

Land Court Document # 753259
Book 1034 page 121

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CONSERVATION AND PRESERVATION RESTRICTION

HARRIET H. ELLISTON of Weston, Middlesex County, Massachusetts (the "Grantor") hereby grants to WESTON FOREST AND TRAIL ASSOCIATION, INC., a Massachusetts corporation organized under Massachusetts General Laws, Chapter 180, having a mailing address of 266 Glen Road, Weston, Massachusetts, (the "Grantee") a conservation and preservation restriction for the purpose of retaining the premises at 263 South Avenue, Weston, Middlesex County Massachusetts, more fully described in Exhibit A attached hereto, predominately in its natural, scenic or open condition.

W I T N E S S E T H:

WHEREAS, the Grantor intends to make a qualified conservation and preservation restriction contribution under Internal Revenue Code Section 170 to the Grantee for the purpose of retaining the premises predominately in its current natural, scenic and open condition pursuant to and under the authority of Massachusetts General Laws Chapter 184, Section 31;

WHEREAS, the Grantee was validly established by the Commonwealth of Massachusetts General Laws Chapter 180 whose purposes include conservation of land and water areas in Weston, Massachusetts;

WHEREAS, the Grantor and Grantee seek to create the conservation and preservation restriction for the purpose of protecting natural habitats of fish, wildlife, plants and similar ecosystems and of preserving existing conditions on the premises pursuant to clearly delineated conservation and preservation policies of the Town of Weston and the Commonwealth of Massachusetts, as evidenced by the approval by the Selectmen of the Town of Weston and the Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts affixed hereto;

WHEREAS, the conservation and preservation restriction hereby imposed will yield a significant public benefit due to the uniqueness of the premises, the intensity of past, present, and projected premises development in the area of the premises, the consistency of the conservation and preservation restriction with state and local conservation and preservation programs in and around Weston, and the increased opportunity for the general public to appreciate the scenic values of the premises by insuring that a greater portion of premises will remain in its natural condition;

WHEREAS, the Grantor desires to forego development permitted under the Zoning By-Laws of the Town of Weston on the premises, which is located in a Residential Zoning District;

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NOW THEREFORE, the Grantor, for herself and her heirs, executors, administrators, successors, and assigns, hereby specifies, provides, covenants with the Grantee and grants as follows:

1. The conservation and preservation restriction hereby granted shall be perpetual, and the right to enforce the same shall be vested in, and managed and controlled by, the Grantee or, should Grantee cease to exist, by a successor agency, otherwise by the Town of Weston.

2. The land with the buildings thereon, affected by the conservation and preservation restriction is the premises shown as Lot 18 on a plan entitled "Plan of Premises in Weston, Mass." prepared by Barnes Engineering Company, Inc. and filed for registration with Middlesex South Registry District of the Land Court as Land Court Plan 8512-N with Certificate of Title No. 169661 in Registration Book 978, Page 111, and more particularly described in Exhibit A attached hereto (the "Premises").

3. The Grantor hereby covenants for herself and her heirs, executors, administrators, successors and assigns, to forbear from performing or wilfully permitting others to perform, except as hereinafter specifically provided in Paragraph 4 hereof, the following activities:

- (a) Construction or placing of any buildings, improved roads, mobile homes, signs, billboards or other advertising, or other structures on or above ground on the land at the Premises;
- (b) Dumping or placing of soil or other substance or material as land fill, or dumping or placing of trash, waste or unsightly or offensive materials, on the land at the Premises;
- (c) Removal or destruction of trees, shrubs, or other vegetation on or from the land at the Premises;
- (d) Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance or natural deposit, in such manner as to permanently affect the surface of the land at the Premises;
- (e) Other surface use of the land at the Premises;
- (f) Activities detrimental to drainage, flood control, water or soil conservation and preservation or erosion control on the land at the Premises;

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(g) Alterations in exterior features of the buildings on the Premises;

(h) Changes in appearance of the buildings on the Premises; or

(i) Other acts or uses detrimental to the retention of the Premises predominately in its natural, scenic or open condition or appropriate to its preservation.

4. The Grantor, for herself and her heirs, executors, administrators, successors and assigns shall have and hereby reserves unto herself to be exercised in the sole discretion of Grantor, and her heirs, executors, administrators, successors and assigns, as the case may be, and there is hereby excluded from said conservation and preservation restriction the following rights and easements:

(a) To maintain unimproved roads, paths and trails on the Premises for passage and repassage by foot or on horseback or by vehicle;

(b) To plant, trim, cut and remove selectively bushes, shrubs, trees and other vegetation (i) for purposes of opening and maintaining such paths and trails, (ii) for purposes of proper horticultural, forestry or landscape practices, (iii) to maintain and improve the scenic view, and (iv) to implement disease prevention measures;

(c) To use the Premises for outdoor recreation;

(d) To cultivate and harvest crops and flowers, to plant and maintain trees, shrubs and the mowing of grass;

(e) To install, maintain, repair, replace and use such underground utility lines as may be reasonably necessary or appropriate to serve buildings owned by Grantor, her heirs, executors, administrators, successors and assigns, and any excavation or construction necessary to undertake the same, provided that the surface of the land on the Premises is restored to its prior condition following such activity;

(f) Subject to the requirements of Massachusetts General Laws, Chapter 131, Section 40, to install and maintain in perpetuity water or flood control devices necessary in the judgment of the Grantor or her heirs,

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executors, administrators, successors and assigns, for the development and use of other land or the land on the Premises;

(g) To place and display small signs to designate the conservation and preservation area and to set forth the regulations applying thereto, all of said signs conforming to applicable rules and regulations;

(h) To place fencing at or near the legal lot lines separating the Premises from adjacent land; and

(i) Easements created under a taking for the Metropolitan Water Works dated August 29, 1901 recorded with Middlesex South Deeds Book 2914, Page 361 and to those easements set forth in a deed from Charles A. Warren to the Commonwealth of Massachusetts dated February 10, 1905 recorded with said Deeds Book 3145, Page 335 if now in force and effect with respect to the Premises.

5. By hereby establishing said conservation and preservation restriction, the Grantor does not hereby grant either to said Grantee, except as set forth in Section 6 hereof, or to the public at large, any right to enter the Premises or any portion thereof.

6. Grantor hereby grants to Grantee an easement of access to the Premises, which easement shall be exercised in a reasonable manner, at reasonable times and upon reasonable notice, solely for the purpose of assuring compliance of the Premises with the restrictions hereunder. The rights hereby granted to Grantee shall be in addition to any other remedies available to the Grantee for the enforcement of the foregoing restrictions.

7. The conservation and preservation restriction herein described is created pursuant to Massachusetts General Laws, Chapter 184, Sections 31 through 33 and shall be construed so as to comply with said provisions of law.

8. The conservation and preservation restriction hereby imposed is in gross and is not for the benefit or appurtenant to any particular estate. The burden of the conservation and preservation restriction hereby imposed shall run with the Premises and shall be binding upon all future owners of any interest therein.

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9. The Grantee shall have the right at any time or times to take any reasonable action which, in its judgment is appropriate to assure its right to enforce or assign the aforesaid conservation and preservation restriction as herein provided, including, without limitation, the right to have said restriction approved by the Selectmen of the Town of Weston, and the Secretary of the Executive Office of Environmental Affairs or similar agency of the Commonwealth of Massachusetts, and the right to file and refile at the sole expense of Grantor notice of this restriction with the Middlesex South Registry District of the Land Court.

10. The provisions of this conservation and preservation restriction shall be considered to be severable, and the revocation, termination or modification of any provision of this conservation and preservation restriction or its terms and conditions shall not affect the force, effect or validity of the provisions not so revoked, terminated or modified.

No documentary stamps need be affixed to this instrument.

