

Conservation Restriction (Copy)

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NORFOLK COUNTY
REGISTRY OF DEEDS
DEDHAM, MA

CERTIFY

William P. O'Donnell
WILLIAM P. O'DONNELL, REGISTER

CONSERVATION RESTRICTION

KNOW ALL PERSONS BY THESE PRESENTS that RICHARD C. KIBBY, individually and as Executor of the Estate of Mary F. Kibby, Norfolk Probate Court Docket No. 09P3100EA, by power conferred by a License for Sale of Real Estate dated June 28, 2010, recorded herewith, and every other power, of 77 North Road, Deerfield, New Hampshire, its successors and assigns, (hereinafter "Grantor"), for consideration paid of Two Hundred Fifty Thousand Dollars, (\$250,000.00), the receipt of which is hereby acknowledged, hereby grants with QUITCLAIM COVENANTS, in perpetuity and for conservation purposes as set forth in Article 97 of the Amendments to the Massachusetts Constitution, a Conservation Restriction (hereinafter "CR") pursuant to Chapter 184, Sections 31-33, and Chapter 92, Section 3, of the General Laws, to the Commonwealth of Massachusetts, acting by and through its Department of Conservation and Recreation, 251 Causeway Street, Boston, Massachusetts 02114 (hereinafter "Grantee"), Grantor's interest in 48,900 +/- square feet of land situated off of Bridge Street in Weymouth, Norfolk County, Massachusetts which is further described in Exhibit A attached hereto and incorporated herein by reference (hereinafter "Premises").

I. PURPOSE: The purpose of this CR is to retain the Premises predominantly in its natural, scenic, and open condition; to protect and promote the conservation of forests, wetlands, soils, natural watercourses, ponds, water supplies and wildlife thereon; to protect the horticultural and natural resources of the Premises; to protect and enhance the value of adjacent and nearby conservation areas; and to allow public access for passive recreational use and enjoyment of the wildlife and open space resources of the Premises. Grantor and Grantee agree that the specific conservation values of the Premises shall be documented in a report to be on file in the offices of the Grantor and the Grantee and incorporated herein by reference (hereinafter the "Baseline Documentation Report"), further described in Article III C below.

II. PROHIBITED ACTIVITIES: The Grantor covenants for itself and its legal representatives, mortgagees, successors and assigns that the Premises will at all times be held, used and conveyed subject to and not in violation of this CR. The Grantor shall refrain from and will not permit any activity which shall be inconsistent with the aforesaid purposes of this grant or which is detrimental to water quality, soil conservation, wildlife conservation and/or forestry management practices or which is otherwise wasteful of the natural resources of the Premises. Prohibited activities shall include, but not be limited to, the following:

A. Construction or placing of any building, dwelling, parking area, tennis court, swimming pool, artificial water impoundment, billboard, sign, except as provided in Article III D below, or other advertising display, roadway, asphalt or concrete pavement, antenna, utility pole, to, conduit or line, or any other temporary or permanent structure or facility above or below the Premises, except as permitted in Article III C below. Grantor and Grantee hereby acknowledge that no buildings or structures exist on the Premises at the time of the execution of this CR.

B. Dumping, placing or storing of equipment (except during forest management activities), mobile home, trailer, automotive vehicle or parts, soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, radioactive waste, hazardous waste, or the installation of aboveground or underground storage tanks on or in the Premises.

C. Excavating, mining, dredging or removing any loam, peat, gravel, soil, sand, rock or other mineral substance, or natural deposit from the Premises, or altering any natural contours or features whatsoever.

D. Removal, destruction or cutting of trees, seedlings, grasses, shrubs, or other vegetation on the Premises, unless such removal or cutting of trees is performed in accordance with prudent and sound forest management practices and pursuant to a Forest Management Plan or Forest Cutting Plan (hereinafter "Plan") approved by the state forester, whether or not such plan is required under Chapter 61 or Chapter 132 of the General Laws, and is approved in writing by the Grantee pursuant to Article V below.

E. Use of motorized or power-driven vehicles of any kind, including without limitation automobiles, trucks, motorcycles, motorized bikes or all-terrain vehicles, snowmobiles, except for vehicles used by Grantor for the purpose of upkeep and maintenance of the Premises, vehicles used by Grantee for proper inspection of the Premises as provided in Article IV below, motorized wheelchairs or other disabled assistance devices as permitted in Article III A below, and except as required by police, fire fighters, and other governmental agents responding to emergencies or otherwise carrying out their lawful duties.

F. Commercial or industrial use of any kind, including but not limited to commercial camping, commercial fishing, commercial hunting or commercial trapping.

G. The storage or application of pesticides, herbicides, insecticides, fungicides or other chemicals on the Premises; except the application of same is allowed if by licensed applicators in strict compliance with all existing state and federal laws and regulations, including but not limited to those administered by the Pesticide Bureau of the Massachusetts Department of Food & Agricultural and after written notice provided to the Grantee at least 5 days prior to application.

H. Purposeful introduction of species or animals or plants that are not native to Norfolk County, as defined by current published lists of native species, including The Vascular Plants of Massachusetts: A County Check list, by Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (1999) or as amended or contained in a similar professionally acceptable publication available in the future.

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I. Subdivision of the Premises under Chapter 41, Section 81K et seq., of the Massachusetts General Laws. It is the intent of this paragraph that the Premises shall be conveyed as a unit, whether or not said Premises are comprised, as of the date of this CR, of more than one separate legal parcel.

J. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or other acts or uses detrimental to retention of land and water resources.

K. Other uses of the Premises or activities which would significantly impair the conservation interests protected by this CR or which are prohibited by federal, state or local law or regulation or which are inconsistent with the intent that the Premises remain, in the reasonable opinion of the Grantee, predominantly in its natural condition, except for the use of the Premises for approved forest management, educational, or recreational purposes in accordance with the provisions of Article III below and otherwise consistent with the provisions of this CR.

III. PERMITTED ACTIVITIES: Notwithstanding any provisions herein to the contrary, the Grantor reserves to itself and to its heirs, devisees, legal representatives, successors and assigns the right to conduct or permit the following activities on the Premises:

A. Use of the Premises by the general public, for passive recreational activities such as hiking, horseback riding, snowshoeing, cross-country skiing, nature study, fishing, swimming, nature study, and other like recreational and educational activities, including access by motorized wheelchairs or other disabled assistance devices, so long as such activities are carried out in a manner which does not impair the purposes of this CR.

B. Maintenance and use of existing ways, trails, fences, bridges, gates and stone walls on the Premises, substantially in their present condition, or as reasonably necessary for the current uses thereof or hereinafter permitted, so long as such use is not significantly detrimental to water quality, soil conservation, wildlife conservation and/or forestry management practices or which is otherwise wasteful of the natural resources of the Premises.

C. Layout and construction of new trails, fences, stone walls, gates, bridges, wildlife observation blinds or towers and installation of stone barriers by Grantor, as reasonably required or necessary to undertake the permitted activities herein described or to carry out the purposes of this CR, so long as such new construction is not detrimental to water quality, soil conservation, wildlife conservation or otherwise wasteful of the natural resources of the Premises; provided such new construction shall be approved by Grantee pursuant to Article V below, as to location, design and materials, to ensure that the construction as proposed would not impair the conservation interests to be protected by this CR.

D. Erection, maintenance and replacement of signs identifying ownership interests of Grantor and Grantee; its status as a conservation area; the restrictions on the use of the Premises; the identity or location of trails, areas of interest, natural and historic features or other characteristics of the Premises, and for providing other like information, provided the location and design of such signs are approved by Grantee pursuant to Article V below.

E. Planting, cutting, pruning and removal of trees, shrubs and other vegetation for ordinary improvement and maintenance of the Premises, to prevent threat of injury or damage to persons or property, to prevent or mitigate pest infestation, blight or disease, or to control, manage or eradicate invasive species not native to Norfolk County.

F. Planting, cutting, pruning and removal of trees to maintain or improve wildlife habitat and/or to improve and maintain the forest stand as dictated by sound forestry practices, and/or commercial harvesting of forest products, provided such planting, cutting, pruning and removal of trees and/or commercial harvesting is performed in accordance with prudent and sound forest management practices and is performed pursuant to a Forest Management or Forest Cutting Plan ("Plan") approved by the state forester, whether or not such plan is required under Chapter 61 or Chapter 132 of the General Laws, and is approved in writing by the Grantee, pursuant to Article V below. Grantor shall submit a copy of this CR with the application for approval of said plans, to the state forester. Any such Plan must be consistent with the terms of this CR.

G. Excavation of cellar holes, stone walls or other landscape features on the Premises with the intent of collecting archaeological artifacts or performing archeological surveys, provided Grantor submits a Project Notification Form (PNF) and obtains an Archeological Field Investigation Permit from the State Archeologist, in accordance with Chapter 9, Section 27C of the General Laws, 950 CMR 70.00 et seq., and obtains approval of Grantee pursuant to Article V below.

