

## Offer to Purchase Conservation Restriction

To: Charles H. McColough, Trustee of the Charles H. McColough Trust – 2004, having an address of 20 Curve Street, Waltham, Massachusetts 02451 (the “Seller”)

Date: As of August 8, 2012

Re: A conservation restriction (the “Restriction”) upon that certain parcel of land, consisting of approximately 25 acres, known as the O’Brien Farm, located at 18 Vose Road in the Town of Westford, Middlesex County, Massachusetts, consisting of an approximately twenty-three (23) acre portion of the O’Brien Farm, which portion shall not include a two-acre house lot to be divided from the 25-acre parcel, the land upon which the Restriction is located being referred to herein as the Property, and being a portion of the premises described in a deed recorded in the Middlesex North Registry of Deeds in Book 23373, Page 60.

The Town of Westford, acting by and through its Conservation Commission (the “Town”) hereby offers to buy the Restriction, subject to the following terms and conditions:

1. The Town will pay Nine Hundred Thirty Thousand and 00/100 (\$930,000.00) Dollars (the “Purchase Price”) for the Restriction, which shall be in a form substantially similar to the document attached hereto as Exhibit A. There shall be no deposit.
2. This Offer is good until 12:00 p.m. (noon) on August 16, 2012, at which time a copy of this Offer must be signed by you and delivered to the Westford Town Hall, Attention: Town Manager, 55 Main Street, Westford, Massachusetts 01886, or else this Offer shall be void and of no force or effect.
3. The Closing shall take place at 11:00 a.m. at the Middlesex North Registry of Deeds on December 31, 2012, provided that the contingencies set forth in Paragraph 4 have been satisfied. The closing may be on an earlier or a later date by mutual agreement of Buyer and Seller, but in no event later than June 30, 2013.
4. If this Offer is accepted, then the Town’s obligation to buy the Restriction is subject to and contingent upon:
  - (a) Obtaining a favorable vote of the Westford Town Meeting appropriating the sum of Seven Hundred Sixty Thousand and 00/100 (\$760,000.00) Dollars pursuant to the recommendation of the Westford Community Preservation Committee that Community Preservation funds be appropriated for the purpose of purchasing the Restriction.
  - (b) Receipt of gifts, grants, and donations in the amount of One Hundred Eighty Five Thousand and 00/100 (\$185,000.00) Dollars by Sudbury Valley Trustees, Inc. (“SVT”) and/or Westford Land Preservation Foundation, Inc. (“WLPF”) and/or the Commonwealth of Massachusetts, and agreement by SVT and/or WLPF and/or the Commonwealth of Massachusetts to be applied to the Purchase Price, excluding Fifteen Thousand and 00/100 (\$15,000.00) which may be retained by SVT for a stewardship endowment for the Property.

- (c) The Seller demonstrating good and clear record and marketable fee simple title to the Property and conveying good and clear record title to the Restriction to the Town, including access thereto.
- (d) To the extent applicable, compliance with the provisions of G.L. c. 30B, §16 (the Uniform Procurement Act) for acquisition of real property determined to be unique, and thirty (30) days shall have elapsed since the date of publication of the Town's determination of uniqueness in the Central Register, without objection. The Town agrees to diligently pursue full compliance with said law.
- (e) The Seller having complied with the disclosure provisions of G.L. c.7, §40J.
- (f) Execution by the Seller and the Town, within fourteen (14) days from satisfaction of the contingencies set forth in Paragraph 4 hereof, of a mutually satisfactory Purchase and Sale Agreement based upon the standard form published by the Real Estate Bar Association of Massachusetts, with appropriate changes to reflect requirements for municipal transactions and setting forth all of the terms and conditions of this transaction, including the conditions set forth herein, which shall then become the agreement of the parties.

If the above conditions are not satisfied after the acceptance of this Offer, this agreement shall terminate and neither party shall have further recourse against each other. The Town may waive any or all of these conditions.

- 5. Seller and the Town agree and acknowledge that Sudbury Valley Trustees, Inc. or another non-profit corporation or trust may be a co-holder of the Restriction.
- 6. Town shall execute Form 8283 and any other documentation required by the Internal Revenue Service to acknowledge receipt of the Restriction.
- 7. This Offer supersedes and replaces all prior offers, agreements to purchase, whether oral or written, that have been made.
- 8. Time is of the essence of this Offer.
- 9. When signed by the Seller, this Offer to Purchase Real Estate shall constitute a binding agreement between the parties.

TOWN OF WESTFORD,  
Acting by and through its Conservation Commission

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

Eric Fahle, Its Chairman, Duly Authorized

Dated: 8-14, 2012

**ACCEPTANCE**

This Offer is hereby accepted upon the foregoing terms and conditions this 14<sup>th</sup> day of August, 2012.

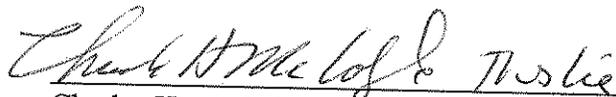
  
Charles H. McColough, Trustee of the  
Charles H. McColough Trust - 2004

Exhibit A

Conservation Restriction

O'BRIEN FARM CONSERVATION RESTRICTION  
TO  
THE TOWN OF WESTFORD AND SUDBURY VALLEY TRUSTEES, INC.  
*DRAFT revised 8/14/12*

I. GRANTOR CLAUSE:

I, Charles H. McColough, sole Trustee of the Charles H. McColough Trust – 2004 of 20 Curve Street, Waltham, Massachusetts, being the owner ("Grantor", which expression includes my successors and legal assigns), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the General Laws, hereby grant, with quitclaim covenants, to the TOWN OF WESTFORD, a Massachusetts municipal corporation, acting by and through its Conservation Commission, pursuant to Chapter 40, Section 8C of the Massachusetts General Laws, having an address of Town Hall, 55 Main Street, WESTFORD, Massachusetts, 01886, and to Sudbury Valley Trustees, Inc., a Massachusetts non-profit corporation with a mailing address of 18 Wolbach Road, Sudbury, Massachusetts, 01776 (together the "Grantee", which expression includes their permitted successors and legal assigns), for consideration of \$ \_\_\_\_\_, in perpetuity and exclusively for conservation purposes the following described Conservation Restriction ("CR") on the land known as O'Brien Farm located on VOSE ROAD in the Town of WESTFORD, MIDDLESEX COUNTY, Massachusetts, consisting of an approximately 23+/- acres (hereinafter referred to as the "Premises") Property and shown as \_\_\_\_\_ on a plan of land entitled "Plan of Land in Westford, Mass."; dated DATE, YEAR, which plan is recorded herewith as Plan Number ### of 2012 in Book ##### at Page ### (the "Plan"), and attached hereto in reduced form as **Exhibit A** (to be inserted when survey has been completed).

For Grantor's title see Deed of Charles H. McColough, Trustee of Helen M. Garrigan Family Trust dated September 15, 2009 to Charles H. McColough, Trustee of Charles H. McColough Trust - 2004 recorded with the Middlesex North Registry of Deeds in Book 23374, page 60.

18 Vose Road, Westford, Massachusetts

The granting and acceptance of this Conservation Restriction is in accordance with the Town Meeting vote on October 15, 2012 to expend MGL c44B Community Preservation Act funds to acquire a Conservation Restriction on the Premises, a copy of which vote is attached hereto as **Exhibit B**.

## II. PURPOSES:

The acquisition and protection of the Premises has been made possible by funds appropriated in accordance with the Community Preservation Act (M.G.L. Chapter 44B), which requires the Premises to be protected with a conservation restriction. The purposes of this Conservation Restriction are to ensure that, while permitting certain acts and uses described in Section III.B herein, the Premises will be subject to the prohibitions described in Section III.A hereof so that the Premises are retained in perpetuity predominantly in their natural, scenic, and open condition for water quality protection, wildlife conservation, habitat protection, preservation of cultural and scenic values, passive public recreation, and other conservation uses consistent with the spirit and intent of and subject to the protections of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and to prevent any use of the Premises that will materially impair or interfere with the conservation, water quality, cultural and scenic values thereof. The conservation and permanent protection of the Premises will yield a significant public benefit for the following reasons:

**Protection of Water Quality.** The Premises include frontage on Pond Brook, a perennial stream that ultimately drains to the Concord River, and a portion of the Premises is within an area regulated by the River Protection Act. Preservation will help to ensure the protection of water quality in Pond Meadow Brook as well as in down stream water bodies.

**Protection of Valuable Habitat.** According to the Massachusetts Division of Fisheries and Wildlife, the Premises boast a variety of habitats on which "Species in Greatest Need of Conservation" depend, including open meadows, forested uplands, a wooded deciduous swamp, a shallow marsh/meadow/fen, and perennial Pond Brook. The Premises are also an important link in an extensive block of fields and woodlands actively used as a transportation corridor by native wildlife. Preservation ensures that this important habitat, a critical link in a larger landscape, is permanently protected.

**Protection of Agricultural and Forestry Values.** Prime agricultural and fertile soils on the Premises are suitable for agricultural uses, and current and future woodlands could be actively managed for forest values.

**Preservation of Scenic Views and Vistas.** The fields and woodlands on the Premises offer broad scenic views to the passing public and are integral to the landscape of Vose Road, a "Scenic" road as designated by vote of Westford Town Meeting. This CR protects these vistas and helps ensure the integrity of the Scenic Road.

**Preservation of a Cultural Resource.** Valuable historic artifacts, including arrowheads and a European musket flint, have been found on the Premises, and rock walls line the extensive road frontage. Preservation of the Premises helps to preserve these resources and protect other historic resources suspected to be present on the property.

**Protection of Public Access Trail.** The Premises include a network of walking trails that will be open to the public from dawn to dusk for passive recreation, education, and quiet contemplation, as specified herein.

**Furtherance of Government Policy.** Protection of the Premises furthers the Town of Westford's 2010-2015 Open Space and Recreation Plan, which specifically identifies the Premises as a "High Priority" property due to the significant conservation, historic, scenic and recreational values. Furthermore, the Premises are located in the Freedom's Way National Heritage Area.

### III. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES:

A. **Prohibited Acts and Uses.** Subject to the exceptions set forth in Paragraph B below, the Grantors will neither perform nor allow others to perform the following acts and uses which are prohibited on, above and below the Premises:

1. Constructing or placing of any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure, utility, or facility on, under, or above the Premises;
2. Mining, excavating, 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 refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
4. Activities detrimental to wildlife habitat, drainage, flood control, water conservation, water quality;
5. Use, parking or storage of motorized vehicles, including but not limited to motorcycles, all-terrain vehicles and snowmobiles, except such as may be reasonably necessary by police, firefighters or other governmental agents in carrying out their lawful duties and for handicap access.
6. No underground or above-ground fuel storage tanks shall be installed, placed or allowed to remain on the Premises, except as allowed in Section III.B;
7. Removal or destruction of stone walls, historical and/or archeological resources;

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8. The conveyance of a part of the Premises, or the division or subdivision of the Premises (as compared to the conveyance of the Premises in its entirety which shall be permitted) without the prior written consent of Grantee; but in no event shall the Premises be used towards building requirements on this or any other parcel;
  9. Notwithstanding the foregoing provisions with regard to specific prohibited uses and activities, but in addition thereto, no other use shall be made of the Premises and no activity permitted thereon which, in the opinion of the Grantee, is or may become inconsistent with or threatening to the purpose and intent of this CR or which would materially impair conservation interests, unless necessary in an emergency for the protection of the conservation interests that are the subject of this CR.
- B. **Reserved Rights.** Notwithstanding any provisions of Paragraph A above, the Grantor reserves to himself and his successors the right to conduct or permit the following activities on and uses of the Premises, but only if such uses and activities do not materially impair the Purposes of this Conservation Restriction.
1. **Excavation.** Excavation from the Premises of soil, gravel or other mineral resource or natural deposit as may be incidental to the maintenance of good drainage, soil conservation practices, acceptable agricultural or crop related purposes, or to other permissible use of the Premises, provided that such activities follow generally accepted soil conservation practices, and that, with the exception of soil removed naturally in conjunction with permitted agricultural and horticultural uses such as the cultivation of root vegetables and shrubs, said materials are to be re-used exclusively within the Premises, and that disturbed areas are re-vegetated with native plant materials.
  2. **Composting.** The composting of stumps, limbs, brush, leaves and similar biodegradable material originating on the Premises, provided such piles are placed a minimum of 100' away from any wetlands, and do not otherwise interfere with the conservation objectives of this Conservation Restriction.
  3. **Fencing.** The placing of sight-pervious fences exclusively in or around the perimeter of the Permitted Agricultural Area that do not interfere with the passage of wildlife to, from, and through the Premises or with the conservation purposes of this Conservation Restriction.
  4. **Vehicular Use.** The use of vehicles and other motorized equipment as needed for agricultural, horticultural and forestry activities permitted by the provisions of this Conservation Restriction.
  5. **Pruning.** Limited and selective pruning and clearing for purposes incidental to (a) permitted agricultural uses in the Permitted Agricultural Area to be located substantially as shown on the sketch entitled "Map E: Proposed Conservation Restriction Plan", attached hereto as **Exhibit C**, (b) permitted forestry related uses, (c)