IN WITNESS WHEREOF, HARRIET H. ELLISTON has hereunto set her hand and seal as of the 8th day of August 1986.

✓ Harriet H. Elliston
HARRIET H. ELLISTON

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

August 8, 1986

Then personally appeared the above-named HARRIET H. ELLISTON and acknowledged the foregoing instrument to be her free act and deed, before me.

Charles A. [Signature]
Notary Public
My commission expires: Feb. 15, 1988

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ACCEPTANCE OF GIFT

The gift of the foregoing Conservation and Preservation Restriction is hereby found to be in the public interest and is hereby accepted this 6th day of August, 1986.

✓ WESTON FOREST AND TRAIL ASSOCIATION, INC.

By George P. Bates
Name: George P. Bates
Title: Treasurer

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX,

August 6, 1986

Then personally appeared the above-named ^{GEORGE P. BATES, TREASURER} and acknowledged the foregoing instrument to be the free act and deed of WESTON FOREST AND TRAIL ASSOCIATION, INC., before me.

Charles G. Goggin
Notary Public
My commission expires: 2/13/87

REQUIRED APPROVALS

A. The Town of Weston:

The undersigned, the Clerk of the Board of Selectmen of the Town of Weston, hereby certifies that the foregoing conservation and preservation restriction was duly approved as being in the public interest, pursuant to Massachusetts General Laws, Chapter 184, Section 32, by the Selectmen at a meeting held on August 12, 1986.

Richard A. Murray
Clerk of the Board of Selectmen
Town of Weston

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

August 12, 1986

Then personally appeared the above-named RICHARD A. MURPHY Clerk of the Board of Selectmen of the Town of Weston, and acknowledged the foregoing instrument to be his free act and deed, before me.

Donna S. VanderCloze
Notary Public
My commission expires: August 15, 1991

B. The Commonwealth of Massachusetts

The undersigned Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts hereby certifies that the foregoing conservation and preservation restriction has been approved as being in the public interest by the Secretary pursuant to Massachusetts General laws, Chapter 184, Section 32.

Date: July 14, 1987

James J. Hoyte
Secretary, Executive Office
of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

July 14, 1987

Then personally appeared the above-named James J. Hoyte Secretary of the Executive Office of Environmental Affairs, and acknowledged the foregoing instrument to be his free act and deed, before me.

Karen De Gault
Notary Public
My commission expires:
January 7, 1994

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C. Approval by the Massachusetts Historical Commission

The undersigned Executive Director of the Massachusetts Historical Commission, hereby certifies that the foregoing preservation restrictions have been approved pursuant to Massachusetts General Laws, Chapter 184, Sec. 32.

Valerie A. Talmage 6/9/87
Executive Director
Massachusetts Historical Commission

Commonwealth of Massachusetts

Suffolk, SS

June 9, 1987

Then personally appeared the above named Valerie A. Talmage and acknowledged the foregoing approval to be the free act and deed of the Massachusetts Historical Commission, before me

Elsa N. Fitzgerald
Notary Public
My Commission expires 11/3/89

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EXHIBIT A

A certain parcel of land situated in Weston, Middlesex County, Massachusetts, bounded and described as follows:

- SOUTHERLY by South Avenue, 385.31 feet;
- SOUTHWESTERLY by Lot 8 shown on plan hereinafter mentioned 507.87 feet;
- NORTHERLY by Lot 19 shown on plan hereinafter mentioned, 612.27 feet; and
- NORTHEASTERLY by said Lot 19, 118.79 feet.

All of said boundaries are determined by the Land Court to be located as shown on a plan, as modified and approved by the Land Court, filed in the Land Registration Office, a copy of a portion of which is filed in the Registry of Deeds for the South Registry District of Middlesex County in Registration Book 978 Page 111 with Certificate 169661 and shown thereon as Lot 18.

For reference to title see Certificates of Title Nos. 50407 and 73320 issued by said Registry District in Registration Book 337 and 490, Pages 161 and 81, respectively.