

CONSERVATION RESTRICTION

13 Douglas J. Ely and Judith Ely Zazula of 386 Great Pond Road, North Andover, MA 01845 ("Grantor(s)"), acting pursuant to Section 32 of Chapter 184 of the General Laws grant with Quitclaim Covenants to the Inhabitants of the Town of North Andover a Massachusetts municipal corporation, of 120 Main Street, North Andover, MA 01845, and its successors and permitted assigns ("Grantee") in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction on a parcel of land located in North Andover, Massachusetts described as Exhibit A attached hereto and made a part hereof (the "Premises"), reserving to Grantor(s) the fee simple in the Premises and all other rights therein not expressly granted to Grantee.

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 assume that the Premises will be retained in perpetuity predominantly in their natural, scenic and open 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:

The Premises have scenic value for the public using the adjoining heavily traveled public way and the Premises are in the watershed of Lake Cochichewick and protection of the premises will enhance the potential for protection of the municipal water supply.

The terms of this Conservation Restriction are as follows:

A. Prohibited Uses. Except to the extent permitted in paragraph B below, Grantor(s) shall neither perform nor permit the following acts or uses on the Premises:

(1) Constructing or placing any building, landing strip, mobile home, swimming pool, tennis court, asphalt or concrete pavement excepting, however, and allowing the construction of an access way from Great Pond Road to other portions of the parcel and abutting lands, 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;

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(3) The installation of underground storage tanks, or the dumping on the Premises of refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material;

(4) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control or soil conservation;

(5) Any other use of the Premises or activity thereon which is inconsistent with the purpose of this Conservation Restriction.

B. Reserved Rights. Notwithstanding anything in Paragraph A to the contrary, the following acts and uses are permitted, but only to the extent such acts and uses do not materially impair the purpose of this Conservation Restriction:

(1) Passive outdoor recreational activities;

(2) The conveyance of the Premises in its entirety or any portion thereof separately, or any lawful subdivision of the Premises, as long as such conveyance is made subject to the terms of this Conservation Restriction.

(3) The posting of "No Trespassing" signs, and signs identifying the property ownership, not to exceed twenty (20) inches by ten (10) inches affixed to existing trees, fences or posts, as well as suitable signs identifying Grantee as the holder of this Conservation Restriction as provided for in Paragraph E below.

(4) Construction of an access way from Great Pond Road to other portions of the parcel and abutting lands.

(5) Set back measurements shall be from the edge of Great Pond Road.

All acts and uses not expressly prohibited in paragraph A are allowed hereunder. The exercise of any right reserved by Grantor under this paragraph B shall be in compliance with the then current Zoning By-Law of the Town of North Andover, the Wetlands Protection Act (General Laws Chapter 131, Section 40) and all other applicable federal, state and local law. The inclusion of any reserved right in this paragraph B requiring a permit from a public agency does not imply that Grantee takes a position on whether such permit should be issued.

C. Notice and Approval. Whenever notice to or consent of Grantee is required under the provisions of paragraph A or B, Grantor(s) shall notify Grantee in writing not less than forty-five (45) days prior to the date Grantor(s) intend 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 consent is required, Grantee shall grant or withhold its consent in writing within forty-five (45) days of receipt of Grantor(s)' written request therefore. Grantee's failure to act upon a request for consent within forty-five (45) days after receipt of such request shall be construed as waiver of Grantee's rights of prior consent solely for that particular request, provided that such request sets forth the provisions of this section relating to deemed approval after the passage of time. Whenever notice to Grantee is required hereunder, there shall be no implication that Grantee's approval or consent is also required.

D. Proceeds from Extinguishment. Grantor(s) 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 fair market value determined by multiplying the current fair market value of the Premises unencumbered by this Conservation Restriction (minus any increase in value attributable to improvements made after the date of this grant) by the ratio of the value of this Conservation Restriction at the time of this grant to the value of the Premises, without deduction for the value of this Conservation Restriction, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal estate tax purposes allowable by reason of this grant, pursuant to Section 2055 of the Internal Revenue Code of 1954, as amended. For the purposes of this paragraph, the ratio of the value of this Conservation Restriction to the value of the Premises unencumbered by this Conservation Restriction shall remain constant. 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 such proportionate value, 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(s) 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(s) and Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between Grantor(s) and

Grantee in shares equal to such proportionate value. 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 to inspect the premises to determine compliance herewith and (b) after thirty (30) days prior written notice, to take any and all actions with respect to the Premises at the then fee owner's cost as may be necessary or appropriate, with or without order of court, to remedy, abate, or otherwise enforce any violation hereof.

