



2014 00002235

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MassWildlife

Commonwealth of Massachusetts

# Division of Fisheries & Wildlife

## Exhibit 9

Wayne F. MacCallum, Director

### MA ENDANGERED SPECIES ACT (G.L. c.131A) CONSERVATION AND MANAGEMENT PERMIT

DATE	9 July 2014
CONSERVATION PERMIT NO.:	014-243.DFW
NHESP FILE NO.	10-28980
PERMIT HOLDER	Sachem's Path Nantucket, LLC 460 West Main Street Hyannis, MA 02601
PROJECT	Affordable Housing Project ("Sachem's Path")

Pursuant to the authority granted in the Massachusetts Endangered Species Act ("MESA") (G.L. c. 131A) and its implementing regulations (321 CMR 10.23), the Director of the Massachusetts Division of Fisheries & Wildlife (the "Division") hereby issues a Conservation and Management Permit (the "Permit") to Sachem's Path Nantucket, LLC (the "Permit Holder"). This Permit authorizes the "taking" of four State-listed Lepidoptera species and a State-listed plant species as provided below, pursuant to the MESA, arising out of the construction of a forty (40) unit affordable housing project (the "Project") on a ±9.12-acre site located southwest of Surfside Road and west of South Shore Road in the Town of Nantucket, Massachusetts (Book 233, Page 26, Nantucket County Registry of Deeds; the "Property"). The "taking" applies to the following State-listed species:

<i>Cicinnus melsheimeri</i>	Melsheimer's Sack Bearer	Butterfly/Moth	Threatened
<i>Cingilia catenaria</i>	Chain Dot Geometer	Butterfly/Moth	Special Concern
<i>Metarranthus pilosaria</i>	Coastal Swamp Metarranthus Moth	Butterfly/Moth	Special Concern
<i>Psectraglaea carnosa</i>	Pink Sallow	Butterfly/Moth	Special Concern
<i>Liatrix scariosa</i> <i>var. novae-angliae</i>	New England Blazing Star	Vascular Plant	Special Concern

[www.mass.gov/nhesp](http://www.mass.gov/nhesp)

Division of Fisheries and Wildlife  
Field Headquarters, One Rabbit Hill Road, Westborough, MA 01581 (508) 389-6300 Fax (508) 389-7890  
An Agency of the Department of Fish and Game

The Division has determined that the Project will result in a "take" of the State-listed species listed above through the permanent loss of approximately  $\pm 6.92$  acres of suitable habitat, disruption to the breeding, feeding, and migratory activities of the Lepidoptera species listed above, and the direct loss of two known New England Blazing Star individuals.

Under the authority granted by and in accordance with MGL c131A§3 and 321 CMR 10.23, the Director may permit the taking of a State-listed species for conservation and management purposes provided that there is a long-term Net Benefit to the conservation of the impacted species. If the Director determines that the applicant for a permit has avoided, minimized and mitigated impacts to the State-listed species consistent with the following Performance Standards, then the Director may issue a conservation and management permit, provided:

- (a) the applicant has adequately assessed alternatives to both temporary and permanent impacts to State-listed species;
- (b) an insignificant portion of the local population would be impacted by the Project or Activity, and;
- (c) the applicant agrees to carry out a conservation and management plan that provides a long-term Net Benefit to the conservation of the State-listed species that has been approved by the Director, as provided in 321 CMR 10.23(5), and shall be carried out by the applicant.

The Director has determined that the applicant for this Permit has met the above noted Performance Standards and that the conservation and management plan described herein provides a long-term Net Benefit to the conservation of the State-listed species listed above.

Pursuant to this Permit, the Permit Holder will (a) permanently protect approximately  $\pm 1.09$  acres of the Property and  $\pm 12.75$  acres of off-site habitat located off of Tom Nevers Road, Nantucket, as open space and State-listed species habitat through Executive Office of Energy & Environmental Affairs-Division of Conservation Services ("EEA-DCS") approved Conservation Restrictions; (b) manage, maintain and monitor these areas for the benefit of State-listed species in perpetuity, in accordance with a Division-approved habitat management plan and funding agreement; and (c) transplant known New England Blazing Stars from the work area to the  $\pm 1.09$ -acre portion of the Property to be protected, which provides suitable habitat for New England Blazing Star.

Therefore, the Project can be permitted pursuant to the MESA. This Permit is issued to condition the Project and to provide a long-term Net Benefit to the State-listed species listed above.

In accordance with the documents submitted to the Division entitled:

- Site Layout Plan (Sheet 4 of 13, Sheet Number C-4; dated 10/11/2011, revised 12/13/2012; prepared by Horsley Witten Group, Inc.; the "Project Plan"; Attachment 1);
- Exhibit B Conservation Restriction Plan Sachem's Path Parcel Nantucket, Massachusetts (dated 10/29/2013, revised 5/20/2014; prepared by Horsley Witten Group; the "Sachem's Path CR Plan"; Attachment 2);
- Exhibit C Conservation Restriction Plan 125 Tom Nevers Road Nantucket, Massachusetts (dated 10/29/2013, revised 5/20/2014; prepared by Horsley Witten Group; the "Tom Nevers CR Plan"; Attachment 3);
- Declaration of Restriction, Sachem's Path (Attachment 4)

- Declaration of Restriction, Tom Nevers (Attachment 5)
- Conservation Restriction, Sachem's Path (Attachment 6);
- Conservation Restriction, Tom Nevers (Attachment 7);
- Appendix A On-Site Mitigation Measures Rare Plant Transplantation and Monitoring Procedures (dated October 2012, updated October 2013, June 2014; prepared by Horsley Witten Group, Inc.; the "Transplantation Procedures"; Attachment 8);
- Appendix B-1 Habitat Management and Monitoring Plan Sachem's Path - Lot 43 (dated November 2013, revised June 2014; prepared by Horsley Witten Group, Inc.; the "Sachem's Path Management Plan"; Attachment 9);
- Appendix B-2 Habitat Management and Monitoring Plan Tome Nevers Road - Lot 91-08 (dated August 2013, updated June 2014; prepared by Horsley Witten Group, Inc.; the "Tom Nevers Management Plan"; Attachment 10);
- Escrow Agreement (Attachment 11);

and any other plans and documents referenced herein, this Permit is issued with the following conditions:

### General Conditions:

1. The Project authorized by this Permit shall be completed within five (5) years from the date of issuance. If needed, the Permit Holder shall submit a written request to the Division for an extension of time to complete said Project and the Division will review the Project pursuant to MESA for any continuing impacts as described herein and for any new impacts to any State-listed species found subsequent to the issuance date of this Permit.
2. This Permit shall not preclude the review of future projects on the Property that are subject to the Wetlands Protection Act regulations (310 CMR 10.37, 10.58(4)(b), 10.59), as applicable, by the Natural Heritage & Endangered Species Program ("NHESP") of the Division.
3. The work authorized by this Permit involves the construction of a forty (40) unit affordable residential housing project, roads, and associated site work as shown on the Project Plan (the "Work"; Attachment 1). The Work also includes any other on-site activity required by the Division as a condition of this Permit.
4. Division representatives shall have the right to enter and inspect the Property subject to this Permit at reasonable hours to evaluate permit compliance and require the submittal of any reasonable information not otherwise required by this Permit but deemed necessary by the Division to complete its evaluation.
5. Any proposed change to any plan identified in this Permit, or to the State-listed species conservation plan required by way of this Permit, shall require the Permit Holder to inquire of the Division, in writing, whether the change is significant enough to require the filing of a new Conservation and Management Permit Application, and or require additional long-term Net Benefit for affected State-listed species. The Division retains the right to require the submittal of additional, reasonable information to evaluate the plan change.
6. This Permit shall apply to, and inure to the benefit of, the Permit Holder and any successor-in-interest of the Permit Holder, or to a subsequent successor-in-control of the Property or portion thereof subject to this Permit should the Permit Holder convey its

record ownership of the Property to said successor-in-control, as well as to any contractor or other person performing Work conditioned by this Permit. Within three (3) days of the transfer of an interest in the Property or a portion thereof, any successor-in-interest or subsequent successor-in-control [i.e., subsequent owners or operators] of the Property or a portion thereof shall provide the Division with a letter indicating (1) that the successor is the successor-in-interest of the Permit Holder or the successor-in-control [i.e., current owner or operator] of the Property or a portion thereof, and (2) that said successor will perform the obligations of the Permit Holder as set forth in this Permit.

If the Permit Holder determines that the successor-in-control of the Property or portion thereof should be a Homeowners Association, Condominium Association, or the like whose members are the owners of all or a portion of the constructed units, the Permit Holder shall submit to the Division for review of compliance with the terms and provisions of this Permit all proposed documents creating said Homeowners Association, Condominium Association, or the like and defining the rights, powers, and responsibilities of said Association and its members. No such Association's documents shall be signed, recorded, or be deemed legally effective in any manner without the express written approval of the Division. The Division's review and approval of such documents are limited to ensuring compliance with this Permit.

7. **Prior to the initiation of Work**, the Permit Holder shall notify the Division in writing of the name, address, business and home telephone numbers of the project supervisor(s) and/or contractor(s) responsible for compliance with this Permit. The Permit Holder shall provide updated information in writing to the Division should new or additional project supervisors and/or contractors be hired after Work has commenced. **Within three (3) days of the start of Work**, the Permit Holder shall send a letter to the Division stating the date upon which Work commenced.
8. **Prior to the initiation of Work**, the text of this Permit shall be recorded by the Permit Holder in the Registry of Deeds or the Land Court for the district in which the Property is located so as to become a record part of the chain of title of the Property. In the case of recorded land, the Permit shall be noted in the Registry's Grantor Index under the name of the owner of the Property upon which the proposed Work is to be done. In the case of registered land, the Permit shall be noted on the Land Court Certificate of Title of the owner of the Property upon which the proposed Work is done. The Permit Holder shall submit to the Division a date-stamped and signed copy of said recorded Permit showing the date and book and page of recording of said Permit within five (5) days after recording and/or filing, as applicable. No Work shall begin on the Property until the Permit is recorded and said recorded copy is submitted to the Division, except as otherwise approved by the Division in writing.
9. **At the completion of Work**, the Permit Holder shall submit to the Division a written request for a Certificate of Permit Compliance, including as-built plans and other supporting materials demonstrating the completion of Work and compliance with all conditions herein.
10. Any land protected to achieve a long-term Net Benefit associated with this Permit, shall remain undeveloped and protected as habitat for State-listed species in perpetuity.
11. The Permit Holder shall comply with all Conditions and Special Conditions contained within this Permit and complete the Project consistent with all Division-approved plans

and supporting documents except as otherwise approved by the Division in writing.

12. The Permit Holder shall submit in writing any documents, plans, reports, or other items required for submission in accordance with this Permit, for review and written approval by the Division, unless otherwise stipulated in this Permit or by the Division in writing.
13. A violation of any condition of this Permit will result in an unauthorized Take pursuant to M.G.L. c. 131A and may be subject to civil and or criminal penalties pursuant to M.G.L. c. 131A.

### Special Conditions:

14. Authorized Construction and Uses: This Permit authorizes construction and uses on the Property as described in General Condition #3. All Work shall be confined to the area of the Property within the limits of Work as shown on the Project Plan (Attachment 1).
15. Declaration of Restriction: The Permit Holder has submitted draft Declaration of Restrictions to the Division, which have been approved (Attachments 4 and 5), for two (2) separate parcels totaling  $\pm 1.09$  acres of land labeled as "NHESP Conservation Restriction Area" on the Sachem's Path CR Plan (Attachment 2) and  $\pm 12.75$  acres of land labeled as "Conservation Restriction Area" on the Tom Nevers CR Plan (Attachment 3) (collectively, the "Open Space"). Prior to the initiation of Work, the Permit Holder shall provide proof to the Division of appropriate recordation of the approved Declaration of Restrictions in the Registry of Deeds or the Land Court for the district in which the Property is located so as to become a record part of the chain of title of the Property. Any proposed changes to the text of the Declaration of Restrictions shall be submitted to the Division for review and approval prior to recordation. Any violation of the Declaration of Restrictions, as recorded, is a violation of this Permit in accordance with General Condition #13.

The Declaration of Restrictions, as approved by the Division, shall remain in effect until such time as the recordation of the Conservation Restrictions required by way of Special Condition #16, below. At the time of recordation of the Conservation Restrictions, the Declaration of Restrictions shall be superseded and the Open Space no longer subject to any provisions of the Declaration of Restrictions.

16. Conservation Restriction: In order to provide a Net Benefit to the conservation of the State-listed species impacted by the Project, the Permit Holder has elected to execute EEA-DCS approved Conservation Restrictions on the Open Space, as shown on the Sachem's Path CR Plan (Attachment 2) and Tom Nevers CR Plan (Attachment 3).

The Conservation Restrictions shall be in substantially the same form as shown in Attachments 6 and 7 and shall be granted by the Permit Holder to the Nantucket Land Council or to any other qualified land trust, nonprofit organization or government entity approved in writing in advance by the Division. Any changes in the form of said Conservation Restriction(s) other than typographical or grammatical changes must be approved in writing by the Division before said changes are submitted to the Secretary of the EEA-DCS for approval. If the EEA-DCS requires changes that substantially expand the permitted activities in said Conservation Restriction(s), the Permit Holder shall immediately notify the Division in writing of the requested changes so that the Division can review said proposed changes for compliance with the terms and provisions of this Permit. If the Division determines that said proposed changes to the Conservation

Restriction(s) are inconsistent with the purposes of this Permit, the Division shall have sixty (60) days after receipt of said notice to discuss said proposed changes with the EEA-DCS in order to seek deletion or modification of the requested changes.

**No Work shall be initiated on the Property until the Permit Holder has submitted proof to the Division of filing said draft Conservation Restrictions with the EEA-DCS.**

Said Conservation Restrictions shall be executed and recorded in the Registry of Deeds or the Land Court for the district in which the Property is located so as to become a record part of the chain of title of the Property, no later than six (6) months from the initiation of Work associated with this Permit. Work shall cease if said Conservation Restrictions are not recorded and copies thereof received by the Division by this date, provided, however, that the Division may extend this date from time to time if the failure to execute and record said Conservation Restrictions results from circumstances beyond the control of Permit Holder and so long as the Permit Holder continues in good faith to seek to execute and record said Conservation Restrictions.

17. Temporary Delineation of the Limit of Work: Prior to the initiation of Work, temporary symbolic fencing shall be erected at the boundaries of the limit of Work, as shown on the Project Plan (Attachment 1). Said temporary fencing shall be maintained throughout the construction period and repaired or replaced, as necessary.
18. Open Space Boundaries & Signage:
  - a. Sachem's Path - Prior to the removal of temporary symbolic fencing referenced in Special Condition #17 or within twelve (12) months of the initiation of Work, whichever is earlier, the boundaries of the areas labeled "NHESP Conservation Restriction Area" and "Buffer Area" on the Sachem's Path CR Plan (Attachment 2) shall be permanently monumented and marked with signage as shown on said Plan.
  - b. Tom Nevers - Prior to the initiation of Work, temporary symbolic fencing shall be erected at the boundary of the area labeled "Conservation Restriction Area" where it abuts the area labeled "Existing Managed Area To Remain", as shown on the Tom Nevers CR Plan (Attachment 3). Within three (3) months of the initiation of Work, the entire boundary of the "Conservation Restriction Area" shall be permanently monumented and marked with signage as shown on said Plan, at which time the temporary symbolic fencing shall be removed.

Said permanent bounds and signage shall be maintained in good condition by the Permit Holder and repaired or replaced, as necessary.

19. Transplantation of New England Blazing Star: Prior to the initiation of Work, New England Blazing Star individuals located within the limits of Work shall be transplanted to the Sachem's Path Open Space parcel in accordance with the Transplantation Procedures (Attachment 8).
20. Long-Term Habitat Management: In order to provide a Net Benefit to the conservation of the State-listed species impacted by the Project, the Permit Holder has elected to manage and maintain the Open Space, in perpetuity, as high quality habitat for State-listed plant and moth species. Therefore, the Permit Holder shall implement a long-term habitat management plan for the Open Space, in compliance with the Sachem's Path and Tom

Nevers Management Plans (Attachment 9 and 10). It is anticipated that maintenance of the Open Space will require, at a minimum, regular mowing of grassland habitats, treatment of invasive species, and hand pruning or brush-hogging of scrub oak habitats (using appropriate equipment), as more completely described within the Sachem's Path and Tom Nevers Management Plans (Attachment 9 and 10).

21. Long-Term Habitat Monitoring: The Permit Holder shall implement a long-term habitat monitoring plan for the Open Space, in compliance with the Sachem's Path and Tom Nevers Management Plans (Attachment 9 and 10). **At five (5) year intervals following the initiation of Work**, a qualified biologist(s) experienced with and knowledgeable about the State-listed species impacted by the Project, approved in writing in advance by the Division, shall prepare and deliver a site evaluation report to the Division and the Permit Holder within thirty (30) thirty days of completing the site evaluation.

Said report shall describe: (i) current habitat conditions (including photographs and detailed descriptions of habitat conditions); (ii) management activities conducted during the previous five year period, with an assessment of the success or failure of said management activities in achieving the desired habitat conditions; (iii) habitat management recommendations for the next five year period; and (iv) recommended modifications to the Sachem's Path and/or Tom Nevers Management Plan (Attachment 9 and 10), if necessary. The Permit Holder shall take all reasonable measures necessary to implement the recommendations of the biologist to maintain and enhance high quality habitats for State-listed species, provided that said recommendations are pre-approved in writing by the Division. The Permit Holder shall work with the Division to adaptively refine the type and frequency of management activities, pursuant to the Sachem's Path and/or Tom Nevers Management Plan (Attachment 9 and 10) and long-term habitat monitoring outlined herein.

22. Funding for Long-Term Habitat Management & Monitoring: In order to ensure adequate funding for short-term implementation of monitoring and management activities pursuant to the Sachem's Path and Tom Nevers Management Plans (Attachment 9 and 10), the Permit Holder shall deposit \$10,590.00 into an escrow account subject to an escrow agreement in substantially the same form as shown in Attachment 11, which has been approved. The Permit Holder, subject to Division approval, may draw funds from the escrow account to pay for said monitoring and management activities.

The Permit Holder has proposed to establish a Homeowner's Association or similar entity (the "HOA") with the rights, responsibility, and obligation to conduct long-term monitoring and management of the Open Space pursuant to the Sachem's Path and Tom Nevers Management Plans (Attachment 9 and 10) and ensure ongoing compliance with the Permit. The HOA shall obtain funds from homeowners, as necessary, to cover all costs associated with said habitat monitoring and management activities and ensure ongoing compliance with the Permit. In accordance with General Condition #6, the Permit Holder shall submit to the Division for review all proposed documents necessary to create said HOA, including but not limited to a declaration of trust or similar documents, in order to ensure that the HOA has the rights, responsibility, and obligation to obtain sufficient funds, conduct said habitat monitoring and management activities, and ensure ongoing compliance with the Permit. Said HOA documents shall not be signed, recorded, or be deemed legally effective in any manner without the express written approval of the Division. The Division's review and approval of such documents are limited to ensuring compliance with this Permit.

**Within twelve (12) months of the initiation of Work**, the Permit Holder shall provide

proof to the Division of appropriate recordation of the approved HOA documents so as to become a record part of the chain of title of the Property. Should the Permit Holder fail to execute approved HOA documents required to transfer said rights, responsibilities, and obligations to the HOA, the Permit Holder shall retain responsibility for conducting all long-term monitoring and management activities pursuant to the Sachem's Path and Tom Nevers Management Plans (Attachment 9 and 10) and ensuring ongoing compliance with the Permit.

23. **Reporting Rare Species Observations:** The Division shall be notified, in the form of an NHESP Rare Animal or Plant Observation Form, within ten (10) days of the observation of any State-listed species within or outside the limits of Work. Preferably, notification will be through the Division's data submittal tool, the Vernal Pool & Rare Species (VPRS) Information System. VPRS and our paper observations forms can be found at:  
<http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/species-information-and-conservation/report-rare-species/>.
24. **Notice of Appeal Rights:** This Determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.23. Any person aggrieved by this decision shall have the right to an adjudicatory hearing at the Division pursuant to M.G.L. c. 30A, s.11 in accordance with the procedures for informal hearings set forth in 801 CMR 1.02 and 1.03.

Any notice of claim for an adjudicatory hearing shall be made in writing and be accompanied by a filing fee in the amount of \$500.00. The notice of claim shall be sent to the Division by certified mail, hand delivered or postmarked within twenty-one (21) days of the date of the Division's Determination to:

Wayne MacCallum  
 Director  
 Division of Fisheries and Wildlife  
 Field Headquarters  
 One Rabbit Hill Road  
 Westborough, MA 01581

Any notice of claim for an adjudicatory hearing shall include the following information:

1. The file number for the project;
2. The complete name, address and telephone number of the person filing the request, and the name, address and telephone number of any authorized representative;
3. The specific facts that demonstrate that a party filing a notice of claim satisfies the requirements of an "aggrieved person," including but not limited to (a) how they have a definite interest in the matters in contention within the scope of interests or area of concern of M.G.L. c. 131A or the regulations at 321 CMR 10.00 and (b) have suffered an actual injury which is special and different from that of the public and which has resulted from violation of a duty owed to them by the Division;
4. A clear statement that an adjudicatory hearing is being requested;
5. A clear and concise statement of facts which are grounds for the proceeding, the specific objections to the actions of the Division and the basis for those objections; and the relief sought through the adjudicatory hearing; and a statement that a copy of the request has been sent by certified mail or hand delivered to the applicant and the record owner, if different from the applicant.

*[Signature]*  
[Illegible text]

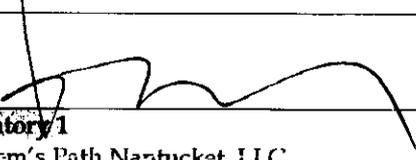
*[Signature]*  
[Illegible text]

**EXPIRES BY: 9 July 2019**

**DATE**

# ACKNOWLEDGEMENT AND ACCEPTANCE OF ALL TERMS OF THIS CONSERVATION PERMIT

The undersigned below agrees that commencement of any work authorized by and described in this Conservation and Management Permit constitutes acknowledgement and acceptance of all terms of this Permit.



Signatory 1  
Sachem's Path Nantucket, LLC

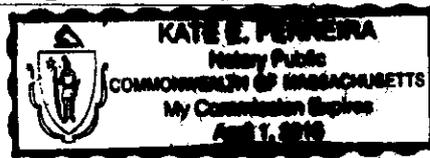
## COMMONWEALTH OF MASSACHUSETTS

On this 21 day of July, 2014, before me, the undersigned notary public, personally appeared Fredenc B. Piesbrey, proved to me through satisfactory evidence of identification which was MA Drivers License to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public



SEAL



My commission expires: 4/1/2016

## **Distribution List**

Amy Ball, Horsley Witten Group, Inc.  
Nantucket Board of Selectmen  
Nantucket Conservation Commission  
Nantucket Planning Board  
Jason Zimmer, DFW Southeast Wildlife District Office  
MA Environmental Policy Act Office

## **Attachment 1**

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Site Layout Plan (Sheet 4 of 13, Sheet Number C-4; dated 10/11/2011, revised 12/13/2012; prepared by Horsley Witten Group, Inc.; the "Project Plan")

1/09/08 4 of 13



BLACKWELL & ASSOCIATES  
ARCHITECTS  
1000 STATE STREET  
BOSTON, MA 02116  
TEL: 617-552-1100  
WWW.BLACKWELL-ARCH.COM

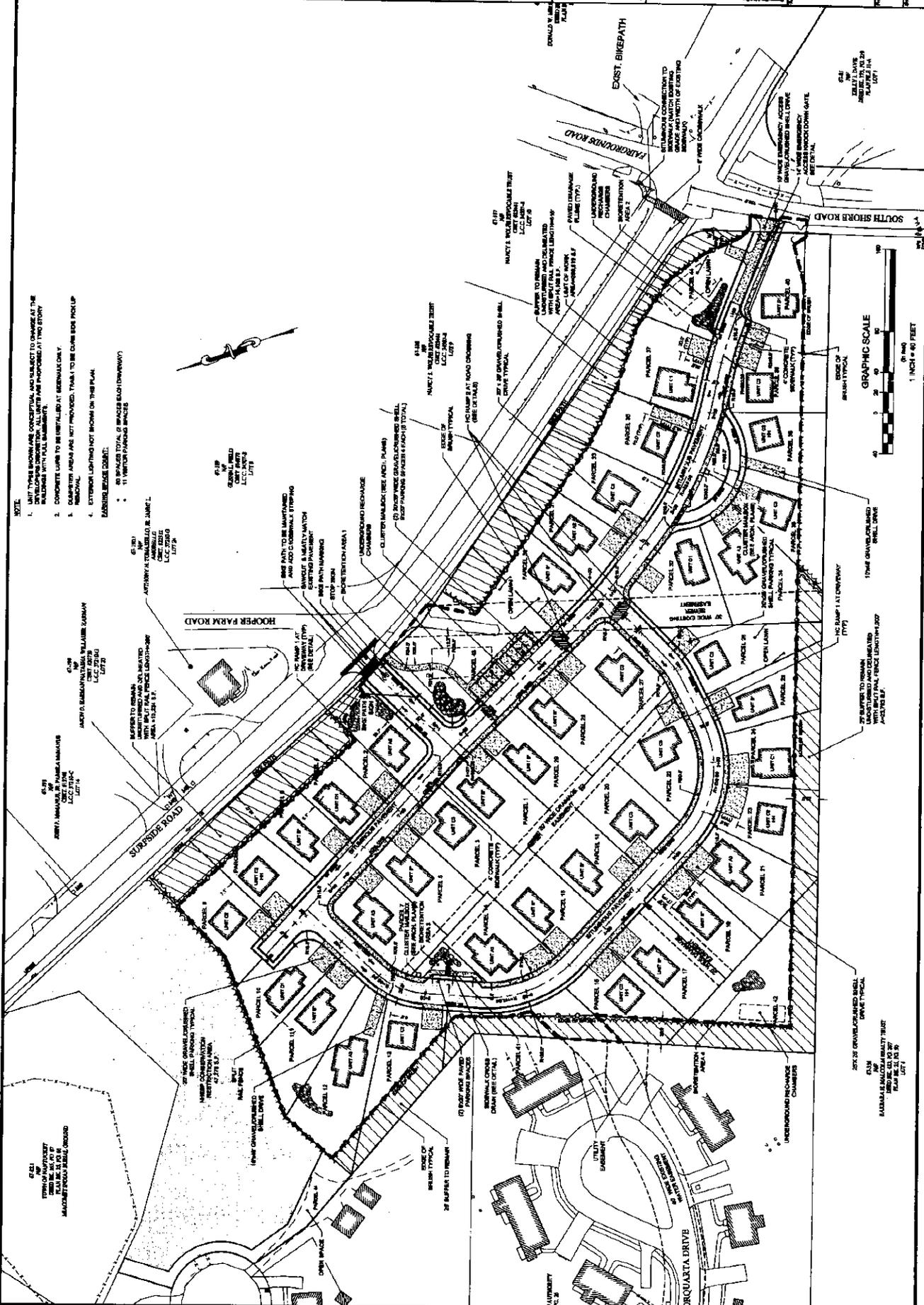
HOUSING ASSISTANCE  
CORPORATION  
1000 STATE STREET  
BOSTON, MA 02116  
TEL: 617-552-1100  
WWW.HOUSINGASSISTANCE.ORG

SACHEM'S PATH  
NANTUCKET, MASSACHUSETTS  
PERMITTING PLANS  
SITE LAYOUT PLAN

Horsey Wilson Group, Inc.  
1000 STATE STREET  
BOSTON, MA 02116  
TEL: 617-552-1100  
WWW.HORSEYWILSON.COM

Table with 4 columns: No., Description, Date, and Status. It lists various items related to the project, such as 'Site Plan', 'Site Plan', 'Site Plan', etc.

