

DECLARATION OF RESTRICTION

THIS DECLARATION OF RESTRICTION (hereinafter the "Declaration") is made this 28th day of March, 2008, by Pribhu Hingorani, Trustee of One Hundred Fourteen Trust u/d/t dated November 3, 1994, having an address at 51 Mount Joy Drive, Tewksbury, MA 01876, (hereinafter the "Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of land located in North Andover, Essex County, Massachusetts, shown as Lot 1N-A, Lot 2N-A, Lot 3N-A and Lot 4N-A on a plan of entitled, "Approval Not Required Plan Lots 1N-A Thru 4N-A North Andover, Mass." dated Sept. 24, 2007, with revisions through October 11, 2007, recorded in the Essex North District Registry of Deeds ("Registry") as Book:PL-15839 (hereinafter the "Property");

WHEREAS, the Property contains Priority and Estimated Habitat for the Blanding's Turtle (*Emydoidea blandingii*), a state-protected species listed as Threatened pursuant to the Massachusetts Endangered Species Act (MESA) (G.L. c. 131A:3 and 321 CMR 10.23); and

WHEREAS, Declarant desires to protect a significant contiguous area of this state-listed species habitat as an integral part of the development of the Property;

NOW, THEREFORE, Declarant hereby voluntarily declares and imposes **in perpetuity** upon a portion of the Property identified herein ("Conservation Easement Area") the following covenants, conditions and restrictions for the benefit of Declarant, its successors and assigns, the Town of North Andover [hereinafter the "Town"], and the Commonwealth of Massachusetts

Property Address: 0 Turnpike Street + Berry Street, No. Andover, MA 01845

Division of Fisheries and Wildlife [hereinafter the "Division"], and said Conservation Easement Area shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, conditions, and restrictions hereinafter set forth.

I. Restricted Area - The portion of the Property shown on the plan recorded herewith, and entitled "Conservation Easement Plan Lots 1N-A Thru 4N-A North Andover, Mass." dated Nov. 18, 2007 (hereinafter "Plan"), as "Conservation Easement 8.3 Acres", consisting of 8.3 +/- acres of land, as shown on the Plan, (herein referred to as the "Conservation Easement Area") shall be maintained in perpetuity in a naturally vegetated state subject to the use restrictions set forth below and as shown on said Plan;

a. **Purpose:** It shall be the intent and purpose of this Declaration of Restriction to limit use of the "Conservation Easement Area" within the Property to conservation, passive recreation, open space, and wildlife habitat.

b. **Use Restrictions:**

Within the Conservation Easement Area,

- i. There shall be no destruction or disturbance of plant life (cutting, removing or otherwise destroying trees, shrubs, grasses, or other vegetation). Any vegetative maintenance activities will require direct approval from NHESP.
- ii. There shall be no constructing, placing or permitting to remain, any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, billboard or other advertising display, or other temporary or permanent structure or facility, on, below or above the ground on the land;
- iii. There shall be no mining, excavating, dredging or removal of soil, loam, peat, gravel, sand, rock or other mineral substances or natural deposits on the land;
- iv. There shall be no placing, filling, storing or dumping of refuse, trash, compost, yard waste, vehicle bodies or parts, rubbish, debris, junk, solid or chemical waste or the installation of underground storage tanks or other unsightly or offensive substance or material whatsoever on or below the land;
- v. There shall be no disruption, removal, or destruction of the fencing and signage surrounding the land;
- vi. There shall be no activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, prevention of pollution, protection of groundwater, or wildlife habitat;
- vii. There shall be no use of motorized vehicles of any nature or kind, including but not limited to cars, trucks, motorcycles, all-terrain vehicles and ski mobiles, except as required by the police, fire department or any other governmental agents in carrying out their lawful duties;

- viii. There shall be no further subdivision of the Property into lots that could be conveyed into separate ownership, however, this provision shall not prohibit lot line adjustments among the four lots presently comprising the Property;
 - ix. There shall be no camping, fishing, or trapping. There shall be no hunting except for limited archery hunting for deer in accordance with the Town of North Andover's Open Space Rules and Regulations.; and
 - x. There shall be no use or activity which would materially impair significant conservation interests unless necessary for the protection of the conservation interests that are the subject of this Deed Restriction;
 - xi. This Covenant of Dedication may be changed, modified or revoked only upon written approval by the Division. To be effective, such approval must be witnessed, authenticated, and recorded pursuant to the law of the Commonwealth of Massachusetts.
 - xii. This Covenant is made in perpetuity such that the present owner and its heirs and assigns forever shall be bound by the terms and conditions set forth herein.
- c. **Reserved Rights:** Notwithstanding any provisions herein to the contrary, Declarant reserves to itself and/or its successors and assigns the right to:
- i. establish, enforce, waive, alter and amend such additional rules, regulations, covenants, conditions and restrictions governing use of the "Conservation Easement Area" as are not otherwise prohibited by this Declaration of Restriction as agreed to in writing by the Division and allowed by applicable federal, state or local law or regulation, and
 - ii. conduct or permit the following activities in the "Conservation Easement Area" if such acts do not materially impair significant conservation interests limited to the following:
 - 1. selective cutting or pruning of trees and vegetation to maintain access to and over existing footpaths located thereon;
 - 2. selective cutting or pruning of trees and vegetation for protection of persons and property from imminent risks of harm or damage to persons and structures with written approval of the Division.
 - 3. use of those portions of the "Conservation Easement Area" shown on the Plan for the purpose of access for construction and maintenance of drainage structures.
 - 4. construct fences, walls or necessary boundary markers on the "Conservation Easement Area" upon written consent by the Division, such consent not to be unreasonably withheld.
 - iii. conduct or permit wetland replication, reforestation, grading, installation of stone walls, installation of signage, maintenance of all such items, and such other work and activities as are required or

permitted under Massachusetts Wetlands Act Order of Conditions DEP File # 242-1410 (Lot 1N-A), DEP File # 242-1409 (Lot 2N-A), DEP File # 242-1408 (Lot 3N-A) or DEP File No# 242-1407 (Lot 4N-A), respectively recorded in the Registry at Book 11044, Page 32; Book 11044, Page 58; Book 1044, Page 84; and Book 11044, Page 110, as modified by Book 11044, Page 135.

