

Grantor: Toll Northeast V Corp.

Grantee: Boxford Conservation Commission

Property Address: Willow Road, Boxford (Assessors Map 6, Block2, Lot 2.2)

Grantor's Title: Book 40906 Page 253 in Southern Essex District Registry of Deeds.

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## CONSERVATION RESTRICTION

Toll Northeast V Corp., with a mailing address of 116 Flanders Road, Suite 1200, Westborough, MA 01581, being the sole owner, for its successors and assigns holding any interest in the Premises as hereinafter defined (the "Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grants with QUITCLAIM COVENANTS to the Town of Boxford acting by and through its Conservation Commission, pursuant to Chapter 40 Section 8C, with an address of 7A Spofford Road, Boxford, MA 01921, their permitted successors and assigns ("Grantee"), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land containing a 90.8-acre +/- portion of a 115.6-acre +/- parcel of land located in the Town of Boxford, Commonwealth of Massachusetts, which Premises is more particularly described in Exhibit A and shown on the attached reduced copy of the *Conservation Restriction Plan* in Exhibit C, both of which are incorporated herein and attached hereto. The Grantor and the Grantee, their successors and assigns, are bound by and subject to the terms and conditions of this Conservation Restriction.

- 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 the Conservation Restriction is to assure that the Premises will be retained in perpetuity substantially in its natural, scenic, and vegetated condition as set forth herein and to prevent any use of the Premises that will impair or interfere with the Conservation Values of the Premises. This Conservation Restriction supersedes the Declaration of Restriction recorded on the Premises in the Southern Essex District Registry of Deeds at Book 40921, Page 442. The conservation of the Premises will yield a significant public benefit for the following reasons:
  - a. **Wildlife & Habitat Protection:** Conservation of the Premises will protect habitat used by a variety of wildlife including but not limited to, the Blanding's Turtle (*Emydoidea blandingii*) and Wood Turtle (*Glyptemys insculpta*), species protected under the Massachusetts Endangered Species Act.
  - b. **Nearby Natural Areas:** The Premises contain fields, early successional habitat, vernal pools, upland forest, and wetland habitat, including the Parker River, for native wildlife and plant species and communities, including many species of native plants, lichens, mammals, birds, reptiles, amphibians, and invertebrates. The preservation of the Premises will protect these habitats. The Premises also contribute to the protection of the scenic and natural open space character of the Town of Boxford by connecting to the 54± acre "Hazeltine Meadow" conservation area owned by the Essex County Greenbelt Association (aka "Ingalls Memorial Wetlands") via existing paths and a wooden boardwalk over the Parker River, a 74± acre Conservation Restriction held by Essex County Greenbelt Association (aka "Price CR"), and the 19± acre Chadwick Farm Road Conservation Area owned by the Essex County Greenbelt Association.

- c. Scenic Landscape Preservation: The Premises comprise part of a scenic landscape associated with a natural, undisturbed environment. The open space conservation land protected under this Conservation Restriction is an important public resource. The preservation of the Premises, by prohibiting significant alterations to the natural character thereof, will further protect and enhance the area's scenic and open space attributes.
- d. Flood Plain Protection: Portions of the Premises lie within the 100-year floodplain of the Parker River. The protection of this floodplain will ensure the continued availability of this flood storage during major storm events.
- e. Water Quality Protection: Preserving the natural, undisturbed environment will provide for groundwater recharge and protect wetland resource areas.
- f. Furtherance of Government Policy: Protection of the Premises furthers the Town of Boxford's 2015 Open Space and Recreation Plan Goals including Goal A: Preserve and protect groundwater resources, drinking water resources, ponds, streams, wetlands and wildlife habitat and Goal C: Preserve, enhance and acquire lands for active and passive recreation needs. The Premises are designated NHESP Priority Habitat of Rare Species and located within NHESP's BioMap2 Core Habitat.
- g. Massachusetts Endangered Species Act ("MESA"): This Conservation Restriction is granted pursuant to and in accordance with the requirements set forth in Conservation and Management Permit No. 21-383 DFW, date October 6, 2021, issued by the Commonwealth of Massachusetts Division of Fisheries and Wildlife acting through the Natural Heritage and Endangered Species Program ("Division") recorded at Book 40883, Page 80, in the Essex (South) County Registry, and incorporated by reference herein ("CMP").
- h. Public Access: A portion of the Premises will be made available for public access for non-commercial, non-motorized passive recreation and nature study.
- i. Baseline Documentation Report and Survey (BDRS): These conservation values are described in more detail in the Baseline Documentation Report and Survey ("BDRS"), copies of which are to be kept on file at the office of the Grantee and incorporated herein by this reference. Grantor and Grantee agree that the purpose of the BDRS, which consists of maps, narratives, survey plans and aerial and ground photographs that portray the condition of the Premises at the time of the creation of the BDRS and immediately prior to recording of this Conservation Restriction, is to provide a baseline from which future changes to the Premises, whether natural or human-caused, can be measured including to objectively and accurately document natural or other uses, physical features, improvements, and trails and as they relate to the prohibited and permitted uses of the Premises. Notwithstanding, in the event that the BDRS is unavailable, or is determined to be inadequate for resolving any issue that may arise after the granting of this Conservation Restriction, other evidence may be used to show the condition of the Premises at either the time of the grant or some subsequent point in time

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, the Grantor and the Grantee voluntarily agree that the Conservation Restriction described herein is an appropriate means to ensure compliance with the CMP issued

pursuant to MESA and achieve the community's open space goals and objectives, all of which thereby represent significant public benefits.

## II. DEFINITIONS:

- a. Conservation Values: shall mean, without limiting the generality of the terms, those conservation attributes set forth above in Section I and as further described in the BDRS.
- b. Hazardous Material: shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as a pollutant, dangerous substance, toxic substance, hazardous waste, hazardous material, hazardous substance or contaminant under any environmental law, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is now or hereafter regulated under any environmental law.
- c. Pervious: shall mean built of materials consisting of unconsolidated minerals such as sand, dirt or gravel, or natural materials such as wood chips or grass.
- d. Structure: (whether or not said term is capitalized) shall mean anything constructed or erected which requires permanent or temporary location on, in, over or under the ground or permanent or temporary attachment to something which is erected or placed on the ground and designed, intended or arranged for the housing, shelter, enclosure and/or structural support of persons, animals or property of any kind, including but not limited to houses, mobile homes, tents, barns, sheds, greenhouses, treehouses, and other buildings of any kind; silos and cribs; swimming pools; playing courts; outdoor riding rings; fences; pads; patios and decks; docks; bridges; roads; driveways and parking areas (whether surfaced with macadam, brick, paving stones, gravel, clay or other material); artificially surfaced walkways; solar panels; satellite dishes and antennae; signs and billboards; storage tanks; windmills and wind turbines; and water, sewer, power, fuel, gas and communication lines, other utility systems and related facilities. A kiosk at the trailhead off of Pine Plain Road shall not be considered a structure.
- e. Passive Recreation: activities that are non-consumptive uses of resources and do not require prepared facilities like sports fields and pavilions. Passive recreation activities place minimal stress on the site's resources and are compatible with the Conservation Values. Examples include hiking, wildlife viewing, observing and photographing nature, picnicking, walking, bird watching, running/jogging, non-motorized mountain biking, and horse-back riding. Passive recreation excludes the use of motorized vehicles, except for motorized wheelchairs and motorized scooters by the disabled.
- f. Private Trails: Existing footpaths composed of natural surfaces, as depicted on the *Proposed Open Space Figure*, which is incorporated herein and attached hereto as Exhibit B, that provide access to the Public Trails explicitly for residents and permitted guests of the 115.6-acre parcel ("The Willows at Boxford").
- g. Baseline Documentation Report (BDRS): Baseline Documentation Report ("BDRS") consists of maps, narratives, survey plans stamped by a Professional Land Surveyor registered in the State of Massachusetts, and aerial and ground photographs, which portray the condition of a

restricted property at the time of the creation of the BDRS and immediately prior to recording of the Restriction. The purpose of the BDRS is to provide a baseline from which future changes to the property, whether natural or human-caused, can be measured including to objectively and accurately document natural or other uses, physical features, improvements, trails and as they relate to the prohibited and permitted uses of the restricted area.

