

## CONSERVATION RESTRICTION

### **I. Grant of Conservation Restriction.**

Stephens Way Nominee Trust, a Massachusetts real estate trust with a principal place of business at 8 Cardinal Lane, Orleans, Massachusetts, 02653 (the "Grantor", which term includes the Grantor's successors and assigns with respect to the ownership of the Premises described below), in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants to the holder, \_\_\_\_\_, a \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ (the "Grantee") under the authority of Massachusetts General Laws, Chapter 184, Sections 31-33 and Massachusetts General Laws, Chapter 132A, Section 3, a Conservation Restriction in gross and perpetuity on  $\pm 6.58$  acres of land (the "Premises") in Truro shown as "Conservation Restriction A" on a plan entitled "Conservation Restriction Plan Of Land In Truro Made For The Stephens Way Nominee Trust" dated November 1, 2007 "prepared by Slade Associates, Inc., Wellfleet, MA (hereinafter the "Plan"), which Plan is attached as Exhibit A hereto and made a part hereof, and which Plan is to be recorded herewith. Reference is hereby made to said Conservation Restriction Plan for a more particular description of the Premises.

### **II. Purposes.**

The Premises that are the subject of this Conservation Restriction have certain unusual, unique, or outstanding qualities, the preservation of which in their predominately natural or open condition would be a benefit to the public. Therefore, the purposes of this Conservation Restriction are to:

- A. retain the Premises predominantly in its current natural condition, a combination of heathland, coastal beaches and dunes, low scrub forest, and old field community with scattered shrubs and trees;
- B. prevent the use or development of the Premises for any purpose or in any manner which would conflict with the maintenance of the Premises predominantly in its current natural condition;
- C. protect and promote the conservation of priority wildlife habitat, including the habitat for endangered or rare species populations such as northern harrier (*Circus cyaneus*, threatened species); eastern box turtle (*Terrapene c. carolina*, species of special concern); and eastern spadefoot toad (*Scaphiopus holbrookii*, threatened species), on the Premises;
- D. protect and promote the conservation and enhancement of broom crowberry (*Corema conradii*), a plant species of special concern listed on the Natural Heritage Endangered Species Program list;
- E. protect and enhance the value of abutting conservation areas; and

- F. allow limited access to the Premises for educational and scientific purposes.

Furthermore, the granting of this Conservation Restrictions is intended as a donation of property which will be referenced in Conservation Permit No. \_\_\_\_\_ issued by the Commonwealth of Massachusetts Division of Fisheries and Wildlife (the "Division". The Natural Heritage and Endangered Species Program of the Commonwealth of Massachusetts Division of Fisheries and Wildlife (the "NHESP") is the state entity that enforces and administers the Massachusetts Endangered Species Act, Massachusetts General Laws, Chapter 131A, as it may be amended ("MESA").

### **III. Prohibited Acts and Uses.**

Subject to the exceptions and rights reserved to the Grantor, its successors, and assigns pursuant to Section IV below, the Grantor will not perform or give permission to others to perform the following acts or uses at the Premises:

- A. alteration or removal of vegetation;
- B. construction or placement of any building or structure;
- C. excavation, dredging, or removal of soil, loam, peat, gravel, sand, rock, or other mineral resource or natural deposit in such manner as to significantly affect the surface thereof;
- D. placement, filling, storing, or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other substance or material whatsoever;
- E. activities detrimental to drainage, flood control, water quality, water conservation, erosion control, soil conservation, or wildlife habitats;
- F. use of motorcycles, motorized trail bikes, snowmobiles, and all other motor vehicles;
- G. construction of bridges, fences, stone walls or paved surfaces;
- H. use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides; and
- I. other uses of the Premises or activities which would significantly impair the Purposes of this Conservation Restriction, or which applicable federal, state, or local laws or regulations prohibit.

