

DRAFT CONSERVATION RESTRICTION

LOT R-15

WEST QUABBIN WOODLANDS CONSERVATION AREA

**DRAFT APPROVED BY SHUTESBURY CONSERVATION COMMISSION: JUNE,
2022**

**SUBMITTED TO DIVISION OF CONSERVATION SERVICES, EXECUTIVE OFFICE
OF ENERGY AND ENVIRONMENTAL AFFAIRS: SEPTEMBER, 2022**

FINAL APPROVAL PENDING

NOTE: DRAFT LANGUAGE SUBJECT TO CHANGE BASED ON DCS GUIDANCE

BASELINE SURVEY PENDING

CONSERVATION MANAGEMENT PLAN PENDING

GRANTOR: Town of Shutesbury
GRANTEE: Kestrel Land Trust, Inc.
ADDRESS OF PREMISES: Pelham Hill Road,
Shutesbury Massachusetts
FOR GRANTOR’S TITLE SEE: Franklin Registry of
Deeds at Book , Page

CONSERVATION RESTRICTION

Town of Shutesbury, a municipal corporation with an address of 1 Cooleyville Road, Shutesbury, Massachusetts 01072, acting by and through its Board of Selectmen, being the sole owner of the Premises as defined herein, for its successors and assigns (“Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grants, with QUITCLAIM COVENANTS, to Kestrel Land Trust, Inc. a Massachusetts non-profit corporation with a principal place of business at 37 Bay Road, Amherst, Massachusetts and a mailing address of P.O. Box 1016 Amherst, Massachusetts 01004, its permitted successors and assigns (“Grantee”), for nominal consideration **IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES**, the following Conservation Restriction on land located in Shutesbury containing 30 acres, more or less, (“Premises”), which Premises is more particularly described in Exhibit A.

I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purposes of this Conservation Restriction (“Purposes”) are to ensure that the Premises will be maintained in perpetuity in its natural, scenic, or open condition and available for forestry use and passive outdoor recreation, and to prevent any use or change that would materially impair the “Conservation Values” (as defined below).

The fee interest in the Premises was acquired utilizing, in part, the following sources of funding:

1. Community Preservation Act funds pursuant to Chapter 44B of the Massachusetts General Laws, which funds were authorized for such purposes by a vote of the Shutesbury Annual Town Meeting on May 21, 2022. A copy of the Annual Town Meeting Vote authorizing the use of such funds for such purpose is attached hereto and incorporated herein as Exhibit C. Pursuant to said vote, the Premises is under the care, custody, and control of the Town of Shutesbury Conservation Commission.
2. Forest Legacy Program funding as authorized by the Cooperative Forestry Assistance Act of 1978, P.L. 95-313, as amended (codified at 16 U.S.C. § 2101 et seq.).

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

1. Open Space. The Premises contributes to the protection of the scenic and natural character of Shutesbury and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises is connected to a large forested area just west of the Quabbin Reservoir and is part of the Massachusetts/New Hampshire Quabbin to Cardigan corridor. The Quabbin to Cardigan corridor is one of the largest remaining

areas of intact, interconnected, ecologically significant forest in New England. The region's forests collect and naturally filter drinking water for nearly 200 cities and towns, including the City of Boston. Habitat conservation in the region is a high priority for both the Massachusetts and New Hampshire Wildlife Action Plans, and the region's interconnected forests could also prove an important north south corridor for wildlife adapting their ranges to a changing climate. Its managed timberlands are an important source of forest products and renewable energy, and are a highly efficient carbon sink.

