

Conservation Restriction (BLT/Galloway), Cotuit MA

CONSERVATION RESTRICTION

BARNSTABLE LAND TRUST, INC., Federal tax identification #22-2483963, a Massachusetts charitable corporation with an office at 407 North Street, Hyannis, Massachusetts 02601, and a mailing address at P.O. Box 224, Cotuit, Massachusetts, 02635, its successors and assigns holding any interest in the Premises as hereinafter defined, ("Grantor") for and in consideration of One Hundred Thousand and 00/100 dollars (\$100,000), grants to **THE TOWN OF BARNSTABLE**, a Massachusetts municipal corporation, with a principal place of business at New Town Hall, 367 Main Street, Hyannis Barnstable County, Massachusetts, 02601-3907, its successors and permitted assigns, ("Grantee"), IN PERPETUITY and exclusively for conservation purposes, the following described CONSERVATION RESTRICTION, to be administered by the Conservation Commission, in accordance with Massachusetts General Law Chapter 40 Section 8c, on an entire parcel of unregistered land, comprising approximately 3.5 acres, located at 580 Old Post Road in the Village of Cotuit, Town of Barnstable, County of Barnstable, Commonwealth of Massachusetts, said parcel being described in Exhibit A and shown on Exhibit A-1 attached hereto and hereinafter referred to as the Premises. The Grantor and Grantee, their successors and assigns, are bound by and subject to the terms and conditions of this Conservation Restriction. For Grantor's title, see deed recorded in the Barnstable County Registry of Deeds in Book 23842 Page 117.

Purpose: The purpose of this Conservation Restriction is to retain the Premises substantially in its natural, scenic and open condition; to allow public access for passive recreational use and enjoyment of the open space and natural resources; and to prevent any use of the Premises that will significantly impair or interfere with the conservation values thereof. The conservation and permanent protection of the Premises will yield a significant public benefit for the following reasons:

The Town of Barnstable developed an *Open Space Plan* (1984, amended 1987, 1998, and 2005) with a goal of preserving "quality open spaces throughout the Town which protect and enhance its visual heritage..." and which identified, among other things, the following community objectives:

- To acquire, retain, preserve and protect a maximum amount of open space for the community and its natural and wildlife habitats (Goal 1, 2005), with priorities focused on, among things, lands adjacent to wetlands; and encourage the use of creative regulatory and non-regulatory land protection tools such as conservation restrictions;
- To protect the environmental health of Barnstable's surface water resources (Goal 2, 2005);
- To protect the Town's current and future groundwater supply (Goal 3, 2005);
- To protect and enhance Barnstable's unique and fragile natural and cultural resources

Conservation Restriction (BLT/Galloway), Cotuit MA

including scenic beauty, historic areas and unique habitats (Goal 6, 2005);

- Acquire, maintain and expand recreational opportunities throughout Barnstable (Goal 7, 2005); and,
- To protect and increase wildlife population and habitats (Goal 10, 2005).

Preservation of the Premises satisfies each of these objectives enumerated above because:

1. The Premises is comprised of classic Cape Cod pine/oak woodland; and contains a small grassy meadow along old "firebreak";
2. The Premises, by connecting to the 805-acre Little River Open Space Corridor, prevents wildlife fragmentation;
3. The Premises creates a new pedestrian access point to the adjacent Eagle Pond Sanctuary;
4. The Premises refreshes the surface waters of the Cotuit Bay estuary, a major aquatic recreation area;
5. The Premises reduces nitrogen loading by preventing a maximum 10-bedroom house, with septic system and lawn, and thereby enhances the sole source aquifer, the Cape's only source of drinking water;
6. The Premises protects down-gradient shellfish beds, an important part of Barnstable's cultural heritage; and,
7. The Premises provides for public access for passive recreational pursuits such as walking and nature study, and provides pedestrian access to the Eagle Pond Sanctuary owned by the Mary Barton Land Trust.

WHEREAS, the Barnstable Town Council, at a duly called meeting held on MAY 21, 2009, 2009, while acting on Item #²⁰⁰⁹~~104~~, voted to authorize the Town of Barnstable to appropriate \$100,000 from Fiscal Year 2009 Community Preservation Fund revenues, pursuant to Section 298 of Chapter 149 of the Acts of 2004, the Community Preservation Act, so-called, to purchase from the Barnstable Land Trust, Inc. a perpetual conservation restriction over the Premises, as authorized by Massachusetts General Laws, Chapter 184, Sections 31-33, allowing conservation and passive recreation uses as described herein, an attested copy of which vote is attached hereto as Exhibit B.