The exercise of any permitted activity or use by Grantor under this Article III shall be in compliance with then current laws applicable to the Premises, the Wetlands Protection Act (General Laws Chapter 131, Section 40) and all other applicable federal, state and local environmental protection and other laws and regulations. The inclusion of any permitted activity or use in this Article III requiring a permit from a public agency does not imply that the Commonwealth takes a position on whether such permit should be issued.

Any activity or use not permitted herein is prohibited without the express written consent of the Grantor stating that such activity or use is not inconsistent with the conservation purposes of the CR. Any request by Grantor for approval of such activity or use shall contain a detailed description of why such activity or use is consistent with the conservation purposes of the CR. In the event the grantor disapproves the requested activity or use, the Grantor shall provide a detailed written explanation of why said activity or use is inconsistent with the conservation purposes of this CR.

IV. RIGHT OF ACCESS; MANAGEMENT; INSPECTION: The CR hereby conveyed includes the grant of the right of the Grantee, its successors and assigns, to enter upon and to permit the public to enter upon and use the Premises and existing and future ways and trails thereon for the purposes set forth in Paragraph III A.

The CR also includes the grant of the right to Grantee, its successors and assigns, to enter upon the Premises in a reasonable manner and at reasonable times for the purpose of inspecting the Premises to determine compliance with the terms of this CR. Grantee may use motor vehicles for this purpose. In the event of any violation, Grantee must notify Grantor thereof and request Grantor to

remedy such violation. If the violation is not remedied within 30 days of receipt of written notice, or such additional time as may be reasonable under the circumstances as determined by Grantee. Grantee may enter upon the Premises in order to remedy or abate such violation, in which event, Grantor, its successors and assigns, covenants and agrees to reimburse the Grantee for all reasonable costs and expenses incurred by Grantee, including without limitation counsel fees, in enforcing this CR or in remedying or abating any violation of this CR. The provisions of this paragraph shall not preclude any other remedies available at law or in equity.

V. NOTICE BY GRANTOR: Unless otherwise provided herein or by law, Grantor shall notify Grantee in writing, sent certified mail, return receipt requested, sixty (60) days before allowing or undertaking any uses or activities on the Premises, which require the approval of the Grantee under the terms of this CR. Grantor shall also in the same manner notify the Grantee before allowing or undertaking any uses or activities which may significantly impair the conservation interests found within the Premises or are contrary to the purposes of this CR. Grantor shall submit to Grantee such plans and other information as Grantee shall reasonably require in order to determine whether the use or activity is consistent with the purposes of this CR. All communications in this regard should be mailed to:

Commissioner
Department of Conservation and Recreation
251 Causeway Street, Suite 600-900
Boston, MA 02114

With respect to those activities or uses that require Grantee's approval, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's written request therefore. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purposes of this CR, or would materially impair the conservation interests to be protected by this CR.

VI. REMEDIES; WAIVER: The rights hereby granted shall include the right to enforce this CR 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 prior to the time of the injury complained of (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.

This CR shall be enforced by Grantee in its sole discretion. Nothing herein shall impose upon the Grantee any affirmative obligation or liability relating to the condition of the Premises. Failure by the Grantee to enforce any provision or condition set forth herein, or to exercise any rights hereby conveyed, shall not constitute a release or waiver of any such right or condition.

VII. COSTS AND TAXES; LIABILITY: Grantor agrees to pay and discharge when and if due any and all real property taxes and other assessments levied by competent authority on the Premises.

VIII. BINDING EFFECT; RELEASE; RECORDATION: The burden of this CR shall run with

the Premises in perpetuity, and shall be enforceable against the Grantor and the Grantor's successors and assigns holding any interest in the Premises. This CR may only be released, in whole or in part, by the Grantee pursuant to the procedures established by Chapter 184, Section 32 of the General Laws, and in accordance with Article 97 of the Amendments to the Massachusetts Constitution.

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this CR. The Grantor, for itself and its successors and assigns, appoints the Grantee its attorney-in-fact, coupled with an interest, to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor agrees to execute any such instrument upon request.

IX. ASSIGNMENT: The benefits of this CR shall be in gross and shall not be assignable by the Grantee, its successors and assigns, unless the assignee is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, including, without limitation, a government entity, provided that, as a condition of such assignment, the assignee is required to hold this CR and enforce its terms for conservation purposes. The Grantee shall notify the Grantors in writing at least thirty (30) days before it assigns this CR.