III. PROHIBITED USES & RESERVED RIGHTS:

- a. Prohibited Uses: Except as to reserved rights set forth in Section III.b. below, the Grantor shall not perform nor permit others to perform the following acts or uses, which are prohibited, in, on, above or below the Premises:
- i. Hunting, fishing, and trapping.
  - ii. Swimming, boating, and kayaking in any waterbody or waterway.
  - iii. Constructing, placing, or allowing to remain any Structure;
  - iv. Mining, excavating, dredging or removing of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
  - v. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree or other vegetation cutting, waste or Hazardous Material or other substance or material whatsoever, whether or not generated on the Premises, or the installation of underground storage tanks;
  - vi. Removing, cutting, pruning or destroying vegetation (native or non-native), including, but not limited to trees or plants, understory, grasses and ground covers, except as allowed in writing by the Grantee and Division to remove hazards to users
  - vii. Applying or using fertilizers, fungicides, herbicides or pesticides in any quantity, unless otherwise approved in writing by the Grantee and Division;
  - viii. Planting, releasing, cultivating, maintaining, or engaging in any other activity that would introduce plant or animal species that pose a substantial risk of being invasive or are otherwise detrimental to the native plant and animal community, as determined by the Division. A list of plant species deemed to be invasive, as of the time of this recording, is provided in the Massachusetts Prohibited Plant List, which is updated and maintained by the Massachusetts Department of Agricultural Resources;
  - ix. Activities detrimental to drainage, flood control, erosion control, water or soil conservation, archaeological resources or the quality of ground water and wetlands;
  - x. Any commercial recreation, other business or industrial use;

- x. Animal penning or grazing; holding horses, pets, livestock, or domestic animals within a paddock; causing or permitting any domestic or livestock to be unattended or to roam or be at large (dogs must be leashed at all times); and the storing or dumping of manure or other animal wastes; any agricultural use;
  - xii. Using, parking or storing motorized vehicles, including, but not limited to, trucks, trail bikes, motorized or non-motorized, all-terrain vehicles, dune buggies, boats, trailers, and snowmobiles, except as necessary by the police, fire fighters or other governmental agents in carrying out their lawful duties; and except for motorized wheelchairs or scooters used by physically challenged parties;
  - xiii. Disrupting, removing, destroying any stone walls, historical stone monuments, or granite fences or posts;
  - xiv. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
  - xv. Damaging, disturbing, or removing, any part or portion of the property or any or resource, real, natural, personal, cultural or historic; and
  - xvi. Any other use or activity which is inconsistent or interferes with, or that would materially impair the Purposes or Conservation Values of this Conservation Restriction.
- b. Reserved Rights in the Premises: The Grantor reserves the right to conduct or permit the following activities provided they do not materially impair the Conservation Values or purposes of this Conservation Restriction or other significant interests:
- i. With prior written permission of the Grantee and Division, after consultation with and consistent with the advice of a professional biologist to ensure such use will not be detrimental to any state-listed species or other wildlife, the erection and maintenance of sight-pervious, non-enclosing, wildlife friendly fences, such as wooden split rail or other open-faced fences, or low hedges of native species;
  - ii. The right to install temporary or permanent boundary monuments; the right to erect and maintain small signs that provide information including identifying the Grantor and Grantee provided that such signage is consistent with the purposes of this Conservation Restriction and does not identify the location or existence of any specific state-listed species on the Premises;
  - iii. The Grantor and the general public are permitted to enter upon a portion of the Premises identified as "Public Trail" in Exhibit C ("Public Trail"), for non-commercial, non-motorized passive recreational uses of the Premises including, but not limited to, walking, jogging, hiking, cross-country skiing, snow shoeing, wildlife observation, and photography. Additional non-commercial activities allowed on the Public Trail

by the general public are non-motorized mountain biking and horseback riding. Motorized wheelchairs and motorized scooters may be used on the Public Trail by members of the public who reasonably require the use of such devices due to disability, advanced age, or limited mobility;

- iv. With prior written permission of the Grantee and Division, hunting, fishing, or trapping are permissible when necessary for habitat management and animal population control, and then only permitted and carried out in accordance with regulations issued by the Division of Fisheries and Wildlife subject to MGL Ch 130, 101 and 321 CMR;
- v. With prior written permission of the Grantee and Division, the right to temporarily close the Public Trail from time-to-time as necessary to conduct trail maintenance, but in a manner that minimizes restrictions on use of the Public Trail and for no more than five (5) consecutive days unless agreed to by the Grantee and Division.
- vi. With prior written permission of the Grantee and Division, the right to remove or control hazardous trees, poison ivy, oriental bittersweet, other invasive or exotic species, insect infestations, diseases, and other types of pests by methods and in a manner that minimize damage to surrounding, non-target species and preserve water quality;
- vii. With prior written permission of the Grantee and Division, the right to restore, maintain, enhance or otherwise manage biotic communities or habitats for native or rare species that include, but are not limited to, selective planting of native species, cutting, prescribed burning or removal of native vegetation, and modification of soils. Where the CMP requires habitat restoration, maintenance or enhancement of rare species habitat, no written permission shall be required from the Grantee. All habitat restoration, maintenance or enhancement of rare species habitat shall be done in accordance with the written permission of the Division, or applicable CMP requirements;
- viii. The marking, clearing, mowing or maintaining of existing footpaths and woods roads with natural surfaces and shown on the Plan and described in the BDRS, including the Public Trail or Private Trails as well as the right to alter the locations of established trails, after consultation with the Grantees and with the Grantees' written permission, provided that neither the conservation values of this Conservation Restriction nor access to and passage through the Premises is materially impaired, and in compliance with the CMP, MESA, and other applicable statutes and regulations.
- ix. The establishment of a kiosk off of Pine Plain Road as designated on the *Proposed Open Space Figure*, which is incorporated herein and attached hereto as Exhibit B.
- x. All actions and activities required or authorized by the CMP, as the CMP may be subsequently amended and duly recorded with the Southern Essex District Registry of Deeds with reference to the CMP and this Conservation Restriction; and

- xi. Any work undertaken in conjunction with the reserved rights mentioned above in paragraph III.b. shall seek to minimize disturbance to the Premises. Upon completion of any site work performed in conjunction with paragraph III.b., any disturbed areas shall be restored substantially to match the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work; and
- xii. Archaeological investigations and activities, including without limitation surveys, excavation, and artifact retrieval conducted under the direction of a qualified organization or person, following submission of an archaeological field investigation plan and written approval thereof by (a) the Commonwealth and (b) the State Archaeologist of the Massachusetts Historical Commission, and in accordance with Massachusetts 950 CMR 70.00 with approval of the Grantee in consultation with Division; and (c) the Division in accordance with the requirements of MESA.

The exercise of any right reserved by the Grantor under paragraph III.b. shall be in compliance with the Zoning By-Laws of the Town of Boxford in effect at the time the right is exercised, and all other applicable federal, state, county and local laws, bylaws, rules and regulations, including, but not limited to Massachusetts Historic Commission regulations and local wetland conservation commission bylaws and regulations. The inclusion of any reserved right in paragraph III.b. requiring a permit from a public agency does not imply that the Grantee or the Division takes any position on whether such permit should be issued.

IV. ADDITIONAL PROVISIONS:

**a. NOTICE AND APPROVAL:**

Whenever notice to or approval by Grantee or Division is required, Grantor shall notify Grantee or Division, as applicable, in writing not less 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, MESA Tracking Number and/or CMP Number, if applicable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantee or Division, as applicable, to make an informed judgment as to its consistency with the purposes of this Conservation Restriction and CMP. Where Grantee's or Division's approval is required, Grantee or Division, as applicable, shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. The Grantee or Division may require the submittal of additional information necessary to evaluate the proposed activity. Grantee's or Division's approval, as applicable, shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction.