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- forest fire prevention or management, (d) unpaved trail establishment, marking, and maintenance, (e) control or prevention of an imminent hazard to structure or life, (f) control or prevention of a grave or formidable disease, (g) control and removal of invasive or exotic species, provided that any chemical controls are used in a manner to affect only the target species but not the non-target species or water quality, or (g) otherwise to preserve the present condition of the Premises.
6. Habitat Management. The right but not the obligation to manage the Premises for the benefit of wildlife, including forestry related activities, planting native vegetation, creating transitional zones, and other activities designed to enhance wildlife habitat.
  7. Agricultural Use. The right but not the obligation to use the area substantially as shown on "Map E: Proposed Conservation Restriction Plan", attached hereto as **Exhibit C**, as Permitted Agricultural Area for agricultural, horticultural, forestry related, or animal husbandry operations, and commercial harvesting and the sale of agricultural products, including clearing, mowing, grazing of livestock, the planting and maintenance of crops or fruit- or nut-bearing trees, provided, however, that such operations are carried out in accordance with a USDA Farm Conservation Plan and in a manner consistent with sound practices and State and municipal laws, including but not limited to, those governing conservation of wetlands.
  8. The use of fertilizers, pesticides, herbicides, and fungicides, provided, however, that such agricultural chemicals are registered under Commonwealth of Massachusetts regulations and are used in accordance and consistent with all pertinent federal, state, and municipal instructions, limitations, laws, zoning, rules, and regulations. Further, such chemicals must be applied to affect only the target species and not non-target species to the extent possible.
  9. The right but not the obligation to clear, conduct prescribed burning, mow and conduct other ecological restoration activities for the purposes of maintaining or restoring native species of vegetation and creating or improving native wildlife habitat.
  10. Planting, seeding, or otherwise cultivating native plant species.
  11. Following notification as outlined in Section IV below and subject to appropriate review and approval under all applicable federal, state and municipal regulations and consistent with the purposes of this CR, activities necessary to the maintenance of Pond Brook and associated wetlands, including the removal of silt, earth, clay, loam, debris or invasive exotic species and the construction, repair, operation and maintenance of a dam, spillway and water control devices thereon, provided that any silt, earth, clay or loam removed from the ponds shall remain on the Premises.
  12. With prior written approval of Grantee, woodland operations carried out in accordance with sound forest management practices, including the selective harvesting of timber, providing piles of slash are removed. Forest management

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practices shall be in accordance with a Forest Management Plan prepared by a licensed or certified forester and approved by the Massachusetts Department of Conservation and Recreation, and which is consistent with this CR and protects the water quality of Pond Brook and its associated wetlands. A copy of said Forest Management Plan shall be provided by Grantor to Grantee. The person, firm or corporation harvesting timber according to said Management Plan shall be licensed under M.G.L. Chapter 132, Section 46. The Forest Management Plan shall reference this CR and no provisions in the Forest Management Plan shall change the meaning or terms of this CR, and in the case of any conflict between this CR and the Forest Management Plan, the CR shall govern.

13. Archaeological activities, including without limitation survey, excavation and artifact retrieval, following submission of an archaeological field investigation plan and its approval by the Grantee and Massachusetts Historical Commission archeologist or successor official.
14. Hiking, horseback riding, cross-country skiing, snowshoeing, wildlife observation, and other non-motorized passive outdoor recreational and educational activities.
15. Trails – With the prior written consent of the Grantee, which consent shall not be unreasonable withheld, delayed or denied, Grantor may relocate public trails as shown in the sketch attached as **Exhibit D** entitled “O’Brien Farm, Vose Rd, Westford, Map F: Trails and Parking”, as needed to accommodate forestry or other permitted activities, and/or mark, clear, and maintain new trails not wider than six (6) feet, provided that the new trails do not have a negative effect on the values of this CR. Trails must be constructed of dirt, stone dust, gravel or other natural and pervious material; in no case may they be paved.
16. Construction, maintenance, repair and replacement by Grantee of a single footbridge for the public crossing Pond Brook in the approximate location shown on the Plan for the purpose of providing access from the potential public Parking Area and trails south of Pond Brook to the public trails north of Pond Brook.
17. Erection of signs by the Grantor or Grantee identifying Grantee as holder of the Conservation Restriction and Grantor as owner of the property and educating the public about the conservation values protected and uses allowed. The Grantor and their successors and assigns may also erect signs with regards to the sale of the Premises.

**Permitted Acts and Uses.** All acts and uses not explicitly permitted by Section III Paragraph B are prohibited unless otherwise approved as described in Section IV below.