- NOTE:
1. UNIT TYPES SHOWN ARE CONCEPTUAL AND SUBJECT TO CHANGE AT THE DISCRETION OF THE ARCHITECT. ALL UNIT TYPES ARE PROPOSED AT TWO STORY BUILDINGS WITH TYPICAL BUILDINGS.
  2. CONCRETE LISTS TO BE INSTALLED AT SEVERAL ONLY.
  3. EXTERIOR LIGHTING AND NOT PROVIDED. THIS IS TO BE DONE BY PICKUP CONTRACTOR.
  4. EXTERIOR LIGHTING NOT SHOWN ON THIS PLAN.
- EXISTING EGRESS ROUTES:
- 1. NORTH PARKING SPACES
  - 2. SOUTH PARKING SPACES
  - 3. EAST PARKING SPACES
  - 4. WEST PARKING SPACES



## **Attachment 2**

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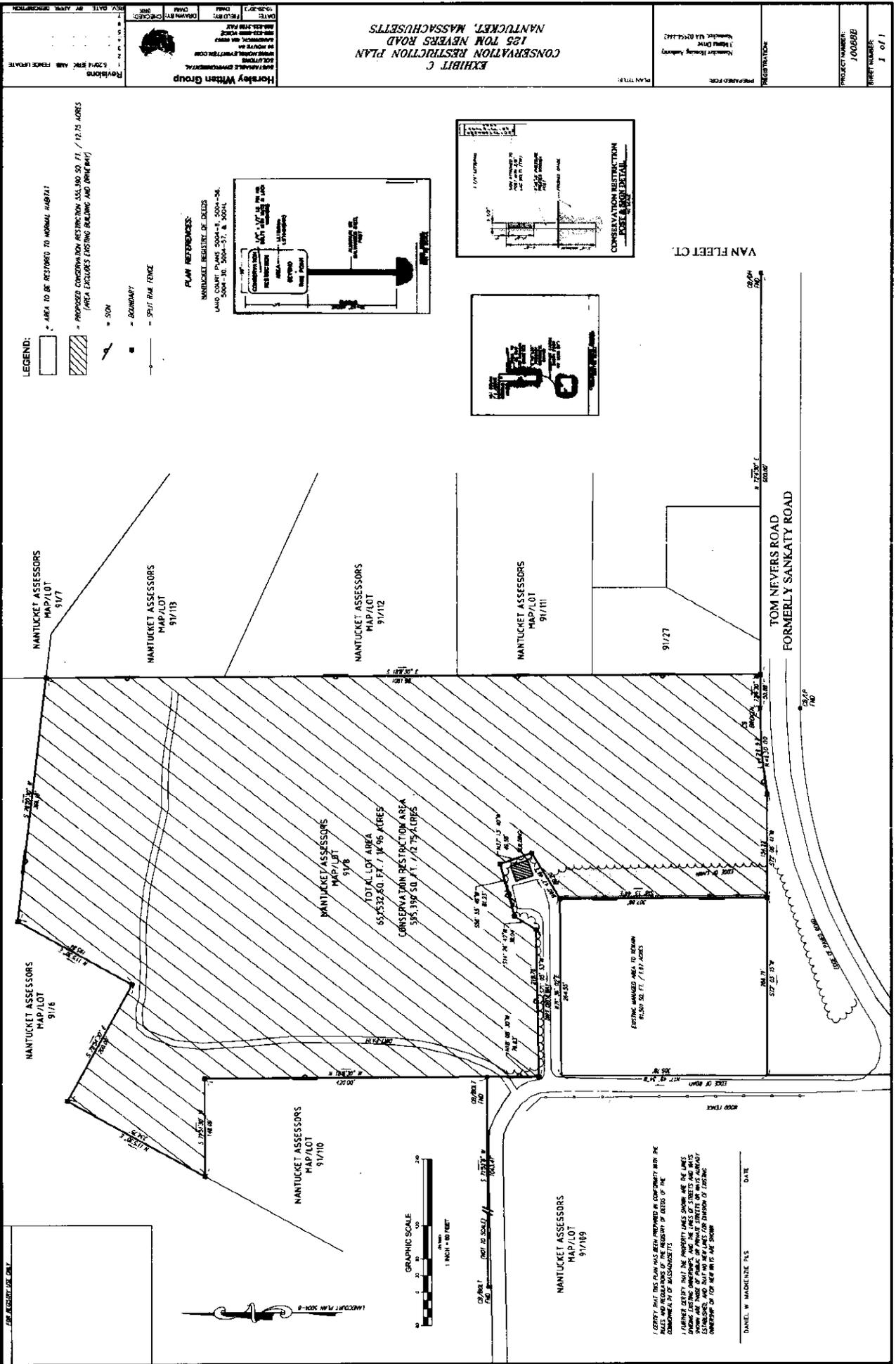
Exhibit B Conservation Restriction Plan Sachem's Path Parcel Nantucket, Massachusetts (dated 10/29/2013, revised 5/20/2014; prepared by Horsley Witten Group; the "Sachem's Path CR Plan")



## **Attachment 3**

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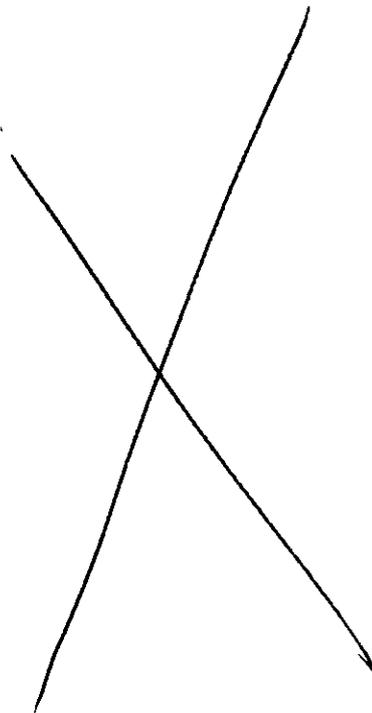
Exhibit C Conservation Restriction Plan 125 Tom Nevers Road Nantucket, Massachusetts (dated 10/29/2013, revised 5/20/2014; prepared by Horsley Witten Group; the "Tom Nevers CR Plan")



# Attachment 4

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Declaration of Restriction, Sachem's Path



## DECLARATION OF RESTRICTION

THIS DECLARATION OF RESTRICTION (hereinafter the "Declaration") is made this \_\_\_\_\_ day of August, 2014, by Sachem's Path Nantucket, LLC, 460 West Main Street, Hyannis, Massachusetts 02601 (hereinafter the "Declarant").

## WITNESSETH

**WHEREAS**, Declarant is the owner of that certain parcel of land within the subdivision known as Sachem's Path, being a portion of Assessors Map 67, Parcel 513 located in the Town of Nantucket, Massachusetts (hereinafter the "Property"), shown as Lot 43 on "Definitive Subdivision Plan, Sachem Path, Nantucket, Massachusetts, Permitting Plans," dated July 31, 2012, prepared by Blackwell & Associates, Inc., and recorded in the Nantucket County District Registry of Deeds as Plan No. 2014-~~2014-168~~ (the "Plan");

**WHEREAS**, the Property contains important habitat, breeding sites, and migration routes for wildlife including two State-listed plant species: New England Blazing Star (*Liatris borealis*) a Species of Special Concern, and Eastern Silvery Aster (*Symphotrichum concolor*), an Endangered species, as well as four State-listed moth species: Chain Dot Geometer (*Cingilia catenaria*), Pink Sallow (*Psectraglaea carnosae*), Coastal Swamp Metarranthis Moth (*Metarranthis pilosaria*), each Species of Special Concern, and Melsheimer's Sack Bearer (*Cicinnus melsheimeri*), a State-Threatened species pursuant to the Massachusetts Endangered Species Act (MESA) (G.L. c. 131A:3 and 321 CMR 10.23);

**WHEREAS**, Declarant desires to protect a contiguous area of this rare species habitat in perpetuity as an integral part of the development of the Property;

**WHEREAS**, at the time of recording of this Declaration, the Property is subject to the provisions of MESA and its implementing regulations;

**WHEREAS**, Declarant desires and agrees as a condition of Conservation and Management Permit # 014-243.DFW (*Exhibit A*) [the CMP; note that the CMP has been recorded with the Nantucket Registry of Deeds in Book \_\_\_\_, Page \_\_\_\_, and is not attached to this instrument] issued by the Commonwealth of Massachusetts Division of Fisheries and Wildlife [hereinafter the "Division"], pursuant to the MESA for the project described in *Exhibit A*, that Declarant shall record an Executive Office of Environmental Affairs-Division of Conservation Services ("EEA\_DCS") approved Conservation Restriction over +/- 1.1 acres of the Property in substantially the same form as *Exhibit B* [agreed upon proposed CR draft];

**WHEREAS**, Declarant desires and agrees that this Declaration of Restriction shall run in perpetuity or until such time as the EEA-DCS approved Conservation Restriction is recorded;

**WHEREAS**, Declarant desires and agrees that the 1.1 acres of the Property more specifically described as Lot 43 shown on said Plan as "NHESP Conservation Restriction Area" (the "Open Space") shall be maintained in perpetuity as habitat and open space, subject to the Prohibited Acts and Uses and Reserved Rights set forth below; and

NOW, THEREFORE, Declarant hereby voluntarily declares and imposes in perpetuity upon the Open Space portion of the Property, the following covenants, conditions and restrictions for the benefit of Declarant, its successors and assigns, the Town of Nantucket [hereinafter the "Town"], and the Division and said Property shall be held, subdivided, transferred, sold, conveyed, occupied and used subject to the covenants, conditions, and restrictions hereinafter set forth.

1. **Prohibited Acts and Uses.** Subject to the exceptions set forth in Section 2 below, the following acts and uses are prohibited in the Open Space:

- A. Construction or placing of any building, tennis court, landing strip, mobile home, swimming pool, fences, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, tower, or other temporary or permanent structure or facility in, on, above or below said Open Space.
- B. Mining, excavating, dredging or removing soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit.
- C. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance of material whatsoever or the installation of underground storage tanks.
- D. Cutting, removing or otherwise destroying trees, grasses or other vegetation or disturbance of shrubs, ground, forest floor or leaf litter.
- E. The use of motorized vehicles of any kind, except as required by the police, fire department or any other governmental agents in carrying out their lawful duties.
- F. The further subdivision of the Open Space.
- G. Activities substantially detrimental to drainage, flood control, water conservation, erosion control or soil conservation.
- H. Any other use of or activity on the Open Space which would materially impair significant conservation interests thereon unless necessary for the protection of the conservation interest that are the subject of this restrictive covenant.

2. **Reserved Rights.** Notwithstanding any provisions herein to the contrary, Declarant reserves to itself and its successors and assigns the right to:

- A. establish, enforce, waive, alter and amend such additional rules, regulations, covenants, conditions and restrictions governing use of the Open Space as are not otherwise prohibited by this Declaration of Restriction as agreed to in writing by the Division and allowed by applicable federal, state or local law or regulation, and

- B. conduct or permit the following activities in the Open Space if such acts do not materially impair significant conservation interests:
- 1) Selective cutting or pruning of trees and vegetation to maintain access to and over existing footpaths located thereon and for protection of persons and property from imminent risks of harm or damage to persons and structures.
  - 2) Construct fences, walls or necessary boundary markers on the Open Space upon written consent by the Division, such consent not to be unreasonably withheld.
  - 3) Habitat management activities, including forestry, may be permissible with prior written approval from the Natural Heritage and Endangered Species Program of the Division of Fisheries and Wildlife (the "Division"), its successors and assigns;
3. **Monuments and Signage.** The Declarant and the Declarant's Successors shall maintain in good condition any, bounds, monuments, markers and signs shown on the Plan, demarcating the boundaries of the Open Space, and shall repair and or replace said monuments and signage on an as needed basis.
4. **Term - Binding Effect In Perpetuity.** This Declaration and its provisions herein set forth shall run with the Open Space as shown on said Plan in perpetuity from the date of recordation in the Nantucket District Registry of Deeds and shall be binding upon Declarant, Declarant's successors and assigns, and any other party having an ownership interest in said Open Space or claiming to have an interest with respect to said Open Space as tenants, invitees, licenses or otherwise, and all of the respective heirs, successors, grantees, mortgages, assigns, agents, contractors, subcontractors and employees of the foregoing until such time as the EEA-DCS approved Conservation Restriction is recorded (*Exhibit B*). The recorded EEA-DCS approved Conservation Restriction shall supersede this Declaration in its entirety.

In the event that any ownership interest in the Property, or portion thereof is sold, transferred or conveyed to another party or parties, the Declarant reserves the right to place and record the EEA-DCS approved Conservation Restriction on the Open Space portion of the Property even after said sale, transfer or conveyance occurs and is recorded in the Nantucket District Registry of Deeds.

This Declaration is hereby intended and declared to be in perpetuity until such time as the EEA-DCS approved Conservation Restriction is recorded and no re-recordation of this Declaration of Restriction under G.L.c. 184, ss. 23-30 or any other law shall ever be necessary in order to maintain the full legal effect and authority hereof and Declarant and its successors and assigns, including but not limited to all subsequent owners of the Open Space, hereby waive all their legal right to and shall forego any action in law or equity of any kind whatsoever attempting to contest the validity of any provision of this

Declaration of Restriction and shall not, in any enforcement action, raise the invalidity of any provision of this Declaration of Restriction.

Notwithstanding the above, the Town and the Division are hereby authorized, jointly and severally, to record and file any notices and/or instruments that the Town and/or the Division deem appropriate to assure the legal validity and enforceability in perpetuity of this Declaration of Restriction and the Declarant, on behalf of itself and its successors and assigns, hereby appoints the Town and the Division as its and their attorney-in-fact to jointly or severally execute, acknowledge, deliver and record any such notice or instrument on its and/or their behalf. Without limiting the foregoing, the Declarant and its successors and assigns agree to execute any such notices and instruments upon request of the Town or the Division.

5. **Enforceability.** The Town and the Division, jointly and severally, shall have the right to enforce this Declaration of Restriction and are a benefitted parties.

The Town and the Division, jointly and severally, shall have the right to enter the Open Space, in a reasonable manner and at reasonable times, for the purposes of (i) inspecting the Open Space to determine compliance with this Declaration of Restriction; (ii) enforcing this Declaration of Restriction; and (iii) taking any other action which may be necessary or appropriate.

The Town and the Division, jointly and severally, shall have the right to bring proceedings at law or equity against any party or parties violating or attempting to violate the terms of this Declaration of Restriction to enjoin them from so doing and to cause any such violation to be remedied, including but not limited to restoration of the portion of the Open Space adversely affected, after providing written notice to such party or parties and all mortgagees of record if the names and addresses of such parties and mortgagees have been provided in writing to the Town and the Division.

6. **Severability.** If any court or other tribunal of competent jurisdiction determines that any provision of this Declaration is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument ~~as though it had never been included herein.~~ In either case, the remaining provisions of this instrument shall remain in full force and effect.

7. **Non-Waiver.** Any election by the Town and/or the Division as to the manner and timing of its right to enforce this Declaration or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

8. **Access.** This Declaration does not grant to the Town, the Division, the general public, or to any other person or entity any right to enter upon the Property except the right of the Town and the Division to enter the Property at reasonable times and in a reasonable

manner for the purpose of inspecting the same to determine compliance herewith and enforcing this Declaration as set forth in Section 5 above.

9. **Incorporation Into Deeds, Mortgages, Leases and Instruments of Transfer.** Declarant and Declarant's successors and assigns, including all subsequent owners of the Open Space or portions thereof, shall incorporate this Declaration, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Open Space or any portion thereof is conveyed. Any such deed, mortgage or other interest purporting to convey any portion of the Open Space without including this Declaration in full or by reference shall be deemed and taken to include said Declaration in full even though said Declaration is not expressly described or referenced therein.
10. **Recordation/Registration.** Declarant shall record and/or register this Declaration with the Nantucket District Registry of Deeds and/or Land Registration Office upon the later of (i) thirty (30) days of its date of execution or (ii) the conveyance of the first Lot located on the Plan to a *bona fide* purchaser.
11. **Amendment and Release.** If the purposes of this Declaration are no longer capable of being met as determined by the Division, its provisions may be amended. No amendment or release of this Declaration shall be effective unless it has been approved in writing by the Division [hereinafter the Division Approval] and said amendment or release and the requisite Division Approval has been recorded with the Nantucket District Registry of Deeds and/or Land Registration Office.

IN WITNESS WHEREOF, Sachem's Path, LLC, has caused these presents to be signed, acknowledged and delivered in its name and behalf by Frederic B. Presbrey, authorized signatory, this \_\_\_\_ day of August, 2014.

SACHEM'S PATH, LLC

By: \_\_\_\_\_  
Frederic B. Presbrey  
Authorized signatory

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss. \_\_\_\_\_, 2014

On this day before me, the undersigned notary public, personally appeared( name), proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

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

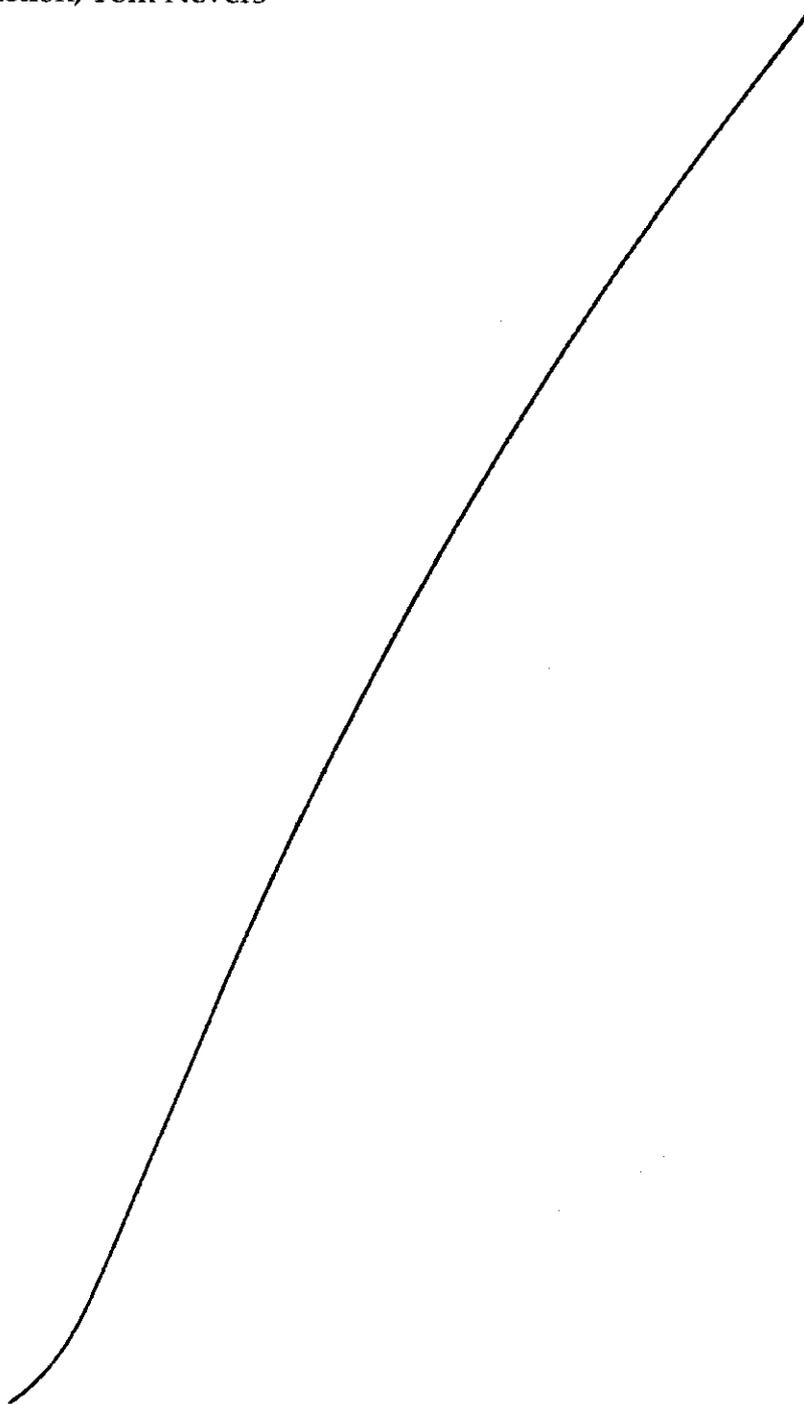
SEAL

My Commission Expires:

## **Attachment 5**

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Declaration of Restriction, Tom Nevers



## DECLARATION OF RESTRICTION

THIS DECLARATION OF RESTRICTION (hereinafter the "Declaration") is made this \_\_\_\_\_ day of August, 2014, by Nantucket Housing Authority, 3 Manta Drive; Nantucket, MA 02554 (hereinafter the "Declarant").

## WITNESSETH

WHEREAS, Declarant is the owner of that certain parcel of land situated at 125 Tom Nevers Road in the Town of Nantucket, Nantucket County, Massachusetts (hereinafter the "Property"), shown as Lot 509 on Land Court Plan 5004-8, filed with Certificate of Title No. 4306 at the Registry District of the Land Court for Nantucket County (the "Land Court Plan"), and shown on Nantucket Assessor's Map 91 as Parcel 5, by virtue of Certificate of Title No. 11965;

WHEREAS, the Property contains important habitat, breeding sites, and migration routes for wildlife including the Northern Harrier (*Circus cyaneus*), a Threatened species; two State-listed plant species: New England Blazing Star (*Liatris borealis*) a Species of Special Concern, and Papillose Nut-rush (*Scleria pauciflora*), an Endangered species; as well as four State-listed moth species: Waxed Sallow Moth (*Chaetagnalea cerata*), Sandplain Heterocampa (*Heterocampa varia*), Melsheimer's Sack Bearer (*Cicinnus melsheimeri*), each Threatened species, and Coastal Swamp Metarranthis Moth (*Metarranthis pilosaria*), a Species of Special Concern, pursuant to the Massachusetts Endangered Species Act (MESA) (G.L. c. 131A:3 and 321 CMR 10.23);

WHEREAS, Declarant desires to protect a contiguous area of this rare species habitat in perpetuity as an integral part of the development of the Property;

WHEREAS, at the time of recording of this Declaration, the Property is subject to the provisions of MESA and its implementing regulations;

WHEREAS, Declarant desires and agrees as a condition of Conservation and Management Permit 014-243.DFW (*Exhibit A*) [the CMP; note that the CMP has been recorded with the Nantucket Registry of Deeds in Book \_\_\_\_, Page \_\_\_\_, and is not attached to this instrument] issued by the Commonwealth of Massachusetts Division of Fisheries and Wildlife [hereinafter the "Division"], pursuant to the MESA for the project described in *Exhibit A*, that Declarant shall record an Executive Office of Environmental Affairs-Division of Conservation Services ("EEA\_DCS") approved Conservation Restriction over +/- 12.75 acres of the Property in substantially the same form as *Exhibit B* [agreed upon proposed CR draft];

WHEREAS, Declarant desires and agrees that this Declaration of Restriction shall run in perpetuity or until such time as the EEA-DCS approved Conservation Restriction is recorded;

WHEREAS, Declarant desires and agrees that the 12.75 acres of the Property more specifically described as "Conservation Restriction Area" as shown on the attached Conservation Restriction Plan, 125 Tom Nevers Road, Nantucket, Massachusetts (the "Open

Space"; *Exhibit C*) shall be maintained in perpetuity as habitat and open space, subject to the Prohibited Acts and Uses and Reserved Rights set forth below; and

NOW, THEREFORE, Declarant hereby voluntarily declares and imposes in perpetuity upon the Open Space portion of the Property, the following covenants, conditions and restrictions for the benefit of Declarant, its successors and assigns, the Town of Nantucket [hereinafter the "Town"], and the Division and said Property shall be held, subdivided, transferred, sold, conveyed, occupied and used subject to the covenants, conditions, and restrictions hereinafter set forth.

1. **Prohibited Acts and Uses.** Subject to the exceptions set forth in Section 2 below, the following acts and uses are prohibited in the Open Space:
  - A. Construction or placing of any building, tennis court, landing strip, mobile home, swimming pool, fences, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, tower, or other temporary or permanent structure or facility in, on, above or below said Open Space.
  - B. Mining, excavating, dredging or removing soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit.
  - C. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance of material whatsoever or the installation of underground storage tanks.
  - D. Cutting, removing or otherwise destroying trees, grasses or other vegetation or disturbance of shrubs, ground, forest floor or leaf litter.
  - E. The use of motorized vehicles of any kind, except as required by the police, fire department or any other governmental agents in carrying out their lawful duties.
  - F. The further subdivision of the Open Space.
  - G. Activities substantially detrimental to drainage, flood control, water conservation, erosion control or soil conservation.
  - H. Any other use of or activity on the Open Space which would materially impair significant conservation interests thereon unless necessary for the protection of the conservation interest that are the subject of this restrictive covenant.
  
