 30 Crosby Road Centerville, MA 02632	None
229126 <u>36 Crosby Road</u>	Lorna M.and Daniel S. Bandstra 36 Crosby Road Centerville, MA 02632	None
229127 <u>38 Crosby Road</u>	Casey L. Upton 38 Crosby Road Centerville MA 02632	None
229128 <u>42 Crosby Road</u>	Adrienne Siegel PO Box 26 Cummaquid MA 02637	None
229129 <u>32 Crosby Road</u>	Janet E. Sheehan 32 Crosby Road Centerville MA 02632	None
230169 <u>28 Crosby Road</u>	Mark M. and Judith J. Joseph 28 Crosby Road Centerville MA 02632	None
230170 <u>26 Crosby Road</u>	Stacey J. Greaves 26 Crosby Road Centerville MA 02632	None
230171 <u>20 Crosby Road</u>	Kelsey A. Welgert Travis Gray 20 Crosby Road Centerville MA 02632	None

<b>Parcel Number</b> <b>Street Address</b>	<b>Current Owner:</b> <b>Name &amp;</b> <b>Mailing Address</b>	<b>Award</b>
230131 <u>314 Phinney's Lane</u>	Stephen J. Heckler 314 Phinney's Lane Centerville MA 02632	None
230132 <u>300 Phinney's Lane</u>	Jeffrey D. Erving, Jr 300 Phinney's Lane Centerville MA 02632	None

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-205**  
**INTRO: 06/15/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, Director of Public Works;  
**DATE:** June 15, 2023  
**SUBJECT:** Order authorizing the taking of road easements by eminent domain for sewer and water purposes over certain private roads in Centerville and Hyannis known as Sunrise Road, Laura Road, Aurora Avenue, Wequaquet Avenue, Gregoire Circle, Portion of Midway Drive, Dacey Drive, Crestview Circle, Regatta Drive and Crosby Road

**BACKGROUND:** The Town is proceeding with plans to install sewers and related infrastructure in Centerville. These proposed takings of easements in existing private ways are the second in a series of takings that are contemplated in order to deploy sewer lines in accordance with the Town's approved Comprehensive Wastewater Management Plan. The timely completion of these takings will also qualify this work for State Revolving Fund (SRF) monies in accordance with state funding. Utilizing the eminent domain procedure to acquire these easements will assure clear title to the property which is necessary to qualify for SRF funding.

Because the value of the improvements exceeds the value of the easement within the travelled roadways, there is no provision for the award of monetary damages.

**FISCAL IMPACT:** None

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this item.

**STAFF ASSISTANCE:** Charles S. McLaughlin, Senior Counsel; Griffin Beaudoin, Town Engineer; Daniel W. Santos, Director of Public Works; Shane Brenner, Town Surveyor

**B. NEW BUSINESS (Refer to Public Hearing 07/20/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-206  
INTRO: 06/15/2023**

**2023-206 APPROPRIATION ORDER IN THE AMOUNT OF \$195,000 FOR THE PURPOSE OF ACQUIRING BY PURCHASE OR EMINENT DOMAIN A FIVE-YEAR TEMPORARY CONSTRUCTION EASEMENT AND A PERMANENT EASEMENT FOR SHARED USE PATH, SEWER AND WATER PURPOSES IN LAND ABUTTING BEARSE’S WAY, WITH AN ADDRESS OF 1174 PITCHER’S WAY, HYANNIS, MA, OWNED BY WINDMILL SQUARE LLC**

**ORDERED:** The Town Council hereby authorizes the Town Manager to purchase, take by eminent domain under Chapter 79 of the General Laws of Massachusetts, or otherwise acquire both a five-year temporary construction easement and a separate permanent easement for shared use path, sewer and water purposes through, under, across, and on a certain parcel of land fronting on Bearse’s Way, for the installation, operation, maintenance, repair, relocation, and replacement of sewer and water lines for the same and for all purposes for which such infrastructure is commonly used in the Town of Barnstable, Hyannis, MA, with an address of 1174 Pitcher’s Way, Hyannis, MA, as more fully shown on Sheet 7 of a plan entitled “Windmill Square, LLC”, said plan being entitled, “Plan of Road in the Town of Barnstable, Massachusetts, Barnstable County, Showing Location of easements for the purpose of constructing the Bearse’s Way shared use path for the Town of Barnstable, Date: May 12, 2023, Scale: 20 Feet to the Inch”. The temporary construction easement containing 6,374 square feet is shown as parcel “TE-5” thereon. The permanent easement for sewer and water purposes consisting of 9,133 square feet is shown thereon as parcel “E-2”. This plan will be filed in the office of the Town Council. To fund the same, **\$195,000** is to be provided from the reserves in the Sewer Construction and Private Way Improvement Special Revenue Fund, and the Town Manager is authorized to contract for and expend said appropriation for such purposes and accept any gifts or grants in relation thereto.

Any trees, buildings, and other structures located within said roads are not included in this Order and the owners of the same may have a period of up to sixty (60) days after the recording of the Order of Taking to remove the same.

The names and addresses of the owners of said interests taken and their mortgagees as far as can be ascertained by the Town are as set forth on Exhibit A attached hereto, along with any awards, if any, for damages sustained by said owners.

Betterments will be assessed for the associated sewer and water improvements made by the Town of Barnstable.

**SPONSOR:** Mark S. Ells, Town Manager

DATE

ACTION TAKEN

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

		EXHIBIT A		
Owner	Street	Side of Street	Area	Damages
	Address	WEST		
WINDMILL SQUARE, LLC	1174 Pitcher's Way, Hyannis	Temporary Construction Easement	square feet 6,374	\$36,429.55
		Permanent easement	9,133	\$158,570.45
				TOTAL: \$195,000.00

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-206**  
**INTRO: 06/15/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**DATE:** June 15, 2023  
**SUBJECT:** Appropriation Order in the amount of **\$195,000** for the purpose of acquiring by purchase or eminent domain a five-year temporary construction easement and a permanent easement for shared use path, sewer and water purposes in land abutting Bearse's Way, with an address of 1174 Pitcher's Way, Hyannis, MA, owned by Windmill Square LLC

**BACKGROUND:** The Town is proceeding with plans to install sewers and related infrastructure in and along Bearse's Way, Hyannis, creating a so-called "shared use path" that will accommodate the underground infrastructure as well as pedestrian and other usage at the surface level. With the exception of a private parcel owned by Windmill Square, LLC, all of the subject installations will be in property owned by the Town. The sewer and water installations on the Windmill Square property (for reference, the current location of the Tractor Supply store) will run parallel to Bearse's Way close to the road layout and will be the subject of a permanent easement to be acquired by agreement or via an eminent domain taking. The Town also needs to acquire a temporary, 5-year construction easement on the property to facilitate equipment and related storage needs.

Because the project will use MassDOT funding, which is subject to federal regulations, an appraisal and a separate "review" appraisal using Mass-DOT approved appraisers were required in order to qualify for the available state grant estimated at \$3,000,000, which is pending. The two takings were valued in combination at \$195,000.00 by the state's approved appraisers. As required by state and federal rules, an offer in that amount has been tendered to the property owner who has 30 days from the offer to accept it. The offer is pending and information will be updated for the Council at the time of the public hearing and vote on this matter.

The timing of this proposed vote is intended to keep this project on a time track consistent with the broad scope of the CWMP requirements. If the Mass-DOT grant is not approved and/or the property owner refuses the tender offer and commences litigation to challenge the damage award, alternate funding analysis may require that the eminent domain taking be postponed.

**FISCAL IMPACT:** Funding for this item will be provided from the Sewer Construction and Private Way Improvement Special Revenue Fund which has a current balance of \$19.9 million.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this item.

**STAFF ASSISTANCE:** Charles S. McLaughlin, Senior Counsel; Robert Steen, Assistant Director of Public Works; Griffin Beaudoin, Town Engineer; Shane Brenner, Town Surveyor

**B. NEW BUSINESS (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-207  
INTRO: 06/15/2023**

**2023-207 RESOLUTION AUTHORIZING THE FLYING AND DISPLAY OF FLAGS AT TOWN HALL AND AT OTHER TOWN PROPERTIES TO COMMEMORATE STATE AND FEDERAL HOLIDAYS**

**WHEREAS**, the Town of Barnstable traditionally flies and displays the flags of the United States and the Commonwealth of Massachusetts and a POW-MIA flag on the Town Green at Barnstable Town Hall and one or more of such flags at other Town properties, as well as the United Nations flag, Korean veteran flag and Korean National flag at the Korean War Memorial park; and

**WHEREAS**, the flying of and display of flags at Town Hall, as well as at other Town properties, is intended to convey an official expression by and of the Town; and

**WHEREAS**, the use of the Town’s flagpoles is not intended to serve as a forum for free expression by the public;

**THEREFORE, BE IT RESOLVED:** That, in addition to the flags traditionally flown by the Town, the Town Council does hereby authorize the Town Manager, as an official expression by and of the Town, to fly and display flags at Town Hall, as well as at other Town properties, which commemorate state or federal holidays, including, but not limited to, the Juneteenth holiday; provided that the Town shall acquire ownership of all flags that it flies at Town Hall and at other Town properties; and, provided further, that by resolution of the Town Council, the Town Manager may be authorized to fly other flags on Town property to convey an official expression by and of the Town.

**SPONSOR:** Councilor Paula K. Schnepf, Precinct 12

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-207**  
**INTRO: 06/15/2023**

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Karen L. Nober, Town Attorney  
**DATE:** June 15, 2023  
**SUBJECT:** Resolution authorizing the flying and display of flags at Town Hall and at other town properties to commemorate State and Federal holidays

**BACKGROUND:** The City of Boston, after denying a group the ability to fly its flag on City Hall Plaza, lost at the U.S. Supreme Court (*Shurtleff v. City of Boston*) because the Court found that the City did not limit the use of its flagpoles to government speech, but had instead created a public forum open to all private voices. For public forums, reasonable time, place and manner restrictions are appropriate, but restrictions cannot be based on the content of the speech. Government speech, however, is not subject to the First Amendment, and the governmental entity generally can say - or not say - what it wants. In concluding that the City of Boston was not engaging in government speech, the Supreme Court looked at several factors, including how the particular means had traditionally been used to communicate (in this case, the traditional use of the City's flagpoles), who would the message be attributed to, and the level of control that the municipality exercises over the message. The Court said that the City could change its policy going forward to make it clear that the use of its flagpoles was government speech and not a public forum open to all voices. In response, the City of Boston adopted an ordinance which specifically states that the City's flagpoles are not intended to serve as a forum for free expression of the public and which requires a City Council resolution or mayoral proclamation prior to a flag-raising. In addition, the ordinance requires that the City take ownership of all flags that are displayed.

The Town of Barnstable does not currently have a flag policy or an ordinance regarding the display of flags on Town property. Accordingly, until such a policy or ordinance is adopted, the proposed resolution has been narrowly tailored to authorize the flying of flags to commemorate state and federal holidays and to make it clear that this is government speech and that the Town's flagpoles are not a public forum for private expression.

**FISCAL IMPACT:** There is no fiscal impact.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this item.

**STAFF ASSISTANCE:** Karen L. Nober, Town Attorney

**B. NEW BUSINESS (May be acted upon) (Majority Vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-208  
INTRO: 06/15/2023**

**2023-208 APPROVING A CONSERVATION RESTRICTION ON 2.3 ACRES OF LAND ON COMMERCE ROAD IN BARNSTABLE VILLAGE BETWEEN BARNSTABLE LAND TRUST (GRANTOR) AND THE TOWN OF BARNSTABLE (GRANTEE)**

**RESOLVED:** That, pursuant to G.L.c. 184, sections 31-33, the Conservation Restriction statute, the Town Council does hereby approve and authorize the Town Council President to sign on behalf of the Town Council a Conservation Restriction (“CR”) between Barnstable Land Trust (Grantor), and the Town of Barnstable (Grantee), over approximately 2.3 acres of vacant land on Commerce Road in Barnstable Village as shown on:

A portion of Map 318, Parcel 025, Lot 002, shown as Lot 13 on a plan entitled “*Plan of Land of Commerce Road Barnstable, MA, Prepared For Dillingham Properties LLC*”, dated 5/18/2022 (Revised), by Daniel A. Ojala, PLS, Down Cape Engineering, Inc., 939 Main Street (Route 6A), YarmouthPort, MA 02675 and filed in the Land Registration Office in Boston as Land Court Plan 4686G;

said parcel to be sold to the Barnstable Land Trust for the purposes of preserving open space, rare species habitat and the scenic and natural character of the Cobbs Village neighborhood. This vote approves the CR in substantially the form attached hereto. Said CR is subject to approval by the Secretary of Energy and Environmental Affairs, who may make minor revisions thereto. It is further ordered that the Town Manager is authorized to execute, receive, deliver and record any written instruments necessary to effectuate the purposes set forth herein.

**SPONSOR:** Councilor Gordon Starr, Precinct 1

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

**BOWLES FIELD – Lot 13 CONSERVATION RESTRICTION, BARNSTABLE MA**

**GRANTOR:** Barnstable Land Trust, Inc.

**GRANTEE:** Town of Barnstable

**ADDRESS OF PREMISES:** Commerce Road, (Lot 13), Barnstable, Massachusetts

**FOR GRANTOR’S TITLE SEE:** Barnstable County Registry of Deeds at Land Court Certificate of Title # Grantor’s Plan: Land Court Plan 4686-G

**GRANT OF CONSERVATION RESTRICTION**

**I. STATEMENT OF GRANT**

**BARNSTABLE LAND TRUST, INC.** (Federal ID #22-2483963), a Massachusetts charitable corporation with an office at 1540 Main Street, Barnstable, Barnstable County, Massachusetts 02668, being the sole owner of the Premises as defined herein, its successors and assigns (“Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant, with QUITCLAIM COVENANTS, to the **INHABITANTS OF THE TOWN OF BARNSTABLE**, a Massachusetts municipal corporation with principal offices at Town Hall, 367 Main Street, Hyannis, Barnstable County, Massachusetts 02601-3907, their permitted successors and assigns (“Grantee”), for consideration paid of One Hundred and Fifty Thousand and 00/100 (\$150,000.00), **IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES**, the following Conservation Restriction on land located in Town of Barnstable, County of Barnstable, Commonwealth of Massachusetts containing the entirety of a 2.3-acre parcel of land (“Premises”), which Premises is more particularly described in Exhibit A and shown in the attached reduced copy of a survey plan in Exhibit B, both of which are incorporated herein and attached hereto.