NOW, THEREFORE, in consideration of the above, and the mutual covenants, terms, conditions and restrictions contained herein, the Grantor and the Grantee voluntarily agree that the CONSERVATION RESTRICTION described herein is an appropriate means to achieve the town's open space goals and objectives which thereby represents a significant public benefit.

The terms of this Conservation Restriction are as follows:

A. Prohibited Uses. Except as to reserved rights set forth in paragraph I.B. below, neither the Grantor nor its heirs, devisees, successors or assigns will perform or permit others to perform the following acts or uses, which are prohibited, in, on, over or under the Premises:

1. Construction or placing of any temporary or permanent building, structure, facility or improvement on, over or under the Premises, including but not limited to any dwelling unit or habitable living space, landing strip or helipad, mobile home, boats, trailers, swimming pool, tennis court, active recreational facility, dock, bulkhead, jetty, parking

Conservation Restriction (BLT/Galloway), Cotuit MA

- area, fence, shed or storage box, utilities, fuel storage tank, wells, asphalt or concrete pavement, antenna, satellite receiving dish, tower, windmill, sewage or septage disposal system, or other temporary or permanent structure or facility, on, under or above the Premises;
2. Construction of any roads, driveways, additional maintained trails or paths through or on the Premises, or the clearing of vegetation, or the addition, removal or movement of soil for such purpose;
 3. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit, and constructing, bulldozing, excavating or drilling of dikes, ditches, holes, swales or other alterations in the natural topography of the Premises;
 4. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, wood chips, tree cuttings, waste or other substance or material whatsoever;
 5. Planting or otherwise introducing or nurturing any non-native tree or woody vegetation on the Premises;
 6. Creation of a cultivated lawn or formal or cultivated gardens;
 7. Any commercial or industrial use; any animal husbandry or horse paddocking or stables, paddocks, grazing areas or other enclosures and the storage or dumping of manure or other animal wastes;
 8. Cutting, removing or otherwise destroying trees, grasses or other vegetation;
 9. Activities detrimental to drainage, flood control, water or soil conservation, erosion control or the quality of surface or ground water; any removal of soil off-site;
 10. The use, parking or storage of motorized trail bikes, all-terrain vehicles, snowmobiles, or any motorized vehicle except as necessary for emergency police and fire vehicles in pursuit of official duties on the Premises; and as minimally necessary for the rights delineated in Paragraphs B.5, B.6 and B.7 herein;
 11. Hunting or camping;
 12. Conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted; and,
 13. Any other use of the Premises or activity thereon which is inconsistent with the purposes of this Conservation Restriction or which would materially impair its conservation interests.

In addition, Grantor, its successors and assigns, agree that all development rights in the Premises are terminated and extinguished by this Conservation Restriction, and that the Premises may not be used for the purpose of calculating the amount of Grantor's or any other land available for additional subdivision or calculating the building requirements on this or any other land owned by the Grantor or any other person.

B. Reserved Rights and Obligations. The Grantor, its heirs, devisees, successors or assigns reserve and retain their residual rights as owners of such land, and are permitted to perform the following uses and activities on the Premises provided such uses and activities do not materially impair the conservation values or purposes of this Conservation Restriction, subject to any limitations noted below:

1. In order to protect the conservation values of the Premises, the Grantor, Grantee, and the general public may use the property only for purposes consistent with conservation and passive recreation which for the purposes of this paragraph shall mean any activity of quiet enjoyment that can be casually performed outdoors with minimum disturbance of an area's natural condition, and which are consistent with M.G.L. c. 40 s. 8C, and are in accordance with paragraph E.1. herein;
2. The right to install temporary or permanent boundary monuments delineating the Premises; the right to erect and maintain small signs so long as such signage is consistent with the purposes of this Conservation Restriction;
3. The right to take active measures in order to prevent unauthorized vehicle entry and dumping;
4. In accordance with best forestry management practices, the right to remove invasive non-indigenous plant species; the right to control poison ivy and other potentially hurtful plant life and other plant life that threatens indigenous species anywhere within the Premises so long as surrounding vegetation is not substantially disturbed;
5. The clean-up of trees felled by storms across existing or future authorized trails including the shallow dispersal of wood chips generated on-site and the orderly stacking of logs resulting from said clean-up, though it is preferred that some deadfall remain as den trees;
6. Live timber may be cut only for disease control, storm cleanup, removal of non-native invasive plant species, and safety reasons to prevent injury to persons or damage to property;
7. The erection and maintenance of signs and educational kiosks identifying ownership of the Premises, its boundaries, its status as conservation land, the restrictions on the use of the Premises, the identity or location of trails, areas of interest, natural features or other characteristics of the Premises, or for providing other like information. Signage will be subject to any applicable regional or local approvals;
8. The use, creation, modification and abandonment of foot trails; said trails shall not exceed 6' in width and shall not be paved;

Conservation Restriction (BLT/Galloway), Cotuit MA

9. The erection and maintenance of a bike rack near the Old Post Road entrance to the Premises; however, bikes shall not otherwise be permitted on the Premises; and,
10. The right to convey the Premises in its entirety.

Any work undertaken in conjunction with the reserved rights mentioned above in Paragraph B. shall seek to minimize disturbance on the Premises. Upon completion of any site work performed in conjunction with Paragraph B., any disturbed areas shall be restored substantially to match the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work.

The exercise of any right or obligation reserved by the Grantor under this paragraph B. shall be in compliance with all permitting requirements, the then-current Zoning Ordinance of the Town of Barnstable, 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 the Grantee or the Commonwealth takes any position on whether such permit should be issued, except Grantee will confirm, in writing, to such agency, if requested, the existence of such reserved right under this Conservation Restriction.

C. Notice and Approval. Whenever notice to or approval by the Grantee is required under the provisions herein, excepting any provisions wherein a different time frame specifically is prescribed, the Grantor shall notify the Grantee in writing not less than sixty (60) days prior to the date the 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 the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where the Grantee's approval is required, the Grantor shall grant or withhold its approval in writing within sixty days (60) days of receipt of the Grantors' written request therefore.

D. Extinguishment. If circumstances arise in the future such as to render the purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction can be terminated or extinguished, whether in whole or in part, only by judicial proceedings in a court of competent jurisdiction, and after review and, if required, approval, by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then the Grantee, on a subsequent sale, exchange or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph D.1. below, subject, however, to (a) any applicable law that expressly provides for a different disposition of the proceeds, and (b) notwithstanding the proportionate value as recited above, the right of the Grantee to receive at least \$100,000 for its interest in the Premises. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

D.1 Proceeds. The Grantor and the Grantee agree that grant of this Conservation Restriction gives rise for purposes of this paragraph B to a property right, immediately vested in the Grantee, with a fair market value that is equal to twenty percent (20%), which is the proportionate value that the consideration for this Conservation Restriction bears to the fair market value of the entire

property as unencumbered at the time of this grant. For the purposes of this paragraph, said proportionate value shall remain constant.

D.2. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee under this paragraph shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and the Grantee in shares equal to such proportionate value, as noted in paragraph D.1. above. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the purposes of this grant.

E. Access. The Conservation Restriction hereby conveyed does not grant to the Grantee, to the public generally, or to any other person any right to enter upon the Premises, except as follows:

- (1) to the public generally for passive recreation purposes such as walking and nature study; running, jogging, cross-country skiing, hiking, bird watching, wildlife observation, photography, sketching and painting, and other similar activities. Bicycling and horseback riding and other non-pedestrian activities are not permitted on the Premises. Access by the public is subject to the terms of this Conservation Restriction and reasonable rules of the Grantor. Visitors may be ejected at any time by the Grantor for failure to abide by such rules; and,
- (2) to the Grantee and its representatives the right to enter the Premises (a) after reasonable notification, at reasonable times and in a reasonable manner, for the purpose of inspecting the same to determine compliance with the provisions of this Conservation Restriction; 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 enforce any violation hereof unless the Grantor has prior to the expiration of said thirty (30) days given written notice to the Grantee reasonably addressing all alleged violations and setting forth a reasonable plan to remedy any such alleged violation.

