

GRANTOR: Town of Lexington

GRANTEE: Citizens for Lexington Conservation,
Inc.

ADDRESS OF PREMISES: Busa Farm, Lowell Street, Lexington, MA

FOR GRANTOR'S TITLE SEE: Middlesex South Registry District of the Land Court as Document
No. 1519938

CONSERVATION RESTRICTION

I. Statement of Grant:

The Town of Lexington, having an address at 1625 Massachusetts Avenue, Lexington, Massachusetts 02420, being the sole owner of the Premises as defined herein, and for its successors and assigns ("Grantor"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the General Laws, hereby grants, with QUITCLAIM COVENANTS, to CITIZENS FOR LEXINGTON CONSERVATION, INC., a Massachusetts non-profit association having an address of PO BOX 292, Lexington, Massachusetts 02420-0003, and its permitted successors and assigns (the "Grantee"), in perpetuity and exclusively for conservation purposes, for nominal consideration, the receipt and sufficiency of which is hereby acknowledged, the following described Conservation Restriction on those certain parcels of land located on Lowell Street, Lexington, Massachusetts, constituting of approximately 7.47 acres, said parcels being shown as "2B", "3", "4" and "7" on a plan entitled "Lowell Street, Lexington, Massachusetts, Assessor's Map 20/Parcel 38, Subdivision Plan of Land, Approval Not Required" prepared by GCG Associates, Inc., dated February 5, 2014, filed with the Middlesex South Registry of Deeds as Plan 108 of 2015 (the "Premises"), a reduced copy of which plan is attached as Exhibit A. For Grantor's title, see that certain deed filed with the Middlesex South Registry District of the Land Court as Document No. 1519938. See also Order of the Land Court to Withdraw from Registration dated July 17, 2014, and filed with the Middlesex South Registry District of the Land Court as Document No. 1676321 and noted on Certificate of Title No. 245506 and recorded with said Registry of Deeds at Book 63955, Page 12.

The fee interest in the Premises was acquired utilizing, in part, Community Preservation Act funds pursuant to Chapter 44B of the Massachusetts General Laws, which funds were authorized for such purposes by a vote of the Lexington Town Meeting held on May 6, 2009, an attested copy of which vote is attached hereto as Exhibit C (“the CPA Vote”).

II. Purposes:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The Premises was acquired with Community Preservation Act funding (Chapter 44B of the General Laws of Massachusetts, as amended) by the Town of Lexington for open space purposes, which include agricultural and recreational purposes pursuant to said Community Preservation Act, and shall be maintained in perpetuity for the purposes stated in Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts and shall be fully protected by all provisions of Article 97. The purposes of this Conservation Restriction (“Purposes”) are (a) to assure that the Premises will be maintained in perpetuity in a natural, scenic, and open condition, and available for agricultural, horticultural, and recreation uses consistent with the Conservation Values and (b) to prevent any use or change that would materially impair or interfere with the Conservation Values (as defined below).

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

- Open Space. The Premises contributes to the protection of the scenic and natural character of Lexington, and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises abuts or is close to land already conserved, including the Town of Arlington’s Arlington Reservoir, the Town of Lexington’s Jerry Cataldo Reservation, and the Town of Lexington’s Whipple Hill Conservation Area.
- Historic and Archaeological Resources. Conservation and appropriate management of the Premises has an important public benefit by preserving historic, cultural and archeological resources within the Premises.
- Water Resources. The preservation of the Premises, would contribute to the protection of water resources including the Mystic River Watershed, the Munroe Brook and the Arlington Reservoir.
- Prime Agricultural Soils. The entire property (100 percent of the 7.47-acre total area) is identified by USDA/NRCS as Farmland of Statewide Importance. 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.