2. Wildlife Habitat. The Premises is almost completely forested, with small streams and wetlands interspersed beneath the forest canopy. The forest is a highly diverse assemblage of tree species associated with northern forest types (Sugar Maple, American beech, Basswood, Striped Maple and an occasional White Birch) intermixed with species characteristic of southern forests (Tulip poplar, Sassafras, Red, White and Chestnut Oaks, Shagbark Hickory, and Black Gum) along with common species such as White Ash, Black and Yellow Birch, Red Maple, Eastern Hemlock and White Pine. According to the Massachusetts State Wildlife Action Plan, viable populations of wide-ranging species will be best conserved within extensive, heavily forested landscapes, including upland forests on the Premises that support Black Bear, moose, bobcat, and coyote habitat.
3. Public Access. Public access to the Premises will be allowed for education, nature study, and passive outdoor recreation.
4. Habitat Connectivity and Ecosystem Integrity. Approximately 60% of the Premises is designated by the University of Massachusetts Conservation Analysis Priorities System (CAPS) as containing the highest level of ecological integrity, meaning the relatively large, intact forest is resilient to stress and capable of sustaining its composition, structure, and function.
5. Water Quality and Water Supply. The Premises contain the headwaters to Amethyst Brook, which is part of the Fort River Watershed and the Silvio O. Conte National Wildlife Refuge conservation focus area. Protection of the West Quabbin Woodlands also contributes to the Quabbin watershed which is the drinking water supply for the City of Boston and 40 other municipalities in the state.
6. Carbon Sequestration. The Premises possesses a well-stocked, diverse forest that may qualify for greenhouse removal enhancements associated with the sequestration of carbon achieved by increasing forest carbon stocks and maturing trees, which also benefit the natural communities therein, and the visitors who may enjoy the scenic beauty and other natural values through wildlife observation and recreation.
7. Climate Change Resiliency. The Nature Conservancy recognizes the West Quabbin region (inclusive of the Premises) as resilient to climate change because of its topographical diversity, geological diversity, and relative habitat connectivity. Climate change resilience is a critical factor in ensuring the future biodiversity of eastern North America.

8. Consistency with Clearly Delineated Federal, State, or Local Governmental Conservation Policy. In addition to being a focus area of the Silvio O. Conte National Fish and Wildlife Refuge and part of the Massachusetts and New Hampshire Quabbin to Cardigan corridor and Massachusetts State Wildlife Action Plan, protection of the Premises is supported by the Town of Shutesbury Open Space and Recreation Plan.

II. PROHIBITED and PERMITTED ACTS AND USES

A. Prohibited Acts and Uses

The Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

1. Structures and Improvements. Constructing, placing, or allowing to remain any temporary or permanent structure including without limitation any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, graveled area, roads, sign, fence, gate, billboard or other advertising, antenna, utilities or other structures, utility pole, tower, solar panel, solar array, conduit, line, septic or wastewater disposal system, storage tank, or dam;
2. Extractive Activities/Uses. Mining, excavating, dredging, withdrawing, or removing soil, loam, peat, gravel, sand, rock, surface water, ground water, or other mineral substance or natural deposit, or otherwise altering the topography of the Premises;
3. Disposal/Storage. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings, liquid or solid waste or other substance or material whatsoever;
4. Removal of Forest Canopy Cover. Taking any actions, individually or cumulatively, that result in a reduction of more than 25% of the forest canopy cover of the Premises, or that result in the violation of any FLP eligibility criteria or requirements, it being acknowledged that any removal of forest canopy cover is permitted only as described and limited in Paragraph II.B;
5. Adverse Impacts to Vegetation. Cutting, removing, or destroying trees, shrubs, grasses or other vegetation;
6. Adverse Impacts to Water, Soil, and Other Features. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, natural habitat, archaeological conservation, or ecosystem function;
7. Introduction of Invasive Species. Planting or introducing any species identified as invasive by the Massachusetts Invasive Plant Advisory Group or identified as invasive in such recognized inventories as the Massachusetts Introduced Pests Outreach Project, the Northeast Aquatic Nuisance Species Panel, or other such inventories, and any successor list as mutually agreed to by Grantor and Grantee;

8. Motor Vehicles. Using, parking, or storing motorized vehicles, including motorcycles, mopeds, all-terrain vehicles, snowmobiles, off-highway vehicles, motorboats or other motorized watercraft, launching or landing aircraft, or any other motorized vehicles, acknowledging that vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) may have a legal right to enter the Premises;
9. Subdivision. Subdividing or conveying a part or portion of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), it being the Grantor's and Grantee's intention to maintain the entire Premises under unified ownership;
10. Use of Premises for Developing Other Land. Using the Premises towards building or development requirements on this or any other parcel;
11. Adverse Impacts to Stone Walls, Boundary Markers. Disrupting, removing, or destroying stone walls, stone structures, granite fence posts, or any other boundary markers;
12. Residential or Industrial Uses. Using the Premises for residential or industrial purposes;
13. Inconsistent Uses. Using the Premises for commercial purposes that are inconsistent with the Purposes or that would materially impair the Conservation Values, or for any other uses or activities that are inconsistent with the Purposes or that would materially impair the Conservation Values.

