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DECLARATION OF RESTRICTION

THIS DECLARATION OF RESTRICTION (hereinafter the "Declaration") is made this 23rd day of January, 2012, by Berry Street Trust, Margaret Fiore (Trustee), 16 Berry Street, North Andover, MA 01845 (hereinafter the "Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of that certain parcel of land known as Lot 12 (a.k.a. Remaining Land), Berry Street located in the Town of North Andover, Essex County, Massachusetts (hereinafter the "Property"), shown on 'Conservation Plan of Land in North Andover, Mass.' dated January 6, 2012, prepared by Goldsmith, Prest & Ringwall, Inc., and recorded in the Essex District Registry of Deeds at Plan Book _____ as Plan 16634 (the "Plan"); and

WHEREAS, the Property contains important habitat, breeding sites, and migration routes for wildlife including the Blanding's Turtle *(Emydoidea Blandingii)*, which at the time of this recording is 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 rare species habitat as an integral part of the development of the Property; and

WHEREAS, the Property is subject to the terms and provisions of MA Endangered Species Act [G.L. c. 131A]; and

WHEREAS, Declarant desires and agrees that the northern portion of Lot 12 (a.k.a. Remaining Land), which Open Space in total contains approximately 3.98± acres as shown on said Plan, shall be maintained in perpetuity as habitat and open space, subject to the Prohibited Acts and Uses and Reserved Rights set forth below;

NOW, THEREFORE, Declarant hereby voluntarily declares and imposes **in perpetuity** upon the Open Space 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 Division of Fisheries and Wildlife [hereinafter the "Division"], and said Property shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, conditions, and restrictions hereinafter set forth.

1. **Prohibited Acts and Uses.** Subject to the exceptions set forth in Section 2 below, the following acts and uses are prohibited in the Open Space:

   A. Construction or placing of any building, tennis court, landing strip, mobile home, swimming pool, fences, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, tower, or other temporary or permanent structure or facility in, on, above or below said Open Space.

B. Mining, excavating, dredging or removing soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit.

C. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance of material whatsoever or the installation of underground storage tanks.

D. Cutting, removing or otherwise destroying trees, grasses or other vegetation or disturbance of shrubs, ground, forest floor or leaf litter.

E. The use of motorized vehicles of any kind, except as required by the police, fire department or any other governmental agents in carrying out their lawful duties.

F. The further subdivision of the Open Space.

G. Activities substantially detrimental to drainage, flood control, water conservation, erosion control or soil conservation.

H. Any other use of or activity on the Open Space which would materially impair significant conservation interests thereon unless necessary for the protection of the conservation interest that are the subject of this restrictive covenant.

2. **Reserved Rights.** Notwithstanding any provisions herein to the contrary, Declarant reserves to itself and its successors and assigns the right to:

A. establish, enforce, waive, alter and amend such additional rules, regulations, covenants, conditions and restrictions governing use of the Open Space 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

B. conduct or permit the following activities in the Open Space if such acts do not materially impair significant conservation interests:

1) Selective cutting or pruning of trees and vegetation to maintain access to and over existing footpaths located thereon and for protection of persons and property from imminent risks of harm or damage to persons and structures.

2) Construct fences or necessary boundary markers on the Open Space upon written consent by the Division, such consent not to be unreasonably withheld.

3) Habitat management activities, including forestry, may be permissible with prior written approval from the Natural Heritage and Endangered Species Program of the Division of Fisheries and Wildlife (the "Division"), its successors and assigns;

3. **Monuments and Signage.** The Declarant and the Declarant's Successors shall maintain in good condition any, bounds, monuments, markers and signs shown on the Plan, demarcating the boundaries of the Open Space, and shall repair and or replace said monuments and signage on an as needed basis.

4. **Term - Binding Effect In Perpetuity.** This Declaration of Restriction and its provisions herein set forth shall run with the Open Space as shown on said Plan in **perpetuity** from the date of recordation in the Essex District Registry of Deeds and shall be binding upon Declarant, Declarant's successors and assigns, and any other party having an ownership interest in said Open Space or claiming to have an interest with respect to said Open Space 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 Restriction 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 Open Space, 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 forgoing, the Declarant and its successors and assigns agree to execute any such notices and instruments upon request of the Town or the Division.

5. **Enforceability.** The Town and the Division, jointly and severally, shall have the authority and right to enforce this Declaration of Restriction and are a benefitted parties.

   The Town and the Division, jointly and severally, shall have the right to enter the Open Space, in a reasonable manner and at reasonable times, for the purposes of (i) inspecting the Open Space 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 portion of the Open Space 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.

6. **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.

7. **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.

8. **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 Property except the right of the Town and the Division to enter the Property at reasonable times and in a reasonable manner for the purpose of inspecting the same to determine compliance herewith and enforcing this Declaration of Restriction as set forth in Section 5 above.

9. **Incorporation Into Deeds, Mortgages, Leases and Instruments of Transfer.** Declarant and Declarant's successors and assigns, including all subsequent owners of the Open Space or portions thereof, 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 Open Space or any portion thereof is conveyed. Any such deed, mortgage or other interest purporting to convey any portion of the Open Space without including this Declaration of Restriction in full or be 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.

10. **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.

11. **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, Margaret Fiore, has caused these presents to be signed, acknowledged and delivered in its name and behalf this 23rd day of January, 2012.

By: Margaret J. Fiore

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss. Jan 23rd, 2012

On this day before me, the undersigned notary public, personally appeared(name), 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.

Notary Public

My Commission Expires: May 31, 2013

KERRY L. CURLEY
NOTARY PUBLIC
COMMONWEALTH OF MASSACHUSETTS
MY COMMISSION EXPIRES MAY 31, 2013