

*Grantor:* Susan C. Skelley, Trustee and acting as such on behalf of the Flanders Family Bliss Pond Farm Nominee Trust  
*Grantee:* Martha's Vineyard Land Bank Commission  
*Address of Premises:* 440 North Road, Chilmark, Massachusetts  
*For title see:* Certificate of Title No. 9732, Document #39122, filed in Dukes County Registry District Office of the Land Court

**CONSERVATION RESTRICTION**  
(including a **VIEW EASEMENT**)

**SUSAN C. SKELLEY**, Trustee and acting as such on behalf of the **FLANDERS FAMILY BLISS POND FARM NOMINEE TRUST** u/d/t dated December 26, 1996, and recorded with the Dukes County Registry District of the Land Court on Certificate No. 9732, as Document No. 39121, with a mailing address of Post Office Box 59, Chilmark, Massachusetts 02535, constituting all of the owners, and for its successors and assigns ("Grantor"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws, grant with quitclaim covenants to the **MARTHA'S VINEYARD LAND BANK COMMISSION**, a body politic and corporate and a public instrumentality established by the Massachusetts Legislature under Chapter 736 of the Acts of 1985, with a principal place of business at 167 Main Street, Edgartown, Massachusetts 02539, its permitted successors and assigns ("Grantee"), for One Million Four Hundred Sixty Two Thousand Dollars (\$1,462,000.00), IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on a 34± acre portion (the "Conservation Area") of a 61.1± acre parcel (the "Premises") located at 440 North Road in the Town of Chilmark, Massachusetts, which Conservation Area is more particularly described and shown in the attached sketch plan in Exhibit A, which exhibit is incorporated herein and attached hereto. The Conservation Area consists of the "View Easement Area" and the "Farm Building Area" shown on Exhibit A. For title to the Premises, see Certificate of Title No. 9732, Document #39122, filed in Dukes County Registry District Office of the Land Court.

**PREAMBLE**

**WHEREAS**, a portion of the Conservation Area lies within the locally-recognized Island Roads District of Critical Planning Concern, a designation intended to preserve the historic and cultural values of Martha's Vineyard and to protect the visual nature of the Island as seen from the roadway, as illustrated in photographs contained in the Baseline Report (described below), and;

**WHEREAS**, available land suitable for pasturage is threatened by development pressure on the finite amount of land that comprises Martha's Vineyard, and;

**WHEREAS**, the open fields of the Conservation Area create a scenic vista at an important intersection in the Town of Chilmark, and;

**WHEREAS**, protection of the Conservation Area will help to maintain water quality not only within the Conservation Area but in downstream ponds fed by the Mill Brook which originates from the Conservation Area;

**WHEREAS**, the wetlands and open fields of the Conservation Area will preserve critical habitat for native species, and;

**WHEREAS**, protection of the Conservation Area will accomplish a number of the factors determining "significant public benefit" under Treas. Reg. Section 1.170A-14(d)(4)(iv); and

**WHEREAS**, accordingly, protection of the Conservation Area for the scenic enjoyment of the general public and will yield a significant public benefit, and therefore this Conservation Restriction meets the requirements of Section 170(h)(4)(A)(iii)(I) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code"); and

**WHEREAS**, accordingly, protection of the Conservation Area is pursuant to clearly delineated federal, state, and local governmental conservation policies, and therefore this Conservation Restriction meets the requirements of Section 170(h)(4)(a)(iii)(II) of the Code; and

**WHEREAS**, Grantor and Grantee desire to preserve the Conservation Values (as defined in Section I) in perpetuity; and

**WHEREAS**, Grantor warrants and represents that Grantor has the authority to enter into this Conservation Restriction and that Grantor freely and voluntarily conveys this Conservation Restriction to Grantee; and

**WHEREAS**, Grantor intends, as owner of the Conservation Area, to convey to Grantee the right to preserve and protect the Conservation Values in perpetuity and represents that the Conservation Area is free and clear of all encumbrances except for rights-of-way, easements, and reservations of record as of the effective date of this grant;

**WHEREAS**, Grantee warrants and represents that Grantee is an organization established for the purpose of preserving the natural resources and beauties of Martha's Vineyard, and is authorized by the laws of the Commonwealth of Massachusetts, specifically, Chapter 736 of the Acts of 1985, as amended, to accept, hold, and administer interests in land including conservation restrictions; and

**WHEREAS**, Grantee warrants and represents that Grantee is a "qualified organization," as that term is defined in Section 170(h)(3) of the Code; and

**WHEREAS**, Grantee warrants and represents that Grantee has the commitment and resources to enforce, and will enforce, the terms of this Conservation

Restriction.

**WHEREAS**, Pursuant to the requirements of Treas. Reg. Section 1.170A-14(g)(6), these and other Conservation Values of the Conservation Area, as well as its current uses and undeveloped condition, 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 referenced herein. The Baseline Report (i) is therein acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Conservation Area as of the date of this Conservation Restriction, (ii) is intended to comply fully with applicable Treasury regulations, and (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. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Conservation Area at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

**NOW THEREFOR**, the Grantor and the Grantee agree to the following terms and conditions:

#### **I. 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 ensure that the Conservation Area will be maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would impair or interfere with its conservation and preservation value (“Conservation Values”), as described below:

- (1) Open space protection. The Conservation Area contributes to the protection of the scenic and natural character of Chilmark and the protection of the Conservation Area will enhance the open-space value of this bucolic section of the Town.
- (2) Views of the Conservation Area. This Conservation Restriction will preserve, for the thousands of residents of and visitors to Martha’s Vineyard, the view of the wide vista of the open fields located at one of the most important intersections in town, viz., the intersection of the North Road and the Menemsha Crossroad.
- (3) Water quality protection. The headwaters of Mill Brook are located within the Conservation Area at Bliss Pond and its surrounding wetlands. The protection of the Conservation Area will help to maintain water quality in Mill Brook and downstream in the Chilmark

Upper Pond and Chilmark Lower Pond, and the protection of Bliss Pond and its surrounding wetlands will ensure the persistence of valuable habitat for a diverse array of wildlife species as well as provide the many other public benefits of wetlands protection recognized by the Commonwealth of Massachusetts (Section 40 of Chapter 131 of the Massachusetts General Laws).

- (4) Working Pastureland and Soils. The Conservation Restriction will ensure that the Conservation Area will be permanently available for pasturage consistent with the protection of other Conservation Values present in the Conservation Area. This Conservation Restriction will help protect the Conservation Area from development so it may serve as some of the remaining open and undeveloped land on Martha's Vineyard that is suitable for such use. The Conservation Area is almost entirely mapped as having either Prime Farmland Soils or Farmland Soils of Statewide Importance, the protection of which is critical to maintaining farmland viability.
- (5) Habitat. The Conservation Area includes land mapped as BioMap2 Critical Natural Landscape (Landscape Block). BioMap2, published in 2010, was designed to guide strategic biodiversity conservation in Massachusetts over the next decade by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems. BioMap2 is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan.
- (6) Massachusetts Scenic Landscape Inventory. The Conservation Area is identified in the Massachusetts Department of Conservation and Recreation's Scenic Landscape Inventory as a Noteworthy Landscape within the Gay Head West Tisbury unit. The Scenic Landscape Inventory identifies landscapes that should be protected to conserve and protect natural, cultural, and recreational resources across the Commonwealth.

## II. PROHIBITED ACTS AND USES, EXCEPTIONS, AND PERMITTED USES

### A. Prohibited Acts and Uses

Subject to the exceptions set forth herein, the Grantor will not perform or allow others to perform, the following acts and uses which are prohibited on, above, and below the Conservation Area:

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, solar panel, solar array, conduit, line or other temporary or permanent structure or facility on, above or under the Conservation Area;
- (2) Mining, excavating, dredging or removing from the Conservation Area of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the Conservation Area;
- (3) Placing, filling, storing or dumping on the Conservation Area of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
- (6) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Conservation Area except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility-impaired;
- (7) Subdivision or conveyance of a part or portion of the Conservation Area (as compared to conveyance of the Conservation Area in its entirety, which shall be permitted, and no portion of the Conservation Area may be used toward building or development requirements on this or any other parcel;
- (8) The disruption, removal, or destruction of the stone walls on the Conservation Area;

- (9) The use of the Conservation Area for residential, commercial, or industrial uses; and
- (10) Any other use of the Conservation Area or activity thereon which is inconsistent with the purpose of this Conservation Restriction or which would materially impair its conservation values.