#### **IV. Permitted Activities and Uses.**

Notwithstanding the provisions of Section III above, the following general acts and uses are permitted, provided that all such activities and uses must be in full conformity with all applicable federal, state, and local environmental regulations, including MESA:

- A. maintenance and modification of the vegetation or excavation, dredging, or removal of soil, loam, peat, gravel, sand, rock, or other mineral resource or natural deposits on the Premises for conservation and scientific purposes and to implement disease prevention measures all of the above with the prior written approval of the NHESP, its successors and assigns (hereinafter, the "NHESP") ;
- B. maintenance, repair, reconstruction, and use of existing easements, utilities, driveways and rights of way, if any;
- C. maintenance, repair and use of the Property as shown on the Conservation Restriction Plan;
- D. maintenance, repair, reconstruction, and use of existing ways, trails, fences, bridges, gates, sheds, boardwalks, and stone walls on the Premises or as shown on the Conservation Restriction Plan, substantially in their present condition, or as reasonably necessary for the current uses thereof or herein permitted; including the use, improvement of and maintenance of Trail A or Path A approximately four (4') feet in width as shown on the Conservation Restriction Plan to access the beach area;
- E. Construction of fences, bridges, boardwalks, gates, and stone walls, so long as such use is not significantly detrimental to the Purposes protected by this Conservation Restriction, with the written approval of the NHESP;
- F. use of motor vehicles to pass and repass over the existing ways for emergency ingress and egress to and from the Premises as required by the police, fire department, or other governmental agents in carrying out their lawful duties;
- G. erection and maintenance of signs identifying ownership of the Premises; its status as a conservation reservation; and the restrictions on the use of the Premises, if necessary;
- H. cutting, removal, burning, transplanting and planting of trees, shrubs, and other vegetation and the removal of obstacles, such as downed, dead, or dying trees, brush, shrubs, debris, or trash for normal maintenance of the Premises or to prevent threat of injury or damage to persons or property;
- I. cutting of trees and vegetation and burning in accordance with a plan approved by the NHESP, prepared by a natural resources professional, that is designed to protect or enhance the conservation values of the Premises, including without limitation, wildlife habitat, plant habitat and scenic values;

- J. use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides only as absolutely necessary to preserve rare or endangered plant or animal species and subject to prior written approval and agreement of the Grantee and the NHESP;
- K. use of the Premises for passive recreational activity such as walking on designated Trail A only, nature study; and use of the beach and dune portion of the Premises for sunbathing, walking, swimming, fishing and other purposes for which beaches are used;
- L. drainage from adjoining land;
- M. scientific research, including but not limited to a broom crowberry burn program and regeneration and transplant program, subject to the prior written approval of NHESP;
- N. erection of wildlife migration barriers;
- O. trapping to control nuisance wildlife species in accordance with Massachusetts General Laws, Chapter 131, Section 80A; and
- P. any other use not otherwise prohibited by this Conservation Restriction or by applicable federal, state, or local laws or regulations that will not interfere with the purposes of the Restriction.

**V. Rights of Grantee, The Division and Grantor.**

- A. Legal and Injunctive Relief; Enforceability. In the event that a breach of these restrictions by the Grantor or by a third party acting under permission granted by the Grantor comes to the attention of the Grantee, or the Division of Fisheries and Wildlife, its successors and assigns (collectively, the "Division"), the Grantee or the Division shall notify the Grantor in writing of such a breach. The Grantor shall have thirty (30) days after receipt of such notice to undertake actions, including the restoration of the Premises to its condition prior to the time of the breach complained of, that are reasonably calculated to correct swiftly the conditions constituting such a breach, provided, however, that the Grantor shall have no obligation to restore conditions in existence prior to the effective date of this Conservation Restriction and the Grantor's obligation to remedy any such breach shall be limited to conditions resulting from a breach by the Grantor of these restrictions or by a third party acting under permission granted by the Grantor. If the Grantor fails to take such corrective action, the Grantee or the Division shall at their discretion undertake such actions, including appropriate legal proceedings, including obtaining injunctive and other equitable relief, as are reasonably necessary to remedy any such breach, and the cost of such corrections shall be paid by the Grantor, provided the Grantor is determined to be responsible for the breach.