Notwithstanding any public use of the Premises as permitted herein, neither the Grantor nor the Grantee assumes any obligation to maintain the Premises for public passive recreational use. Grantor and Grantee claim all the rights and immunities against liability for injury to the public to the fullest extent of the law.

F. Legal Remedies of the 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 the Grantee will have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee. If Grantee prevails in any action to enforce the terms of this Conservation Restriction, the Grantor, successors and assigns, as the case may be, shall reimburse the Grantee for all reasonable costs and expenses (not including attorney's fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy

Conservation Restriction (BLT/Galloway), Cotuit MA

or abate any violation thereof. If Grantor prevails in any action brought by Grantee to enforce the terms of this Conservation Restriction, the Grantee, successors and assigns, as the case may be, shall reimburse the Grantor for all reasonable costs and expenses (not including attorney's fees) incurred in defending such action to enforce this Conservation Restriction.

The Grantor, its successors and assigns shall each be liable under this paragraph for only such violations of this Conservation Restriction as may exist during its or their respective periods of ownership of the Premises. By its acceptance, the Grantee does not undertake any liability or obligation relating to the condition of the Premises, including with respect to compliance with hazardous materials or other environmental laws and regulations, or acts not caused by the Grantee or its agents.

In the event of a dispute over the boundaries of the Premises, Grantor shall pay for survey and permanent boundary markers delineating the Premises.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of the Grantee, and any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver.

G. Acts Beyond Grantor's Control. Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any action against the Grantor, its successors and assigns for any injury to or change in the Premises resulting from causes beyond the Grantor's, its successors' and assigns' control, including, but not limited to, fire, road drainage, flood, storm, natural erosion, and acts caused by trespass on the Premises not contributed to by acts or omissions of the Grantor, its successors and assigns, or from any prudent action taken by the Grantor, its successors and assigns under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. Grantor and Grantee agree that in the event of damage to the Premises from acts beyond Grantor's control, that if Grantor and Grantee mutually agree that it is desirable that the Premises be restored, Grantor and Grantee will cooperate in attempting to restore the Property if feasible.

H. Duration and Assignability. The burdens of this Conservation Restriction shall run with the Premises IN PERPETUITY and shall be enforceable against the Grantor, and its successors and assigns holding any interest in the Premises. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; and the Grantor on behalf of its successors and assigns, may appoint the Grantee as their attorney-in-fact to execute, acknowledge and deliver any such instruments on their behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instrument upon request.

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances from time to time:

1. Grantor gives its prior approval to such assignment in writing, which approval shall not be unreasonably withheld;
2. as a condition of any assignment, the Grantee requires that the purpose of this

Conservation Restriction (BLT/Galloway), Cotuit MA

- Conservation Restriction continue to be carried out;
3. 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 a donee eligible to receive this Conservation Restriction directly; and,
 4. the Grantee complies with the provisions required by Article 97 of the amendments to the State Constitution, if applicable.

I. Subsequent Transfers. The Grantor, its successors and assigns agree to incorporate by reference the terms of this Conservation Restriction in any deed or other recordable legal instrument by which Grantor, its successors and assigns convey any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. Grantor, its successors and assigns, further agree to give written notice to the Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. Failure of the Grantor, its successors and assigns to do so shall not impair the validity of this Conservation Restriction or limit its enforceability in any way.

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

K. Estoppel Certificates. Upon request by the Grantor, its successors or assigns, the Grantee shall, upon thirty (30) days prior written notice, execute and deliver to the Grantors any document, including an estoppel certificate, if appropriate, which certifies the Grantor's, its successors' and assigns' compliance with any obligation of the Grantor contained in this Conservation Restriction, and which otherwise evidences the status of this Conservation Restriction as may be requested by the Grantor, its successors and assigns.

L. Amendment. If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, the Grantor, its successors and assigns and the Grantee may by mutual consent amend in writing any term or provision hereof provided that this Conservation Restriction as thus amended complies with the then-applicable requirements of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts; Massachusetts General Law, Chapter 184, Sections 31-33; Internal Revenue Code of 1986 Section 170(h), as amended; any gifts, grants or funding requirements; and the Conservation Restriction Program of the Town of Barnstable, or any successors thereto, and provided that any such amendment, together with any approvals necessary to its effectiveness, including that of the Massachusetts Secretary of Energy and Environmental Affairs, shall be recorded with the Barnstable County Registry of Deeds. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not diminish the conservation values of the Premises, and shall not affect its perpetual duration.