## **B. Reserved Rights and Exceptions**

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

- (1) Vegetation Management.
  - a. For General Property Management. Mowing, cutting, pruning, and grazing the Conservation Area to maintain its condition as shown in the Baseline Report, and the removal of dead, diseased, disfigured, dangerous, or injured trees;
  - b. For Vista Maintenance. Mowing, cutting, pruning and removal of any vegetation to preserve the scenic vistas, including those vistas of the Conservation Area from public roads, all as documented in the Baseline Report and, with the approval of the Grantee, to expand these vistas.
- (2) Agriculture. Conducting normally accepted, ecologically sound and sustainable agricultural management practices, including the raising of crops, maintenance and creation of fields, and grazing of livestock under a farm conservation plan or comparable plan designed to protect the conservation values of the Conservation Area, including, without limitation, water quality, water features, scenic views, and wildlife habitat ("Farm Conservation Plan");
- (3) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species and the control of species in a manner that minimizes damage to surrounding non-target species and preserves water quality;

- (4) Composting. The stockpiling and composting of stumps, trees, brush, limbs and similar biodegradable materials, provided (i) that such stockpiling and composting will take place in locations where the presence of such activities will not impair the Conservation Values (including scenic vistas) of this Conservation Restriction; (ii) that such activities will take place no closer than one hundred (100) feet from any wetland, waterbody or stream; and (iii) that all exercise of this reserved right will take into account sensitive areas and will avoid harm to nesting species during nesting season.
- (5) Wildlife habitat improvement. With prior notice to the Grantee, implementation of measures designed to restore native biotic communities or to maintain, enhance or restore wildlife, wildlife habitat or rare or endangered species including selective planting of native trees, shrubs or other plant species;
- (6) Archeological investigations. The conduct of archeological activities, including without limitation survey, excavation and artifact retrieval, following submission of an archeological field investigation plan and its approval in writing by Grantee and the state archeologist of the Massachusetts Historical Commission (or appropriate successor official);
- (7) Signs. The erection, maintenance and replacement of signs with respect to trespass, identity and address of the occupants, sale of the Conservation Area, the Grantee's interest in the Conservation Area, and the protected Conservation Values;
- (8) Outdoor passive recreational activities. Fishing, boating, hunting, hiking, horseback-riding, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape and do not degrade environmental quality, such activities being reserved to the Grantor, its guests and invitees;
- (9) Farm buildings. The right to use, erect, maintain, repair and replace any and all agriculturally-related buildings, structures and facilities provided that such buildings, structures and facilities are (i) located within the portion of the Conservation Area designated on Exhibit A as the "Farm Building Area"; (ii)

meet the zoning code and any other building codes of the Town of Chilmark; and (iii) are non-habitable.

- (10) Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph II(B) shall seek to minimize disturbance to the Conservation Values and other natural features within the Conservation Area and to Bliss Pond that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph II(B), any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Report.
- (11) Permits, Regulations and Laws. The exercise of any right reserved by Grantor under this Paragraph II(B) shall be in compliance with zoning, all wetland protection laws and bylaws, and all other applicable federal, commonwealth and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the commonwealth takes any position whether such permit should be issued.
- (12) Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph II(B) shall follow — when available and if applicable — established, up-to-date, and regionally-applicable best management practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

### **C. Notice and Approval**

Whenever notice to or approval by Grantee is required, Grantor shall notify 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. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient



detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.

Grantee's failure to respond within the sixty (60) calendar day period shall be deemed a denial of the request (hereinafter, a "Deemed Denial"). A Deemed Denial is not final or binding on Grantee, and Grantor may submit the same or a similar request for approval without prejudice.

### **III. VIEW EASEMENT**

The Grantor hereby grants to the Grantee, with quitclaim covenants, a perpetual view easement for the benefit of members of the public, as and when they travel by any means on North Road or Menemsha Crossroad, over and across and burdening that portion of the Conservation Area designated on Exhibit A as the "View Easement Area" for the purpose of preserving, maintaining, enhancing, and expanding the view of the Conservation Area. In particular, Grantor agrees:

- (1) that no buildings or structures of any kind shall be constructed, erected or maintained within the View Easement Area and that if Grantor is in violation of this restriction Grantee shall, at Grantee's sole risk and cost, have a reasonable right of access to and across the View Easement Area for the purpose of removing so much of any building or structure that is constructed, erected or maintained within the View Easement Area; and
- (2) that Grantor shall, within one year of the Effective Date (see Paragraph XI) of this Conservation Restriction, remove all vegetation within the View Easement Area having a caliper of less than ten (10) inches, and remove all tree limbs on the remaining trees (to a height of not more than fifteen (15) feet for those trees located west and south of Bliss Pond and a height of not more than ten (10) feet for those located north of Bliss Pond), failing which the Grantee shall, at Grantee's sole risk and cost, have a reasonable right of access to and across the View Easement Area for the purpose of removing and limbing such vegetation; and
- (3) that Grantor shall regularly mow the View Easement Area so as to prevent the growth of woody vegetation, failing which the Grantee shall, at Grantee's sole risk and cost and no more frequently than

once in any one twelve-month period, have a reasonable right of access to and across the View Easement Area for the purpose of conducting such mowing.

#### **IV. LEGAL REMEDIES OF THE GRANTEE**

##### **A. Legal and Injunctive Relief**

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Conservation Area to its condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the Conservation Values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to Grantee 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. In the event of a dispute over the boundaries of the Conservation Area, Grantee shall pay for a survey and to have the boundaries permanently marked.

##### **B. Non-Waiver**

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

##### **C. Disclaimer of Liability**

By acceptance of this conservation restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Conservation Area 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 Conservation Area resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Area resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Conservation Area, if desirable and feasible.

**V. ACCESS**

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Conservation Area upon reasonable notice and at reasonable times, for the purpose of inspecting the Conservation Area to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Conservation Area for the purpose of taking any and all actions with respect to the Conservation Area as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

**VI. EXTINGUISHMENT**

**A. Terms**

If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Conservation Area, shall be entitled to a portion of the proceeds in accordance with Paragraph VI(B), 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. Grantee shall use its

share of the proceeds in a manner consistent with the conservation purpose set forth herein.

**B. Proceeds**

Grantor and Grantee agree that the grant of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction bears to the value of the unrestricted property. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements.

**C. Grantor/Grantee Cooperation Regarding Public Action**

Whenever all or any part of the Conservation Area or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph VI(B), after complying with the terms of any law, gift, grant, or funding requirements. 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 like a continuing trust in a manner consistent with the conservation purposes of this grant.

**VII. DURATION AND ASSIGNABILITY**

**A. Running of the Burden**

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

**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 in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the assignee is not an owner of the fee in the Conservation Area, and the assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

**VIII. SUBSEQUENT TRANSFERS**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Conservation Area, including a leasehold interest, and to notify the Grantee not less than twenty (20) days prior to the execution of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after 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 Conservation Area or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

**IX. ESTOPPEL CERTIFICATES**

Upon request by the Grantor, the Grantee shall, within thirty (30) days, execute and deliver to the Grantor any document, including an estoppel certificate, which

certifies the Grantor's compliance or non-compliance with the terms of this Conservation Restriction.

#### **X. NON MERGER**

The parties intend that any future acquisition of the Conservation Area 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 Conservation Area without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

#### **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 Massachusetts General Laws. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Dukes County Registry of Deeds.

#### **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 Dukes County Registry of Deeds. The Grantee shall record this instrument in timely manner in the Dukes County Registry of Deeds.

