

AMENDMENT TO
CONSERVATION RESTRICTION
FROM
Boston Hill Development, LLC
To
Town of North Andover

THIS Amendment ("Amendment") to the Conservation Restriction described below is made this 10th day of October, 2011 by and between BOSTON HILL DEVELOPMENT, LLC, a Massachusetts limited liability company, having a mailing address at 100 Andover By-Pass, Suite 203, North Andover, Massachusetts 01845 ("Boston Hill"), hereinafter with its successors and assigns sometimes referred to as the "Grantor", and the TOWN OF NORTH ANDOVER, a Massachusetts municipal corporation in the Commonwealth of Massachusetts, acting by and through its Conservation Commission by authority of Section 8C of Chapter 40 of the General Laws of Massachusetts, having a mailing address at 1600 Osgood Street, North Andover, Massachusetts 01845, hereinafter with its successors and permitted assigns referred to as "Town" or the "Grantee".

Preliminary Statement

A. Boston Hill Development, LLC ("Boston Hill") is the owner of the parcel of land adjacent to Route 114 (also known as Turnpike Street) and located across from Johnson Street, North Andover, Massachusetts, as more particularly described in an instrument recorded in the Essex North Registry of Deeds at Book 4932, Page 127 (the "Boston Hill Premises").

B. On June 13, 2006 Boston Hill granted to the Town acting by and through its Conservation Commission a Conservation Restriction (the "Conservation Restriction") on approximately 18.74 acres of the Boston Hill Premises (the "Restricted Premises"), which Conservation Restriction is recorded in the Essex North Registry of Deeds at Book 10282, Page 272. The location of the Restricted Premises is shown as "Open Space Parcel A" on Exhibit A of the Conservation Restriction.

C. On April 6, 2010 the Town granted a Special Permit for the development and construction of a continuing care retirement center on the Boston Hill Premises (the "Project").

D. In connection with the proposed development of the Project on the Boston Hill Premises and in accordance with the provisions of Section M of the Conservation Restriction the Grantor and the Grantee desire to amend the Conservation Restriction to release a portion of the Restricted Premises from the Conservation Restriction, and subject an additional portion of the Boston Hill Premises which is currently unrestricted by the

1275 Turnpike St, North Andover, MA

Conservation Restriction to the Conservation Restriction, and to amend the Conservation Restriction in certain other respects, upon the terms and conditions hereinafter set forth.

E. On July 28, 2010 the Massachusetts Legislature enacted Chapter 230 of the Acts of 2010 which authorized the removal and release to the Grantor of certain areas from and the addition of certain areas to the Conservation Restriction, and the Grantor and the Grantee desire to implement such Legislation upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in furtherance of the foregoing and in consideration of One Dollar (\$1.00) and the mutual promises contained herein, the parties hereto agree as follows:

1. All capitalized terms not otherwise defined in this Amendment shall have the same meanings as set forth in the Conservation Restriction.

2. The Grantor and the Grantee agree effective as of the Effective Date, as defined in Paragraph 3 below, as follows:

(a) The first paragraph of the Conservation Restriction is deleted in its entirety and the following is substituted in place thereof:

“BOSTON HILL DEVELOPMENT, LLC, with an address at 100 Andover By-Pass, Suite 203, North Andover, Massachusetts 01845 (hereinafter, together with successors in title to any or all of the Entire Premises as hereinafter defined, called the "Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the General Laws of Massachusetts, grants, with QUITCLAIM COVENANTS, to the TOWN OF NORTH ANDOVER, a Massachusetts municipal corporation in the Commonwealth of Massachusetts, acting by and through its Conservation Commission by authority of Section 8C of Chapter 40 of the General Laws of Massachusetts, having a mailing address at 1600 Osgood Street, North Andover, Massachusetts 01845 (hereinafter together with its successors and permitted assigns called the "Grantee"), in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction, (hereinafter called the "Restriction") on a parcel of land adjacent to Route 114 (also known as Turnpike Street) and located across from Johnson Street, North Andover, Massachusetts, constituting approximately 25.14 acres of a 33.35 acre parcel of land, and shown as 'Open Space Parcel A' on the plan prepared by Marchionda & Associates, L.P., dated February 13, 2009, entitled “CONSERVATION RESTRICTION THE BOSTON HILL PREMISES NORTH ANDOVER, MA Prepared for: ELM DEVELOPMENT SERVICES, L.L.C. 200 NORTH MAIN STREET EAST LONGMEADOW, MA 01028”, a copy of which is attached hereto and marked as Exhibit A and made a part hereof (the “Open Space Plan”). The 25.14 acre Open Space Parcel A shall hereinafter be referred to as the “Premises”. The approximately 33.35 acre parcel of which the Premises are a part shall hereinafter be referred to as the “Entire Premises”. That portion of the Entire Premises that does not constitute part of the approximately 25.14 acre Open Space Parcel A shall not be subject to the Restriction in

any respect whatsoever, with the exception of the Parking Spaces as defined in Section A(9). For Grantor's title, see deed of Boston Hill Ski Area Inc. to Boston Hill Development, LLC, dated January 2, 1998, and recorded with the Essex North District Registry of Deeds at Book 4932, Page 127."