In addition, the Grantee is not obligated to consider any amendments to this Conservation Restriction and shall not consider any amendment UNLESS all of the following conditions are met:

Conservation Restriction (BLT/Galloway), Cotuit MA

1. The minimum amount of amendment, as to terms, land area or structural dimensions, activity, or level of use, is proposed to accommodate the proposal;
2. Whenever possible, mitigation measures of like kind be proposed and the substitution be more advantageous to the cause of conservation;
3. There will be a net gain to conservation values offered through mitigation to the affected parcel or its immediate vicinity; and,
4. Cash values of items or areas proposed for release, amendment or mitigation may be disregarded by Grantee in the equation to determine net gain to conservation values; and,
5. The then-Grantor agrees to pay all costs involved in the amendment process.

M. Non-Merger: The parties intend that the doctrine of merger shall not apply to this conveyance, and that no transfer of Grantor's or Grantee's interest in the Premises and no acquisition of any additional interest in the Premises by Grantor or Grantee shall cause this Conservation Restriction to merge with the fee or have the effect of causing any of the terms hereof to be rendered unenforceable by reason of the so-called doctrine of merger. If it is determined that a transfer or assignment of any interest will result in a merger, no deed shall be effective until this Conservation Restriction has been assigned or other action taken to avoid a merger and preserve the terms and enforceability of this Conservation Restriction. It is the intent of the parties that the Premises will be subject to the terms of this Conservation Restriction in perpetuity, notwithstanding any merger.

N. Subordination of Mortgage: Grantor shall record at the Barnstable County Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

O. Miscellaneous Provisions.

1. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
2. Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purposes of this Conservation Restriction and the policies and purposes of Mass. Gen. Laws Chapter 184, Sections 31-33 and the Grantee. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
3. Severability. If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.
4. Entire Agreement. This obligation sets forth the entire agreement of the parties with respect to the Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

Conservation Restriction (BLT/Galloway), Cotuit MA

5. Joint Obligation. The obligations imposed by this Conservation Restriction upon the parties that together comprise “Grantor” shall be joint and several.
6. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

P. Effective Date. This Conservation Restriction shall be timely recorded. Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this Conservation Restriction is registered in the official records of the Barnstable County Registry of Deeds, after all signatures required by Section 32, Chapter 184 of the General Laws of Massachusetts have been affixed hereto.


No Massachusetts deed excise tax stamps are required by Chapter 64D, Section 1, as a municipality is a party to this instrument.

Conservation Restriction (BLT/Galloway), Cotuit MA


Executed under seal this 5TH day of June, 2009.

Grantor:

Barnstable Land Trust, Inc.



Joseph Hawley, President
Barnstable Land Trust, Inc.



Joseph Wood, Treasurer
Barnstable Land Trust, Inc.

COMMONWEALTH OF MASSACHUSETTS

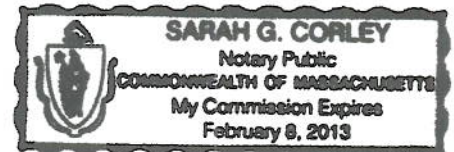
Barnstable, ss.

June 5th, 2009

Then personally appeared the above-named Joseph Hawley, President, and Joseph Wood, Treasurer, Barnstable Land Trust, Inc., the corporation named in the foregoing instrument, and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the persons whose names are signed on the document, and each acknowledged he is duly authorized to act on behalf of said corporation, that the seal affixed to said instrument is the corporate seal of said corporation and each further acknowledged the foregoing instrument to be the free act and deed of said corporation, before me.