Failure of Grantee or Division to respond in writing within 60 days shall be deemed to constitute approval by Grantee or Division, as applicable, of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, is not in violation of any local, state or federal law, including but not limited to MESA, and the activity will not materially impair the conservation values or purposes of this Conservation Restriction.

**b. LEGAL REMEDIES OF THE GRANTEE:**

**i. 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 Premises to their 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 Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

The Conservation Restriction shall also be enforceable by the Commonwealth of Massachusetts acting through the Division; and does not limit in any manner the Division's authorities or duties under G.L. c. 131 and 131A et. seq. or the implementing regulations for such statutory provisions.

**ii. 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.

**iii. Disclaimer of Liability.**

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

Pursuant to M.G.L. Chapter 21, Section 17C, neither the Grantor nor the Grantees is liable to any member of the public for injuries to person or property sustained by such person while on the Premises in the absence of willful, wanton, or reckless conduct.

**iv. Acts Beyond the Grantor's Control.**



Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from 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. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

**c. GRANTEE'S RIGHT OF ENTRY ONTO THE PREMISES:**

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

The Grantor grants to the Grantee and designees of the Grantee, the right to erect and maintain a kiosk off of Pine Plain Road, together with trail signs consistent with other trail signage in Boxford.

**d. PUBLIC ACCESS:**

Subject to the provisions of this Conservation Restriction, the Grantor hereby grants to the Grantee and the general public the right to enter upon a portion of the Premises identified as "Public Trail" in Exhibit C, attached hereto, provided that such access shall be limited to daylight hours unless Grantor provides permission for an exception and activities shall be limited to uses described in Paragraph III.b.iii. and confined to the Public Trail. Public access shall be subject to such reasonable rules and regulations as the Grantor or Grantees may establish and post.

**e. EXTINGUISHMENT:**

- i. 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 and the Division. 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 Premises, shall be entitled to a portion of the proceeds in accordance with paragraph IV.e.ii. below, 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.

- ii. Proceeds. Grantor and Grantee agree that the donation 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. The proportionate value of the Grantee's property right will be determined as of the date of termination, release, or extinguishment. 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.
- iii. 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 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 IV.e.ii., 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.

**f. ASSIGNABILITY:**

- i. Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.
- ii. 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 herself and her successors and assigns, appoint the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on her behalf. Without limiting the foregoing, the Grantor and her successors and assigns agree themselves to execute any such instruments upon request.
- iii. 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 Property, 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 General Laws of

Massachusetts. Any assignment will comply with article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

**g. 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 Premises, including a leasehold interest and to notify the Grantee within 20 days 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 Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

**h. ESTOPPEL CERTIFICATES:**

Upon request by the Grantor, the Grantee shall, within sixty (60) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

**i. NON MERGER:**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner 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.

**j. AMENDMENT:**

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General laws of Massachusetts. Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an

amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction and the CMP, shall not affect its perpetual duration, shall be approved in writing by the Secretary of Energy and Environmental Affairs and Division, 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 be recorded in the Southern Essex District Registry of Deeds.

**k. 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 General Laws have been obtained, and it has been recorded in a timely manner in the Southern Essex District Registry of Deeds.

**l. 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 be served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Toll Northeast V Corp.  
116 Flanders Road, Suite 1200  
Westborough, MA 01581

To Grantee: Boxford Conservation Commission  
7A Spofford Road  
Boxford, MA 01921

To 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 shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

**m. GENERAL PROVISIONS:**

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

- iii. 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.
- iv. 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.

**n. MISCELLANEOUS.**

- i. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

- ii. 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 Premises 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 M.G.L. c. 188 10(e).

- iii. The Grantor agrees to subordinate all liens, mortgages, construction loans and home equity lines of credit to this Conservation Restriction.
- iv. The following signature pages are included:

Grantor  
Grantee Acceptance  
Approval by Select Board  
Approval of the Secretary of Energy and Environmental Affairs  
Acknowledgement by the MA Division of Fisheries and Wildlife

- v. Attached hereto and incorporated herein are the following exhibits:  
Exhibit A: Legal Description  
Exhibit B: Proposed Open Space Figure (reduced copy)  
Exhibit C: Conservation Restriction Plan (reduced copy)

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2022,

Toll Northeast V Corp.