(b) Section A(9) of the Conservation Restriction is deleted in its entirety and the following is substituted in place thereof: "(9) Use and enjoyment by the general public of the Premises outside of use of the trails (and the six parking spaces denoted on the Open Space Plan (the "Parking Spaces")) as shown on the Open Space Plan unless invited by residents of any development constructed on any portion of the Entire Premises which is not subject to this Restriction (the "Development")."

(c) The word "Plans" in the fifth line of Section B is deleted and the words "plans approved by all governmental authorities exercising jurisdiction over the Grantor's Premises and/or the Development (the "Plans")" are substituted in its place.

(d) Section B(1) of the Conservation Restriction is deleted in its entirety and the following is substituted in place thereof: "(1) All uses and structures shown on the Plans or as allowed by the terms of the governmental permits or approvals for the Development, such as, for example, drainage purposes, grading, storm water management systems, and a footbridge;"

(e) Section B(2) of the Conservation Restriction is deleted in its entirety and the following is substituted in place thereof: "(2) Construction and maintenance and repair or replacement of all improvements as shown on the Plans or as allowed by the terms of the governmental permits or approvals for the Development;"

(f) Section B(10) of the Conservation Restriction is deleted in its entirety and the following is substituted in place thereof: "(10) The construction and maintenance of the trail system shown on the Open Space Plan subject to review by the Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries and Wildlife to determine any impact on protected species;

(g) The words "Boston Hill Condominium" in Section B(11) of the Conservation Restriction are deleted, and the word "Development" is substituted in place thereof.

(h) Section B of the Conservation Restriction is amended by adding the following after the numbered paragraph (11) on Page 5 of the Conservation Restriction: "(12) Habitat management activities designed to benefit state-listed species and/or species of conservation interest with prior written approval from the Natural Heritage and Endangered Species Program of the Division of Fisheries and Wildlife, its successors and assigns, and the Grantee. Such activities may include, but are not limited to, forestry, mowing, cutting, pruning, soil and vegetation alteration, use of herbicide for invasive species control/removal, and burning."

(i) The words "six parking spaces accessory to the biking trail, and shown on Pages 6, 8, 16, and L 1 of the Plans," in the second paragraph of Section E of the Conservation Restriction are deleted and the words "Parking Spaces" are substituted in place thereof.

(j) The words "six parking spaces designed on Exhibit A" in the third line of Section E(7) of the Conservation Restriction are deleted and the words "Parking Spaces" are substituted in place thereof.

(k) The first sentence of the last paragraph of Section E of the Conservation Restriction is deleted in its entirety and the following is substituted in place thereof: "However, and notwithstanding the foregoing, Grantee shall have the right at any time, and from time to time, to further regulate and limit such purposes for which the public may use the hiking trail on the Premises and the Parking Spaces, and to otherwise regulate public use of the hiking trail located on the Premises.

(l) The words "Boston Hill Condominium" in the third line of the second paragraph of Section F of the Conservation Restriction are deleted and the words "Grantor or its successors in title to any or all of the Entire Premises" are substituted in place thereof.

(m) The plan prepared by Marchionda & Associates, L.P., dated February 13, 2009, entitled "CONSERVATION RESTRICTION THE BOSTON HILL PREMISES NORTH ANDOVER, MA Prepared for: ELM DEVELOPMENT SERVICES, L.L.C. 200 NORTH MAIN STREET EAST LONGMEADOW, MA 01028", a copy of which is attached hereto and marked as Exhibit A and made a part hereof, supersedes and replaces Exhibit A to the Conservation Restriction.

(n) The first paragraph of Exhibit B to the Conservation Restriction is deleted in its entirety and the following is substituted in its place: "The Premises, as defined in and subject to, the aforesaid Restriction is located on a parcel of land adjacent to Route 114 (also known as Turnpike Street) and located across from Johnson Street, North Andover, Massachusetts, constituting approximately 25.14 acres of a 33.35 acre parcel of land, and shown as 'Open Space Parcel A' on the plan prepared by Marchionda & Associates, L.P., dated February 13, 2009, entitled "CONSERVATION RESTRICTION THE BOSTON HILL PREMISES NORTH ANDOVER, MA Prepared for: ELM DEVELOPMENT SERVICES, L.L.C. 200 NORTH MAIN STREET EAST LONGMEADOW, MA 01028", a copy of which is attached hereto as Exhibit A."

3. The agreements set forth herein shall take effect upon the occurrence of all of the following: (i) the execution of this Amendment by the Grantor, accepted by the Grantee, approved by the Selectman of the Town of North Andover and the Secretary of Environmental Affairs of the Commonwealth of Massachusetts, and (ii) the recording of this Amendment in the North Essex Registry of Deeds (the "Effective Date").

