

PUBLIC USE OF LAND BANK PROPERTIES

*adopted by vote of the land bank commission: July 23, 2012
amended through: June 8, 2020*

Landscape reflects the lives of the people who live in it. Although the American landscape is thoroughly variegated, three primary elements can be isolated: commerce, personality and respite.

Every town witnesses to the first two. Trade and enterprise have created business districts and transportation networks, while houses and other forms of public art spotlight personality. Respite is to be found in open spaces, most particularly those less tamed conservation reservations that have been set aside in their natural state.

The land bank hews to the idea that commingling these elements dilutes them. As a result, the land bank seeks always to refine the ability of its properties to offer respite. This means that they need to be deaf to the call of commerce. They need to be immune to the thrust of personality. Instead, they are to offer individuals and families the opportunity to experience the outdoors — for nature study, hiking, picnicking, mountain-biking, horseback-riding, dog-walking, hunting, fishing, kayaking, swimming and all of the other types of passive recreation — in personal and/or unpaced ways.

The following Parts 1, 2 and 3, therefore, shall apply to all properties owned by the land bank in fee-simple:

1.0 Permitted uses

The following uses are permitted:

- 1.1 Passive recreation.** The land bank law permits only passive recreation on land bank properties. Examples are cited above. Hikers shall confine themselves to marked trails.
- 1.2 Household-based harvesting.** Low-impact harvesting — such as berrying, sugaring, herb-snipping, seaweed-gathering and the like — is permitted, provided:

- 1.21 that any limitations cited in any particular management plan for any particular property are honored; and
- 1.22 that no use shall be made of any species appearing on any federal or commonwealth list of endangered, rare or “of special concern” species; and
- 1.23 that no mechanized tools are employed; and
- 1.24 that no plants are uprooted or removed.

1.3 Tours. Interested individuals and organizations may lead guided tours on land bank properties, provided:

- 1.31 that the particular land bank properties are open to the general public and have approved management plans; and
- 1.32 that the tourguides comply with the terms of the management plans, particularly the requirement that attendees stay on designated trails; and
- 1.33 that no fee is charged for the tours, although donations — strictly voluntary — may be accepted; and
- 1.34 that the land bank is advised in advance of the particular dates and times of the tours.

2.0 Permitted uses, by advance permission only

The following uses are permitted, subject to land bank commission oversight:

2.1 Farming. No farming shall occur except in accordance with the following:

- 2.11 that the land bank shall maintain all fallow land in such a manner — including but not limited to regular mowing and removal of exotic or invasive species — as to facilitate its future agricultural use;
- 2.12 that the land bank shall, in the case of exemplary farm proposals submitted by qualified prospective lessees, be willing to consider installing, via either contracted or staff labor, livestock or deer fencing and/or agricultural wells, such improvements to be considered public assets;
- 2.13 that, in order to seek out such lessees, the land bank commission shall issue a public request-for-proposals (RFP), in the interests of fair

competition, and shall make notice of the RFP in the local newspapers, “trade” publications both on- and off-island, Martha’s Vineyard Agricultural Society, Island Grown Initiative, and the like; and

2.14 that a rate of \$10 per acre per annum is applied and that no higher figure is entertained, so that the land bank can be certain that it is making its decisions based on the welfare of the land itself rather than any emoluments which may be offered to the institution; and

2.15 that no lease will be issued without prior review by the land bank land superintendent as to:

2.151 the lessee’s plan for the leasehold, specifically:

(i) the intended agricultural use; and

(ii) its soil management protocols (e.g., organic conditioning; pesticide use; composting; minimal disturbance of soil profile; cover crops so as to maintain roots in soil year-round; grazing intensity); and

(iii) the expected rotation of and variation in crops and livestock; and

(iv) the use of natural materials, as opposed to man-made; and

(v) any proposal to convert woodland or shrubland to pasture or cropland; and

(vi) its sensitivity to ecology of surrounding land; and

2.152 the likelihood that the farmer will be skilled enough to realize the proposal as submitted; and

2.153 the probability that the farmer will make serviceable use of the agricultural resource while not overburdening it or impeding public use of its environs; and

2.154 any past use of land bank farmland by that particular farmer.