- B. Acts Beyond the Grantor's Control. Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee or the Division to bring any action against 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, earth movement, trespass, other actions of third parties not under Grantor's control, or from any prudent action taken by Grantor in event of an emergency.
- C. Grantee's Disclaimer of Liability. By its acceptance of this Conservation Restriction, the Grantee or the Division do not undertake any liability or obligation relating to the condition of the Premises.
- D. Grantor's Rights. Except as expressly provided herein, Grantor shall not have any obligation to maintain the Premises but shall have the right to do so if it so elects in accordance with this Conservation Restriction.
- E. Non-Waiver. Any election by the Grantee or the Division 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.

**VI. Access.**

The Conservation Restriction hereby conveyed does not grant to the Grantee, to the general public, or to any other person any right to enter upon the Premises, except there is hereby:

- A. granted to the Grantee, the Division and Grantor a permanent easement to access and utilize any passive recreation trails existing or developed in accordance with Section IV hereof.
- B. granted to the Grantee, the Division and the Grantor the right to enter the Premises at reasonable times and in a reasonable manner with forty-eight (48) hours prior notice for the purpose of:
  - 1. inspecting the Premises to determine compliance with the requirements of this Conservation Restriction;
  - 2. exercising their rights herein; and
  - 3. conducting scientific research and special wildlife and plant habitat preservation activities.

The liability of Grantor with respect to any such access to the Premises shall be subject to the provisions of Massachusetts General Laws, Chapter 21, §17C. Notwithstanding the above access provision, nothing in this Conservation Restriction shall be construed to limit the Division's authority pursuant to G.L. c. 131, §§4 and 11 to access the Premises.

## **VII. Assignability.**

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.

The Grantee and the Division are authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. The Grantor and its successors and assigns agree to execute any such instruments upon request.

The benefits of this Conservation Restriction shall not be assignable by the Grantee except in the following instances and from time to time:

- A. As condition of any assignment, the Grantee obtains the approval of Grantor and NHESP, and requires that the Purposes of this Conservation Restriction be carried out;
- B. The assignee, at the time of the assignment, qualifies under Section 170 (h) of the United States Internal Revenue Code of 1954, as amended, and the applicable regulations thereunder, and under Massachusetts General Laws, Chapter 184, Section 32 as an eligible grantee to receive this Conservation Restriction directly; and
- C. any assignment shall comply with the provisions of Article 97 of the Amendments to the State Constitution.

## **VIII. Subsequent Transfers.**

The Grantor agrees to refer to the terms of this Conservation Restriction in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises. Notwithstanding anything contained herein, to the extent permitted under applicable law, upon the transfer by a party of its entire interest in the Premises, the rights and obligations of such party under this Conservation Restriction shall terminate. In the event of a transfer by a party of a partial interest in the Premises, the rights and obligations of such party under this Conservation Restrictions shall terminate with respect to the portion transferred.

## **IX. Estoppel Certificates.**

Upon request by the Grantor, the Grantee shall within twenty (20) days execute and deliver to the Grantor any document, including an estoppel, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction and which otherwise evidences the status of this Conservation Restriction as may be requested by Grantor.

**X. Effective Date.**

This Conservation Restriction shall be effective after all of the following have occurred: (i) when executed by the Grantor and the Grantee, (ii) when the Division has issued a Conservation Management Permit and all appeal periods have run, (iii) when the administrative approvals required by Massachusetts General Laws, Chapter 184, Section 32 have been obtained: and (iv) when it has been recorded in Barnstable County District Registry of Deeds.

**XI. Recordation.**

The Grantor shall record this instrument in the Barnstable County District Registry of Deeds. This instrument is exempt from documentary stamp exercise taxes pursuant to Massachusetts General Laws, Chapter 64D, Section 1. For Grantor's title, reference is made to the deed recorded in Barnstable County District Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_.

**XII. Notice and Approval.**

Whenever notice to or approval by the Grantee, NHESP or the Division is required under the provisions of this Conservation Restriction, except in the case of an emergency, the Grantor shall give written notice by certified mail, return receipt requested, to the Grantee, NHESP or the Division, not less than thirty (30) days prior to the date the Grantor intends to undertake any proposed activity that requires any such notice or approval. 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 or the Division to make an informed judgment as to its consistency with the Purposes of this Conservation Restriction and to monitor the proposed activity. Where the Grantee's or the Division approval is required, the Grantee or the Division shall grant or withhold its approval by written notice, by certified mail, return receipt requested, to the Grantor within thirty (30) days of receipt of the written request therefore. If the Grantee or the Division does not respond to the Grantor's request within said thirty (30) days in accordance with the provisions of this paragraph, the Grantor's request shall be deemed approved by the party that did not respond.

Any notice that either party desires or is required to give to the other shall be sent addressed as follows:

To the Grantor: Stephens Way Nominee Trust  
Duane Landreth, Trustee  
8 Cardinal Lane  
Orleans, MA 02653

To the Grantee: [Name of Grantee]  
[mailing address]

To the NHESP or the Division: Natural Heritage Endangered Species Program  
Massachusetts Division of Fisheries & Wildlife

1 Rabbit Hill Road  
Westborough, MA 01581

or to such other address as any of the above parties from time to time shall designate by written notice to each other.

**XIII. Miscellaneous.**

- A. Construction and Validity. Notwithstanding any general rule of construction to the contrary, this Conservation Restriction shall be liberally construed in a manner consistent with the Purposes of this Conservation Restriction. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purposes of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid. If any provision of this Conservation Restriction or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Restriction and their application to other persons and circumstances shall not be affected thereby.
- B. Costs and Taxes; Liability. The Grantor agrees to pay and discharge when and if due any and all real property taxes and other assessments levied by competent authority with respect to the Premises and attributable to the period of the Grantor's ownership of the Premises.
- C. Extinguishment; Eminent Domain. The Grantor and the Grantee agree that the grant of this Restriction gives rise to a property right that vests immediately in the Grantee and which has a fair market value that is equal to the value by which the Restriction reduces, at the time of the grant, the value of the property as a whole.

Should this Restriction be extinguished over all or any portion of the Premises by judicial decree or by act of public authority, the Grantee shall be entitled to a portion of the proceeds equal to the proportionate value of the Restriction, subject, however, to any applicable law which expressly provides for a different disposition of proceeds. If the conservation interests protected hereby are unaffected by the taking, and the only interest taken by public authority is the Grantor's interest, and recovered proceeds are awarded on the basis of the value of the Premises as restricted by this Restriction, then the proceeds from such taking shall be payable in their entirety to Grantor.

Whenever all or any part of the Premises or any interest therein is taken by a public authority other than the Commonwealth under power of eminent domain, or if all or any part of this Restriction is extinguished by act of public authority other than the Commonwealth, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. If the public authority is the Commonwealth, the Grantor and the Grantee shall pursue their remedies separately.



If circumstances arise in the future such as to render the Purposes of this Conservation Restriction impossible to accomplish, this Conservation Restriction can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction and with the approval of the Secretary of the Executive Office of Energy and Environmental Affairs in accordance with Massachusetts General Laws, Chapter 184, Section 32.

- D. Cumulative Rights. The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for enforcement of this Conservation Restriction.
- E. Amendments. This Conservation Restriction may be amended with the consent of the Grantor, the Grantee, and the Secretary of the Executive Office of Energy and Environmental Affairs.
- F. Governing Law. This Restriction shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

SIGNED as a sealed instrument this \_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Grantor

\_\_\_\_\_  
Grantee

**ACCEPTANCE OF RIGHTS AND ENFORCEMENT RESPONSIBILITIES UNDER  
CONSERVATION RESTRICTION**

The rights and enforcement responsibilities granted in the above Conservation Restriction by Stephens Way Nominee Trust to the Commonwealth are accepted this \_\_\_ day of \_\_\_\_\_, 200\_.

**COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF FISHERIES AND WILDLIFE**

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

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss

\_\_\_\_\_, 200\_

On this day 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 he signed it in his stated capacity, duly authorized and voluntarily, as \_\_\_\_\_ of the Massachusetts Division of Fisheries and Wildlife, for its stated purpose.

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

SEAL

APPROVAL BY SELECTMEN

We, the undersigned, being a majority of the Board of Selectmen of the Town of Truro, Massachusetts, hereby certify that at a meeting duly held on [date], the Board voted to approve the foregoing Conservation Restriction as being in the public interest pursuant to Massachusetts General Laws, Chapter 184, Sections 31-33.

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

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss

\_\_\_\_\_, 200\_

On this day before me, the undersigned notary public, personally appeared the signatories above, proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the Selectmen of the Town of Truro whose names are signed on the preceding document, and acknowledged to me that they signed it in their stated capacity, duly authorized and voluntarily, on behalf of the Town of Truro for its stated purpose.

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

SEAL

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 [name of grantee] has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Date: \_\_\_\_\_, 200\_

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

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss

\_\_\_\_\_, 200\_

On this day before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts whose name is signed on the preceding document, and acknowledged to me that he signed it in his stated capacity, duly authorized and voluntarily, for its stated purpose.

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

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

SEAL

Exhibit A

PROPERTY DESCRIPTION

Exhibit B

CONSERVATION AND MANAGEMENT PERMIT

## DECLARATION OF RESTRICTION

THIS DECLARATION OF RESTRICTION (hereinafter the "Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_ 2007, by Stephens Way Nominee Trust, 8 Cardinal Lane, Orleans, Barnstable County, MA 02653 (hereinafter the "Declarant").

### WITNESSETH

**WHEREAS**, Declarant is the owner of that certain parcel of land off Stephens Way (hereinafter the "Restricted Parcel") located in the Town of Truro, Barnstable County, Massachusetts (hereinafter the "Property"), shown on "Conservation Restriction Plan Of Land In Truro Made For The Stephens Way Nominee Trust," dated November 1, 2007, prepared by Slade Associates, Inc., Wellfleet, MA and to be recorded in the Barnstable County District Registry of Deeds at Plan Book \_\_\_\_\_ as Plan \_\_\_\_\_ (the "Plan"); and

**WHEREAS**, the Property contains over wintering, feeding, nesting, and breeding habitat and migration routes for the Eastern Box Turtle (*Terrapene carolina*), a state-protected species listed as a Species of Special Concern pursuant to the Massachusetts Endangered Species Act (MESA); Northern Harrier (*Circus cyaneus*) a threatened species, and eastern spadefoot toad (*Scaphiopus holbrookii*), a threatened species; under M.G.L. c. 131A, §3 and 321 CMR 10.23; and

**WHEREAS**, a conservation restriction will protect and promote the conservation and enhancement of broom crowberry (*Corema conradii*), a plant species of special concern listed on the Natural Heritage Endangered Species List; and

**WHEREAS**, the Property is subject to the terms and provisions of a Conservation and Management Permit pursuant to MESA issued by the Commonwealth of Massachusetts Division of Fisheries and Wildlife; and

**WHEREAS**, Declarant will voluntarily protect a significant contiguous area of state-listed plant and species habitat as an integral part of the development of the Property consisting of approximately 6.58 acres of land (the "Premises"); and

**NOW, THEREFORE**, Declarant hereby voluntarily declares and imposes **in perpetuity** upon the Restricted Parcel the following covenants, conditions and restrictions on the Restricted Parcel for the benefit of Declarant, its successors and assigns, the Town of Truro Conservation Commission [hereinafter the "Commission"], and the Commonwealth of Massachusetts Division of Fisheries and Wildlife, its successors and assigns [hereinafter the "Division"], and said Restricted Parcel shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, conditions, and restrictions hereinafter set forth.

- I. Restricted Parcel.** Declarant will place an Executive Office of Energy and Environmental Affairs Division of Conservation Services (EOEA-DCS) approved Conservation Restriction pursuant to M.G.L., c. 184, §§31-33 in perpetuity on the

Restricted Parcel as shown on the Plan, the purposes of which shall be 1) wildlife habitat protection, including that of the state-listed Eastern Box Turtle, Northern Harrier, Eastern Spade Foot Toad; 2) protection of broom crowberry, 3) scenic landscape preservation, 4) water quality protection, 5) protection of nearby natural areas, and 6) furtherance of government policy. Said Conservation Restriction shall be recorded within three (3) months of the approval of the EOEEA-DCS. Said Conservation Restriction shall include permitted and prohibited uses consistent with said purposes.

**II. Prohibited Acts and Uses.** Subject to the exceptions and rights reserved to the Grantor, its successors, and assigns pursuant to Section III below, the Grantor will not perform or give permission to others to perform the following acts or uses at the Premises:

- A. alteration or removal of vegetation;
- B. construction or placement of any building or structure;
- C. excavation, dredging, or removal of soil, loam, peat, gravel, sand, rock, or other mineral resource or natural deposit in such manner as to significantly affect the surface thereof;
- D. placement, filling, storing, or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other substance or material whatsoever;
- E. activities detrimental to drainage, flood control, water quality, water conservation, erosion control, soil conservation, or wildlife habitats;
- F. use of motorcycles, motorized trail bikes, snowmobiles, and all other motor vehicles;
- G. construction of bridges, fences, stone walls or paved surfaces;
- H. use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides; and
- I. other uses of the Premises or activities which would significantly impair the Purposes of this Conservation Restriction, or which applicable federal, state, or local laws or regulations prohibit.

**III. Permitted Activities and Uses.** Notwithstanding the provisions of Section II above, the following general acts and uses are permitted on the Premises, provided that all such activities and uses must be in full conformity with all applicable federal, state, and local environmental regulations, including MESA:

- A. maintenance and modification of the vegetation or excavation, dredging, or removal of soil, loam, peat, gravel, sand, rock, or other mineral resource or natural deposits on the Premises for conservation and scientific purposes and to implement disease prevention measures all of the above with the prior written approval of the Division;
- B. maintenance, repair, reconstruction, and use of existing easements, utilities, driveways and rights of way, if any;
- C. maintenance, repair and use of the Property as shown on the Conservation Restriction Plan;
- D. maintenance, repair, reconstruction, and use of existing ways, trails, fences, bridges, gates, sheds, boardwalks, and stone walls on the Premises or as shown on the Conservation Restriction Plan, substantially in their present condition, or as reasonably necessary for the current uses thereof or herein permitted; including the use, improvement of and maintenance of Trail A or Path A approximately four (4') feet in width as shown on the Conservation Restriction Plan to access the beach area;
- E. Construction of fences, bridges, boardwalks, gates, and stone walls, so long as such use is not significantly detrimental to the Purposes protected by this Conservation Restriction, with the written approval of the Division;
- F. use of motor vehicles to pass and repass over the existing ways for emergency ingress and egress to and from the Premises as required by the police, fire department, or other governmental agents in carrying out their lawful duties;
- G. erection and maintenance of signs identifying ownership of the Premises; its status as a conservation reservation; and the restrictions on the use of the Premises, if necessary;
- H. cutting, removal, burning, transplanting and planting of trees, shrubs, and other vegetation and the removal of obstacles, such as downed, dead, or dying trees, brush, shrubs, debris, or trash for normal maintenance of the Premises or to prevent threat of injury or damage to persons or property;
- I. cutting of trees and vegetation and burning in accordance with a plan approved by the Division, prepared by a natural resources professional, that is designed to protect or enhance the conservation values of the Premises, including without limitation, wildlife habitat, plant habitat and scenic values;



- J. use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides only as absolutely necessary to preserve rare or endangered plant or animal species and subject to prior written approval and agreement of the Grantee and the Division;
- K. use of the Premises for passive recreational activity such as walking on designated Trail A only, nature study; and use of the beach and dune portion of the Premises for sunbathing, walking, swimming, fishing and other purposes for which beaches are used;
- L. drainage from adjoining land;
- M. scientific research, including but not limited to a broom crowberry burn program and regeneration and transplant program, subject to the prior written approval of Division;
- N. erection of wildlife migration barriers;
- O. trapping to control nuisance wildlife species in accordance with Massachusetts General
- P. Laws, Chapter 131, Section 80A; and
- Q. any other use not otherwise prohibited by this Conservation Restriction or by applicable federal, state, or local laws or regulations that will not interfere with the purposes of the Restriction.

