

AMENDMENT TO CONSERVATION RESTRICTION

THIS AMENDMENT TO CONSERVATION RESTRICTION (this "**Amendment**"), made as of the 11th day of January, 2018 (the "**Effective Date**") by and among the **TOWN OF WILTON**, a Connecticut municipality with offices at 238 Danbury Road, Wilton, Connecticut 06897 (the "**Town**"), the **WILTON LAND CONSERVATION TRUST**, with a mailing address at P.O. Box 77, Wilton, Connecticut 06897 (the "**Land Trust**"), and **MILLSTONE PROPERTY HOLDINGS LLC**, a Delaware limited liability company with a mailing address at 132 Water Street, 3rd Floor, Norwalk, Connecticut 06854 ("**Millstone**" and, collectively with the Town and the Land Trust, the "**Parties**").

W I T N E S S E T H:

WHEREAS, that certain Conservation Restriction recorded in the land records of the Town at Volume 1272 at Page 237 (the "**Conservation Restriction**") imposes restrictions on the use and development of real property commonly known as 180 Millstone Road, Wilton, Connecticut and more particularly described on **Exhibit A** attached hereto (the "**Protected Property**"); and

WHEREAS, the Town and the Land Trust have an interest in reducing the size of the indoor riding ring described in the Conservation Restriction; and

WHEREAS, the Town and the Land Trust desire to improve or cause to be improved the trails for public access and use, including parking as hereinbelow set forth; and

WHEREAS, it is in the public interest to continue the current farming operation on the Protected Property; and

WHEREAS, the Town views the existing stone walls to be an integral and significant feature of the Protected Property; and

WHEREAS, the Wilton Health Department and Sanitation Department have advised that an acceptable location for a septic system, both in terms of efficiency and potential impacts, is as shown on the attached **Schedule B**; and

WHEREAS, Millstone recently acquired title to the Protected Property and, by way of such acquisition, became successor-in-interest to the owners of the Protected Property at the time the Conservation Restriction was created; and

WHEREAS, Millstone intends to construct a new indoor riding ring facility (the "**Indoor Riding Ring**") and a new barn (the "**Barn**" and, together with the Indoor Riding Ring, the "**Facility**") on the Protected Property in the 8 Acre Reserved Residential Area (as defined in the Conservation Restriction and shown on **Schedule B**, attached hereto); and

WHEREAS, the Conservation Restriction allows for, without limitation, the construction of an indoor riding ring with ground floor gross floor area of up to 26,400 square feet and a barn with ground floor gross floor area of up to 5,000 square feet within the 8 Acre Reserved Residential Area; and

WHEREAS, the Conservation Restriction is susceptible to interpretation as (i) requiring that the septic infrastructure and leach field for the Facility (the "Septic") be located within only certain portions of the Protected Property and (ii) prohibiting the continued existence of those certain Hoop Houses located on the Protected Property, as such Hoop Houses are more particularly defined and described below; and

WHEREAS, in exchange for the Town and the Land Trust agreeing to (i) clarify and memorialize the agreed upon location for the Septic and (ii) expressly permit the continued existence of the Hoop Houses (together the "Septic Clarification and Hoop House Permission"), Millstone is willing to (x) grant additional restrictions upon and effecting the Protected Property (the "Additional Restrictions") and (y) commit to providing additional benefits to the Town and the Land Trust with respect to the Protected Property (the "Additional Benefits"), all as more particularly set forth in this Amendment; and

WHEREAS, Millstone wishes to have the Septic Clarification and Hoop House Permission and the Town and the Land Trust desire to have the Additional Restrictions and Additional Benefits; and

WHEREAS, in order to carry out the wishes and intent of the Parties and in light of certain unusual and unforeseen circumstances and conditions with respect to the Protected Property, the Parties desire to amend the Conservation Restriction as more particularly set forth herein, which amendment shall not result in private inurement or confer any impermissible private benefits; and

WHEREAS, the Parties have mutually determined that the amendments to the Conservation Restriction set forth in this Amendment (i) are consistent with the conservation purpose of the Conservation Restriction, (ii) will not result in a net degradation of the conservation values of the Protected Property, (iii) will not affect the enforceability of the Conservation Restriction, as amended, and (iv) by way of this Amendment, have been accomplished in compliance with any applicable statutes and requirements, including without limitation Section 170(h) of the Internal Revenue Code of 1986, as amended.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto, for themselves, their legal representatives, successors and assigns, hereby agree as follows:

1. Defined Terms and Recitals. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to those terms in the Conservation Restriction. The recitals set forth above are hereby incorporated herein by reference with the same force and effect as if set forth in the body of this Amendment.

2. Additional Restrictions. Notwithstanding anything to the contrary in the Conservation Restriction, the Parties hereby agree and Millstone absolutely and unconditionally hereby grants, bargains, and conveys unto the Town and the Land Trust, and their respective successors and assigns forever, the following additional restrictions upon the Protected Property: (A) the indoor riding ring permitted to be constructed pursuant to the terms of the Conservation Restriction shall (i) only be constructed within the 8 Acre Reserved Residential Area (which is 8.19 acres in size), a depiction of which is included on the Updated Schedule B Map (as defined below) and (ii) have a ground floor gross floor area of no greater than 14,000 square feet; (B) the Facility will only be served by the existing driveway off of Millstone Road and/or, subject to the terms of the Conservation Restriction, any future driveway off of Tito Lane; (C) Millstone will use its best efforts to retain all existing stone walls in their current locations in connection with Millstone's construction of the Facility, whether located in the interior of the Protected Property or along the perimeter; particularly where such stone walls contribute to the scenic value and rural character of the Protected Property; (D) Millstone shall, as part of the Existing Trail Improvement Project (as defined below) or the Updated Trail Improvement Project (as defined below), as the case may be, remove all fences and gates that impede access to the trails described in Section 3 below; and (E) Millstone shall remove the existing "glamping" structure and compost toilet located upon the Protected Property, within thirty (30) days following the date upon which the weather reasonably permits such removal.
3. Additional Benefits.
- (a) After execution of this Amendment, Millstone may (but shall not be obligated to) engage a mutually agreed upon professional trail builder to design and build, at Millstone's sole cost and expense, a mutually agreed upon alternate trail system upon the Protected Property, which when completed, will be used as the public access trail described in Section 5.2 of the Conservation Restriction (such an event, an "Agreement to Modify the Trails"). The Parties shall, from the Effective Date and through and until the earlier of an Agreement to Modify the Trails or the date which falls five (5) months after the Effective Date (the "Trail Agreement Outside Date"), work together in good faith to reach an Agreement to Modify the Trails. In the event the Parties have not reached an Agreement to Modify the Trails on or before the Trail Agreement Outside Date, then Millstone shall be obligated at its cost and expense, and hereby covenants and agrees to, clear and mark the existing trail as the same is shown on the Updated Schedule B Map (such circumstance, the "Existing Trail Improvement Project") on or before the date which falls nine (9) months after the Trail Agreement Outside Date, subject to force majeure. The Existing Trail Improvement Project shall not include and Millstone shall not be obligated to design, build or install trails, bridges, fences or other improvements of any kind, obtain or install wood chips and/or do anything other than basic clearing and marking of the existing trail.
- (b) In the event of an Agreement to Modify the Trails (and only in such event), (x) Millstone shall covenant and agree, at its cost and expense, to clear, mark and improve an alternate trail system to be located upon the Protected Property (the

“Updated Trail Improvement Project”) as contemplated in the Agreement to Modify the Trails, (y) Millstone shall cause the Updated Trail Improvement Project to be completed on or before the date that falls nine (9) months after the effective date of the Agreement to Modify the Trails, subject to force majeure, and (z) Millstone shall provide a financial guaranty in form and amount reasonably satisfactory to the Town Attorney to guaranty completion of the Updated Trail Improvement Project.

- (c) The completion date of the Existing Trail Improvement Project or the Updated Trail Improvement Project, as the case may be, shall be evidenced by a writing from Millstone to the Town and the Land Trust (electronic mail being sufficient) indicating that the Existing Trail Improvement Project or the Updated Trail Improvement Project, as the case may be, is complete and the date of its completion, provided that the Town and the Land Trust shall have ten (10) days following receipt of such writing to object to Millstone’s assertion of completion, failing which the Existing Trail Improvement Project or the Updated Trail Improvement Project, as the case may be, shall be deemed conclusively completed.
- (d) Notwithstanding anything to the contrary in the Conservation Restriction, the Parties agree that, in the event Millstone is obligated to complete the Existing Trail Improvement Project pursuant to the terms and conditions of this Amendment, the trail system contemplated under Section 5.2 of the Conservation Restriction shall be located on the Protected Property substantially in accordance with the Updated Schedule B Map. Notwithstanding anything to the contrary in the Conservation Restriction, the Parties agree that, in the event of an Agreement to Modify the Trails, the trail system contemplated under Section 5.2 of the Conservation Restriction shall be located on the Protected Property in accordance with a preliminary map to be attached to the Agreement to Modify the Trails (the “Preliminary Trail Map”), with the Parties acknowledging and agreeing that they will work together in good faith to agree on the best location for the trail as part of its final construction, including without limitation considering adding switchbacks to mitigate runoff in areas of steep topography, provided, however, in the event the Parties are unable to reach agreement on the final location of any one or more portions or sections of the trail, the locations shown on the Preliminary Trail Map shall govern.
- (e) Upon completion of the Existing Trail Improvement Project or the Updated Trail Improvement Project, as the case may be, Millstone shall, at its cost and expense, cause the trail system to be plotted by Millstone’s surveyor (the resulting plan, the “Final Trail Plan”). Promptly following completion of the Final Trail Plan (which shall replace and supersede the Preliminary Trail Map, as applicable, in all respects), Millstone shall, at its cost and expense, cause the Updated Schedule B Map to be updated to reflect the trail locations shown on the Final Trail Map and, promptly thereafter, cause such further updated Updated Schedule B Map to be recorded in the Town Land Records. In furtherance of the Parties’ agreement as to the location of the trail system as set forth in this Section 3, (i) in the event of

an Agreement to Modify the Trails, the Town and the Land Trust shall, as a condition precedent to the effectiveness of such agreement, absolutely and unconditionally release, grant, bargain, and convey unto Millstone, and its successors and assigns forever, any and all right, title and interest either or both of them may have to locate, use or enjoy trails upon the Protected Property other than as expressly set forth on the Preliminary Trail Map or, once completed, the Final Trail Plan and (ii) in the event Millstone is obligated to complete the Existing Trail Improvement Project pursuant to the terms and conditions of this Amendment, the Town and the Land Trust shall, substantially simultaneous with completion of the Final Trail Plan, absolutely and unconditionally release, grant, bargain, and convey unto Millstone, and its successors and assigns forever, any and all right, title and interest either or both of them may have to locate, use or enjoy trails upon the Protected Property other than as expressly set forth on the Final Trail Plan.

- (f) Until such time as the Existing Trail Improvement Project or the Updated Trail Improvement Project, as the case may be, is completed, (i) the existing trail (as described and shown in the Conservation Restriction) upon the Protected Property, to the extent the same exists, shall be available for public use as set forth in and subject to the terms and conditions of the Conservation Restriction and (ii) nothing in this Amendment shall be construed as modifying the Parties' rights and obligations with respect to the existing trail system upon the Protected Property.
 - (g) Nothing in the Conservation Restriction or this Amendment shall be construed as obligating Millstone to perform maintenance, repairs and/or upkeep on existing and/or any future trail system located upon the Protected Property.
 - (h) The Town and the Land Trust acknowledge and agree that, except by written agreement of Millstone, persons and parties accessing the trail system are not and shall not be permitted to bring dogs upon the Protected Property.
4. Septic Clarification and Hoop House Permission. Notwithstanding anything to the contrary in the Conservation Restriction and without limiting any of Millstone's other rights with respect to the use and development of the Protected Property, the Parties hereby agree and the Town and the Land Trust absolutely and unconditionally hereby release, grant, bargain, and convey unto Millstone, and its successors and assigns forever, the rights to (i) install, maintain, repair, replace, inspect, clean, operate, use and enjoy the Septic in and from substantially the area depicted on the Updated Schedule B Map as the "Proposed Septic Area", together with all necessary incidental rights to use and enjoy such Septic (by way of example and not limitation, the rights to connect the same to the Facility and to cause effluent to be discharged to the Septic) and (ii) maintain, repair, replace, relocate, inspect, clean, operate, use and enjoy those certain Hoop Houses upon the Protected Property, together with all necessary incidental rights to use and enjoy such Hoop Houses, provided, however, nothing in this Amendment shall be construed to permit Millstone or its successors and assigns to replace the Hoop Houses with hoop or green houses which (x) in the aggregate, have a ground floor gross floor area greater than

3,400 square feet and/or (y) are not materially similar to the Hoop Houses. Specifically, the Hoop Houses shall not have a foundation or permanent floor and there shall be no storage, temporary or otherwise, of solvents, fertilizers, gases or other chemical or flammable materials except to the extent the same are used in reasonable and customary amounts in connection with use of the Hoop Houses. In the event Millstone intends to relocate the Hoop Houses to another location upon the Protected Property, it shall first notify the Town and the Land Trust of the proposed new location and allow them an opportunity to object in writing to such location, provided, however, the right to so object shall be limited to circumstances where the relevant relocation is reasonably likely to have a material adverse effect on the Protected Property and any such objection shall contain a reasonably detailed and substantiated explanation of the nature of and reasons for such material adverse effect and, provided, further, that a failure on the part of the Town or the Land Trust to so object within thirty (30) days following receipt of the proposed relocation area from Millstone shall constitute a waiver on the part of the non-objecting entity(ies) to object to the relevant proposed location. If one or both of the Town and Land Trust object to a relocation as set forth above, the Parties shall work together in good faith for thirty (30) days to resolve such objection, failing which, each Party reserves all of their rights at law and in equity with respect to resolution of such dispute. By way of background, the "Hoop Houses" located on the Protected Property as of the Effective Date: (A) have an aggregate ground floor gross floor area of approximately 3,400 square feet; (B) are heated or capable of being heated; (C) have plastic (as distinct from glass) walls and roofs, as the case may be; (D) have dirt floors; and (E) do not have footings or foundations. For the avoidance of doubt, it is the intention of the Parties that Millstone and its successors and assigns have and enjoy the rights under this Section 4 in addition to the other rights under the Conservation Restriction, as amended, including without limitation the rights to (x) construct the Facility subject to the applicable size limitations in the Conservation Restriction, as amended hereby, and (y) the right to create the 3 Acre Reserved Lot and, upon conveyance of the same, separate the same from the Protected Property and the effect of the Conservation Restriction, provided, however, it shall be a condition precedent to the right to convey the 3 Acre Reserved Lot that the deed of conveyance include the substance of any and all covenants, agreements, terms, conditions and restrictions expressly applicable to the 3 Acre Reserved Lot pursuant to Sections 2.1 and 4.0 of the Conservation Restriction. Millstone agrees to notify the Town and the Land Trust of any pending sale of the 3 Acre Reserved Lot prior to sale of the same by Millstone.

5. Replacement of Schedule B. Schedule B to the Conservation Restriction is hereby deleted in its entirety and replaced with the map attached hereto and made a part hereof as Schedule B (the "Updated Schedule B Map"). All references in the Conservation Restriction to "Schedule B" or to Map Number 5269 are, as of the Effective Date, amended to be references to the Updated Schedule B Map, provided, however, (i) references in the Conservation Restriction to "Schedule B" or to Map Number 5269 in the context of or with respect to the trail system located upon the Protected Property shall mean and refer to the Updated Schedule B Map unless and until there is an Agreement to Modify the Trails, in which case all such references shall mean and refer to the Preliminary Trail Map or, once completed, the Final Trail Map and (ii) references in Section 5.2 of the Conservation Restriction to a potential parking area along Tito Lane

and on the Protected Property shall mean and refer to the potential parking area shown on the Updated Schedule B Map as "Proposed Parking (4)" unless and until there is an Agreement to Modify the Trails, in which case such references shall mean and refer to the are shown as "Proposed Parking (4)" on the Preliminary Trail Map or, once completed, the Final Trail Map. Millstone shall, at its cost and expense, cause the Updated Schedule B Map to be updated to reflect the trail locations shown on the Final Trail Map (if and as applicable) and, promptly thereafter, cause the same to be recorded in the Town Land Records as set forth in Section 3(e) above.

6. Updated Notice Address. Section 18.6 of the Conservation Restriction is hereby amended as follows. Delete the name and notice address for "Grantors" and substitute in their place the following:

Grantors: Millstone Property Holdings LLC
132 Water Street, 3rd Floor
Norwalk, Connecticut 06854

7. Covenants Running with the Land. The covenants agreed to and the terms, conditions, restrictions and easements imposed by this Amendment shall not only be binding upon the Parties, but also their lessees, agents, personal representatives, successors and assigns, and all other successors to Millstone in interest with respect to the Protected Property and shall continue as covenants running with the Protected Property and a servitude running in perpetuity with the Protected Property.
8. Brokerage. Each Party represents and warrants to the others that it has not dealt with any broker or agent in connection with this Amendment. The execution and delivery of this Amendment by each Party shall be conclusive evidence that such party has relied upon the foregoing representation and warranty. Each party covenants and agrees to indemnify the other against any claims for a fee or commission made by any broker or agent claiming to have acted by or on behalf of the indemnifying party in connection with this Amendment. The parties' obligations under this Section 8 shall survive expiration or termination of this Amendment.
9. Ratification. Except as modified by this Amendment, the Conservation Restriction and all covenants, agreements, terms, conditions and restrictions thereof are unchanged and shall remain in full force and effect and are hereby in all respects ratified and confirmed. In furtherance of the foregoing, the Parties acknowledge and agree that their collective intent is to leave in place all of the covenants, agreements, terms, conditions and restrictions contained in the Conservation Restriction unless and to the extent the same are modified by this Amendment.
10. Inconsistencies. In the event of any conflict or inconsistency between the provisions of the Conservation Restriction and this Amendment, the provisions of this Amendment shall prevail to the extent of such conflict or inconsistency.
11. Authority. Each of the Parties hereby represents and warrants to the others that it has full right, power and authority to enter into this Amendment, that no third party consents are

required in connection herewith, and that the person or persons executing this Amendment on its behalf are authorized to do so.

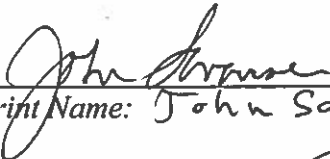
12. Successors and Assigns. This Amendment and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
13. Captions. The paragraph headings or captions appearing in this Amendment are for convenience only, are not a part of this Amendment and are not to be considered in interpreting this Amendment.
14. Entire Agreement. This Amendment and the Conservation Restriction constitute the complete and entire agreement of the Parties with respect to the subject matter hereof and thereof. No representations, inducements, promises or agreements, oral or written, have been made by the Parties, or anyone acting on behalf of the Parties, which are not contained herein or in the Conservation Restriction, and any prior agreements, promises, negotiations, or representations (other than those in the Conservation Restriction) are superseded by this Amendment and the Conservation Restriction.
15. Governing Law. This Amendment has been negotiated in and shall be governed by and construed and enforced in accordance with the laws of the State of Connecticut without regard to the principles thereof relating to conflict of laws.
16. Counterparts. This Amendment may be executed in one or more counterparts, which, when taken together, shall constitute one and the same instrument.
17. Other Approvals. Notwithstanding anything in this Amendment to the contrary, including without limitation Section 4 above, the construction and/or location of any improvement shown on the Updated Schedule B Map is subject to the review and approval of any agency, board, commission, department or other body of the Town that has jurisdiction over such construction and/or location as a matter of applicable law (as distinct from Town rights arising under the Conservation Restriction). Whenever a reference to the Town is made in this Amendment, it shall be deemed to mean the Town as a municipal corporation acting by and through its Board of Selectmen with respect to the Town's role as a party to the Conservation Restriction and shall not be deemed to include any other agency, board, commission, department or other body of the Town.

[Remainder of page intentionally left blank; signatures to follow.]

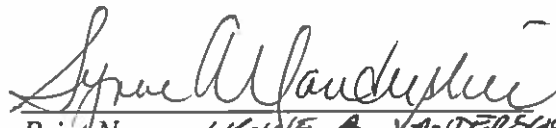
IN WITNESS WHEREOF, the Town, the Land Trust and Millstone have caused this Amendment to Conservation Restriction to be signed as of the Effective Date.

Signed, sealed and delivered
in the presence of:

TOWN:
TOWN OF WILTON


Print Name: John Savarese



Print Name: JACQUELINE ROCHESTER

By: 
Print Name: LYNNE A. VANDERSLICE
Title: FIRST SELECTMAN
Hereunto Duly Authorized

STATE OF CONNECTICUT)
: ss. Wilton
COUNTY OF FAIRFIELD)

On this the 11TH day of January, 2018, before me, personally appeared LYNNE A. VANDERSLICE, the FIRST SELECTMAN of the TOWN OF WILTON, signer and sealer of the foregoing instrument, and who acknowledged the same to be the free act and deed of said TOWN OF WILTON, and his/her free act and deed as such officer thereof.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Print Name: JACQUELINE ROCHESTER
Commissioner of the Superior Court
Notary Public; My Commission Expires: 10/31/2020

Signed, sealed and delivered
in the presence of:

LAND TRUST:
WILTON LAND CONSERVATION TRUST

Print Name:

By:

Print Name:

Title:

Hereunto Duly Authorized

Print Name:

STATE OF CONNECTICUT)

: ss. Wilton

COUNTY OF FAIRFIELD)

On this the ____ day of January, 2018, before me, personally appeared _____, the _____ of the **WILTON LAND CONSERVATION TRUST**, signer and sealer of the foregoing instrument, and who acknowledged the same to be the free act and deed of said **WILTON LAND CONSERVATION TRUST**, and his/her free act and deed as such officer thereof.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Print Name:

Commissioner of the Superior Court

Notary Public, My Commission Expires:

Signed, sealed and delivered
in the presence of:

MILLSTONE:
MILLSTONE PROPERTY HOLDINGS LLC

Print Name:

By:

Print Name: Matthew Motley
Title: Manager
Hereunto Duly Authorized

Print Name:

STATE OF CONNECTICUT)

: ss. _____

COUNTY OF FAIRFIELD)

On this the ____ day of January, 2018, before me, personally appeared Matthew Motley, the Manager of the **MILLSTONE PROPERTY HOLDINGS LLC**, signer and sealer of the foregoing instrument, and who acknowledged the same to be the free act and deed of said **MILLSTONE PROPERTY HOLDINGS LLC**, and his/her free act and deed as such Manager thereof.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Print Name:

Commissioner of the Superior Court
Notary Public, My Commission Expires:

Exhibit A

ALL THOSE CERTAIN pieces or parcels of land, with the buildings thereon, situated in the Town of Wilton, County of Fairfield and State of Connecticut, and shown and designated as "Parcel 'A'" and as "Parcel 'B'" on a map entitled "Map Prepared for Ernest J. & Vincent J. Tito, Wilton, Connecticut, Total Area = 81.778 Ac." Certified "Substantially Correct" Henricis' New Canaan, Ridgefield & Bethel, Conn. Class A-2 Survey date April 25, 1968, June 20, 1968 Robert M. Henrici L.S. #6089 which map is on file in the office of the Town Clerk of Wilton as Map No. 2761, reference thereto being made for a more particular description of the said premises.

Said premises are conveyed subject to the following:

1. Effect, if any, of notes and/or notations appearing on said Map No. 2761.

Schedule B

An electronic version of the map below is on file with Peter V. Gelderman, Esq., Berchem Moses PC, 1221 Post Road East, Westport, CT 06880 and Elliot G. Kaiman, Esq., Wiggin and Dana LLP, 265 Church Street, New Haven, Connecticut 06510.

