

CONSERVATION RESTRICTION

I. GRANTING CLAUSE

The undersigned, Wolcott Residential LLC, a Massachusetts limited liability company, of 80 Beharrell Street – Suite E, Concord, Massachusetts 01742 (“Grantor”), acting pursuant to Sections 31, 32 and 33 of the General Laws of Massachusetts, hereby grant to the Town of Milton Conservation Commission, having a mailing address at 525 Canton Avenue, Milton, Massachusetts 02186, its successors and permanent assigns (“Grantee”), in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction (the “Restriction”) on the land located in Milton, Norfolk County, Massachusetts described as the Open Land in Exhibit A attached hereto and incorporated herein by reference (the “Premises”).

II. PURPOSE; DESCRIPTION OF PREMISES AND HIERARCHY OF OPEN LAND

A. Purpose. This Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. Its purposes are to assure that the Premises, which consist of approximately 28.648 acres of land area, will be retained predominantly in its natural, scenic and/or open condition and will prohibit any use of the Premises that will significantly impair or interfere with the conservation values of the Premises.

B. Description of Premises. As shown on Exhibit A, the Premises is a substantial portion (approximately 28.648 acres) of a large lot (the “Parcel”) of land containing 47.05 acres that sits at the base of the Great Blue Hill. The Parcel rises from an elevation 150’ at its northerly corner (proximate to the Manor House driveway/Canton Avenue intersection) to elevation 300’ at its highest point in the southerly corner abutting the Blue Hill Reservation. This change in elevation occurs over distance of approximately 2,100’, as the site rises and plateaus from low to high. There are a number of significant features that are visible as one travels along Canton Avenue and which are worthy of preservation. They include the Manor House Lawn, the Devens and Upper Meadows, a wooded glacial esker, wooded successional, an intermittent stream, stone walls and other features. The Grantor is pursuing a Planned Unit Development on the property in accordance with the Great Estate Planned Unit zoning bylaw (the “Bylaw”) adopted by the Town in 2017. The Bylaw provides that at least 60% of the land be dedicated to an open space perpetual land use covenant; this Restriction covers approximately 60.88% of the Parcel.

C. Hierarchy of Open Land. In accordance with the Bylaw, the Grantor has proposed a hierarchy of permitted and prohibited uses as are authorized by the Bylaw, based in part on their location relative to setbacks from Canton Avenue and abutting properties shown on Exhibit A, as follows:

- (1) Within the area shown as the Open Space No Disturbance Zone (75'), land use activities shall be limited to the abandonment and subsequent infill of the existing middle driveway and construction of a new main roadway, associated support infrastructure, including but not limited to installation and maintenance of stormwater detention structures for the new access roadway, installation and connection of utilities (water, sewer, electric, etc.) to municipal utilities for the new access roadway and the Project, the construction and maintenance of a pervious walking path running parallel to Canton Avenue inside the stone wall, entry landscaping, signage and lighting, and the removal of dead, dying or invasive vegetation.
- (2) Within the area shown as the Open Space No Building Zone (250'), activities shall be limited to the construction of the new main roadway and associated utility infrastructure, the removal and infill of the existing middle driveway, the installation of stormwater detention structures, the installation and coursing of other Project-required utilities, periodic mowing/maintenance of the Manor House Lawn and the Devens Meadow, and maintenance and infill of the Pine Grove located to the southwest of the new main access roadway.
- (3) Within the area shown on the southwesterly side as the Neighborhood Perimeter Buffer (125'), activities shall be limited to removal of that portion of the existing driveway to the Wolcott House that is located above the driveway spur to 1776 Canton Avenue. The Beech Grove and Pine Woods shown within the Buffer shall be retained in their existing condition.
- (4) Within the area shown on the northeasterly side as the Neighborhood Perimeter Buffer (125'), activities shall be limited to removal of an old non-functional tennis court, a dwelling and freestanding garage structure, the planting of new vegetated buffer screening, the maintenance of the intermittent stream (as such may be approved by the Grantee in its regulatory capacity), and preservation of the Esker and Esker Woods. The Upper Woods and the Upper Woods Path areas shall be retained in their existing condition.
- (5) Within the Rear Setback Area (50'), activities shall be limited to the installation and maintenance of a trail head accessing the abutting DCR lands, including a small parking area of pervious materials, to the Carberry Trail in accordance with DCR specifications. The Upland Woods areas shall be preserved in their existing condition. The Intermittent Stream shall also be maintained (as may be approved by the Grantee in its regulatory capacity).
- (6) Within the remainder of the Open Land, all reasonable steps shall be taken to minimize the impacts to the Open Land. Significant trees and groves of trees, included the Center Woods and Pine Grove areas, shall be retained and preserved unless deemed to be a public threat or nuisance. Underground utilities, including sewer and stormwater detention structures are permissible, but shall be sited to avoid impacts to such trees and groves to the extent practicable. The Manor House Lawn, the Devens Meadow and the Upper Meadow will undergo periodic mowing and maintenance.