**IV. Term - Binding Effect In Perpetuity.** This Declaration of Restriction and its provisions herein set forth shall run with the Restricted Parcel as shown on said Plan in perpetuity from the date of recordation in the Barnstable District Registry of Deeds and shall be binding upon Declarant, Declarant's successors and assigns, and any other party having an ownership interest in said Restricted Parcel or claiming to have an interest with respect to said Restricted Parcel as tenants, invitees, licensees or otherwise, and all of the respective heirs, successors, grantees, mortgages, assigns, agents, contractors, subcontractors and employees of the foregoing unless and until the above-referenced EOEEA Restriction is approved, executed and recorded against the Restricted Parcel and a written release is executed and recorded pursuant to Section XI, below.

This Declaration of Restriction is hereby intended and declared to be in perpetuity and no re-recordation of this Declaration of Restrictions under M.G.L. c. 184, §§23-30 or any other law shall ever be necessary in order to maintain the full legal effect and authority hereof and Declarant and its successors and assigns, including but not limited to, all subsequent owners of the Restricted Parcel,

hereby waive all their legal right to and shall forego any action in law or equity of any kind whatsoever attempting to contest the validity of any provision of this Declaration of Restriction and shall not, in any enforcement action, raise the invalidity of any provision of this Declaration of Restriction.

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

**V. Enforceability.** The Commission and the Division, jointly and severally, shall have the authority and right to enforce this Declaration of Restriction.

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

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

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

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

**VIII. Access.** This Declaration of Restriction does not grant to the Commission, the Division, the general public, or to any other person or entity any right to enter upon the Restricted Parcel except the right of the Commission and the Division to enter the Restricted Parcel at reasonable times and in a reasonable manner for the purpose of inspecting the same to determine compliance herewith, enforcing this Declaration of Restriction as set forth in Section V above, and for all purposes as defined in the Conservation Restriction.

**IX. Incorporation Into Deeds, Mortgages, Leases and Instruments of Transfer.** Declarant and Declarant's successors and assigns, including all subsequent owners of the Restricted Parcel, shall incorporate this Declaration of Restriction, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Restricted Parcel or any portion thereof is conveyed. Any such deed, mortgage or other interest purporting to convey any portions of the Restricted Parcel without including this Declaration of Restriction in full or by reference shall be deemed and taken to include said Declaration of Restriction in full even though said Declaration of Restriction is not expressly described or referenced therein.

**X. Recordation/Registration.** Declarant shall record and/or register this Declaration of Restriction with the appropriate Registry of Deeds and/or Land Registration Office upon the later of (i) thirty (30) days of its date of execution or (ii) the conveyance of any portion of the Restricted Parcel shown on the Plan to a *bona fide* purchaser.

**XI. Amendment, Termination and Release.** No amendment, termination or release of this Declaration of Restriction shall be effective unless it has been approved in writing by the Division [hereinafter the "Division Approval"] and said amendment, termination or release and the requisite Division Approval has been recorded with the appropriate Registry of Deeds and/or Land Registration Office.

**IN WITNESS WHEREOF**, Duane P. Landreth, Trustee of Stephens Way Nominee Trust, has caused these presents to be signed, acknowledged and delivered in its name and behalf this \_\_\_\_\_ day of November, 200-.

**STEPHENS WAY NOMINEE TRUST**

**By:** \_\_\_\_\_  
**Duane P. Landreth, Trustee**

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss. \_\_\_\_\_, 200\_

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

**SEAL**

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