\_\_\_\_\_  
David A. Buckley, Authorized Representative

COMMONWEALTH OF MASSACHUSETTS

*Worcester*, ss:

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

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

**ACCEPTANCE OF GRANT BY TOWN OF BOXFORD CONSERVATION COMMISSION**

We, the undersigned, being a majority of the Conservation Commission of the Town of Boxford, Massachusetts, hereby certify that at a public meeting duly held on \_\_\_\_\_, the Conservation Commission voted to approve and accept the foregoing Conservation Restriction from Toll Northeast V Corp. pursuant to M.G.L. Chapter 184 Section 32 and Chapter 40 Section 8(C) and do hereby accept the foregoing Conservation Restriction.

**BOXFORD CONSERVATION COMMISSION:**

\_\_\_\_\_  
David Smallman

\_\_\_\_\_  
Frank DiLuna

\_\_\_\_\_  
Alan Fowler

\_\_\_\_\_  
Natasha Grigg

\_\_\_\_\_  
Kerri Lumus

\_\_\_\_\_  
Greg Kokorda

\_\_\_\_\_  
Doug Hamilton

**COMMONWEALTH OF MASSACHUSETTS**

Essex County, ss:

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

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

**APPROVAL OF SELECT BOARD**

We, the undersigned, being a majority of the Select Board of the Town of Boxford, hereby certify that at a public meeting duly held on \_\_\_\_\_, 2022, the Select Board voted to approve the foregoing Conservation Restriction from Toll Northeast V Corp. to the Town of Boxford, acting by and through the Conservation Commission, pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

SELECT BOARD:

\_\_\_\_\_  
Barbara G. Jessel

\_\_\_\_\_  
Charles J. Costello

\_\_\_\_\_  
Peter C. Perkins

\_\_\_\_\_  
Judith A. Stickney

\_\_\_\_\_  
Margaret Chow-Menzer

**COMMONWEALTH OF MASSACHUSETTS**

Essex County, ss:

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

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



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

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from Toll Northeast V Corp. to the Town of Boxford, acting by and through its Conservation Commission, has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
BETHANY A. CARD  
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned notary public, personally appeared BETHANY A. CARD, 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:

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

This grant of Conservation Restriction set forth above to the Town of Boxford, acting by and through its Conservation Commission, by Toll Northeast V Corp., is acknowledged this \_\_\_\_\_ day of \_\_\_\_\_, 2022. The MA Division of Fisheries and Wildlife (Division) acknowledges the reserved rights and obligations of the Division set forth herein.

\_\_\_\_\_  
Mark S. Tisa, Director

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

**COMMONWEALTH OF MASSACHUSETTS**

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned notary public, personally appeared Mark S. Tisa, proved to me through satisfactory evidence of identification, which was one of the following (check applicable box):  a driver's license;  a valid passport;  personally known to be the person whose name is signed on the preceding or attached document; or  other \_\_\_\_\_, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Director of the Commonwealth of Massachusetts Division of Fisheries and Wildlife.

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

## **EXHIBIT A**

### Legal Description of Premises

That certain land off Willow Road in the Town of Boxford, MA, shown as "Conservation Restriction Area 1" (also shown as "CRA 1") comprising 3,757,270 sq. ft. (86.2551 acres), and "CRA 2" comprising 197,936 sq. ft. (4.5440 acres), on that certain plan entitled: "Amended Conservation Restriction Plan Located in Boxford, Mass. Prepared for Toll Northeast V Corp.," by The Morin-Cameron Group, Inc., dated October 31, 2022, recorded with the Essex (South) Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_.

**EXHIBIT B**

Proposed Open Space Figure dated July 20, 2021 (reduced copy)

**EXHIBIT C**

Conservation Restriction Plan (reduced copy)