**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:           FLANDERS FAMILY BLISS POND FARM NOMINEE TRUST  
                          Post Office Box 59  
                          Chilmark, Massachusetts 02535

To Grantee:            MARTHA'S VINEYARD LAND BANK COMMISSION  
                          Post Office Box 2057  
                          Edgartown, Massachusetts 02539

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

**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 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.

**C. Severability**

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

**D. Entire Agreement**

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

**XIV. 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 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 Conservation Area, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

**B. Homestead**

The Grantor hereby releases, agrees to waive, subordinate, and release any and all Massachusetts General Law Chapter 188 Homestead rights it may have in favor of this Conservation Restriction with respect to any portion of the Conservation Area affected by this Conservation Restriction, and hereby agrees to execute, deliver and/or record any and all instruments necessary to effectuate such waiver, subordination and release. In all other respects, the Grantor reserves and retains any and all Homestead rights, subject to this Conservation Restriction, pursuant to Section 10(e) of Chapter 188 of the Massachusetts General Laws.

**C. Subordination**

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

Attached hereto and incorporated herein by reference are the following:

Signature pages:



Grantor

Grantee Acceptance

Approval by Board of Selectmen of the Town of Chilmark

Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:

Exhibit A: Sketch Plan of Conservation Area

WITNESS my hand and seal this 12<sup>th</sup> day of May, 2021.

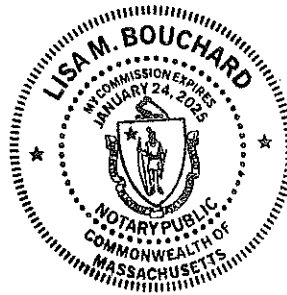
*Susan C. Skelley*  
SUSAN C. SKELLEY, Trustee of the  
FLANDERS FAMILY BLISS POND  
FARM NOMINEE TRUST

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

On this 12<sup>th</sup> day of May, 2021, before me, the undersigned notary public, personally appeared Susan C. Skelley, Trustee of the Flanders Family Bliss Pond Farm Nominee Trust, proved to me through satisfactory evidence of identification of the principal, viz., *Personal Knowledge* to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose

*Lisa M. Bouchard*  
Notary Public  
My commission expires: 1/24/25



**ACCEPTANCE OF GRANT**

The above Conservation Restriction was accepted by the MARTHA'S VINEYARD LAND BANK COMMISSION at a public meeting duly held on \_\_\_\_\_, 2021.

by: \_\_\_\_\_  
Sarah Thulin, its Chairman,  
duly authorized

**COMMONWEALTH OF MASSACHUSETTS**

Dukes County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared Sarah Thulin, Chairman, proved to me through satisfactory evidence of identification of the principal, viz., \_\_\_\_\_ to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose on behalf of the Martha's Vineyard Land Bank Commission.

\_\_\_\_\_  
Notary Public  
My commission expires:

**APPROVAL OF THE BOARD OF SELECTMEN**

We, the undersigned, being a majority of Board of Selectmen of the Town of Chilmark, hereby certify that at a public meeting duly held on \_\_\_\_\_, 2021, the Board of Selectmen voted to approve the foregoing Conservation Restriction from Susan C. Skelley, Trustee and acting as such on behalf of the Flanders Family Bliss Pond Nominee Trust to the Martha's Vineyard Land Bank Commission in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

\_\_\_\_\_  
Warren Doty

\_\_\_\_\_  
James Malkin

\_\_\_\_\_  
William Rossi

**COMMONWEALTH OF MASSACHUSETTS**

Dukes County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared \_\_\_\_\_, Chairman, proved to me through satisfactory evidence of identification of the principal, viz., \_\_\_\_\_ to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the Chilmark Board of Selectmen.

\_\_\_\_\_  
Notary Public  
My commission expires:

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

The undersigned Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts hereby certifies that the foregoing Conservation Restriction from Susan C. Skelley, Trustee and acting as such on behalf of the Flanders Family Bliss Pond Nominee Trust to the Martha's Vineyard Land Bank Commission has been approved in the public interest pursuant 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: