

**Draft**

**AGREEMENT TO MANAGE AND HARVEST  
THE CRANBERRY BOG**

AGREEMENT made as of this (Date) by and between the TOWN OF CARLISLE, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, Carlisle, Middlesex County, Massachusetts 01741, hereinafter referred to as "TOWN", acting by and through its Board of Selectmen with the concurrences of its Conservation Commission, and ("Name"), hereinafter referred to as "COMPANY."

WHEREAS, the TOWN is the owner of approximately forty (40) acres of the Agricultural Area (hereinafter defined) of the Cranberry Bog Property (hereinafter defined) located in the northwest quadrant of the Town of Carlisle, abutting Chelmsford, with frontage on Curve Street and Martin Street, known as Assessor Map 30-Parcel 2 and Map 31-Parcel 15; and

WHEREAS, the TOWN wishes to provide continued cultivation and increased harvest of cranberries from the Agricultural Area of the Cranberry Bog Property, while satisfying the following obligations: (1) registration of water rights according to the Water Management Act (Massachusetts General laws, Chapter 21G; passed in 1985) granted to the TOWN, (2) protection of the surrounding natural resources, including surface and ground water supplies; (3) enhancement of the conservation values of the surrounding property; (4) maintenance of public access to and enjoyment of the property surrounding the Agricultural Area; and (5) provision of educational opportunities for the public; and

WHEREAS, the COMPANY is experienced in the management, maintenance, cultivation and harvesting of cranberries and wishes to cultivate and manage the Agricultural Area and to assist the TOWN to protect the surrounding natural resources, enhance the conservation values of the surrounding property, allow public access and enjoyment of the property surrounding the Agricultural Area and provide educational opportunities for the public; and

WHEREAS, the COMPANY's proposal was accepted by the TOWN for maintenance and harvesting of the TOWN-owned cranberry bog, said proposal being hereby attached and made a part of this Agreement except where modified by this Agreement; and

WHEREAS, The COMPANY has provided the Conservation Commission with a Ten (10) year Management Plan (herein after the "Plan") which addresses irrigation systems; ditches; dikes, dams and flumes; fertilizer, herbicide and pesticide use; sanding and gravel materials; pollination; water usage; rebuilding bogs; structures; vines; mowing; harvesting; signs, notices and fencing; and details all methods to be employed by the COMPANY for the operation, cultivation and renovation of the Agricultural Area, including but not limited to the repair, maintenance, improvement and harvesting of the Agricultural Area and establishing deadline for the implementation of each and every aspect of the Plan, which Plan is incorporated herein by reference and attached hereto as Exhibit A; and

WHEREAS, the Conservation Commission has approved the Plan;

NOW, THEREFORE, in consideration of the in-kind services, capital improvements, rents and covenants herein and in the Plan reserved and contained, on the part of the COMPANY to be paid, performed and observed, the TOWN hereby grants access to and use of the Agricultural Area, as hereinafter defined, upon the following terms and conditions:

### **SECTION 1 – DEFINITIONS**

1. The Cranberry Bog Property. The real property together with all improvement situated thereon described in the deed to the Town of Carlisle dated December 18, 1986 to the Town of Carlisle, recorded in the Middlesex North District Registry of Deeds in Book 3841, Page 267.
2. The Agricultural Area. That portion of the Cranberry Bog Property consistent of approximately forty (40) acres of actual cranberry bog, shown on the Town of Carlisle Cranberry Bog Drawing, attached hereto as Exhibit B and identified as the “Crop Production Area”, plus other adjoining land used in connection with or otherwise reasonably necessary or incidental to the maintenance, cultivation and harvesting of said bog, including existing sand pits, gravel, dikes, water supplies and control structure and including the Cranberry Bog House, except the attic third floor (hereinafter defined), and including the parking areas northeasterly of and adjacent to the Cranberry Bog House and including so much of the property as it reasonably necessary and incidental to the provide access to the Crop Production Area for the purposes and uses which the COMPANY is permitted hereunder.

3. The Cranberry Bog House. The agricultural building situated at 750/752 Curve Street, Carlisle, Massachusetts.
4. Multi-Use Areas. So much of the Cranberry Bog Property as is not included within the Agricultural Area or the Cranberry Bog House.
5. Subcontractor(s). Those having a direct contract with the COMPANY to perform a portion of the work, services, uses or activities on the Agricultural Area.
6. Invitees. A person is an "invitee" on land of another if (1) he enters by invitation, express or implied, (2) his entry is connected with the owner's business or with an activity the owner conducts or permits to be conducted on his land and (3) there is mutuality of benefit or benefit to the owner.

## **7. SECTION 2 - TERM**

1. The term of this Agreement shall be ten (10) years commencing on November 1, 2015 and shall terminate on October 31, 2025, unless terminated earlier in accordance with this Agreement or by mutual consent of the parties. Provided that the COMPANY is in full compliance with all the terms and conditions of this Agreement, the COMPANY shall have the right to request an extension of the Agreement term for an additional ten (10 years), which request may be granted in the sole discretion of the TOWN. If the COMPANY desires to extend the term, it shall submit its request of their desire to extend the

Agreement to the TOWN no less than one (1) year prior to the expiration of the first ten-year term.

2. The COMPANY shall, at the expiration or other termination of this Agreement, remove all COMPANY's goods and effects from the premises including its equipment, pumps and other trade fixtures. In the event of the COMPANY's failure to remove any of the COMPANY's property from the premises, the TOWN is hereby authorized, without liability to the COMPANY for loss or damage thereto, and at the sole risk of the COMPANY, to remove and store any of the property at the COMPANY's expenses, or to retain same under the TOWN's control, or sell at public or private sale, without notice, any or all 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.
3. In the event of the failure of the COMPANY to comply with any of the requirements set forth in this Agreement, notifications of such non-compliance shall be given to the COMPANY in writing by the TOWN. Failure of the COMPANY to remedy any valid breach of the terms and conditions of this Agreement within twenty-one (21) days after receipt of such notices shall be grounds for termination of the same by the TOWN. In the event that the TOWN elects to terminate this Agreement pursuant to this paragraph 3, notice of such termination shall be given to the COMPANY in writing.

4. In the event that the Town enacts new bylaws and/or local regulations after the execution of this Agreement which directly or indirectly effect cranberry bog operations, the Company may terminate this agreement without penalty upon 30 days written notice to the Town, however, in no event shall the Town be responsible for any early termination and/or sunk-cost expenses incurred by the Company prior to termination.

### **SECTION 3 - USES**

1. The parties agree that the COMPANY shall use and occupy the bog under this Agreement but that no tenancy at will or any other tenancy shall be created. This agreement shall not be considered a lease or any other disposition of real property.
2. The COMPANY, its personnel and subcontractors, if any (collectively, the "COMPANY"), shall cultivate, maintain, manage and harvest cranberries from the Agricultural Area annually and shall take any and all other steps necessary to maintain the status of the Agricultural Area as "land in agricultural use" with the meaning of 310 CMR 10.04. Such cultivation, maintenance, management and harvesting shall be the only activities conducted in the Agricultural Area without the prior approval of the Conservation Commission. The COMPANY agrees to maintain the bogs in the Agricultural Area in good condition in accordance with customary methods for cranberry growers in the Commonwealth of Massachusetts, consistent with the terms and provisions of this Agreement. In the event that the COMPANY wishes, for whatever

reason, not to plant, cultivate and harvest a cranberry crop in any given year, it may request approval from the Conservation Commission to cease such activities for one harvest season. The COMPANY shall continue to perform all activities required to meet all of its remaining obligations described herein, including, but not limited to, the obligations to maintain and preserve the existing cranberry plants, to maintain public access and all pathways throughout the Cranberry Bog Property, and to maintain the Cranberry Bog House. Two or more consecutive requests not to plant, cultivate and harvest a cranberry crop shall be grounds for termination of this Agreement by the Conservation Commission.

3. As necessitated by routine operation of a commercial cranberry bog, the Company shall monitor, control, and maintain water levels in the Agricultural Area by manipulation of the existing and any subsequently approved water control structures and ancillary equipment.
4. Except as allowed by this Agreement or set forth in the approved Plan or in cases of emergency necessitating immediate action so as to prevent undue damage to the Agricultural Area or to protect the public health and safety, the COMPANY shall not alter or install any structures, including water control structures, or facilities on the Agricultural Area without the prior written approval of the Conservation Commission. Such written approval of the Conservation Commission shall not relieve

the COMPANY's obligation to comply with all applicable local, state and federal rules and regulations.

5. The COMPANY understands that the property is public land and the public uses the land as walking trails. The public shall continue to be permitted on the walking trails except for occasional temporary periods when their presence would substantially interfere with the operation of the bog. In the event that the COMPANY determines that any routine continuous public access substantially interferes with the operation of the bog, it shall notify and obtain Conservation Commission approval before blocking off the public's access to any such walking trail.
6. The COMPANY shall conduct all activities under this Agreement so as to not to interfere with such access to and public use and enjoyment of the Multi-Use Areas. The COMPANY may post notice to prohibit or limit entry by the public into the Agricultural Area when necessary for public safety purposes. The COMPANY shall promptly notify the Conservation Commission and the Carlisle Chief of Police when the Agricultural Area is so posted. The COMPANY may post other non-commercial instructional or advisory signs not otherwise required by local, state or federal law or this Agreement, for public safety or public education upon notification of such signs to the Conservation Commission.
7. The COMPANY shall be responsible for all the acts and omissions of its employees, personnel, subcontractors, and of all persons directly or indirectly employed by it in connection with this Agreement.

8. The COMPANY shall cause its employees, personnel, subcontractors, and all persons directly or indirectly employed by it to observe and comply with all existing and future federal, state and municipal laws and regulations and all orders and decrees of any governmental bodies or tribunals having jurisdiction in any manner which affect this Agreement.

#### **SECTION 4 – RENT, IN-KIND AND OTHER PAYMENTS**

1. The COMPANY shall return to the TOWN annually zero (0) percent of the gross revenue from the sale of cranberries harvested from the Agricultural Area.
2. In accordance with the Plan attached hereto as Exhibit A, the COMPANY shall pay rent in-kind by growing and harvesting cranberries, and to the extent economically reasonable, by reconstructing, renovating and cultivating the Agricultural Area, including the Cranberry Bog House.

#### **SECTION 5 – COSTS AND EXPENSES**

1. The COMPANY shall bear the expense and make all financial disbursement for the costs of running the cultivation, management and harvesting of the Agricultural Area, including utilities, and shall be responsible for any damage caused by the COMPANY, its employees, agents, assigns or invitees, to the land and structure in and on the Agricultural Area.

2. The COMPANY shall bear the expenses for the Cranberry Bog House, including all utilities and routine repairs in accordance with Section 8 of this Agreement.

**SECTION 6 – OPERATIONS, CARE, MAINTENANCE AND  
HARVESTING**

1. The COMPANY is responsible for providing, maintaining and repairing any necessary equipment to fulfill its obligations under this Agreement.
2. Subject to and in compliance with any and all applicable local, state and federal laws, rules and regulation, the COMPANY may:
  - (a) Use sand, gravel and other earth materials within the Agricultural Area to repair and maintain the Agricultural Area and bog structures, provided that on-site excavation in the sand pits shall not be any deeper than the average stream depths of the adjacent brook;
  - (b) Use sand, gravel, other earth materials and fill obtained off-site as reasonably necessary and incidental to the maintenance, repair and renovation of the Agricultural Area; provided, however, that except in case of emergency necessitating immediate action so as to prevent undue damage to the Agricultural Area or to protect the public health and safety, no such off-site materials shall be brought on-site without the prior approval of the Conservation Commission. Nothing herein contained shall be construed to allow the COMPANY to excavate material from the

Multi-Use Areas, without the prior written approval of the Conservation Commission; and

(c) Remove from the Agricultural Area ditch cleanings and bog scrapings and dispose of said materials off-site; provided, however, that nothing herein contained shall be deemed to permit the COMPANY to stockpile such materials on the Multi-Use Areas.

3. The COMPANY shall mow the trail around the perimeter of the bog, along the dikes, and between the trail and the bank of the pond according to the Plan.
4. To enable the COMPANY to carry out the obligations under this Agreement, the COMPANY shall have the right to use, maintain and harvest said cranberry bogs, access routes, water resource areas, buildings, drainage areas, pump houses and other adjoining and appurtenant land and realty which in the past have been used by the TOWN and/or its managers and contractors in carrying out all functions pertaining to the operations, care, maintenance and harvesting of said cranberry bogs, as shown on the attached Exhibit B.
5. Rights granted to the COMPANY under this Agreement may be subject to separate agreements in force at the time of execution of this Agreement with other parties besides the TOWN. The COMPANY shall cooperate in, and adhere to, any written agreements with respect to water maintenance and control and/or property infrastructure with the

Town of Carlisle and/or any Cranberry Bog Property abutters (e.g., the Town of Chelmsford, and the Heart Pond Association), provided that such agreements do not alter or change terms in this Agreement.

## **SECTION 7 – EQUIPMENT, REPAIRS, AND CAPITAL**

### **IMPROVEMENTS**

1. Subject to the provision of Section 4-2, the COMPANY may install, make alterations or improvements to the premises, including but not limited to irrigation equipment, pumps, ditches, dikes and flumes as allowed by and provided by the Plan, or otherwise provided by the TOWN's written consent which consent will not be unreasonably withheld or delayed. In addition, the TOWN will assist the COMPANY in obtaining such permits, if any, which will be required for such alterations or improvements. All such allowed alterations and improvements shall be at the COMPANY's expense. The COMPANY shall not permit any mechanics' liens or similar liens to remain upon the premises for labor and material furnished to the COMPANY or claimed to have been furnished to the COMPANY in connection with work of any character performed or claimed to have been performed at the direction of the COMPANY and shall cause any such lien to be released of record forthwith without cost to the TOWN. Any alterations or improvements made by the COMPANY shall become the property of the TOWN at the

termination of occupancy as provided herein (except for “trade fixtures”, as hereinafter provided).

### **SECTION 8 – CRANBERRY BOG HOUSE**

1. The COMPANY is granted specific use of the Cranberry Bog House (defined within) including ground basement, first floor storage and living areas, and second floor living area, for such activities, as are reasonably necessary for, or customary and usual in conduct of the activities permitted in the Agricultural Area pursuant to this Agreement.
2. In addition, the COMPANY assumes responsibility for routine maintenance of the Cranberry Bog House for occupancy, including necessary maintenance of the water pump, hot water heater, routine on-site septic disposal system pumping, electrical, and heating systems; mowing of the grass around the building; and seasonal maintenance (such as water shutoff in winter months if unoccupied). Such routine maintenance may be beyond monthly expenses, such as utility costs for electricity and heating fuel and may be subject to the requirements of M.G.L. c. 149, §§26-27, the Massachusetts Prevailing Wage Law. The COMPANY shall inquire with the TOWN prior to contracting for such routine maintenance to determine if such work is subject to the Prevailing Wage Law.
3. The TOWN will be responsible for major repairs such as roof, well or septic system replacement to the premises as legal owner. In the event of any such major repair, the COMPANY shall promptly vacate the

Cranberry Bog House until such time that the TOWN completes its work on the property if directed to do so by a governmental authority acting on health and safety considerations. The Town shall have no obligation to provide replacement space/housing during such repair.

4. The parties agree that the COMPANY shall use, maintain, and occupy the Cranberry Bog House under this Agreement but that no tenancy at will or any other tenancy shall be created. This agreement shall not be considered a lease or any other disposition of real property.

#### **SECTION 9 – INSECT, WEED, DISEASE AND PEST MANAGEMENT**

1. The COMPANY shall institute an integrated pest management system and all applications of pesticides & herbicides shall be done in accordance with the Massachusetts Pesticide Control Act.
2. No aerial spraying will be allowed. Adjustable spray nozzles shall be required where necessary to limit the spray to the Crop Production Area, avoiding public access areas and trails. All applications of pesticides must be performed under the direct supervision of a licensed pesticide applicator.
3. The COMPANY shall observe all local, state and federal laws, rules and regulations regarding the posting of when pesticides or herbicides are to be or have been applied to the bogs in the Agricultural Area; and regarding the handling, storage and mixing practices associate with applications. The COMPANY shall use best management practices to minimize inadvertent chemical releases.

4. The COMPANY shall not use chemicals, pesticides or application procedures which are prohibited by local, county, state or federal laws or regulations.
5. The COMPANY shall provide and maintain a well publicized notification system, such as (a) a telephone answering service or (b) an internet web-site, or (c) a permanent bulletin board at the entrance to the Agricultural Area, on which information is updated weekly, stating what chemicals have been applied during the previous seven (7) days.

#### **SECTION 10 – PUBLIC EDUCATION**

As is mutually agreed between the COMPANY and the Town, the COMPANY shall from time to time advise, assist and/or cooperate with the Conservation Commission or its designee to provide public education programs or services concerning the cultivation, maintenance, or management of cranberry bogs, and/or support of activities that would serve the public access and use of, and safety on, trails and reservoirs that are part of the Cranberry Bog Property. Such provisions or services are to be sponsored jointly or solely by the COMPANY, the Conservation Commission, and/or designee as shall be mutually agreeable.

#### **SECTION 11 – INDEMINIFICATION, LIABILITY INSURANCE**

1. The COMPANY shall procure maintain and provide to the TOWN certificates of insurance and copies of policies evidencing proof of

coverage for the following minimum coverages and in the following amounts:

- (a) Workmen's compensation Insurance providing statutory coverage for the COMPANY's employees, if any;
  - (b) Broad form Commercial General Liability coverage written on a "per occurrence" basis and with an aggregate cap no less than three times the required limit: \$1,000,000 per event with total coverage being \$3,000,000. The general liability policy shall name the TOWN as additional insured.
  - (c) Automobile liability coverage, including coverage for owned, hired or borrowed autos: \$1,000,000 C.S.L. Such policy shall name the TOWN as additional insured.
  - (d) Umbrella or excess liability coverage following form of underlying general and automobile liability coverage: \$1,000,000 C.S.L. (Note: existence of umbrella coverage in excess of the minimum amount may serve to satisfy underlying limits for automobile and/or general liability where existing limits do not meet requirements under (b) and (c), above.)
3. The COMPANY agrees to indemnify, defend with counsel acceptable to the TOWN, and save harmless the TOWN from all suits, actions, claims, demands, losses, damage or injury, expenses and costs, including attorneys' fees, of every kind and description which the TOWN may incur or suffer resulting from, in

connection with, or arising out of any negligent act, error or omission of, or breach of contractual duties to the TOWN by the COMPANY, its agents, servants, employees personnel or subcontractors in fulfillment of its responsibilities under this Agreement. The extent of the foregoing indemnification and hold harmless provision shall not be limited by any provision of insurance required by this Agreement and shall survive termination of this Agreement for events occurring during the term of this Agreement.

3. The COMPANY agrees to forever release the TOWN, its officers, agents, employees and board members from any and all claims, rights of action and causes of action that may arise in the future, directly or indirectly, for loss, damage or injury sustained by the COMPANY and/or its agents, servants, employees, personnel or subcontractors that may arise from the COMPANY's actions or inactions under this Agreement.

#### **SECTION 12 - SEVERABILITY**

2. In any provision of this Agreement shall be found invalid for any reason, such invalidity shall be construed as narrowly as possible and the balance of the Agreement shall be deemed amended to the minimum extent necessary to provide the Parties substantially the benefits set forth in this Agreement.

### **SECTION 13 – GOVERNING LAW**

1. This Agreement is executed under and is to be construed according to the laws of the Commonwealth of Massachusetts and bylaws and regulations of the Town of Carlisle.

### **SECTION 14 – ASSIGNMENT**

1. The COMPANY shall not encumber, assign or otherwise transfer this Agreement or any right or interest in this Agreement without the express written consent of the TOWN. Consent by the TOWN to one assignment or use by another person shall not be deemed to be consent to any subsequent assignment or use by another person. Any encumbrance, assignment or transfer without the prior written consent of the TOWN, whether voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of the TOWN, terminate this Agreement.

### **SECTION 15 – REPORTING**

1. The COMPANY will adhere to the following reporting requirements to the TOWN:
  - (a) a copy of Agricultural Conservation Plan;
  - (b) as requested by the Town from time to time, pre-arranged informal quarterly reports and/or meetings in the field or office to discuss ongoing and/or developing Plan issues;

- (c) scheduled formal pre-season (annual) meetings to review completed activities and planned activities, including in-kind services or otherwise, that are specified in the Management Plan;
- (d) if unavailable from published sources such as the Cranberry Marketing Committee, scheduled formal post-harvest (annual) report and meeting to review quantitative yield data; and
- (e) copy of the COMPANY's submission of pesticide application reports.

### **SECTION 16 - NOTICES**

1. Any notice from the TOWN to the COMPANY relating to this Agreement shall be deemed duly served if mailed, registered or certified mail, return receipt requested, postage prepaid, addressed to the COMPANY at **[Address]**. Any notice from the COMPANY to the TOWN relating to this Agreement shall be deemed served if mailed to the TOWN by registered or certified mail, return receipt requested, postage prepaid, addressed to the Conservation Commission, Town Hall, 66 Westford Street, Carlisle, Massachusetts 01741.

In the event that any appropriate order of any governmental authority, other than the Town of Carlisle, rule or regulations prohibits or precludes operation of the cranberry bogs during the term hereof, COMPANY at its option may terminate this Agreement, thereby rendering it null and void without recourse to the parties hereto.

## **SECTION 17 – MISCELLANEOUS**

1. Conflict of Interest. The COMPANY acknowledges that the TOWN is a municipality for purposes of Chapter 268A of the Massachusetts General Laws (the Massachusetts conflict of interest statute), and the COMPANY agrees, as circumstances require, to take actions and to forebear from taking actions so as to be in compliance at all times with obligations of the COMPANY based on said statute.
2. Equal Employment Opportunity. In connection with the performance of the services under this Agreement, the COMPANY shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, age, sex or handicap. The COMPANY shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Massachusetts Commission Against Discrimination (the “Commission”), setting forth the provisions of the Fair Employment Practices Law of the Commonwealth.
3. Subcontractors. Contracts between the COMPANY and Subcontractors shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the COMPANY by the terms of this Agreement, and to assume toward the COMPANY all the obligations and responsibilities that the COMPANY assumes toward the Town.

4. Limited Liability. No officer, director, member, employee, or other principal, agent or representative (whether disclosed or undisclosed) of the TOWN, nor any participant with the TOWN, shall be personally liable to the COMPANY hereunder, for the TOWN's obligations or otherwise, the COMPANY hereby agreeing to look solely to the assets of the TOWN for the satisfaction of any liability of the TOWN hereunder. In no event shall the TOWN ever be liable to the COMPANY for indirect, incidental or consequential damages.
5. Disputes. All claims, disputes and other matters in question between the TOWN and the COMPANY arising out of or relating to this Agreement or the breach thereof shall be submitted for resolution to a court of competent jurisdiction in Middlesex County, Massachusetts, unless otherwise agreed by the parties. The parties agree, however, to negotiate in good faith any claims, disputes or other matters in question during the term of this Agreement before resorting to litigation.
6. Entire Agreement. This Agreement represents the entire and integrated agreement between the TOWN and the COMPANY with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the TOWN and the COMPANY.

WITNESS our hands and seals the day and year first above written.

FOR THE TOWN OF CARLISLE

By: \_\_\_\_\_  
Board of Selectmen

Approved as to Form: \_\_\_\_\_  
Thomas Harrington, Carlisle Town Counsel

**EXHIBIT A**  
**Ten (10) YEAR MANAGEMENT PLAN**

**EXHIBIT B**  
**TOWN OF CARLISLE CRANBERRY BOG DRAWING**