III. PROHIBITED AND PERMITTED ACTIVITIES AND USES

A. Prohibited Acts and Uses. Subject to the exceptions, reserved rights and permitted uses set forth in Paragraphs II.C and III. B, the following acts and uses are prohibited on the Premises:

- (1) Construction or placing of any building, tennis court, mobile home, swimming pool, new road, sign, fence, billboard or other advertising display, poles, antennas, windmills, solar panels or other temporary or permanent structures on or above the ground of the Premises;
- (2) Dumping or placing of soil or other substances on the ground of the Premises as landfill, or dumping or placing of vehicle bodies or parts, junk, trash, refuse, solid or chemical waste or unsightly or offensive materials whatsoever, or the installation of underground storage tanks;
- (3) Cutting, removal or destruction of trees, grasses, shrubs or other vegetation;
- (4) Mining, excavating, dredging or removal of loam, peat, sand, gravel, soil, rock or other mineral substances or natural deposits except as necessary for proper drainage or soil conservation and then only in a manner which does not impair the purposes of this Restriction;
- (5) Any commercial or industrial use or any institutional use inconsistent with the purposes of this Restriction;
- (6) Use of motorized vehicles of any nature or kind, including but not limited to cars, trucks, motorcycles, all-terrain vehicles and snowmobiles, except such as may be reasonably required by police, firemen or other governmental agents in carrying out their lawful duties and except for cars, truck and farm vehicles used for purposes permitted by this Restriction;
- (7) Use of the Premises except for passive outdoor recreational purposes such as walking and nature study or other purposes which permit the Premises to remain predominantly in its natural condition;
- (8) Activities detrimental to drainage, flood control, water or soil conservation, water quality, erosion control, or archeological conservation; or
- (9) Acts or uses which in the reasonable opinion of the Grantee are detrimental to preservation of the Premises in its present condition.

B. Exceptions to Otherwise Prohibited Acts and Uses; Reserved Rights. All acts and uses not prohibited in Paragraph A are permissible. Notwithstanding the provisions of Paragraph

A, the following acts and uses are permitted, but only if such uses and activities do not materially impair the purposes of this Restriction or other significant conservation interests:

- (1) Periodic mowing and maintenance of the Manor House Lawn, the Devens Meadow, the Upper Meadow and other areas, as shown on Exhibit A;
- (2) Maintenance and repair of existing fences and stone walls;
- (3) Maintenance and repair of underground utilities, including drainage structures intended to receive and manage stormwater from Wolcott Woods Lane, which are located as shown on Exhibit A;
- (4) Maintenance and repair of water, sewer and other utility lines, which are located as shown on Exhibit A;
- (5) Installation and maintenance of walking paths and a small parking area to be located proximate to the Carberry Trail on the abutting Blue Hill Reservation;
- (6) Selective cutting or pruning of dead trees only to prevent, control or remove an imminent hazard;
- (7) Selective cutting or pruning of live or dead trees, brush and other vegetation in accordance with an overall maintenance plan approved by the Grantee with the goals of preventing, controlling or removing hazards, disease, insect damage, fire damage, storm damage or invasive species or promoting a health ecosystem; and
- (8) Any activities designed to enhance the ecological or natural historical value of the Premises or to enhance the awareness of such values, including but not limited to the creation of walking trails and footpaths.

The exercise of any right reserved by the Grantor under this Paragraph B shall be in compliance with the then-current zoning special permit applicable to the Premises; and all other applicable federal, state and local laws.

C. Notice and Approval. Whenever notice to or approval by the Grantee is required under the provisions of Paragraphs A or B hereof, the Grantor shall notify the Grantee in writing not less than forty-five (45) days prior to the date the Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Restriction. Where the Grantee's approval is required, the Grantee shall conduct a hearing grant or withhold is approval in writing within forty-five (45) days of receipt of the Grantor's written request therefor.

IV. ACCESS

The Grantee, through its duly designated officers, members, employees, representatives or agents, shall have the right to enter the Premises at reasonable times and in a reasonable manner for the purpose of inspecting the Premises, determining compliance with the terms of this Restriction and preventing, abating or remedying any violations thereof. Except as aforesaid, no rights to enter the Premises are granted to the Grantee, the public or to any other person.

V. LEGAL RIGHTS AND REMEDIES OF THE GRANTEE

A. Legal and Injunctive Relief. The rights hereby granted shall include the right to enforce this Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of (it being agreed that the Grantee may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee.

B. Actions to Prevent or Remedy Violations. The Grantee shall have the right to take appropriate actions to prevent, abate or remedy violations of this Restriction.

C. Reimbursement of Costs of Enforcement. The Grantor, and thereafter the successors and assigns of the Grantor, covenants and agrees to reimburse the Grantee for all reasonable costs and expenses (including without limitation counsel fees) incurred in enforcing this Restriction or in remedying or abating any violation thereof, provided that such costs and expenses are determined by a court of competent jurisdiction to have been incurred as a result of a violation caused by the Grantor.

D. Grantee's Disclaimer of Liability. By its acceptance of this Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises.

E. Non-Waiver. Any election by the Grantee as to the manner and timing of its right to enforce this Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be waiver of such rights.

F. Acts Beyond Grantor's Control. Nothing contained in this Restriction shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including, but not limited to, fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Premises or the Grantor's abutting property or property of others abutting the Premises resulting from such causes.

VI. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate the terms of this Restriction in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises or any of the units within the condominium which abut the Premises. The Grantor shall notify the Grantee

in writing at least thirty prior to conveying of the Premises, but the failure of the Grantor to do so shall neither impact the validity of this Restriction or limit its enforceability in any way, nor impair the validity of any such transfer by the Grantor.

VII. BINDING EFFECT; INTERPRETATION

A. Running of the Benefit. The benefits of this Restriction shall be deemed to be in gross and the Grantee shall have the right to assign its interests herein to a “Qualified Organization” as defined in Section 170(h)(3) of the Internal Revenue Code, as amended, provided that such assignee shall also be an eligible donee of a conservation restriction as set forth in Chapter 184, Section 32 of the General Laws of Massachusetts, and provided further, that as a condition of such assignment, the assignee is required to hold this Restriction and enforce its terms for conservation purposes. The Grantee shall notify the Grantor in writing at least thirty (30) days in advance of any such assignment, but the failure of the Grantee to do so shall not impair the validity of this Restriction or limit its enforceability in any way.

B. Running of the Burden. The burdens of this Restriction shall be deemed to run with the Premises and shall be enforceable in perpetuity against the Grantor, the Grantor’s successors in title to the Premises, and any person holding any interest therein, by the Grantee, its successors and assigns and its duly designated officers, directors, members, employees or agents as holders of this Restriction.

C. Termination of Rights and Obligations. Notwithstanding anything to the contrary contained herein, the rights and obligations under this Restriction of any party holding any interest in the Premises terminate upon transfer of that party’s interest, except that liability for acts or omissions occurring prior to transfer, and liability for the transfer itself if the transfer is in violation of this Restriction, shall survive the transfer.