The Conservation Restriction was acquired utilizing, in part, Community Preservation Act funds pursuant to Chapter 44B § 1 et seq. as applied pursuant to Chapter 149, §298 of the Acts of 204, as amended by Chapter 352, §129-133 of the Acts of 2004 (the so called “Barnstable County Community Preservation Act” or “CPA”), which funds were authorized for such purposes by a vote of the Barnstable Town Council at a duly called meeting held on November 17, 2022, on Agenda Item 2023-049. A copy of the Town Council Order is attached hereto as Exhibit C.

**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 fee interest in the Premises was acquired utilizing, in part, assistance from the Conservation Partnership program which requires, pursuant to Section 2A of Chapter 286 of the Acts of 2014 and Section 2A of Chapter 102 of the Acts of 2021, the conveyance of this Conservation Restriction.

The fee interest in the Premises was acquired utilizing, in part, the Conversation Land Tax Credit Program authorized under Sections 1-4 of the Chapter 509 of the Acts of 2008, as amended by Sections 4-13 of Chapter 409 of the Acts of 2010 and Section 15 of Chapter 286 of the Acts of 2014.

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

- ACEC. The Commonwealth of Massachusetts, through the authority of the Secretary of Energy and Environmental Affairs under General Law c. 21A, s. 2(7), designated the Barnstable Harbor/Sandy Neck ecosystem as an Area of Critical Environmental Concern (ACEC) in 1978. The Premises is proximate to ACEC in the north, east and south.
- Open Space. The Premises contributes to the protection of the scenic and natural character of The Town of Barnstable and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises abuts land already conserved, including 26 acres of conservation restricted land owned or monitored by the Barnstable Land Trust, and 8.65 acres owned by Massachusetts Audubon Society.
- Soils and Soil Health. The Premises includes a majority of Farmland of Statewide Importance, as identified by the USDA Natural Resources Conservation Service. The protection of the Premises will promote healthy soils and healthy soils practices as such terms are defined in Chapter 358 of the Acts of 2020, which added definitions of these terms to Section 7A of Chapter 128 of the Massachusetts General Laws.
- Biodiversity. The Premises is proximal to areas designated Core Habitat and Critical Natural Landscape as defined by the Massachusetts Natural Heritage and Endangered Species Program. *BioMap* was designed to guide strategic biodiversity conservation in Massachusetts by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems. *BioMap* is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan. The Premises' northern boundary is proximal to Critical Natural Landscape, Coastal Adaptation, and Tern Foraging areas. The Critical Natural Landscape, and specifically the Coastal Adaptation and Tern Foraging areas, support a diversity of wildlife, including migratory shorebirds and waterfowl including Snowy Egrets, Black Ducks, and Least Terns. Protection of the Premises, therefore, aligns with the NHESP's wildlife and habitat protection objectives and would ensure perpetual protection for each of these state-recognized habitats.

The Premises is wholly within a statewide important and critically imperiled sandplain grassland, and includes a stand of native little bluestem grass. The Premises was formerly used for agriculture, and now is maintained as an open grassland habitat. The Premises is surrounded by and proximal to approximately 26 acres of conservation restricted land owned or monitored by the Barnstable Land Trust. Conservation of the Premises will therefore enhance a protected open-space assemblage.

- Historic and Archaeological Resources. Conservation and appropriate management of the Premises has an important public benefit by preserving historic and archeological resources within the Premises. The Premises is identified by the Massachusetts Historical Commission as being within the Old King’s Highway District listed in the State Register of Historic Places, a local historic district, and adjacent to the Dillingham House. Ancient Native American and historical period archeological sites are recorded elsewhere in proximity along Maraspin Creek in similar environments to the Premises. The site is favorable for ancient and historical period land use and occupation. Evidence of ancient and historical period Native American activities, colonial period agricultural, industrial and residential activities may be present within undisturbed portions of the property.
- Climate Change Resiliency. The Premises is identified as an area of slightly above average Terrestrial Resilience according to The Nature Conservancy’s (TNC) Resilient Land Mapping Tool, including slightly above average Landscape Diversity and slightly above average Local Connectedness. TNC’s Resilient Land Mapping Tool was developed in order to map ‘climate-resilient’ sites that are ‘more likely to sustain native plants, animals, and natural processes into the future.’ The protection of these climate resilient sites is an important step in both reducing human and ecosystem vulnerability to climate change and adapting to changing conditions.
- Protection of the Premises will assist in achieving Barnstable County conservation goals. In July 1991, the Barnstable County Assembly of Delegates, pursuant to the Cape Cod Commission Act (Chapter 716 of the Acts of 1989), adopted a *Regional Policy Plan* (RPP), amended in 1996, 2002, 2009, 2012, and 2018, which provided, *inter alia* (references are to the 2018 RPP, amended in 2021 to accommodate climate change goals and objectives):
  - “To protect, preserve, or restore the quality and natural values and functions of inland and coastal wetlands and their buffers.” (Wetland Resources Goal, p. 55).
  - “To protect, preserve, or restore wildlife and plant habitat to maintain the region’s natural diversity” (Wildlife and Plant Habitat Goal, p. 55).
  - In reference to this Wildlife and Plant Habitat Goal, the RPP states, “For many years habitat loss due to development has been the primary threat to the region’s habitats” (p. 32); and
  - “To conserve, preserve, or enhance a network of open space that contributes to the region’s natural community resources and systems” (Open Space Goal, p. 55). In reference to this Open Space Goal, the RPP states, “[t]he open space of the Cape is critical to the health of the region’s natural systems, economy, and population. Open space provides habitat for the region’s diverse species and protection of the region’s drinking water supply” (p. 30).

Granting this Conservation Restriction will advance each of these goals outlined in the RPP. The Wetlands Goal will be addressed in protecting areas that will be affected by inland migration of marine wetlands with sea level rise and other climate change impacts. Wildlife and Plant Habitat Goal will be served because the Premises contains a host of important plant and wildlife species, and falls within an NHESP BioMap Critical Natural Landscape area. The Open Space Goal will be advanced because the Premises is proximal to several conservation restricted parcels.

Conservation of the Premises also supports Barnstable Town Council's Strategic Plan FY2015 which seeks to promote the preservation and protection of significant natural resources for visual quality, outdoor recreation, public access, and wildlife habitat.

- Consistency with Clearly Delineated Town of Barnstable Conservation Policy. Protection of the Premises will further the Town of Barnstable’s documented goals regarding conservation land.

The Town outlined its conservation goals in its *Open Space and Recreational Plan* (1984, amended 1987, 1998, 2005, 2010, and 2018), identifying goals, policies, and actions to guide conservation efforts, among them the goal of preserving “quality open spaces throughout the Town which protect and enhance its visual heritage.” Additional objectives include (*references are to the 2018 Plan*):

1) "Preservation of open space for protection of drinking water resources, and for protection of other natural, historic and scenic resources is a community-wide priority; and 2) Protection of open space should continue to be an integral component of the Town's efforts." (p. 6)  
To achieve this vision, the Plan sets several goals for the town including: 1) "To protect and maintain the maximum amount of open space to enhance environmental protection, recreational opportunities and community character, and 2) “Plan, coordinate and execute open space protection measures that complement community efforts to protect water supply, protect fresh and marine surface waters, [and] preserve historic, scenic and cultural resources...” (pp. 10-11).

Additionally, the Barnstable Town Council’s Strategic Plan for fiscal year 2015 identified the goal to preserve and protect significant natural and historic resources for visual quality, outdoor recreation, wildlife habitat, and cultural history.

Moreover, in 1981, the Town of Barnstable adopted a Conservation Restriction Program consisting of policies and guidelines, in particular an *Open Space Policy*, approved by the Board of Selectmen, Assessors, and Conservation Commission, which encourages the use of conservation restrictions in perpetuity to protect natural resources in accordance with the purposes of the *Open Space and Recreation Plan*, and which further specified that purposes of a conservation restriction could include the following:

- preserve scenic view;
- preserve open space;
- preserve important natural habitats of fish, wildlife or plants; and,
- limit or prevent construction on land of natural resource value.

The Town of Barnstable promotes the Cape Cod Pathways program, intended to create a series of looped and through-routes in the town and beyond for public walking and scenic enjoyment. The Premises is located on Commerce Road part of the harbor walking loop identified in the Cape Cod Pathways plan for the Town of Barnstable.

- Consistency with Clearly Delineated Federal Conservation Policy. Protection of the Premises meets the definition of “conservation purposes” as defined in 26 CFR 1.170A-14(d) (1), because its conservation would: reserve the land for education regarding the natural world; protect wildlife habitats; and it would contribute to the preservation of open space because it is proximate to several other parcels already conserved.
- Consistency with Clearly Delineated State Conservation Policy. The Premises possesses significant open space, natural, aesthetic, ecological, plant and wildlife habitat, solid and water resource quality, watershed, and scenic values (collectively “conservation values”) of great importance to the Grantee and the people of Barnstable and the Commonwealth of Massachusetts, including the protection of a State ACEC and Regional Historic District
- Therefore, preservation of the Premises will advance the open space, water and other natural resource management and passive recreational goals and objectives of the Town of Barnstable, Barnstable County, and the Commonwealth of Massachusetts.

### 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, mobile home, swimming pool, shed, asphalt or concrete pavement, graveled area, roads, trails, 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;
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. Non-Native Species. Introduction of species of animals or plants that are not native to Barnstable County, as defined by current published lists of native species, including The Vascular Plants of Massachusetts: A County Checklist, by Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (1999) or as amended or contained in a similar professionally acceptable publication available in the future.
8. Hunting. Using the Premises for hunting.
9. 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;

10. 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), it being the Grantor's and Grantee's intention to maintain the entire Premises under unified ownership;
11. Use of Premises for Developing Other Land. Using the Premises towards building, septic system, or development requirements on this or any other parcel;
12. Adverse Impacts to Boundary Markers. Disrupting, removing, or destroying granite fence posts, or any other boundary markers;
13. Excavation. The excavation of landscape features on the Premises with the intent of collecting or otherwise removing archaeological artifacts (prehistoric and/or historic).
14. Residential, Agricultural, or Industrial Uses. Using the Premises for residential, agricultural, or industrial purposes;
15. 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 but not limited to, pruning, trimming, cutting, animal grazing, mowing, and removing brush, controlled burning for habitat management or improvement subject to a controlled burning plan approved by the Grantee and subject to any and all relevant regulations, but only in the months between November and April, 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), particularly related to the public scenic view and sandplain grassland habitat maintenance.
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. Native Plants. The non-commercial propagation of herbaceous plants for the cultivation of native plants from local seed stock. Native plants are defined hereinabove in Section III A.7.
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. 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;

6. Fencing. The installation of sight-permeable fencing in order to prevent unauthorized vehicle entry and dumping, vandalism or other acts destructive to the Premises. Also, the erection of fencing or other barriers with the purpose of protecting state-listed rare species. Any fences shall not detract from the public's view across the Premises from the adjoining town road;
7. Signs. Constructing, installing, maintaining, and replacing signs 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, any gift, grant, or other applicable source of support for the conservation of the Premises, including the erection of signs required for the protection of state-listed rare species. Any signs shall not detract from the public's view across the Premises from the adjoining town road.
8. Landform protection. With the prior approval of the Grantee, measures taken in order to protect landform stability, including measures to maintain a naturally-occurring feature on the land's surface (e.g., bank, dune, hill) from erosion.
9. Motorized Vehicles. The use of motorized vehicles (1) by the Grantor as reasonably necessary to carry out activities permitted under this Restriction, (2) for access by Grantee for purposes set forth in Paragraph IV, below, and (3) for access by police, fire, emergency, public works, or other governmental personnel carrying out their official duties and (4) by persons with mobility impairments in carrying out activities permitted by this Restriction. Notwithstanding the foregoing, the use of motorized vehicles for recreational purposes, such as dirt bikes, all-terrain vehicles, off-highway vehicles, and the like, is not permitted except as necessary for persons with mobility impairments.
10. Other. Such other non-prohibited activities or uses of the Premises may be permitted with the prior approval of the Grantee provided that the Grantee has made a finding, such finding to be documented in writing and kept on file at the office of the Grantee, that such activities are consistent with the Permitted Acts and Uses, do not impair the conservation values and purposes of this Conservation Restriction, and, where feasible, result in a net gain in conservation value of the Premises.

### **C. Site Restoration**

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

### **D. Compliance with Permits, Regulations, Laws**

The exercise of any Permitted Acts and Uses under Paragraph III.B. shall be in compliance with all applicable federal, state and local laws, rules, regulations, zoning, and permits, and with the Constitution of the Commonwealth of Massachusetts. The inclusion of any Reserved Right requiring a

permit, license or other approval from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit, license, or other approval should be issued.

## **E. Notice and Approval**

1. Notifying Grantee. Whenever notice to or approval by Grantee is required, 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 Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.
3. Resubmittal. Grantee's failure to respond within sixty (60) days of receipt shall not constitute approval of the request. Grantor may subsequently submit the same or a similar request for approval.
4. Emergencies. In the event the activity proposed is necessary to address an emergency situation, either to avert environmental degradation, ecological damage, or risk to public health and safety, Grantee shall respond forthwith, but failure to respond with a specific period shall not constitute approval of the request.

## **IV. INSPECTION AND ENFORCEMENT**

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

The Grantor hereby grants to the Grantee, and its duly authorized agents or representatives, with or without the presence of an employee or employees of the Grantor 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 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 Grantor immediately ceases the violation and Grantee determines that there is no ongoing violation. In instances where a violation may also constitute a violation of local, state, or federal law, the Grantee may notify the proper authorities of such violation.
3. Reimbursement of Costs and Expenses of Enforcement. Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including counsel fees) incurred by the Grantee in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof. In the event of a dispute over the boundaries of the Conservation Restriction, 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 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.