X. SUBSEQUENT TRANSFERS: The Grantor agrees to incorporate the terms of this CR, in full or by reference, in any deed or other legal instrument by which Grantor conveys or transfers any interest in all or a portion of the Premises, including without limitation, a leasehold interest. The Grantor shall notify the Grantee in writing at least thirty (30) days before conveying or transferring the Premises, or any part thereof or interest therein (including a lease).

XI. EXTINGUISHMENT; EMINENT DOMAIN: The Grantor and Grantee agree that the grant of this CR gives rise to a property right that vests immediately in the Grantee and which has a fair market value that is equal to the value by which the CR reduces, at the time of the grant, the value of the property as a whole. Such proportionate value of the Grantee's property right at the time of the grant shall remain constant.

Should this CR be extinguished over all or any portion of the Premises by judicial decree or by act of public authority, the Grantee shall be entitled to a portion of the proceeds equal to the proportionate value of the CR, subject, however, to any applicable law which expressly provides for a different disposition of proceeds. If the conservation interests protected hereby are unaffected by the taking, and the only interest taken by public authority is the Grantor's interest, and recovered proceeds are awarded on the basis of the value of the Premises as restricted by this CR, then the proceeds from such taking shall be payable in their entirety to Grantor.

Whenever all or any part of the Premises or any interest therein is taken by a public authority (other than The Commonwealth) under power of eminent domain, or if all or any part of this CR is extinguished by act of public authority (other than The Commonwealth), then the Grantor and Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. If the public authority is The Commonwealth, the Grantor and Grantee shall pursue their remedies separately.

XII. AMENDMENT: The parties to this CR may amend it by mutual written agreement, provided that such amendment does not have a material adverse effect on the conservation purposes of this CR and does not violate Article 97 of the Amendments to the Massachusetts Constitution. The Grantor and Grantee shall execute a written confirmation concluding that the amendment meets this criterion, explaining in detail the reasons for this conclusion. Any such amendment shall be recorded with the appropriate Registry of Deeds in Massachusetts.

XIII. SEVERABILITY: If any section or provision of this CR shall be held to be unenforceable by any court of competent jurisdiction, the CR shall be construed as though such section had not been included in it. If any section or provision of the CR shall be susceptible of two constructions, one of which would render such section or provision invalid, then such section or provision shall be given the construction that would render it valid. If any section or provision of this instrument is ambiguous, it shall be interpreted in accordance with the policies and provisions expressed in Chapter 184, Sections 31 - 33 and Chapter 132A of the General Laws.

XIV. MISCELLANEOUS:

- (1) This instrument does not purport to transfer a fee interest.
- (2) This CR is conveyed subject to matters of record at the Norfolk County Registry of Deeds.
- (3) The land restricted hereunder may not be used for purposes of calculating permissible building density of other unrestricted and adjacent land of Grantor, if any.

IN WITNESS WHEREOF, the said _____ has caused these presents to be signed, acknowledged and delivered on this 29 day of June, 2010, by


Grantors

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

On this 29 day of June, 2010, before me the undersigned notary public, personally appeared, Richard C. Kibby, proved to me through satisfactory evidence of identification, which was Driver's License (NH), to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed voluntarily for its stated purpose


Notary Public
My Commission Expires:



GREGORY F. GALVIN
Notary Public
Commonwealth of Massachusetts
My Commission Expires
May 11, 2012

EXHIBIT A
(Legal Description)

Property Owner: Richard C. Kibby
Property Address: A parcel of Land situated off of Bridge Street, Weymouth, MA

A certain parcel of land situated off of Bridge Street, Weymouth, Norfolk County, Massachusetts, Containing, according to the plan cited below, forty eight thousand nine hundred (48,900) +/- square feet shown as Lot 1 on a plan of land entitled, "Subdivision of Land Bridge Street (Assessors Parcel 5-13-6) Weymouth, Massachusetts," Town Engineer: Andrew P. Fontaine, PE, prepared by James E. McGrath, PLS, dated ~~6~~21/2010, Scale: 1" = ~~40~~' , said plan having been recorded with the Norfolk County Registry of Deeds as Plan No. ____ in Plan Book ____, Page ____.

Together with any easements, rights of way and rights so far as now in force and applicable.

Being a portion of Parcel 2, a 1/3 interest having been conveyed to Richard C. Kibby by Deed of Richard C. Kibby, Jr. dated September 26, 2000 and recorded with the Norfolk County Registry of Deeds in Book 14517, Page 132. The other 2/3 interest having been inherited by said Richard C. Kibby, see Probate of Jessie K. Kibby, Norfolk Probate and Family Court, Docket No. 188625 and Probate of Mary F. Kibby, Norfolk Probate and Family Court, Docket No. 09P3100.