II. Term - Binding Effect In Perpetuity. This Declaration of Restriction and its provisions herein set forth shall run with the Property as shown on said Plan in **perpetuity** from the date of recordation in the Registry and shall be binding upon Declarant, Declarant's successors and assigns, and any other party having an ownership interest in said Property or claiming to have an interest with respect to said Property as tenants, invitees, licenses or otherwise, and all of the respective heirs, successors, grantees, mortgages, assigns, agents, contractors, subcontractors and employees of the foregoing.

This Declaration of Restriction is hereby intended and declared to be in perpetuity and no re-recordation of this Declaration of Restrictions under G.L. c. 184, ss. 23-30 or any other law shall ever be necessary in order to maintain the full legal effect and authority hereof and Declarant and its successors and assigns, including but not limited to all subsequent owners of the Restricted Parcels, hereby waive all their legal right to and shall forego any action in law or equity of any kind whatsoever attempting to contest the validity of any provision of this Declaration of Restriction and shall not, in any enforcement action, raise the invalidity of any provision of this Declaration of Restriction.

Notwithstanding anything inconsistent or to the contrary set forth above, the Town and the Division are hereby authorized, jointly and severally, to record and file any notices and/or instruments that the Town and/or the Division deem appropriate to assure the legal validity and enforceability in perpetuity of this Declaration of Restriction and the Declarant, on behalf of itself and its successors and assigns, hereby appoints the Town and the Division as its and their attorney-in-fact to jointly or severally execute, acknowledge, deliver and record any such notice or instrument on its and/or their behalf. Without limiting the foregoing, the Declarant and its successors and assigns agree to execute any such notices and instruments upon request of the Town or the Division.

III. Enforceability. The Town and the Division, jointly and severally, shall have the authority and right to enforce this Declaration of Restriction.

The Town and the Division, jointly and severally, shall have the right to enter the Conservation Easement Area, in a reasonable manner and at reasonable times, for the purposes of (i) inspecting the Conservation Easement Area to determine compliance

with this Declaration of Restriction; (ii) enforcing this Declaration of Restriction; and (iii) taking any other action which may be necessary or appropriate.

The Town and the Division, jointly and severally, shall have the right to bring proceedings at law or equity against any party or parties violating or attempting to violate the terms of this Declaration of Restriction to enjoin them from so doing and to cause any such violation to be remedied, including but not limited to restoration of the Conservation Easement Area adversely affected, after providing written notice to such party or parties and all mortgagees of record if the names and addresses of such parties and mortgagees have been provided in writing to the Town and the Division.

IV. Severability. If any court or other tribunal of competent jurisdiction determines that any provision of this Declaration of Restriction is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

V. Non-Waiver. Any election by the Town and/or the Division as to the manner and timing of its right to enforce this Declaration of Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

VI. Access. This Declaration of Restriction does not grant to the Town, the Division, the general public, or to any other person or entity any right to enter upon the Conservation Easement Area or any other portion of the Property except the right of the Town and the Division to enter the Conservation Easement Area at reasonable times and in a reasonable manner for the purpose of inspecting the same to determine compliance herewith, enforcing this Declaration of Restriction as set forth in Section III above.

VII. Incorporation Into Deeds, Mortgages, Leases and Instruments of Transfer. Declarant and Declarant's successors and assigns, including all subsequent owners of any portion of the Conservation Easement Area, shall incorporate this Declaration of Restriction, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Conservation Easement Area or any portion thereof is conveyed. Any such deed, mortgage or other interest purporting to convey any portion of the Conservation Easement Area without including this Declaration of Restriction in full or by reference shall be deemed and taken to include said Declaration of Restriction in full even though said Declaration of Restriction is not expressly described or referenced therein.

VIII. Recordation/Registration. Declarant shall record and/or register this Declaration of Restriction with the appropriate Registry of Deeds and/or Land Registration Office upon the later of (i) thirty (30) days of its date of execution or (ii) the conveyance of the first Lot located on the Plan to a *bona fide* purchaser.

IX. Amendment and Release. No amendment or release of this Declaration of Restriction shall be effective unless it has been approved in writing by the Division [hereinafter the Division Approval] and said amendment or release and the requisite Division Approval has been recorded with the appropriate Registry of Deeds and/or Land Registration Office.

IN WITNESS WHEREOF, Pribhu Hingorani, Trustee of One Hundred Fourteen Trust u/d/t dated November 3, 1994, has caused these presents to be signed, acknowledged and delivered as trustee of said trust this 28th day of March, 2008.

One Hundred Fourteen Trust

By: Pribhu Hingorani, Trustee
Pribhu Hingorani, Trustee

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

28th March, 2008

On this day before me, the undersigned notary public, personally appeared Pribhu Hingorani, Trustee of One Hundred Fourteen Trust, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, ☐ personal knowledge of the undersigned, 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.

James B. Sheridan, Notary Public

SEAL

My Commission Expires: 10-25-2013