

CONSERVATION RESTRICTION AND PUBLIC ACCESS EASEMENT

I. Grantor Clause

Hayes Development Corp., a Massachusetts Corporation with a mailing address of 54 Junction Square Drive, Concord, Massachusetts, and Stanley N. McNiff of Shirley, Massachusetts, Trustee of Longley Trace Condominium under Declaration of Trust dated November 15, 1994, recorded Middlesex South District Registry of Deeds Book 25000, Page 586 with a mailing address of 11 Longley Road, Shirley, Massachusetts (hereinafter, the "Grantor") in consideration of One (\$1.00) Dollar GRANTS TO THE TOWN OF SHIRLEY, acting by and through its Conservation Commission (hereinafter the "Grantee") for conservation purposes pursuant to G.L. c.40, §8C, with Quitclaim Covenants, a Conservation Restriction in gross in perpetuity pursuant to M.G.L.A. Chapter 184, Section 31-33, on certain land shown as "Open Space" on a plan of land entitled, "Plan of Designated Perpetual Open Space Longley Trace Shirley, Mass. Prepared for LeMac Realty Trust", by David E. Ross Associates, Inc., dated September, 1999, recorded with Middlesex South District Registry of Deeds on September 14, 1999 as Plan No. 1024 of 1999 (2 sheets). Said area subject to said Conservation Restriction is shown as "Open Space" on said plan and is referred to in this Restriction as the "Premises". For Grantor's title of Hayes development Corp., see Middlesex South District Registry of Deeds Book 30741, Page 464. For title of Stanley N. McNiff, Trustee as aforesaid, see Master deed recorded said Deeds Book 25000, Page 565.

II. 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 assure that the Premises will be retained in perpetuity predominantly in their, natural, scenic and open conditions and to prevent any use of the Premises that will significantly impair or interfere with the conservation values of the Premises. The Premises contain unusual, unique or outstanding qualities the protection of which will be of benefit to the public. These qualities include:

- A. The areas of Open space create a significant protected area comprised of significant portions of Mulpus Brook to preserve and protect water resource values as well as wildlife habitat;
- B. The Conservation Restriction grants access over the Premises to the condominium owners of Longley Trace and invitees and the general public by foot and horseback the right to construct a scenic walking/riding trail;
- C. The Premises contain outstanding scenic and aesthetic qualities, and the forested area provides for the amelioration of noise, heat and air-borne pollutants.
- D. The premises are adjacent to and link up with other conservation lands of the Grantee and other private restricted lands.
- E. The Conservation Restriction is required by Special Permit granted by the Town of

III. Prohibited Acts and Uses, Exceptions Thereto, and Permitted Uses.

A. Prohibited Acts and Uses

Subject to the exceptions set forth in Paragraph B below, the following acts and uses are prohibited on the Premises:

1. Constructing or placing any of building, tennis court, landing strip, mobile homes, swimming pools, fences, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, above, or below 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;
3. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
4. Except for emergency vehicles, ADA wheelchairs and vehicles necessary in connection with permitted uses allowed in Sections III (B) 3, 4 and 5 below use of off-road and similar motorized vehicles including snowmobiles, all-terrain vehicles and motorcycles;
5. Cutting, removing or otherwise destroying trees, grasses or other vegetation;
6. The subdivision of the Premises;
7. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or wild life habitat;
8. Any other use of the Premises or activity which would materially impair significant conservation interests unless necessary for the protection of the conservation interests that are the subject of this Conservation Restriction.

B. Exceptions to Otherwise Prohibited Acts and Uses.

The following acts and uses otherwise prohibited in subparagraph A are permitted subject to Conservation Commission approval, but only if such acts or uses do not materially impair significant conservation interests.

1. Excavation and removal from the premises of soil, gravel or other mineral resource of natural deposit as may be incidental to the installation or maintenance of utilities, good drainage, soil conservation practices or to other permissible uses of the site;

2. Selective cutting of trees for fire protection, public safety, unpaved trail and road maintenance, or otherwise to preserve the present condition of the Premises;
3. Woodland husbandry operations carried on in accordance with sound forest management practices (including but not necessarily limited to the selective cutting and planting of trees subject to the Massachusetts Forest Cutting Practices Act of 1982 as amended (G.L. Ch. 132 §§ 40-46) on the basis of an approved cutting plan and under the supervision of a professional forester approved by the Grantee);
4. Erection of signs by the Grantor or Grantee identifying the Grantee as holder of the Conservation Restriction and to educate the public about the conservation values protected and any limitations relating to the public access;
5. After consultation with each other the construction and maintenance by the Grantor or the Grantee of Trails, and a small parking area for Trail use.

C. Exceptions to Otherwise Permitted Acts and Uses.

1. All acts and uses not prohibited by subparagraphs A and B are permissible.
2. The compensatory storage area previously shown on the plans referred to in the Special Permit dated February 10, 1988, recorded with the Middlesex South District Registry of Deeds Book 19063, Page 287, has been moved out of the Open Space area to a new location as shown on a plan entitled "Wetland Site Plan of Land in Shirley, Massachusetts, Sheet 1 of 2, dated March, 2000 and revised through May 10, 2000 and prepared by David E. Ross Associates, Inc. No excavation, construction or maintenance work will be required to take place on this compensatory storage area within the Open Space Area.