#### **F. Costs and Taxes**

Grantor agrees to pay and discharge when and if due any and all real property taxes and other assessments levied by competent authority on the Premises.

## **V. PUBLIC ACCESS**

This Conservation Restriction does not grant any right of physical access to the public, owing to the sensitivity of the rare sandplain grassland habitat and the fact that the public can enjoy the open view across the Premises to adjoining open fields and the fact that a public walking trail is provided on the western adjacent lot.

## **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 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 date of termination, release, or extinguishment (See Paragraph XII) shall be thirty percent (30%)<sup>1</sup>, based on Grantee’s contribution towards the purchase price on the Effective Date.

### **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.

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<sup>1</sup> Purchase price of property \$500,000. CPA contribution to project \$150,000 = 30%

## **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 thirty (30) days prior to the effective date of such transfer. Any transfers shall receive prior approval by Grantee to assure that the Premises is transferred to a qualified conservation organization. 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 Barnstable Registry District of the Land Court, 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 thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

## **X. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The 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**

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 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 Grantee and Grantor, approved by the Town of Barnstable and by the Secretary in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, and recorded in the Barnstable Registry District of the Land Court.

## **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 Barnstable Registry District of the Land Court.

## **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: Barnstable Land Trust  
1540 Main Street  
West Barnstable MA 02668

To Grantee: Town of Barnstable, c/o Town Manager  
367 Main Street  
Hyannis MA 02601-3907

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 the Conservation Restriction, all of which are merged herein.

## **XV. BASELINE DOCUMENTATION REPORT**

The Conservation Values, as well as the natural features, current uses of, and existing improvements on the Premises, such as, but not limited to, trails, woods roads, structures, meadows or other cleared areas, agricultural areas, and scenic views, as applicable, are described in a Baseline Documentation Report (“Baseline Report”) titled “*Bowles Field Lot 13, 14, 15 Conservation Restrictions, Barnstable, MA – 2023*”, dated \_\_\_\_\_ 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 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 attests that there is no residence on or abutting the Premises (including areas excluded from the Premises) that is occupied or intended to be occupied as a principal residence by a spouse, former spouse, or children of the grantor, or a spouse, former spouse, or children of a beneficiary of the trust, if Premises is owned by a trust.

### **C. Subordination**

The Grantor shall record at the Barnstable Registry District of the Land Court simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

### **D. Executory Limitation**

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

**E. Prior Encumbrances**

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

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

Grantor – Barnstable Land Trust, Inc.

Grantee Acceptance – Town of Barnstable Town Manager

Approval - Town of Barnstable Town Council

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

Exhibit C: Town Council Order – CPA Funding

Exhibit C.1: Town Council Order – Acceptance and Approval of Conservation Restriction

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2023 as authorized by vote of the Barnstable Land Trust, Inc., at a meeting duly held on \_\_\_\_\_, 2023, authorizing grant of the foregoing Conservation Restriction to the Town of Barnstable.

**Barnstable Land Trust, Inc.**

\_\_\_\_\_  
Leigh Townes, President,  
Barnstable Land Trust, Inc.

\_\_\_\_\_  
Jill McCleary, Treasurer  
Barnstable Land Trust, Inc.

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss. \_\_\_\_\_ 2023

Then personally appeared the above-named Leigh Townes, President, Barnstable Land Trust, Inc. and Jill McCleary, Treasurer, Barnstable Land Trust, Inc., the corporation named in the foregoing instrument, and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the persons whose names are signed on the document, and each acknowledged she is duly authorized to act on behalf of said corporation, and each further acknowledged the foregoing instrument to be the free act and deed of said corporation, before me.

Mark H. Robinson, Notary Public  
My commission expires: 8 July 2027

**APPROVAL OF THE TOWN OF BARNSTABLE  
TOWN COUNCIL**

At a public meeting duly held on \_\_\_\_\_2023, the Town Council of the Town of Barnstable, Massachusetts, voted to accept the foregoing Conservation Restriction from the Barnstable Land Trust, Inc., to the Town of Barnstable in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

**TOWN COUNCIL**

**PRESIDENT:** \_\_\_\_\_  
Matthew Levesque

**COMMONWEALTH OF MASSACHUSETTS**

**Barnstable, ss**

On the \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared **Matthew Levesque**, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was , and who being by me duly sworn did say that he is the President of the Town Council of the Town of Barnstable; that he is duly authorized to act on behalf the Town Council; and he acknowledged the foregoing instrument to be the free act and deed of Town of Barnstable Town Council.

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

**ACCEPTANCE AND APPROVAL OF TOWN MANAGER**

I, Mark S. Ells, as Town Manager of the Town of Barnstable, Massachusetts, authorized by a vote of the Barnstable Town Council at a duly called meeting held on \_\_\_\_\_ on Agenda Item \_\_\_\_\_, a copy of the Town Council Order being attached hereto as Exhibit C.1, hereby approve and accept the foregoing Conservation Restriction from the Barnstable Land Trust, Inc. to the Town of Barnstable pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

TOWN OF BARNSTABLE

TOWN MANAGER: \_\_\_\_\_

Mark S. Ells

Barnstable, ss

On the \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Mark S. Ells, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, and who being by me duly sworn did say that he is the Town Manager of the Town of Barnstable; that he is duly authorized to act on behalf the Town of Barnstable and he acknowledged the foregoing instrument to be his free act and deed.

\_\_\_\_\_  
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 Barnstable Land Trust, Inc. to the Town of Barnstable 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 Premises subject to this Conservation Restriction is all of a vacant tract of land located in the Village of Barnstable, in the Town of Barnstable, Barnstable County, Commonwealth of Massachusetts, more particularly bounded and described as follows:

The land in Barnstable in Barnstable County, Massachusetts shown as Lot 13 on a plan entitled *Plan of Land of Commerce Road Barnstable, MA, Prepared For Dillingham Properties LLC*, dated 5/18/2022 (*Revised*), by *Daniel A. Ojala, PLS, Down Cape Engineering, Inc., 939 Main Street (Route 6A), YarmouthPort, MA 02675* and filed in the Land Registration Office in Boston as Land Court Plan 4686G.

Containing 2.3 acres, more or less, per survey.

For Grantor's Title see Certificate #

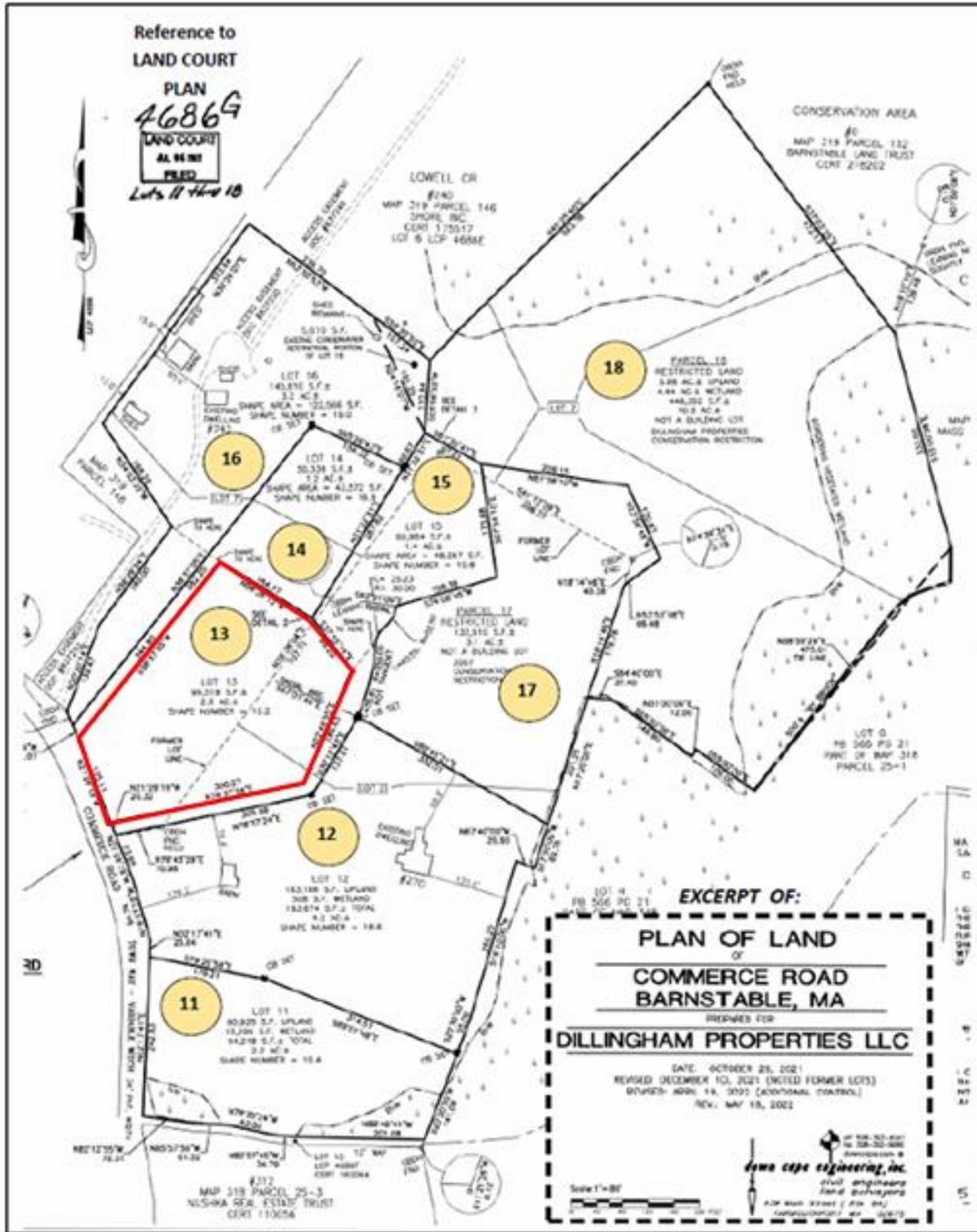
Town of Barnstable Assessor Map 318, Parcel 025, Lot 002 (portion)

Street Address: Lot 13, Commerce Road, Barnstable, Massachusetts 02630

EXHIBIT B

Sketch Plan of Premises

For official full size plan see Land Court Plan: 4686-G



**EXHIBIT C**

Town Council Order – CPA Funding



**Town of Barnstable  
Office of Town Clerk**

367 Main Street, Hyannis MA 02601

Office: 508-862-4044  
Fax: 508-790-6326

Ann M. Quirk, CMMC/MMC  
Town Clerk

January 26, 2023

To whom it may concern:

Please be advised that the following is a true copy of an item duly passed by the Barnstable Town Council on November 17, 2022:

**2023-049 APPROPRIATION ORDER IN THE AMOUNT OF \$150,000 IN COMMUNITY PRESERVATION FUNDS FOR THE PURPOSE OF ACQUIRING A CONSERVATION RESTRICTION ON 2.3 ACRES OF OPEN SPACE LOCATED AT 242 COMMERCE ROAD, BARNSTABLE, MA, SHOWN AS A PORTION ON ASSESSORS MAP 318, PARCEL 025/001  
INTRO: 11/03/2022, 11/17/2022**

Upon a motion duly made and seconded it was

**ORDERED:** That, pursuant to the provisions of the Community Preservation Act, G.L. c. 44B, the amount of One Hundred and Fifty Thousand Dollars **\$150,000** be appropriated and transferred from the amount set aside for Open Space and Recreation within the Community Preservation Fund for the purpose of acquiring a Conservation Restriction on 2.3 acres of open space located at 242 Commerce Road, Barnstable, shown as a portion of Assessors Map 318, Parcel 025/001. Said Restriction is subject to approval by the Massachusetts Secretary of Energy and Environmental Affairs. Further it is ordered that the Town Manager is authorized to expend the amount appropriated on behalf of the Town for the acquisition subject to oversight by the Community Preservation Committee, and that the Town Manager is authorized to execute, receive, deliver and record any written instruments for the stated purposes.

**VOTE: PASSES 11 YES**

**Roll Call: Atsalis, Clark, Cullum, Cusack, Levesque, Mendes, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

Sincerely,

Ann M. Quirk  
Town Clerk/Town of Barnstable



**EXHIBIT C.1**

Town Council Order – Acceptance and Approval of Conservation Restriction

# BARNSTABLE TOWN COUNCIL

ITEM # 2023-208  
INTRO: 06/15/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Councilor Gordon Starr  
**DATE:** June 15, 2023  
**SUBJECT:** Approving a Conservation Restriction on 2.3 acres of land on Commerce Road in Barnstable Village between Barnstable Land Trust (Grantor) and the Town of Barnstable (Grantee)

**BACKGROUND:** This item has been placed on the agenda for the Council’s approval and acceptance of a conservation restriction (CR) to be granted by Barnstable Land Trust and to be held by the Town of Barnstable over approximately 2.3 acres of land on Commerce Road in the Cobbs Village neighborhood of Barnstable Village, to be sold by the current owner to the BLT under a bargain sale. The purchase of the property was supported by funding from the Community Preservation Act (CPA) funds, and a Conservation Partnership Grant, and the current owner, Jennifer Brazelton, has been deemed eligible to receive a Conservation Land Tax Credit (CLTC) for the donation of this land to Barnstable Land Trust, with the stipulation that a conservation restriction be placed on the land.

**ANALYSIS:** This Conservation Restriction preserves a landmark property, with sweeping open coastal views from Commerce Road to the Sandy Neck lighthouse across the harbor. The conservation restriction preserves a critically imperiled sandplain grassland, which includes native little bluestem grass, Cape Cod’s original “prairie grass.” The property was formerly used for crops and pasture and is now maintained as an open grassland.

Admiral Francis T. Bowles (1859-1927) retired to Barnstable Harbor on a 100-acre saltwater farm owned by the Lowell family, his in-laws, where he died. The family honors his name in the Bowles Field Landscape Project. Over the past 30 years, the extended family has conducted multiple gifts of land and CRs at the farm totaling 40 acres. This parcel is being preserved in conjunction with two additional parcels (under separate CRs) totaling 4.9 acres.