B. Permitted Acts and Uses

Notwithstanding the Prohibited Acts and Uses described in Paragraph II.A., the Grantor may conduct or permit the following acts and uses on the Premises, provided they do not materially impair the Purposes and/or Conservation Values. In conducting any Permitted Act and Use, Grantor shall minimize impacts to the Conservation Values to ensure any such impairment thereto is not material.

1. Vegetation Management. Maintaining vegetation, including pruning, trimming, cutting, and mowing, and removing brush, all to prevent, control, and manage hazards, disease, insect or fire damage, and/or in order to maintain the condition of the Premises as documented in the Baseline Report (see Paragraph XIV.);
2. Non-native, Nuisance, or Invasive species. Removing non-native, nuisance, or invasive species, interplanting native species, and controlling species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
3. Composting. Stockpiling and composting stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises provided that any such activity

shall occur at least one hundred (100) feet from any wetlands or surface water resources;

4. Natural Habitat and Ecosystem Improvement. With prior written approval of the Grantee, conducting measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, ecosystem function, or rare or endangered species including planting native trees, shrubs, and other vegetation;
5. Indigenous Cultural Practices. With prior written approval of the Grantee which may take the form of a single, per-use approval or an ongoing memorandum of understanding, allowing Indigenous peoples to:
 - a. Conduct cultural land ceremonial uses. Cultural practices are defined, for the purposes of this Conservation Restriction, as including traditional spiritual ceremonies, seasonal celebrations, offerings, and cultural, educational, and interpretive programming; and
 - b. Harvest plant-life for traditional cultural practices, using methods which, in the sole judgment of the Grantee, ensure sustainable populations of the harvested species within the Premises, including regrowth and replanting;
6. Archaeological Investigations. Conducting archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only in accordance with an archaeological field investigation plan, which plan shall also address restoration following completion of the archaeological investigation, prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historical Commission State Archaeologist (or appropriate successor official) and by the Grantee. A copy of the results of any such investigation on the Premises is to be provided to the Grantee and the Shutesbury Historical Commission;
7. Trails. Maintaining and constructing trails as follows:
 - a. Trail Maintenance. Conducting routine maintenance of trails, which may include widening trail corridors up to eight (8) feet in width overall, with a treadway up to four (4) feet in width.
 - b. New Trails. With prior written approval of the Grantee, constructing new trails or relocating existing trails, provided that any construction or relocation results in trails that conform with the width limitations above.
 - c. Trail Features. With prior written approval of the Grantee, constructing bog bridging, boardwalks, footbridges, railings, steps, culverts, benching, cribbing, contouring, or other such features, together with the use of motorized equipment to construct such features;
8. Recreational Structures. With prior written approval of the Grantee, the construction, and thereafter without prior written approval of the Grantee, the use, maintenance, and repair, of recreational structures such as wildlife viewing blinds and open-air covered

pavilions not to exceed 600 square feet individually, and 2,000 square feet in the aggregate at any one time;

9. Signs. Constructing, installing, maintaining, and replacing signs and informational kiosks with respect to the Permitted Acts and Uses, the Purposes, the Conservation Values, trespass, public access, identity and address of the Grantor, sale of the Premises, the Grantee's interest in the Premises, boundary and trail markings, any gift, grant, or other applicable source of support for the conservation of the Premises;
10. Motorized Vehicles. Using motorized vehicles by persons with mobility impairments, and as necessary to conduct the Permitted Acts and Uses referenced herein, including for the use of the Parking Area and Associated Access Drive provided in Paragraph II.B.12.
11. Outdoor Passive Recreational and Educational Activities. Hiking, horseback riding, cross-country skiing, snowshoeing, ice-skating, nature observation, nature and educational walks and outings, outdoor educational activities; mountain biking on designated trails; hunting and trapping following town and state regulations; and other non-motorized outdoor recreational and educational activities;
12. Parking Area and Associated Access Drive.
 - a. Parking Area. With prior written approval of the Grantee, and for the purpose of providing access to the Premises to the public for the purposes described in Paragraph IV, the construction, use, repair, and maintenance of a parking area not to exceed fifteen hundred (1,500) square feet, with the closest point to the road located no more than fifty (50) feet from Pelham Hill Road;
13. Forest Management. Conducting sound silvicultural uses of the Premises, including the right to harvest forest products (as such term may be defined from time to time in Section 1 of Chapter 61 of the Massachusetts General Laws, or successor law) or conduct other forest management activities, reestablish historic woods roads and establish new woods roads, and the use of motorized vehicles, all as necessary to conduct such activities ("Forestry Activities"), provided that any Forestry Activities are carried out pursuant to a Forest Stewardship Plan (as defined below). All Forestry Activities shall avoid any stone structures or historical and cultural resources and shall be reasonably required to prevent any damage thereto. All cutting operations shall be supervised by a licensed forester.
 - a. Requirement of a Forest Stewardship Plan. Before any Forestry Activities occur on the Premises, Grantor shall submit a Forest Stewardship Plan to the Grantee, the Massachusetts Department of Conservation and Recreation ("DCR") or appropriate successor agency, and to any other required state agencies for their approval. The Forest Stewardship Plan shall:
 - i. be prepared by a forester licensed through DCR and shall follow the "Directions for the Preparation of the Chapter 61 Forest Management