4. Except as specifically modified by this Amendment, the Grantor and the Grantee acknowledge that all terms and conditions of the Conservation Restriction and the obligations of the parties thereunder remain unchanged and in full force and effect and may be enforced against the respective parties in accordance with the terms thereof. The Grantor and the Grantee further acknowledge that this Amendment is consistent with the purposes of the Conservation Restriction and shall not affect its perpetual duration or the conservation value of the Premises.

IN WITNESS WHEREOF, the parties hereto have signed this Amendment to Conservation Restriction as a sealed instrument as of the date first written above.

BOSTON HILL DEVELOPMENT, LLC

By: *Anthony Mesiti*
Anthony Mesiti
Manager

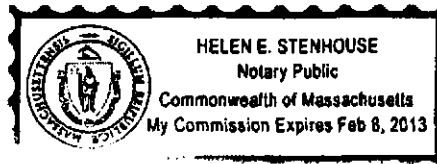
COMMONWEALTH OF MASSACHUSETTS

Essex County
Hampden, ss.

On this 10 day of October, 2011, before me, the undersigned notary public, personally appeared Anthony Mesiti, in his capacity as Manager of Boston Hill Development, LLC, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Helen E. Stenhouse
Notary Public

My commission expires: 2-8-2013




**ACCEPTANCE OF GRANT
APPROVAL OF RELEASE**

We, the undersigned, being a majority of the Conservation Commission of the Town of North Andover, Massachusetts, hereby certify that at a meeting duly held on October 26, 2011 the Conservation Commission unanimously voted to accept the foregoing Amendment to Conservation Restriction to the Town of North Andover pursuant to G.L. Chapter 184, Section 32 and G.L. Chapter 40, Section 8C.


CONSERVATION COMMISSION




Louis Napoli, Chairman



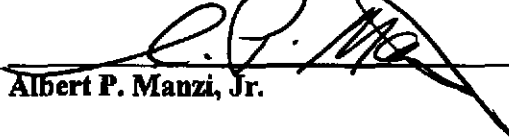
Douglas Sarr



Joseph W. Lynch



Sean F. McDonough



Albert P. Manzi, Jr.

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 26th day of OCTober, 2011, before me, the undersigned notary public, personally appeared the above-named persons, Conservation Commission of the Town of North Andover, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Donna M. Wedge

Notary Public

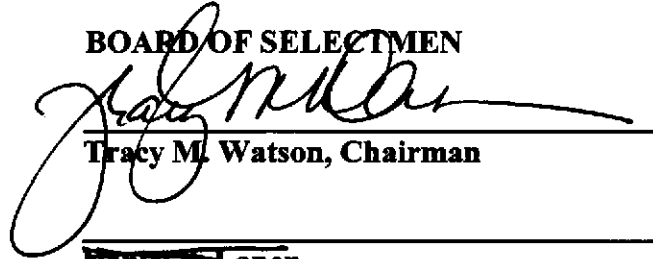
My commission expires: 7/15/2016




APPROVAL OF SELECTMEN

We, the undersigned, being all of the Selectmen of the Town of North Andover, Massachusetts, hereby certify that at a meeting duly held on ~~October 20, 2011~~ the Selectmen unanimously voted to approved the foregoing Amendment to Conservation Restriction to the Town of North Andover pursuant to G.L. Chapter 184, Section 32 and G.L. Chapter 40, Section 8C.

BOARD OF SELECTMEN



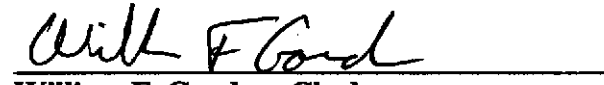
Tracy M. Watson, Chairman

~~Daniel F. Lanen~~


Rosemary Connelly Smedile, Licensing
Chairman



Donald B. Stewart



William F. Gordon, Clerk

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 24 day of October, 2011, before me, the undersigned notary public, personally appeared the above-named persons, Selectmen of the Town of North Andover, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Adelle J Johnson
Notary Public

My commission expires: Dec 29, 2011

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Amendment to Conservation Restriction to the Town of North Andover has been approved in the public interest pursuant to M.G.L. Chapter 184, Section 32.

Date: November 9, 2011 Philip Griffiths
for Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

November 9, 2011

Then personally appeared before me Philip Griffiths on behalf of Richard K. Sullivan, Jr., Secretary, Executive Office of Energy and Environmental Affairs, and proved to me through satisfactory evidence of identification, which was (*personal knowledge of identity*), to be the person whose name is signed on the document and acknowledged to me that he/she signed it voluntarily as Secretary of Energy and Environmental Affairs for the Commonwealth of Massachusetts, for its stated purpose.

Mark Sean

Notary Public
My Commission expires: 12/15/2011