This proposed Conservation Restriction conforms to the Open Space Policy of the Town, adopted in 1981, which “encouraged...grants of conservation restrictions” which yielded “benefits to the Town,” and furthers the Town of Barnstable’s Updates to its Open Space & Recreation Plan. Specifically, the Conservation Restriction offers the following public benefits and will:

- preserve open space,
- link to other conservation land,
- preserve important natural habitats of wildlife or plants,
- prevent construction on land of natural resource value
- preserve scenic views and a culturally significant landscape

Barnstable Land Trust wishes to restrict the use of the 2.3 undeveloped acres of its property to conservation purposes. This conservation restriction is required as the land has been acquired using, in-part, CPA funds, and a state Conservation Partnership Grant. The conservation restriction is also

required for the prior owners to receive a State Conservation Land Tax Credit for the bargain sale of the property to Barnstable Land Trust. These programs require that a town or non-profit hold a conservation restriction to protect the land for conservation in perpetuity. All CRs held by non-profits must be approved by the Town (and the State) under G.L. Ch. 184, ss. 31-33. Town Council action is needed for the Town to approve the CR.

**APPROVALS:** The Conservation Commission voted its support on June 21, 2022. The Land Acquisition and Preservation Committee voted to recommend the Conservation Restriction to Town Council on June 13, 2022.

**FISCAL IMPACT:** There is no fiscal impact on the town's tax levy. As the property is to be sold to the Barnstable Land Trust, removing it from the town's tax roll, any property tax paid by the previous owner get redistributed to all other taxpayers. Under Proposition 2 ½ future tax levies are not reduced by this action.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of the Conservation Restriction.

**STAFF ASSISTANCE:** Kate Connolly, Assistant Town Attorney

**B. NEW BUSINESS (May be acted upon) (Majority Vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-209  
INTRO: 06/15/2023**

**2023-209 APPROVING A CONSERVATION RESTRICTION ON 1.2 ACRES OF LAND ON COMMERCE ROAD IN BARNSTABLE VILLAGE BETWEEN CATHERINE BOWLES BRAZELTON, TRUSTEE OF THE CATHERINE BOWLES BRAZELTON 2022 REVOCABLE TRUST (GRANTOR) AND BARNSTABLE LAND TRUST (GRANTEE)**

**RESOLVED:** That, pursuant to G.L.c. 184, sections 31-33, the Conservation Restriction statute, the Town Council does hereby approve and authorize the Town Council President to sign on behalf of the Town Council a Conservation Restriction (“CR”) between Catherine Bowles Brazelton, Trustee of the Catherine Bowles Brazelton 2022 Revocable Trust (Grantor), and Barnstable Land Trust (Grantee), over approximately 1.2 acres of vacant land on Commerce Road in Barnstable Village as shown on:

A portion of Map 318, Parcel 025-001 and 025-002, shown as Lot 14 on a plan entitled “*Plan of Land of Commerce Road Barnstable, MA, Prepared For Dillingham Properties LLC*”, dated 5/18/2022 (Revised), by Daniel A. Ojala, PLS, Down Cape Engineering, Inc., 939 Main Street (Route 6A), YarmouthPort, MA 02675 and filed in the Land Registration Office in Boston as Land Court Plan 4686G.

said Conservation Restriction to be donated to the Barnstable Land Trust for the purposes of preserving open space, rare species habitat and the scenic and natural character of the Cobbs Village neighborhood. This vote approves the CR in substantially the form attached hereto. Said CR is subject to approval by the Secretary of Energy and Environmental Affairs, who may make minor revisions thereto. It is further ordered that the Town Manager is authorized to execute, receive, deliver and record any written instruments necessary to effectuate the purposes set forth herein.

**SPONSOR:** Councilor Gordon Starr, Precinct 1

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

**BOWLES FIELD HISTORIC LANDSCAPE – Lot 14 CONSERVATION RESTRICTION  
BARNSTABLE MA**

Property Address: Lot 14, 0 Commerce Road, Barnstable, MA 02630

**GRANTOR:** Catherine Bowles Brazelton, Trustee of the Catherine Bowles Brazelton 2022 Revocable Trust

**GRANTEE:** Barnstable Land Trust, Inc.

**ADDRESS OF PREMISES:** Commerce Road (Lot 14), Barnstable, Massachusetts

**FOR GRANTOR’S TITLE SEE:** Barnstable Registry District of the Land Court, Document #1465531 noted on Certificate of Title #230822

**FOR GRANTOR’S PLAN:** Barnstable Registry District of the Land Court, Plan # 4686-G

**GRANT OF CONSERVATION RESTRICTION**

**XVII. STATEMENT OF GRANT**

**CATHERINE B. BRAZELTON**, as sole Trustee of the Catherine Bowles Brazelton 2022 Revocable Trust, u/d/t dated August 3, 2022 registered with Barnstable Registry District of the Land Court as Document No. 1,465,530 and noted on Certificate of Title No. 230,822, with a mailing address at 242 Commerce Road, Barnstable, Barnstable County, Massachusetts 02630, being the sole owner of the Premises as defined herein, for her successors and assigns (“Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant, with QUITCLAIM COVENANTS, to **BARNSTABLE LAND TRUST, INC.** (Federal ID #22-2483963), a Massachusetts non-profit corporation with its principal place of business at 1540 Main Street, Barnstable, Barnstable County, Massachusetts 02668, its permitted successors and assigns (“Grantee”), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in the Town of Barnstable, Barnstable County, Commonwealth of Massachusetts containing the entirety of a 1.2-acre parcel of land (“Premises”), which Premises is more particularly described in Exhibit A and shown in the attached reduced copy of a survey plan in Exhibit B, both of which are incorporated herein and attached hereto.

**XVIII. 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 passive outdoor recreational use, and to prevent any use or change that would materially impair the Conservation Values (as defined below).

The Conservation Restriction was acquired utilizing, in part, the Conversation Land Tax Credit Program (CLTC#: 0520) authorized under the Chapter 509 Acts of 2008 Sections 1-4 as amended by Chapter 409 Acts of 2010 Sections 4-13 of the Massachusetts General Court.

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

- Area of Critical Environmental Concern (ACEC): The Premises consist of approximately 1.2 acres proximate to the Barnstable Harbor Area of Critical Environmental Concern (ACEC) a state-designated area due to its significance as a marine estuary.
- Open Space. The Premises contributes to the protection of the scenic and natural character of Cobbs Village, an historic area near Barnstable Harbor within the Town of Barnstable and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises abuts land already conserved, including 26 acres of land under conservation restrictions held by Barnstable Land Trust, and 8.65 acres owned by Massachusetts Audubon Society.
- Public Access. Pedestrian public access to the Premises will be allowed within a designated walking path, for enjoyment of scenic vistas from the property. Maintaining the parcel as open grassland will preserve scenic and historic water views for recreational walkers within the Premises, and views visible to the general public traveling along Commerce Road.
- Biodiversity. The Premises' northern boundary is proximal to areas designated as Critical Natural Landscape, Coastal Adaptation, and Tern Foraging areas, by the Massachusetts Division of Fisheries and Wildlife acting by and through its Natural Heritage and Endangered Species Program ("NHESP"). BioMap2, published by NHESP in 2010, was designed to guide strategic biodiversity conservation in Massachusetts over the next decade by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems. *BioMap2* is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan. The Critical Natural Landscape, and specifically the Coastal Adaptation and Tern Foraging areas, support a diversity of wildlife, including migratory shorebirds and waterfowl including Snowy Egrets, Black Ducks, and Least Terns. Protection of the Premises, therefore, aligns with the NHESP's wildlife and habitat protection objectives and would ensure perpetual protection for each of these state-recognized habitats.

The Premises is 100% within a sandplain grassland, a critically imperiled natural community (State Rank of S1 in MassWildlife's *'Classification of the Natural Communities of Massachusetts'* by Swain, P.C., 2020) of statewide, regionwide, and global importance and includes a stand of native little bluestem grass. The Premises was formerly used for agriculture, and now is maintained as an open grassland habitat.

- Working Farmland. The protection of the Premises will ensure that the open fields contained on the Premises will be permanently available for agriculture that is consistent with the Purposes.
- Water Quality. The Premises falls 100% within the Cape Cod High Yield Aquifer, as identified by the Massachusetts Department of Environmental Protection.
- Climate Change Resiliency. The Premises is identified as an area of above average Terrestrial Resilience according to The Nature Conservancy's (TNC) Resilient Land Mapping Tool, including slightly above average Landscape Diversity and above average Local Connectedness. TNC's Resilient Land Mapping Tool was developed in order to map 'climate-resilient' sites that

are ‘more likely to sustain native plants, animals, and natural processes into the future.’ The protection of these climate resilient sites is an important step in both reducing human and ecosystem vulnerability to climate change and adapting to changing conditions.

- Consistency with Clearly Delineated Town of Barnstable Conservation Policy. Protection of the Premises will further the Town of Barnstable’s documented goals regarding conservation land. The Town outlined its conservation goals in its *Open Space and Recreational Plan* (1984, amended 1987, 1998, 2005, 2010, 2018), identifying goals, policies, and actions to guide conservation efforts, among them the goal of preserving “quality open spaces throughout the Town which protect and enhance its visual heritage.” Additional objectives include (*references are to the 2018 Plan*):

1) "Preservation of open space for protection of drinking water resources, and for protection of other natural, historic and scenic resources is a community-wide priority; and 2) Protection of open space should continue to be an integral component of the Town's efforts." (p. 6) To achieve this vision, the Plan sets several goals for the town including: 1) "To protect and maintain the maximum amount of open space to enhance environmental protection, recreational opportunities and community character, and 2) “Plan, coordinate and execute open space protection measures that complement community efforts to protect water supply, protect fresh and marine surface waters, [and] preserve historic, scenic and cultural resources...” (pp. 10-11).

Additionally, the Barnstable Town Council’s Strategic Plan for fiscal year 2015 identified the goal to preserve and protect significant natural and historic resources for visual quality, outdoor recreation, public access, wildlife habitat, and cultural history.

Moreover, in 1981, the Town of Barnstable adopted a Conservation Restriction Program consisting of policies and guidelines, in particular an *Open Space Policy*, approved by the Board of Selectmen, Assessors, and Conservation Commission, which encourages the use of conservation restrictions in perpetuity to protect natural resources in accordance with the purposes of the *Open Space and Recreation Plan*, and which further specified that purposes of a conservation restriction could include the following:

- preserve scenic view;
- protect groundwater quality for drinking purposes;
- preserve open space;
- to protect a trail;
- preserve important natural habitats of fish, wildlife or plants; and,
- limit or prevent construction on land of natural resource value.

Conservation of the Premises also supports Barnstable Town Council's Strategic Plan FY2015 which seeks to promote the preservation and protection of significant natural resources for visual quality, outdoor recreation, public access, and wildlife habitat.

- Protection of the Premises will assist in achieving Barnstable County conservation goals. In July 1991, the Barnstable County Assembly of Delegates, pursuant to the Cape Cod Commission Act (Chapter 716 of the Acts of 1989), adopted a *Regional Policy Plan* (RPP), amended in 1996, 2002, 2009, 2012, and 2018, which provided, *inter alia* (references are to the 2018 RPP, amended in 2021 to accommodate climate change goals and objectives):
  - “To protect, preserve, or restore the quality and natural values and functions of inland and coastal wetlands and their buffers.” (Wetland Resources Goal, p. 55).

- “To protect, preserve, or restore wildlife and plant habitat to maintain the region’s natural diversity” (Wildlife and Plant Habitat Goal, p. 55).
- In reference to this Wildlife and Plant Habitat Goal, the RPP states, “For many years habitat loss due to development has been the primary threat to the region’s habitats” (p. 32); and
- “To conserve, preserve, or enhance a network of open space that contributes to the region’s natural community resources and systems” (Open Space Goal, p. 55). In reference to this Open Space Goal, the RPP states, “[t]he open space of the Cape is critical to the health of the region’s natural systems, economy, and population. Open space provides habitat for the region’s diverse species and protection of the region’s drinking water supply” (p. 30).

Granting this Conservation Restriction will advance each of these goals outlined in the RPP. The Wetlands Goal will be addressed in protecting areas that will be affected by inland migration of marine wetlands with sea level rise and other climate change impacts. The Wildlife and Plant Habitat Goal will be served because the Premises contains a host of important plant and wildlife species and falls within a NHESP BioMap2 Critical Natural Landscape area. The Open Space Goal will be advanced because the Premises is proximal to several permanently protected parcels.

- Consistency with Clearly Delineated Federal Conservation Policy. Protection of the Premises meets the definition of “conservation purposes” as defined in 26 CFR 1.170A-14(d) (1), because its conservation would: protect the land for outdoor recreation by the general public; reserve the land for education regarding the natural world; protect wildlife habitats; and it would contribute to the preservation of open space because it is proximate to several other parcels already conserved.
- Consistency with Clearly Delineated State Conservation Policy. The Premises possesses significant open space, natural, aesthetic, ecological, plant and wildlife habitat, solid and water resource quality, watershed, and scenic values (collectively “conservation values”) of great importance to the Grantee and the people of Barnstable and the Commonwealth of Massachusetts. Protection of the Premises allows for storm protection by maintaining upland buffer areas as open space and protection of Barnstable Harbor water quality and habitat for saltwater finfish, shellfish and other marine species dependent on this coastal environment.
- Historic and Archaeological Resources. Conservation and appropriate management of the Premises has an important public benefit by preserving historic and archeological resources within the Premises. The Premises is identified by the Massachusetts Historical Commission as being within the Old King’s Highway District listed in the State Register of Historic Places, a local historic district, and adjacent to the Dillingham House. Ancient Native American and historical period archeological sites are recorded elsewhere in proximity along Maraspin Creek in similar environments to the Premises. The site is favorable for ancient and historical period land use and occupation. Evidence of ancient and historical period Native American activities, colonial period agricultural, industrial and residential activities may be present within undisturbed portions of the property.