2.16 that the sample lease attached as Exhibit A is used, as a guideline

subject to modification or waiver by the land bank commission at its discretion but with the following standard features:

- 2.161 expiration after five years but with a renewal clause yielding a total term of nine years; and
- 2.162 regular performance review; and
- 2.163 early termination in circumstances of dereliction; and
- 2.164 payment in cash in full at the time of lease execution, or in kind at the discretion of the land bank land superintendent; and
- 2.165 acknowledgment that the land bank may site trails along the perimeters or in pre-agreed locations for use by the general public; and
- 2.166 acknowledgment that any use of the leasehold by any party other than the lessee requires land bank approval; and
- 2.167 use of sound soil conservation and soil enhancement techniques which will facilitate or allow for future agricultural use; and
- 2.168 a recommendation that the lessee carry appropriate liability insurance, if deemed prudent by lessee as a result of analysis of the risk involved in its proposed farm operation but with the understanding that lack of same gives rise to no liability for the land bank as an institution, as it is protected by its own insurance policies.

2.2 Hunting. No hunting shall occur except in accordance with land bank policy, separately adopted.

2.3 Firewood-gathering. No firewood shall be removed except as part of an organized community-woodlot program overseen by the foreman or his designee.

2.4 All other harvesting. No other harvesting shall occur except in accordance with the following:

- 2.41 that the land bank commission shall first issue a public request-for-proposals so as to allow for fair competition; and
- 2.42 that use of a product by the land bank itself — e.g., log harvesting for boardwalks, seed harvesting for field restoration — shall take precedence over use by anyone else; and
- 2.43 that no use shall be made of any species appearing on any federal or commonwealth list of endangered, rare or “of special concern” species; and
- 2.44 that priority will be given to those individuals/companies who:
 - 2.441 outline specifically how the product will be used, including a timetable so that the land bank can be certain that it will not go to waste; and
 - 2.442 have a demonstrated record in successfully using the particular product; and
 - 2.443 will use the product on Martha’s Vineyard; and
 - 2.444 will return a portion of the harvest to the land bank “in kind;” and
- 2.45 that a license for such activity is issued by the land bank commission, such license possibly to include conditions such as:
 - 2.451 one harvesting per site in any one season; and/or
 - 2.452 harvestings on alternate years only, or less frequently, so as to assure the replenishment of the source site.

2.5 Extraction and collection. No plants, animals, minerals or artifacts shall be extracted or collected except in accordance with the following:

- 2.51 that a license for such activity is issued by the land bank commission, such license to include conditions such as:
 - 2.511 adherence to the land bank ecologist’s protocol as regards item(s) sought, property, method and the like; and
 - 2.512 extraction or collection to occur exclusively under the

direct and on-site supervision of the ecologist; or

2.513 extraction or collection to be undertaken solely by the ecologist, with specimens then delivered to the requesting party.

2.6 Release of species. No species shall be released on any land bank property without prior land bank consent.

2.7 Private inurements. Betterments requested or sought to be exercised by private parties on land bank property in the absence of pre-existing legal rights — e.g., vegetation trimming; trail siting; crossing of land bank land by personal vehicles — shall not be permitted unless such betterments are (i) temporary; and (ii) *de minimus* in nature and scale; and (iii) pose no lasting impact to any resource; (iv) constitute extraordinary circumstances; and (v) are part of a proffered exchange of such conservation benefit that its public magnitude offsets the short-term private benefit (its being stipulated that the offering of cash is not a conservation benefit).

3.0 Prohibited uses

The following uses are prohibited:

3.1 Active recreation. The land bank law prohibits the use of land bank properties for active recreation. Active recreation refers to any activity in which [a] structures of some nature are required and [b] participants conduct themselves according to rules or some sort of organization. Examples of active recreation are baseball, frisbee golf, geocaching, motocross riding, soccer, tennis and the like.