- Public Access. The preservation of the Premises will provide access to the Premises by the general public for outdoor recreation. The Premises connects to the ACROSS Lexington trail network via Trail C, and connects to the public walking trail around the Arlington Reservoir.
- Indigenous Cultural Landscape. The Premises is identified by members of the Massachusetts Tribe as an Indigenous cultural landscape with attributes relevant to the intrinsic values of contemporary Indigenous communities within the Commonwealth of Massachusetts.
- Working Farmland. The protection of the Premises will ensure that the open fields and forests contained on the Premises will be permanently available for agriculture, horticulture and farming uses that are consistent with the Purposes, including community farming and other educational uses.
- Climate Change Resiliency. A portion of the Premises is identified as an area of average Terrestrial Resilience according to The Nature Conservancy's Resilient Land Mapping Tool. 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 reducing human and ecosystem vulnerability to climate change and adapting to changing conditions.
- Consistency with the 2022 Lexington Open Space and Recreation Plan (OSRP). The Busa Farm is identified as a Unique Feature on page 48 of the Lexington OSRP. According to the plan, "the Town acquisition of Busa Farm in 2009 allowed for the preservation of an important agricultural resource in Lexington. Currently the site of Lexington Community Farm ("Community Farm"), this is one of two Community Supported Agriculture (CSA) programs in Lexington." As the OSRP further states, "After lengthy public deliberation the Town has elected to lease the property to Lexington Community Farm, a local non-profit organization that has established a community based farm offering locally grown produce through CSA shares and an onsite farm stand, along with various educational programs for the community. LexFarm opened in 2014 and is currently connected to over 400 member households in Town." The Community Farm is also identified on page 36 of the OSRP as an important element of the Mystic River Watershed, and on page 61 as situated immediately adjacent to an Environmental Justice Population. The protection of the Premises is also consistent with OSRP Goal 5: "Enhance connectivity between open space and recreation areas", and Goal 9: "Expand upon and create new opportunities for bicycling and walking throughout Lexington", as well as action items "To increase collaboration with bordering communities that share or abut open space parcels" and "to utilize connections with volunteer organizations/groups to increase programming opportunities".

III. Prohibited Acts and Uses, Exceptions Thereto, and Permitted Uses:

A. Prohibited Acts and Uses

Subject to the reserved rights and exceptions set forth in Paragraph III.B, the Grantor will not perform or permit the following acts and uses which are prohibited on, above, and below the Premises:

1. Buildings, Structures, Facilities and Improvements. Constructing, placing or allowing to remain any permanent or temporary building, tennis court, landing strip, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna/tower, utility pole/conduit, or other permanent structure or facility;
2. Excavating Soil, Mineral Resources, etc. Mining, excavating, dredging or removing soil, loam, peat, gravel, sand, rock or other mineral resources or natural deposits or other processes such as hydraulic fracturing that might allow mining to or from adjacent properties, or otherwise making topographical changes;
3. Dumping of Refuse and Other Materials. Placing, filling, storing or dumping soil, grass clippings, compost, yard debris or other substances on the ground or dumping or placing of refuse, trash, vehicle bodies or parts, rubbish, debris, junk, trash, solid or chemical waste or other substance or material whatsoever or the installation of underground storage tanks;
4. Cutting of Vegetation. Cutting, removing or otherwise destroying trees, 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, wildlife habitat, or archaeological conservation;
6. Motorized Vehicles. Use, parking or storage of motorized vehicles of any kind, including but not limited to automobiles, motorcycles, mopeds, all-terrain vehicles, snowmobiles or any other motorized vehicles;
7. Historical or Archaeological Resources. The disruption, removal, or destruction of any historical or archaeological resource, including but not limited to stone walls and granite fence posts;
8. Subdivision. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
9. Commercial Recreational, Business, Residential or Industrial Uses. The use of the Premises for commercial recreation, business, residential or industrial use;

10. Other uses. Any other use of the Premises or activity which is inconsistent with the Purposes of this Conservation Restriction or which would impair its Conservation Values.

