

CONSERVATION RESTRICTION
To
The Trustees of Reservations
Edgewood Farm, North Andover

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Edgewood Retirement Community, Inc., a Massachusetts not-for-profit corporation with an address of 1060 Osgood Street, North Andover, Massachusetts, 10845 grants, with quitclaim covenants, to The Trustees of Reservations, a Massachusetts charitable corporation established under Chapter 352 of the Acts of 1891, with an address at 572 Essex Street, Beverly, Massachusetts, its successors and permitted assigns, ("Grantee") in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction on a parcel of land of approximately 29.5 acres located in the Town of North Andover, Massachusetts, said parcel being described in Exhibit A attached ("Premises"). Hereafter the term "Grantor" shall mean the said Edgewood Retirement Community, Inc. and its successors and assigns.

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 forested condition and to prevent any use of the Premises that will significantly impair or interfere with the conservation values of the Premises. The conservation of the Premises will yield a significant public benefit for the following reasons:

- (1) The Premises lie within the watershed of, and immediately abut, Lake Cochichewick, the public water supply of the Town of North Andover. Preservation of the watershed is critical to maintaining the water quality of the lake and the well-being of the town's inhabitants.
- (2) The Premises comprise a diverse natural area offering field and woodland habitat for wildlife and flora.
- (3) The Premises consist of open space the preservation of which is in furtherance of the conservation policy of the Town of North Andover.
- (4) The Premises abut and provide a buffer to Weir Hill Reservation, a property of The Trustees of Reservations owned and managed for its natural and scenic and its public recreational opportunities.

The terms of this Conservation Restriction are as follows:

A. **Prohibited Uses.** Except, as otherwise provided, as to reserved rights set forth in paragraph B below, Grantor will

Ropes AND GRAY
INTERNATIONAL PL
BOSTON, MA 02110
ATT. Arthur Hughes

neither perform nor permit the following acts and uses on the Premises:

- (1) Constructing or placing of any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on or above the Premises;
- (2) Mining, excavating, dredging 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 soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities causing accelerated soil erosion or inimical to soil conservation, and which are not conducted in compliance with standards and practices recommended for erosion and sedimentation control by the U.S. Department of Agriculture Soil Conservation Service or any successor organization; and
- (6) Any other use of the Premises or activity thereon which is inconsistent with the purpose of this Conservation Restriction.

B. Reserved Rights. All acts and uses not prohibited in paragraph A are permissible and are reserved to and may be undertaken exclusively by Grantor. Notwithstanding the provisions of paragraph A, the following acts and uses are also permitted by Grantor only but only if such uses and activities do not materially impair the purpose of this Conservation Restriction:

- (1) Fishing, hiking, cross-country skiing and other passive outdoor recreational activities.
- (2) Selective cutting or trimming of trees, brush and other vegetation for the purposes of maintaining the existing field as open meadow, removal of dead or diseased vegetation, and removal of safety hazards to users of the Premises.
- (3) The construction, marking, maintenance, and repair of trails for pedestrian use, provided that such trails are located, constructed and maintained in a manner

approved in writing by the Grantee as consistent with protection of the ecological and public health values of the Premises, which approval shall not be unreasonably withheld. One trail providing reasonably direct access from other land of the Grantor to the lakeshore may be surfaced with asphalt or other impervious material, provided it is no greater than six feet in width. Grantor agrees to maintain any paved trail in good condition and to promptly remove fractured pavement. All other trails shall be surfaced with dirt, wood chips or other natural, pervious material.

- (4) Construction, maintenance, and repair of a picnic shelter no greater than 16 by 16 feet in either floor or roof dimensions, provided however that the shelter shall be located a minimum of 25 feet from the shoreline of the lake and provided further that the location and design shall first be approved in writing by the Grantee as consistent with the protection of the ecological and public health values of the Premises, which approval shall not be unreasonably withheld nor delayed in violation of paragraph C below.
- (5) Construction of a small seating area near the lakeshore to provide Grantor with a resting area offering views across the lake, construction of which may include installation of benches, selective clearing of vegetation, and limited extension of any pavement from the paved walking path, provided, however, that the location and design of the seating area shall first be approved in writing by the Grantee as consistent with protection of the ecological and public health values of the Premises, which approval shall not be unreasonably withheld nor delayed in violation of paragraph C below.
- (6) Following notice to Grantee, demolition and removal of the existing residence and storage shed on the Premises, removal of debris in the existing field, and restoration of the disturbed ground through the application of fill, loam, seed and plant materials, as necessary. Demolition and removal of materials and restoration shall be conducted in such a manner as to prevent erosion from the work site and to otherwise protect the conservation values of the Premises.
- (7) Use of the existing field for gardens to be maintained by residents of Grantor's adjacent property. Said use may include the erection of small, communal sheds for the storage of tools, the installation of water lines for irrigation, and the erection of fences. Pesticide use shall be kept to a reasonable minimum and shall be in compliance with federal, state and local law;

Grantor shall erect and maintain a sign at the entrance to the gardens notifying residents of these limitations.

C. Notice and Approval. Whenever notice to or approval by Grantee is required under the provisions of paragraph B, Grantor shall notify 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. Where Grantee's approval is required, within sixty days of receipt of Grantor's written request therefor, Grantee shall, in writing, either (a) approve the request, or (b) disapprove the request, in which case it will give written notice of the reasons why and suggestions for modification whereby such request may be made acceptable. Failure of Grantee to respond in writing within such 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time.

D. Proceeds from Extinguishment. Grantor and Grantee agree that the donation of this Conservation Restriction gives rise for purposes of this paragraph to a property right, immediately vested in Grantee, with a value at any point in time equal to the difference between the fair market value of the Premises as if unencumbered by this Restriction (minus any increase in value attributable to improvements made after the date of this grant) and the fair market value of the Premises as if subject to this Restriction. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds equal to the value of Grantee's property right as previously defined, the valuation date being the date of such sale, exchange or involuntary conversion; subject, however, to any applicable law which expressly provides for a different disposition of proceeds. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain, or if all or any part of this Conservation Restriction is otherwise extinguished by act of public authority, then Grantor and Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by Grantor and Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between Grantor and Grantee as determined by a court of competent jurisdiction. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

E. 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) There is hereby granted to Grantee and its 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 and (b) after 30 days prior written notice, to take any and all actions with respect to the Premises at the then fee owner's reasonable cost, subject to the provisions of paragraph G hereof, as may be reasonably necessary or appropriate, with or without order of court, to remedy, abate or otherwise enforce any violation hereof.
- (2) There is hereby granted to Grantee the right to erect and from time to time replace, at appropriate locations near the boundaries of the Premises mutually agreed upon, suitable signs identifying Grantee as the holder of this Conservation Restriction.

F. 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 at the time of this grant (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 all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy or abate any violation thereof. By its acceptance, Grantee does not undertake any liability or obligation relating to the condition of the Premises. Enforcement of the terms of this Restriction shall be at the reasonable discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Restriction shall not be deemed or construed to be a waiver. If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.

G. Acts Beyond Grantor's Control. Notwithstanding anything herein to the contrary, nothing contained in this Conservation Restriction shall be construed to entitle Grantee to bring any action against Grantor, or make Grantor liable on its covenant to reimburse Grantee all reasonable costs and expenses incurred in enforcing this Conservation Restriction, 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, earth movement, and acts caused by trespass on the Premises not contributed to by acts or negligence of Grantor, 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.

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; and Grantor appoints Grantee as Grantor's attorney-in-fact solely to execute, acknowledge and deliver, on Grantor's behalf, any instrument whose sole purpose is to assure the perpetual enforceability of this Conservation Restriction. Without limiting the foregoing, Grantor agrees to execute any such instrument upon request. 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 purpose 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. Grantor and Grantee intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.

I. Subsequent Transfers. Grantor agrees to incorporate 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. Failure of Grantor to do so shall not impair the validity of this Conservation Restriction or limit its enforceability in any way.

J. Estoppel Certificates. Upon request by Grantor, Grantee shall within twenty (20) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Conservation Restriction, and which otherwise evidences the status of this Conservation Restriction as may be requested by Grantor.

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

Executed under seal this 27th day of October, 1995.