#### IV. NOTICE AND APPROVAL:

- A. **Notice and Approval.** Whenever notice to or approval by Grantee is required under the provisions of paragraphs III.A or III.B above, Grantor shall notify Grantee in writing not less

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than 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. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity will not materially impair the purposes of this Conservation Restriction.

B. **Grantee's Approval.** Where Grantees' approval is required as set forth under Section III, Grantees shall grant or deny approval within sixty days from the effective date of the Grantor's notice described in Section IV Paragraph A above. Approval or denial by the Grantees shall be in writing and delivered by hand, or mailed postage prepaid by registered or certified mail return receipt requested, or delivered by a recognized overnight delivery service, or sent by facsimile transmission. Failure of Grantees to respond within said period shall be deemed to constitute approval by Grantees of the request as submitted, so long as the request sets forth the provisions of this paragraph relating to deemed approval and provided the requested activity is not prohibited under III.A and the activity will not materially impair the purposes of this CR. Grantees' approval may be withheld only upon a reasonable determination by Grantees that the action as proposed would be inconsistent with the Purposes described in Section II of this Conservation Restriction.

C. **General.** Except as specified above, 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 Grantee: The Town of Westford  
Attn: Conservation Commission  
55 Main Street  
Westford, MA 01886

With a copy to: Sudbury Valley Trustees, Inc.  
18 Wolbach Road  
Sudbury, MA 01776

With a copy to: Deborah Eliason, Esq.  
15 Walnut Street, Suite 400  
Wellesley, MA 02481

To Grantor: Charles H. McColough, Trustee  
Charles H. McColough Trust  
20 Curve Street  
Waltham, MA 02451

Or to such other address as is reasonably ascertainable.

### V. LEGAL REMEDIES OF THE GRANTEE:

- A. **Legal and Injunctive Relief.** The rights hereby granted shall include the right to enforce this CR by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to 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 CR. 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 this CR. In the event of a dispute over the boundary areas of this CR, Grantor shall be responsible for a survey and placement of permanent boundary markers. Grantee and Grantor agree to work together to resolve issues, including working with a committee if such is established by both parties.
- B. **Reimbursement of Costs.** Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this CR or in taking reasonable measures to remedy or abate or correct any violation thereof, provided that a violation of this CR is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred at the sole fault of the Grantor.
- C. **Non-Waiver.** Enforcement of the terms of this CR shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this CR 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 CR, 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 CR shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including, but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. The parties to this CR agree that in the event of damage to the Premises from acts beyond the Grantor's control, that if it is desirable and feasible to restore the Premises or any part thereof, the parties will cooperate in attempting to do so, however in no case is the Grantor obligated to expend funds on any restoration due to causes beyond the Grantor's control.

VI. ACCESS:

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- A. **Public Use of Premises.** There is hereby granted the perpetual right for the public to enter upon and use, and pass and repass over marked trails and footpaths on the Premises in locations substantially as shown on the sketch attached as **Exhibit D** entitled "O'Brien Farm, Vose Rd, Westford, Map F: Trails and Parking" and dated 4/26/12, for passive, non-motorized (except for motorized wheelchairs or similar equipment reasonably necessary to enable handicapped members of the public to access the Premises which shall be allowed) recreational purposes, including, but not limited to, hiking, horseback riding, wildlife observation, snowshoeing and cross-country skiing, and to participate in educational activities. Grantor may relocate trails as needed to accommodate, forestry or other activities as permitted herein. Grantee is hereby granted the right to enter the Premises for the purposes of trail maintenance, including marking, repair, and reconstruction of trails.
- B. **Future Parking Area.** The Grantees shall have the right, but not the obligation, to create, at Grantees' sole cost and expense, a public parking area in the area shown as Potential Parking Area on the Plan, provided that Grantees determine that a parking area is needed. The parking area shall consist of a porous, gravel surface, hold a maximum of five cars, and be open from dawn to dusk or as otherwise allowed by Grantor.
- C. **Inspection by Grantee.** Grantee and its representatives are also granted the right to enter the Premises at reasonable times and in a reasonable manner for the purpose of inspecting the compliance with the terms of this Conservation Restriction.