IV. Legal Remedies of the Grantee:

A. Legal and Injunctive Relief

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 prior to the time of the injury complained of (it being agreed that the 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 the Grantee.

B. Reimbursement of Costs of Enforcement.

The Grantor, and thereafter the successors and assigns of the Grantor covenant and agree to reimburse the Grantee for all reasonable costs and expenses (including without limitation counsel fees) incurred in enforcing this Conservation Restriction or in abating any violation thereof

C. Grantee Disclaimer of Liability

By its acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises.

D. Severability Clause

If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.

E. Non-Waiver

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 of such rights.

V. Access

The Conservation Restriction hereby conveyed does not grant to the Grantee, to the general public, or to any other person any right to enter upon the premises, except there is hereby:

- A. Granted to the Grantee a permanent easement of access to enter said parcel over the ways shown on the Site Plan of the Longley Trace Condominium recorded Middlesex South District Registry of Deeds Book 25000, Page 555 and over "Plan of Open Space Access Easement in Shirley, Mass Prepared for Hayes Development Corp. Scale 1"40', Date May 2000, By David E. Ross Associates, Inc. Job Number 13030, Plan # 6326" recorded herewith, by its designees, for the purpose of inspecting the premises and enforcing the foregoing restrictions and remedying any violation thereof The right hereby granted shall be in addition to any other remedies available to the Town for the enforcement of the foregoing restrictions.
- B. Reserved to the Grantor and to the Longley Trace Condominiums Association and its invitees:
access by foot, horseback, skis or snowshoes, over said Premises;
- C. Granted to the Grantee the right to police and maintain the within described area as follows:

To maintain, repair, police and administer the Premises for the purposes of preserving its natural and scenic conditions and controlling its use in accordance with the terms of this Conservation Restriction. The Grantor and its successors and assigns assume responsibility, either through its agents or contractors, for the removal of any damage caused by natural disaster, as well as for discouraging littering and other spoilage to or encroachment upon the natural features of the Premises and for periodically removing litter. The Grantor further agrees that any significant alteration of existing vegetation in the Premises, other than for the

purposes set forth in Section III.B.2 of this Conservation Restriction, or for the prevention of fire or disease, or for the improvement of scenic views, shall be undertaken only after the prior written consent of the Grantee, or its successors or assigns, has been obtained. Such consent shall not be unreasonably withheld. The Grantor agrees to indemnify and hold harmless the Grantee, its successors and assigns, for all liability and damages occurred as a consequence of this provision or as a result of action by the Grantor, its agents, employees, successors or assigns. The right hereby granted to the Grantee to maintain, repair, police and administer the Premises shall not impose on the Grantee any obligation to maintain, repair, police or administer the Premises.

- D. Granted to the Grantee and to the general public an easement to pass and repass upon marked trails which shall be laid out and constructed on the Premises as the Grantor and the Grantee may agree, which agreement shall not unreasonably be withheld or delayed, on foot, horseback, skis or snowshoes, for purposes of hiking, winter sports or nature study. Grantee shall have the right, but not the obligation, to maintain such trails. Grantor's liability to the general public for injuries sustained to persons or property while on the premises shall be limited as provided in G.L. Ch. 21 § 17C "Public Use of Land for Recreational Purposes" as the same may be amended from time to time.
- E. Granted to the Grantee and its successors and assigns an easement to construct, maintain and use a parking area in a location and in accordance with a plan showing the number of spaces, to be consented to by the Grantor, which consent shall not unreasonably be withheld or delayed, such parking area to be for the use of persons using the trails and to be located so that access is provided by trails from the parking area to conservation lands of the Grantee that abut the premises. Grantee shall have the right but not the obligation to construct and maintain such parking area.

VI. Assignability

A. Running of the Burden

The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Execution of Instruments

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor on behalf of itself and its successors and assigns appoint the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit

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

1. As a condition of any assignment, the Grantee requires that the purpose of this Conservation Restriction continue to be carried out.

2. The assignee, at the time of assignment, qualifies under Section 32 of Chapter 184, of the General Laws as an eligible donee to receive this Conservation Restriction directly.

3. The Grantee has complied with the provisions of Article XCVII of the Amendments to the State Constitution of the Commonwealth of Massachusetts.

VII. Subsequent Transfers:

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises including a leasehold interest.

VIII. Estoppel Certificates:

Upon request by the Grantor, the Grantee shall within twenty (20) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

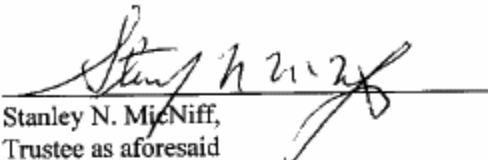
IX. Effective Date:

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administration approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded, or if registered land, it has been registered.