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(s) covenant. Grantee does not undertake any liability or obligation relating to the conditions of the Premises. Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation 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. Nothing contained in this Conservation Restriction shall be construed to entitle Grantee to bring an action against Grantor(s) 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 omissions of Grantor(s), or from any prudent action taken by Grantor(s) 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(s) and all future owners and tenants in perpetuity. Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. Without limiting the foregoing, Grantor(s) agree 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 (or successor) must require that the purposes of this Conservation Restriction continue to be carried out by the assignee; (ii) that such assignment would in no way deprive Grantor(s) or either of them of the ability to deduct the value of this Conservation Restriction for federal income tax purposes, and; (iii) that such assignment is to a governmental unit within the meaning of Section 170(c)(1) of the Internal Revenue Code of 1986, as amended (the Code), or to an entity able to enforce such restrictions, which entity shall have purposes similar to those of Grantee and which encompass the Purposes set forth in this Conservation Restriction and which qualifies under Section 32 of Chapter 184 of the General Laws as an eligible donee to receive this Conservation Restriction directly. In addition, such entity must satisfy the requirements of Section 170(h)(3) of the Code and shall be either (a) a charitable organization described in section 501(c)(3) of the Code and which is publicly supported within the meaning of section 170(b)(1)(a)(vi) of the Code or paragraph (2) of section 509(a) of the Code; (b) a government entity described in section 170(b)(1)(A)(v) of the Code; or (c) a public charity that satisfies the terms of section 501(c)(3) of the Code and that is controlled by such a governmental entity or publicly supported organization within the meaning of paragraph (3) of section 509(a) of the Code.

I. Subsequent Transfers. Except in the case of death or other legal disability, Grantor(s) agree to give written notice to Grantee of the transfer of any interest in all or any portion of the premises at least fifteen (15) days prior to the date of such transfer. Failure of Grantor(s) to do so shall not impair the validity of this Conservation Restriction or limit its enforceability in any way. Grantor(s) further agree to include reference to this Conservation Restriction in any subsequent conveyance, including leasehold interests.

J. Termination of Rights and Obligations. Notwithstanding anything to the contrary herein, the rights and obligations, under this Conservation Restriction, of any party holding any interest in the Premises shall terminate upon transfer of that party's interest, except that liability for acts or omissions occurring prior to transfer shall survive the transfer.

K. Estoppel Certificates. Upon request by Grantor(s), Grantee shall within fifteen (15) days execute and deliver to Grantor(s) any document, including an estoppel certificate, which certifies Grantor(s)' compliance with any obligation of Grantor(s) contained in this Conservation Restriction, and which otherwise evidences the status of this Conservation Restriction as may be requested by Grantor(s).

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

IN WITNESS WHEREOF, Douglas J. Ely and Judith Ely Zazula have caused these presents to be executed this 23rd day of May, 1995.

  
\_\_\_\_\_  
Douglas J. Ely

  
\_\_\_\_\_  
Judith Ely Zazula

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

May 23, 1995

Then personally appeared the above named Douglas J. Ely and Judith Ely Zazula and acknowledged the foregoing instrument to be their free act and deed, Before me

  
\_\_\_\_\_  
-Notary Public  
My commission expires:

10/14/99

## EXHIBIT A

A portion of the land located in North Andover, Essex County, Massachusetts known as Lot B1 and shown on "Plan of land located in North Andover, Mass." recorded in the North Essex Registry of Deeds as plan No. 8322 dated January 1, 1980 consisting of a strip of land thirty feet in width and parallel to Great Pond Road along the Southeasterly side of the property approximately 95.25 feet in length running from Lot A to Lot 17 (the Registered land) on said plan. For Grantor's title see deed recorded in Book 2832, Page 176.