The public shall not have any right of access to the Premises, other than as provided for herein

### VII. EXTINGUISHMENT:

- A. **Right of Grantee to Recover Proportional Value at Disposition.** If circumstances arise in the future such as to render the purpose of the CR impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction with the Secretary's and Legislative approval, under applicable law. If any change in conditions ever gives rise to the extinguishment or other release of the CR 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 Section VII.B below, subject however, to any applicable law which expressly provides for a different disposition of proceeds after complying with the terms of any gift, grant or funding requirements, including M.G.L. Chapter 44B and with Article 97 of the Amendments to the Massachusetts Constitution, if applicable. 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 sale of this CR 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 CR bears to the value of the unrestricted Premises at the time of the conveyance of this CR, which has been determined to be \_\_\_\_\_% by a valid appraisal. Grantor

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and Grantee acknowledge that the term "Premises" excludes the portion of the Property expressly unrestricted under this CR, comprising the Building Envelope as shown on the Plan.

- C. **Grantor/Grantee 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 Grantor and Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by Grantor and Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between Grantor and Grantee in shares equal in proportion to the ratio of their respective interests, after complying with the terms of any gift, grant or funding requirements, including M.G.L. Chapter 44B and with Article 97 of the Amendments to the Massachusetts Constitution, if applicable. If a less-than-fee interest is so taken, the proceeds shall be equitably allocated according to the nature of the interest taken. Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purpose set forth herein.

### VIII. ASSIGNABILITY:

- A. **Running of the Burden.** The burden of this CR shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the Grantor's successors and assigns 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 CR; the Grantor, for itself and its successors and assigns, appoints the Grantee its attorney-in-fact, coupled with an interest, to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree to execute any such instrument upon request.
- C. **Running of the Benefits.** The Grantee is benefitted by this CR and the benefits of this CR shall be in gross and shall not be assignable by the Grantee, its successors and assigns, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this CR continues to be carried out; and that 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 CR under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

### IX. SUBSEQUENT TRANSFERS:

The Grantors agree to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which they divest themselves of any interest in all or a

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portion of the Premises, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. Failure of the Grantors to do so shall not impair the validity of this Conservation Restriction or limit its enforceability in any way. 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 Grantor's ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of the CR 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 violation.

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

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

### **XI. ESTOPPEL CERTIFICATES:**

Upon request by the Grantors, the Grantee shall within twenty (20) days execute and deliver to the Grantors any document, including an estoppel certificate, which certifies the Grantors' compliance with any obligation of the Grantors contained in this Conservation Restriction.

### **XII. AMENDMENT OF CONSERVATION RESTRICTION:**

If circumstances arise under which amendment to or modification of this CR would be appropriate, Grantor and Grantee may jointly amend this CR, provided that no amendment shall be allowed that will affect the qualifications of the CR 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 CR 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 the CR, 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 Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall not be effective until it is executed by all parties and recorded with the Middlesex North Registry of Deeds.

**XIII. EFFECTIVE DATE:**

This Conservation Restriction shall be effective when the Grantors 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, or if registered land, it has been registered.

**XIV. RECORDATION:**

The Grantors shall record this instrument in timely fashion in the Middlesex North Registry of Deeds.

**XV. TERMINATION OF RIGHTS AND OBLIGATIONS:**

Notwithstanding anything to the contrary contained herein, the rights and obligations under this Conservation Restriction of any party holding any interest in the Premises terminate upon and to the extent of such party's transfer of its interest, except that liability for acts or omissions occurring prior to transfer, and liability for the transfer itself if the transfer is in violation of this Conservation Restriction, shall survive the transfer.

**XVI. MISCELLANEOUS:**

- A. **Controlling Law.** The interpretation and performance of this CR shall be governed by the laws of the Commonwealth of Massachusetts.
- B. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this CR shall be liberally construed in favor of the grant to affect the purpose of this CR and the policy and purpose of Massachusetts General Laws Chapter 184, Sections 31 through 33. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of the CR that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. **Severability.** If any section or provision of this CR shall be held to be unenforceable by any court of competent jurisdiction, the CR shall be construed as though such section had not been included in it. If any section or provision of the CR shall be susceptible to two constructions,

one of which would render such section or provision invalid, then such section or provision shall be given the construction that would render it valid.