Plans and Forest Stewardship Plans” (as such guidelines may be amended by DCR or its successor agency) and such statutes, regulations and directions in effect at the time of the approval of said Forest Stewardship Plan; and

- ii. include a provision designed to promote mature forest for wildlife habitat and minimize impacts to the Conservation Values; and
- iii. include provisions designed to comply with the recommended activities and guidelines and required best management practices established in the Massachusetts Forestry Best Management Practices Manual (Catanzaro, Fish & Kittredge, University of Massachusetts, Amherst & DCR; 2013) and subsequent versions as may be approved by the Forestry Bureau (“Forestry BMPs”); and
- iv. address how the Forest Stewardship Plan complies with this Paragraph II.B.13; and
- v. be effective for a ten (10) year period and shall be resubmitted once every ten (10) years as necessary if additional Forestry Activities are desired.

C. Site Restoration

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

D. Compliance with Permits, Regulations, Laws

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

E. Notice and Approval.

1. Notifying Grantee. Whenever notice to or approval by Grantee is required, Grantor shall notify or request approval from Grantee, by a method requiring proof of receipt, in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question, unless a different time period is specified herein. The notice shall:
 - a. Describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity;

- b. Describe how the proposed activity complies with the terms and conditions of this Conservation Restriction, and will not materially impair the Purposes and/or Conservation Values;
 - c. Identify all permits, licenses, or approvals required for the proposed activity, and the status of any such permits, licenses, or approvals.
 - d. Describe any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Purposes and Conservation Values.
2. Grantee Review. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.
 3. Resubmittal. Grantee's failure to respond within sixty (60) days of receipt shall not constitute approval of the request. Grantor may subsequently submit the same or a similar request for approval.

III. INSPECTION AND ENFORCEMENT

A. Entry onto the Premises

The Grantor hereby grants to the Grantee, and its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction.

B. Legal and Injunctive Relief.

1. Enforcement. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain compensatory relief, and equitable relief against any violations, including, without limitation, injunctive relief and relief requiring restoration of the Premises to its condition prior to the time of the injury (it being agreed that the Grantee will have no adequate remedy at law in case of an injunction). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction.
2. Notice and Cure. In the event the Grantee determines that a violation of this Conservation Restriction has occurred and intends to exercise any of the rights described herein, the Grantee shall, before exercising any such rights, notify the Grantor in writing of the violation. The Grantor shall have thirty (30) days from receipt of the written notice to halt the violation and remedy any damage caused by it, after which time Grantee may take further action, including instituting legal proceedings and entering the Premises to take reasonable measures to remedy, abate or correct such

violation, without further notice. Provided, however, that this requirement of deferment of action for thirty (30) days applies only if Grantor immediately ceases the violation and Grantee determines that there is no ongoing violation. In instances where a violation may also constitute a violation of local, state, or federal law, the Grantee may notify the proper authorities of such violation.

3. Reimbursement of Costs and Expenses of Enforcement. Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including counsel fees) incurred by the Grantee in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey by a Massachusetts licensed professional land surveyor and to have the boundaries permanently marked.

C. Non-Waiver.

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

D. Disclaimer of Liability

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

E. Acts Beyond the Grantor's Control

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from natural causes beyond the Grantor's control, including but not limited to fire, flood, weather, climate-related impacts, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

IV. PUBLIC ACCESS

The Grantor grants access to the Premises to the general public and agrees to take no action to prohibit or discourage access to and use of the Premises by the general public, but only for daytime use and only as described in Paragraphs II.B.11 and II.B.12. provided that such agreement by Grantor is subject to the Grantor's reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the protection of the

Purposes and Conservation Values. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in Paragraphs II.B11 and II.B.12. The Grantor's right to grant public access across the Premises is subject to the restrictions described in this Conservation Restriction. The Grantee may require the Grantor to post the Premises against any use by the public that results in material impairment of the Conservation Values. This grant of public access to the Premises is solely for the purposes described in Section 17C of Chapter 21 of the Massachusetts General Laws and the Grantor and Grantee hereto express their intent to benefit from exculpation from liability to the extent provided in such section.

V. TERMINATION/RELEASE/EXTINGUISHMENT

A. Procedure

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

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

If any change in conditions ever gives rise to termination, release, or extinguishment of this Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph V.C., subject, however, to any applicable law which expressly provides for a different disposition of the proceeds, and after complying with the terms of any gift, grant, or funding requirements. The Grantee shall use its share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

C. Grantee's Receipt of Property Right

Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is equal to 25% of the fair market value of this Conservation Restriction as determined as of the date of termination, release, or extinguishment.

D. Cooperation Regarding Public Action

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph V.B. and Paragraph V.C. If a less than fee interest is taken,

the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

VI. DURATION and ASSIGNABILITY

A. Running of the Burden

The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Execution of Instruments

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

C. Running of the Benefit

The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except when all of the following conditions are met:

1. the Grantee requires that the Purposes continue to be carried out;
2. the assignee is not an owner of the fee in the Premises;
3. the assignee, at the time of the assignment, qualifies under and 26.U.S.C. 170(h), and applicable regulations thereunder, if applicable, and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws; and
4. the assignment complies with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

A. Procedure for Transfer

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) days prior to the effective date of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. If the Grantor fails to reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, then the Grantee may record, in the applicable registry of deeds, or

registered in the applicable land court registry district, and at the Grantor's expense, a notice of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

B. Grantor's Liability

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

VIII. ESTOPPEL CERTIFICATES

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

IX. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction following the terms set forth in Paragraph VII.C to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

X. AMENDMENT

A. Limitations on Amendment

Grantor and Grantee may amend this Conservation Restriction only to correct an error or oversight, clarify an ambiguity, maintain or enhance the overall protection of the Conservation Values, or add real property to the Premises, provided that no amendment shall:

1. affect this Conservation Restriction's perpetual duration;
2. be inconsistent with or materially impair the Purposes;
3. affect the qualification of this Conservation Restriction as a "qualified conservation contribution" or "interest in land" under any applicable laws, including 26 U.S.C. Section 170(h), and related regulations;
4. affect the status of Grantee as a "qualified organization" or "eligible donee" under any applicable laws, including 26 U.S.C. Section 170(h) and related regulations, and Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws; or
5. create an impermissible private benefit or private inurement in violation of federal tax law, as determined by an appraisal, conducted by an appraiser selected by the Grantee, of the economic impact of the proposed amendment; or

6. alter or remove the provisions described in Paragraph V (Termination/Release/Extinguishment); or
7. cause the provisions of this Paragraph X to be less restrictive; or
8. cause the provisions described in Paragraph VI.C (Running of the Benefit) to be less restrictive

B. Amendment Approvals and Recording

No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor, approved by the Town of Shutesbury and by the Secretary in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, and recorded in the applicable registry of deeds or registered in the applicable land court registry district.

XI. EFFECTIVE DATE

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

XII. NOTICES

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

To Grantor: Town of Shutesbury
1 Cooleyville Road
Shutesbury MA 01072

To Grantee: Kestrel Land Trust, Inc.
P.O. Box 1016
Amherst MA 1016

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

XIII. GENERAL PROVISIONS

A. Controlling Law

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

B. Liberal Construction

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in order to effect the Purposes and the policy and purposes of Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the Purposes that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability

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

D. Entire Agreement

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

XIV. BASELINE DOCUMENTATION REPORT

The Conservation Values, as well as the natural features, current uses of, and existing improvements on the Premises, such as, but not limited to, trails, woods roads, structures, meadows or other cleared areas, agricultural areas, and scenic views, as applicable, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and is included by reference herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein, and (iv) may be supplemented as conditions on the Premise change as allowed over time. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant in addition to the Baseline Report.

XV. MISCELLANEOUS

A. Pre-existing Public Rights

Approval of this Conservation Restriction pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary, is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

B. No Surety Interest

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

C. Prior Encumbrances

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

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

Signature pages:

Grantor Approval and Grant of Conservation Restriction

Grantee Acceptance

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

Exhibits:

Exhibit A: Legal Description of Premises

Exhibit B: Shutesbury Town Meeting Vote

WITNESS our hand and seal this ____ day of _____, 2022.

We, the undersigned, Select Board of the Town of Shutesbury, hereby certify that at a public meeting duly held on _____, 2022, the Select Board voted to grant and approve in the public interest the foregoing Conservation Restriction from Town of Shutesbury to Kestrel Land Trust, Inc. pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws and do hereby grant and approve in the public interest the foregoing Conservation Restriction.

Shutesbury Select Board

COMMONWEALTH OF MASSACHUSETTS

_____ County, ss:

On this ____ day of _____, 2022, before me, the undersigned notary public, personally appeared _____, _____, _____, _____, and _____, and proved to me through satisfactory evidence of identification which was _____ to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as Select Board members.

Notary Public
My Commission Expires:

ACCEPTANCE OF GRANT

The foregoing Conservation Restriction from Town of Shutesbury was accepted by Kestrel Land Trust, Inc. this _____ day of _____, 2022

By: _____
Joel Russell, President

Ralph Tate, Treasurer

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, ss:

On this _____ day of _____, 2022, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, ss:

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

**APPROVAL OF SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS OF
THE COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from Town of Shutesbury to Kestrel Land Trust, Inc. has been approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: _____, 2021

Kathleen A. Theoharides
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this ____ day of _____, 2021, before me, the undersigned notary public, personally appeared Kathleen A. Theoharides, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

EXHIBIT A

The land in Shutesbury, Franklin County, Massachusetts, bounded and described as follows:

Beginning at an iron rod lying on the westerly side of Pelham Hill Road, said rod being 10.08' northerly of a concrete bound found near the Shutesbury-Pelham town line, said rod also marking the southeasterly corner of the parcel herein to be described, thence running;

The first 5 courses being along land now or formerly Kruczek Family Realty Trust:

S 82°17'17" W a distance of 302.00' to an iron rod, thence;

S 82°28'41" W a distance of 134.07' to an iron rod, thence;

S 81°03'31" W a distance of 151.24' to an iron rod, thence;

S 88°03'32" W a distance of 34.75' to an iron rod, thence;

S 82°01'44" W a distance of 148.56' to an iron rod at land now or formerly Sirius, Inc., thence;

N 08°12'43" W a distance of 1694.73' along said Sirius, Inc. land to the end of a stone wall, thence;

N 09°20'12" W a distance of 55.24' continuing along said stone wall and said Sirius, Inc. land to an iron pipe at land now or formerly Kristen A. Avonti, thence;

N 09°12'21" W a distance of 158.04' along said stone wall and said Avonti land to a drill hole at land now or formerly Wendy Pearson, thence ;

N 74°10'32" E a distance of 468.92' along said Pearson land to a stone wall, thence;

N 09°55'11" W a distance of 31.12' continuing along said Pearson to an iron rod at land now or formerly Jeffrey R. & Elizabethann M. Lacy, thence;

N 76°17'29" E a distance of 356.29' along said Lacy land to an iron rod at the westerly side of said Pelham Hill Road, thence;

The final 5 courses being along the westerly side of said Pelham Hill Road:

S 02°16'55" E a distance of 183.13' to a point, thence;

S 00°40'22" E a distance of 670.37' to a point, thence;

S 06°51'22" E a distance of 203.43' to a point, thence;

S 09°57'52" E a distance of 208.62' to a point, thence;

S 12°39'52" E a distance of 785.83' to the point of beginning, having an area of 33.617 acres, more or less.

EXHIBIT B
Shutesbury Town Meeting Vote

DRAFT