## **XIX. PROHIBITED and PERMITTED ACTS AND USES**

### **F. 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:

16. 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, shed, asphalt or concrete pavement, graveled area, road, 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;
17. 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;
18. 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;
19. Adverse Impacts to Vegetation. Cutting, removing, or destroying trees, shrubs, grasses or other vegetation;
20. 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;
21. 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;
22. Introduction of Non-Native Species. Introduction of species of animals or plants that are **not native** to Barnstable County, as defined by current published lists of native species, including *The Vascular Plants of Massachusetts: A County Checklist*, by Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (1999) or as amended or contained in a similar professionally acceptable publication available in the future,
23. 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;
24. 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), it being the Grantor's and Grantee's intention to maintain the entire Premises under unified ownership;
25. Use of Premises for Developing Other Land. Using the Premises towards building, septic system, or development requirements on this or any other parcel;

26. Adverse Impacts to Stone Walls, Boundary Markers. Disrupting, removing, or destroying stone walls, granite fence posts, or any other boundary markers;
27. Camping. camping of any form
28. Residential or Industrial Uses. Using the Premises for residential or industrial purposes;
29. Inconsistent Uses. Using the Premises for non-agricultural business purposes or 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.

#### **G. 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.

11. Vegetation Management. Maintaining vegetation, including but not limited to, pruning, trimming, cutting, animal grazing, mowing, and removing brush, controlled burning for habitat management or improvement subject to a controlled burning plan approved by the Grantee and subject to any and all relevant regulations, 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), particularly related to the public scenic view and sandplain grassland habitat maintenance. Vegetation management activities shall be carried out according to the written Maintenance and Stewardship Agreement produced by Grantor and approved by Grantee, which may be amended as the need arises with the approval of the Grantee;
12. 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;
13. Native Plants. The non-commercial propagation of herbaceous plants for the cultivation of native plants from local seed stock. Native plants shall be defined as being native to Barnstable County, as defined by current published lists of native species, including *The Vascular Plants of Massachusetts: A County Checklist*, by Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (1999) or as amended or contained in a similar professionally acceptable publication available in the future;
14. Composting. Stockpiling and composting stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises;
15. 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;

16. 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 prepared by or on behalf of the Grantor, and following submission of a project notification form (PNF) in accordance with Section 27C of Chapter 9 of the Massachusetts General Laws and associated regulations, as amended. The plan shall also address restoration following completion of the archaeological investigation, and shall be approved in advance of such activity, in writing, by the Massachusetts Historical Commission's (MHC) 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;
17. Trails. Maintaining and constructing trails as follows:
  - a. Trail Maintenance. Conducting routine maintenance of trails and associated fencing and signage, which may include widening trail corridors up to eight (8) 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, said approval not to be unreasonably withheld, constructing bridging, boardwalks, footbridges, railings, steps, culverts, benches, cribbing, contouring, or other such features, together with the use of motorized equipment to construct such features;
  - d. Public Access Path. Constructing and maintaining a public access path, up to 225 feet in length, starting at the roadway and running perpendicular to Commerce Road, and parallel to the hedge on the boundary of Lot 14 and 242 Commerce Road to a viewing area. The public access pathway shall be fenced with a sight-pervious split rail fence, and signage shall be erected indicating the area beyond the fence is private land not open to the public. Signage language shall be agreed by Grantor and Grantee. The Grantee is hereby authorized to construct the public access pathway and shall be solely responsible for its maintenance.
18. Signs. Constructing, installing, maintaining, and replacing signs 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, any gift, grant, or other applicable source of support for the conservation of the Premises, including the erection of signs required for the protection of state-listed rare species. Any signs shall not detract from the public's view across the Premises from the adjoining town road;
19. Outdoor Passive Recreational Activities. Hiking, snowshoeing, nature observation and other non-motorized outdoor recreational activities.
20. Landform protection. With the prior approval of the Grantee, measures taken in order to protect landform stability (i.e., to maintain a naturally occurring feature on the land's surface, e.g., bank, dune, hill, from erosion);
21. Fencing. Measures, such as the installation of sight-permeable fencing no more than four (4) feet in height, including wooden split rail fence or similar, taken in order to prevent

unauthorized vehicle entry and dumping, vandalism or other acts destructive to the Premises. Also, the erection of fencing or other barriers with the purpose of protecting state-listed rare species. Any fences shall not detract from the public's view across the Premises from the adjoining town road;

22. Motorized Vehicles. The use of motorized vehicles (1) by the as reasonably necessary to carry out activities permitted in this Paragraph III.B, (2) for access by Grantee for purposes set forth in Paragraph IV, and (3) for access by police, fire, emergency, public works, or other governmental personnel carrying out their official duties. The use of motorized vehicles for the purposes described herein shall be limited to the existing trails;

23. Agricultural Activities.

a. Permitted Activities. "Agricultural Activities" are collectively defined as "Animal Husbandry" and "Horticulture," defined below:

i. Animal Husbandry. Raising animals, including but not limited to dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, and bees, for the purpose of using, consuming, or selling such animals or a product derived from such animals in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for use, consumption, or market.

ii. Horticulture. Raising fruits, vegetables, berries, nuts, and other foods for human consumption, feed for animals, flowers, nursery 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 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 using organic farming methods 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.
- d. Agricultural Improvements. With prior written approval of Grantee, constructing and maintaining the following improvements to conduct Agricultural Activities:
- i. Wells, including but not limited to artesian wells, and any irrigation structures that require subsurface installation;
  - ii. 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 hayracks, “run-in” shelters or other three-sided shelters, and the like, provided that any temporary structure is located and constructed so that it does not detract from the public’s view across the Premises from the adjoining town road. 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. No permanent structures are permitted under this conservation restriction;
  - iii. The right to erect and maintain open-faced fences for boundaries or livestock grazing with a maximum height of four (4) feet, provided that it is sight-permeable and does not detract from the public’s view across the Premises from the adjoining town road;
  - iv. The right to fence any garden using open faced animal enclosure fencing with a maximum height of four (4) feet, provided that it is sight-permeable and does not detract from the public’s view across the Premises from the adjoining town road;

24. Other. Such other non-prohibited activities or uses of the Premises may be permitted with the prior approval of the Grantee provided that the Grantee has made a finding, such finding to be documented in writing and kept on file at the office of the Grantee, that such activities are consistent with the Reserved Rights, do not impair the conservation values and purposes of this Conservation Restriction, and, where feasible, result in a net gain in conservation value of the Premises.

## **H. 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. Where prior conditions included non-native vegetation, the disturbed area shall be restored with native vegetation.

## **I. Compliance with Permits, Regulations, Laws**

The exercise of any Permitted Acts and Uses under Paragraph III.B shall be in compliance with all

applicable federal, state and local laws, rules, regulations, zoning, and permits, and with the Constitution of the Commonwealth of Massachusetts. The inclusion of any Reserved Right requiring a permit, license or other approval from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit, license, or other approval should be issued.

## **J. Notice and Approval**

5. 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.
6. Grantee Review. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.
7. Resubmittal. Grantee's failure to respond within sixty (60) days of receipt shall not constitute approval of the request. Grantor may subsequently submit the same or a similar request for approval.

## **XX. INSPECTION AND ENFORCEMENT**

### **G. 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.

### **H. Legal and Injunctive Relief**

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

5. 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 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 Grantor immediately ceases the violation and Grantee determines that there is no ongoing violation. In instances where a violation may also constitute a violation of local, state, or federal law, the Grantee may notify the proper authorities of such violation.
6. Reimbursement of Costs and Expenses of Enforcement. Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including counsel fees) incurred by the Grantee in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey by a Massachusetts licensed professional land surveyor and to have the boundaries permanently marked.

#### **I. Non-Waiver**

Enforcement of the terms of this Conservation Restriction shall be at the sole discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

#### **J. 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.

#### **K. 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.

### **XXI. PUBLIC ACCESS**

Subject to the provisions of this Conservation Restriction, the Grantor hereby grants access to the

Premises to the general public and agrees to take no action to prohibit or discourage access to and use of the Premises by the general public, but only for daytime use and only for the passive recreational use of the proposed public access path as described in Paragraph III.B.7.d. and provided that such agreement by Grantor is subject to the Grantor's reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the protection of the Purposes and Conservation Values. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in this paragraph. The Grantee may require the Grantor to post the Premises against any use by the public that results in material impairment of the Conservation Values. This grant of public access to the Premises is solely for the purposes described in Section 17C of Chapter 21 of the Massachusetts General Laws and the Grantor and Grantee hereto express their intent to benefit from exculpation from liability to the extent provided in such section.

Subject to the provisions of this Conservation Restriction, the Grantor hereby grants to the Grantee, after at least three (3) days verbal or written notice, the right to conduct activities required and allowed under the Maintenance and Stewardship Agreement referred to in Paragraph III.B.1, the right to construct and maintain the proposed public access path, and the right to enter the Premises as reasonably necessary to conduct these activities. Access granted by this Paragraph is in addition to any other right of access of the Grantee provided herein.

## **XXII. TERMINATION/RELEASE/EXTINGUISHMENT**

### **E. 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.

### **F. 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 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.

### **G. 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 shall be kept on file by Grantee. Such proportionate value of the Grantee's property right shall remain constant.

## **H. 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.

## **XXIII. DURATION and ASSIGNABILITY**

### **D. 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.

### **E. 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.

### **F. 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:

5. the Grantee requires that the Purposes continue to be carried out;
6. the assignee is not an owner of the fee in the Premises;
7. 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
8. the assignment complies with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **XXIV. SUBSEQUENT TRANSFERS**

### **C. 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 twenty (20) days prior to the effective date of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. If the 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 register, in the Barnstable Registry District of the Land Court, 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.

#### **D. 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.

#### **XXV. ESTOPPEL CERTIFICATES**

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

#### **XXVI. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction 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.

#### **XXVII. AMENDMENT**

##### **C. Limitations on Amendment**

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:

9. affect this Conservation Restriction's perpetual duration;
10. be inconsistent with or materially impair the Purposes;
11. 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;
12. affect the status of Grantee as a "qualified organization" or "eligible donee" under any applicable laws, including 26 U.S.C. Section 170(h) and related regulations, and Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws; or
13. 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

14. alter or remove the provisions described in Paragraph VI (Termination/Release/Extinguishment); or
15. cause the provisions of this Paragraph XI to be less restrictive; or
16. cause the provisions described in Paragraph VII.C (Running of the Benefit) to be less restrictive

#### **D. Amendment Approvals and Recording**

No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor, approved by the Town of Barnstable and by the Secretary in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, and registered in the Barnstable Registry District of the Land Court.

#### **XXVIII. 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 registered in the Barnstable Registry District of the Land Court.

#### **XXIX. 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, sent by first class mail postage pre-paid, or by email with return receipt, addressed as follows:

To Grantor: Catherine Bowles Brazelton 2022 Revocable Trust  
c/o Catherine B. Brazelton  
242 Commerce Road  
Barnstable, MA, 02630  
[kitbraz@gmail.com](mailto:kitbraz@gmail.com)

To Grantee: Barnstable Land Trust, Inc.  
1540 Main Street  
West Barnstable MA 02668

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.

#### **XXX. GENERAL PROVISIONS**

##### **E. Controlling Law**

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

##### **F. 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.

#### **G. 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.

#### **H. 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 the Conservation Restriction, all of which are merged herein.

### **XXXI. 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”) 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 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.

### **XXXII. MISCELLANEOUS**

#### **H.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.

#### **I. 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.

**J. Subordination**

The Grantor shall record at the Barnstable Registry District of the Land Court simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

**K. Executory Limitation**

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

**L. 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.

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

Grantor - Catherine B. Brazelton, Trustee of Catherine Bowles Brazelton 2022 Revocable Trust  
Grantee Acceptance - Barnstable Land Trust, Inc.  
Approval of Town Manager  
Approval of Town of Barnstable Town Council  
Approval of the Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts.

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

Exhibit A: Legal Description of Premises  
Exhibit B: Reduced Copy of Recorded Plan of Premises  
Exhibit C: Town Council Order

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

Catherine B. Brazelton, as Trustee of Catherine Bowles Brazelton 2022 Revocable Trust

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss:

On this day of , 2023, before me, the undersigned notary public, personally appeared Catherine B. Brazelton, 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 she signed it voluntarily for its stated purpose.

---

Notary Public: Mark H. Robinson  
My Commission Expires: 8 July 2027

**ACCEPTANCE OF GRANT**

The foregoing Conservation Restriction from Catherine Bowles Brazelton 2022 Revocable Trust was accepted by Barnstable Land Trust, Inc. this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

Leigh Townes  
Its: President, duly authorized

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

Jill McCleary  
Its: Treasurer, duly authorized

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss. \_\_\_\_\_ 2023

Then personally appeared the above-named Leigh Townes, President, Barnstable Land Trust, Inc. and Jill McCleary, Treasurer, Barnstable Land Trust, Inc., the corporation named in the foregoing instrument, and proved to me through satisfactory evidence of identification, which was , to be the persons whose names are signed on the document, and each acknowledged she is duly authorized to act on behalf of said corporation, and each further acknowledged the foregoing instrument to be the free act and deed of said corporation, before me.

Mark H. Robinson, Notary Public  
My commission expires: 8 July 2027

**APPROVAL OF TOWN MANAGER**

I, Mark S. Ells, as Town Manager of the Town of Barnstable, Massachusetts, authorized by a vote of the Barnstable Town Council at a duly called meeting held on \_\_\_\_\_ on Agenda Item \_\_\_\_\_, a copy of the Town Council Order being attached hereto as Exhibit C, hereby approve the foregoing Conservation Restriction from Catherine Bowles Brazelton 2022 Revocable Trust to the Barnstable Land Trust, Inc. pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

**TOWN OF BARNSTABLE  
TOWN MANAGER:**

\_\_\_\_\_

Mark S. Ells

**THE COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss

On the \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Mark S. Ells, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, and who being by me duly sworn did say that he is the Town Manager of the Town of Barnstable; that he is duly authorized to act on behalf the Town of Barnstable and she acknowledged the foregoing instrument to be his free act and deed.