EDGEWOOD RETIREMENT COMMUNITY, INC.

By Name: [Signature]
Title: President

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

October 27, 1995

Then personally appeared the above-named Joseph R. Rokous and acknowledged the foregoing instrument to be the free act and deed of Edgewood Retirement Community, Inc., before me.

[Signature]
Notary Public
My commission expires: 1-15-99

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this 19th day of September, 1995, to take effect upon execution by Grantor.

THE TRUSTEES OF RESERVATIONS

By [Signature]
Its [Signature]

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

September 19, 1995

Then personally appeared the above-named Frederic Winthrop, Jr. and acknowledged the foregoing instrument to be the free act and deed of The Trustees of Reservations, before me.

[Signature]
Notary Public Charles D. Wyman
My commission expires: 10/27/2000

APPROVAL OF SELECTMEN

We, the undersigned, being a majority of the Selectmen of the Town of North Andover, Massachusetts, hereby certify that at a meeting duly held on SEPTEMBER 18, 1995 the Selectmen voted to approve the foregoing Conservation Restriction to The Trustees of Reservations pursuant to M.G.L. Chapter 184, Section 32, subject to the approval of the Secretary of Environmental Affairs.

Selectmen

[Signature]
[Signature]
[Signature]
Donald B. Stewart

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SEPTEMBER 18, 1995

Then personally appeared the above-named JOHN R. LEEMAN, JR.,

JOHN P. SAVASTANO, KENIN P. FOLEY,

KENNETH C. CROUCH, and DONALD B. STEWART

and acknowledged the foregoing instrument to be their free act and deed, and the free act and deed of the Board of Selectmen of the Town of North Andover, before me.

Joyce A. Bradshaw
Notary Public
My commission expires: 3-21-97

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. Chapter 184, Section 32.

Date: 10/12/, 1995
[Signature]
Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

October 12, 1995

Then personally appeared the above-named Leo Pierre Roy and acknowledged the foregoing instrument to be his or her free act and deed, before me.

[Signature]
Notary Public
My commission expires:

8/17/95

Sharon M. Pelosi
NOTARY PUBLIC
My Commission expires June 21, 2002

EXHIBIT A
CONSERVATION RESTRICTION DESCRIPTION

BK 4379 PG 251

A portion of Lot 6 being easterly of the watershed line as shown on sheet two of a set of four, by Harry R. Feldman, Inc., dated April 11, 1989, recorded at the Essex County North District Registry of Deeds as Plan No. 11656 of 1989, with affidavit amendment of November 9, 1989, recorded on November 17, 1989 as Document No. 25218, bounded and described as follows:

Beginning at a drill hole at the corner of a stone wall at the end of the lane to Pond Pasture at the junction with land of Samuel F. Rockwell, Jr., et al and Lot 6;

thence turning and running S 19° 17' 59" E, along a stone wall, a distance of 181.49 feet to a corner of a stone wall;

thence turning and running along a stone wall by four courses described as follows:

N 78° 53' 10" E, a distance of 286.63 feet;

N 78° 32' 29" E, a distance of 168.03 feet;

N 78° 04' 17" E, a distance of 363.94 feet;

N 77° 34' 20" E, a distance of 325 feet more or less to the westerly shoreline of Lake Cochichewick as located on January 6, 1986;

thence turning and running along the said westerly shoreline of Lake Cochichewick generally southerly, a distance of 1485 feet more or less to a point;

thence turning and running S 79° 55' 35" W, a distance of 594 feet more or less to an iron pipe;

thence turning and running along the aforementioned watershed line generally in a northerly direction, a distance of 1610 feet more or less to a point, said point lying on the northerly boundary of said Lot 6 adjoining land now or formerly of Mary F. Charles and the centerline of the lane to Pond Pasture;

thence turning and running along the said centerline by land now or formerly of Mary F. Charles, S 89° 03' 24" E, a distance of 51.10 feet to a point;

thence turning and running along a stone wall S 62° 59' 08" W, a distance of 60.14 feet to the point of beginning.

The above described parcel contains approximately 1,286,250 square feet (29.528 acres) of land as shown on the aforementioned reference plan.