- D. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the CR and supersedes all prior discussions, negotiations, understandings, or agreements relating to the CR, all of which are merged herein.
- E. **Joint Obligation.** The obligations imposed by this Conservation Restriction upon the parties that together comprise "Grantors" shall be joint and several.
- F. **Captions.** The captions in this instrument have been inserted solely for the convenience of reference and are not part of this instrument and shall have no effect upon construction or interpretation.
- G. **Exclusion of Building Envelope from Premises.** Grantor and Grantee agree and restate that the portions of the Property contained within said Building Envelope is specifically excluded from the definition of the term "Premises" hereunder and that this Conservation Restriction does not encumber or restrict in any way the land and improvements contained within said Building Envelope.
- H. **Compliance with Applicable Law.** The exercise of any right reserved under this Conservation Restriction by the Grantors or their successors and assigns shall be in compliance with the then-current Zoning By-Law of the Town of Westford, the state Wetlands Protection Act (Massachusetts General Laws Chapter 131, Section 40, as amended) and all other applicable federal, state, and local law.
- I. **Pre-existing Rights of the Public.** Approval of this Conservation Restriction pursuant to Massachusetts General Laws 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.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.**

[Signature pages follow]

DRAFT 8/14/12

EXECUTED as an instrument under seal in multiple counterparts as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**GRANTOR:**

By: \_\_\_\_\_  
Charles H. McColough, Sole Trustee  
Charles H. McColough Trust - 2004

**COMMONWEALTH OF MASSACHUSETTS**

COUNTY OF MIDDLESEX, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned notary public, personally appeared Charles H. McColough, as Sole Trustee of the Charles H. McColough Trust, proved to me through satisfactory evidence of identification, which was [my personal knowledge of said person **or** driver's license], to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she/he signed it voluntarily for its stated purpose.

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

APPROVAL AND ACCEPTANCE OF THE GRANT BY THE  
TOWN OF WESTFORD CONSERVATION COMMISSION

We, the undersigned, being a majority of the Conservation Commission of The Town of Westford, acting pursuant to the provisions of M.G.L. Chapter 40, §8C, hereby certify that at a public meeting duly held on \_\_\_\_\_, the Conservation Commission voted to approve and accept the foregoing Conservation Restriction in accordance with M.G.L. Chapter 184, § 32 .

EXECUTED as an instrument under seal as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011

TOWN OF WESTFORD ACTING BY AND THROUGH ITS  
CONSERVATION COMMISSION

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

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

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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 she/he signed it voluntarily for its stated purpose as a member of \_\_\_\_\_ of the Town of Westford Conservation Commission.

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

DRAFT 8/14/12

APPROVAL AND ACCEPTANCE OF THE GRANT BY THE  
TOWN OF WESTFORD BOARD OF SELECTMEN

We, the undersigned, being a majority of the Board of Selectmen of the Town of Westford Massachusetts, hereby certify that at a public meeting duly held on \_\_\_\_\_, the Board voted to approve and accept the foregoing Conservation Restriction as being in the public interest pursuant to M.G.L. Ch. 184, sections 31-33.

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

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, 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 document, and acknowledged to me that they signed it in their stated capacity, duly authorized, and voluntarily for its stated purpose.

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

DRAFT 8/14/12

ACCEPTANCE OF GRANT:

Sudbury Valley Trustees, Inc., at a meeting held on \_\_\_\_\_, 20\_\_ voted to accept, and hereby accepts the above Conservation Restriction this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by:

\_\_\_\_\_  
Ronald N. McAdow, *Executive Director*  
*Duly Authorized*

COMMONWEALTH OF MASSACHUSETTS, \_\_\_\_\_ County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned Notary Public, personally appeared the above-named Ronald N. McAdow, Executive Director of Sudbury Valley Trustees, Inc., proved to me by satisfactory evidence of identification, being (check whichever applies):  driver's license or other state or federal governmental document bearing a photographic image,  oath or affirmation of a credible witness known to me who knows the above signatory, or  my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.

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

DRAFT 8/14/12

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS,  
COMMONWEALTH OF MASSACHUSETTS:

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to THE TOWN OF WESTFORD Conservation Commission and SUDBURY VALLEY TRUSTEES, INC. has been approved in the public interest pursuant to Massachusetts General Laws Chapter 184, Sections 31-33.

\_\_\_\_\_  
Richard K. Sullivan, Jr.  
Secretary of Environmental Affairs

\_\_\_\_\_  
*Date*

COMMONWEALTH OF MASSACHUSETTS, \_\_\_\_\_ County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public, personally appeared the above-named Richard K. Sullivan, Jr., Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs, proved to me by satisfactory evidence of identification, being (check whichever applies):  driver's license or other state or federal governmental document bearing a photographic image,  oath or affirmation of a credible witness known to me who knows the above signatory, or  my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by her voluntarily for its stated purpose.

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

# **EXHIBIT C**

O'Brien Farm  
18 Vose Road, Westford, MA  
Map E: Proposed Conservation Restriction Plan

Note: Actual boundaries and locations may vary slightly, but will be substantially as shown; survey to be completed prior to closing.