\_\_\_\_\_

Notary Public  
My Commission Expires

**APPROVAL OF THE TOWN OF BARNSTABLE  
TOWN COUNCIL**

At a public meeting duly held on \_\_\_\_\_2023, the Town Council of the Town of Barnstable, Massachusetts, voted to approve the foregoing Conservation Restriction from Catherine Bowles Brazelton 2022 Revocable Trust to the Barnstable Land Trust, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

**TOWN COUNCIL PRESIDENT:**

\_\_\_\_\_  
Matthew Levesque

**COMMONWEALTH OF MASSACHUSETTS**

**Barnstable, ss**

On the \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared **Matthew Levesque**, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, and who being by me duly sworn did say that he is the President of the Town Council of the Town of Barnstable; that he is duly authorized to act on behalf the Town Council; and he acknowledged the foregoing instrument to be the free act and deed of Town of Barnstable Town Council.

\_\_\_\_\_  
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 Catherine Bowles Brazelton 2022 Revocable Trust to Barnstable Land Trust, 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

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss:

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

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

## EXHIBIT A

### Description of Premises

The Premises subject to this Conservation Restriction is a vacant tract of land located in Cobbs Village in the Town of Barnstable, Barnstable County, Commonwealth of Massachusetts, more particularly bounded and described as follows:

The land in Barnstable in Barnstable County, Massachusetts shown as Lot 14 on a plan entitled “*Plan of Land of Commerce Road Barnstable, MA, Prepared For Dillingham Properties LLC*”, dated 5/18/2022 (*Revised*), by *Daniel A. Ojala, PLS, Down Cape Engineering, Inc., 939 Main Street (Route 6A), YarmouthPort, MA 02675* and filed in the Land Registration Office in Boston as Land Court Plan 4686-G.

Containing 1.2 acres, more or less.

For Grantor's Title see Barnstable Registry District of the Land Court, Document # 1465531, noted on Certificate of Title #230822.

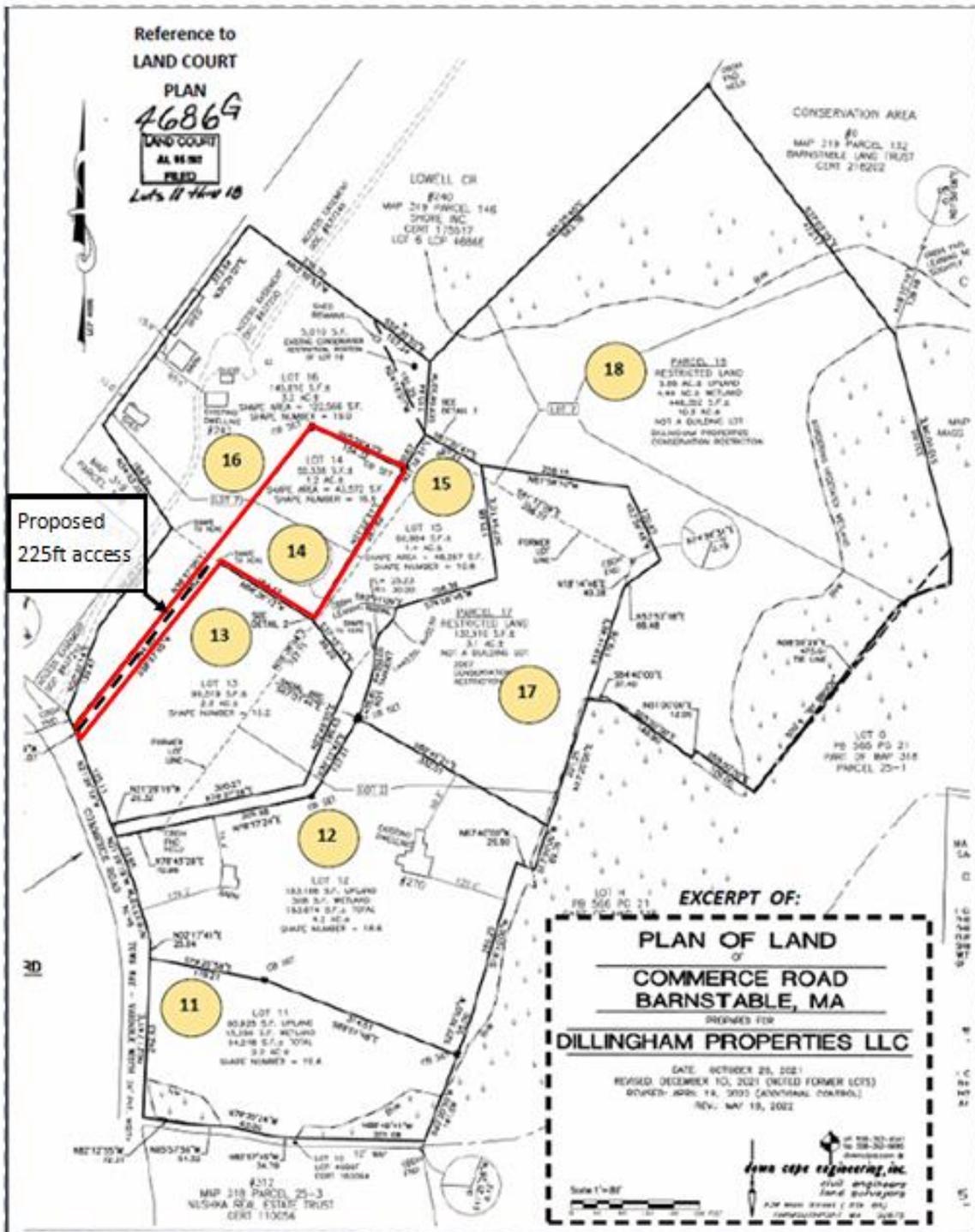
Town of Barnstable Assessor Map 318, Portion of Parcel 025-001 & 025-002

Street Address: LOT 14, 0 Commerce Road, Barnstable, MA 02630

# EXHIBIT B

## Reduced Copy of Plan of Premises

For official full size plan see Barnstable Registry District of the Land Court, Plan # 4686-G.



# EXHIBIT C

Town Council Order

# BARNSTABLE TOWN COUNCIL

ITEM # 2023-209  
INTRO: 06/15/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Councilor Gordon Starr  
**DATE:** June 15, 2023  
**SUBJECT:** Approving a Conservation Restriction on 1.2 acres of land on Commerce Road in Barnstable Village between Catherine Bowles Brazelton, Trustee of the Catherine Bowles Brazelton 2022 Revocable Trust (Grantor) and Barnstable Land Trust (Grantee)

**BACKGROUND:** This item has been placed on the agenda for the Council’s approval of a Conservation Restriction (CR) to be granted by Catherine Bowles Brazelton, Trustee of the Catherine Bowles Brazelton 2022 Revocable Trust and to be held by the Barnstable Land Trust over approximately 1.2 acres of land on Commerce Road in the Cobbs Village neighborhood of Barnstable Village. The current owner, Catherine Bowles Brazelton, Trustee, has been deemed eligible to receive a Conservation Land Tax Credit (CLTC) for the donation of this Conservation Restriction to the Barnstable Land Trust. This parcel is being preserved in conjunction with two additional parcels (Lot 13 and Lot 15), under separate CRs totaling 4.9 acres (see attached map). Only Lot 13 includes Town participation, in supporting the BLT purchase of the parcel with Community Preservation Act (CPA) funds, and in holding the Conservation Restriction. For this lot (Lot 14) and Lot 15, the owners are donating Conservation Restrictions to BLT.

**ANALYSIS:** This Conservation Restriction preserves a landmark property, with sweeping open coastal views from Commerce Road to the Sandy Neck lighthouse across the harbor. The conservation restriction preserves a critically imperiled sandplain grassland, which includes native little bluestem grass, Cape Cod’s original “prairie grass.” The property was formerly used for crops and pasture and is now maintained as an open grassland.

Admiral Francis T. Bowles (1859-1927) retired to Barnstable Harbor on a 100-acre saltwater farm owned by the Lowell family, his in-laws, where he died. The family honors his name in the Bowles Field Landscape Project. Over the past 30 years, the extended family has conducted multiple gifts of land and CRs at the farm totaling 40 acres.

This proposed Conservation Restriction conforms to the Open Space Policy of the Town, adopted in 1981, which “encouraged...grants of conservation restrictions” which yielded “benefits to the Town,” and furthers the Town of Barnstable’s Updates to its Open Space & Recreation Plan. Specifically, the Conservation Restriction offers the following public benefits and will:

- preserve open space,
- link to other conservation land,
- preserve important natural habitats of wildlife or plants,
- prevent construction on land of natural resource value
- preserve scenic views and a culturally significant landscape

The current owner, Catherine Bowles Brazelton, Trustee wishes to restrict the use of the 1.2 undeveloped acres of her property to conservation purposes. The conservation restriction is required to receive a State Conservation Land Tax Credit for the protection of the property. These programs require that a town or non-profit hold the conservation restriction to protect the land for conservation in perpetuity. All CRs held by non-profits must be approved by the Town (and the State) under G.L. Ch. 184, ss. 31-33. Town Council action is needed for the Town to approve the CR.

**APPROVALS:** The Conservation Commission voted its support on March 14, 2023. The Land Acquisition and Preservation Committee voted to recommend the Conservation Restriction to Town Council on March 13, 2023.

**FISCAL IMPACT:** Any reduction in property taxes as a result of this action will get redistributed to all other taxpayers. Under Proposition 2 ½ future tax levies are not reduced by this action.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of the Conservation Restriction.

**STAFF ASSISTANCE:** Kate Connolly, Assistant Town Attorney

**B. NEW BUSINESS (May be acted upon) (Majority Vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-210  
INTRO: 06/15/2023**

**2023-210 APPROVING A CONSERVATION RESTRICTION ON 1.4 ACRES OF LAND ON COMMERCE ROAD IN BARNSTABLE VILLAGE BETWEEN THOMAS B. BRAZELTON, III (GRANTOR) AND BARNSTABLE LAND TRUST (GRANTEE)**

**RESOLVED:** That, pursuant to G.L.c. 184, sections 31-33, the Town Council does hereby approve and authorize the Town Council President to sign on behalf of the Town Council a Conservation Restriction (“CR”) between Thomas B. Brazelton, III (Grantor), and Barnstable Land Trust (Grantee), over approximately 1.4 acres of vacant land in Barnstable Village as shown on:

A portion of Map 318, Parcel 025-001 and 025-002, shown as Lot 15 on a plan entitled “*Plan of Land of Commerce Road Barnstable, MA, Prepared For Dillingham Properties LLC*”, dated 5/18/2022 (Revised), by Daniel A. Ojala, PLS, Down Cape Engineering, Inc., 939 Main Street (Route 6A), YarmouthPort, MA 02675 and filed in the Land Registration Office in Boston as Land Court Plan 4686G.

said Conservation Restriction to be donated to the Barnstable Land Trust for the purposes of preserving open space, rare species habitat and the scenic and natural character of the Cobbs Village neighborhood. This vote approves the CR in substantially the form attached hereto. Said CR is subject to approval by the Secretary of Energy and Environmental Affairs, who may make minor revisions thereto. It is further ordered that the Town Manager is authorized to execute, receive, deliver and record any written instruments necessary to effectuate the purposes set forth herein.

**SPONSOR:** Councilor Gordon Starr, Precinct 1

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

**BOWLES FIELD HISTORIC LANDSCAPE – Lot 15 CONSERVATION RESTRICTION  
BARNSTABLE MA**

Property Address: Lot 15, 0 Commerce Road, Barnstable, MA 02630

**GRANTOR:** Thomas B. Brazelton, III

**GRANTEE:** Barnstable Land Trust, Inc.

**ADDRESS OF PREMISES:** Commerce Road (Lot 15), Barnstable, Massachusetts

**FOR GRANTOR’S TITLE SEE:** Barnstable Registry District of the Land Court, Document # 1465529, noted on Certificate of Title #230,821

**FOR GRANTOR’S PLAN SEE:** Barnstable Registry District of the Land Court Plan No. 4686-G

**GRANT OF CONSERVATION RESTRICTION**

**XXXIII.STATEMENT OF GRANT**

**THOMAS B. BRAZELTON, III**, with a mailing address at 9410 Hill Creek Drive, Verona, WI 53593, being the sole owner of the Premises as defined herein, for my successors and assigns (“Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant, with QUITCLAIM COVENANTS, to **BARNSTABLE LAND TRUST, INC.** (Federal ID #22-2483963), a Massachusetts non-profit corporation with its principal place of business at 1540 Main Street, West Barnstable, MA 02668, their permitted successors and assigns (“Grantee”), for nominal consideration, **IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES**, the following Conservation Restriction on land located in the Town of Barnstable, Barnstable County, Commonwealth of Massachusetts containing the entirety of a 1.4-acre parcel of land (“Premises”), which Premises is more particularly described in Exhibit A and shown in the attached reduced copy of a survey plan in Exhibit B, both of which are incorporated herein and attached hereto.

**XXXIV.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 Restriction was acquired utilizing, in part, the Conversation Land Tax Credit Program (CLTC#: 0580) authorized under Sections 1-4 of Chapter 509 of the Acts of 2008, as amended by Sections 4-13 of Chapter 409 of the Acts of 2010 and Section 15 of Chapter 286 of the Acts of 2014 of the Massachusetts General Court.

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

- Area of Critical Environmental Concern (ACEC): The Premises consist of approximately 1.4 acres proximate to the Barnstable Harbor Area of Critical Environmental Concern (ACEC) a state-designated area due to its significance as a marine estuary.
- Open Space. The Premises contributes to the protection of the scenic and natural character of Cobbs Village, an historic area near Barnstable Harbor within the Town of Barnstable and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises abuts land already conserved, including 26 acres of land under conservation restrictions held by Barnstable Land Trust, and 8.65 acres owned by Massachusetts Audubon Society.
- Biodiversity. The Premises' northern boundary is proximal to areas designated as Critical Natural Landscape, Coastal Adaptation, and Tern Foraging areas, by the Massachusetts Division of Fisheries and Wildlife acting by and through its Natural Heritage and Endangered Species Program ("NHESP"). BioMap, published by NHESP, was designed to guide strategic biodiversity conservation in Massachusetts by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems. *BioMap* is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan. The Critical Natural Landscape, and specifically the Coastal Adaptation and Tern Foraging areas, support a diversity of wildlife, including migratory shorebirds and waterfowl including Snowy Egrets, Black Ducks, and Least Terns. Protection of the Premises, therefore, aligns with the NHESP's wildlife and habitat protection objectives and would ensure perpetual protection for each of these state-recognized habitats.

