

3-6-14 DRAFT

**CONSERVATION RESTRICTION
To
The Trustees of Reservations**

Dilla Street, Milford

The Town of Milford, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, having principal place of business at Town Hall, 52 Main Street, Milford, Massachusetts 01757, acting through its Board of Selectmen (hereinafter "Grantor") grants, with quitclaim covenants, to The Trustees of Reservations, a 501(c)(3) nonprofit organization established under Chapter 352 of the Acts of 1891, with an address of 572 Essex Street, Beverly, Massachusetts 01915, its successors and permitted assigns ("Grantee"), in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction (hereinafter, the "Conservation Restriction") on eight contiguous parcels of land lying north of Dilla Street consisting of a total of +/- 200.11 acres, located in the Town of Milford, Massachusetts, said parcels being further described in Exhibit A attached hereto (collectively the "Premises").

A. Purpose.

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. Its purpose is to assure that the Premises will be retained in perpetuity predominantly in their natural, scenic, and open condition, to conserve the natural and wildlife habitat values of the Premises, and to prevent any use of the Premises that will significantly impair or interfere with the conservation values of the Premises. The public benefits resulting from conservation of the Premises (collectively, the "conservation values") include, without limitation:

1. Preservation of +/- 200.11 acres of open space including Louisa Lake, approximately 1,000 feet of waterfront along the Charles River. The Premises is also abutting 36.99 acres of land owned by the Milford Water Company;
2. Maintenance of open areas used for passive recreation, visual enjoyment, and nature study, including the Louisa Lake Recreation Area and 1.4 miles of the Upper Charles Trail;
3. Preservation of qualities of open space consistent with the Goals of the Town of Milford 2002 Open Space and Recreation Plan to provide for the highest possible quality of life for the town's residents and confirm the Town's commitment to regional resource conservation.

4. Preservation of qualities of open space consistent with the Goals and Objectives of the Town of Milford 2003 Comprehensive Plan to protect open spaces that have high conservation or recreational values. Further, the Plan recommends that the Town designate clearly significant parcels as permanently protected open space and to retain a greenway corridor connecting to the Town Forest and Louisa Lake recreation area.
5. Preservation of public water supply areas immediately south of the Premises, and preservation of Resource Areas protected under the Massachusetts Wetland Protection Act, G. L. c. 131, §40, which are important to regional water quality, water supply and wildlife habitat;
6. Preservation of actual and potential habitat of species protected under the Massachusetts Endangered Species Act, G. L. c. 131A, and other wildlife habitat.

The terms of this Conservation Restriction are as follows:

B. Prohibited Uses.

Except as to reserved rights set forth in paragraph C below, the following acts and uses are expressly prohibited on the Premises:

- (1) Constructing, placing or allowing to remain any building, tennis court, groomed playing fields, artificial turf, landing strip, mobile home, swimming pool, asphalt or concrete pavement, storage tank, sign, fence, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;
- (2) Mining, excavating, or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit;
- (3) Placing, filling, storing or dumping on the Premises of refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation;
- (6) The use of motorcycles, motorized trail bikes, snowmobiles and all other motor vehicles, except as reasonably necessary in exercising any of the reserved rights in paragraph C, or as required by the police, firefighters or other governmental agents in carrying out their lawful duties;

- (7) Further division of the parcels, either individually or collectively, constituting the Premises;
- (8) Purposefully introducing or allowing the introduction of species of plants and animals recognized or listed by the Executive Office of Environmental Affairs to pose a substantial risk of being invasive or otherwise detrimental to the native plant and animal species and plant communities on the Property;
- (9) Any other use of the Premises or activity thereon unless otherwise permitted in Paragraph C, without the prior written permission of Grantee.

C. Reserved Rights.

Notwithstanding the provisions of paragraph B, the following acts and uses are permitted, and have been deemed not to be inconsistent with the purposes of this Conservation Restriction:

- (1) Recreational Activities: Passive recreation, nature study, hiking, cross-country skiing, horseback riding, fishing, and other non-motorized outdoor recreational activities that do not materially alter the landscape, nor degrade environmental quality, nor involve commercial recreational use, including the annual restocking of Louisa Lake with fish.
- (2) Trails: The continued operation and maintenance of the paved Upper Charles Trail and related appurtenances, and the construction, maintenance and marking of unpaved trails for pedestrian and passive recreation use by the public, such unpaved trails to be approved by the Grantee.
- (3) Woods Roads: The maintenance of presently existing woods roads located on the Premises substantially in their present condition or as reasonably necessary for the uses hereinafter permitted, up to 12 feet in width.
- (4) Forestry and Vegetation Removal: In accordance with generally accepted forest management practices, (a) selective pruning and cutting of trees and other vegetation to control or remove hazards, or damage caused by disease, insects or fire, or to preserve the present condition of the Premises, including woods roads and trails; and (b) the cutting of trees and vegetation for any non-commercial purpose in accordance with a plan prepared by a natural resources professional that is designed to protect or enhance the conservation values of the Premises, including without limitation, wildlife habitat and scenic values.
- (5) Composting: The stockpiling and composting of stumps, tree and brush limbs and similar biodegradable materials originating on the Premises in locations where the presence of such materials will not have a deleterious impact on the purposes of this Conservation Restriction.

