

81

PRESERVATION RESTRICTION AGREEMENT

between

THE TOWN OF CONCORD

and

THE THOREAU FARM TRUST, INC.



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THIS PRESERVATION RESTRICTION is made this 30th day of June, 2008, by and between **THE THOREAU FARM TRUST, INC.**, a nonprofit Massachusetts corporation maintaining its place of business at P.O. Box 454, Concord, Massachusetts 01742 ("Grantor") and **THE TOWN OF CONCORD**, a municipality of the Commonwealth of Massachusetts acting by and through its Board of Selectmen (the "Town").

WITNESSETH:

WHEREAS, Grantor is owner in fee simple of a certain parcel of real property located at 341 Virginia Road in the Town of Concord, Middlesex County, Massachusetts (hereinafter referred to as the "Premises"), and described in Exhibit A attached hereto and incorporated herein, as well as on a deed dated November 21, 2007 (book 50376, volume 333, page 209232) from the Town to the Grantor recorded with the Middlesex South District Registry of Deeds on the date hereof (the "Deed"), said Premises including one building known both as the Wheeler/Minot Farmhouse and the Henry David Thoreau Birth House (hereinafter the "Building");

WHEREAS, the Building and Premises were listed on the National Register of Historic Places on March 19, 2004;

WHEREAS, the Town is interested in the preservation and conservation of sites, buildings, and objects of local, state and national significance in the Town and is authorized to accept and hold preservation restrictions as defined under the Massachusetts General Laws, Chapter 184, Section 31, 32 and 33 (the "Act");

WHEREAS, the Town has provided the Grantor with a grant of monies under the Community Preservation Act, G.L. c. 44B, §§ 1-17 for the restoration /rehabilitation of the Building;

WHEREAS, the Building's preservation values are documented in reports, drawings and photography (the "Baseline Documentation") incorporated herein by reference, which Baseline Documentation the parties agree provides an accurate representation of the Premises as of the date of this grant;

WHEREAS, the Baseline Documentation shall consist of the following documents attached hereto as Exhibit B:

- *National Register of Historic Places, Nomination Form* for Wheeler/Minot Farmhouse prepared by Anne McCarthy Forbes, 2004;
- Grantor's *Application for CPA Funding* submitted to the Town on September 29, 2006.

WHEREAS, the Baseline Documentation shall consist of the following document as incorporated by reference and on file with Grantor and Grantee;

- *Historic Structure Report and Master Plan / Henry David Thoreau Birth House* prepared for Grantor by Lawrence A. Sorli and William B. Finch, August 2006 (the "Master Plan").

WHEREAS, Grantor desires to grant to the Town, and the Town desires to accept, a preservation restriction on the Premises;

NOW, THEREFORE, for adequate consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby irrevocably grant and convey unto the Town this preservation restriction (hereinafter "the Restriction"), which shall apply in perpetuity to the Premises.

1. Purpose: It is the purpose of this Restriction to protect the public investment in the restoration /rehabilitation of the historically, architecturally and culturally significant Building by ensuring that the exterior and interior architectural, historic, and cultural features of the Building will be retained and maintained forever substantially in their restored and rehabilitated condition for preservation purposes, and to prevent any use or change to the interior and exterior of the Building that will significantly impair or interfere with the Building's preservation values.

2.1 Grantor's Covenants: Covenant to Maintain. Grantor agrees at all times to maintain the Building in sound structural condition and good state of repair in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings* (36 C.F.R. 67 and 68), as these may be amended from time to time (hereinafter the "Secretary's Standards").

The Town does not assume any obligation for maintaining, repairing or administering the Premises. Grantor's obligation to maintain shall also require that the landscaping at the Premises be maintained in good appearance and of a character that is consistent with a rural agricultural setting.

2.2 Grantor's Covenants: Prohibited Activities. The following acts or uses are expressly forbidden on, over, or under the Premises, except as otherwise conditioned in this paragraph:

(a) the Building shall not be moved, demolished, removed or razed except as provided in paragraphs 7 and 8;

(b) nothing shall be erected or allowed to grow on the Premises which would impair the visibility from street level of the Building;

(c) no other buildings or structures, including satellite receiving dishes, camping accommodations or mobile homes, shall be erected or placed on the Premises hereafter except for a barn, not to exceed 40 feet by 60 feet in size and 35 feet in height (unless a historic barn is erected or used on the site, in which case the Town Manager shall be entitled to waive the size limitations), and temporary structures required for the maintenance or rehabilitation of the Premises;

(d) the dumping of ashes, trash, rubbish or any other unsightly or offensive materials is prohibited on the Premises;

(e) the Premises shall not be divided or subdivided in law or in fact and shall not be devised or conveyed except as a unit;

(f) no above-ground utility transmission lines, except those reasonably necessary for the existing Building, may be created on the Premises, subject to utility easements already recorded;

(g) subject to the maintenance covenants of paragraph 2.1 hereof, the following features shall be preserved in accordance with a building treatment philosophy developed with the help of the Massachusetts Historical Commission ("MHC") and following the guidelines of the Secretary's Standards:

1. The stone foundation;
2. The second-floor window opening on the west side of the house;
3. The 18th-century woodwork, finishes, and plaster ceiling in the central entrance lobby;
4. The 18-century flooring, baseboards, historic beam, post casings, and two doors in the east chamber, Thoreau's birth room;
5. All 18th-century flooring, woodwork, casings, trim, paneling, and doors in other interior rooms;
6. Selected 19th and 20th-century elements (including plaster in attic stairway) that will be interpreted as later renovations, where definitive 18th-century elements are missing.

The MHC has recommended that no restoration of the exterior should be made that contains architectural elements that were not in place in 1878, the year the house was moved to its present location. Based on the Secretary's Standards and the *Historic Structure Report and Master Plan/Henry David Thoreau Birth House* prepared for Grantor by Lawrence A. Sorli and William B. Finch, August 2006, the elements listed above have been identified as elements of the existing structure that must be preserved and restored. In addition to these, other 18th-century elements may be identified for preservation during the restoration/rehabilitation process and shall be identified and documented in a report that shall be submitted by Grantor to the Town of Concord Planning Department.

2.3 Grantor's Covenant's: Completion of Rehabilitation and Restoration. Grantor agrees that it shall complete the initial rehabilitation and restoration of the Building according to the plans identified as "Proposed Treatment" in the Master Plan, as such plans are modified and amended from time to time, within three (3) years after the date hereof. The foregoing time period may be extended due to delays caused by force majeure and other circumstances beyond Grantor's reasonable control. In the event any requirements imposed by any governmental authority change the scope of the initial rehabilitation and restoration obligation, the foregoing time period shall be extended for as long as is reasonably required to complete such work.

3.1 Conditional Rights Requiring Approval by Town. Grantor shall not undertake any of the following actions without prior express written approval of the Town, which approval may be withheld or conditioned in the sole discretion of the Town:

(a) increase or decrease the height of, make additions to, change the exterior construction materials of, or move, improve, alter, reconstruct or change the facades (including fenestration and trim), roofs, foundations and chimneys of the restored and rehabilitated Building. Notwithstanding the foregoing, alterations listed as "Minor" in the Restriction Guidelines attached hereto as Exhibit C are considered part of ordinary maintenance and repair, and may be made to the Building and Premises without the Town's approval.

(b) change the floor plan of the Building;

(c) erect any external signs or external advertisements except: (i) a sign stating solely the address of the Premises and (ii) a temporary sign to advertise the sale or rental of the Premises;

(d) make permanent topographical changes, such as excavation for the construction of roads and recreational facilities; or

(e) materially change the use of the Premises. The Town may consider any request for a material change in the use of the Premises in light of existing planning and zoning regulations, and in order to approve such change the Town must determine that the proposed use (i) does not impair the significant conservation and preservation values of

the Premises; and (ii) does not conflict with the purpose of this Restriction as set forth in paragraph 1.

3.2 Review of the Grantor's Request for Approval. Should Grantor wish to exercise the conditional rights set out or referred to in paragraph 3.1, Grantor shall submit to Town, for Town's approval, five copies of information (including plans, specifications and designs where appropriate,) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to Town a timetable for the proposed activity sufficient to permit Town to monitor such activity. Within sixty (60) days of Town's actual receipt of any plan or written request for approval hereunder, Town shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted in which case Town shall provide Grantors with written suggestions for modification or a written explanation for Town's disapproval. Any failure by Town to act within 60 days of actual receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by Town of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted; provided, however, that Grantor shall also comply with any other Town regulatory or permitting process that may apply.

3.3 Conditional Rights Requiring Approval of the Massachusetts Historical Commission. The conduct of archeological activities, including without limitation survey, excavation and artifact retrieval, may occur only following the submission of an archeological field investigation plan prepared by the Grantor and approved in writing by the State Archeologist of the Massachusetts Historical Commission (M.G.L. Chap. 9, Section 27C, 950 CMR 70.00).

4. Standards for Review. Town shall apply the Secretary's Standards whenever (a) exercising any authority created by the Restriction to inspect the interior and exterior of the Building (b) reviewing any construction, alteration, repair or maintenance; (c) reviewing casualty damage or (d) reconstructing or approving reconstruction of the Building following casualty damage.

5. Public Access. Grantor shall make the Premises and the interior of the Building accessible to the public (who otherwise have no legal ownership or use rights with respect to the Premises) on a minimum of 12 days per year. At other times deemed reasonable by the Grantor, persons affiliated with educational organizations, professional architectural associations and historical societies shall be admitted to study the Premises and Building.

6. Grantor's Rights Not Requiring Further Approval by Town. Subject to the provision of paragraphs 2.1, 2.2 and 3.1, this Restriction does not prohibit, and does not require the Town's approval of, the following rights, uses, and activities of or by Grantor on, over, or under the Premises, without limitation:

(a) the right to engage in all those activities and uses that:

(i) are permitted by governmental statute, bylaw or regulation; and

- (ii) are not inconsistent with the purpose of this Restriction;
- (b) subject to the provisions of paragraph 2.1, the right to maintain and repair the Building in accordance with the Secretary's Standards;
- (c) subject to the provisions protecting interior features of paragraph 2.2(g) and the provisions of paragraph 3.1(b), the right to make changes to the interior of the Building that do not compromise the structural integrity of the Building and do not affect the characteristics that contribute to the architectural, archeological, or historical integrity of the Building's interior;
- (d) the right to continue all manner of existing residential use and enjoyment of the Premises, including but not limited to the maintenance, repair and restoration of existing fences; the right to maintain existing driveways, roads and paths with the use of same or similar surface materials; the right to maintain existing utility lines, gardening and Building walkways, steps and garden fences; the right to cut, remove and clear grass and other vegetation and to perform routine maintenance, landscaping, horticultural activities and upkeep, consistent with the purpose of this Restriction as set forth paragraph 1; and
- (e) the right to conduct at or on the Premises educational and non-profit activities that are not inconsistent with the protection of the conservation and preservation values of the Premises.

7. Casualty Damage or Destruction. In the event that the Building or any part thereof shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Grantor shall notify Town in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has been completed. No repairs or reconstruction of any type other than temporary emergency work to prevent further damage to the Building and to protect public safety shall be undertaken by Grantor without Town's prior written approval of the work. Within thirty (30) days of the date of damage or destruction, if required by Town, Grantor at Grantor's expense shall submit to the Town a written report prepared by a qualified restoration architect and an engineer who are acceptable to the Grantor and Town, which report shall include the following:

- (a) an assessment of the nature and extent of the damage to the Building;
- (b) a determination of the feasibility of the restoration of the Building and/or reconstruction of damaged or destroyed portions of the exterior of the Building; and
- (c) a report of such restoration and/or reconstruction work necessary to return the Building to the condition existing at the date hereof, or if improvements have

been made to the condition existing at the time of completion of said improvements.

8. Review after Casualty Damage or Destruction. If, after reviewing the report provided in paragraph 7 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Town agree that the purpose of the Restriction will be served by such restoration/reconstruction, Grantor and Town shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Building in accordance with plans and specifications consented to by the parties to at least the total of the casualty insurance proceeds available to the Grantor.

If, after reviewing the report and assessing the availability of the insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Town agree that restoration/reconstruction of the Building is impractical or impossible, or agree that the purpose of the Restriction would not be served by such restoration/reconstruction, Grantor may with prior written consent of Town, alter, demolish, remove or raze the Building and/or construct new improvements on the Premises, and Grantor and the Town may agree to extinguish this Agreement in accordance with the requirements of the Act for extinguishment and with the laws of the Commonwealth of Massachusetts and paragraph 22 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Town are unable to agree that the purpose of the Restriction will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration.

9. Insurance. Grantor shall keep the Building insured by an insurance company rated "A1" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Building without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to Town, within ten (10) business days of Town's written request therefore, certificates of such insurance coverage. Provided, however, that whenever the Premises is encumbered with a mortgage or deed of trust nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

10. Indemnification. Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, the Town and its agents, directors, employees and independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses and expenditures (including reasonable attorneys' fees) arising out

of or in connection with injury to or death of any person related to the use of the Premises; physical damage to the Premises; the release in, on or about the Premises of any substance now or hereafter defined, listed or otherwise classified pursuant to any law, ordinance or regulation as a hazardous or toxic substance, except for those substances that are present on the Premises at the time of Grantor's acquisition thereof; or other injury or other damage occurring on or about the Premises, unless such injury or damage is caused by the Town or any agent, trustee, employee or contractor thereof. In the event that Grantor is required to indemnify the Town pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Premises; provided, however, that nothing contained herein shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Premises.

11. Written Notice. Any notice which either Grantor or Town may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods: by overnight courier postage prepaid, registered or certified mail with return receipt requested, or hand delivery:

To Grantor:

Thoreau Farm Trust
Post Office Box 454
Concord, MA 01742

To Town:

Town Manager
Town of Concord
Town House
22 Monument Square
P.O. Box 535
Concord, MA 01742

With a copy to:

William Lahey, Esq.
Anderson & Kreiger LLP
One Canal Park, Suite 200
Cambridge, MA 02141

Each party may change its address set forth herein by a notice to such effect to the other party given pursuant hereto.

12. Evidence of Compliance. Upon request by Grantor, the Town shall promptly furnish Grantor with certification that, to the best of the Town's knowledge, Grantor is in compliance with the obligations of Grantor contained herein, or that otherwise evidences the status of this Restriction to the extent of the Town's knowledge thereof.

13. Inspection. Town shall be permitted at reasonable times to inspect the Premises to determine whether the Grantor is in compliance with the terms of this Restriction. Grantor covenants to cooperate in good faith in determining dates and times for such inspections.

14. Town's Remedies. Town may, following reasonable written notice to Grantor, institute suit(s) to enjoin any violation of the terms of this Restriction by ex parte, temporary, preliminary and or permanent injunction, including prohibitory and/or mandatory injunctive relief and to require the restoration of the exterior of the Building to the condition and appearance required under this Preservation Restriction Agreement. The Town shall also have available all legal and other equitable remedies to enforce Grantor's obligations hereunder. In the event any civil action is commenced and Grantor is found to have violated any of Grantor's obligations, Grantor shall reimburse the Town for any costs or expenses incurred in connection with the Town's enforcement of the terms of this Restriction, including all reasonable court costs, and attorney's, architectural, engineering and expert witness fees.

15. Runs with the Land.

(a) This Restriction and all of the covenants, agreements and restrictions contained herein shall be deemed to be a preservation restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c. 184, §§ 26, 31, 32 and 33. The Grantor shall use its best efforts to obtain any government approvals necessary for the perpetual enforcement of this Restriction, including but not limited to the approval of the Massachusetts Historic Commission ("MHC") as provided under G.L. c. 184, § 32. In the event that the Restriction in its current form is not acceptable to the MHC for purposes of said approval, the Grantor and the Town shall cooperate and use good faith efforts to make any and all technical (non-substantive) or mutually acceptable modifications that are necessary to obtain said approval. This Restriction shall also be deemed an "other restriction held by any governmental body" as that term is used under G.L. c. 184, § 26 and a restriction gifted for public purposes under G.L. c. 184, § 23 notwithstanding MHC approval or disapproval of this Restriction. The term of this Restriction shall be perpetual, subject to the provisions of paragraphs 8 and 22.

(b) The Grantor intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Restriction and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Premises for the term of this Restriction, and are binding upon the Grantor's successors in title, (ii) are not merely personal covenants of the Grantor, and (iii) shall bind the Grantor, its successors and assigns and inure to the benefit of the Town and its successors and assigns for the term of the Restriction.

16. Title; Authority. The Grantor hereby represents, covenants and warrants as follows:

- (a) The Grantor (i) is a non-profit corporation duly organized under the laws of the Commonwealth of Massachusetts, and is qualified to transact business under the laws of this State, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Restriction.

- (b) The execution and performance of this Restriction by the Grantor (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Grantor is a party or by which it or the Premises is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Grantor will, at the time of execution and delivery of this Restriction, have good and marketable title to the premises constituting the Project free and clear of any monetary lien or encumbrance. The Grantor represents and warrants that it has obtained the consent of all existing mortgagees of the Premises to the execution and recording of this Restriction and to the terms and conditions hereof, and the subordination of all existing mortgages to this Restriction, and that all such consents and subordinations are attached hereto and made a part hereof.

17. Assignment. The Town may, at its discretion without prior notice to Grantor, convey, assign or transfer this Restriction to a unit of federal, state or local government or to a similar local, state or national organization that is a charitable corporation or trust qualified to hold preservation restrictions under the Act, whose purposes, inter alia, are to promote preservation or conservation of historical, cultural or architectural resources, provided that any such conveyance, assignment or transfer requires that the Purpose for which the Restriction was granted will continue to be carried out.

18. Recording and Effective Date. Grantor shall do and perform at its own cost all acts necessary to the prompt recording of this Restriction in the land records of Middlesex County, Massachusetts. Grantor and the Town intend that the restrictions arising under this Restriction shall take effect on the day and year this instrument is recorded in the land records at Middlesex South Registry of Deeds, Cambridge, Massachusetts. In the interest of time, the Town and Grantor will diligently seek MHC approval of this Restriction after the initial recording of this document, and Grantor shall do and perform at its own cost all acts necessary for the recording of the version of this Restriction, with amendments as provided above, that may be so approved. Grantor hereby warrants and represents to the Town that, except as disclosed in the Deed, as of the date of the recording hereof, there shall be no liens or other encumbrances on the Premises that shall have priority over this document; Grantor shall reaffirm this warranty and representation upon the recording of any subsequent version of this Restriction as provided above.

19. Interpretation. Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of property shall not apply in the construction or interpretation of this Restriction, and this instrument shall be interpreted broadly to effect its purpose and the transfer of rights and the restrictions on use herein contained.

20. Severability. In case any section, paragraph or part of this Restriction shall be for any reason declared invalid by any court, every other section, paragraph and part shall continue in full force and effect.

21. Amendment. If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, Grantor and Town may by mutual written agreement jointly amend this Restriction, provided that no amendment shall be made that will adversely affect the qualification of this Restriction, the validity of this Restriction under the Act or the status of the Town under any applicable law. Any such amendment shall be consistent with the protection values of the Building and the purpose of this Restriction; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, cultural and historic values protected by this Restriction. Nothing in this paragraph shall require Grantor or Town to agree to any amendment or negotiate regarding any amendment.

22. Extinguishment.

(a) Grantor and the Town acknowledge that as of the date of this Agreement each party is vested with real property interests in the Premises and that each such interest represents a percentage interest of the full fair market value of the Premises. Said percentage interests are equal to the ratio of the value of the Restriction on the date of this grant to the value of the Premises, without deduction for the value of this Restriction, on the date hereof, which Grantor and the Town agree shall equal: (i) 77.8%, representing the percentage value of the Grantor's real property interests in the Premises (the "Grantor's Share"); and (ii) 22.2%, representing the percentage value of the Town's real property interests in the Premises (the "Town's Share"). For purposes of this Section, the foregoing percentage values shall remain constant.

(b) Grantor and the Town hereby acknowledge that there are certain circumstances that may warrant extinguishment of the Restriction ("Extinguishment"), including, without limitation, partial or total destruction of the Building resulting from casualty. Such an extinguishment must be the result of a judicial proceeding and shall entitle the Town to a share of any Net Proceeds (as hereinafter defined) resulting from the extinguishment. "Net Proceeds" shall mean (i) net insurance proceeds resulting from a total or partial casualty loss to the Building that results in Extinguishment; and (ii) net proceeds from the first subsequent sale, exchange or involuntary conversion by Grantor of all or any portion of the Premises following Extinguishment. Upon the realization of any Net Proceeds following an Extinguishment, the Town shall be entitled to the Town's Share of the Net Proceeds, and the Grantor shall be entitled to the Grantor's Share of the Net Proceeds.

(c) If all or any part of the Property is taken under the power of eminent domain by public, corporate or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and the Town shall cooperate and join in appropriate proceedings at the time of such taking to recover the full value of their respective interests in the Premises that are subject to the taking and all incidental and direct damages resulting from the taking, including legal action if necessary. All expenses reasonably incurred by the parties in connection with such taking shall be paid out of the

recovered proceeds. Grantor and the Town shall be respectively entitled to compensation from the balance of the recovered proceeds for the value of their respective property interests subject to the taking, as determined by the taking authority or by a court of competent jurisdiction. If no such determination is made, the Grantor and the Town shall share in the net recovered proceeds in accordance with the allocation set forth in subparagraph (a) above, provided that the Town shall only be entitled to share in the proceeds if the taking results in a full or partial extinguishment or taking of the Restriction. Notwithstanding the foregoing, however, if the Premises are encumbered by a mortgage or deed of trust at the time of such condemnation, Grantor and the Town shall be entitled to recover for the value of their respective interests in any proceeds; provided, however, that if any sums are required to be paid for the satisfaction of a mortgage or deed of trust secured by the Premises, Grantor's share shall be decreased by the amount of such sum, and if Grantor's share is insufficient to cover the full sum, the Town's share shall be decreased by the remaining amount of such sum.

23. Authority. Grantor hereby warrants and represents to the Town that the individual who is signing this Restriction on behalf of the Grantor has been duly authorized to execute this document and to grant the restrictions set forth herein.

24. Compliance with Law. Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods or use. In the event of any conflict between any such ordinance or regulation and the terms hereof, Grantor shall promptly notify the Town of such conflict and shall co-operate with the Town and applicable governmental entity to accommodate the purposes of both this Restriction and such ordinance or regulation.

25. Notice from Government Authorities. Grantor shall deliver to the Town copies of any notice or violation or lien relating to the Premises received by Grantor from any government authority other than the Town within ten (10) days of receipt by Grantor. Upon request by the Town, Grantor shall promptly furnish the Town with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

26. Notice of Proposed Sale. Grantor shall promptly notify the Town in writing of any proposed sale of the Premises and provide the opportunity for the Town to explain the terms of this Restriction to potential new owners prior to a sale closing.

27. Liens. Any lien on the Premises created pursuant to any paragraph of this Restriction may be confirmed by judgment and foreclosed by the Town.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, on the date shown above, Grantor has caused this Restriction to be executed, sealed and delivered; and the Town has caused this instrument to be accepted, sealed and executed.

Grantor: THE THOREAU FARM TRUST, INC.

Lucille Stott
Lucille Stott, President

Joseph Wheeler
Joseph Wheeler, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this 10th day of July, 2008, before me, the undersigned notary public, personally appeared Lucille Stott, proved to me through satisfactory evidence of identification, which was a Massachusetts Drivers License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purposes.

Notary Public

Jean Elizabeth Ollivier-Labrousse

My Commission Expires: June 7, 2013

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this 10th day of July, 2008, before me, the undersigned notary public, personally appeared Joseph Wheeler, proved to me through satisfactory evidence of identification, which was a Massachusetts Drivers License, 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 purposes.

Notary Public

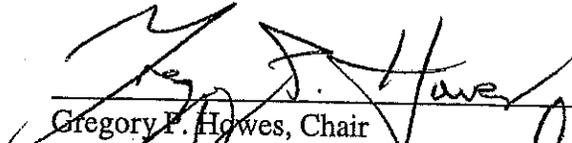
Jean Elizabeth Ollivier-Labrousse

My Commission Expires: June 7, 2013

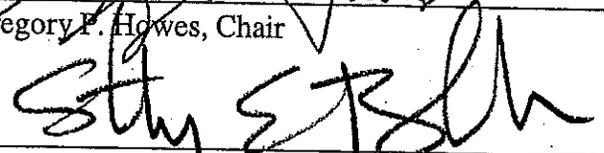
Grantee: CONCORD BOARD OF SELECTMEN

The foregoing Preservation Restriction is hereby approved and accepted by the Board of Selectmen of the Town of Concord this 30 day of JUNE, 2008.

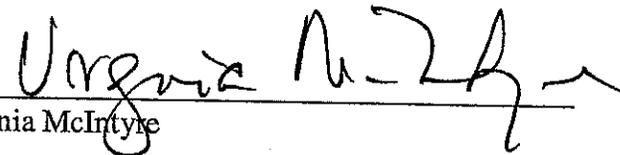
CONCORD BOARD OF SELECTMEN



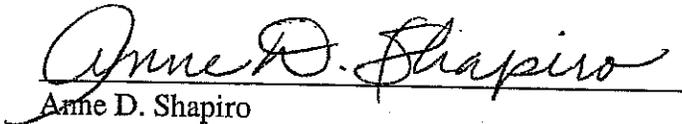
Gregory P. Howes, Chair



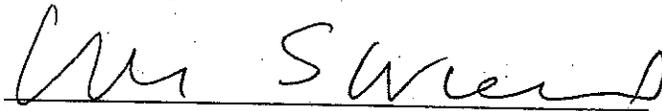
Stanly E. Black, Clerk



Virginia McIntyre



Anne D. Shapiro



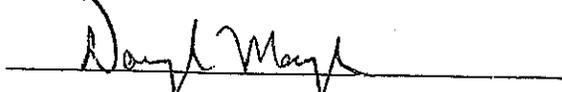
Jeffrey S. Wieand

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

On this 30 day of JUNE, 2008, before me, the undersigned notary public, personally appeared Gregory P. Howes, proved to me through satisfactory evidence of identification, which was a personal knowledge, 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 purposes.

Notary Public



My Commission Expires **DOUGLAS MEAGHER**
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires
April 16, 2015

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this 30 day of JUNE, 2008, before me, the undersigned notary public, personally appeared Stanly E. Black, proved to me through satisfactory evidence of identification, which was personal knowledge, 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 purposes.

Notary Public

Douglas Meagher

My Commission Expires



DOUGLAS MEAGHER
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires
April 16, 2015

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this 30 day of JUNE, 2008, before me, the undersigned notary public, personally appeared Virginia McIntyre, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purposes.

Notary Public

Douglas Meagher

My Commission Expires



DOUGLAS MEAGHER
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires
April 16, 2015

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this 30 day of JUNE, 2008, before me, the undersigned notary public, personally appeared Anne D. Shapiro, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purposes.

Notary Public

Douglas Meagher

My Commission Expires



DOUGLAS MEAGHER
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this 30 day of June, 2008, before me, the undersigned notary public, personally appeared Jeffrey S. Wieand, proved to me through satisfactory evidence of identification, which was personal knowledge, 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 purposes.

Notary Public

Douglas Meagher

My Commission Expires



DOUGLAS MEAGHER
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires
April 16, 2015

MASSACHUSETTS HISTORICAL COMMISSION

Brona Simon

Brona Simon, Executive Director and Clerk

COMMONWEALTH OF MASSACHUSETTS

Sub B 1K, ss

On this 28th day of July, 2008, before me, the undersigned notary public, personally appeared Brona Simon, proved to me through satisfactory evidence of identification, which was a personally known, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purposes.

Notary Public

Nancy Maier

My Commission Expires: January 19, 2012

Exhibit A

PROPERTY DESCRIPTION

That certain parcel of land situated on the northeasterly side of Virginia Road, Concord, Middlesex County, Massachusetts shown as Lot 1-A on a plan entitled "Land in Concord, Mass., Prepared for The Thoreau Farm Trust," dated June, 2006, prepared by David E. Ross Associates, Inc., recorded with Middlesex South Registry of Deeds as Plan No. ___ of 2007, bounded and described according to said plan as follows:

BEGINNING at a point on the northeasterly side of Virginia Road at the southwesterly corner of said Lot 1-A;

THENCE N16°-15'-00"E by Lot 2 on said plan, a distance of 190.00 feet to a point;

THENCE S71°-33'-14"E by Parcel A on said plan, a distance of 38.22 feet to a point;

THENCE N12°-41'-25"E by said Parcel A, a distance of 212.63 feet to a point;

THENCE S75°-28'-27"E by said Lot 2, a distance of 216.26 feet to a point;

THENCE S08°-10'-00"W by said Lot 2, a distance of 418.00 feet to a point on the northeasterly side of Virginia Road;

THENCE N72°-29'-30"W by the northeasterly side of Virginia Road, a distance of 300.00 feet to the point of beginning.

Containing 2.37 acres according to said plan.

Exhibit B

BASELINE DOCUMENTATION

ATTACHED:

- *National Register of Historic Places, Nomination Form* for Wheeler/Minot Farmhouse prepared by Anne McCarthy Forbes, 2004;
- Grantor's *Application for CPA Funding* submitted to the Town on September 29, 2006.

ON FILE WITH GRANTOR AND GRANTEE:

- *Historic Structure Report and Master Plan / Henry David Thoreau Birth House* prepared for Grantor by Lawrence A. Sorli and William B. Finch, August 2006 (the "Master Plan"); and