The Premises is 100% within a sandplain grassland, a critically imperiled natural community (State Rank of S1 in MassWildlife's *'Classification of the Natural Communities of Massachusetts'* by Swain, P.C., 2020) of statewide, regionwide, and global importance, and includes a stand of native little bluestem grass. The Premises was formerly used for agriculture, and now is maintained as an open grassland habitat.

- Working Farmland. The protection of the Premises will ensure that the open fields contained on the Premises will be permanently available for agriculture that is consistent with the Purposes.
- Water Quality. The Premises falls 100% within the Cape Cod High Yield Aquifer, as identified by the Massachusetts Department of Environmental Protection.
- Climate Change Resiliency. The Premises is identified as an area of above average Terrestrial *Resilience* according to The Nature Conservancy's (TNC) Resilient Land Mapping Tool, including slightly above average Landscape Diversity and above average Local Connectedness. TNC's Resilient Land Mapping Tool was developed in order to map 'climate-resilient' sites that are 'more likely to sustain native plants, animals, and natural processes into the future.' The protection of these climate resilient sites is an important step in both reducing human and ecosystem vulnerability to climate change and adapting to changing conditions.
- Consistency with Clearly Delineated Town of Barnstable Conservation Policy. Protection of the Premises will further the Town of Barnstable's documented goals regarding conservation land. The Town outlined its conservation goals in its *Open Space and Recreational Plan* (1984, amended 1987, 1998, 2005, 2010, 2018), identifying goals, policies, and actions to guide conservation efforts, among them the goal of preserving "quality open spaces throughout the

Town which protect and enhance its visual heritage.” Additional objectives include (*references are to the 2018 Plan*):

1) "Preservation of open space for protection of drinking water resources, and for protection of other natural, historic and scenic resources is a community-wide priority; and 2) Protection of open space should continue to be an integral component of the Town's efforts." (p. 6) To achieve this vision, the Plan sets several goals for the town including: 1) "To protect and maintain the maximum amount of open space to enhance environmental protection, recreational opportunities and community character," and 2) "Plan, coordinate and execute open space protection measures that complement community efforts to protect water supply, protect fresh and marine surface waters, [and] preserve historic, scenic and cultural resources..." (pp. 10-11).

Additionally, the Barnstable Town Council's Strategic Plan for fiscal year 2015 identified the goal to preserve and protect significant natural and historic resources for visual quality, outdoor recreation, public access, wildlife habitat, and cultural history.

Moreover, in 1981, the Town of Barnstable adopted a Conservation Restriction Program consisting of policies and guidelines, in particular an *Open Space Policy*, approved by the Board of Selectmen, Assessors, and Conservation Commission, which encourages the use of conservation restrictions in perpetuity to protect natural resources in accordance with the purposes of the *Open Space and Recreation Plan*, and which further specified that purposes of a conservation restriction could include the following:

- preserve scenic view;
- protect groundwater quality for drinking purposes;
- preserve open space;
- to protect a trail;
- preserve important natural habitats of fish, wildlife or plants; and,
- limit or prevent construction on land of natural resource value.

Conservation of the Premises also supports Barnstable Town Council's Strategic Plan FY2015 which seeks to promote the preservation and protection of significant natural resources for visual quality, outdoor recreation, public access, and wildlife habitat.

- Protection of the Premises will assist in achieving Barnstable County conservation goals. In July 1991, the Barnstable County Assembly of Delegates, pursuant to the Cape Cod Commission Act (Chapter 716 of the Acts of 1989), adopted a *Regional Policy Plan (RPP)*, amended in 1996, 2002, 2009, 2012, and 2018, which provided, *inter alia* (references are to the 2018 RPP, amended in 2021 to accommodate climate change goals and objectives):
  - “To protect, preserve, or restore the quality and natural values and functions of inland and coastal wetlands and their buffers.” (Wetland Resources Goal, p. 55).
  - “To protect, preserve, or restore wildlife and plant habitat to maintain the region’s natural diversity” (Wildlife and Plant Habitat Goal, p. 55).
  - In reference to this Wildlife and Plant Habitat Goal, the RPP states, “For many years habitat loss due to development has been the primary threat to the region’s habitats” (p. 32); and
  - “To conserve, preserve, or enhance a network of open space that contributes to the region’s natural community resources and systems” (Open Space Goal, p. 55). In reference to this Open Space Goal, the RPP states, “[t]he open space of the Cape is critical to the health of the region’s natural systems, economy, and population. Open

space provides habitat for the region's diverse species and protection of the region's drinking water supply" (p. 30).

Granting this Conservation Restriction will advance each of these goals outlined in the RPP. The Wetlands Goal will be addressed in protecting areas that will be affected by inland migration of marine wetlands with sea level rise and other climate change impacts. The Wildlife and Plant Habitat Goal will be served because the Premises contains a host of important plant and wildlife species and falls within a NHESP BioMap Critical Natural Landscape area. The Open Space Goal will be advanced because the Premises is proximal to several permanently protected parcels.

- Consistency with Clearly Delineated Federal Conservation Policy. Protection of the Premises meets the definition of "conservation purposes" as defined in 26 CFR 1.170A-14(d) (1), because its conservation would: reserve the land for education regarding the natural world; protect wildlife habitats; and it would contribute to the preservation of open space because it is proximate to several other parcels already conserved.
- Historic and Archaeological Resources. Conservation and appropriate management of the Premises has an important public benefit by preserving historic and archeological resources within the Premises. The Premises is identified by the Massachusetts Historical Commission as being within the Old King's Highway District listed in the State Register of Historic Places, a local historic district, and adjacent to the Dillingham House. Ancient Native American and historical period archeological sites are recorded elsewhere in proximity along Maraspin Creek in similar environments to the Premises. The site is favorable for ancient and historical period land use and occupation. Evidence of ancient and historical period Native American activities, colonial period agricultural, industrial and residential activities may be present within undisturbed portions of the property.

## **XXXV. PROHIBITED and PERMITTED ACTS AND USES**

### **K. 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:

30. 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, shed, asphalt or concrete pavement, graveled area, road, 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;
31. 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;
32. 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;

33. Adverse Impacts to Vegetation. Cutting, removing, or destroying trees, shrubs, grasses or other vegetation;
34. 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;
35. 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;
36. Introduction of Non-Native Species. Introduction of species of animals or plants that are **not native** to Barnstable County, as defined by current published lists of native species, including *The Vascular Plants of Massachusetts: A County Checklist*, by Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (1999) or as amended or contained in a similar professionally acceptable publication available in the future;
37. 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;
38. 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), it being the Grantor's and Grantee's intention to maintain the entire Premises under unified ownership;
39. Use of Premises for Developing Other Land. Using the Premises towards building or development requirements on this or any other parcel;
40. Adverse Impacts to Boundary Markers. Disrupting, removing, or destroying granite fence posts, or any other boundary markers;
41. Camping. Camping of any form;
42. Residential or Industrial Uses. Using the Premises for residential or industrial purposes;
43. 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.

**L. 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.

25. Vegetation Management. Maintaining vegetation, including but not limited to, pruning, trimming, cutting, animal grazing, mowing, removing brush, and controlled burning for habitat management or improvement subject to a controlled burning plan approved by the Grantee and subject to any and all relevant regulations, 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), including for the purposes of public scenic view and sandplain grassland habitat maintenance. Vegetation management activities shall be carried out according to the written Maintenance and Stewardship Agreement produced by Grantor and approved by Grantee, which may be amended as the need arises with the approval of the Grantee;
26. 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;
27. Native Plants. The non-commercial propagation of herbaceous plants for the cultivation of native plants from local seed stock. Native plants shall be defined as being native to Barnstable County, as defined by current published lists of native species, including *The Vascular Plants of Massachusetts: A County Checklist*, by Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (1999) or as amended or contained in a similar professionally acceptable publication available in the future;
28. Composting. Stockpiling and composting stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises;
29. 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;
30. 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 prepared by or on behalf of the Grantor, and following submission of a project notification form (PNF) in accordance with Section 27C of Chapter 9 of the Massachusetts General Laws and associated regulations, as amended. The plan shall also address restoration following completion of the archaeological investigation, , and shall be approved in advance of such activity, in writing, by the Massachusetts Historical Commission's (MHC) 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;
31. Trails. Maintaining and constructing trails as follows:
  - a. Trail Maintenance. Conducting routine maintenance of trails, which may include widening trail corridors up to eight (8) 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, said approval not to be unreasonably withheld, constructing bog bridging, boardwalks, footbridges, railings, steps, culverts, benches, cribbing, contouring, or other such features, together with the use of motorized equipment to construct such features;
- 32. Signs. Constructing, installing, maintaining, and replacing signs 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, any gift, grant, or other applicable source of support for the conservation of the Premises, including the erection of signs required for the protection of state-listed rare species. Any signs shall not detract from the public's view across the Premises from the adjoining town road;
- 33. Outdoor Passive Recreational Activities. Hiking, snowshoeing, nature observation, and other non-motorized outdoor recreational activities;
- 34. Landform protection. With the prior approval of the Grantee, measures taken in order to protect landform stability, including measures to maintain a naturally-occurring feature on the land's surface (e.g., bank, dune, hill) from erosion;
- 35. Fencing. The installation of sight-permeable fencing including wooden split rail fence or similar, no more than four (4) feet in height, in order to prevent unauthorized vehicle entry and dumping, vandalism or other acts destructive to the Premises. Also, the erection of fencing or other barriers with the purpose of protecting state-listed rare species. Any fences shall not detract from the public's view across the Premises from the adjoining town road;
- 36. Motorized Vehicles. The use of motorized vehicles (1) as reasonably necessary to carry out activities permitted in this Paragraph III.B and (2) for access by Grantee for purposes set forth in Paragraph IV, (3) for access by police, fire, emergency, public works, or other governmental personnel carrying out their official duties and (4) by persons with mobility impairments in carrying out activities permitted by this Restriction. The use of motorized vehicles for the purposes described herein shall be limited to the existing trails;
- 37. Agricultural Activities.
  - a. Permitted Activities. "Agricultural Activities" are collectively defined as "Animal Husbandry" and "Horticulture," defined below:
    - i. Animal Husbandry. Raising animals, including but not limited to dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, and bees, for the purpose of using, consuming, or selling such animals or a product derived from such animals in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for use, consumption, or market.
    - ii. Horticulture. Raising fruits, vegetables, berries, nuts, and other foods for human consumption, feed for animals, flowers, nursery 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 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 using organic farming methods 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.
  - d. Agricultural Improvements. With prior written approval of Grantee, constructing and maintaining the following improvements to conduct Agricultural Activities:
    - i. Wells, including but not limited to artesian wells, and any irrigation structures that require subsurface installation;
    - ii. open-faced fencing for boundaries or livestock grazing with a maximum height of four (4) feet, and provided such fences shall be sight-permeable and shall not detract from the public’s view across the Premises from the adjoining town road;
    - iii. fencing of any garden using open faced animal enclosure fencing with a maximum height of four (4) feet, provided that such fencing is sight-permeable and does not detract from the public’s view across the Premises from the adjoining town road;
38. Other. Such other non-prohibited activities or uses of the Premises may be permitted with the prior approval of the Grantee provided that the Grantee has made a finding, such finding to be documented in writing and kept on file at the office of the Grantee, that such activities

are consistent with the Permitted Acts and Uses, do not impair the conservation values and purposes of this Conservation Restriction, and, where feasible, result in a net gain in conservation value of the Premises.

#### **M. 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.

#### **N. Compliance with Permits, Regulations, Laws**

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

#### **O. Notice and Approval**

8. 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.
9. Grantee Review. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.
10. Resubmittal. Grantee's failure to respond within sixty (60) days of receipt shall not constitute approval of the request. Grantor may subsequently submit the same or a similar request for approval.

### **XXXVI.INSPECTION AND ENFORCEMENT**

#### **L. 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.

**M. Legal and Injunctive Relief**

7. Enforcement. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain compensatory relief, including without limitation, compensation for interim losses (i.e., ecological and public use service losses that occur from the date of the violation until the date of restoration) 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.
8. 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 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 Grantor immediately ceases the violation and Grantee determines that there is no ongoing violation. In instances where a violation may also constitute a violation of local, state, or federal law, the Grantee may notify the proper authorities of such violation.
9. Reimbursement of Costs and Expenses of Enforcement. Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including counsel fees) incurred by the Grantee in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey by a Massachusetts licensed professional land surveyor and to have the boundaries permanently marked.

**N. Non-Waiver**

Enforcement of the terms of this Conservation Restriction shall be at the sole discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

**O. 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.

## **P. 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.

## **XXXVII. 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.

Subject to the provisions of this Conservation Restriction, the Grantor hereby grants to the Grantee, after at least three (3) days verbal or written notice, the right to conduct activities required and allowed under the Maintenance and Stewardship Agreement referred to in Paragraph III.B.1, and to enter the Premises as reasonably necessary to conduct these activities. Access granted by this Paragraph is in addition to any other right of access of the Grantee provided herein.

## **XXXVIII. TERMINATION/RELEASE/EXTINGUISHMENT**

### **I. 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.

### **J. 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 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.

### **K. 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 shall be kept on file by Grantee. Such proportionate value of the Grantee's property right shall remain constant.

#### **L. 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.

### **XXXIX.DURATION and ASSIGNABILITY**

#### **G. 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.

#### **H. 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.

#### **I. 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:

9. the Grantee requires that the Purposes continue to be carried out;
10. the assignee is not an owner of the fee in the Premises;
11. 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
12. the assignment complies with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

### **XL. SUBSEQUENT TRANSFERS**

#### **E. 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 twenty (20) days prior to the effective date of such

transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. If the 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 Barnstable Registry District of the Land Court, 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.