- (6) Wildlife Habitat Management: On the entire Premises, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species.
- (7) Signs: On the entire Premises, the erection, maintenance and replacement of signs with respect to hunting, trespass, trail access, identity and address of the occupants, the Grantee's interest in the property, and the protected conservation values.
- (8) Parking Areas: The maintenance and limited expansion of the existing Louisa Lake Recreation Area parking lot located adjacent to Dilla Street, and the construction and maintenance of unpaved parking area(s) to facilitate public access to the Premises. Such unpaved parking area shall preserve, to the extent feasible, the natural topography and vegetation of the parcel.
- (9) Louisa Lake Dam & Spillway: The continued maintenance and repair of the Louisa Lake dam and spillway and related appurtenances.
- (10) Water Supply: The exploration, investigation, testing, drilling, and installation of water supply wells, including access roads and related appurtenances.
- (11) Dilla Street Improvements: The improvement of Dilla Street (a public way) to increase vehicular and pedestrian safety, including but not limited to realignment, re-grading, reconstruction, repaving, and widening (including the provision of public sidewalks), a portion of which may encroach upon the Premises.

The exercise of any right reserved by Grantor under this paragraph C shall be in compliance with the Town of Milford's then-current zoning by-law, the Wetlands Protection Act (General Laws Chapter 131, Section 40) and all other applicable federal, state and local law and regulations. The inclusion of any reserved right in this paragraph C requiring a permit from a public agency does not imply that Grantee or the Commonwealth of Massachusetts takes any position on whether such permit should be issued.

D. Notice and Approval.

Whenever notice to or approval by Grantee is required under the provisions of paragraphs B or C, Grantor shall give notice, either personally or by a form of mail requiring a receipt, to Grantee in writing not less than sixty (60) days prior to the date 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 Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction and to monitor the proposed activity. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction and the conservation values of the Premises. Failure of Grantee to respond in writing within such 60 days shall be deemed to constitute approval by it of

the request as submitted, provided that the requested notice sets forth the provisions of this paragraph relating to deemed approval after the passage of time.

Any notice that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: The Town of Milford
c/o Board of Selectmen
52 Main Street
Milford, Massachusetts 01757

To Grantee: The Trustees of Reservations
572 Essex Street
Beverly, Massachusetts 01915

Or to such other address as any of the above parties from time to time shall designate by written notice to the other.

E. Legal Remedies of Grantee.

The rights hereby granted shall include the right to enforce this Conservation 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 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 Grantee. Grantor covenants and agrees to reimburse Grantee for all reasonable costs and expenses (including without limitation counsel fees) incurred in enforcing Grantor's compliance with this Conservation Restriction or in remedying or abating any violation thereof by Grantor, provided that a violation of this Conservation Restriction by Grantor is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. By its acceptance of this Conservation Restriction, Grantee does not undertake any liability or obligation relating to the condition of the Premises. Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee, and any election by Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights. Nothing herein shall preclude Grantor's and Grantee's rights to pursue other parties for damages to the Premises for vandalism, trespass, or any other violation of the terms of this Conservation Restriction.

F. Access.

The Conservation Restriction hereby conveyed does not grant to Grantee, to the public generally, or to any other person any right to enter upon the Premises except as follows:

- (1) Monitoring and Enforcement. Grantor hereby grants to Grantee and their representatives the right to enter the Premises (a) at reasonable times and in a

reasonable manner for the purpose of inspecting the same to determine compliance herewith; (b) following consultation with Grantor, to erect and from time to time replace near the boundaries of the Premises a reasonable number of signs each no greater than four square feet identifying Grantee as the holder of this Conservation Restriction; and (c) at reasonable times and in a reasonable manner, to take any and all actions with respect to the Premises as may be necessary or appropriate, with or without order of court, to remedy, abate or otherwise enforce any violation hereof.

- (2) Public Access. Grantor further grants to Grantee, and its licensees and invitees, with quitclaim covenants, as a part of this Conservation Restriction, a perpetual easement over the entire Premises to permit public access for any of the passive recreational purposes set forth or permitted in paragraph C of this Conservation Restriction.

G. Extinguishment.

- (1) Court Proceedings and Right of Grantee to Recover Portion of Proceeds at Disposition. If any occurrence ever gives rise to extinguishment or other release of this Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange or involuntary conversion of the Premises, shall be entitled to 100% of such proceeds.

- (2) Continuing Trust of Grantee's Share of Proceeds. Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes of this grant.

H. Duration and Assignability.

The burdens of this Conservation Restriction shall run with the Premises and shall be enforceable against Grantor in perpetuity. Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction.