2. **Reserved Rights.** Notwithstanding any provisions herein to the contrary, Declarant reserves to itself and its successors and assigns the right to:
  - A. establish, enforce, waive, alter and amend such additional rules, regulations, covenants, conditions and restrictions governing use of the Open Space as are not otherwise prohibited by this Declaration of Restriction as agreed to in writing by the Division and allowed by applicable federal, state or local law or regulation, and

- B. conduct or permit the following activities in the Open Space if such acts do not materially impair significant conservation interests:
- 1) Selective cutting or pruning of trees and vegetation to maintain access to and over existing footpaths located thereon and for protection of persons and property from imminent risks of harm or damage to persons and structures.
  - 2) Construct fences, walls or necessary boundary markers on the Open Space upon written consent by the Division, such consent not to be unreasonably withheld.
  - 3) Habitat management activities, including forestry, may be permissible with prior written approval from the Natural Heritage and Endangered Species Program of the Division of Fisheries and Wildlife (the "Division"), its successors and assigns;
3. **Monuments and Signage.** The Declarant and the Declarant's Successors shall maintain in good condition any, bounds, monuments, markers and signs shown on the Plan, demarcating the boundaries of the Open Space, and shall repair and or replace said monuments and signage on an as needed basis.
4. **Term - Binding Effect In Perpetuity.** This Declaration and its provisions herein set forth shall run with the Open Space as shown on said Plan in perpetuity from the date of recordation in the Nantucket District Registry of Deeds and shall be binding upon Declarant, Declarant's successors and assigns, and any other party having an ownership interest in said Open Space or claiming to have an interest with respect to said Open Space as tenants, invitees, licenses or otherwise, and all of the respective heirs, successors, grantees, mortgages, assigns, agents, contractors, subcontractors and employees of the foregoing until such time as the EEA-DCS approved Conservation Restriction is recorded (*Exhibit B*). The recorded EEA-DCS approved Conservation Restriction shall supersede this Declaration in its entirety.

In the event that any ownership interest in the Property, or portion thereof is sold, transferred or conveyed to another party or parties, the Declarant reserves the right to place and record the EEA-DCS approved Conservation Restriction on the Open Space portion of the Property even after said sale, transfer or conveyance occurs and is recorded in the Nantucket District Registry of Deeds.

This Declaration is hereby intended and declared to be in perpetuity until such time as the EEA-DCS approved Conservation Restriction is recorded and no re-recordation of this Declaration of Restriction under G.L. c. 184, ss. 23-30 or any other law shall ever be necessary in order to maintain the full legal effect and authority hereof and Declarant and its successors and assigns, including but not limited to all subsequent owners of the Open Space, hereby waive all their legal right to and shall forego any action in law or

equity of any kind whatsoever attempting to contest the validity of any provision of this Declaration of Restriction and shall not, in any enforcement action, raise the invalidity of any provision of this Declaration of Restriction.

Notwithstanding the above, the Town and the Division are hereby authorized, jointly and severally, to record and file any notices and/or instruments that the Town and/or the Division deem appropriate to assure the legal validity and enforceability in perpetuity of this Declaration of Restriction and the Declarant, on behalf of itself and its successors and assigns, hereby appoints the Town and the Division as its and their attorney-in-fact to jointly or severally execute, acknowledge, deliver and record any such notice or instrument on its and/or their behalf. Without limiting the foregoing, the Declarant and its successors and assigns agree to execute any such notices and instruments upon request of the Town or the Division.

5. **Enforceability.** The Town and the Division, jointly and severally, shall have the right to enforce this Declaration of Restriction and are benefitted parties.

The Town and the Division, jointly and severally, shall have the right to enter the Open Space, in a reasonable manner and at reasonable times, for the purposes of (i) inspecting the Open Space to determine compliance with this Declaration of Restriction; (ii) enforcing this Declaration of Restriction; and (iii) taking any other action which may be necessary or appropriate.

The Town and the Division, jointly and severally, shall have the right to bring proceedings at law or equity against any party or parties violating or attempting to violate the terms of this Declaration of Restriction to enjoin them from so doing and to cause any such violation to be remedied, including but not limited to restoration of the portion of the Open Space adversely affected, after providing written notice to such party or parties and all mortgagees of record if the names and addresses of such parties and mortgagees have been provided in writing to the Town and the Division.

6. **Severability.** If any court or other tribunal of competent jurisdiction determines that any provision of this Declaration is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.
7. **Non-Waiver.** Any election by the Town and/or the Division as to the manner and timing of its right to enforce this Declaration or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.
8. **Access.** This Declaration does not grant to the Town, the Division, the general public, or to any other person or entity any right to enter upon the Property except the right of the Town and the Division to enter the Property at reasonable times and in a reasonable

manner for the purpose of inspecting the same to determine compliance herewith and enforcing this Declaration as set forth in Section 5 above.

9. **Incorporation Into Deeds, Mortgages, Leases and Instruments of Transfer.** Declarant and Declarant's successors and assigns, including all subsequent owners of the Open Space or portions thereof, shall incorporate this Declaration, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Open Space or any portion thereof is conveyed. Any such deed, mortgage or other interest purporting to convey any portion of the Open Space without including this Declaration in full or by reference shall be deemed and taken to include said Declaration in full even though said Declaration is not expressly described or referenced therein.
10. **Recordation/Registration.** Declarant shall record and/or register this Declaration with the Nantucket District Registry of Deeds and/or Land Registration Office upon the later of (i) thirty (30) days of its date of execution or (ii) the conveyance of the first Lot located on the Plan to a *bona fide* purchaser.
11. **Amendment and Release.** If the purposes of this Declaration are no longer capable of being met as determined by the Division, its provisions may be amended. No amendment or release of this Declaration shall be effective unless it has been approved in writing by the Division [hereinafter the Division Approval] and said amendment or release and the requisite Division Approval has been recorded with the Nantucket District Registry of Deeds and/or Land Registration Office.

IN WITNESS WHEREOF, Nantucket Housing Authority has caused these presents to be signed, acknowledged and delivered in its name and behalf this \_\_\_\_ day of August, 2014.

NANTUCKET HOUSING AUTHORITY

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

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss. \_\_\_\_\_, 20\_\_

On this day before me, the undersigned notary public, personally appeared( name), proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

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

SEAL

My Commission Expires: \_\_\_\_\_

**CONSERVATION RESTRICTION**

Grantor: Nantucket Housing Authority  
 Grantee: Nantucket Land Council, Inc.  
 Property Address: Off Surfside Road. Map 76 Parcel 513  
 Title Reference:

The Nantucket Housing Authority, a Massachusetts non profit whose business and mailing address is 3 Manta Dr. Nantucket, MA 02554, and its successors and assigns (collectively, the "Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of Massachusetts General Laws, for nominal consideration hereby grant with quitclaim covenants to the Nantucket Land Council, Inc., a Massachusetts non-profit corporation whose purposes include the preservation of land in its natural state having a principal place of business at 6 Ash Lane, Nantucket, Massachusetts 02554, and its successors and permitted assigns, (the "Grantee") in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction on a certain parcel of land off of Surfside Road, constituting approximately 1.1 acres, and more particularly described as set forth in Exhibit A (the "Premises"). A copy of a plan prepared by Jeffrey Blackwell on August 8, 2012 depicting the Premises as Lot 43 which is subject to the Conservation Restriction, and further defined in the Draft Conservation Restriction Plan, Sachem Path Parcel, Nantucket, Massachusetts, dated August 29, 2013, and prepared by Horsley Witten Group, Inc. hereunder are attached hereto as Exhibit B.

For Grantor's title see Certificate of Title No. [REDACTED] at the Nantucket Registry District of the Land Court.

Grantee warrants that Grantee is a charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code"), and a "charitable corporation whose purposes include conservation of land" in accordance with MGL Chap. 184, Section 32 whose primary purpose is "To encourage, support and engage in research, study, and education regarding land in the County of Nantucket ... and to engage in, institute, defend and to support in any legal manner or way any litigation or administrative procedures regarding such land, its ownership and utilization; and to engage in such other activities as are necessary or reasonably appropriate thereto."

Grantee represents that Grantee is a "qualified organization," as that term is defined in Section 170(h)(3) of the Code.

Grantee has received a determination letter from the Internal Revenue Service dated November 24, 2003, to the effect that Grantee is a "publicly-supported" organization described in Section 509(a)(1) and Section 170(b)(A)(vi) of the Code, and is not a private foundation under Section 509(a)(1) of the Code.

Grantor and Grantee recognize the natural, scenic, and special character of the Premises and have the common purpose of the conservation and protection in perpetuity of the Premises through the use of restrictions on the Premises.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, in consideration of the above and mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to Section 170(h) of the Code and the laws of the Commonwealth of Massachusetts, including M.G.L. Chapter 184, Sections 31-33, Grantor hereby voluntarily grants and conveys to Grantee and its successors and permitted assigns a conservation restriction (the "Restriction" or "Conservation Restriction") in perpetuity and for conservation purposes over the Premises of the nature and character and to the extent hereinafter set forth. Grantor herein declares that the Premises shall be held, mortgaged, encumbered, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, and restrictions hereinafter set forth, which covenants, conditions, and restrictions shall be deemed to run with the land in perpetuity and to burden the Premises in perpetuity.

#### **A. PURPOSES:**

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

The specific conservation values of the Premises are documented in a report to be kept on file at the offices of Grantee and incorporated herein by this reference, which documentation ("Baseline Documentation") the parties agree provides an accurate representation of the Premises as of the effective date of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.

This Conservation Restriction is intended to protect the aforementioned conservation values of the Premises and Nantucket by prohibiting all buildings; by prohibiting practices such as commercial agriculture and raising of animals which can damage or alter natural plant communities; and by encouraging conservation of the land in its predominantly vacant and undeveloped condition, as more particularly described herein.

These conservation values are more particularly described as including the following:

- **Open Space Preservation.** The protection of the Premises contributes to the protection of the scenic and natural character of surrounding permanently protected Nantucket Conservation Foundation land to the north and west being used as open space and the protection of the Premises will enhance the open-space value of these lands.
- **Water Quality.** The Premises are located on Nantucket Island which has a sole source aquifer for the use of its inhabitants. Protection of the Premises will further protect the water quality of the aquifer.
- **Scenic Protection.** The Premises are located along Tom Nevers Road and afford the public with uninterrupted views of pristine vegetation and open space which if developed would interrupt, obstruct and fragment beneficial scenic vistas.
- **Protection of Wildlife Habitat.** The entire Premises fall within an area designated as "Priority Habitat for State-Protected Rare Species" by the Massachusetts Division of Fisheries and Wildlife's Natural Heritage & Endangered Species Program (the "Division"). The Premises are comprised of a coastal heathland and sandplain grasslands and low lying open scrub oak. Because development on Nantucket threatens to destroy much of the Island's natural environment and threatens to introduce exotic and invasive species of plants, conservation of the Premises in its predominantly undisturbed and natural condition maintains increasingly rare indigenous wildlife and plant habitats on Nantucket. Conservation of the Premises will protect habitat used by a variety of state-listed rare wildlife species including, but not limited to, two state-listed plant species: New England Blazing Star (*Liatris borealis*), a "Species of Special Concern," and Eastern Silvery Aster (*Symphotrichum concolor*), state-listed as "Endangered"; as well as four state-listed moth species: Chain Dot Geometer (*Cingilia catenaria*), Pink Sallow (*Psectraglaea carosa*), Coastal Swamp Metarranthis Moth (*Metarranthis pilosaria*), each a "Species of Special Concern," and Melsheimer's Sack Bearer (*Cicinnus melsheimeri*), state-listed as "Threatened" pursuant to the Massachusetts Endangered Species Act (MESA) (G.L. c. 131A:3 and 321 CMR 10.23).
- **Massachusetts Endangered Species Act.** This Conservation Restriction is granted pursuant to and in accordance with the requirements set forth in Conservation and Management Permit [REDACTED] issued by the Division and further referenced below.
- **Furtherance of Governmental Policy.** Preservation of the Premises is pursuant to clearly delineated conservation policy expressed in Nantucket's Master Plan, adopted by Nantucket's voters at the Annual Town Meeting in April 2009, which states in the Town of Nantucket 2007 Open Space and Recreation Plan as Goal/Objectives 1C: "The town should encourage the use of creative

regulatory and non-regulatory land protection tools such as conservation restrictions, tax abatements, gifts and zoning measures.”; and in *The Nantucket Comprehensive Community Plan* (NCCP), including the following objectives therein: Objective 4.1, “To aggressively acquire land and conservation restrictions to protect natural ecosystems;” Objective 4.2, “To encourage land management activities by the Land Bank and nonprofit entities to provide permanent resource protection;”

Preservation of the Premises as open space is further pursuant to clearly delineated governmental conservation policy in accordance with “Nantucket’s Goals and Objectives for Balanced Growth” which was adopted in November 1990 by Town Meeting and states as Objective A-1: “To identify and acquire critical open spaces through outright ownership or by less-than-fee means, such as conservation restrictions, scenic easements, and the purchase of development rights, in order to complete the Island’s open space network.

Preservation of the Premises as open space is pursuant to the following permits and Declarations:

a) MESA Conservation and Management Permit # [REDACTED] dated [REDACTED], a copy of which is attached hereto as Exhibit C, issued by the Division and incorporated herein by this reference (the “Permit”).

b) Town of Nantucket Zoning Board of Appeals File No. 076-11 Comprehensive Permit for Housing Assistance Corporation, Surfside Road at South Shore Drive, Nantucket, issued September 13, 2012.

**B. Prohibited Uses.** Except for reserved rights as set forth in Paragraph C below, Grantor will neither perform nor give permission to others to perform the following acts or uses which are prohibited on, under, and above the Premises:

(1) The construction or placement of any temporary or permanent building, landing strip, helicopter landing area, tennis court, mobile home, swimming pool, asphalt or concrete pavement, stadium, bleachers, outdoor lighting equipment, ropes course, sign, billboard, or other advertising display, utility pole, tower, conduit or line, septic system, or any other temporary or permanent structure on, above, or under the Premises;

(2) Excavating, mining, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit;

(3) Placing, filling, storing or dumping on the Premises of soil, refuse, trash, boats, trailers, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground tanks;

(4) Cutting, removing or otherwise destroying trees, grasses or other vegetation on the Premises;

(5) The conduct of activities detrimental to drainage, flood control, water conservation, water quality, erosion control or soil conservation;

(6) The use, parking or storage of motorcycles, motorized trail bikes, snowmobiles and all other motorized vehicles and activities;

(7) Division or subdivision of the Premises, except for merging all or a portion of the Premises with abutting property or properties. No portion of the Premises – either following such merger or in the absence of such merger – may be used to satisfy or comply with building, development or density requirements on the Premises or on any other property;

(8) All commercial and municipal structures and all commercial or industrial activities and uses;

(9) Any work, including, but not limited to, filling and/or construction of roads, in wetlands as defined by the Wetlands Protection Act (Chapter 131, Section 40) or the Nantucket Wetlands Bylaw (Chapter 136 of the Nantucket Code);

(10) The use of the Premises for recreation, business, residential or industrial use of the Premises.

(11) The use of pesticides and fertilizers; and

(12) Any other use of the Premises or the conduct of any other activity on the Premises which would materially impair the Premises' conservation values unless necessary for the protection of the conservation values that are the subject of this Conservation Restriction.

**C. Reserved Rights.** The provisions of Paragraph B notwithstanding, the following acts and uses by Grantor are permitted on, above or under the Premises provided they do not materially impair the Premises' conservation values and they are not inconsistent with the purposes of this Conservation Restriction.

(1) Subject to Division approval, the right to excavate a known archaeological site identified by and under the direction of a qualified organization such as the Massachusetts Historical Commission according to Massachusetts Regulations 950 CMR 70;

(2) Subject to Grantee and Division prior approval in accordance with Paragraph E, hereof the right to conduct any activity, such as selective cutting, mowing or burning, to manage the habitat of any threatened or rare species, as

identified by the Division or its successors, and/or any other natural plant community on Nantucket, and/or to enhance or manage wildlife. Management activities shall be in accordance with the Conservation and Management Plan dated [REDACTED], which is included as an attachment to the Permit (Exhibit C). Grantee and/or the Division may impose conditions or limitations to protect wildlife, natural vegetation and environmental systems. Such conditions and limitations may include the limited erection of nest boxes or osprey poles;

(3) Subject to Grantee and Division prior approval in accordance with Paragraph E, hereof the right to plant indigenous species of plants which are native to Nantucket.

(4) Subject to Grantee and Division prior approval in accordance with Paragraph E, hereof the right to control noxious or invasive plant and animal species by mechanical and/or chemical means on the Premises,

(5) The right to walk and conduct other noncommercial passive recreational (including educational) activities on foot that do not materially alter the landscape and do not degrade environmental quality;

(6) Subject to Grantee and Division prior approval in accordance with Paragraph E, hereof the right to survey and to conduct scientific research, including occasional erection of bird mist nets;

(7) Subject to Grantee's prior approval in accordance with Paragraph E, hereof the right to erect, maintain or replace fence posts, post and rail fences, and signs with respect to hunting, trespass, trail access, identify and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, and the protected conservation values provides that such signs do not specifically reference species on the MESA by scientific or common names or provide the actual location of said species. Signs may use generalized terms such as "Sensitive Ecological Community", "wildlife habitat", "rare animal habitat" or other generalized terms;

(8) The right to use motor vehicles only as necessary and solely for exercising any of the reserved rights in this Paragraph C or as necessary by the police, firefighters, Board of Health agents, Department of Environmental Protection personnel, or other governmental agents in carrying out their lawful duties;

(9) All actions and activities required or authorized by Grantor, Grantee and/or the Division within the Permit (Exhibit C); and

Certain reserved rights under this Paragraph C may require permits from one or more public agencies. The exercise of any right reserved by Grantor

under this Paragraph C shall be in compliance with the then-current Zoning, the Wetlands Protection Act, the MA Endangered Species Act (MGL c131A), and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any such rights herein does not imply that Grantee or the Commonwealth takes any position on whether any such permit should be issued.

**D. Prior Notice to Grantee.** Grantor agrees to notify Grantee and the Division, in writing, at least sixty (60) days prior to exercising those rights reserved in subparagraph 3 of Paragraph C hereof, and again shortly before commencing uses and activities previously approved by Grantee in accordance with Paragraph E hereof. The notice shall describe the nature, scope, design, location, timetable, MESA Tracking Number and/or Conservation and Management Permit #, and any other material aspect of the planned activity in sufficient detail to permit Grantee and/or the Division to monitor the proposed activity to assure that it is conducted in a manner that is not inconsistent with the purposes of this Conservation Restriction.

**E. Prior Approval of Grantee.** Whenever approval by Grantee and/or the Division is required under the provisions of subparagraphs 1, 3, 4, 5, 7, 8 of Paragraph C hereof, Grantor shall request such approval in writing delivered to Grantee and/or the Division not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question; however, Grantee and/or the Division may waive or reduce the required period of time, provided said waiver is obtained in writing prior to the initiation of such activity. The request for approval shall describe the nature, scope, design, location, timetable, MESA Tracking Number and/or Conservation and Management Permit Number, and any other material aspect of the proposed activity in sufficient detail to permit Grantee and/or the Division to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Grantee and/or the Division shall grant, condition or withhold its approval in writing within sixty (60) days of its receipt of Grantor's written request for approval. Grantor's written request for approval shall specifically recite the length of time provided by this Conservation Restriction for review and response by Grantee. Grantee and Division approval shall not be unreasonably withheld, but it shall only be granted upon Grantee and/or the Division's determination that the proposed activity is not inconsistent with the purposes of this Conservation Restriction. Failure of Grantee and/or the Division to respond in writing within sixty (60) days shall be deemed to constitute approval by Grantee of the request as submitted, so long as significant conservation values are not impaired by the use or activity and the request has set forth the provisions of this section relating to deemed approval after such sixty (60) days.

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 prepaid, addressed as follows:

To Grantor: Nantucket Housing Authority  
3 Manta Drive  
Nantucket, MA 02554  
Attn: Renee Ceely, Executive Director

To Grantee: Nantucket Land Council, Inc.  
Post Office Box 502  
Nantucket, Massachusetts 02554  
Attn: Cormac Collier

To Division: Natural Heritage & Endangered Species Program  
Mass. Division of Fisheries & Wildlife  
North Drive, Route 135  
Westborough, MA 01581

or to such other address as either party from time to time shall designate by written notice to the other.

**F. Breach by Grantor.**

In the event that a potential breach of this Conservation Restriction by the Grantor, by a third party employed by the Grantor, or by a party under contract to the Grantor, comes to the attention of Grantee, and Grantee in the exercise of its best professional judgment concludes that a breach may have occurred or is occurring, Grantee shall notify Grantor in writing of such an alleged breach. Except in the event of an emergency which requires immediate action, Grantor shall have thirty (30) days - or such additional time as Grantee deems reasonably necessary depending on the circumstances of the alleged breach - after delivery of such notice to initiate corrective actions, including restoration of the Premises, that are reasonably calculated to correct swiftly the conditions constituting such a breach. If Grantor fails to initiate such corrective action within such time, Grantee may in its discretion undertake such actions, including appropriate legal proceedings as are reasonably necessary to effect the correction of each such alleged breach. If a court of competent jurisdiction determines, or the Grantor acknowledges, that such correction resulted from Grantor's violation of this Conservation Restriction, then Grantee's costs of each such correction, including Grantee's expenses, court costs and legal fees, shall be paid by Grantor.

**G. Acts Beyond Grantor's Control; Third Party Breach.**

Nothing contained in this Conservation Restriction shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Premises resulting from causes beyond Grantor's control, including, but not

limited to, fire, flood, storm, earth movement, and acts caused by trespass on the Premises not contributed to by acts or omissions of Grantor, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Premises resulting from such causes. Parties to this Conservation Restriction agree that in the event of damage to the Premises from acts beyond the Grantor's control, that if it is desirable that the Premises be restored, the parties will cooperate in attempting to restore the Premises if feasible.

#### H. Extinguishment

(1) If circumstances arise in the future such as render the Purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law. If any change in conditions ever gives rise to extinguishment or other release of this Conservation Restriction under applicable law, then Grantee, on the first subsequent sale of the Premises following termination or extinguishment, shall be entitled to a portion of the proceeds in accordance with subparagraphs (2) and (3) of this Paragraph H, subject, however, to any applicable law which expressly provides for a different disposition of proceeds. Grantee shall use its share of the proceeds to advance the conservation of Nantucket lands and waters in a manner consistent with the conservation purposes set forth herein.

(2) Grantor and Grantee agree that the grant of this Conservation Restriction gives rise to a real property right, immediately vested in Grantee, with a value that is determined by the ratio of the consideration recited herein for this Conservation Restriction to the assessed value ascribed by the Nantucket Assessor to the Premises on the effective date of this grant. Such ratio (hereinafter, the "proportionate value") shall be included in the Baseline Documentation and shall remain constant over time.

(3) 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 (including, for purposes of this subparagraph, proceeds from any lawful sale of the Premises unencumbered by the restrictions hereunder) shall be distributed between the Grantor and the Grantee in shares equal to said proportionate value. If a less-than-fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes of this grant.

I. Access. The Conservation Restriction hereby conveyed does not grant to the Grantee, to the public generally, or to any other person any right to enter upon the Premises, except as follows: there is hereby granted to the Grantee and its representatives the right to enter the Premises at reasonable times and in a reasonable manner, for the purpose of inspecting the Premises to determine compliance herewith, of enforcing this Conservation Restriction, and after thirty (30) days prior written notice of taking any and all actions with respect to the Premises as may be necessary or appropriate with or without order of court, to remedy, abate or otherwise enforce any violation hereof. Nothing herein, however, shall impair any rights of others or of the public generally now existing in any portion of the Premises, and shall in no way limit, amend or alter the legal authority of the Division to access the Premises of the Grantor, its successors and assigns.

J. Legal and Equitable Remedies of Grantee. The rights hereby granted shall include the right to enforce this Conservation Restriction in accordance with its terms, including by appropriate legal proceedings and to obtain injunctive and other equitable relief against violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of (it being agreed that Grantee shall have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee. Grantee shall attempt to resolve issues concerning violations through negotiations with Grantor prior to resorting to legal means. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and permanent monumentation of the boundaries.

Grantor covenants and agrees to reimburse Grantee for those reasonable costs and expenses (including without limitation counsel fees) incurred by Grantee in enforcing this Conservation Restriction or in remedying or abating any violation thereof, provided Grantor has been determined by final judgment (after all appeal periods have passed) of a court of competent jurisdiction or by mutual agreement of Grantor and Grantee to be responsible for any such violations which resulted in Grantee's incurring enforcement, remediation or abatement costs.

This Conservation Restriction shall also be enforceable by the Commonwealth of Massachusetts acting through the Division. If the Division in its sole discretion determines that Grantee is not taking satisfactory action to monitor and/or enforce this Conservation Restriction, the Division shall give written notice to Grantee of said unsatisfactory monitoring and/or enforcement and the reasons therefore, and Grantee shall have 30 days in which to take action satisfactory to the Division to monitor and enforce this Conservation Restriction. If the Division in its sole discretion subsequently determines that the Grantee has failed to take satisfactory action within said 30-day period following

written notice from the Division, the Division may in its sole discretion monitor and undertake whatever actions, including appropriate legal proceedings which include obtaining injunctive and other equitable relief, that the Division determines are reasonably necessary or appropriate to effect such corrections of any violations and/or to otherwise enforce the terms and provisions of this Conservation Restriction as provided herein.

If the Division in its sole discretion determines that immediate legal or other action is necessary to protect the Premises against injury or harm, the Division may waive this notice and 30-day Grantee response time period and take whatever legal and other action the Division deems as necessary or appropriate to protect the resources on the Premises.

Grantor covenants and agrees to reimburse to Division all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.