D. Prior Encumbrances. This Restriction shall be in addition to and not in lieu of any other restrictions, encumbrances or easements of record affecting the Premises.

E. Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Restriction; and the Grantor on its behalf and on behalf of its successors and assigns, appoints the Grantee to be its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instrument upon request.

F. Severability. If any provision of this Restriction shall to any extent be held invalid, the remaining provisions shall not be affected.

G. Non-Merger. No future assignment of the Grantor’s or the Grantee’s interest in the Premises or future acquisition of any additional interest in the Premises by the Grantor or the Grantee shall cause this Restriction to merge with the fee or have the effect of causing any of the terms hereof to be rendered unenforceable by reason of the so-called “doctrine of merger.”

H. Counterparts. This Restriction may be executed in multiple counterparts, and shall constitute a single agreement, whether or not all signatures appear on a single counterpart hereof.

I. Effective Date. This Restriction shall be effective when the Grantor and Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded, or, if registered land, has been registered.

J. Recording. The Grantor shall record this instrument in timely fashion in the Norfolk County Registry of Deeds.

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IN WITNESS WHEREOF, the said Wolcott Residential, LLC has caused this Conservation Restriction to be signed under seal this ___ day of _____, 2018.

WOLCOTT RESIDENTIAL, LLC a
Massachusetts limited liability company

By: _____

Name: John C. Dawley

Its: Manager

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss. _____, 2018

On this ___ day of _____, 2018, before me, the undersigned notary public, personally appeared John C. Dawley, proved to me through satisfactory evidence of identification, which was a drivers license, to be the person whose name is signed on the preceding document and acknowledged to me that he signed it voluntarily for its stated reason.

Notary Public

My Commission Expires:

APPROVAL BY GRANTEE

We, the undersigned majority of the members of the Milton Conservation Commission, hereby certify that at a meeting duly held on _____, 2018, the Commission voted to accept this Conservation Restriction and agreed to be bound by its terms.

DRAFT

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss. _____, 2018

On this ___ day of _____, 2018, before me, the undersigned notary public, personally appeared the members of the Milton Conservation Commission, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the persons whose names are signed on the preceding document and acknowledged to me that they signed it voluntarily for its stated reason.

Notary Public
My Commission Expires:

APPROVAL BY THE MILTON BOARD OF SELECTMEN

We the undersigned being a majority of the Selectmen of the Town of Milton, Massachusetts, hereby certify that at a meeting duly held on _____, 2018, the Selectmen voted to approve the foregoing Conservation Restriction to the Milton Conservation Commission pursuant to M.G.L. c. 184, s. 32.

Milton Selectmen

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COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss. _____, 2018

On this ___ day of _____, 2018, before me, the undersigned notary public, personally appeared the members of the Board of Selectmen, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the persons whose names are signed on the preceding document and acknowledged to me that they signed it voluntarily for its stated reason.

Notary Public
My Commission Expires:

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS

The undersigned Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts hereby certifies that the foregoing grant of Conservation Restriction to the Milton Conservation Commission has been approved as being in the public interest pursuant to M.G.L. c. 184, s. 32.

Date: _____

Secretary of Executive Office of Energy
and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

_____, 2018

On this ___ day of _____, 2018, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document and acknowledged to me that he signed it voluntarily for its stated reason.

Notary Public
My Commission Expires:

EXHIBIT A

The granted Premises consist of a parcel of vacant land shown as _____, “Conservation Restriction – Approximately 28.648 acres)” on a plan entitled “_____” by _____, dated _____, 2018, revised _____, 2018 and recorded herewith in the Norfolk County Registry of Deeds as Plan ___ of 2018 in Plan Book _____. For the Grantor’s title, see Deeds of _____ to this Grantor dated _____, 2016 and recorded in said Registry of Deeds at Book _____, Page _____ and Deed of _____ to this Grantor recorded in said Registry of Deeds at Book _____, Page _____.

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