3.2 Commercial Uses. All commercial uses, excepting those permitted in Part 2, are prohibited, whether the cash is exchanged on- or off-premises.

3.3 Nuisances. Recreational sound- or vibration-generating uses — such as unmanned aircraft (e.g., drones) or music-amplification devices — are prohibited.

3.4 Artistic exhibitions and other venue-based events. No land bank property shall be used as a venue for film-making; performance art; the display of sculpture or paintings or graphics of any nature; wedding ceremonies; and the like.

Exhibit A

F A R M L A N D L E A S E

date: _____

1. Parties. The MARTHA'S VINEYARD LAND BANK COMMISSION of Post Office Box 2057, Edgartown, Massachusetts 02539 ("OWNER") does hereby Lease to _____ of Post Office Box _____, _____, Massachusetts _____ ("LESSEE", which expression shall not include any successors, executors, administrators or assigns), a portion of the following described property: _____, Dukes County, Massachusetts.
2. Leasehold. The Leasehold comprises a portion of the property conveyed to the OWNER by deed recorded in the Dukes County registry of deeds on _____ in book _____ page _____ (the "Premises"), such portion appearing on the attached Exhibit "Q" as "_____" (the "Leasehold"), containing _____ acres.
3. Term. The term of this Lease shall be from _____ to _____, unless sooner terminated or extended in accordance herewith.
4. Rent. The LESSEE shall pay to the OWNER \$____.00 (_____ dollars and zero cents) for each calendar year or portion thereof that this Lease is in effect, payable in full for the full term at the time of Lease execution. LESSEE may, at the sole discretion of the OWNER's land superintendent, make such payment in kind rather than in cash.
5. Use of Leasehold. The LESSEE shall use the Leasehold solely for _____. [The number and type of livestock shall be subject to the approval of the OWNER's land superintendent, in his sole discretion, and such approval need not be in writing; in no event shall horses be permitted on the Leasehold.] LESSEE shall be entitled to use, install and employ equipment necessary to this purpose and shall also be entitled to park on the Leasehold at any one time, in addition to any farm equipment, one (1) vehicle for personal use [plus two (2) additional vehicles for employees], such parking of vehicles to occur only when LESSEE and/or LESSEE's employees are working on the Leasehold. Any goods, equipment or personal property stored or otherwise maintained by LESSEE at the Premises shall be kept there at LESSEE's sole risk.

No other activity, including but not limited to retail activity, shall be permitted on the Leasehold without the express written consent of the OWNER.

It is understood by LESSEE that trails exist or will exist on the Premises near the Leasehold which are or will be used by the OWNER and its guests and invitees for passive recreational purposes and that these guests and invitees shall have the

right to walk on such paths and otherwise use such paths for such passive recreational activities (which include pet exercise) as the OWNER shall, in its sole discretion, determine. The LESSEE acknowledges that the OWNER shall not patrol the Premises or Leasehold. [The LESSEE covenants and agrees that the Leasehold, or such portion as LESSEE is using at any one time, will be fenced in such a secure manner as to assure OWNER that its guests and invitees can bring their pets on the paths without concern that these pets might annoy or harass the livestock.]

The LESSEE shall not be liable for damages incurred by OWNER in connection with or arising out of use by OWNER or its guests or invitees of such paths on the Premises unless such damage is caused by LESSEE's omission, fault, neglect or other misconduct. Conversely, the OWNER shall not be liable for damages incurred by the LESSEE in connection with or arising out of use of paths located on the Premises including, but not limited to, harm to livestock and crops.

Without limiting the generality of any other provisions of this Lease, LESSEE shall not make or permit any use of the Leasehold which shall be unlawful, improper or contrary to any applicable federal or commonwealth law or municipal ordinance (including, without limitation, all zoning, building, land bank or sanitary statutes, codes, rules, regulations or ordinances) or the OWNER's management plan for the Premises, as it may be amended from time to time, and which is available for inspection at the OWNER's office. In addition, LESSEE shall not make or suffer offensive use of the Leasehold, nor permit uses not contemplated by this Lease, nor create any substantial interference with rights, safety or enjoyment of the public, or occupants of any adjacent property, nor make any use whatsoever thereof other than as expressly stated herein.

6. Utilities. [LESSEE acknowledges and agrees that the type and amount of utilities currently serving the Leasehold are sufficient for LESSEE's purposes and that if LESSEE desires additional utilities servicing the Leasehold in the future LESSEE shall obtain said additional utilities at its sole cost and expense, subject to the prior written approval of the OWNER's land superintendent.] LESSEE shall promptly pay all bills for any such utilities, including any repair and/or activation fees.
7. Alterations/Additions. The LESSEE may, at LESSEE's expense, erect fencing, gates and impermanent structures on the Leasehold provided that in each instance it has received in advance and in writing the approval of the OWNER's land superintendent as to siting, style, quality, composition and the like. It is understood and agreed that any improvements made to the Leasehold by LESSEE and any goods or other property owned or otherwise possessed by LESSEE and stored or otherwise maintained by LESSEE at the Leasehold shall be erected and kept there at LESSEE's sole risk and without any liability whatsoever on the part of the OWNER for any loss or damage thereto.

8. Annual Review. On December 1, _____, and on each consecutive December 1 during the term hereof, the OWNER shall conduct a review of the LESSEE's use of the Leasehold as permitted under the terms of this Lease, to determine whether the public interest is served by this Lease, and whether the LESSEE's use of the Leasehold under the terms of this Lease is compatible with the goals and objectives of the OWNER (each, an "Annual Review"). If, as the result of any Annual Review, the OWNER determines, in its sole discretion, that the public interest is not served by the LESSEE's use of the Leasehold under the terms of this Lease, or that the LESSEE's use of the Leasehold is not compatible with the goals and objectives of the OWNER, then the OWNER may unilaterally terminate this Lease, upon thirty (30) days' written notice to the LESSEE.

If OWNER has been satisfied with LESSEE's performance under this Lease during this period and if OWNER and LESSEE so desire, OWNER shall renew this Lease, under the same terms and conditions, for a period from _____ to _____. Such renewal shall be memorialized in writing by OWNER, with LESSEE to sign the renewal in acknowledgment of same.

9. Maintenance of the Leasehold. The LESSEE agrees to maintain the Leasehold in a condition which is in accordance with sound agricultural, soil conservation and soil enhancement techniques and which will facilitate or allow for further agricultural use. Care and preparation of the Leasehold for the intended agricultural use shall be the sole responsibility of the LESSEE.

The LESSEE shall maintain and keep all fences and other improvements located on the Premises in as good order, repair and condition as the same are at the commencement of the term, reasonable wear and tear or damage by fire or other unavoidable casualty excepted. LESSEE shall keep all fencing, no matter where located on the Leasehold, clear of all vegetation at all times and shall accomplish same without use of any chemical treatments.

The LESSEE shall prevent the conversion to shrubland or woodland of any and all grassy areas, through regular grazing or mowing or both.

The LESSEE shall not permit the Leasehold to be overloaded, damaged, stripped nor to suffer any waste. The LESSEE covenants, with respect to the public use of the Premises, that LESSEE shall operate its equipment and conduct its activities so as not to endanger public safety. Specifically, equipment shall, whenever possible, be housed or removed from the Leasehold when not in immediate use. The LESSEE further agrees that the use of heavy equipment will be confined as much as possible to existing farm roads, so as to avoid soil compaction. The OWNER shall have the right to disapprove any use of the Leasehold which is not compatible with existing or planned passive recreational use of the Premises by the public.