B. Reserved Rights and Exceptions

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not materially impair the conservation values or purposes of this Conservation Restriction:

1. Existing Structures. Maintenance, repair, removal or replacement of any permanent or temporary structures or other improvements on the Premises as currently shown on the sketch plan attached hereto as Exhibit B (the “Structures and Fields Plan”), including without limitation use of the office trailer currently on the Premises as offices for Community Farm operations and administration, provided, however that any replacement of said permanent or temporary structures or other improvements shall be constructed on the Premises in areas outside of the “Growing Fields” shown on the Structures and Fields Plan. Said structures or improvements shall be set back at least five (5) feet from the legal boundaries of the Premises if permitted by current Town zoning;

2. Passive Recreational Activities. Biking, walking, hiking, horseback riding, equestrian uses, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape and do not degrade environmental quality;

3. Educational Activities. Organized walks, educational programs, school field trips, farm tours, and other similar activities designed to promote an understanding of nature, conservation, agriculture and/or history;

4. Vegetation Management. In accordance with generally accepted land conservation management practices, removing of brush, selective minimal pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, and regular mowing at least once a year to prevent reforestation, and the planting of native trees and shrubs and the mowing of grass;

5. Water Infrastructure. The digging or drilling and the maintenance, repair and replacement of water supply wells, together with the installation, construction, and placement of permanent underground and temporary aboveground pumps, conduits, hoses, and other equipment all as exclusively associated with irrigation for allowed uses on the Premises. Prior to commencing any new well, plans for the same shall be developed by the Grantor, after consultation with the Grantee, and with the Grantee’s approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld.

6. Agricultural Management. The following ‘Agricultural Management’ activities:

(a) Clearing, mowing, and prescribed burning of vegetation;

- (b) The planting, maintenance, cultivation, and harvesting of crops or fruit- or nut-bearing trees, together with soil preparation, conservation, and management activities commonly associated with such agricultural uses, including the plowing of agricultural fields and the addition of soil amendments, such as lime or compost (generated on or off the Premises);
- (c) The raising and pasturing of livestock;
- (d) The use of fertilizers;
- (e) The use of pesticides, herbicides, and fungicides, provided, however, that such agricultural chemicals are registered under Commonwealth of Massachusetts regulations or otherwise permitted by the MA Department of Agricultural Resources, and are used and stored in accordance and consistent with all pertinent federal, state, and local instructions, limitations, laws, zoning, rules, and regulations;
- (f) The maintenance of piles of limbs, brush, manure, leaves, compost, and similar biodegradable material generated on the Premises, but not stumps, provided such piles are not placed in any wetlands and do not otherwise interfere with the conservation values (manure may not be stockpiled within any Protected Wetland Resource Areas, including Riverfront and wetland buffer zones);
- (g) The installation, maintenance, and removal of fences, including but not limited to electric fences consistent with permitted Agricultural Management activities described in this Paragraph III.B.6, provided that said fences do not interfere with access to any public trails and paths on the Premises;
- (h) The use of the 'Farmstore' as shown on Exhibit B to market and sell agricultural products and related supplies and tools, and conduct educational programs and products;
- (i) Use of vehicles and other motorized equipment as necessary and convenient for the operation of the Community Farm and for other Agricultural Management activities as described in this Paragraph III.B.6, including but not limited to tractors, trucks, balers, spreaders and planters, and similar types of vehicles, and vehicles permitted in Paragraph III.B.12;
- (j) Construction of, or addition to, stone walls and/or piles incidental to the removal of rocks from plowed areas;
- (k) Horse and other livestock use carried on in accordance with sound management practices (including without limitation, generally accepted water quality management standards) and uses accessory thereto, including without limitation run-in sheds, riding areas, bridle paths and sight pervious and non chain-link fencing. This right shall

include, without limitation, the right to use equipment and vehicles as reasonably necessary for such purposes; and

- (l) **Requirement to Follow Best Agricultural Practices.** Agricultural Activities shall be conducted in a manner consistent with generally accepted best management practices for sustainable farming as those practices may be identified from time to time by appropriate governmental or educational institutions such as the USDA Natural Resources Conservation Service (NRCS), UMass Extension, Northeast Organic Farming Association (NOFA), Massachusetts Department of Agricultural Resources, and the like (collectively, “Best Agricultural Practices”) and in a manner that promotes healthy soils and healthy soil practices, as such terms are defined in Chapter 358 of the Acts of 2020, which added definitions of these terms to Section 7A of Chapter 128 of the Massachusetts General Laws (“Healthy Soils and Practices”), and in a manner that does not hinder the ability of future generations to engage in Agricultural Activities on the Premises.