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by Grantee, except in the following instances from time to time: (i) as a condition of any assignment, Grantee requires that the purposes of this Conservation Restriction continue to be carried out, and (ii) the assignee, at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the General Laws, as an eligible donee to receive this Conservation Restriction directly.

I. Acts Beyond Grantor's Control.

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

J. Subsequent Transfers.

Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which Grantor conveys any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. Grantee shall give written notice to Grantor at least twenty (20) days prior to any assignment of this Conservation Restriction. Failure of Grantor or Grantee to do so shall not impair the validity of this Conservation Restriction or limit its enforceability in any way.

K. Termination of Rights and Obligations.

Notwithstanding anything to the contrary contained herein, the rights and obligations under this Conservation 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 Conservation Restriction, shall survive the transfer.

L. Estoppel Certificates.

Upon request by Grantor, Grantee shall within forty-five (45) days execute and deliver to Grantor a written certificate of compliance in a form suitable for recording, stating whether, and with what exceptions or limitations, the Premises or any portion thereof complies with the terms and conditions of this Conservation Restriction, and which otherwise evidences the status of this Conservation Restriction.

M. Effective Date.

This Conservation Restriction shall be effective when 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 in the Registry of Deeds, or if registered land, it has been registered with the Land Court. This Conservation Restriction shall be recorded in a timely fashion.

N. Miscellaneous.

(1) Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

(2) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purposes of this Conservation Restriction and the policy and purpose of Mass. Gen. Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

(3) Severability. If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.

(4) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

(5) Joint Obligation. The obligations imposed by this Conservation Restriction upon the parties that together comprise "Grantor" shall be joint and several.

(6) Pre-existing rights of the Public. Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises. Any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

(7) No Merger. No transfer of Grantor's or Grantee's interest in the Premises and no acquisition of any additional interest in the Premises by Grantor or Grantee shall cause this Conservation 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."

(8) Captions. The captions in this instrument have been inserted solely for convenience of reference. They are not a part of this instrument and shall have no effect upon construction or interpretation.

(9) Counterparts. This Restriction may be executed in counterparts and shall constitute a single agreement whether or not all signatures appear on a single copy hereof.

No documentary stamps are required, as this Conservation Restriction is a gift.

Executed under seal this _____ day of _____, 20__.

THE INHABITANTS OF THE TOWN OF MILFORD
By its Board of Selectmen

xxxxxxxxxxxxxx, Chairman

xxxxxxxxxxxxxx, Member

xxxxxxxxxxxxxx, Member

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this _____ day of _____ 20__, before me, the undersigned notary public, personally appeared _____, _____, and _____, proved to me through satisfactory evidence of identification which was _____ to be the persons whose names are signed on the preceding document, and acknowledged to me that they signed it in their stated capacity, duly authorized, and voluntarily for its stated purpose.

Notary Public
My commission expires:

ACCEPTANCE OF GRANT

The Conservation Restriction set forth above from the Town of Milford, Massachusetts is accepted this _____ day of _____, 20__.

THE TRUSTEES OF RESERVATIONS

By: _____

Its: _____

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this ____ day of _____, 2006, before me, the undersigned notary public, personally appeared _____ proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose _____ for _____.

Notary Public
My Commission Expires:

APPROVAL BY SELECTMEN

We, the undersigned, being a majority of the Board of Selectmen of the Town of Milford, Massachusetts, hereby certify that at a meeting duly held on _____, the Board voted to approve the foregoing Conservation Restriction to The Trustees of Reservations as being in the public interest pursuant to M.G.L. Ch. 184, sections 31-33.

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this _____ day of _____ 20____, before me, the undersigned notary public, personally appeared _____, _____, and _____, proved to me through satisfactory evidence of identification which was _____ to be the persons whose names are signed on the preceding document, and acknowledged to me that they signed it in their stated capacity, duly authorized, and voluntarily for its stated purpose.

Notary Public
My commission expires:

APPROVAL BY SECRETARY OF ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to The Trustees of Reservations has been approved in the public interest pursuant to M.G.L. Ch. 184, Section 32.

Date: _____, 20__

Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this _____ day of _____ 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the preceding document, and acknowledged to me that they signed it in their stated capacity, duly authorized, and voluntarily for its stated purpose.

Notary Public
My commission expires:

Exhibit A

PROPERTY DESCRIPTION

The Premises consist of the following eight contiguous parcels lying north of Dilla Street consisting of a total of +/- 200.11 acres, located in the Town of Milford, Massachusetts, said parcels being more specifically described as follows:

<u>Assessors:</u>			<u>Land Area</u>	<u>Worcester Registry</u>	
<u>Map</u>	<u>Block</u>	<u>Lot</u>	<u>In Acres</u>	<u>Book</u>	<u>Page</u>
19	0	14	14.1	3226	585
20	0	11	10.4	1804	192
20	63	1	11.91	47976	228
27	0	15	42.2	26960	124
34	0	93	0.14	47597	131
19	0	13	9.4	33795	324
20	0	6	78.5	2638	289
27	0	16	<u>33.26</u>	2584	525
Total =			200.11 Acres		

Exhibit B