By its acceptance of this Conservation Restriction, Grantee does not undertake any liability or obligation relating to the condition of the Premises not caused by the Grantee or Grantee's agents pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts which are not caused by the Grantee or anyone acting under the direction of the Grantee.

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

K. Severability. If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected and shall remain in full force and effect.

L. Duration and Assignability. The burdens of this Conservation Restriction shall run with the Premises in perpetuity and shall be enforceable in perpetuity against the original Grantor, all successors and assigns of the original Grantor holding any interest in the Premises, and third parties as described in this Conservation Restriction. Grantee is hereby authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction, and the original Grantor, and all successors in title or interest to the Premises, to the extent permissible under applicable law, appoints Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the original Grantor and

all successors in title or interest to the Premises, agrees to execute any such instruments upon request.

The benefits of this Conservation Restriction shall be in gross and assignable, but only to an entity or governmental unit able and authorized to enforce such restrictions, which entity shall also have purposes similar to those of Grantee and which encompass the purposes set forth in this Conservation Restriction. Such entity or governmental unit must qualify under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the Massachusetts General Laws as an eligible donee to receive this Conservation Restriction directly. Any assignment of benefits by Grantee (or successor) must require the transferee to carry out the purposes of this Conservation Restriction. Furthermore, no assignment by the Grantee of this Conservation Restriction shall be effective unless previously approved in writing by the Nantucket Planning Board and by the Grantor, whose approval will not be unreasonably withheld. Any assignment shall be in accordance with Article 97 of the Amendments to the Massachusetts Constitution if applicable.

**M. Effective Date.** While the Grantor may execute this instrument prior to obtaining title to the Premises and the receipt of final acceptance and approvals of this Conservation Restriction, this Conservation Restriction shall be effective only when Grantor has obtained such title, Grantor and Grantee have both executed this Conservation Restriction, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and this Conservation Restriction has been filed for registration at the Nantucket Registry District of the Land Court and noted upon the Certificate of Title for the Premises. The Grantee shall file this instrument for registration in timely manner at the Nantucket Registry District of the Land Court and note it upon the Certificate of Title for the Premises.

**N. Subsequent Transfers.** Grantor agrees:

(1) to incorporate by reference the terms of this Conservation Restriction into any deed or other legal instrument which divests Grantor of any interest in all or a portion of the Premises, including, without limitation, a leasehold interest, and

(2) to make reference to this Conservation Restriction in any executory contract for the transfer of any interest in the Premises. Grantor further agrees to give written notice to Grantee of all transfers of any interest in all or a portion of the Premises and to provide such notice forthwith upon every transfer if such notice has not been given prior to a transfer. Such notice to Grantee shall include the name, address and telephone number of the transferee and his/her legal representative, if any. Failure of Grantor to comply with this Paragraph N shall

not impair the validity of this Conservation Restriction or limit its enforceability in any way.

O. Estoppel Certificates. Upon request by Grantor, Grantee shall within twenty (20) days execute and deliver to Grantor any document which certifies the status of Grantor's compliance with any obligation of Grantor contained in this Conservation Restriction and which otherwise evidences the status of this Conservation Restriction, as may be reasonably requested by Grantor, including a so-called estoppel certificate if applicable in form suitable for registration with Nantucket Registry District and notation upon the Certificate of Title then outstanding for the Premises.

P. Limitation of Grantor Liability. The Grantor shall not be liable for violations occurring after its, his or her ownership. Liability for any acts or omissions not excepted by operation of Paragraphs F or G hereof occurring prior to any transfer and liability preceding any transfer if in violation of this Conservation Restriction and not excepted by operation of Paragraphs F or G hereof shall survive the transfer. Irrespective of the above, any new owner of the Premises shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s).

Q. Non Merger. The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner to ensure that merger does not occur and that the Conservation Restriction continues to be enforceable. If it is determined that a transfer or assignment of any interest will result in a merger, no deed shall be effective until this Conservation Restriction has been assigned to a non-fee owner or other action taken to avoid a merger and preserve the terms and enforceability of this Conservation Restriction. It is the intent of the parties that the Premises will be subject to the terms of this Conservation Restriction in perpetuity, notwithstanding any merger.

R. Successor Grantee. If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended, or to be authorized to acquire and hold conservation restrictions under M.G.L. Chapter 184, Section 32, as amended, and a prior assignment of this Conservation Restriction has not been made, then Grantee's rights and obligations under this Conservation Restriction shall become vested in and fall upon the first (by order of listing) of the below-named organizations which agrees to acceptance of the assignment and which qualifies for assignment under the terms of this paragraph, and such vesting shall have been previously approved in writing by the Nantucket Planning Board:

- (a) Nantucket Conservation Foundation, Inc., Nantucket, Massachusetts
- (b) The Massachusetts Audubon Society, Lincoln, Massachusetts
- (c) Nantucket Islands Land Bank, Nantucket, Massachusetts

In the event that none of the above-named organizations agrees to acceptance and qualifies for assignment, Grantee's rights and obligations shall become vested in such other organization, previously approved in writing by the Nantucket Planning Board and by the Grantor, whose approval will not be unreasonably withheld, as a court of competent jurisdiction shall direct under the doctrine of cy pres.

S. Restriction in Perpetuity. The provisions hereof shall inure to and be binding upon the heirs, executors, devisees, administrators, successors and assigns as the case may be of the parties hereto and shall be restrictions running with the land in perpetuity. The term "Grantor" herein, unless the context or wording otherwise requires, shall include all successors and assigns of the original Grantor Hummock Pond of Nantucket Homeowners Association, Inc. The term "Grantee" herein, unless the context or wording otherwise requires, shall include all successors and assigns of the original Grantee Nantucket Land Council, Inc. and Nantucket Land Bank Commission.

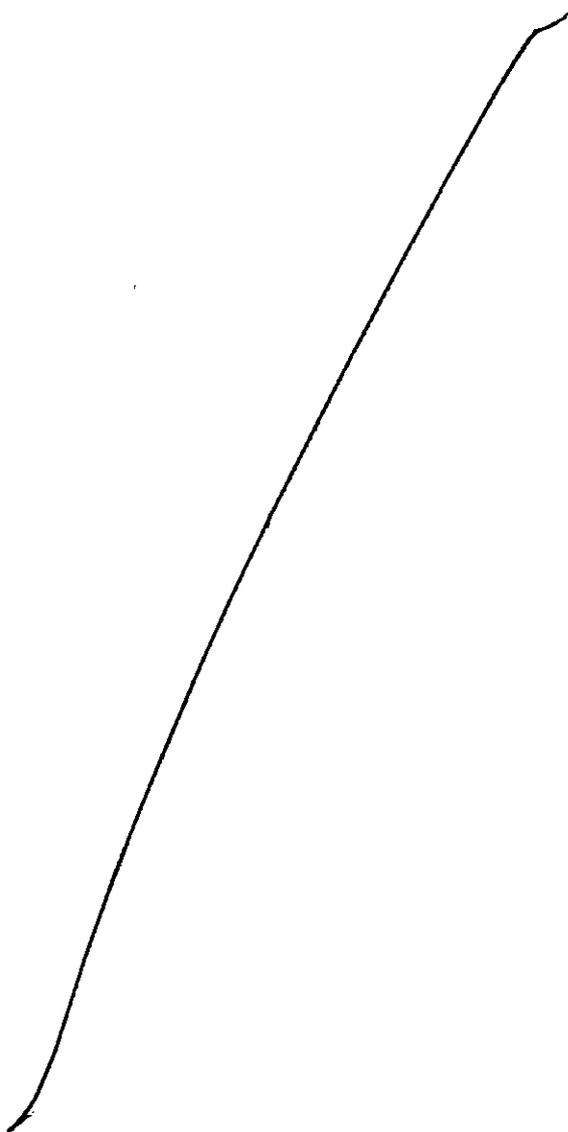
T. Amendment. If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation 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 the Town of Nantucket, and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gift, grant or funding requirements. Any amendment shall be filed for registration at the Nantucket Registry District of the Land Court and noted upon the Certificate of Title for the Premises.

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

# Attachment 6

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Conservation Restriction, Sachem's Path



V. 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 Massachusetts General Laws Chapter 184, Sections 31-33. 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.

W. Recordation. The Grantee shall record this instrument in timely fashion at the Nantucket Registry District of the Land Court and noted upon the Certificate of Title for the Premises.

X. 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.

Y. Pre-Existing Public Rights. Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 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.

Z. Subordination of Mortgage. The Grantor shall record at the appropriate Nantucket County Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Property.

#### ZZ. ATTACHMENTS

Exhibit A  
Exhibit B  
Exhibit C

The foregoing Conservation Restriction is hereby executed by the undersigned, as a sealed instrument under Massachusetts law.

Executed and sealed on \_\_\_\_\_, 201\_.

Nantucket Housing Authority, Inc.:

By: \_\_\_\_\_  
Officers Name:  
Its:

**COMMONWEALTH OF MASSACHUSETTS**

Nantucket, ss.

On this \_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

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

My Commission Expires:

**ACCEPTANCE OF GIFT BY THE NANTUCKET LAND COUNCIL, INC.**

The gift of the above Conservation Restriction from Nantucket Housing Authority is hereby accepted this \_\_ day of \_\_\_\_\_, 201\_.

Nantucket Land Council, Inc.

By:

\_\_\_\_\_  
Officer's Name

\_\_\_\_\_  
Officer's Name

**COMMONWEALTH OF MASSACHUSETTS**

Nantucket, ss.

On this \_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose.

\_\_\_\_\_  
(Print Name) Notary Public

My Commission Expires:

**APPROVAL BY BOARD OF SELECTMEN OF THE TOWN OF NANTUCKET**

We, the undersigned members of the Board of Selectmen of the Town of Nantucket, Massachusetts, hereby certify that at a meeting held on \_\_\_\_\_, 20\_\_\_\_, the Board of Selectmen voted to approve the foregoing Grant of Conservation Restriction by

\_\_\_\_\_ to \_\_\_\_\_, pursuant to Massachusetts General Laws, Chapter 184, Section 32, as being in the public interest.

Board of Selectmen of the  
Town of Nantucket

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

NANTUCKET, ss. \_\_\_\_\_, 20\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared

\_\_\_\_\_  
\_\_\_\_\_

proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person(s) whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as a member of the Board of Selectmen for the Town of Nantucket.

\_\_\_\_\_  
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 Grant of Conservation Restriction by the Nantucket Housing Authority to the Nantucket Land Council, Inc. has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32. Said approval 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.

\_\_\_\_\_ Date \_\_\_\_\_ Secretary of Energy and Environmental Affairs

**COMMONWEALTH OF MASSACHUSETTS**

, ss.

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose.

\_\_\_\_\_  
(Print Name) Notary Public

My Commission Expires:

**ACKNOWLEDGEMENT BY  
THE MA DIVISION OF FISHERIES AND WILDLIFE**

This grant of Conservation Restriction set forth above to the Nantucket Land Council, Inc. is acknowledged this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.  
The MA Division of Fisheries and Wildlife (DFW) acknowledges the reserved rights and obligations of the Division set forth herein.

\_\_\_\_\_  
Wayne MacCallum, Director

Date: \_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

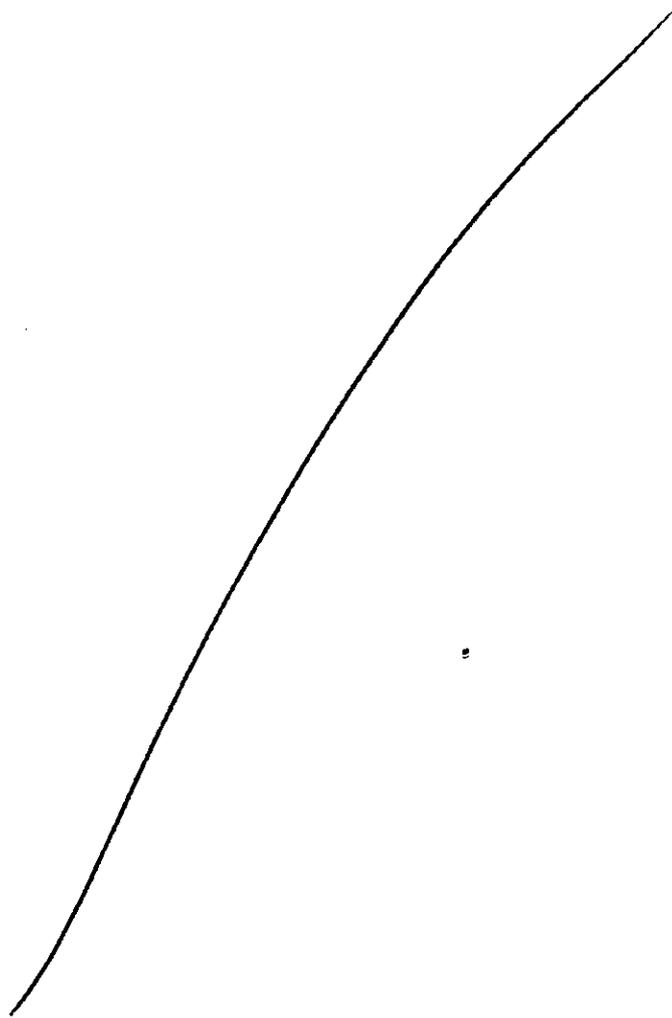
, ss.

On this \_\_\_ day of \_\_\_\_\_, 201\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose.

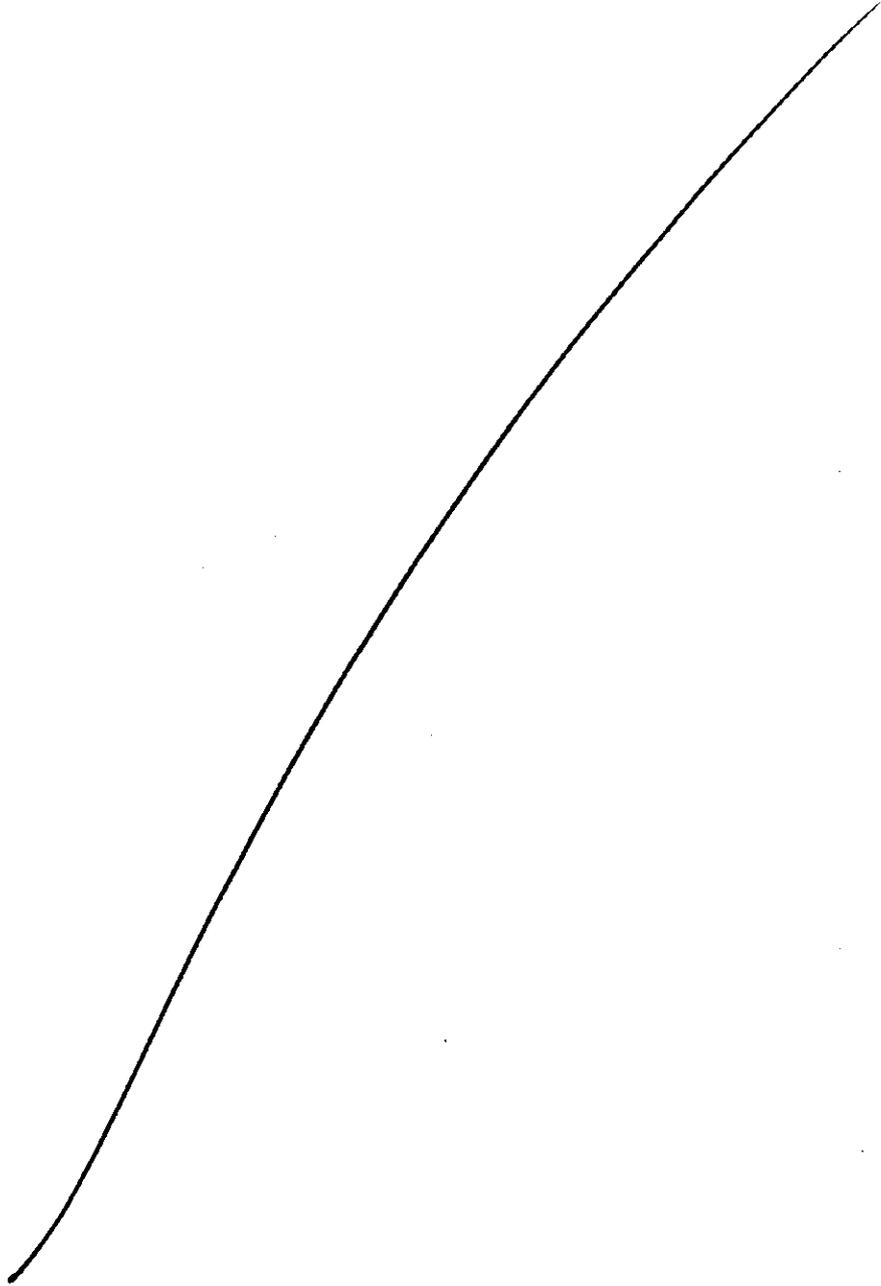
\_\_\_\_\_  
(Print Name) Notary Public

My Commission Expires:

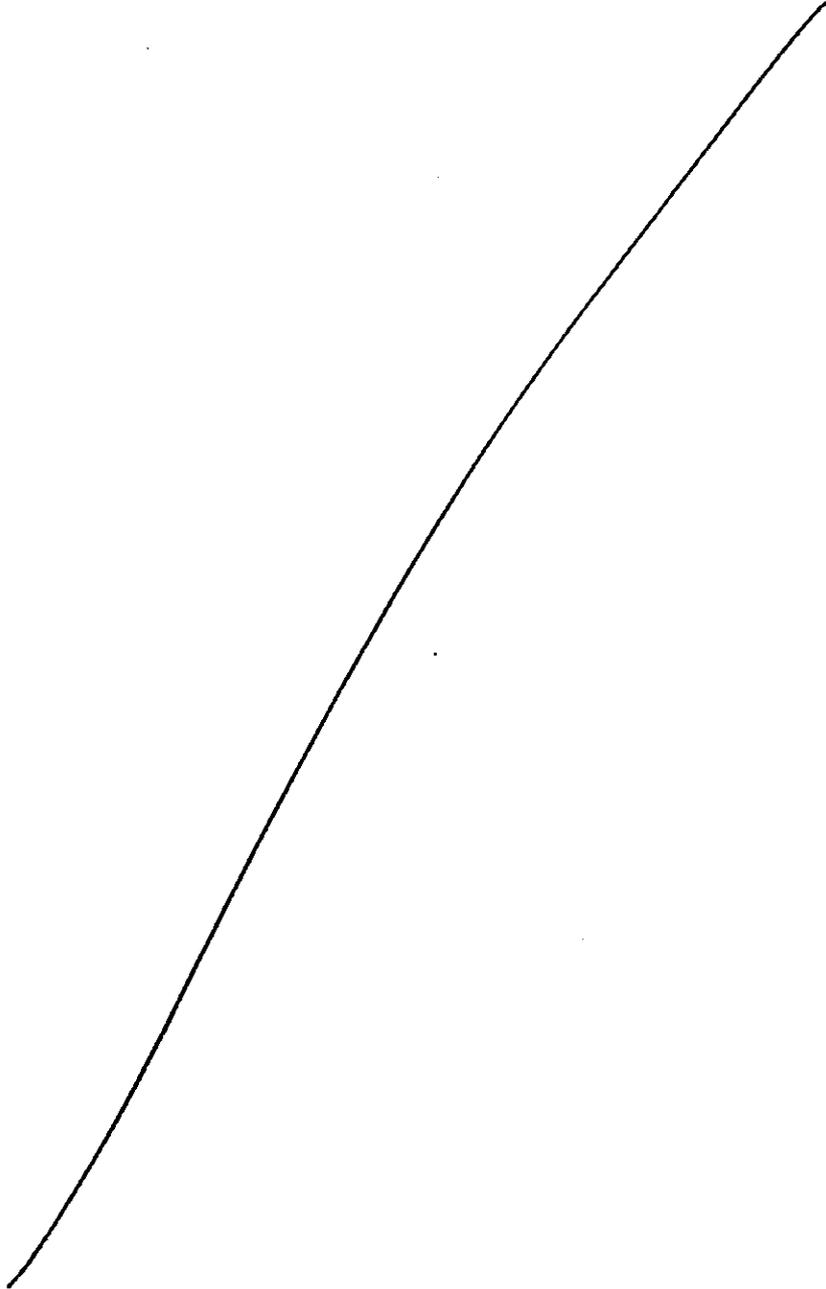
**EXHIBIT A**  
**Description of Premises**



**EXHIBIT B**



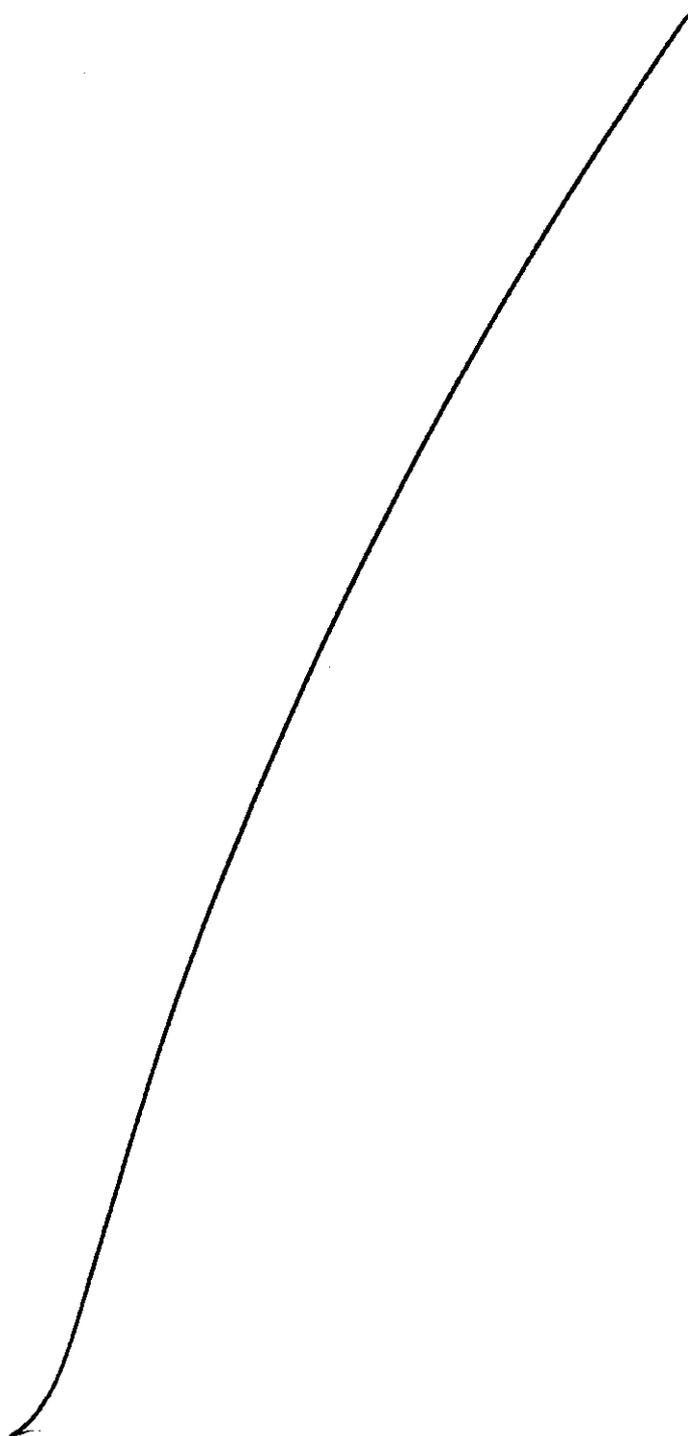
**EXHIBIT C**



## Attachment 7

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Conservation Restriction, Tom Nevers



## CONSERVATION RESTRICTION

Grantor: Nantucket Housing Authority  
Grantee: Nantucket Land Council, Inc.  
Property Address: 125 Tom Nevers Rd. Map 76 Parcel 513  
Title Reference:

The Nantucket Housing Authority, a Massachusetts non profit whose business and mailing address is 3 Manta Dr. Nantucket, MA 02554, and its successors and assigns (collectively, the "Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of Massachusetts General Laws, hereby grant with quitclaim covenants to the Nantucket Land Council, Inc., a Massachusetts non-profit corporation with a principal place of business at 6 Ash Lane, Nantucket, Massachusetts 02554, and its successors and permitted assigns, in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction on a certain parcel of land known as 125 Tom Nevers Road, located in the Town of Nantucket, Massachusetts, consisting of portions of Lot 509 shown on Land Court Plan 5004-8 filed with Certificate No. 4306 at the Nantucket Registry District of the Land Court constituting approximately 12.75 acres, and more particularly described as set forth in Exhibit A (the "Premises"). A copy of a plan prepared by Horsley Witten Group, Inc titled Draft Conservation Restriction Plan, 125 Tom Nevers Road, Nantucket, Massachusetts, dated August 29, 2013, depicting the Premises which are subject to the Conservation Restriction hereunder is attached hereto as Exhibit B.

For Grantor's title see Certificate of Title No. 11965 at the Nantucket Registry District of the Land Court.

Grantee warrants that Grantee is a charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code"), and a "charitable corporation whose purposes include conservation of land" in accordance with MGL Chap. 184, Section 32 whose primary purpose is "To encourage, support and engage in research, study, and education regarding land in the County of Nantucket ... and to engage in, institute, defend and to support in any legal manner or way any litigation or administrative procedures regarding such land, its ownership and utilization; and to engage in such other activities as are necessary or reasonably appropriate thereto."

Grantee represents that Grantee is a "qualified organization," as that term is defined in Section 170(h)(3) of the Code.

Grantee has received a determination letter from the Internal Revenue Service dated November 24, 2003, to the effect that Grantee is a "publicly-

supported" organization described in Section 509(a)(1) and Section 170(b)(A)(vi) of the Code, and is not a private foundation under Section 509(a)(1) of the Code.

Grantor and Grantee recognize the natural, scenic, and special character of the Premises and have the common purpose of the conservation and protection in perpetuity of the Premises through the use of restrictions on the Premises.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, in consideration of the above and mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to Section 170(h) of the Code and the laws of the Commonwealth of Massachusetts, including M.G.L. Chapter 184, Sections 31-33, Grantor hereby voluntarily grants and conveys to Grantee and its successors and permitted assigns a conservation restriction (the "Restriction" or "Conservation Restriction") in perpetuity and for conservation purposes over the Premises of the nature and character and to the extent hereinafter set forth. Grantor herein declares that the Premises shall be held, mortgaged, encumbered, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, and restrictions hereinafter set forth, which covenants, conditions, and restrictions shall be deemed to run with the land in perpetuity and to burden the Premises in perpetuity.

#### **A. PURPOSES:**

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

The specific conservation values of the Premises are documented in a report to be kept on file at the offices of Grantee and incorporated herein by this reference, which documentation ("Baseline Documentation") the parties agree provides an accurate representation of the Premises as of the effective date of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.

This Conservation Restriction is intended to protect the aforementioned conservation values of the Premises and Nantucket by prohibiting all buildings; by prohibiting practices such as commercial agriculture and raising of animals which can damage or alter natural plant communities; and by encouraging conservation of the land in its predominantly vacant and undeveloped condition, as more particularly described herein.

These conservation values are more particularly described as including the following:

- **Open Space Preservation.** The protection of the Premises contributes to the protection of the scenic and natural character of surrounding permanently protected Nantucket Conservation Foundation land to the north and west being used as open space and the protection of the Premises will enhance the open-space value of these lands.

- \* **Water Quality.** The Premises are located on Nantucket Island which has a sole source aquifer for the use of its inhabitants. Protection of the Premises will further protect the water quality of the aquifer.

- **Scenic Protection.** The Premises are located along Tom Nevers Road and afford the public with uninterrupted views of pristine vegetation and open space which if developed would interrupt, obstruct and fragment beneficial scenic vistas.

- **Protection of Wildlife Habitat.** The entire Premises fall within an area designated as "Priority Habitat for State-Protected Rare Species" by the Massachusetts Division of Fisheries and Wildlife's Natural Heritage & Endangered Species Program (the "Division"). The Premises are comprised of a coastal heathland and sandplain grasslands and low lying open scrub oak. Because development on Nantucket threatens to destroy much of the Island's natural environment and threatens to introduce exotic and invasive species of plants, conservation of the Premises in its predominantly undisturbed and natural condition maintains increasingly rare indigenous wildlife and plant habitats on Nantucket. Conservation of the Premises will protect habitat used by a variety of state-listed rare wildlife species including, but not limited to, two state-listed plant species: New England Blazing Star (*Liatris borealis*), a "Species of Special Concern," and Papillose Nut-rush (*Scleria pauciflora*), state-listed as "Endangered"; as well as four state-listed moth species: Waxed Sallow Moth (*Chaetagnela cerata*), Sandplain Heterocampa (*Heterocampa varia*), and Melsheimer's Sack Bearer (*Cicinnus melsheimeri*), each state-listed as "Threatened," and Coastal Swamp Metarranthis Moth (*Metarranthis pilosaria*), state-listed as "Special Concern" pursuant to the Massachusetts Endangered Species Act (MESA) (G.L. c. 131A:3 and 321 CMR 10.23).

- **Massachusetts Endangered Species Act.** This Conservation Restriction is granted pursuant to and in accordance with the requirements set forth in Conservation and Management Permit [REDACTED] issued by the Division and further referenced below.

- **Furtherance of Governmental Policy.** Preservation of the Premises is pursuant to clearly delineated conservation policy expressed in Nantucket's Master Plan, adopted by Nantucket's voters at the Annual Town Meeting in April

2009, which states in the Town of Nantucket 2007 Open Space and Recreation Plan as Goal/Objectives 1C: "The town should encourage the use of creative regulatory and non-regulatory land protection tools such as conservation restrictions, tax abatements, gifts and zoning measures."; and in *The Nantucket Comprehensive Community Plan* (NCCP), including the following objectives therein: Objective 4.1, "To aggressively acquire land and conservation restrictions to protect natural ecosystems;" Objective 4.2, "To encourage land management activities by the Land Bank and nonprofit entities to provide permanent resource protection;"

Preservation of the Premises as open space is further pursuant to clearly delineated governmental conservation policy in accordance with "Nantucket's Goals and Objectives for Balanced Growth" which was adopted in November 1990 by Town Meeting and states as Objective A-1: "To identify and acquire critical open spaces through outright ownership or by less-than-fee means, such as conservation restrictions, scenic easements, and the purchase of development rights, in order to complete the Island's open space network.

Preservation of the Premises as open space is pursuant to the following permits and Declarations:

- a) MESA Conservation and Management Permit # [REDACTED] dated [REDACTED], a copy of which is attached hereto as Exhibit C, issued by the Division and incorporated herein by this reference (the "Permit"). Town of Nantucket Zoning Board of Appeals File No. 076-11 Comprehensive Permit for Housing Assistance Corporation, Surfside Road at South Shore Drive, Nantucket, issued September 13, 2012.

**B. Prohibited Uses.** Except for reserved rights as set forth in Paragraph C below, Grantor will neither perform nor give permission to others to perform the following acts or uses which are prohibited on, under, and above the Premises:

- (1) The construction or placement of any temporary or permanent building, landing strip, helicopter landing area, tennis court, mobile home, swimming pool, asphalt or concrete pavement, stadium, bleachers, outdoor lighting equipment, ropes course, sign, billboard, or other advertising display, utility pole, tower, conduit or line, septic system, or any other temporary or permanent structure on, above, or under the Premises;

- (2) Excavating, mining, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit;

- (3) Placing, filling, storing or dumping on the Premises of soil, refuse, trash, boats, trailers, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground tanks;

(4) Cutting, removing or otherwise destroying trees, grasses or other vegetation on the Premises;

(5) The conduct of activities detrimental to drainage, flood control, water conservation, water quality, erosion control or soil conservation;

(6) The use, parking or storage of motorcycles, motorized trail bikes, snowmobiles and all other motorized vehicles and activities;

(7) Division or subdivision of the Premises, except for merging all or a portion of the Premises with abutting property or properties. No portion of the Premises – either following such merger or in the absence of such merger – may be used to satisfy or comply with building, development or density requirements on the Premises or on any other property;

(8) All commercial and municipal structures and all commercial or industrial activities and uses;

(9) Any work, including, but not limited to, filling and/or construction of roads, in wetlands as defined by the Wetlands Protection Act (Chapter 131, Section 40) or the Nantucket Wetlands Bylaw (Chapter 136 of the Nantucket Code);

(10) The use of the Premises for recreation, business, residential or industrial use of the Premises.

(11) The use of pesticides and fertilizers; and

(12) Any other use of the Premises or the conduct of any other activity on the Premises which would materially impair the Premises' conservation values unless necessary for the protection of the conservation values that are the subject of this Conservation Restriction.

**C. Reserved Rights.** The provisions of Paragraph B notwithstanding, the following acts and uses by Grantor are permitted on, above or under the Premises provided they do not materially impair the Premises' conservation values and they are not inconsistent with the purposes of this Conservation Restriction.

(1) Subject to Division approval, the right to excavate a known archaeological site identified by and under the direction of a qualified organization such as the Massachusetts Historical Commission according to Massachusetts Regulations 950 CMR 70;

(2) Subject to Grantee and Division prior approval in accordance with Paragraph E, hereof the right to conduct any activity, such as selective cutting, mowing or burning, to manage the habitat of any threatened or rare species, as identified by the Division or its successors, and/or any other natural plant community on Nantucket, and/or to enhance or manage wildlife. Management activities shall be in accordance with the Conservation and Management Plan dated [REDACTED], which is included as an attachment to the Permit (Exhibit C). Grantee and/or the Division may impose conditions or limitations to protect wildlife, natural vegetation and environmental systems. Such conditions and limitations may include the limited erection of nest boxes or osprey poles;

(3) Subject to Grantee and Division prior approval in accordance with Paragraph E, hereof the right to plant indigenous species of plants which are native to Nantucket.

(4) Subject to Grantee and Division prior approval in accordance with Paragraph E, hereof the right to control noxious or invasive plant and animal species by mechanical and/or chemical means on the Premises,

(5) The right to walk and conduct other noncommercial passive recreational (including educational) activities on foot that do not materially alter the landscape and do not degrade environmental quality;

(6) Subject to Grantee and Division prior approval in accordance with Paragraph E, hereof the right to survey and to conduct scientific research, including occasional erection of bird mist nets;

(7) Subject to Grantee's prior approval in accordance with Paragraph E, hereof the right to erect, maintain or replace fence posts, post and rail fences, and signs with respect to hunting, trespass, trail access, identify and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, and the protected conservation values provides that such signs do not specifically reference species on the MESA by scientific or common names or provide the actual location of said species. Signs may use generalized terms such as "Sensitive Ecological Community", "wildlife habitat", "rare animal habitat" or other generalized terms;

(8) The right to use motor vehicles only as necessary and solely for exercising any of the reserved rights in this Paragraph C or as necessary by the police, firefighters, Board of Health agents, Department of Environmental Protection personnel, or other governmental agents in carrying out their lawful duties;

(9) All actions and activities required or authorized by Grantor, Grantee and/or the Division within the Permit (Exhibit C); and

Certain reserved rights under this Paragraph C may require permits from one or more public agencies. The exercise of any right reserved by Grantor under this Paragraph C shall be in compliance with the then-current Zoning, the Wetlands Protection Act, the MA Endangered Species Act (MGL c131A), and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any such rights herein does not imply that Grantee or the Commonwealth takes any position on whether any such permit should be issued.

**D. Prior Notice to Grantee.** Grantor agrees to notify Grantee and the Division, in writing, at least sixty (60) days prior to exercising those rights reserved in subparagraph 3 of Paragraph C hereof, and again shortly before commencing uses and activities previously approved by Grantee in accordance with Paragraph E hereof. The notice shall describe the nature, scope, design, location, timetable, MESA Tracking Number and/or Conservation and Management Permit #, and any other material aspect of the planned activity in sufficient detail to permit Grantee and/or the Division to monitor the proposed activity to assure that it is conducted in a manner that is not inconsistent with the purposes of this Conservation Restriction.

**E. Prior Approval of Grantee.** Whenever approval by Grantee and/or the Division is required under the provisions of subparagraphs 1, 3, 4, 5, 7, 8 of Paragraph C hereof, Grantor shall request such approval in writing delivered to Grantee and/or the Division not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question; however, Grantee and/or the Division may waive or reduce the required period of time, provided said waiver is obtained in writing prior to the initiation of such activity. The request for approval shall describe the nature, scope, design, location, timetable, MESA Tracking Number and/or Conservation and Management Permit Number, and any other material aspect of the proposed activity in sufficient detail to permit Grantee and/or the Division to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Grantee and/or the Division shall grant, condition or withhold its approval in writing within sixty (60) days of its receipt of Grantor's written request for approval. Grantor's written request for approval shall specifically recite the length of time provided by this Conservation Restriction for review and response by Grantee. Grantee and Division approval shall not be unreasonably withheld, but it shall only be granted upon Grantee and/or the Division's determination that the proposed activity is not inconsistent with the purposes of this Conservation Restriction. Failure of Grantee and/or the Division to respond in writing within sixty (60) days shall be deemed to constitute approval by Grantee of the request as submitted, so long as significant conservation values are not impaired by the use or activity and the request has set forth the provisions of this section relating to deemed approval after such sixty (60) days.

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 prepaid, addressed as follows:

To Grantor: Nantucket Housing Authority  
3 Manta Drive  
Nantucket, MA 02554  
Attn: Renee Ceely, Executive Director

To Grantee: Nantucket Land Council, Inc.  
Post Office Box 502  
Nantucket, Massachusetts 02554  
Attn: Cormac Collier

To Division: Natural Heritage & Endangered Species Program  
Mass. Division of Fisheries & Wildlife  
North Drive, Route 135  
Westborough, MA 01581

or to such other address as either party from time to time shall designate by written notice to the other.

**F. Breach by Grantor.**

In the event that a potential breach of this Conservation Restriction by the Grantor, by a third party employed by the Grantor, or by a party under contract to the Grantor, comes to the attention of Grantee, and Grantee in the exercise of its best professional judgment concludes that a breach may have occurred or is occurring, Grantee shall notify Grantor in writing of such an alleged breach. Except in the event of an emergency which requires immediate action, Grantor shall have thirty (30) days - or such additional time as Grantee deems reasonably necessary depending on the circumstances of the alleged breach - after delivery of such notice to initiate corrective actions, including restoration of the Premises, that are reasonably calculated to correct swiftly the conditions constituting such a breach. If Grantor fails to initiate such corrective action within such time, Grantee may in its discretion undertake such actions, including appropriate legal proceedings as are reasonably necessary to effect the correction of each such alleged breach. If a court of competent jurisdiction determines, or the Grantor acknowledges, that such correction resulted from Grantor's violation of this Conservation Restriction, then Grantee's costs of each such correction, including Grantee's expenses, court costs and legal fees, shall be paid by Grantor.

**G. Acts Beyond Grantor's Control; Third Party Breach.**

Nothing contained in this Conservation Restriction shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Premises resulting from causes beyond Grantor's control, including, but not limited to, fire, flood, storm, earth movement, and acts caused by trespass on the Premises not contributed to by acts or omissions of Grantor, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Premises resulting from such causes. Parties to this Conservation Restriction agree that in the event of damage to the Premises from acts beyond the Grantor's control, that if it is desirable that the Premises be restored, the parties will cooperate in attempting to restore the Premises if feasible.

#### H. Extinguishment

(1) If circumstances arise in the future such as render the Purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law. If any change in conditions ever gives rise to extinguishment or other release of this Conservation Restriction under applicable law, then Grantee, on the first subsequent sale of the Premises following termination or extinguishment, shall be entitled to a portion of the proceeds in accordance with subparagraphs (2) and (3) of this Paragraph H, subject, however, to any applicable law which expressly provides for a different disposition of proceeds. Grantee shall use its share of the proceeds to advance the conservation of Nantucket lands and waters in a manner consistent with the conservation purposes set forth herein.

(2) Grantor and Grantee agree that the grant of this Conservation Restriction gives rise to a real property right, immediately vested in Grantee, with a value that is determined by the ratio of the consideration recited herein for this Conservation Restriction to the assessed value ascribed by the Nantucket Assessor to the Premises on the effective date of this grant. Such ratio (hereinafter, the "proportionate value") shall be included in the Baseline Documentation and shall remain constant over time.

(3) 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 (including, for purposes of this subparagraph, proceeds from any lawful sale of the Premises unencumbered by the restrictions hereunder) shall be distributed between the Grantor and the Grantee in shares equal to said proportionate value. If a less-than-fee interest is taken, the proceeds shall be equitably allocated according to

the nature of the interest taken. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes of this grant.

**I. Access.** The Conservation Restriction hereby conveyed does not grant to the Grantee, to the public generally, or to any other person any right to enter upon the Premises, except as follows: there is hereby granted to the Grantee and its representatives the right to enter the Premises at reasonable times and in a reasonable manner, for the purpose of inspecting the Premises to determine compliance herewith, of enforcing this Conservation Restriction, and after thirty (30) days prior written notice of taking any and all actions with respect to the Premises as may be necessary or appropriate with or without order of court, to remedy, abate or otherwise enforce any violation hereof. Nothing herein, however, shall impair any rights of others or of the public generally now existing in any portion of the Premises, and shall in no way limit, amend or alter the legal authority of the Division to access the Premises of the Grantor, its successors and assigns.

**J. Legal and Equitable Remedies of Grantee.** The rights hereby granted shall include the right to enforce this Conservation Restriction in accordance with its terms, including by appropriate legal proceedings and to obtain injunctive and other equitable relief against violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of (it being agreed that Grantee shall have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee. Grantee shall attempt to resolve issues concerning violations through negotiations with Grantor prior to resorting to legal means. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and permanent monumentation of the boundaries.

Grantor covenants and agrees to reimburse Grantee for those reasonable costs and expenses (including without limitation counsel fees) incurred by Grantee in enforcing this Conservation Restriction or in remedying or abating any violation thereof, provided Grantor has been determined by final judgment (after all appeal periods have passed) of a court of competent jurisdiction or by mutual agreement of Grantor and Grantee to be responsible for any such violations which resulted in Grantee's incurring enforcement, remediation or abatement costs.

This Conservation Restriction shall also be enforceable by the Commonwealth of Massachusetts acting through the Division. If the Division in its sole discretion determines that Grantee is not taking satisfactory action to monitor and/or enforce this Conservation Restriction, the Division shall give written notice to Grantee of said unsatisfactory monitoring and/or enforcement and the reasons therefore, and Grantee shall have 30 days in which to take

action satisfactory to the Division to monitor and enforce this Conservation Restriction. If the Division in its sole discretion subsequently determines that the Grantee has failed to take satisfactory action within said 30-day period following written notice from the Division, the Division may in its sole discretion monitor and undertake whatever actions, including appropriate legal proceedings which include obtaining injunctive and other equitable relief, that the Division determines are reasonably necessary or appropriate to effect such corrections of any violations and/or to otherwise enforce the terms and provisions of this Conservation Restriction as provided herein.

If the Division in its sole discretion determines that immediate legal or other action is necessary to protect the Premises against injury or harm, the Division may waive this notice and 30-day Grantee response time period and take whatever legal and other action the Division deems as necessary or appropriate to protect the resources on the Premises.

Grantor covenants and agrees to reimburse to Division all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.

By its acceptance of this Conservation Restriction, Grantee does not undertake any liability or obligation relating to the condition of the Premises not caused by the Grantee or Grantee's agents pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts which are not caused by the Grantee or anyone acting under the direction of the Grantee.

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

K. Severability. If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected and shall remain in full force and effect.

L. Duration and Assignability. The burdens of this Conservation Restriction shall run with the Premises in perpetuity and shall be enforceable in perpetuity against the original Grantor, all successors and assigns of the original Grantor holding any interest in the Premises, and third parties as described in this Conservation Restriction. Grantee is hereby authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this

Conservation Restriction, and the original Grantor, and all successors in title or interest to the Premises, to the extent permissible under applicable law, appoints Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the original Grantor and all successors in title or interest to the Premises, agrees to execute any such instruments upon request.

The benefits of this Conservation Restriction shall be in gross and assignable, but only to an entity or governmental unit able and authorized to enforce such restrictions, which entity shall also have purposes similar to those of Grantee and which encompass the purposes set forth in this Conservation Restriction. Such entity or governmental unit must qualify under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the Massachusetts General Laws as an eligible donee to receive this Conservation Restriction directly. Any assignment of benefits by Grantee (or successor) must require the transferee to carry out the purposes of this Conservation Restriction. Furthermore, no assignment by the Grantee of this Conservation Restriction shall be effective unless previously approved in writing by the Nantucket Planning Board and by the Grantor, whose approval will not be unreasonably withheld. Any assignment shall be in accordance with Article 97 of the Amendments to the Massachusetts Constitution if applicable.

**M. Effective Date.** While the Grantor may execute this instrument prior to obtaining title to the Premises and the receipt of final acceptance and approvals of this Conservation Restriction, this Conservation Restriction shall be effective only when Grantor has obtained such title, Grantor and Grantee have both executed this Conservation Restriction, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and this Conservation Restriction has been filed for registration at the Nantucket Registry District of the Land Court and noted upon the Certificate of Title for the Premises. The Grantee shall file this instrument for registration in timely manner at the Nantucket Registry District of the Land Court and note it upon the Certificate of Title for the Premises.

**N. Subsequent Transfers.** Grantor agrees:

(1) to incorporate by reference the terms of this Conservation Restriction into any deed or other legal instrument which divests Grantor of any interest in all or a portion of the Premises, including, without limitation, a leasehold interest, and

(2) to make reference to this Conservation Restriction in any executory contract for the transfer of any interest in the Premises. Grantor further agrees to give written notice to Grantee of all transfers of any interest in all or a portion of

the Premises and to provide such notice forthwith upon every transfer if such notice has not been given prior to a transfer. Such notice to Grantee shall include the name, address and telephone number of the transferee and his/her legal representative, if any. Failure of Grantor to comply with this Paragraph N shall not impair the validity of this Conservation Restriction or limit its enforceability in any way.

O. Estoppel Certificates. Upon request by Grantor, Grantee shall within twenty (20) days execute and deliver to Grantor any document which certifies the status of Grantor's compliance with any obligation of Grantor contained in this Conservation Restriction and which otherwise evidences the status of this Conservation Restriction, as may be reasonably requested by Grantor, including a so-called estoppel certificate if applicable in form suitable for registration with Nantucket Registry District and notation upon the Certificate of Title then outstanding for the Premises.

P. Limitation of Grantor Liability. The Grantor shall not be liable for violations occurring after its, his or her ownership. Liability for any acts or omissions not excepted by operation of Paragraphs F or G hereof occurring prior to any transfer and liability preceding any transfer if in violation of this Conservation Restriction and not excepted by operation of Paragraphs F or G hereof shall survive the transfer. Irrespective of the above, any new owner of the Premises shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s).

Q. Non Merger. The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner to ensure that merger does not occur and that the Conservation Restriction continues to be enforceable. If it is determined that a transfer or assignment of any interest will result in a merger, no deed shall be effective until this Conservation Restriction has been assigned to a non-fee owner or other action taken to avoid a merger and preserve the terms and enforceability of this Conservation Restriction. It is the intent of the parties that the Premises will be subject to the terms of this Conservation Restriction in perpetuity, notwithstanding any merger.

R. Successor Grantee. If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended, or to be authorized to acquire and hold conservation restrictions under M.G.L. Chapter 184, Section 32, as amended, and a prior assignment of this Conservation Restriction has not been made, then Grantee's rights and obligations under this Conservation Restriction shall become vested in and fall

upon the first (by order of listing) of the below-named organizations which agrees to acceptance of the assignment and which qualifies for assignment under the terms of this paragraph, and such vesting shall have been previously approved in writing by the Nantucket Planning Board:

- (a) Nantucket Conservation Foundation, Inc., Nantucket, Massachusetts
- (b) The Massachusetts Audubon Society, Lincoln, Massachusetts
- (c) Nantucket Islands Land Bank, Nantucket, Massachusetts

In the event that none of the above-named organizations agrees to acceptance and qualifies for assignment, Grantee's rights and obligations shall become vested in such other organization, previously approved in writing by the Nantucket Planning Board and by the Grantor, whose approval will not be unreasonably withheld, as a court of competent jurisdiction shall direct under the doctrine of cy pres.

S. Restriction in Perpetuity. The provisions hereof shall inure to and be binding upon the heirs, executors, devisees, administrators, successors and assigns as the case may be of the parties hereto and shall be restrictions running with the land in perpetuity. The term "Grantor" herein, unless the context or wording otherwise requires, shall include all successors and assigns of the original Grantor Hummock Pond of Nantucket Homeowners Association, Inc. The term "Grantee" herein, unless the context or wording otherwise requires, shall include all successors and assigns of the original Grantee Nantucket Land Council, Inc. and Nantucket Land Bank Commission.

T. 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 the Town of Nantucket, and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gift, grant or funding requirements. Any amendment shall be filed for registration at the Nantucket Registry District of the Land Court and noted upon the Certificate of Title for the Premises.

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

V. 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 Massachusetts General Laws Chapter 184, Sections 31-33. 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.

W. Recordation. The Grantee shall record this instrument in timely fashion at the Nantucket Registry District of the Land Court and noted upon the Certificate of Title for the Premises.

X. 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.

Y. Pre-Existing Public Rights. Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 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.

Z. Subordination of Mortgage. The Grantor shall record at the appropriate Nantucket County Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Property.

## ZZ. ATTACHMENTS

Exhibit A

Exhibit B

Exhibit C

The foregoing Conservation Restriction is hereby executed by the undersigned, as a sealed instrument under Massachusetts law.

Executed and sealed on \_\_\_\_\_, 201\_.

Nantucket Housing Authority. Inc.:

By: \_\_\_\_\_  
Officers Name:  
Its:

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

On this \_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

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

My Commission Expires:

**ACCEPTANCE OF GIFT BY THE NANTUCKET LAND COUNCIL, INC.**

The gift of the above Conservation Restriction from, Nantucket Housing Authority, is hereby accepted this \_\_\_ day of \_\_\_\_\_, 201\_.

Nantucket Land Council, Inc.

By:

\_\_\_\_\_  
Officer's Name

\_\_\_\_\_  
Officer's Name

**COMMONWEALTH OF MASSACHUSETTS**

Nantucket, ss.

On this \_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose.

\_\_\_\_\_  
(Print Name)      Notary Public

My Commission Expires:

APPROVAL BY BOARD OF SELECTMEN OF THE TOWN OF NANTUCKET

We, the undersigned members of the Board of Selectmen of the Town of Nantucket, Massachusetts, hereby certify that at a meeting held on \_\_\_\_\_, 20\_\_\_\_, the Board of Selectmen voted to approve the foregoing Grant of Conservation Restriction by

\_\_\_\_\_ to \_\_\_\_\_, pursuant to Massachusetts General Laws, Chapter 184, Section 32, as being in the public interest.

Board of Selectmen of the Town of Nantucket

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, ss.

\_\_\_\_\_, 20\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared

\_\_\_\_\_

\_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person(s) whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as a member of the Board of Selectmen for the Town of Nantucket.

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



**THE MA DIVISION OF FISHERIES AND WILDLIFE**

This grant of Conservation Restriction set forth above to the Nantucket Land Council, Inc. is acknowledged this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.  
The MA Division of Fisheries and Wildlife (DFW) acknowledges the reserved rights and obligations of the Division set forth herein.

\_\_\_\_\_  
[Redacted Signature]

Date: \_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

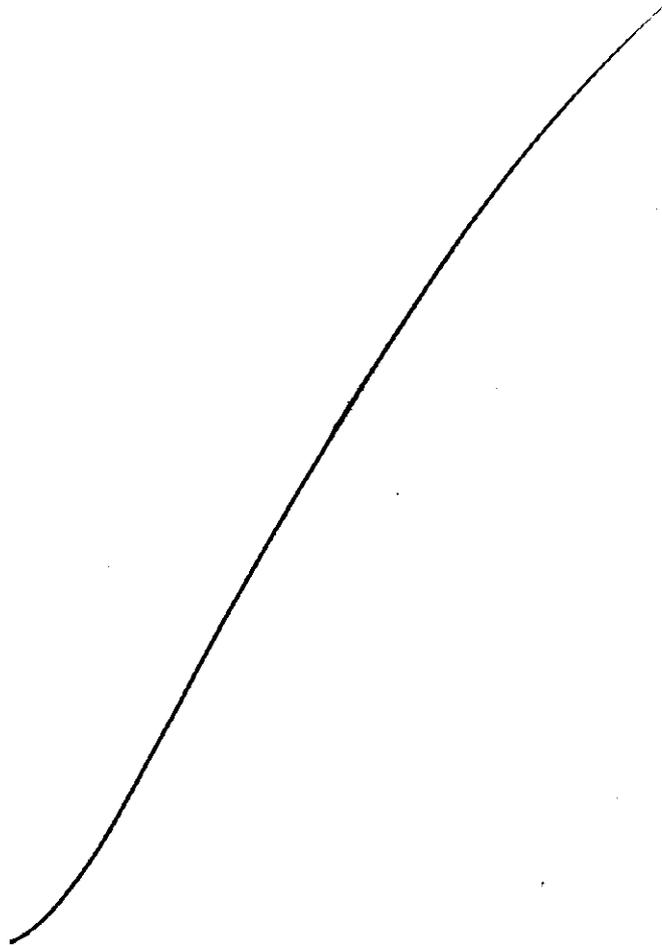
, ss.

On this \_\_\_ day of \_\_\_\_\_, 201\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose.

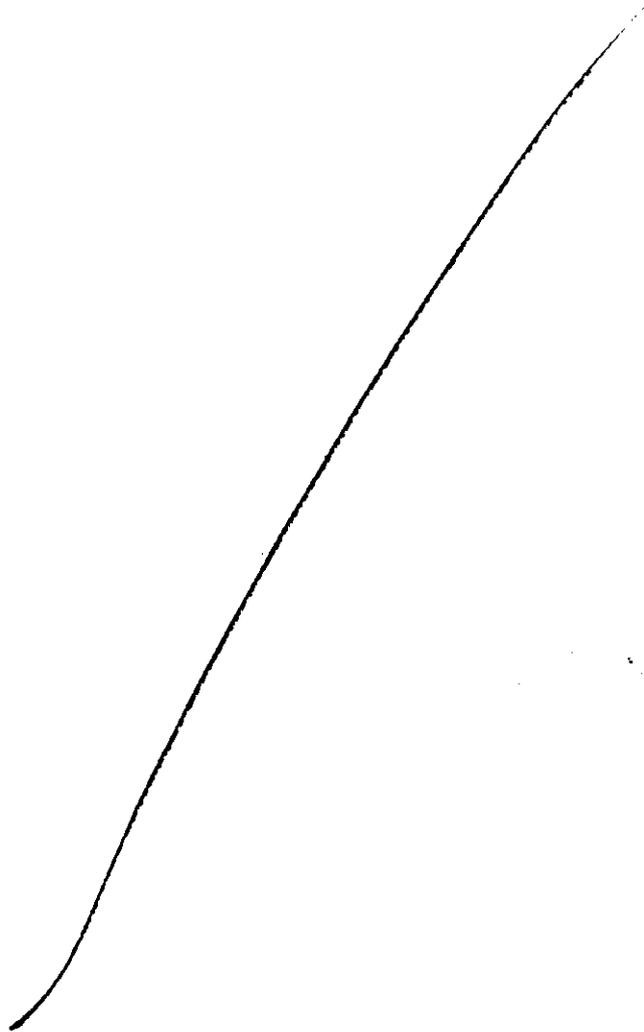
\_\_\_\_\_  
(Print Name) Notary Public

My Commission Expires:

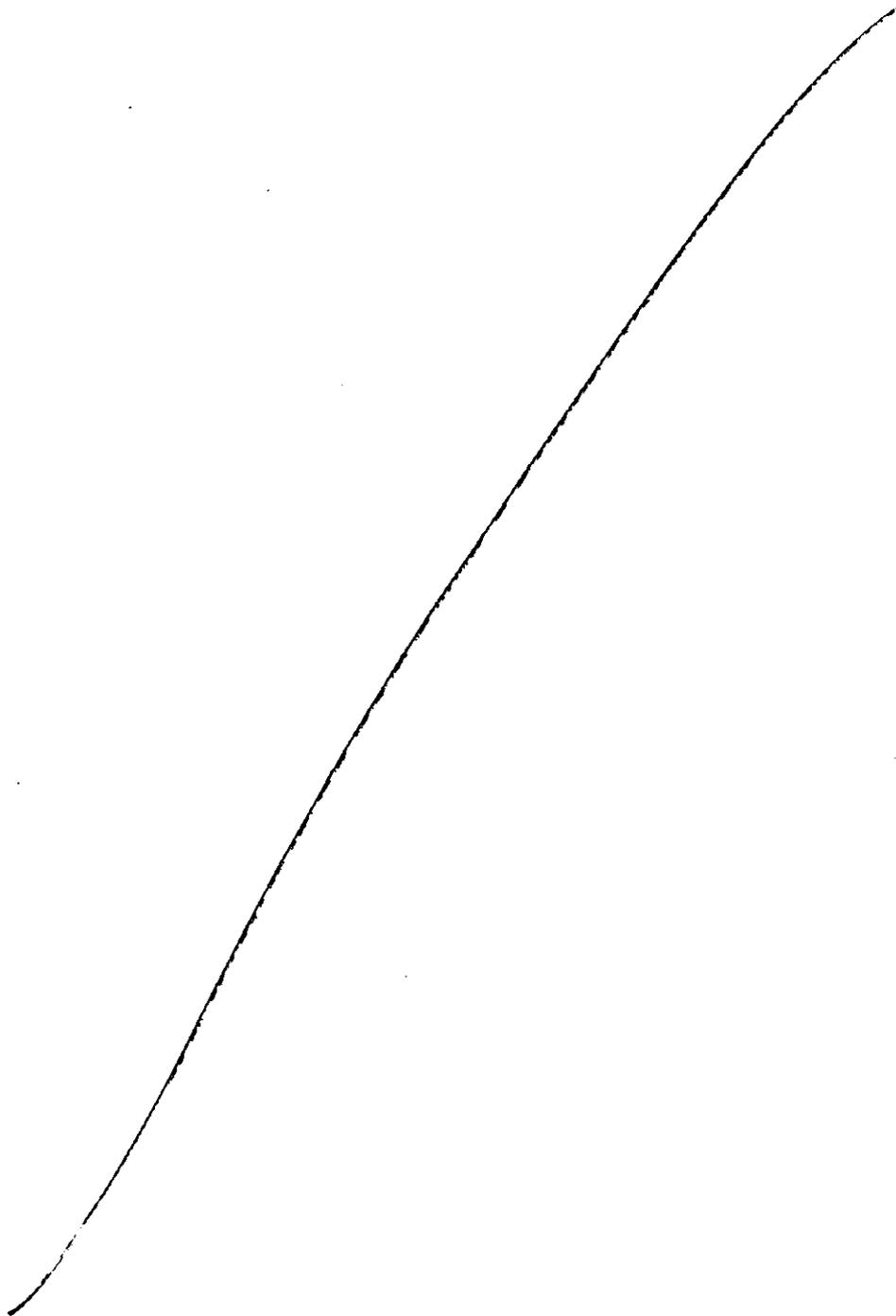
**EXHIBIT A**  
**Description of Premises**



**EXHIBIT B**



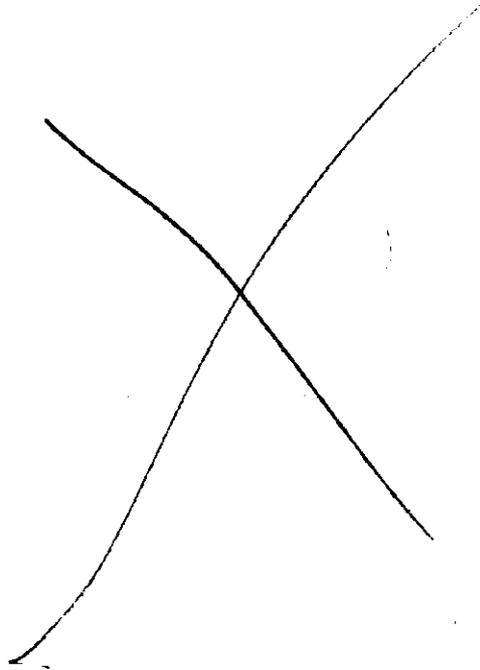
**EXHIBIT C**



## Attachment 8

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Appendix A On-Site Mitigation Measures Rare Plant Transplantation and Monitoring Procedures (dated October 2012, updated October 2013, June 2014; prepared by Horsley Witten Group, Inc.; the "Transplantation Procedures")



## APPENDIX A

### ON-SITE MITIGATION MEASURES Rare Plant Transplantation and Monitoring Procedures

#### Conservation and Management Permit Application Sachem's Path, Nantucket, Massachusetts *NHESP Tracking No. 10-28980* (updated June 2014)

For unavoidable impacts to individual rare plant species within the existing population of New England Blazing Star (*Liatris borealis*), the Proponent of the Sachem's Path development propose to implement the following transplantation and monitoring procedures (subject to approval by NHESP).

#### **On-Site Conservation Measures**

Proposed on-site conservation measures include preservation of approximately 1.1 acres of land within the Sachem's Path parcel in the northernmost reaches of the site (Figure 1 – CR Plan for Sachem's Path; Exhibit B). This portion of the site contains the largest concentration of rare plant species at this site, and is located immediately adjacent to the majority of the population of Eastern Silvery Aster (*Symphyotrichum concolor*), which resides primarily on the adjacent Town-owned parcel associated with the Miacomet Indian Burial Ground.

This area will be protected as permanent open space and cordoned off from the developed portions of the site with appropriate fencing. This area is proposed to be placed under a Conservation Restriction (CR) to be held by a non-profit organization (Nantucket Land Council or NLC) and protected and managed in perpetuity to the net benefit of the rare plant species. (Please note that additional on-site and off-site measures are also proposed; see Appendix B.)

Rare plant species that occur within the proposed developed portions of the site include two individual New England Blazing Star plants (identified as L#3 and L#10 in the original botanical survey) that are proposed to be transplanted within the on-site CR area (also known as Lot 43) prior to the start of construction, in accordance with the following procedures.

#### **Transplantation Procedures**

##### Pre-Transplantation Confirmation and Staking

Prior to construction, the individual plant species will be confirmed in their previously-known locations and identified with brightly-colored pink pin flags such that they are easily detected among the dense vegetation. The flagging will be placed in a 2-foot radius around the individual plants. Confirmation and staking will be conducted by an NHESP-approved botanist or other qualified individual with expertise in plant identification.

As described below, prior to transplantation, an NHESP-qualified individual (in possession of a Scientific Collection Permit) will collect seeds (fruits) from the plants slated for transplantation<sup>1</sup>. Collected seeds will be and sent to the New England Wildflower Society for cleaning and preservation in the event that the contingency plan must be implemented.

#### Transplantation Site Selection and Preparation

Prior to construction, suitable locations for the plants to be relocated will be identified and staked out in a similar manner within the proposed on-site CR area. These locations will avoid the known locations of other rare plants (see Figure 1). This may be conducted in conjunction with the plant confirmation (above).

Immediately prior to the transplantation of the individual plants, transplantation plots will be excavated to approximately 8-12 inches below grade using a hand-held shovel or spade. Excavated material will be stockpiled for later backfill around the transplanted individuals.

#### Transplantation Oversight

All transplantation activities will be conducted and or supervised by an individual with horticultural or botanical experience that has been approved by NHESP. This individual will also be responsible for obtaining a Scientific Collection Permit from the Massachusetts Division of Fisheries & Wildlife. This individual(s) will be responsible for overseeing all transplantation activities, and will be initially responsible for long-term monitoring of the transplanted individuals. Alternatively, the entity holding the CR for this site may assume responsibility for the long-term monitoring and maintenance of these individuals as well as the entire CR area (to be coordinated through NHESP).

The Proponent has identified two qualified individuals to oversee the transplantation of the individual plants for this project:

Ms. Rachael Freeman Slosek  
53 Polpis Rd  
Nantucket, MA 02554-2317  
[rachaelslosek@gmail.com](mailto:rachaelslosek@gmail.com)  
Cell: 617-901-9370

Ms. Amy M. Ball  
Horsley Witten Group, Inc.  
90 Route 6A  
Sandwich, MA 02563  
[aball@horsleywitten.com](mailto:aball@horsleywitten.com)  
Office: 508-833-6600  
Cell: 508-246-5378

Each of these individuals is familiar with the project site and participated in the original botanical surveys, and has directly supervised the successful transplant of rare species occupying similar habitat per NHESP protocols, and is familiar with the species to be transplanted.

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<sup>1</sup> Seeds were previously collected in the fall of 2012 in anticipation of a major coastal storm. The collected seeds are currently being stored in accordance with NHESP protocols by the New England Wildflower Society.

### Transplantation Protocol

Two individual plants are proposed for transplantation (see Figure 1): New England Blazing Star (L#3 and L#10). The transplantation of New England Blazing Star may be conducted at any time prior to construction, but before frozen ground conditions occur. Currently, the Proponent proposes to begin construction in the summer of 2014, following final NHESP approval.

Photos will be taken of each individual plant prior to transplantation in order to document its pre-transplantation condition.

Transplantation will involve the excavation of a 2-foot radius around the individual plants to include several square feet of suitable soil and surrounding vegetation, and transplantation of the entire area to the prepared transplantation sites. L#10 and L#3 are currently growing in two separate locations in more open areas in the central portion of the site, and would be transplanted individually. All precautions will be taken to minimize disturbance to the plants. Excavated plants will be transported in as timely a manner as possible to the transplantation plots, set in place, back-filled with stockpiled material, and thoroughly watered. Once transplanted, these plants will be marked with an individual pin flag for ease of monitoring.

### Transplant Monitoring

Transplanted individuals will be inspected and reported on in accordance with the monitoring schedule detailed below. Monitoring and reporting will occur over a two-year period. During drought conditions within the long-term monitoring period, professional judgment will be used to provide additional watering as necessary.

#### *Transplant Year/Year 1*

- Monitoring will be performed a minimum of three days spread over the first two weeks following transplantation to ensure adequate watering and vigor of the plants in response to the transplantation.
- After the initial two-week monitoring period, transplanted individuals will be monitored at least once per month for the first growing season (April 5-November 16 for Nantucket County, MA)<sup>2</sup>. At least one of the monitoring visits will coincide with the respective flowering periods of these individuals

#### *Year 2*

- Transplanted individuals will be monitored a minimum of two times during Year 2, to occur two months apart between April 30 and October 31.

### Monitoring Reports

- Monitoring reports will be submitted to the NHESP by December 31 for each active year of monitoring over the course of the monitoring period (Years 1 and 2). Should initial transplantation activities and monitoring occur toward the end or even after the growing

<sup>2</sup> USDA Growing Seasons for Massachusetts; source, MA Inland Replication Guidelines, Appendix 2, March 2002.

season, an interim report describing the transplantation activities will be submitted to NHESP by December 31 of the *Transplant Year*.

- Monitoring reports will include photographs and detailed observations for each transplanted individual, including the general plant vigor and signs of injury and stress.
- A final letter or report will be sent to the NHESP stating that construction was completed on the project.
- Should it be clear during any part of the monitoring period that the plants are not thriving or are lost (dead), NHESP will be notified immediately, and the contingency plan will be implemented as described below.

### Contingency Plan

As noted above, as a precautionary measure, the Proponent has already implemented a contingency plan with prior authorization from NHESP, as part of the overall transplantation plan, to compensate for any plants that may be lost to drought or other causes as a result of the transplantation activities during the long-term monitoring plan. Implementation of the propagation component of this contingency plan will only be implemented in the event of lost plants.

Prior to transplantation, an NHESP-qualified individual in possession of a Scientific Collection Permit collected seeds (fruits) from the plants slated for transplantation. Collected seeds have been sent to the New England Wildflower Society for cleaning and preservation in the event that the contingency plan must be implemented.

Propagation will follow the protocols established by NHESP:

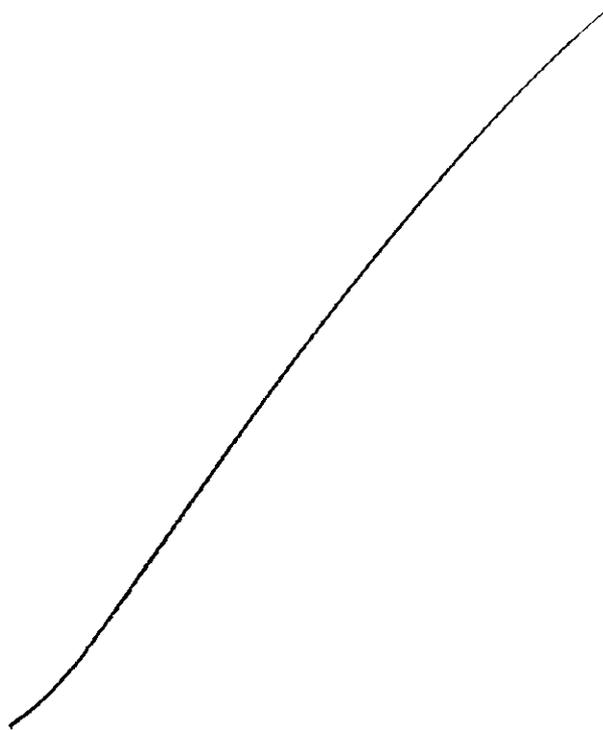
#### **Propagating a Reserve from Seeds**

- Prior to collection of the seeds or cuttings, a qualified propagator and facility which has previous experience propagating state-listed plant species must be approved by the NHESP.
- If the transplantation of the individual Bushy Rockrose and/or New England Blazing Star is not successful, the proponent must replace lost plants by seed. When collecting seeds, collect no more than 10% of the seed present on the plants to be transplanted and no more than 10% of the seed present on plants in the population that was not impacted by the project. When collecting seed sample throughout the population. The seeds shall be propagated by the qualified person approved by the NHESP.
- Seeds are best collected during the fall months (at the end of the growing season).

## Attachment 9

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Appendix B-1 Habitat Management and Monitoring Plan Sachem's Path - Lot 43 (dated November 2013, revised June 2014; prepared by Horsley Witten Group, Inc.; the "Sachem's Path Management Plan")



## APPENDIX B-1

### HABITAT MANAGEMENT AND MONITORING PLAN

#### Sachem's Path – Lot 43 Nantucket, Massachusetts

Conservation Permit No. [TBA]  
NHESP Tracking No. 10-28980

*Prepared by: Horsley Witten Group, Inc., in conjunction with Nantucket Land Council, Inc., October 2013; updated June 2014*

#### 1.0 INTRODUCTION

This Habitat Management and Monitoring Plan is designed to address the “Net Benefit” requirement in the Massachusetts Endangered Species Act (“MESA”; 321 CMR 10.00) for the regulatory “take” of four State-listed moth species and one plant species pursuant to MESA and the Conservation and Management Permit issued by the Massachusetts Natural Heritage and Endangered Species Program (NHESP).

The four moth species include:

- Chain Dot Geometer (*Cingilia catenaria*) – Species of Special Concern;
- Pink Sallow moth (*Psectraglaea carnosata*) – Species of Special Concern;
- Coastal Swamp Metarranthis (*Metarranthis pilosaria*) – Species of Special Concern; and
- Melsheimer's Sack Bearer (*Cicinnus melsheimeri*) – Threatened.

The state-listed plant is:

- New England Blazing Star (*Liatris borealis*) – Species of Special Concern.

A second plant species, Eastern Silvery Aster (*Symphotrichum concolor*), a State-Endangered species, also occurs at Sachem's Path, but will not be impacted (i.e., will not result in a “taking”) as a result of the proposed project. However, preservation of this species has been incorporated into this land management plan.

This “taking” is a consequence of the construction of an affordable residential housing development consisting of single-family homes on individual subdivided lots to be created on land that is currently-owned by the Nantucket Housing Authority (NHA). The 9.12-acre property is located along Surfside Road between Miacomet Road and South Shore Drive (see Figures 1, 2 and 3 from CMP application). Sachem's Path was originally donated to the NHA by the Town of Nantucket.

The NHA has proposed to place a 1.09-acre portion of the Sachem's Path parcel in the northernmost reaches of the site into a Conservation Restriction (CR) (see attached Conservation Restriction Plan

(Exhibit B) for Lot 43 Sachem's Path). This portion of the site contains the largest concentration of rare plant species at this site (see Figure 6), and is located immediately adjacent to the population of Eastern Silvery Aster, the majority of which resides primarily on the adjacent Town-owned parcel associated with the Miacomet Indian Burial Ground.

An additional parcel will be placed into a Conservation Restriction to serve as off-site mitigation for the "taking" to further contribute to the Net Benefit. This second parcel, located at 125 Tom Nevers Road (Assessor's Map 91 Lot 8), totals 15 acres, 12.75-acres of which will also be placed under a CR (see Figures 9, 10, and 11). A separate Land Management Plan has been developed for this off-site parcel (see Appendix B-2).

Horsley Witten Group, Inc. (HW) has developed this Land Management Plan in consultation with Endangered Species Review Biologists at NHESP with the intention of achieving the Net Benefit requirement under MESA through direct land protection, habitat management, and monitoring. Placing Lot 43 into a CR is intended to provide a long-term net-benefit to the affected rare plant and moth species and the natural plant communities and associated habitats, and will be maintained in perpetuity as open space, subject to the Prohibited Acts and Uses and Reserved Rights set forth in the Declaration of Restriction (DR) and CR.

The CR will be held by a non-profit organization, and the NHA has engaged the Nantucket Land Council (NLC) for this purpose. The executive Director of NLC was also consulted on this Land Management Plan. NLC is a 501(c)(3) non-profit with a mission to protect Nantucket's natural world and rural character by holding and enforcing conservation restrictions, commissioning scientific research, monitoring development proposals, engaging in legal proceedings to protect natural resources, and educating the public on local environmental issues.

Access to this area is anticipated to be limited to habitat management activities, which may include selective removal of non-native species or pruning of vegetation to maintain the open sandplain grassland/open scrub-shrub habitat that currently supports habitat for these six state-listed species. As such, Lot 43 will be cordoned off with split rail fencing and the area marked with signage indicating the preservation of open space as indicated on the CR Plan. This fencing and any bounds or monuments and signs will be maintained in good condition and repaired or replaced as necessary.

This Land Management Plan consists of perpetual land management using a combination of selective removal of non-native species, pruning of vegetation to maintain the open scrub-shrub habitat, periodic mowing of grasslands, and the placement of a perpetual conservation restriction over approximately 1.1 acres of land as identified below in Table 1.

<b>Assessor's Map &amp; Parcel</b>	<b>Lot Name</b>	<b>Area (ac)</b>	<b>On-site/Off-site</b>
67-513-43	Lot 43 (at Sachem's Path)	1.09	On-site
91-08	Tom Nevers Parcel	12.75	Off-site
	<b>Total Mitigation (on &amp; off site):</b>	<b>13.84</b>	

## 2.0 LAND MANAGEMENT GOALS

This land (Lot 43) will be monitored by the CR holder, NLC, with the goal of maintaining conditions suitable for the perpetuation of the populations of the two on-site State-listed plant species, as well as habitat for the four moth species, that have been identified at the Sachem's Path site. Land management activities are anticipated to be minimal and will be consistent with the allowable and prohibited land uses.

Desired future conditions at the site include a mosaic of primarily open habitats that are in different successional stages (e.g., open sandplain grasslands and pitch pine/scrub oak barrens) that will maintain and enhance existing plant populations while simultaneously maintaining and encouraging *Lepidoptera* use. The sandplain grassland habitat is critical to the continued existence of the plants. Accordingly, habitat management will be adaptive to allow for revision to management techniques so as to elicit desired rare species response to applied techniques. Invasive plants will also be identified and the goal will be to minimize the impact of invasive plants on the habitats.

The land management program for New England Blazing Star and the *Lepidoptera* species will seek to:

1. Limit access to public to protect sensitive habitat;
2. Ensure success of transplanted plants (see Appendix A);
3. Discourage establishment of non-native or otherwise invasive species not typical of this natural community and associated habitat;
4. Maintain open sandplain grasslands and scrub-shrub habitat with only partial pitch pine canopy that is desirable for the affected species cover through periodic mowing or pruning of overgrown woody vegetation;
5. Maintain access barriers (i.e., split rail fence) and signage, repairing and replacing as necessary to discourage and limit access by the public.

The percent of each habitat at Lot 43 (1.1 acres) is shown in Table 2 as compared to the overall pre- and post-development habitats that are present within the entire 9.12-acre Sachem's Path parcels (see also Figure B1-2). Habitat within Lot 43 will be permanently protected and maintained through adaptive management at the existing, pre-development state (see also Photo 1).

HABITAT TYPE	Predevelopment % of habitat in entire parcel (9.12 ac)	Pre-development habitat % (Lot 43)	Post-development habitat % (Lot 43)
Scrub Oak Thicket	20	30	30
Pitch Pine Partial Canopy	15	10	10
Sandplain Grassland	40	40	40
Pitch Pine Canopy	25	20	20

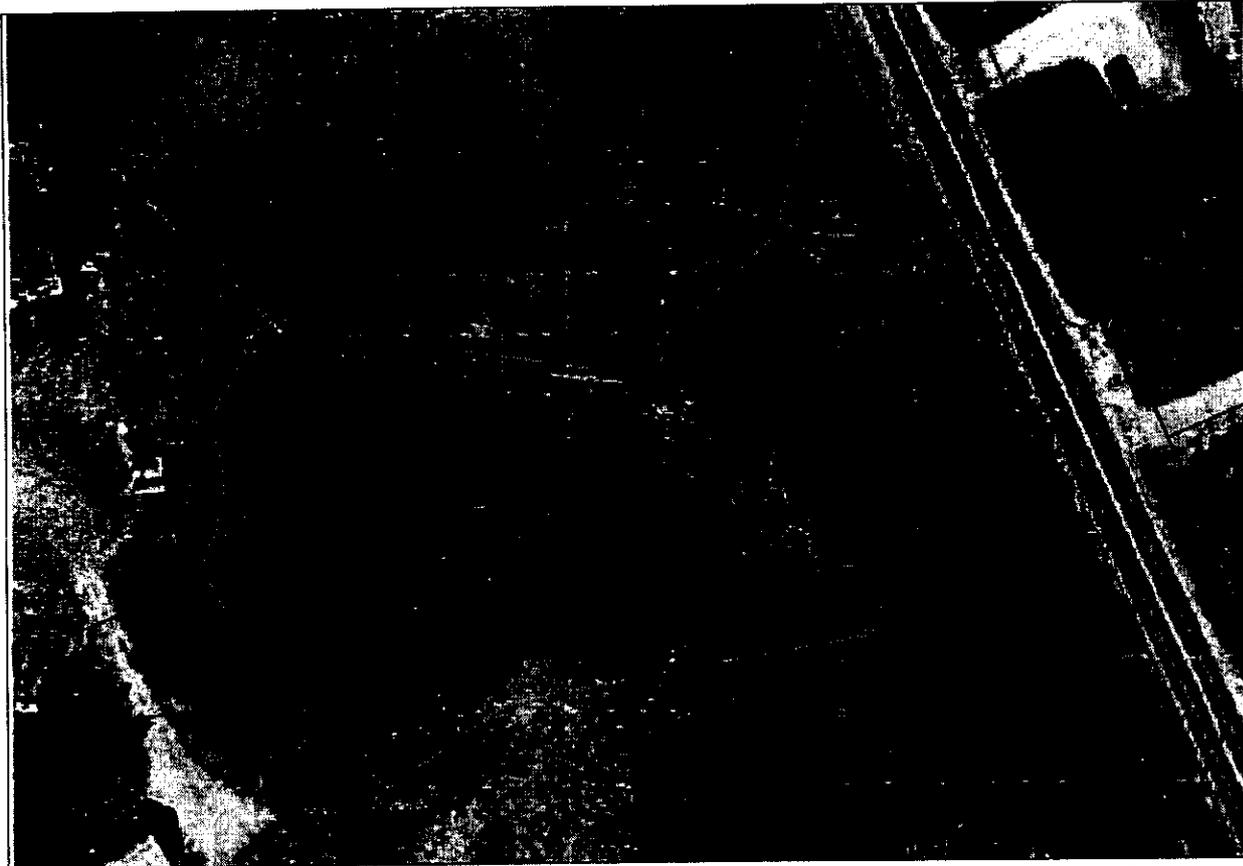


Photo 1. Approximate area of Conservation Restriction (in blue) depicting existing plant communities (Source Mass GIS 2008-2009).

### 3.0 VEGETATION MONITORING AND REPORTING METHODS

In addition to the monitoring and reporting of transplanted plant species (see Appendix A for Transplantation Protocols), monitoring of the CR parcel will be conducted annually to evaluate the existing plant communities and/or to assess the success of various techniques and determine the appropriate land management activities for future years. An initial report (i.e., Year 1) will be filed with the Division of Fisheries & Wildlife NHESP (or the "Division") identifying any proposed changes to the management plan provided here for subsequent years. Modifications to the proposed management activities will be implemented only upon written approval of the plan by the Division.

A report will be prepared by NLC or its designee documenting land management efforts and measuring their success in meeting the goals of maintaining the existing (pre-development) percentages of habitats following the completion of Year 1, Year 3, Year 5, and then every 5 years thereafter. This report will include detailed maintenance logs indicating the timing of all treatments and monitoring/maintenance activities since the last report, a summary of annual land management efforts, available aerial photos of the site, photographs of site conditions from pre-established permanent photo-stations, and an evaluation of the quantity and quality of New England Blazing Star, Eastern Silvery Aster, and *Lepidoptera* habitat. Changes in vegetation cover and distribution will be noted, and the report will

also include an evaluation of undesirable or invasive plants on the property and propose methods for control/eradication of these species as appropriate.

Monitoring reports will also discuss the timing of land management activities (if any) and an evaluation of their effectiveness based on state-listed species responses to the management techniques. Finally, the monitoring reports will include recommendations for future land management activities and will be submitted to the Division during the winter (i.e., outside the growing season) in order to allow the Division to comment on the effectiveness of land management techniques and recommendations made by the Land Manager, prior to the start of the next growing season. As noted above, any modifications of the management plan will only be implemented upon written approval of the Division.

#### 4.0 PROPOSED MANAGEMENT METHODS

Following transplantation of plant species<sup>1</sup> and initial installation of exclusion fencing and signage (i.e., maintenance measures implemented in Year 1), anticipated land management efforts will include a combination of the following elements:

- mowing and/or brush hogging twice every five years, as needed;
- pruning or cutting of woody scrub-shrub species once every five years, as needed, to maintain open habitat; and
- annual invasive species monitoring and management.

Habitat management methods will be phased and not all management activities will occur on an annual basis. Mowing activities will generally occur during the non-growing season after seeds have set and prior to the commencement of the next growing season (i.e., November 1 through March 31). However, since occasional mowing during the growing season may be beneficial as a means of discouraging establishment of woody vegetation, mowing during the growing season may be considered based upon the results of the monitoring, and dependent upon future discussion with NHESP.

Unless otherwise approved by NHESP and NLC, the use of herbicides and pesticides will not be used on Lot 43 in order to protect rare plants and juvenile and adult moth species of concern, as herbicides pose a major threat to their populations. Off road vehicles will also be prohibited from the site, with the exception of mowing and maintenance activities by qualified personnel.

Portions of the 1.09-acre lot (Lot 43) will be mowed twice every five years. The entire lot may be mowed at once, or the process may be phased with subsections being mowed over a period of time within the season. Pruning and cutting of any overgrown woody scrub-shrub species will also be conducted during the same time as mowing activities. Mowing and pruning on a five-year cycle will allow for long-term maintenance of the mosaic of early successional open scrub-shrub and sandplain

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<sup>1</sup> Transplanting of rare plants will occur at the beginning of Year 1. Monitoring of the transplanted individuals to encourage their successful reestablishment within Lot 43 will be conducted during Years 1 and 2, and may be extended if deemed necessary (see Appendix A for details).

grassland habitat preferred by all of the species of concern at the site to encourage present and future colonization.

Monitoring and maintenance of the split-rail fence and conservation signage will occur annually (or more frequently, as needed) to ensure that access barriers and posted signs are maintained in good condition to discourage unauthorized access. A breakdown of anticipated tasks and associated costs per year for Years 1 to 5 are provided in Table 3.

Management Activity	Annual Cost Totals	Total Cost Years 1-5
Plant Transplantation & Initial Maintenance (2 plants total) – 1 time only	\$175	\$875 (one time expenditure)
Transplant Monitoring & Report – Year 1	\$420	\$2,100
Transplant Monitoring & Report – Year 2	\$250	\$1,250
Minor Pruning/Cutting of Woody Plants – 1x/5 years – Year 5 (30% of site)	\$75	\$375
Mowing 2x/5 years – Year 5 (40% of site)	\$35	\$175
Invasive Species (hand removal) – each year (entire site)	\$225	\$1,125
Consulting Science & Reporting* – Years 3 & 5	\$400	\$2,000
<b>Total for Years 1-5:</b>	<b>\$1,180</b>	<b>\$7,900</b>

\*to be conducted biologist preapproved by NHESP

During subsequent years, work will be conducted as determined based on the results of the management activities undertaken to date. For the purpose of cost estimation, it has been assumed that 1 week of work would be conducted annually and would include a combination of pruning/cutting, mowing, selective tree removal, and mechanical/manual invasive species removal and disposal. A breakdown of anticipated tasks and associated annual costs beyond Year 5 is provided in Table 4. Per the homeowners association documents, fees will be adjusted as necessary to cover shifts in annual costs.

Management Activity	Total Annual Cost
Minor Pruning/Cutting of Woody Plants once every 5 years (@\$200/acre) - 30%	\$15
Mowing (every 5 years) (@\$200/acre) - 40%	\$35
Invasive Species (hand removal) – every other year (@\$200/acre)	\$100
Consulting Science & Reporting – once every 5 years	\$200
<b>Total:</b>	<b>\$350</b>

## 5.0 FUNDING

Funding is anticipated to be sourced from a percentage of the fees collected by the Sachem's Path Homeowners' Association. Based upon full buildout of 40 single family homes, it is estimated that

each household would generate approximately \$29.08 per year or \$1,163 per year per 40 houses for the first five years (Years 1-5) and approximately \$8.75 per household per year (or approximately \$350/year) to cover management costs at Lot 43 in subsequent years. This cost accounts for any mowing activities and brush hogging, as well as costs for general pruning of forested portions, and hand removal and disposal of any invasive species. Additional labor costs for initial transplant monitoring studies by an approved botanist or field biologist will be required for the first five years and have also been incorporated into the costs for Years 1-5.

**Table 5. Breakdown of Management Cost for Sachem's Path and Tom Nevers Parcel**

Contribution from Homeowners Association Fees (per household/year) (assuming full build-out of 40 homes)	Year's 1-5	Subsequent Years
<b>Sachem's Path Lot 43</b>	\$29.08	\$8.75
<b>Tom Nevers Parcel</b>	\$13.88	\$18.00
<b>TOTAL</b>	<b>\$42.95</b>	<b>\$26.75</b>

As shown in Tables 3, 4 and 5, higher costs per year are anticipated for the first five years, as there are one-time expenditures that will not be incurred after Year 5. For the purposes of budgeting, funds should be collected and placed in escrow prior to September 30<sup>th</sup> each year for activities that may occur during the non-growing season (i.e., after November 1<sup>st</sup>) of that year. The following milestones are anticipated to cover the costs for the first five years (Table 6).

**Table 6: Accumulated Funds for Land Management Activities – Years 1 through 5 – Sachem's Path Lot 43**

Year	Escrow Funds	Funds Expended	Funds Remaining in Escrow
Year 1	\$7,815	\$3,200	\$4,615
Year 2	\$4,615	\$1,475	\$3,140
Year 3	\$3,140	\$1,225	\$1,915
Year 4	\$1,915	\$225	\$1,690
Year 5	\$1,690	\$1,690	\$0
<b>Total:</b>		<b>\$7,815</b>	<b>\$0</b>

\*\*Based upon annualized costs for first five years

Table 7 summarizes the total estimated escrow needed to account for management costs during the first five years at both parcels.

<b>Table 7: Total Funds needed for Escrow Account - Years 1-5 – Both Sachem's Path and Tom Nevers Parcels</b>			
<b>Year</b>	<b>Escrow Funds</b>	<b>Funds Expended</b>	<b>Funds Remaining in Escrow</b>
Year 1	\$10,590	\$3,200	\$7,390
Year 2	\$7,390	\$1,575	\$5,815
Year 3	\$5,815	\$1,225	\$4,590
Year 4	\$4,590	\$325	\$4,265
Year 5	\$4,265	\$3,590	\$675
<b>Total:</b>		<b>\$9,915</b>	<b>0</b>

An Escrow Agreement will be established to cover the "gap" in collected maintenance fees that occurs between the initial "take" and full build-out for this property, during which time the full amount of the annual maintenance costs are anticipated to be covered by dues collected from the homeowners association. Funds will be held in escrow in an interest-bearing account that will be managed by the Homeowners Association under the direction of NHA.

After Year 5, full build-out of all 40 houses is anticipated. Should full build out not be achieved prior to Year 6, costs per household would vary depending upon occupancy within the development at any point in time. Should that be the case, additional funds will be set aside in an Escrow Account to ensure that annual maintenance costs are covered. Management costs shall be reassessed over time to account for inflation.

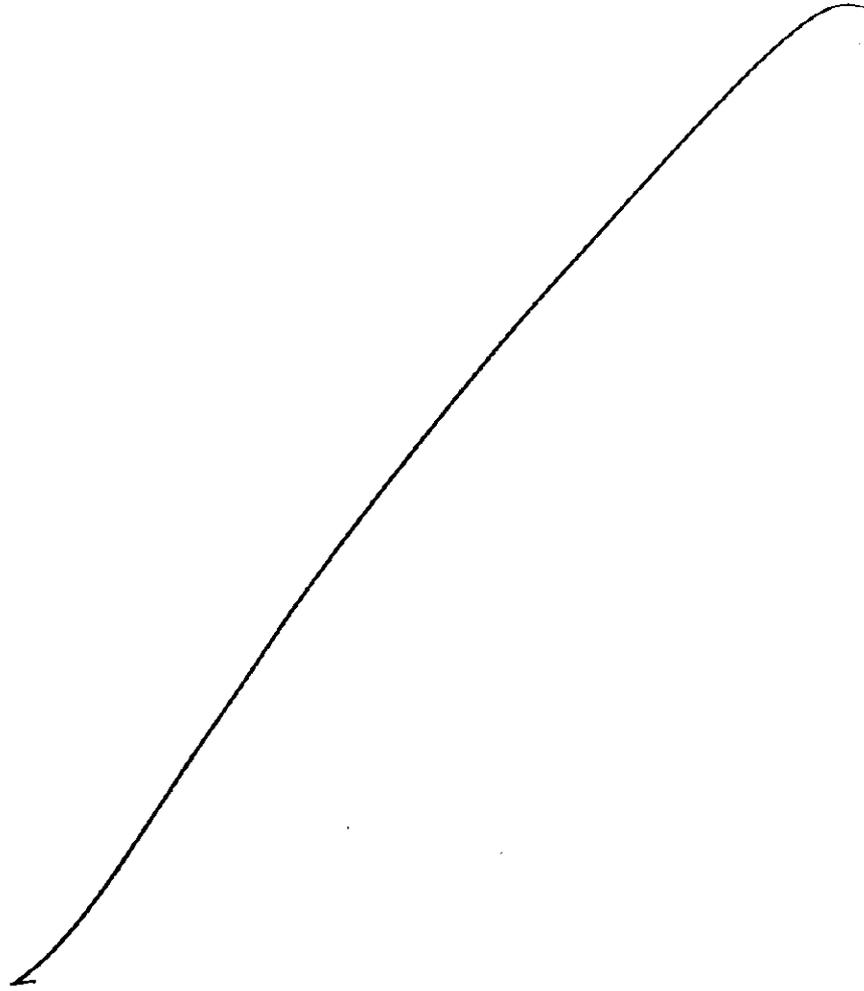
## **6.0 CONSERVATION RESTRICTION**

As previously mentioned in this Land Management Plan, NHA (the Proponent) proposes to place a CR over the parcels included in Table 1, and intends that the CRs be held by the Nantucket Land Council. Copies of the Conservation Restriction and CR plan (Exhibit B) for Sachem's Path are provided as attachments. A separate Land Management Plan has been prepared for the off-site mitigation at the Tom Nevers Parcel (see Appendix B-2).

## Attachment 10

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Appendix B-2 Habitat Management and Monitoring Plan Tome Nevers Road - Lot 91-08 (dated August 2013, updated June 2014; prepared by Horsley Witten Group, Inc.; the "Tom Nevers Management Plan")



## APPENDIX B-2

### HABITAT MANAGEMENT AND MONITORING PLAN

**Tom Nevers Road – Lot 91-08  
Nantucket, Massachusetts**

Conservation Permit No. [TBA]  
NHESP Tracking No. 10-28980

*Prepared by: Horsley Witten Group, Inc., in conjunction with Nantucket Land Council, Inc., August 2013*

#### 1.0 INTRODUCTION

This Habitat Management and Monitoring Plan is designed to address the “Net Benefit” requirement in the Massachusetts Endangered Species Act (“MESA”; 321 CMR 10.00) for the regulatory “take” of four State-listed moth species and one plant species pursuant to MESA and the Conservation and Management Permit issued by the Massachusetts Natural Heritage and Endangered Species Program (NHESP) for the Sachem’s Path affordable housing project off Surfside Road between Miacomet Road and South Shore Drive in Nantucket, Massachusetts (see Appendix B-1).

The four moth species include:

- Chain Dot Geometer (*Cingilia catenaria*) – Species of Special Concern;
- Pink Sallow moth (*Psectraglaea carnosa*) – Species of Special Concern;
- Coastal Swamp Metarranthis (*Metarranthis pilosaria*) – Species of Special Concern; and
- Melsheimer’s Sack Bearer (*Cicinnus melsheimeri*) – Threatened.

The state-listed plant is:

- New England Blazing Star (*Liatris borealis*) – Species of Special Concern.

A second plant species, Eastern Silvery Aster (*Symphyotrichum concolor*), a State- Endangered species, also occurs at Sachem’s Path, but will not be impacted (i.e., will not result in a “taking”) as a result of the proposed project. However, preservation of this species has been incorporated into the land management plan for the Sachem’s Path parcel.

#### On-site Mitigation – Sachem’s Path Parcel

This “taking” is a consequence of the construction of an affordable residential housing development consisting of single-family homes on individual subdivided lots to be created on a 9.12-acre property that is currently-owned by the Nantucket Housing Authority (NHA). The NHA has proposed to place a 1.09-acre portion of the Sachem’s Path property in the northernmost reaches of the site into a Conservation Restriction (CR). This portion of the site contains the largest concentration of rare plant species at this site, and is located immediately adjacent to the population of Eastern Silvery Aster, the

majority of which resides primarily on the adjacent Town-owned parcel associated with the Miacomet Indian Burial Ground.

#### Off-site Mitigation – Tom Nevers Parcel

An additional parcel, and the subject of this Land Management Plan, will be placed into a CR to serve as off-site mitigation to further contribute to the Net Benefit for state-listed rare moth and plant species. This second parcel, also owned by the NHA, is located at 125 Tom Nevers Road (Assessor's Map 91, Lot 8) in the southeastern corner of Nantucket Island (see Figures 9, 10, and 11 submitted with the CMP application). This 15-acre parcel is largely undeveloped, but for a small cement block storage facility and associated driveway. The southwestern corner of this parcel (approximately 2.38 acres) has been traditionally utilized for event parking by the Town of Nantucket (Figure B2-1 and B2-2). The parcel is abutted by residential parcels to the east and south, Town-owned lands to the southwest, and by open space lands owned by the Nantucket Conservation Foundation to the northwest and north.

The entire parcel is also mapped as *Estimated Habitat of Rare Wildlife and Certified Vernal Pools* (EH 79) and *Priority Habitat of Rare Species* (PH 15) by NHESP. This parcel is mapped for four moth species, one bird, and two plants as shown in Table 1.

Scientific Name	Common Name	Taxonomic Group	State Status
<i>Cicinnus melsheimeri</i>	Melsheimer's Sack Bearer	Butterfly/Moth	Threatened
<i>Chaetagnaea cerata</i>	Waxed Sallow Moth	Butterfly/Moth	Threatened
<i>Heterocampa varia</i>	Sandplain Heterocampa	Butterfly/Moth	Threatened
<i>Metarranthis pilosaria</i>	Coastal Swamp Metarranthis Moth	Butterfly/Moth	Special Concern
<i>Circus cyaneus</i>	Northern Harrier	Bird	Threatened
<i>Liatrix scariosa</i> var. <i>novae-angliae</i>	New England Blazing Star	Vascular Plant	Special Concern
<i>Scleria pauciflora</i>	Papillose Nut-sedge	Vascular Plant	Endangered

Off-site mitigation includes the placement of a second, separate CR on 12.75 acres of this parcel. The land area placed within the CR is exclusive of the footprint of the existing building and driveway, but incorporates a narrow strip of the currently maintained parking area, which will be cordoned off with fencing (split rail or equivalent, as appropriate) and signage. This area will be maintained as a sandplain grassland community (see CR map (Exhibit C) and Photo 1 below).

#### Land Management Plan Overview

Horsley Witten Group, Inc. (HW) has developed this Land Management Plan in consultation with Endangered Species Review Biologists at NHESP with the intention of achieving the Net Benefit requirement under MESA through direct land protection, habitat management, and monitoring. Placing 12.75 acres of the Tom Nevers Parcel into a CR is intended to provide a long-term net-benefit to the affected rare plant and moth species and the natural plant communities and associated habitats, and will be maintained in perpetuity as open space, subject to the Prohibited Acts and Uses and Reserved Rights set forth in the Declaration of Restriction (DR) and CR.

The CR will be held by a non-profit organization, and the NHA has engaged the Nantucket Land Council (NLC) for this purpose. The executive Director of NLC was also consulted on this Land Management Plan. NLC is a 501(c)(3) non-profit with a mission to protect Nantucket's natural world and rural character by holding and enforcing conservation restrictions, commissioning scientific research, monitoring development proposals, engaging in legal proceedings to protect natural resources, and educating the public on local environmental issues.

Access to this area is anticipated to be limited to habitat management activities, which may include selective removal of non-native species, pruning of vegetation, and periodic brush-hogging to maintain the open scrub-shrub habitat that currently supports these seven state-listed species. However, this parcel also includes several footpaths (as seen in Photo 1 below as well as in Figure 11) that provide access for non-motorized passive recreation, which will not be restricted. In addition, maintained portions in the southwestern corner of this parcel outside of the CR will continue to be used on a seasonal basis with the exception of the narrow strip of the maintained grassland area within the CR, which will be cordoned off with split rail fencing and the area marked with signage indicating the preservation of open space as indicated on the CR Plan. This fencing and any bounds or monuments and signs will be maintained in good condition and repaired or replaced as necessary.

This Land Management Plan consists of perpetual land management using a combination of pruning or brush-hogging of vegetation to maintain the open scrub-shrub habitat, mowing of an existing grassland area, and the placement of a perpetual conservation restriction over approximately 12.75 acres of land as identified below in Table 2.

<b>Assessor's Map &amp; Parcel</b>	<b>Lot Name</b>	<b>Area (ac)</b>	<b>On-site/Off-site</b>
67-513-43	Lot 43 (at Sachem's Path)	1.09	On-site
91-08	Tom Nevers Parcel (Lot 91-08)	12.75	Off-site
	<b>Total Mitigation (on &amp; off site):</b>	<b>13.84</b>	

## **2.0 LAND MANAGEMENT GOALS**

The 12.75 acres of the Tom Nevers Parcel will be monitored by the CR holder, NLC, with the goal of maintaining conditions suitable for the perpetuation of the populations of the seven State-listed species that have been identified at this site. Land management activities are anticipated to be minimal and will be consistent with the allowable and prohibited land uses.

Desired existing and future conditions at this site include a mosaic of primarily open habitats that are in different successional stages (scrub oak barrens and sandplain grasslands) that will maintain and enhance existing plant populations while simultaneously maintaining and encouraging *Lepidoptera* use. Accordingly, habitat management will be adaptive to allow for revision to management techniques that elicit a desired rare species response to applied techniques. Any invasive plants will also be identified and the goal will be to minimize the impact of invasive plants on the habitats.

In addition, the narrow strip of land that is currently managed and will be mowed periodically is anticipated to potentially support habitat for the Papillose Nut-sedge whose seeds are known to exist in the soil seedbank in a dormant state for decades. This area will be diligently monitored for the emergence of this species. Long-term monitoring for invasive species will focus on the areas immediately surrounding this narrow strip of land and any potential nearby source of invasives (e.g., housing, roadways, parking).

The land management program for New England Blazing Star, Papillose Nut-sedge, Northern Harrier, and the *Lepidoptera* species will seek to:

1. Limit access to public to protect sensitive habitat;
2. Maintain and area of open sandplain grassland habitat through occasional mowing of the existing grassland strip;
3. Discourage establishment of non-native or otherwise invasive species not typical of this natural community and associated habitat;
4. Maintain an early successional, high quality scrub-shrub thicket to serve as host plants for state-listed moth species through infrequent brush-hogging of overgrown scrub-shrub areas outside of the existing path (see Photo i);
5. Maintain the mosaic of sandplain grassland-sandplain heathland communities within interior portions of the CR parcel (i.e., inside of the pathway; see Photo 1);
6. Maintain access barriers (i.e., split rail fence) and signage, repairing and replacing as necessary to discourage and limit access by the public.

The percent of each habitat at the Tom Nevers Parcel (12.75 acres) is shown in Table 3. This habitat will be permanently protected and maintained through adaptive management.

<b>HABITAT TYPE</b>	<b>Percent of Habitat (12.75-acre CR parcel)</b>
Dense Scrub Oak Thicket	30
Sandplain Grassland/Heathland mosaic	65
Maintained Grasslands	5



**Photo 1. Aerial photograph depicting existing conditions (Source: MassGIS 2008-2009). Approximate land management areas depicted here as guidelines.**

- Key:**
- Maintain as early successional scrub-shrub thickets
  - Maintain as sandplain grassland community
  - (Elsewhere within CR) maintain as sandplain grassland-sandplain Heathland mosaic

### 3.0 VEGETATION MONITORING AND REPORTING METHODS

Monitoring of the CR parcel will be conducted annually to evaluate the existing plant communities and/or to assess the success of various techniques and determine the appropriate land management activities for future years. An initial report (i.e., Year 1) will be filed with the Division of Fisheries & Wildlife NHESP (or the "Division") identifying any proposed changes to the management plan provided here for subsequent years. Modifications to the proposed management activities will be implemented only upon written approval of the plan by the Division.

A report will be prepared by NLC documenting land management efforts and measuring their success in meeting the goals of maintaining and the existing percentages of habitats following the completion of Year 1 (baseline) and Year 5, and then every 5 years thereafter. This report will include detailed maintenance logs indicating the timing of all treatments and monitoring/maintenance activities since the last report, a summary of annual land management efforts, available aerial photos of the site, photographs of site conditions from pre-established permanent photo-stations, and an evaluation of the quantity and quality of rare plant, bird, and *Lepidoptera* habitat. Changes in vegetation cover and distribution and any emergence of the Papillose Nut-sedge individuals will be noted, and the report will also include an evaluation of undesirable or invasive plants on the property and propose methods for control/eradication of these species as appropriate.

Monitoring reports will also discuss the timing of land management activities (if any) and an evaluation of their effectiveness based on state-listed species responses to the management techniques. Finally, the monitoring reports will include recommendations for future land management activities and will be submitted to the Division during the winter (i.e., outside the growing season) in order to allow the Division to comment on the effectiveness of land management techniques and recommendations made by the Land Manager, prior to the start of the next growing season. Any modifications of the management plan will only be implemented upon written approval of the Division.

### 4.0 PROPOSED MANAGEMENT METHODS

Following initial installation of exclusion fencing and signage (i.e., maintenance measures implemented in Year 1); anticipated land management efforts will include a combination of the following elements:

- fence and signage maintenance;
- invasive species monitoring and management as necessary;
- mowing of fenced off grassland strip; and
- brush hogging every 5 to 10 years of remaining habitats, as needed.

Habitat management methods will be phased and not all management activities will occur on an annual basis. The use of herbicides and pesticides will not be used for any form of management in order to protect rare plants and juvenile and adult moth species of concern, as this poses a major threat to their populations. Off road vehicles will also be prohibited from the site, with the exception of mowing and maintenance activities by qualified personnel.

The narrow strip of the existing maintained field (currently used as seasonal event parking) that has been cordoned off with fencing will be mowed once every two to three years. The entire strip is anticipated to be mowed at one time at the end of the growing season (e.g., after November 1<sup>st</sup>). Brush-hog mowing of the remaining areas as shown outlined in red will occur every 5-10 years (based upon the recommendations of the land manager and NLC) and will allow for long-term maintenance of the mosaic of early successional open scrub-shrub and sandplain grassland habitat preferred by all of the species of concern at the site to encourage present and future colonization.

Monitoring and maintenance of the split-rail fence and conservation signage will occur annually (or more frequently, as needed) to ensure that access barriers and posted signs are maintained in good condition to discourage unauthorized access. A breakdown of anticipated tasks and associated costs per year for Years 1 to 5 are provided in Table 4.

<b>Management Activity</b>	<b>Annual Cost Totals*</b>	<b>Total Cost Years 1-5</b>
Mowing (Twice during 1 <sup>st</sup> 5 years – Years 2 & 4) (@\$150/ac) 5%	\$40	\$200
Brush-hog mowing (once every 7-8 years (@\$240/acre) - 30%**	\$135	\$675
Reporting / Communication w/ NHESP and Land Manager (Years 3 & 5)	\$380	\$1,900
<b>Total for Years 1-5:</b>	<b>\$555</b>	<b>\$2,775</b>

\*Annual costs may be rounded

\*\*Funds collected during years 1-5 to ensure adequate funding in Year 7

During Year 6 through Year 10, work will be conducted as determined based on the results of the management activities undertaken to date. A breakdown of anticipated tasks and associated costs per year, starting in Year 6, are provided in Table 5.

<b>Management Activity (in no particular order)</b>	<b>Total Annual Cost</b>
Mowing (every other year) (@\$150/acre) - 5%	\$40
Brush-hog mowing (once every 5 years (@\$240/acre) - 30%	\$250
Invasive Species (hand removal) - once every 5 years (@\$200/acre)	\$30
Reporting / Communication with NHESP and Land Manager – once every 5 years)	\$400
<b>Total:</b>	<b>\$720</b>

## 5.0 FUNDING

Funding is anticipated to be sourced from a percentage of the fees collected by the Sachem's Path Homeowner's Association. Based upon full buildout of 40 single family homes, it is estimated that each household would generate approximately \$13.88 per year or \$555 per year per 40 houses for the first five years (Years 1-5) and approximately \$18.00 per household per year (or approximately \$720/year) to cover management costs in subsequent years. This cost accounts for any mowing

activities (5% of the 12.75-acre CR parcel) and brush hogging (30% of parcel) are calculated in Tables 4 and 5, which indicate nominal costs for mowing for the first five years, with somewhat higher costs in subsequent years to maintain the mosaic of scrub-shrub and grassland communities at this site. Table 6 shows the breakdown of the anticipated management costs for both parcels.

<b>Contribution from Homeowners Association Fees (per household/year) (assuming full build-out of 40 homes)</b>	<b>Year's 1-5</b>	<b>Subsequent Years</b>
<b>Sachem's Path Lot 43</b>	\$29.08	\$8.75
<b>Tom Nevers Parcel</b>	\$13.88	\$18.00
<b>TOTAL</b>	<b>\$42.95</b>	<b>\$26.75</b>

For the purposes of budgeting, funds should be collected and placed in escrow prior to September 30<sup>th</sup> each year for activities that may occur during the non-growing season (i.e., after November 1<sup>st</sup>) of that year. The following milestones are anticipated to cover the costs for the first five years (Table 7). This also accounts for management activities that are not anticipated to occur until Year 7 or 8.

<b>Year</b>	<b>Escrow Funds***</b>	<b>Funds Expended</b>	<b>Funds in Escrow</b>
Year 1	\$2,775	\$0	\$2,775
Year 2	\$2,775	\$100	\$2,675
Year 3	\$2,675	\$0	\$2,675
Year 4	\$2,675	\$100	\$2,575
Year 5	\$2,575	\$1,900	\$675
<b>Total:</b>		<b>\$2,775</b>	<b>\$675</b>

\*\*\*Based upon annualized costs for first five years, including projected costs for Year 7/8

Table 8 summarizes the total estimated escrow needed to account for management costs during the first five years at both parcels.

<b>Year</b>	<b>Escrow Funds</b>	<b>Funds Expended</b>	<b>Funds Remaining in Escrow</b>
Year 1	\$10,590	\$3,200	\$7,390
Year 2	\$7,390	\$1,575	\$5,815
Year 3	\$5,815	\$1,225	\$4,590
Year 4	\$4,590	\$325	\$4,265
Year 5	\$4,265	\$3,590	\$675
<b>Total:</b>		<b>\$9,915</b>	<b>0</b>

An Escrow Agreement will be established to cover the "gap" in collected maintenance fees that occurs between the initial "take" and full build-out for this property, during which time the full amount of the annual maintenance costs are anticipated to be covered by dues collected from the homeowners association. Funds will be held in escrow in an interest-bearing account that will be managed by the Homeowners Association under the direction of NHA.

After Year 5, full build-out of all 40 houses is anticipated. Should full build out not be achieved prior to Year 6, costs per household would vary depending upon occupancy within the development at any point in time. Should that be the case, additional funds will be set aside in an Escrow Account to ensure that annual maintenance costs are covered. Management costs shall be reassessed over time to account for inflation.

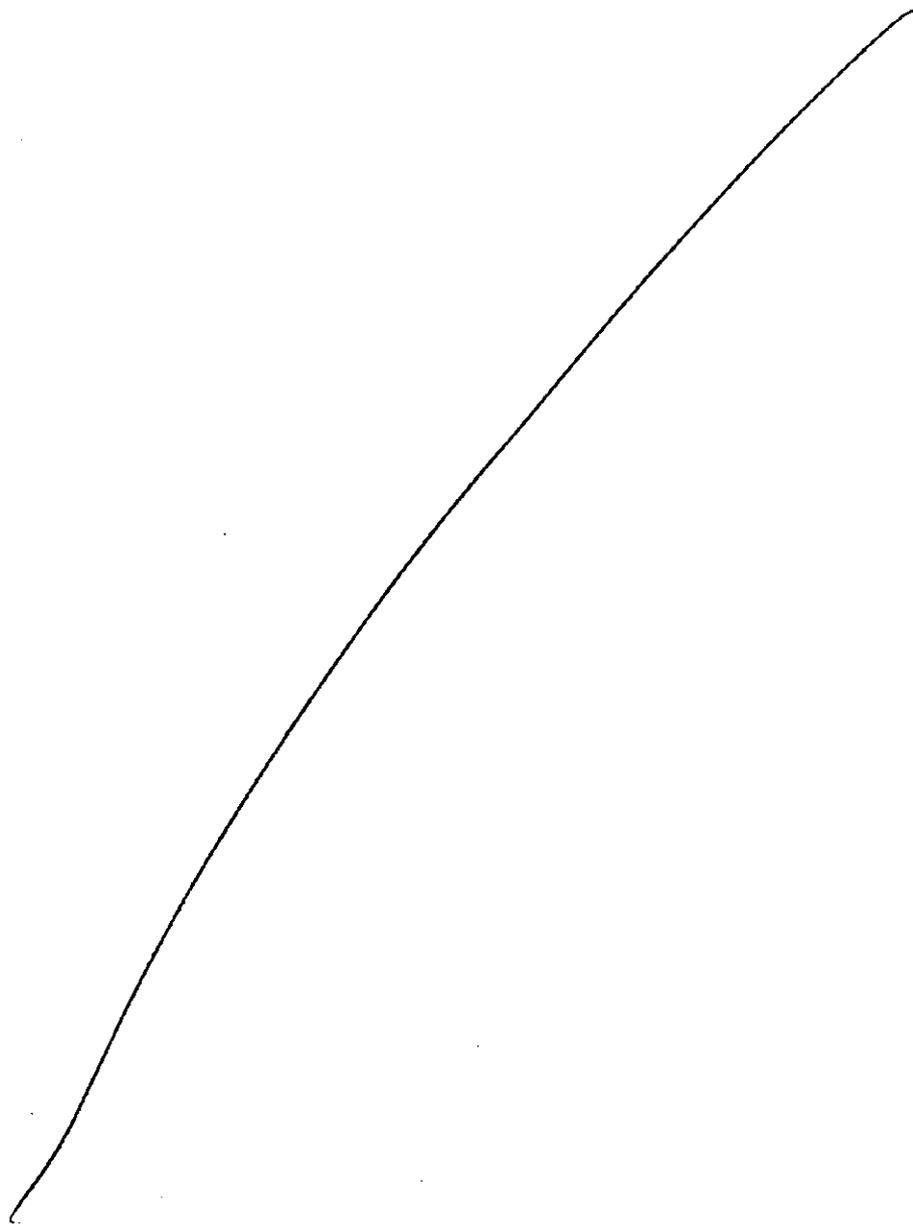
## **6.0 CONSERVATION RESTRICTION**

As previously mentioned in this Land Management Plan, NHA (the Proponent) proposes to place a CR over the parcels included in Table 1 and intends that the CRs be held by the Nantucket Land Council (qualified local entity). Copies of the Conservation Restriction and CR plan (Exhibit C) for Sachem's Path are provided as attachments. A separate Land Management Plan has been prepared for the on-site mitigation component at Lot 43 of the Sachem's parcel (see Appendix B-1).

# Attachment 11

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Escrow Agreement



## ESCROW AGREEMENT

This ESCROW AGREEMENT (this "Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2014 by and between the Massachusetts Division of Fisheries and Wildlife, by and through the Natural Heritage and Endangered Species Program, having a principal place of business at 1 Rabbit Hill Road, Westborough, MA, 01581 ("NHESP")<sup>1</sup>; Sachem's Path Nantucket, LLC (Proponent) having a principal place of business at 460 W. Main Street, Hyannis, MA 02601; and Reade, Gullicksen, Hanley & Gifford, LLP, a Massachusetts limited liability partnership, having a principal place of business at 6 Young's Way, Nantucket, MA 02554 ("Escrow Agent"). NHESP, the Proponent, and Escrow Agent are referred to herein collectively as the "Parties."

1. Recitals

a. The Conservation and Management Permit No. 014-243.DFW ("Permit") issued by NHESP to Sachem's Path Nantucket, LLC contains financial assurance provisions in paragraph #22 of the Special Conditions section requiring that Sachem's Path Nantucket, LLC ensure that funds are available in the sum of Ten Thousand, Five Hundred and Ninety Dollars (\$10,590.00) (the "Funds") for the management of habitat for the benefit of rare plant and Lepidoptera species populations in Massachusetts.

Specifically, the proponent proposes to manage habitat within two separate parcels for the following state-listed species:

Lot 43 Sachem's Path (1.09 ac):

- Chain Dot Geometer (*Cingilia catenaria*) – Species of Special Concern
- Pink Sallow Moth (*Psectraglaea carnosae*) – Species of Special Concern
- Coastal Swamp Metarranthis (*Metarranthis pilosaria*) – Species of Special Concern
- Melsheimer's Sack Bearer (*Cicinnus melsheimeri*) – Threatened
- New England Blazing Star (*Liatris borealis*) – Species of Special Concern
- Eastern Silvery Aster (*Symphyotrichum concolor*) – Endangered

Tom Nevers Parcel (12.75 ac):

- Chain Dot Geometer
- Pink Sallow moth
- Coastal Swamp Metarranthis
- Melsheimer's Sack Bearer
- New England Blazing Star

b. The Parties agree the Funds shall be paid by Sachem's Path Nantucket, LLC to the Escrow Agent and held in an interest bearing escrow account ("Escrow Account") (further defined in 2 below) and expended pursuant to the terms and conditions described below to mitigate for the use of state-listed species habitat in connection with the Sachem's Path subdivision (the "Project"), located at the southwestern corner of Surfside Road and South Shore Road in Nantucket, Massachusetts.

<sup>1</sup> Temporary headquarters at 100 Hartwell Street, Suite 230, West Boylston, MA 01583

The Parties enter into this Agreement for the purpose of defining the terms and conditions under which the Funds shall be held and disbursed.

NOW THEREFORE, after consideration of the above recitals, Sachem's Path Nantucket, LLC, NHESP and the Escrow Agent hereby covenant and agree as follows:

2. Escrow Account

a. Sachem's Path Nantucket, LLC shall deliver the Funds to the Escrow Agent in the manner described below:

(i) Sachem's Path Nantucket, LLC shall deliver to Escrow Agent the Funds, in the amount of \$10,590.00, within twenty (20) business days after the recording of the Permit;

b. All funds delivered by Sachem's Path Nantucket, LLC to the Escrow Agent shall be deposited by the Escrow Agent in an interest bearing account or held in obligations by the US Government at one or more banks ("Depository Bank"), said accounts to be at all times insured by the Federal Deposit Insurance Corporation and which shall pay interest on the Funds at a reasonable rate. The Depository Bank shall be entitled to charge the Escrow Account for services related to maintenance of the Escrow Account at a rate not exceeding the Bank's standard charges to other customers for similar services.

c. The Escrow Account shall be opened by the Escrow Agent and funds may be withdrawn only by the Escrow Agent and no other person. Disbursements shall be made from the Escrow Account only in accordance with the terms of this Agreement.

d. The Escrow Agent shall maintain a record of all deposits, income, disbursements, and other transactions of the Escrow Account. Upon request, the Escrow Agent shall provide to any of the Parties a written accounting of all transactions. The Parties shall have the right to inspect all books and records of the Escrow Agent relating to the Escrow Account at reasonable times upon request. Escrow Agent's computation of the Funds is correct in the absence of manifest error.

e. The Escrow Agent shall keep possession of the book(s) and bank statements of the Escrow Account until such time as it is terminated in accordance with the terms of this Agreement, or until a successor Escrow Agent is appointed as provided herein.

3. Disbursements

From time to time, NHESP may, on or before the date which is five (5) years from the date of this Agreement, request in writing the Escrow Agent to deliver all or portions of the Funds, plus any interest thereon, for land acquisition, land protection, land restoration, habitat management, habitat restoration and/or conservation planning and research, to provide a net-benefit to those state-listed plants and Lepidoptera species listed above in Massachusetts. Upon receipt of such written request, the Escrow Agent shall deliver the requested portion of the Funds to NHESP or any party designated in writing by NHESP. Delivery of the Funds in accordance with the terms of this Agreement shall be made by cashier's check, or by federal funds wire transfer, at the option of the payee.

- a. The Escrow Agent may make disbursements to the Depository Bank for services rendered in maintaining said account.
- b. If the management of on-site habitats is not completed to the satisfaction of NHESP, NHESP shall have the right to utilize all or a portion of the Funds to conduct all necessary management activities in accordance with the Permit and any other written requirements of the Division.
- c. If, at the end of five (5) years from the date of this Agreement, any portion of the Funds is still held in escrow under this Agreement, then NHESP shall, within six (6) months after such five (5) year date, develop a plan for the use of any remaining Funds by NHESP or any party designated in writing by NHESP for the further acquisition, restoration and/or management of habitat for the benefit of those state-listed plants and Lepidoptera species listed above in Massachusetts.
- d. The Escrow Agent shall release any remaining Funds to NHESP or any party designated in writing by NHESP in accordance with such plan.

4. Termination of Agreement

This Escrow Agreement shall terminate, and the Escrow Agent shall be relieved of all liability, after all funds in the Escrow Account have been properly disbursed in accordance with the terms and conditions of this Agreement. When the Escrow Account is terminated, the Escrow Agent shall provide a final accounting of all transactions hereunder to the Parties.

5. Duties and Liabilities of Escrow Agent

- a. The sole duty of the Escrow Agent under this Agreement is to receive funds from Sachem's Path Nantucket, LLC and to hold the funds for disbursement according to Section 3 above. The Escrow Agent shall be under no duty to pass upon the adequacy of any documents, to determine whether any of the Parties are complying with the terms and provisions of this Escrow Agreement, or to determine the identity or authority of any person purporting to be a signatory authorized by Sachem's Path Nantucket, LLC or NHESP.
- b. The Escrow Agent may conclusively rely upon, and shall be protected in acting on, a statement, certificate, notice, requisition, order, approval, or other document believed by the Escrow Agent to be genuine and to have been given, signed and presented by a duly authorized agent of Sachem's Path Nantucket, LLC or NHESP. The Escrow Agent shall have no duty or liability to verify any statement, certificate, notice, request, requisition, consent, order, approval or other document, and its sole responsibility shall be to act only as expressly set forth in this Agreement. The Escrow Agent shall not incur liability for following the instructions contemplated by this Agreement or expressly provided for in this Agreement or other written instructions given to the Escrow Agent by the Parties. The Escrow Agent shall be under no obligation to institute or defend any action, suit or proceeding in connection with this Escrow Agreement, unless first indemnified to its satisfaction. The Escrow Agent may consult with counsel of its choice including shareholders, directors, and employees of the Escrow Agent, with respect to any question arising under or in connection with this Agreement, and shall not be liable for any action taken, suffered or omitted in good faith. The Escrow Agent shall be liable solely for its own willful misconduct.

c. The Escrow Agent may refrain from taking any action, other than keeping all property held by it in escrow if the Escrow Agent: (i) is uncertain about its duties or rights under this Escrow Agreement; (ii) receives instructions that, in its opinion, are in conflict with any of the terms and provisions of this Agreement, until it has resolved the conflict to its satisfaction, received a final judgment by a court of competent jurisdiction (if it deems such action necessary or advisable), or it has received instructions executed by both Sachem's Path Nantucket, LLC and NHESP.

d. Escrow Agent is acting, and may continue to act, as counsel to Sachem's Path Nantucket, LLC in connection with the subject transaction, whether or not the Funds are being held by Escrow Agent or have been delivered to a substitute impartial party or a court of competent jurisdiction. Escrow Agent is not acting as counsel to Sachem's Path Nantucket, LLC in Escrow Agent's capacity as escrow agent.

e. Each of the Parties admits, acknowledges and represents to each of the other Parties that it has had the opportunity to consult with and be represented by independent counsel of such party's choice in connection with the negotiation and execution of this Agreement. Each of the Parties further admits, acknowledges and represents to the other Parties that it has not relied on any representation or statement made by the other Parties or by any of their attorneys or representatives with regard to the subject matter, basis or effect of this Agreement.

6. Escrow Agent's Fee

- a. The Escrow Agent shall be entitled to compensation from Sachem's Path Nantucket, LLC for its basic services under this Escrow Agreement. The Escrow Agent may bill the Sachem's Path Nantucket, LLC directly for such services in accordance with the fee schedule attached to this Escrow Agreement as Exhibit B. Payments for services provided by Escrow Agent shall not be made from Escrow Funds.

7. Investment Risk

- a. In no event shall the Escrow Agent have any liability as a result of any loss occasioned by the financial difficulty or failure of any institution, including Depository Bank, or which holds United States Treasury Bills, or other securities, or for failure of any banking institution, including Depository Bank, to follow the instructions of the Escrow Agent. Without limiting the generality of the foregoing, in no event shall the Escrow Agent incur any liability as the result of any claim or allegation that the Escrow Agent should have invested the escrow funds in United States Treasury Bills rather than hold same on deposit at the Depository Bank, or vice versa.

8. Notices

- a. All notices permitted or required by this Agreement shall be in writing and shall be deemed duly provided when deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, to the other Parties at the addresses set forth in the first paragraph of this Agreement. The Party providing notice may choose alternate methods, including hand delivery, Federal Express, or other recognized overnight courier. Notices provided by hand delivery, Federal Express or other recognized overnight courier shall

be deemed duly provided when received at the addresses set forth in the first paragraph of this Agreement.

b. All notices, certification, authorizations, requests or other communications required, or permitted to be made under this Escrow Agreement shall be delivered as follows:

To the NHESP:

Tom French, Assistant Director  
Natural Heritage and Endangered Species Program  
ATTN: Regulatory Review, CMP 014-243.DFW  
Division of Fisheries and Wildlife  
1 Rabbit Hill Road, North Drive  
Westborough, MA 01581

With a temporary address of:  
100 Hartwell Street, Suite 230  
West Boylston, MA 01583

To Sachus's Path Nantucket, LLC:

460 W. Main Street, Hyannis, MA 02601  
508-778-7535

To the Escrow Agent:

Reade, Gullicksen, Hanley & Gifford, LLP  
6 Young's Way  
Nantucket, MA 02554  
508-228-3128

or to such other place or to the attention of such other individual as a Party from time to time may designate by written notice to all other Parties.

9. Resignation, Removal, or Successor Escrow Agent

a. If, for any reason, the Escrow Agent is unable or unwilling to continue to act as Escrow Agent, he/she shall give written notice to the other Parties of his/her inability or unwillingness to continue as Escrow Agent. The parties shall agree upon a successor agent, formally appoint the successor agent, and provide written notification to the Escrow Agent of the subsequent appointment within ten (10) business days. The Escrow Agent shall then, within three (3) business days after receiving notice of subsequent appointment, deliver to the successor escrow agent all cash and other property held by the Escrow Agent under this Escrow Agreement. Upon such delivery, all obligations of the Escrow Agent under this Escrow Agreement shall automatically cease and terminate. If no successor escrow agent is designated within the prescribed ten (10) day period, or if notice of subsequent appointment is not received within such period, then the Escrow Agent may, at its option at any time thereafter, deposit the funds and any documents then being held by it in escrow into any court having appropriate jurisdiction, and upon making such deposit, shall thereupon be relieved of and discharged and

released from any and all liability hereunder, including without limitation any liability arising from the Funds, or any portion thereof so deposited.

b. The Escrow Agent may be removed at any time by a written instrument or concurrent instruments signed by the NHESP and Sachem's Path Nantucket, LLC and delivered to the Escrow Agent.

c. If at any time hereafter, the Escrow Agent shall resign, be removed, be dissolved, or otherwise become incapable of acting, or the position of the Escrow Agent shall become vacant for any of the foregoing reasons or for any other reason, the Parties hereto shall promptly appoint a successor Escrow Agent. Upon appointment, such successor Escrow Agent shall execute and deliver to his/her predecessor and to the Parties hereto an instrument in writing accepting such appointment hereunder. Thereupon, without further act, such successor Escrow Agent shall be fully vested with all the rights, immunities, and powers, and shall be subject to all the duties and obligations of his/her predecessor, and the predecessor Escrow Agent shall promptly deliver all books, records, and, other property and monies held by him/her hereunder to such successor Escrow Agent.

10. Interest

a. All interest income accrued on funds in the Escrow Account shall become part of the Escrow Account and shall remain in the Escrow Account. The Escrow Agent may disburse funds to Sachem's Path Nantucket, LLC to pay federal and state taxes on accrued interest. Said disbursement may be made by the Escrow Agent only after receiving a written confirmation from Sachem's Path Nantucket, LLC, with a copy sent to the NHESP, of all itemized federal and state tax liabilities incurred by interest accrued on the Escrow Account.

11. Miscellaneous

a. This Escrow Agreement shall be binding upon, and shall inure to the benefit of the respective Parties hereto and their successors and assigns.

b. This Agreement shall be governed by and be construed in accordance with the laws of the Commonwealth of Massachusetts.

c. This Agreement shall be interpreted as an instrument under seal.

d. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all counterparts shall constitute one Agreement.

e. This Escrow Agreement may not be amended, altered, or modified except by written instrument duly executed by all of the Parties hereto.

f. If the term, condition or provision of this Agreement, or the application thereof to any circumstances or party hereto, ever shall be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, condition, or provision to any other circumstance or party hereto (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

g. Each individual and entity executing this Agreement hereby represents and warrants that he, she or it has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he, she or it is executing this Agreement to the terms hereof.

12. Effective Date

a. This Agreement shall take effect on the latest date of execution by the NHESP, Sachem's Path Nantucket, LLC, or Escrow Agent.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Escrow Agreement to be duly executed as of the day and year first written above.

FOR THE MASSACHUSETTS DIVISION OF FISHERIES AND WILDLIFE:

Wayne J MacCallum  
Name: Wayne MacCallum  
Title: Director

COMMONWEALTH OF MASSACHUSETTS

Worcester ss

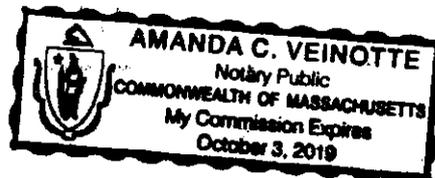
August 7 2014

On this 7 day of August, 2014, before me, the undersigned notary public, personally appeared Wayne MacCallum and proved to me through satisfactory evidence of identification, which were personal knowledge to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Amanda C Veinotte

Notary Public

My commission expires:



FOR Sachem's Path Nantucket, LLC:

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

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

Name: FB Rusby

Its: CEO

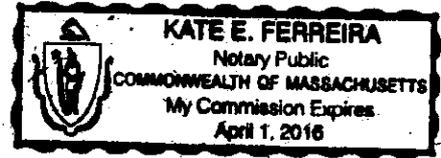
STATE OF Massachusetts

Barnstable, ss

July 21 2014

On this 21 day of July, 2014, before me, the undersigned notary public, personally appeared Evidence Presby and proved to me through satisfactory evidence of identification, which were license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Kate E Ferreira  
Notary Public  
My commission expires:  
4/1/2016



FOR Reade, Gullicksen, Hanley & Gifford, LLP  
:

By: Arthur I. Reade, P.C.  
Name: Arthur I. Reade, Jr. Re  
Title: Partner

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

August 19 2014

On this 19 day of August, 2014, before me, the undersigned notary public, personally appeared Arthur I. Reade, Jr. and proved to me through satisfactory evidence of identification, which were personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Barbara A Reis  
Notary Public  
My commission expires:



BARBARA A. REIS  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
January 7, 2016

NANTUCKET COUNTY Received & Entered  
Attest: Jennifer H. Ferreira, Registrar of Deeds