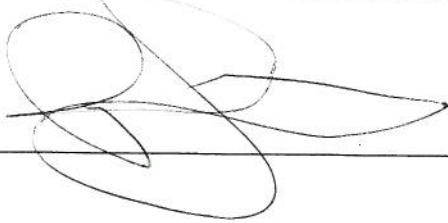


Notary Public
My commission expires:

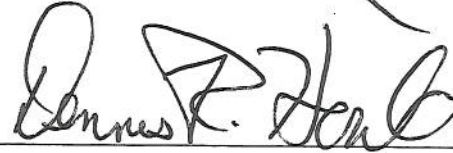
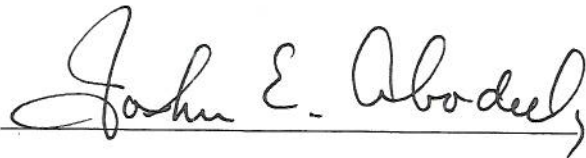


ACCEPTANCE OF GRANT

At a meeting held on June 2, 2009, the Conservation Commission of the Town of Barnstable, Massachusetts voted to accept, by authority of M.G. L. c. 40 Section 8C, the foregoing Conservation Restriction from the Barnstable Land Trust, Inc.



Louise R. Foster



COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

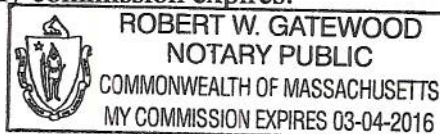
June 2, 2009

Then personally appeared the above-named Dennis R Houle, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, and who being by me duly sworn did say that he is the chair of the Conservation Commission and acknowledged the foregoing instrument to be his free act and deed on behalf of the Town of Barnstable Conservation Commission, before me.



Notary Public

My commission expires:

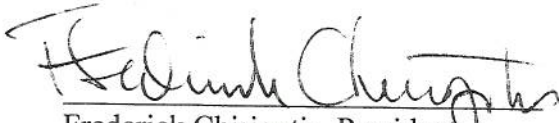


ACCEPTANCE and APPROVAL by TOWN COUNCIL

At a meeting duly held on May 21, 2009, the Town Council of the Town of Barnstable, Massachusetts voted to accept, pursuant to Item # 2009-104 of the Town Council Meeting of May 7, 2009, and also voted to approve, pursuant to M.G.L. Chapter 184, Section 32, the foregoing Conservation Restriction from the Barnstable Land Trust, Inc.

EXECUTED this 7 day of July, 2009.

TOWN OF BARNSTABLE
TOWN COUNCIL

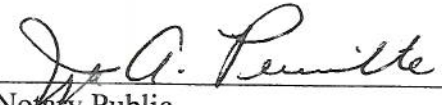

Frederick Chirigotis, President

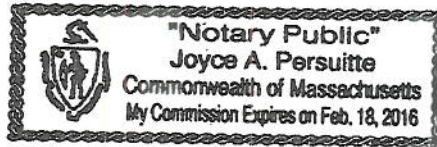
COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

July 7, 2009

Then personally appeared the above-named Frederick Chirigotis and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the document, and acknowledged the foregoing instrument to be his free act and deed, on behalf of said Town of Barnstable Town Council, before me.

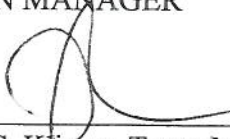

Notary Public
My commission expires: Feb. 18, 2016



APPROVAL OF TOWN MANAGER

I, John C. Klimm, as Town Manager of the Town of Barnstable, Massachusetts hereby approve the foregoing Conservation Restriction to Barnstable Land Trust, Inc., pursuant to Massachusetts General Law Chapter 184, Section 32.

TOWN OF BARNSTABLE
TOWN MANAGER



John C. Klimm, Town Manager

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

July 2, 2009

Then personally appeared the above-named John C. Klimm and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the document, and acknowledged the foregoing instrument to be his free act and deed, before me.



Notary Public

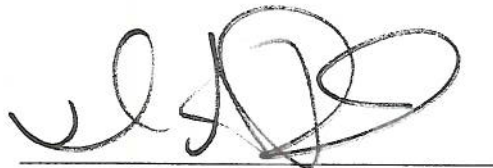
My commission expires:



APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the Town of Barnstable has been approved in the public interest pursuant to M.G.L. Chapter 184, Section 32. Said approval is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction. This Conservation Restriction, so long as it is held by a governmental body, is subject to Article 97 of the Amendments of the Massachusetts Constitution, and any amendment or disposition under M. G. L. c. 184 section 32 requires the signatures of the Secretary of Energy and Environmental Affairs, and the Conservation Commission, which will administer the Conservation Restriction by authority of M. G. L. c. 40 section 8C.

Date: 7/14, 2009.