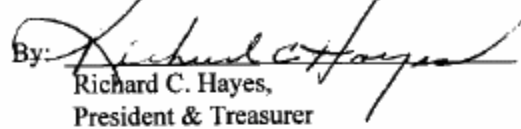
X. Recordation:

The Grantor shall record this instrument in timely fashion in the Middlesex South District Registry of Deeds.

Executed under seal this 15th day of June, 2000.


Stanley N. McNiff,
Trustee as aforesaid

HAYES DEVELOPMENT CORP.

By: 
Richard C. Hayes,
President & Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

June 15, 2000

Then personally appeared the above named Richard C. Hayes, President and Treasurer of Hayes Development Corp. and acknowledged the foregoing to be the free act and deed of said corporation, before me,

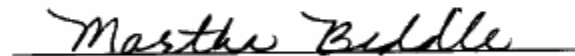

Notary Public: J. Michelle McCue
My Commission Expires: January 31, 2003

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

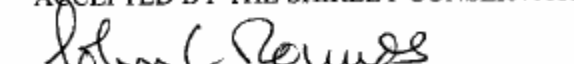
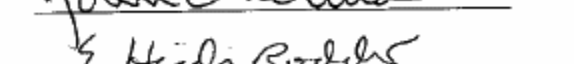
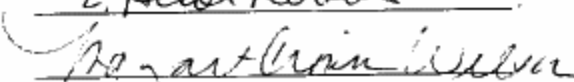
15 June, 2000


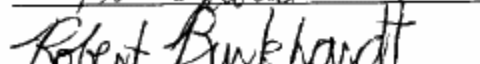
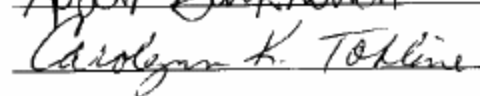
Then personally appeared the above named Stanley N. McNiff, Trustee as aforesaid and did acknowledge the foregoing instrument to be his free act and deed as Trustee before me;


Notary Public,
My Comm. Expires:

MARTHA BIDDLE
Notary Public
My Commission Expires
April 14, 2006

ACCEPTED BY THE SHIRLEY CONSERVATION COMMISSION BY:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

June 15, 2000.

Then personally appeared the above named

JOHN ROUNDS ET. AL.

and did acknowledge the foregoing instrument to be the free act and deed of the Shirley Conservation Commission before me.

Notary Public,
My Comm. Expires:

Ann Hagan
June 28, 2002

APPROVAL OF SELECTMEN

We, the undersigned members of the Board of Selectmen of the Town of Shirley, hereby certify that we approved the receipt of the foregoing Restriction under M.G.L. c. 40, Section 8C and M.G.L. c. 184, Section 32 as they have been and may be amended, for the protection of the natural and watershed resources of the Town.

TOWN OF SHIRLEY BY ITS SELECTMEN:

Leonardo M. Giercio
Leonardo M. Giercio, Chairman
Kyle J. Keady
Kyle J. Keady
Charles R. Shultz, Jr.
Charles R. Shultz, Jr.

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

June 26, 2000.

Then personally appeared

Board of Selectmen

Leonardo M. Giercio, Chairman of the

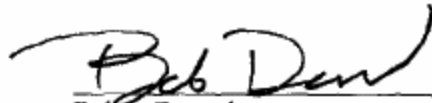
and acknowledged the foregoing to be the free act and deed of the Board of Selectmen, before me

L. Thomas Linden
Notary Public L. Thomas Linden
My Commission Expires: November 26, 2004

APPROVAL BY THE SECRETARY OF ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction and Public Access Easement ("Conservation Restriction") to The Town of Shirley has been approved in the public interest pursuant to M.G.L. Chapter 184, section 32. Said approval shall not 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.

Dated: July 11, 2000


Robert Durand,
Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

July 11, 2000

Then personally appeared the above-named Robert Durand, Secretary of Environmental Affairs, and acknowledged the foregoing instrument to be his free act and deed as Secretary of Environmental Affairs of the Commonwealth of Massachusetts, before me,


Notary Public

My commission expires:

NICOLE SICARD
Notary Public
My Commission Expires December 31, 2004

Map of Lot 1, 24.8± Acres, including Open Space. The map shows the Longley Trace, Longley Road, and N/F Farnsworth Brook. It identifies several existing buildings and structures, including a large building complex on the right and smaller buildings on the left. The map also shows the boundaries of adjacent landowners: Kenneth L. Jean, Daniel and Wanda McNiff, Raymond A. and Maura A. Prisk, Oliver Robert Worla III and Joanne Worla, and Robert P. Walsh and Katherine L. Walsh. The map includes a north arrow and a scale bar. The map is titled 'Lot 1 24.8± Acres Including Open Space' and is signed by William P. Farnsworth and Kenneth P. Farnsworth.

William P. Farnsworth and Kenneth P. Farnsworth