#### **F. 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.

#### **XLII. ESTOPPEL CERTIFICATES**

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

#### **XLIII. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction 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.

#### **XLIV. AMENDMENT**

#### **E. Limitations on Amendment**

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:

17. affect this Conservation Restriction's perpetual duration;
18. be inconsistent with or materially impair the Purposes;
19. 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;
20. affect the status of Grantee as a "qualified organization" or "eligible donee" under any applicable laws, including 26 U.S.C. Section 170(h) and related regulations, and Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws; or

21. 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
22. alter or remove the provisions described in Paragraph VI (Termination/Release/Extinguishment); or
23. cause the provisions of this Paragraph XI to be less restrictive; or
24. cause the provisions described in Paragraph VII.C (Running of the Benefit) to be less restrictive

## **F. Amendment Approvals and Recording**

No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor, approved by the Town of Barnstable and by the Secretary in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, and registered in the Barnstable Registry District of the Land Court.

## **XLIV. 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 Barnstable Registry District of the Land Court.

## **XLV. 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, or by email with return receipt, addressed as follows:

To Grantor:                Thomas B. Brazelton, III  
                                  9410 Hill Creek Dr.  
                                  Verona, WI 53593  
                                  [tbrazelton3@gmail.com](mailto:tbrazelton3@gmail.com) and [pbraz235@gmail.com](mailto:pbraz235@gmail.com)

To Grantee:                Barnstable Land Trust, Inc.  
                                  1540 Main Street  
                                  West Barnstable MA 02668  
                                  [info@blt.org](mailto:info@blt.org)

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.

## **XLVI. GENERAL PROVISIONS**

### **I. Controlling Law**

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

### **J. 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.

#### **K. 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.

#### **L. 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 the Conservation Restriction, all of which are merged herein.

### **XLVII.BASELINE DOCUMENTATION REPORT**

The Conservation Values, as well as the natural features, current uses of, and existing improvements on the Premises, such as, but not limited to, trails, woods roads, structures, meadows or other cleared areas, agricultural areas, and scenic views, as applicable, are described in a Baseline Documentation Report (“Baseline Report”) titled “*Bowles Field Lot 13, 14, 15 Conservation Restrictions, Barnstable, MA – 2023*” dated \_\_\_\_\_ 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 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.

### **XLVIII.MISCELLANEOUS**

#### **O. 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.

#### **P. 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.

**Q. Subordination**

The Grantor shall record at the Barnstable Registry District of the Land Court simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

**R. Executory Limitation**

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

**S. 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.

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

Grantor - Thomas B. Brazelton, III

Grantee Acceptance - Barnstable Land Trust, Inc.

Approval of Town Manager

Approval of Town of Barnstable Town Council

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

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

Exhibit A: Legal Description of Premises

Exhibit B: Reduced Copy of Recorded Plan of Premises

Exhibit C: Town Council Order

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

Thomas B. Brazelton III

STATE OF WISCONSIN

\_\_\_\_\_ County:

On this day of , 2023, before me, the undersigned notary public, personally appeared Thomas B. Brazelton III, 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 s/he signed it voluntarily for its stated purpose.

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

**ACCEPTANCE OF GRANT**

The foregoing Conservation Restriction from Thomas B. Brazelton III was accepted by Barnstable Land Trust, Inc. this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

Leigh Townes  
Its: President, duly authorized

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

Jill McCleary  
Its: Treasurer, duly authorized

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss. \_\_\_\_\_ 2023

Then personally appeared the above-named Leigh Townes, President, Barnstable Land Trust, Inc. and Jill McCleary, Treasurer, Barnstable Land Trust, Inc., the corporation named in the foregoing instrument, and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the persons whose names are signed on the document, and each acknowledged they are duly authorized to act on behalf of said corporation, and each further acknowledged the foregoing instrument to be the free act and deed of said corporation, before me.

Mark H. Robinson, Notary Public  
My commission expires: 8 July 2027

**APPROVAL OF TOWN MANAGER**

I, Mark S. Ells, as Town Manager of the Town of Barnstable, Massachusetts, authorized by a vote of the Barnstable Town Council at a duly called meeting held on \_\_\_\_\_ on Agenda Item \_\_\_\_\_, a copy of the Town Council Order being attached hereto as Exhibit C, hereby approve the foregoing Conservation Restriction from Thomas B. Brazelton III, to the Barnstable Land Trust, Inc. pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

**TOWN OF BARNSTABLE  
TOWN MANAGER**

\_\_\_\_\_

Mark S. Ells

**THE COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss

On the \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Mark S. Ells, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, and who being by me duly sworn did say that he is the Town Manager of the Town of Barnstable; that he is duly authorized to act on behalf the Town of Barnstable and he acknowledged the foregoing instrument to be his free act and deed.

\_\_\_\_\_

Notary Public  
My Commission Expires

**APPROVAL OF THE TOWN OF BARNSTABLE  
TOWN COUNCIL**

At a public meeting duly held on \_\_\_\_\_, 2023, the Town Council of the Town of Barnstable, Massachusetts, voted to approve the foregoing Conservation Restriction from Thomas B. Brazelton III, to the Barnstable Land Trust, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

**TOWN COUNCIL PRESIDENT:**

\_\_\_\_\_  
Matthew Levesque

**COMMONWEALTH OF MASSACHUSETTS  
Barnstable, ss**

On the \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared **Matthew Levesque**, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was , and who being by me duly sworn did say that he is the President of the Town Council of the Town of Barnstable; that he is duly authorized to act on behalf the Town Council; and he acknowledged the foregoing instrument to be the free act and deed of Town of Barnstable Town Council.

\_\_\_\_\_  
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 Thomas B. Brazelton III to Barnstable Land Trust, 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

**COMMONWEALTH OF MASSACHUSETTS**  
SUFFOLK, ss:

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

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

## **EXHIBIT A**

### Description of Premises

The Premises subject to this Conservation Restriction is a vacant tract of land located in Cobbs Village in the Town of Barnstable, Barnstable County, Commonwealth of Massachusetts, more particularly bounded and described as follows:

The land in Barnstable in Barnstable County, Massachusetts shown as Lot 15 on a plan entitled “*Plan of Land of Commerce Road Barnstable, MA, Prepared For Dillingham Properties LLC*”, dated 5/18/2022 (*Revised*), by *Daniel A. Ojala, PLS, Down Cape Engineering, Inc., 939 Main Street (Route 6A), YarmouthPort, MA 02675* and filed in the Land Registration Office in Boston as Land Court Plan 4686-G.

Containing 1.4 acres, more or less.

For Grantor's Title see Barnstable Registry District of the Land Court, Document # 1465529 noted on Certificate of Title # 230,821.

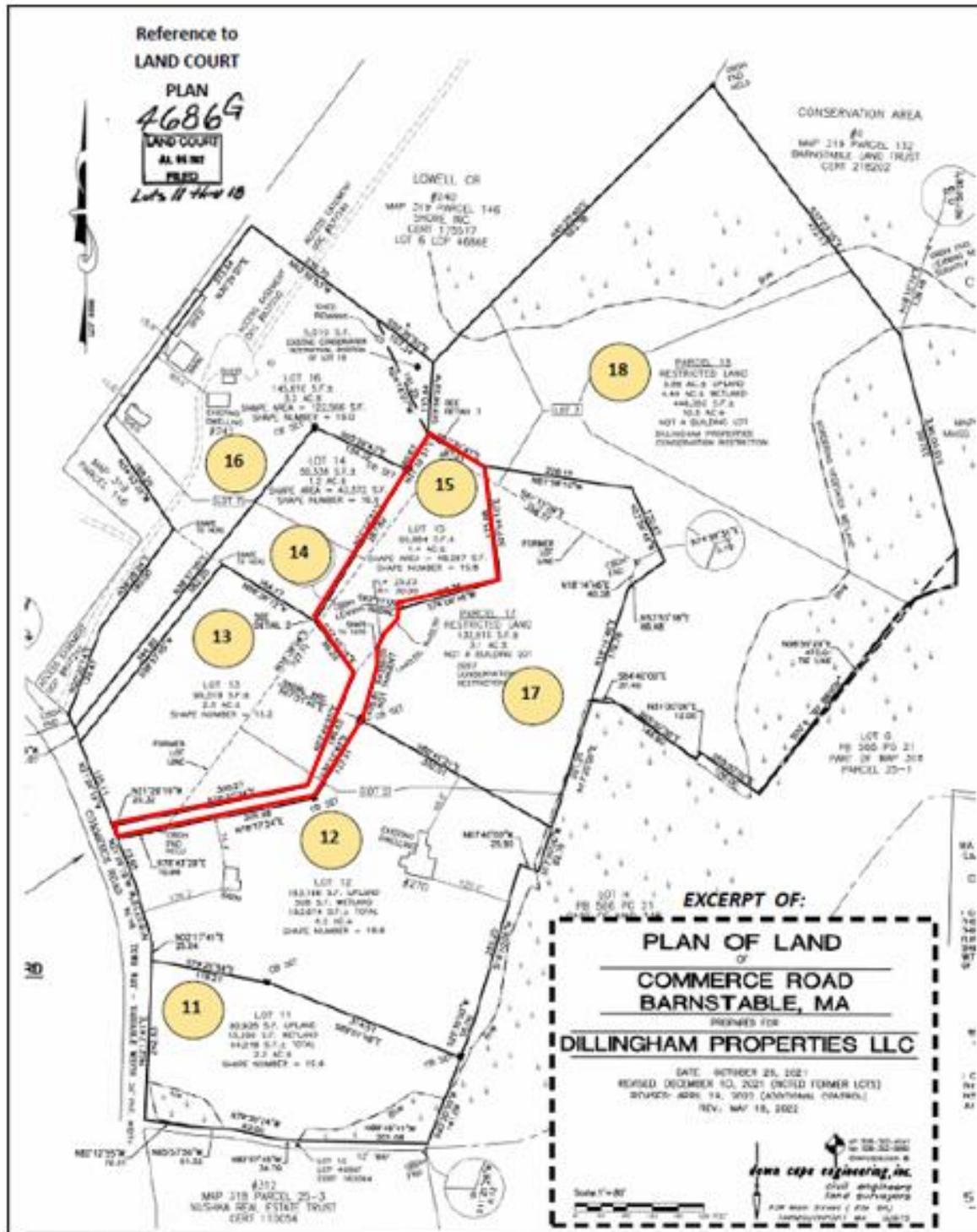
Town of Barnstable Assessor Map 318, Portion of Parcel 025-001 & 025-002

Street Address: LOT 15, 0 Commerce Road, Barnstable, MA 02630

## **EXHIBIT B**

### Reduced Copy of Plan of Premises

For official full size plan see Barnstable Registry District of the Land Court, Plan # 4686-G.



**EXHIBIT C**

Town Council Order

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-210  
INTRO: 06/15/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Councilor Gordon Starr  
**DATE:** June 15, 2023  
**SUBJECT:** Approving a Conservation Restriction on 1.4 acres of land on Commerce Road in Barnstable Village between Thomas B. Brazelton, III (GRANTOR) and Barnstable Land Trust (GRANTEE)

**BACKGROUND:** This item has been placed on the agenda for the Council’s approval of a Conservation Restriction (CR) to be granted by Thomas B. Brazelton, III, and to be held by the Barnstable Land Trust over approximately 1.4 acres of land on Commerce Road in the Cobbs Village neighborhood of Barnstable Village. The current owner, Thomas B. Brazelton, III, has been deemed eligible to receive a Conservation Land Tax Credit (CLTC) for the donation of this Conservation Restriction to the Barnstable Land Trust. This parcel is being preserved in conjunction with two additional parcels (Lot 13 and Lot 14), under separate CRs totaling 4.9 acres (see attached map). Only Lot 13 includes Town participation, in supporting the BLT purchase of the parcel with Community Preservation Act (CPA) funds, and in holding the Conservation Restriction. For this lot (Lot 15) and Lot 14, the owners are donating Conservation Restrictions to BLT.

**ANALYSIS:** This Conservation Restriction preserves a landmark property, with sweeping open coastal views from Commerce Road to the Sandy Neck lighthouse across the harbor. The conservation restriction preserves critically imperiled sandplain grassland, which includes native little bluestem grass, Cape Cod’s original “prairie grass.” The property was formerly used for crops and pasture and is now maintained as open grassland.

Admiral Francis T. Bowles (1859-1927) retired to Barnstable Harbor on a 100-acre saltwater farm owned by the Lowell family, his in-laws, where he died. The family honors his name in the Bowles Field Landscape Project. Over the past 30 years, the extended family has conducted multiple gifts of land and CRs at the farm totaling 40 acres.

This proposed Conservation Restriction conforms to the Open Space Policy of the Town, adopted in 1981, which “encouraged...grants of conservation restrictions” which yielded “benefits to the Town,” and furthers the Town of Barnstable’s Updates to its Open Space & Recreation Plan. Specifically, the Conservation Restriction offers the following public benefits and will:

- preserve open space,
- link to other conservation land,
- preserve important natural habitats of wildlife or plants,
- prevent construction on land of natural resource value
- preserve scenic views and a culturally significant landscape

The current owner, Thomas B. Brazelton, III wishes to restrict the use of the 1.4 undeveloped acres of her property to conservation purposes. The conservation restriction is required to receive a State Conservation Land Tax Credit for the protection of the property. These programs require that a town or non-profit hold the conservation restriction to protect the land for conservation in perpetuity. All CRs held by non-profits must be approved by the Town (and the State) under G.L. Ch. 184, ss. 31-33. Town Council action is needed for the Town to approve the CR.

**APPROVALS:** The Conservation Commission voted its support on March 14, 2023. The Land Acquisition and Preservation Committee voted to recommend the Conservation Restriction to Town Council on March 13, 2023.

**FISCAL IMPACT:** Any reduction in property taxes as a result of this action will get redistributed to all other taxpayers. Under Proposition 2 ½ future tax levies are not reduced by this action.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of the Conservation Restriction.

**STAFF ASSISTANCE:** Kate Connolly, Assistant Town Attorney