Legend

-  Habitat Management Area
-  House/Barn Lot to be excluded from CR, not to exceed two acres
-  Approximate location of future footbridge



 Permitted Agricultural Area



Revised 8/9/12

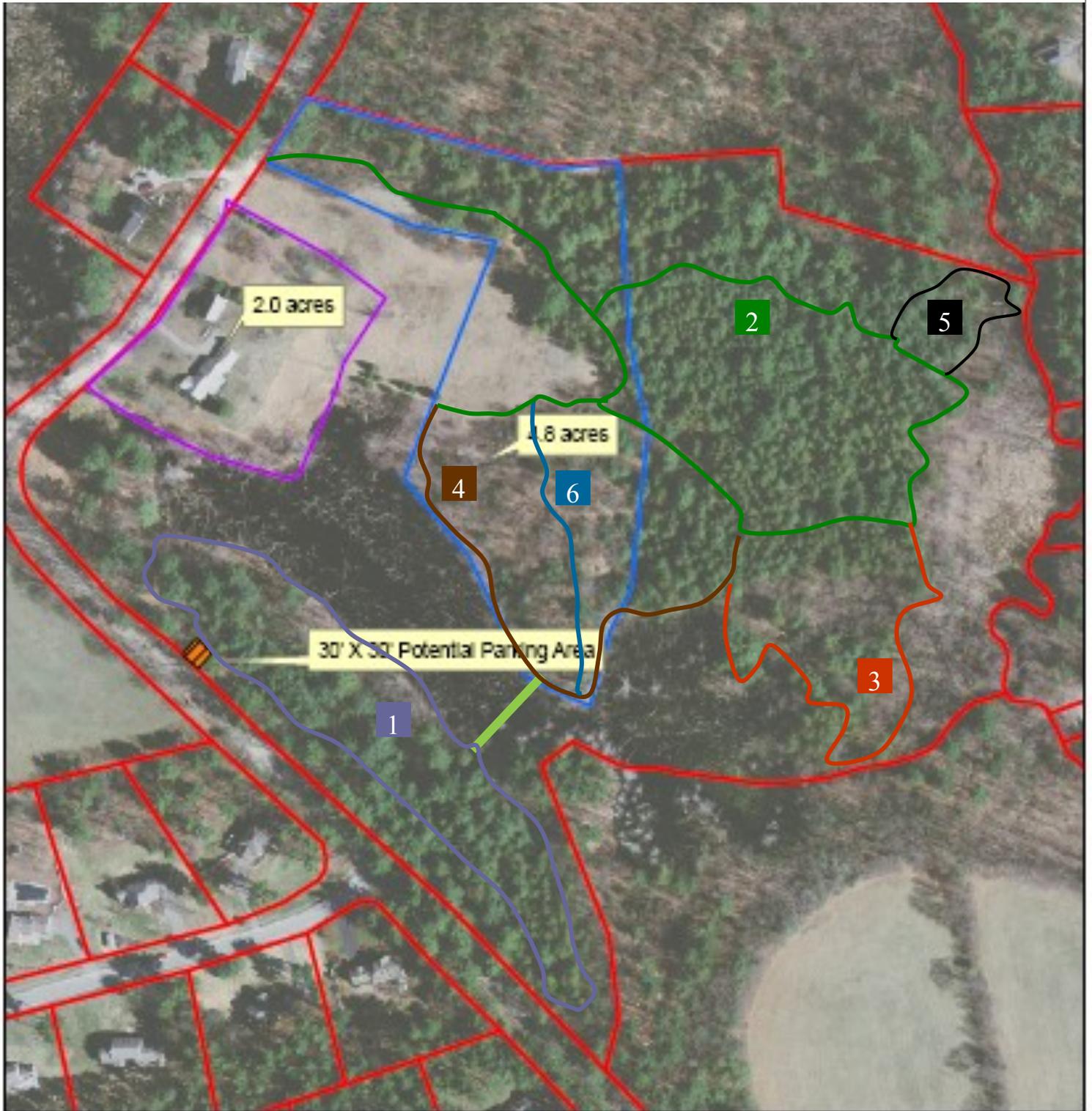
# **EXHIBIT D**

# O'Brien Farm

Vose Road, Westford

Map F: Trails and Parking (approximate location)

Rev. 4/26/12



### Legend

- Existing Habitat Management Area
- House/Barn—excluded from CR Premises
- Assessor's Parcels
- Approximate location of future footbridge



- Loop Trail 2
- Winterberry 5
- Deer Run 3
- Helen's Path 4
- Oak Tree Path 6
- Scenic View 1