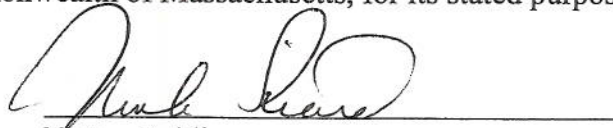
Ian A. Bowles, Secretary
Executive Office of Energy and
Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

July 14, 2009.

Then personally appeared the above-named Ian A. Bowles, Secretary, Executive Office of Energy and Environmental Affairs, and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the document and acknowledged to me that he signed it voluntarily as Secretary of Energy and Environmental Affairs for the Commonwealth of Massachusetts, for its stated purpose.



Notary Public

My commission expires: 12/15/2011

CONSERVATION RESTRICTION

on Land owned by
Barnstable Land Trust, Inc.
in Cotuit, Massachusetts

EXHIBIT A

Description of the Premises

The Premises subject to this Conservation Restriction is located in the Village of Cotuit, Town of Barnstable, County of Barnstable, Commonwealth of Massachusetts, and comprises approximately 3.5 acres of land, more or less, and is all of the land shown bounded and described as follows:

SOUTHEASTERLY by Old Post Road, two hundred thirty-five (235.00) feet;

EASTERLY by land now of Bodurtha and formerly of Goodell, seven hundred two and 55/100 (702.55) feet;

NORTHWESTERLY by land now of Park and formerly of Barton, two hundred thirty-seven and 94/100 (237.94) feet; and

WESTERLY by land now of Park and formerly of Barton, six hundred ninety-four and 09/100 (694.09) feet.

The Premises are also shown on a "Plan of Land in Cotuit, Massachusetts", scale 1 in. = 60 ft., dated December 1927, and recorded in the Barnstable County Registry of Deeds in Plan Book 37 page 121.

For Grantor's title, see Deed recorded in the Barnstable County Registry of Deeds in Deed Book 23842 Page 117.

Street Address: 580 Old Post Road, Cotuit, MA.

Town of Barnstable Assessor's Map 54, Parcel 7

EXHIBIT A-1

Plan Book 37 Page 121

37-121

BARTON

578.39

227.54

N63°18'00"E
340.45

Cleared for firebreak

AREA
5.4 ACRES

AREA
3.5 ACRES

OLD POST ROAD

AREA
1.4 ACRES

BARTON

138.58

COTUIT HARBOR

37-121

PLAN OF LAND
IN
COTUIT, MASSACHUSETTS

SCALE: 1" = 60 FT. ~ DECEMBER 1927
George F. Clements - Civil Engineer
Hydronic Bridgewater & Orlean, - MASS.

NOTE: FOR REFERENCE SEE PLAN
ENTITLED "Plan of Land in Cotuit, Mass.
dated 12/15/27 and 1/10/28, filed in
Registry of Deeds, Middlesex County, Mass.

Plan Book 37 Page 121



EXHIBIT B

Attested Copy of Town Council Vote

A. OLD BUSINESS (Public Hearing) (Roll-call)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-104

INTRO: 05/07/09, 05/21/09

2009-104 COMMUNITY PRESERVATION FUND APPROPRIATION FOR THE ACQUISITION OF A CONSERVATION RESTRICTION ON 3.5 ACRES

ORDERED, that pursuant to the provisions of G.L. c. 44B, the sum of One Hundred Thousand and No/100 (\$100,000) Dollars be appropriated and transferred from the amount set aside for Open Space in the Community Preservation Fund on March 30, 2009; and that the Town of Barnstable Growth Management Department is authorized to contract for and expend the amount of (\$100,000) with the prior approval of the Town Manager for the purpose of acquiring a conservation restriction on a 3.5 acre parcel located at 580 Old Post Road in Cotuit, on Map 054 Parcel 007.

SPONSOR: Town Manager John C. Klimm and Councilor Richard Barry upon recommendation of the Community Preservation Committee

DATE ACTION TAKEN

May 01, 2009 Adopted 16 Yes, 1 No (Roll call)

- Read item
- Motion to Open Public Hearing
- Rationale
- Public Hearing
- Close public hearing
- Council discussion
- Move/vote

A TRUE COPY ATTEST
Linda J. Hestlenridge
Town Clerk
BARNSTABLE