7. **Non-Native, Nuisance or Invasive Species.** The removal of non-native, nuisance or invasive species, the interplanting of native species, including but not limited to beaver management, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality and scenic vistas;

8. **Soil Management.** Excavation and removal from the Premises of soil, gravel or other mineral resources or natural deposits (a) as may be reasonably necessary for Agricultural Management, (b) as may be incidental to the maintenance of trails or creation of trail connections, bikeways, and access roads or (c) to maintain good drainage and hydrologic functioning of the Premises, provided that (i) such activities follow generally accepted soil conservation practices, (ii) such activities do not occur within protected wetland resource areas, or if they do, the activities receive required authorizations, and (iii) disturbed areas are re-vegetated with native plant materials, and (iv) only after Grantor consultation with Grantee and with the Grantee’s approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;

9. **Wildlife Habitat Improvement.** Measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including but not limited to continued selective planting of native trees, shrubs and plant species, and avian nesting structures;

10. **Archaeological Investigations.** Archaeological activities, including but not limited to surveys, following submission of a Project Notification Form and other materials that may be required and its approval by the State Archaeologist/State Historic Preservation Office of the Massachusetts Historical Commission (or appropriate successor official); and only after Grantor consultation with Grantee and with the Grantee’s approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;

11. **Signs.** The erection, maintenance and replacement of signs and kiosks by the Grantor, at Grantor’s expense. Permanent signs may identify the Grantee as the holder of the Conservation

Restriction and the Grantor as the owner of the Premises, spell out the ongoing activities and Reserved Rights, and educate the public about trail access, the protected conservation values, and any rules pertaining to uses of the Premises;

12. Permitted Vehicles. Use of vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their lawful duties and trucks and other vehicles reasonably necessary for activities permitted by this Conservation Restriction, including in the operation of the Community Farm, and motorized and non-motorized vehicles to assist the mobility of handicapped persons;

13. Utilities. The construction, use, maintenance and replacement of utilities, including the installation and maintenance of town-supplied water and sewer lines, to serve all allowed uses on the Premises, including without limitation a public bathroom facility; provided that the repair or replacement of existing utilities in their current locations shall require prior notice to (but not approval of) Grantee, and new construction, expansion or relocation of utilities shall require Grantor consultation with Grantee and Grantee's prior approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;

14. Allowable New Structures. In addition to the structures described above in Paragraph III.B.1, allowable new structures may include any structures allowed by federal, state and local laws and regulations, provided that such structures are consistent with the purposes of this Conservation Restriction and the protection of the Conservation Values and the total area of all new structures does not exceed 1500 square feet; and only after Grantor consultation with Grantee and with the Grantee's approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;

15. Parking. The construction, use, maintenance, repair, replacement, expansion, and removal of driveways and parking areas of the Premises consistent with community farming use, provided that prior to any construction for new driveways or parking areas, Grantor shall provide plans for the same for approval by Grantee as provided in Paragraph III.E, and provided that future parking expansion be restricted to 1,000 square feet or five spaces more than the size of the parking areas described in the Baseline Documentation Report, whichever is less;

16. Trails and Bikeways. The routine maintenance of public access trails and possible future unpaved bikeways and the relocation of existing trails and bikeways or the construction of new trails and bikeways. Maintenance may include widening unpaved walking trails up to 36 inches in width and bikeways up to 14 feet total, including 2 foot treadways. Construction of new trails shall occur only after Grantor consultation with Grantee and with the Grantee's approval as provided in Paragraph III.E, whose approval shall not be unreasonably withheld;

17. Green Energy. With prior written approval of the Grantee, constructing energy producing structures and associated transmission lines that produce negligible or no pollution or carbon emissions ("Green Energy Structures") to supply power for any Reserved Rights and Exceptions on the Premises. In addition to the terms of Paragraph III.E., when considering whether to grant approval, the Grantee will take into consideration the energy needs related to the relevant

Reserved Rights and Exceptions. While it is agreed that some power may be fed back into the public power grid during high production periods, such Green Energy Structures shall be limited to a capacity not higher than that necessary to meet, or exceed by up to 20% at the time of installation, the power requirements of the Reserved Rights and Exceptions, and shall not be located on growing fields;

18. Active Outdoor Recreation.

- a. The uses set forth in subparagraph (b) below shall be permissible, only upon satisfaction of the following conditions:
 - i. Either the Grantor has not renewed the lease with the Community Farm operator, or the Community Farm operator has (a) notified the Grantor of its intent to discontinue Agricultural Management operations, (b) abandoned such use by failing to cultivate at least twenty percent (20%) of the arable land on the Premises (shown on the Structure Plan as “Growing Fields”) for three (3) successive years, or (c) not renewed its lease to conduct Agricultural Management activities;
 - ii. Following such discontinuance, abandonment, or non-renewal of lease, the Grantor has made reasonable efforts, as determined by the Grantee, to re-lease or otherwise lease the Premises for Agricultural Management activities, and such efforts have been unsuccessful;
 - iii. Not sooner than one (1) year following the discontinuance, abandonment, or non-renewal of the lease, a majority vote is taken at a duly called Special or Annual Town Meeting approving the use of the Premises for active recreation on in accordance with subparagraph (b) below; and
 - iv. Following the completion of the steps enumerated in Paragraph II.B.18i.-iii., the Grantor shall notify the Grantee of its intent to use the Premises for Active Recreation.
- b. Provided the above enumerated conditions have been met, the Premises may be used for Active Outdoor Recreational use including, but not limited to, the use of land for community gardens, trails, and noncommercial youth and adult sports, and the use of land as a park, playground, hard courts and athletic fields, including outdoor restrooms and athletic lighting. Active Outdoor Recreational use shall not include horse or dog racing or the use of land for a stadium, gymnasium or similar structure. The Grantor may enlarge the existing parking area in the northwest corner of the Premises along Lowell Street to accommodate up to 60 parking spaces for recreational use provided that the total area does not exceed 20,000 square feet.

D. Governmental Permits, Regulations, Laws

The exercise of any right reserved by Grantor under Paragraph III.B shall be in compliance with the following: (a) then current building, zoning, land use, planning and conservation bylaws, ordinances and regulations applicable to the Premises; (b) any variances or special permits applicable to the Premises; (c) the Wetlands Protection Act (Chapter 131, Section 40 of the General Laws of Massachusetts, as amended) and (d) all other applicable federal, state and local laws, rules,

regulations, 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 means only that the Grantor may have a right or privilege to request a permit, license, or other approval; it does not mean or imply that the Grantee or the Commonwealth of Massachusetts takes any position on whether such permit, license, or other approval should be issued.

E. Notice and Approval

Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, the Grantee shall grant or withhold approval in writing within thirty (30) days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall be granted only upon a showing that the proposed activity will not materially impair the purposes of this Conservation Restriction. Grantee's failure to respond within 30 days of receipt shall not constitute approval by Grantee of the request. Grantor may subsequently submit the same or a similar request for approval. In cases of emergency, the 30-day approval period may be waived by the Grantee to avoid harm to the Purposes or Conservation Values.

IV. LEGAL REMEDIES OF THE GRANTEE

A. Legal and Injunctive Relief

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law 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. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the Conservation Values of the Conservation Restriction.

To the extent permitted by law, Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in good faith enforcement of this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof; provided, however, that Grantor shall not be obligated to reimburse Grantee for costs and expenses related to any such enforcement that Grantor successfully challenges as evidenced by a final, unappealed determination of a court of competent jurisdiction.

B. Non-Waiver

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

C. 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.

D. Acts Beyond the Grantor's Control

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes.

V. ACCESS

A. Access by the Grantee

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be reasonably necessary or appropriate to remedy or abate any violation hereof.

B. Access by the Public

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 as described in Paragraph III.B.2 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. To the extent permitted by law, the Grantee hereby expressly disclaims any duty to maintain the Premises or warn persons who may enter upon the same. Pursuant to Chapter 21, Section 17C of the General Laws of Massachusetts, as amended, neither the Grantor nor the Grantee is liable to any member of the

public for injuries to person or property sustained by such person while on the Premises in the absence of willful, wanton, or reckless conduct.

VI. EXTINGUISHMENT

A. Consistent with state law

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. The Grantee’s Property Right in the Conservation Restriction; Value

Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, for the purpose of enforcing this Conservation Restriction, but does not entitle Grantee, upon extinguishment, release, or termination, to any proceeds received by the Grantor from the subsequent sale, exchange or involuntary conversion of the Premises. Any proceeds that result from any such extinguishment, release, or termination will be distributed to Grantor only after complying with the terms of any gift, grant, or other funding requirements.

C. Grantee’s Right to Recover Value of its Property Right

If any change in conditions ever gives rise to termination, release, or extinguishment of the Conservation Restriction under applicable law, then all reasonable and directly-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 such proportionate value, subject, however, to the requirements of any gift, grant, or funding program or applicable law, including the Community Preservation Act, which expressly provides for a different disposition of the proceeds.

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, at no cost to 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 shares equal to the proportionate value set forth in Paragraph VI.B, provided that all related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and subject to the requirements of any gift, grant, or funding program

or applicable law, including the Community Preservation Act, which expressly provides for a different disposition of the proceeds.

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. Running of the Benefit

The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances: As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the Assignee is not an owner of the fee in the Premises; and the Assignee, at the time of the assignment, is a “Qualified Organization” as defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VIII. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises, including a leasehold interest, and to notify the Grantee within twenty (20) days of such transfer. Failure to do so shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable. The Grantor shall not be liable for violations occurring after its 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 a reasonable request by the Grantor, the Grantee shall, within thirty (30) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor’s compliance with any obligation of the Grantor contained in this Conservation Restriction or otherwise evidences the status of this Conservation Restriction.

X. AMENDMENT

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

XI. 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 of Paragraph VII.B. in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

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 Middlesex South District Registry of Deeds. The Grantee shall record this instrument in a timely manner in said Registry of Deeds.

XIII. NOTICES

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

To Grantor: Town of Lexington
 1625 Massachusetts Avenue
 Lexington, MA 02420
 Attention: Town Manager

To Grantee: Citizens for Lexington Conservation
PO Box 292
Lexington MA 02420-0003

or to such other address as any of the above parties shall designate from time to time by written notice to the other or 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 favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Sections 31-33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability

If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement

This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

E. 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 of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

G. 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. Without limiting the foregoing, the Grantor and the Grantor's successors and assigns agree to execute any such instruments upon request.

H. No Surety Interest

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

I. Baseline Documentation

In order to establish the present condition of the Premises and the conservation values thereon that are protected by this Conservation Restriction, and to serve as an objective information baseline to enable the Grantee to monitor future uses of the Premises and to assure compliance with the terms hereof, Grantee has prepared an inventory of the relevant features and conditions of the Premises (the "Baseline Documentation Report" or "BDR"), and Grantor and Grantee agree that the same is a complete and accurate representation of the condition and values of the Premises as of the date of the execution of this Conservation Restriction. The BDR also includes an aerial photograph showing conditions of the property in 2012, the year the Town acquired the property. Verified originals of the Baseline Documentation Report will be deposited with the Grantor and in the permanent records of the Grantee. If the originals of said Baseline Documentation Report are subsequently destroyed by casualty or other circumstance, other evidence may be offered by the parties to establish the condition of the Premises as of the date of this Conservation Restriction.

J. No documentary stamps are required hereon because the Grantor is a municipality.

K. Included herein are the following:

Signature pages:

Grantor (includes Board of Selectmen approval)
Grantee Acceptance
Approval of the Secretary of Energy and Environmental Affairs.

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

Exhibits:

Exhibit A: Reduced Copy of Plan of the Premises
Exhibit B: Structures and Fields Plan

Exhibit C: Town Vote Authorizing Use of CPA Funds

IN WITNESS WHEREOF, the said Town of Lexington acting by and through its Board of Selectmen, in compliance with Chapter 44B of the General Laws of Massachusetts, as amended and the Town Meeting vote, an attested copy of which attached hereto as Exhibit C, at a public meeting duly held on _____, 2024, voted to approve in the public interest and grant the foregoing Conservation Restriction to Citizens for Lexington Conservation, Inc. pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

TOWN OF LEXINGTON
BOARD OF SELECTMEN

Joseph N. Pato

Suzanne E. Barry

Douglas M. Lucente, Chair

Jill I. Hai

Mark D. Sandeen

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

On this _____ day of _____, 2024, before me, the undersigned notary public, personally appeared _____, _____,

_____, _____, _____, _____, as

Selectmen of the Town of Lexington, proved to me through satisfactory evidence of identification which was ☐ government-issued document bearing the signer's photographic image and signature ☐ my personal knowledge of the principal's identity, to be the persons whose names are signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public

My Commission Expires:

ACCEPTANCE OF GRANT BY
CITIZENS FOR LEXINGTON CONSERVATION

The above Conservation Restriction from the Town of Lexington acting by and through its Board of Selectmen is accepted by the CITIZENS FOR LEXINGTON CONSERVATION, INC. as of this _____ day of _____, 2024.

By: _____
Name: Eileen Entin
President
Hereunto duly authorized

By: _____
Name: Roberta Hodson
Treasurer
Hereunto duly authorized

On this _____ day of _____, 2024, before me, the undersigned notary public, personally appeared Eileen Entin, President of Citizens for Lexington Conservation, Inc. proved to me through satisfactory evidence of identification which was ☐ government-issued document bearing the signer's photographic image and signature ☐ my personal knowledge of the principal's identity, to be the person whose name is signed on the preceding document, and acknowledged to me that she/he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

On this _____ day of _____, 2024, before me, the undersigned notary public, personally appeared Roberta Hodson, Treasurer of Citizens for Lexington Conservation, Inc. proved to me through satisfactory evidence of identification which was ☐ government-issued document bearing the signer's photographic image and signature ☐ my personal knowledge of the principal's identity, to be the person whose name is signed on the preceding document, and acknowledged to me that she/he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from the Town of Lexington acting by and through its Board of Selectmen to Citizens for Lexington Conservation, Inc. has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 2024

Rebecca L. Tepper
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this _____ day of _____, 2024, 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 Plan of Premises

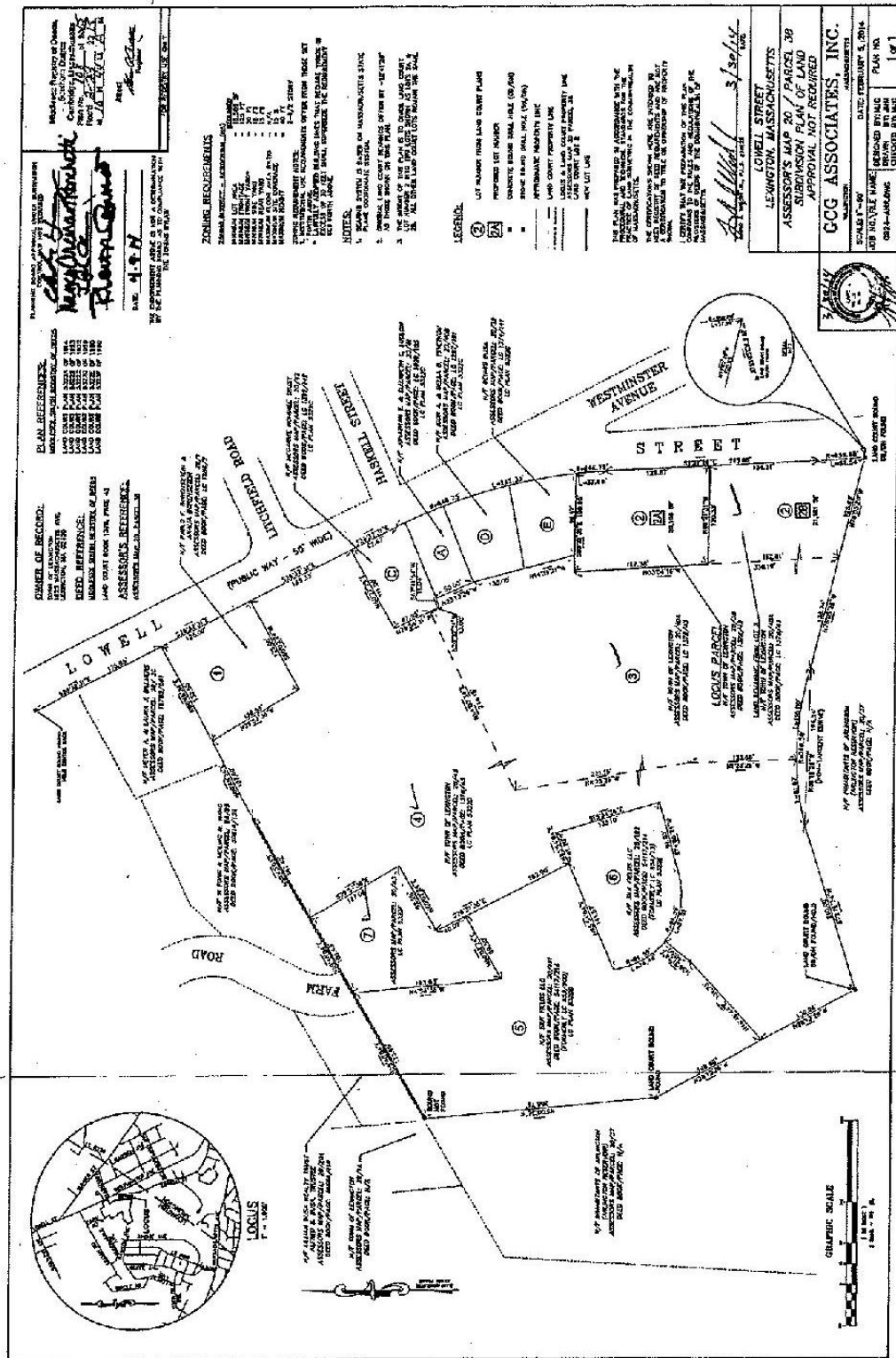


Exhibit B
Plan of Existing Structures on Premises



Aerial Photo from
MassGIS 2021

LexFarm Buildings and Fields As Of 2023

0 25 50 100 150 200
Feet

This map is for planning purposes only, with specific points subject to verification
on the ground. It is not to be used by itself for legal boundary definition.
Conservation Works - August 2023



Exhibit C
Town Meeting Approval Vote

MD&X SO. DIST. DEEDS
DOCUMENT: 1519937
DATE: 12-4-09
TIME: 8:49 AM

TOWN CLERK'S CERTIFICATE

I, Donna M. Hooper, Clerk of the Town of Lexington, Massachusetts, hereby certify that at the adjourned sessions of the 2009 Special Town Meeting held on May 6, 2009, the following motion was adopted under Article 6.

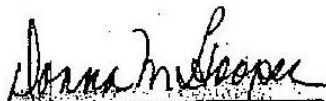
ARTICLE 6: LAND PURCHASE – OFF LOWELL STREET

MOTION: That (a) the Selectmen be authorized to purchase or otherwise acquire, or to take by eminent domain, for recreation, and/or affordable housing, and/or open space purposes any fee, easement or other interest in all or any part of land shown as lots 38, 40A and 43 on Assessor's Property Map 20 on such terms and conditions as the Selectmen may determine; that the sum of \$4,197,000 be appropriated for such land acquisition, and that to raise such amount, the Treasurer, with the approval of the Board of Selectmen, is authorized to borrow \$4,197,000 under M.G.L. Chapter 44, Section 7 (3), as amended, or under M.G.L. Chapter 44B, as amended, or any other enabling authority; (b) \$98,000 be appropriated from the Undesignated Fund Balance of the Community Preservation Fund for debt service and related borrowing costs of the Community Preservation Fund for fiscal year 2010; and (c) the Board of Selectmen be authorized to lease to the seller all or any part of such land for farming purposes for a period not to exceed three years on such terms as the Board of Selectmen shall determine, as part of the consideration for the acquisition.

Declared adopted by more than the necessary two-thirds vote.

A true copy.

Attest:


Donna M. Hooper, Town Clerk

May 14, 2009