10. Assignment/Subleasing. The LESSEE may assign or sublet the whole or any part of the Leasehold, or allow third-party use thereof, but only with the OWNER's prior written consent. In the event that the LESSEE desires to do so, LESSEE will provide written notice to the OWNER. Upon receipt of such notice, the OWNER shall, within thirty (30) days, consent or disapprove of same.
11. Indemnification and Liability. The LESSEE agrees to defend, indemnify and save the OWNER harmless from any and all liability, loss, injury, claim or damage to or of any person or property arising out of the LESSEE's use of the Leasehold, unless caused by the fault or negligence of the OWNER or its agents; indemnify and save the OWNER harmless from all injury, loss, claim or damages, including reasonable attorneys' fees, to or of any person or property anywhere occasioned by any omission, fault or neglect or other misconduct of LESSEE, or acting expressly or impliedly at LESSEE's direction, or occasioned by virtue of LESSEE's activity at the Leasehold.
12. Default. In the event that the LESSEE shall default in the payment of any installation of rent, or the LESSEE shall default in the observance or performance of any other of the LESSEE's covenants, agreements or obligations hereunder, and such default shall not be corrected within thirty (30) days after written notice thereof, the OWNER shall have the right thereafter, while the default continues, to reenter and take complete possession of the Leasehold, to declare the term of this Lease to be ended and to remove the LESSEE's personal property, without prejudice to any remedies which might otherwise be used for arrears of rent or other default. The LESSEE shall indemnify the OWNER against all loss of rent which the OWNER may incur by reason of such termination during the residue of the term.
13. Notice. Any notice from the OWNER to the LESSEE relating to the Leasehold or to the occupancy thereof shall be deemed to have been duly served if mailed to _____, Post Office Box _____, _____, Massachusetts _____ by registered or certified mail, return receipt requested, postage prepaid, addressed to the LESSEE. Any notice from the LESSEE to the OWNER relating to the Leasehold or to the occupancy thereof shall be deemed to have been duly served if mailed to Post Office Box 2057, Edgartown, Massachusetts 02539 by registered or certified mail, return receipt requested, postage prepaid, addressed to the OWNER.
14. Surrender. The LESSEE shall, at the expiration or other termination of the Lease, remove all LESSEE's personal property, including all signs affixed by the LESSEE, and all alterations and additions, and all rubbish, and shall deliver to the OWNER the Leasehold in the same condition as it was prior to the term hereof, all soil conditioning excepted, unless by earlier written agreement the parties have agreed that any such alterations have become the property of the OWNER. The LESSEE shall deliver to the OWNER all locks and keys thereto. The LESSEE shall, under

the sole direction and at the sole discretion of the OWNER's land superintendent, seed and condition the Leasehold in order to assure that all portions thereof are in an acceptable natural condition. In the event of LESSEE's failure to remove any of LESSEE's property from the Leasehold, the OWNER is hereby authorized, without liability to the LESSEE for loss or damage thereto, and at the sole risk of the LESSEE, to remove and store any of the property at the LESSEE's expense, or to retain same under the OWNER's control or to sell at public or private sale, without notice, any of the property not so removed, and to apply the net proceeds of such sale to the payment of any sum due hereunder, or to destroy such property.

- 15. Insurance. The OWNER recommends that the LESSEE maintain, with respect to the Leasehold, comprehensive public liability insurance, worker's liability insurance (if necessary) and personal property damage insurance insuring the LESSEE. The OWNER shall have no obligation to procure and maintain such insurance on behalf of the LESSEE.
- 16. Option to Terminate. It is understood and agreed to by the parties that either party shall have the option to terminate this Lease on six (6) months' written notice to the other party, with or without cause.
- 17. General Provisions. This Lease contains the entire agreement of the parties hereto concerning the subject matter hereof and supersedes all other agreements between the parties hereto, whether written or oral. This Lease may only be amended by written instrument executed by both parties hereto. This Lease shall be governed by and construed in accordance with the laws of the commonwealth of Massachusetts (without reference to choice of law provisions).

IN WITNESS WHEREOF, the OWNER and LESSEE have hereunto set their hands and seals this ____ day of _____, ____.

(LESSEE)

MARTHA'S VINEYARD LAND BANK COMMISSION (OWNER)
by: