

CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT is made this ____ day of August, 2022, by DXD SS F1 Land LLC, a Delaware limited liability company (hereinafter “Grantor”), to the Town of Bristol, Rhode Island, a Rhode Island municipal corporation with offices at 10 Court Street, Bristol, RI 02809 (“Grantee”).

WHEREAS, Grantor is the owner of that certain property depicted on the Plan of Subdivision entitled “Bristol Self Storage A.P. 41 Lot 4 180 Mount Hope Avenue Bristol, Rhode Island”, prepared by Northeast Engineers & Consultants, Inc., dated [date], said plan having been approved by the Planning Board of the Town of Bristol, Rhode Island by Decision recorded in the Land Evidence Records of the Town of Bristol on [date] in Book ____, Page ____, and said plan being recorded in the Land Evidence Records of the Town of Bristol on [date], as document no. ____, Book ____, Page ____ (the “Premises”);

WHEREAS, portions of the Premises possess a unique, natural character, said portions being designated on the Plan as “_____” (hereinafter, the “Open Space”) and which are required to be preserved in perpetuity as undeveloped, open space for the benefit of the public, as set forth by the Planning Board Decision of May 2022, recorded in Book ____, Page ____ of the Land Evidence Records of the Town of Bristol, said requirement made pursuant to the authority of Article 28 of the Bristol Town Code and Article 6.1 of the Town of Bristol Subdivision and Development Review Regulations;

WHEREAS, Grantor and Grantee recognize the value of the unique, natural character of the Open Space and acknowledge the stated purpose to conserve the unique, natural character of the Open Space, and to prevent the use or development of the Open Space for any purpose or in any manner that would conflict with the maintenance and preservation of the Open Space in its current, natural, scenic, and open condition;

WHEREAS, Grantor, as the owner of the Open Space, on behalf of its successors and assigns, intends to convey to Grantee the right to preserve and protect the value of the unique, natural character of the Open Space in perpetuity; and

WHEREAS, Grantor acknowledges that this grant of conservation easement is a condition for Final Subdivision Approval, as granted by the Town of Bristol Planning Board, and the conveyance of this Conservation Easement is not intended to create any affirmative duties, obligations or liabilities of the Town of Bristol as Grantee.

NOW THEREFORE, in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein and in consideration of TEN DOLLARS (\$10.00) paid by Grantee to Grantor, the receipt and sufficiency of which is hereby acknowledged and pursuant to the laws of the State of Rhode Island, and in particular Title 34, Chapter 39 and Title 45, Chapter 36 of the General Laws of Rhode Island, as amended, Grantor hereby voluntarily grants and conveys unto Grantee a Conservation Easement in perpetuity over the Open Space which is intended to run with the land as a real covenant and is not personal in nature or in interest, for the preservation of its unique, natural character, to the extent hereinafter set forth.

1. Purpose. It is the purpose of this Conservation Easement to assure that the Open Space will be retained forever in its open, natural, scenic, agricultural, and ecological condition. Grantor intends that this Conservation Easement will confine the use of the Open Space to those uses set forth in section 3 herein, including, but not limited to, the maintenance of the Open Space to preserve its natural values.

2. Rights of Grantee. To accomplish the purpose of this Conservation Easement, the following rights are conveyed to the Grantee by this Conservation Easement:

- a. To preserve and protect the conservation values of the Open Space;
- b. To enter upon the Open Space at all reasonable times with notice to the Grantor in order to: (i) monitor and inspect Grantor's, or its successors or assigns, compliance with the covenants and purposes of this Conservation Easement, (ii) enforce the terms of this Conservation Easement, (iii) take any and all actions as may be necessary or appropriate, with or without order of court, to remedy or abate violation hereof; and (iv) after prior notice to Grantor, or its successors or assigns, to observe and study nature, make scientific and educational observations and studies in such manner as will not disturb the quiet enjoyment of the Open Space by Grantor.
- c. To prevent any activity or use of the Open Space that is inconsistent with the purpose of this Conservation Easement.
- d. To require restoration of such areas or features of the Open Space that may be damaged by any inconsistent activity of use.

3. Rights of Grantor: Grantor reserves for itself, its heirs, successors and assigns, the following reserved rights:

- a. To use the Open Space for the following enumerated uses and for all purposes not inconsistent with this Conservation Easement:
 - i. To maintain areas of significant or outstanding natural value, conservation areas, wildlife preserves, bird sanctuaries, or areas of scenic, historic or archaeological value;
 - ii. To act as buffer between adjacent or nearby areas or neighboring streets or property. Such buffer may contain fences or other natural or architectural screens.
 - iii. To create landscaped areas such as lawns, fields, wooded areas, plantings, or gardens.
 - iv. To provide pedestrian facilities such as walks, footpaths or bridges.

The following uses of the Open Space may be permitted subject to the limitations provided:

- i. Underground utilities and/or drainage facilities such as stormwater retention or detention areas may be located within the Open Space, provided that such facilities are incorporated into the landscape of the

Open Space and occupy no more than 20% of the Open Space.

- b. To sell, give or otherwise convey the Open Space Parcels or any interest in the Open Space Parcels, provided such conveyance is subject to the terms of this Conservation Easement and the Management Plan.
- c. The erection, maintenance and replacement of signs with respect to hunting, trespass, trail access, identity and address of the occupants, sale of the Open Space, the Grantee's interest in the Open Space, and the protected conservation values.
- d. Such other non-prohibited activities requested by the Grantor and expressly approved in writing by the Grantee, in its sole and exclusive discretion, which permission may only be given if the Grantee expressly finds that the activity is consistent with, and does not materially impair, the purposes or conservation values of the Open Space.

4. No Public Access. Nothing herein shall be construed as permitting public access to the Open Space.

5. Prohibited Activities and Uses. Any activity on or use of the Open Space inconsistent with the purpose of this Conservation Easement and/or the Management Plan is prohibited. Without-limiting the generality of the foregoing, the following activities and uses are expressly prohibited on, above, and below the Open Space:

- a. The subdivision of the Open Space Parcels or the disturbance or change in the natural habitat that would be inconsistent with the conservation values.
- b. The placement or construction of any buildings, structures, or other improvements of any kind including, without limitation, camping accommodations or mobile homes, fences, signs, billboards or other advertising material, tennis courts, swimming pools, asphalt driveways, roads, parking lots, utility poles, towers, conduits, or lines or other structures, other than those structures currently on the Open Space and as may be permitted pursuant to paragraph 3 above and the Management Plan. No commercial or industrial activity of any kind shall be permitted on the Open Space, except as set forth in the Management Plan.
- c. Any ditching, draining, digging, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, or any building of roads or change in the topography of the land in any manner except the maintenance of existing foot trails and as may be allowed in paragraph 3 above and the Management Plan.
- d. No portion of the Open Space Parcels may be used toward building or development requirements on this or any other parcel.
- e. The disruption, removal, or destruction of the stone walls on the Open Space.
- f. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation.

- g. Any other use of the Open Space Parcels or activity thereon which is inconsistent with the purpose of this Conservation Easement and the Management Plan.

6. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Conservation Easement or that a violation is threatened, the Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or injury to any conservation values protected by this Conservation Easement, including damages for the loss of scenic, aesthetic, water resource protection or environmental values, and to require the restoration of the Open Space to the condition that existed prior to any such injury, costs incurred and reasonable attorney fees to prosecute any such actions to enforce. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Open Space. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Open Space, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement, and Grantor agrees that if Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate, that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Open Space resulting from any causes beyond Grantor's control, including, without limitation, fire, flood, storm, or earth movement.

- a. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, costs of suit and attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Easement, shall be borne by Grantor.
- b. Grantee's Discretion. Enforcement of the terms of this Conservation Easement shall be at the sole discretion of Grantee, and any forbearance or delay by Grantee to exercise its rights under this Conservation Easement, in the event of any breach of any term of this Conservation Easement by Grantor, shall not be deemed or construed to be a waiver by Grantee of such terms or of any subsequent breach of the same of any other term of this Conservation Easement or any of Grantee's rights under this

Conservation Easement.

- a. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.

8. General Provisions.

- a. Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of Grantor and Grantee and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity on the Premises.
- b. Counterparts. Grantor may execute this instrument in two or more counterparts; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- c. Choice of Law. This Conservation Easement shall be and is deemed to be a conservation restriction under the laws of the State of Rhode Island only, and shall be construed and given effect in accordance with the laws of the State of Rhode Island and not otherwise.
- d. Severability. If any provision of this Conservation Easement or the application hereof to any person or circumstance shall be to any extent invalid or unenforceable, the remainder of this Conservation Easement and the application to persons or circumstances other than those as to which it is invalid or unenforceable shall not be effected thereby, and each term and provision of this Conservation Easement shall be valid and enforceable to the fullest extent permitted by law.
- e. Waiver. No consent or waiver, expressed or implied by either party to or of any breach in the performance by the other party of its agreements hereunder shall be construed as a consent or waiver to or of any breach in the performance by such party of the same or any other agreement. The failure on the part of either party to complain of any such action or inaction on the part of the other or to declare the other in default, no matter how long such failure may continue, shall not be deemed to be a waiver by either party of any of its rights hereunder.
- f. Construction. This Conservation Easement shall not be construed, without regard to any presumption or other rule requiring construction, against the party causing this Conservation Easement to be drafted.

9. Amendments, Assigns and Transfers.

- a. Amendment. This Conservation Easement may only be amended if in writing and by unanimous agreement of Grantor and Grantee. Any party seeking an amendment to this Conservation Easement must provide notice to all other parties and if any party makes a written objection within ten (10) days of receipt of said notice the request for amendment shall be deemed denied. If no such objection is timely made, then the parties shall arrange to meet at a reasonable date, time and place and discuss the requester's request. No party is bound to agree to any request for an amendment by merely attending a meeting or meetings to discuss such amendments. The parties shall endeavor to act in good faith and judiciously act on the requester's request. Any amendments to this Conservation Easement must be signed by all parties and recorded in the Land Evidence of the Town of Bristol to be valid and enforceable.
- b. Assignment. This Conservation Easement is transferable, but Grantee may assign its rights and obligations under this Conservation Easement only to an organization authorized to acquire and hold Conservation Easements under R.I. General Laws 34-39-1 *et seq.* (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.
- c. Subsequent Transfers. Granter agrees to incorporate a reference to this Conservation Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises, including, without limitation, a leasehold interest.

[Signature Page to Follow.]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

Cameron Paktinat, CDO of DXD SS F1 Land LLC

STATE OF [INSERT STATE]
COUNTY OF [INSERT COUNTY]

In _____ in said County, on the ____ day of _____, 2022 before me personally appeared _____, to me known and known by me to be the person executing the foregoing instrument, and he acknowledged said instrument, by him executed, to be his free act and deed.

NOTARY PUBLIC
My commission expires:

on behalf of the Town of Bristol, Rhode Island

STATE OF RHODE ISLAND
COUNTY OF BRISTOL

In _____ in said County, on the ____ day of _____, 2022 before me personally appeared _____, to me known and known by me to be the person executing the foregoing instrument, and he acknowledged said instrument, by him executed, to be his free act and deed.

NOTARY PUBLIC
My commission expires: