

LAW DEPARTMENT



CITY OF NEWTON, MASSACHUSETTS
CITY HALL
1000 COMMONWEALTH AVENUE
NEWTON CENTRE, MA 02459
TELEPHONE (617) 796-1240
FACSIMILE (617) 796-1254

CITY SOLICITOR
ALISSA O. GIULIANI

DEPUTY CITY SOLICITORS

JEFFREY A. HONIG
MARIE M. LAWLOR

ASSISTANT CITY SOLICITORS

MAURA E. O'KEEFE
ALAN D. MANDL
JILL M. MURRAY
JONAH M. TEMPLE
JACLYN R. ZAWADA
JENNIFER C. PUCCI
ANDREW S. LEE
CAROLYN A. WEISMAN

December 27, 2019

*VIA USPS FIRST CLASS
AND ELECTRONIC MAIL*
(john.gioia@state.ma.us)


Mr. John Gioia, Conservation Restriction Reviewer
Divisions of Conservation Services
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: **Recorded Conservation Restriction**
CR Reference No.: 16648
CR No.: NEWTON #032
CR Address: 20 Rogers Street
City: Newton

Dear Mr. Gioia:

I am pleased to inform you that the above-referenced Conservation Restriction ("CR") has been recorded with the Middlesex South District Registry of Deeds in Book 73890, Page 290. A copy of the recorded CR is enclosed herewith. Thank you for your assistance throughout this process.

Very truly yours,

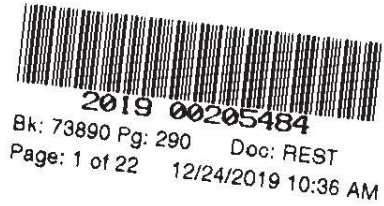

Andrew S. Lee
Assistant City Solicitor

Enclosures

cc: Alice E. Ingerson, Community Preservation Program Manager

122

GRANTOR: City of Newton
1000 Commonwealth Avenue
Newton Centre, MA 02459



GRANTEE: Newton Conservators, Incorporated
P.O. Box 590011
Newton Centre, MA

ADDRESS OF PREMISES: 20 Rogers Street
Newton, MA

FOR GRANTOR'S TITLE SEE:
Middlesex South District Registry of Deeds
Book 49418, Page 163

CONSERVATION RESTRICTION

The City of Newton, acting by and through its Mayor, with a mailing address at 1000 Commonwealth Avenue, Newton Centre, Massachusetts 02459, being the sole owner, for its successors and assigns (hereinafter referenced to as the "Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, hereby grants with QUITCLAIM COVENANTS to Newton Conservators, Incorporated, having an address of P.O. Box 590011, Newton Centre, Massachusetts 02459 and its permitted successors and assigns (hereinafter referred to as the "Grantee"), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR RECREATIONAL AND OTHER CONSERVATION PURPOSES, the following Conservation Restriction located on a parcel of land 20 Rogers Street in Newton, Massachusetts constituting approximately 44,449 square feet ("Premises") which Premises is more particularly described in Exhibit A and shown as Lot B1 on a plan of land entitled "Plan of Land, in Newton, Mass," dated July 13, 1950, prepared by Henry F. Bryant & Son, Engineer, recorded with Middlesex South Registry of Deeds as Plan Number 1320 of 1950, a reduced copy of which is attached hereto as Exhibit B.

I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for recreational and other conservation purposes, to permit such limited activities pursuant to said purposes and consistent with the terms of this Conservation Restriction, and to prevent any use or change that would impair or interfere with its open space, recreational or conservation values (collectively, the "conservation values").

The Premises was acquired using M.G.L. c. 44B Community Preservation Act funds, and copies of the Newton Board of Aldermen Orders "#88-07 &88-07(2)", and "88-07(4)" authorizing the use of such funds for such purpose are attached hereto as Exhibit C and Exhibit D, respectively

The conservation values include the following:

Open Space Protection and Consistency with Clearly Delineated Federal, State, or Local Governmental Conservation Policy.

Protecting open space is a goal in Newton, with specific points of importance outlined in the 2014 Open Space and Recreation Plan "OSRP" and also stated in the Newton Comprehensive Plan section for Open Space and Recreation. In the 2014 OSRP, Crystal Lake and the open space areas surrounding the lake, including the Premises (20 Rogers Street), are highly prioritized areas of interest. This is because of all water bodies in Newton, Crystal Lake receives the most use, hosting up to 1200 swimmers a day in the summer season.

Flood Plain Protection.

A portion, approximately 505 square feet, of the Premises lies within the 100-year floodplain determined by the City of Newton Floodplain Ordinance (§22-22) of Crystal Lake. The protection of this floodplain will ensure the continued availability of this flood storage during major storm events. The site is also partially encompassed by the 100' Buffer Zone to Crystal Lake (technically a Great Pond) under the Wetlands Protection Act, M.G.L. c. 131, § 40, and by protecting the Premises it will prevent future development on the parcel that may cause damage to or alter the wetland resource area.

Public access.

Public access to the Premises will be allowed for passive recreation and nature study. The protection of the Premises will connect public land or access easements on either side, allowing public access between the adjacent City-owned Crystal Lake beach and bathhouse to the southeast of the Premises and the adjacent City-owned land to the northwest of the Premises. Connectivity is a priority for Newton open space, as stated in the 2014-2020 Open Space and Recreation Plan.

Water Quality Protection.

The Premises includes approximately 210 feet of frontage along Crystal Lake. The permanent conservation of the Premises thus contributes to the overall water quality maintenance provided by the natural vegetative buffer around Crystal Lake through natural stormwater management.

These and other recreational values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report ("Baseline Report") prepared by Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

A. Prohibited Acts and Uses

Subject to the exceptions set forth herein, the Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, solar panel, solar array, conduit, line, drilled or dug wells, or other temporary or permanent structure or facility on, above or under the Premises.
- (2) Mining, excavating, dredging or removing from the Premises of groundwater, soil, loam, peat, gravel, sand, rock or other mineral or natural resource or natural deposit or otherwise making topographical changes to the area.
- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste, hazardous substances or waste oil, or other substance or material whatsoever, including the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
- (6) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles of any kind on the Premises, except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or individual transportation vehicles as necessary for the mobility impaired, and except as permitted under Paragraph B or as reasonably necessary in connection with activities permitted under Paragraph B;

- (7) Subdivision or conveyance of a part or portion of the Premises alone, or division, or subdivision of the Premises, and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
- (8) The use of the Premises for business, residential or industrial use;
- (9) Hunting or commercial trapping;
- (10) The use of herbicides or pesticides or other methods for the management of target species, except when approved by the Grantee or as part of a current, approved management system used by the Grantor;
- (11) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values.

B. Reserved Rights and Exceptions

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not impair the conservation values or purposes of this Conservation Restriction.

- (1) Wildlife Habitat Improvement. With the approval of the Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species;
- (2) Archaeological Investigations. The conduct of archaeological activities, including without limitation survey, excavation and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by the Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official);
- (3) Trails. Work on existing or new trails, with prior notice and approval by the Grantee, as described in Section II(B)(6) below;
- (4) Signs. The erection, maintenance and replacement of signs with respect to: trespass, trail access, any gift, grant, or other applicable source of support for the conservation of the Premises, and the protected conservation values; and with respect to Outdoor Recreation Activities, as outlined in Section II(B)(5) below; and other reserved rights;
- (5) Outdoor Passive Recreational Activities. Use of the Premises by the general public for any outdoor passive recreational use, including without limitation education, nature study, bird watching, swimming, fishing, boating, hiking, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape,

do not degrade environmental quality, and do not involve more than minimal use for commercial recreational activities

- (6) Public Access Amenities. With prior notice to and approval by the Grantee, the installation, construction, relocation, alteration, maintenance, and use of fences, gates, trails, parking areas, and informational kiosks for passive recreational purposes, not to exceed a cumulative area of 8,890 square feet, which represents 20 percent of the total Premises. Included in that total is the marking, clearing and maintenance of existing trails as shown on the Baseline Report. With prior notice to and approval by the Grantee, the construction of new trails or the relocating or alteration of existing trails. Trails may not exceed a width of eight (8) feet and may be paved provided that permeable materials are used where possible;
- (7) Site Work. Removal, addition, or temporary storage of gravel, sand, soil, rocks and other natural or man-made materials, structures and equipment from, to, or on the Premises to facilitate the construction, maintenance, repair and improvement of the Premises pursuant to the Reserved Rights described in this Section II(B), provided Grantor uses adequate erosion control measures and restores any surface alterations resulting from the activities permitted in this Section II(B)(7) as much as possible to the previously existing conditions;
- (8) Vegetation. The selective cutting, pruning, mowing, and removal of trees, shrubs, invasive species and other vegetation to prevent, control or remove hazards, disease, insect or fire damage, to preserve the existing condition of the Premises, or for general maintenance of the Premises, all in accordance with established forestry practices;
- (9) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of target species in a manner that minimizes damage to surrounding, non-target species and preserves land and water quality
- (10) Underground utilities. Installation, replacement, maintenance or repair of underground utility systems to serve only the Public Access Amenities and other uses of the Premises described in this Section II(B), provided any surface alterations resulting from the activities permitted in this Section II(B)(10) are restored as much as possible to the previously existing conditions;
- (11) Park Furniture. The placement and maintenance of trash barrels, receptacles, light poles, benches, or other furniture typically found in a public park, which Park Furniture shall not count toward the maximum footprint of Public Access Amenities described in Section II(B)(6);
- (12) Motor Vehicles. Use of motor vehicles reasonably necessary to carry out the Reserved Rights described herein, provided that motorized recreational vehicles are expressly prohibited;

- (13) Permits, Regulations, Laws. The exercise of any right reserved by Grantor under this Paragraph B shall be in compliance with zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued;
- (14) Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph B shall follow, when available and if applicable, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

C. Notice and Approval.

Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than 60 days prior to the date 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 Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.

Subject to any applicable law or regulation, failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, and the activity will not impair the recreational values or purposes of this Conservation Restriction.

III. 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 their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. The Grantee shall attempt to resolve issues concerning violations through negotiations with the Grantor prior to reverting to legal means.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.

B. Non-Waiver.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. 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.

C. Disclaimer of Liability

By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

D. Acts Beyond the Grantor's Control

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible, at no expense to the Grantee.

IV. ACCESS

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

This Conservation Restriction grants to the general public and to the Grantee the right to enter upon and use the Premises for passive recreation purposes and activities as described in Section II(B)(5) provided that such activities shall not involve the use of motorized vehicles (except for use of individual transportation vehicles (ITV) necessary for the mobility of persons with disabilities and maintenance vehicles, public safety vehicles and vehicles related to permitted uses of the Premises), shall not impair the purposes of or violate the terms of

this Conservation Restriction, and shall not unreasonably interfere with Grantor's use and enjoyment of the Premises. The terms and conditions of public access, such as hours of access, shall be determined by the Grantor. The Grantor and Grantee agree that, at the time of this Conservation Restriction's recording, the Grantor was charging a fee for summer swimming at Crystal Lake and may continue to charge a fee for such access. However, no fees shall be charged for access to the Premises by the general public as described in this Section IV.

V. EXTINGUISHMENT

A. Procedure for Extinguishment

If circumstances arise in the future such as to render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs.

B. Proceeds

Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to an interest in land in the Grantee, including, without limitation, the right to enforce the terms of this Conservation Restriction, but (except as set forth herein) does not entitle Grantee, upon the extinguishment or other release of this Conservation Restriction under applicable law, to any proceeds received by the Grantor from the subsequent sale, exchange or involuntary conversion of the Premises. The City of Newton shall use its share of the proceeds in a manner consistent with the purposes of this Conservation Restriction by depositing its portion of the proceeds into the City of Newton's CPA fund for open space purposes (see M.G.L. c 44B). If CPA funds no longer exist, then the proceeds will be placed in a similar fund for similar purposes.

Notwithstanding the foregoing, the parties agree that in the event that this Conservation Restriction is extinguished or terminated when the Premises are owned by an entity other than the City of Newton (the "Subsequent Owner"), any sale or conveyance of the Premises by the Subsequent Owner shall entitle Grantee to a share of the proceeds thereof, which share shall be equal to the proportionate value that this Conservation Restriction bears to the value of the unrestricted fee simple property interest. Such proportionate value of the Grantee's property right shall be determined by an independent appraisal at the time of extinguishment or release. Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

Any proceeds that result from any extinguishment or other release of this Conservation Restriction under applicable law, whether the City of Newton or a Subsequent Owner is the owner of the Premises, will be distributed only after complying with the terms of any gift, grant, or other funding requirements, including the Community Preservation Act.

C. Grantor/Grantee Cooperation Regarding Public Action

Whenever all or any 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 Grantor and Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by Grantor and Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed to the Grantor, or be distributed between the Subsequent Owner and Grantee, in accordance with Paragraph V(B) herein above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. DURATION & 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, appoints the Grantee their 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 run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the Assignee is not an owner of the fee in the Property, and the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) days prior to the execution of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

IX. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General laws of Massachusetts. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Middlesex South District Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Middlesex South District Registry of Deeds.

XII. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Mayor
City of Newton
City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

With a Copy to Grantor's Counsel:

City Solicitor
City of Newton
City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

To Grantee: Newton Conservators Incorporated
P.O. Box 590011
Newton, MA 02459

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

XIII. GENERAL PROVISIONS

A. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal 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 purpose of this Conservation Restriction and the policy and purposes of Chapter 184, Sections 31, 32, and 33 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

XIV. MISCELLANEOUS

A. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to Chapter 184, Section 32 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs 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.

B. The Grantor attests that there is no mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

C. Attached hereto and incorporated herein by reference are the following:

Signature pages:

Grantor (and Mayor's Approval)
Grantee Acceptance
Approval of Newton City Council

Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:

Exhibit A: Description of the Premises
Exhibit B: Reduced Copy of Plan of the Premises
Exhibit C: City Vote Authorizing the Use of CPA Funds
Exhibit D: City Vote Authorizing the Use of CPA Funds

I, Ruthanne Fuller, duly elected Mayor of the City of Newton, Massachusetts, on this 10 day of December, 2019, as authorized by Section 3-2 of the Charter of the City of Newton and Section 2-2 of the Revised Ordinances of the City of Newton 2017, hereby approve in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws and grant the foregoing Conservation Restriction to the Newton Conservators, Incorporated.

GRANTOR:
CITY OF NEWTON

Recommended: [Signature] 10/9/19
Robert J. DeRubeis Date
Commissioner of Parks and Recreation

12/10/19
Date

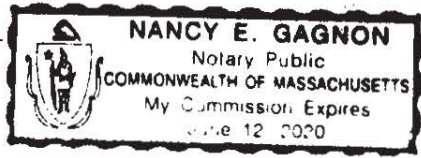
By: Ruthanne Fuller
Ruthanne Fuller
Its: Mayor

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss: 10/9 2019

On this 9th day of October, 2019, before me, the undersigned notary public, personally appeared Robert J. DeRubeis, and proved to me through satisfactory evidence of identification which was MA license to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Nancy E. Gagnon
Notary Public
My Commission Expires: 6/20/2020



COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

December 10, 2019

On this 10th day of December, 2019, before me, the undersigned notary public, personally appeared Ruthanne Fuller, and proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Emily A. Meehan
Notary Public
My Commission Expires: 11/17/25

Approved as to legal form and character:

[Signature]
Assistant City Solicitor



ACCEPTANCE OF GRANT

This Conservation Restriction from the City of Newton was accepted by the Newton Conservators, Incorporated this 9th day of October, 2019.

By: Theodore T. Kuklinski

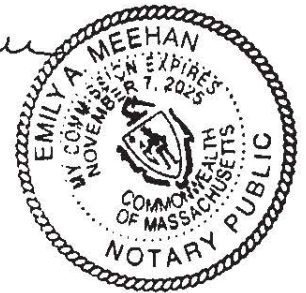
Its: President, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

On this 9th day of October, 2019, before me, the undersigned notary public, personally appeared Theodore T. Kuklinski, and proved to me through satisfactory evidence of identification which was MA Driver's License to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Emily A. Meehan
Notary Public
My Commission Expires: 11/7/25



APPROVAL OF CITY COUNCIL

I, the undersigned Clerk of the City Council of the City of Newton, Massachusetts, hereby certify that at a public meeting duly held on November 4, 2019 the City Council voted to approve the foregoing Conservation Restriction from the City of Newton to the Newton Conservators, Incorporated, in the public interest pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

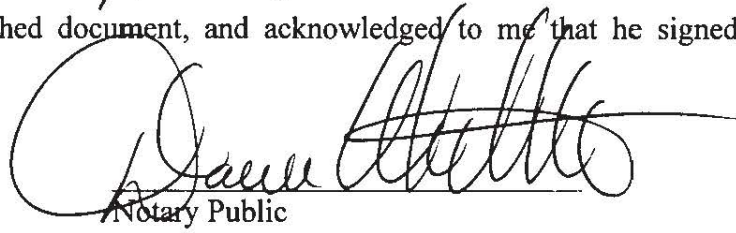
Attest: Clerk of the City Council, City of Newton,
Massachusetts:


David A. Olson

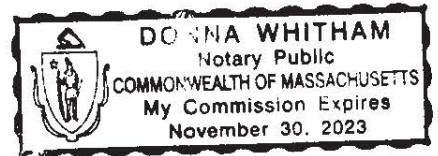
COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss:

On this 6th day of NOVEMBER, 2019, before me, the undersigned notary public, personally appeared David A. Olson, proved to me through satisfactory evidence of identification which was personally known to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.


Notary Public

My Commission Expires:



**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from the City of Newton to the Newton Conservators, Incorporated has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: 12/12, 2019

K. Theoharides
KATHLEEN A. THEOHARIDES
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this 12th day of December, 2019, before me, the undersigned notary public, personally appeared KATHLEEN A. THEOHARIDES, and proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Denise Pires
Notary Public
My Commission Expires: 12/28/23

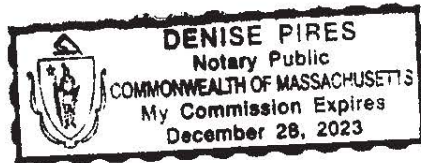


Exhibit A – Legal Description of the Premises

A certain parcel of land situated in Newton Highlands, City of Newton, Middlesex County, Commonwealth of Massachusetts, being known and numbered as 20 Rogers Street and shown as "Lot B1" on a Plan entitled, "Plan of Land in Newton, Mass.," prepared by Henry F. Bryant & Sons, Inc., Engineers, Brookline, Massachusetts, dated July 13, 1950, scale 1"= 40', and recorded in the Middlesex South District Registry of Deeds, in Book 7616, Page 159, Plan Number 1320 of 1950, recorded July 28, 1950, bounded and described as follows:

Beginning on the northeasterly sideline of the right of way of Rogers Street at the southwest side of Lot B1, as shown on said Plan, and thence bounding:

- | | |
|---------------|--|
| Southwesterly | by Rogers Street, a distance of one hundred eighty eight and seventy-two hundredths (188.72') feet, thence; |
| Northerly | by Lot A1 on said plan, a distance of sixty two and three hundredths (62.03') feet, thence; |
| Northeasterly | by Lot A1 on said plan, a distance of seventy and six hundredths (70.06') feet, thence; |
| Northerly | by Lot A1 on said plan, a distance of thirty one and nineteen hundredths (31.19') feet, thence; |
| Northwesterly | by Lot A1 on said plan, a distance of seventy eight and sixty four hundredths (78.64') feet, thence; |
| Northwesterly | by Lot A1 on said plan, but more northerly, a distance of eleven and twenty three hundredths (11.23') feet, thence; |
| Northwesterly | by Lot A1 on said plan, but more westerly, a distance of nineteen and fifty hundredths (19.50') feet, thence; |
| Northeasterly | by Crystal Lake (high water meander line location from July 1, 1927 plan) on said plan, a distance of two hundred (210.00'±) feet, thence; |
| Southeasterly | by land now or formerly of the City of Newton, (N/F Gasbarri on said plan), three hundred forty two and fifty (342.50') feet. |

The above described Lot B1 contains forty four thousand four hundred forty nine square feet more or less (44,449+/- S.F.) according to said record plan.

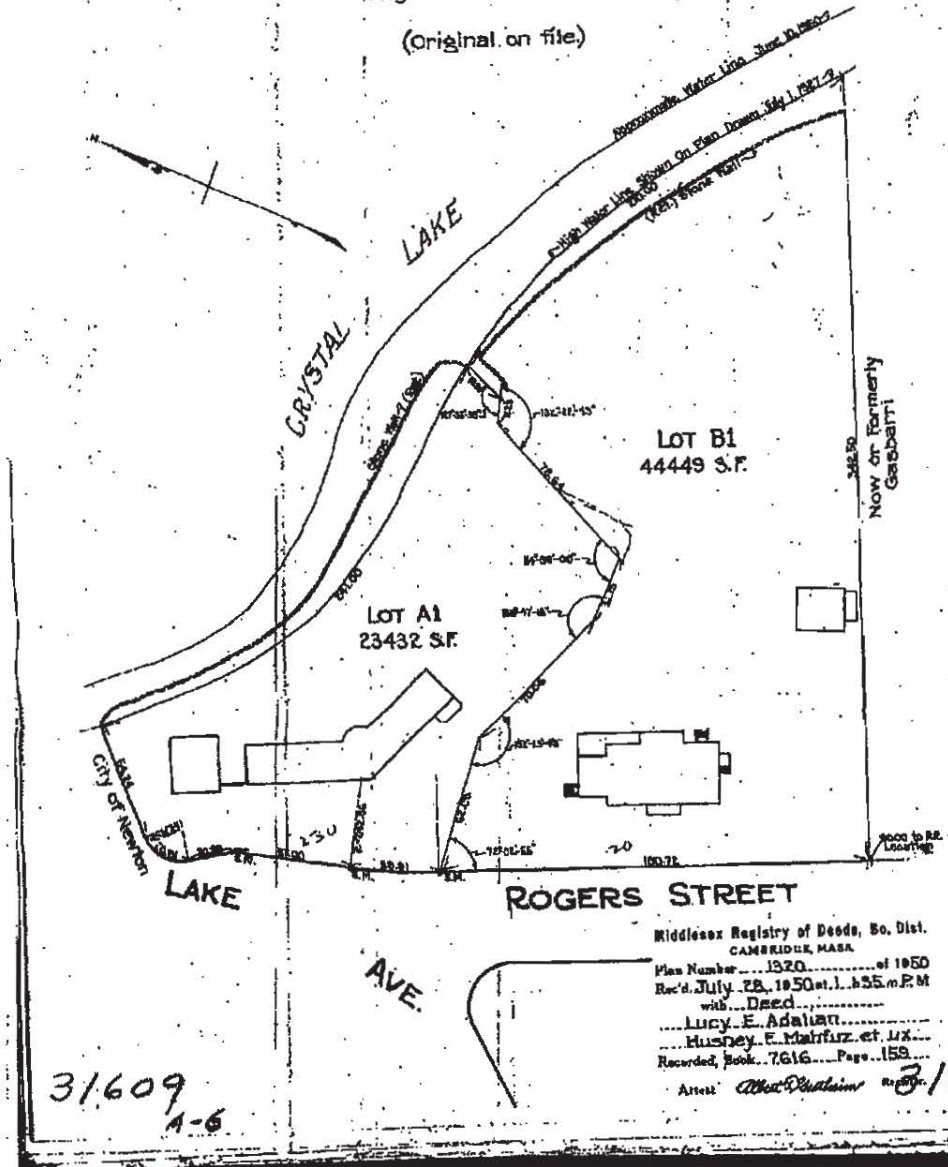
For back title references see: Deed Book 49418, Page 163 (2007), Deed Book 36206, Page 167 (2002), Middlesex South District Registry of Deeds. —

Exhibit B - Reduced Copy of Plan of the Premises

EXHIBIT B

Scale: 1 inch=40 ft. July 13, 1950
Henry F. Bryant & Son, Inc.
Engineers - Brookline, Mass.

(Original on file)



31609
A-6

Middlesex Registry of Deeds, So. Dist.
CAMBRIDGE, MASS.
Plan Number 1320 of 1950
Rec'd July 28, 1950 at 1:55 P.M.
with Deed
Lucy E. Adalian
Hussey F. Matfuz et ux
Recorded, Book 7616 Page 158
Attest: *Albert D. Williams* 316

Exhibit C - City Vote Authorizing the Use of CPA Funds (Page 1)

Bk: 49418 Pg: 163

am

88-07 & 88-07(2)

CITY OF NEWTON

IN BOARD OF ALDERMEN

May 7, 2007



Bk: 49418 Pg: 163 Doc: TAKE
Page: 1 of 2 06/09/2007 10:17 AM

EMERGENCY PREAMBLE

WHEREAS, it is the opinion of the Board of Aldermen that the following measure constitutes an Emergency Measure under Section 2-9(b) of the Charter of the City of Newton due to the fact that a safety emergency exists: specifically, that the existing retaining wall at 20 Rogers Street is unstable, causing a public safety risk to swimmers and other members of the public who have access to the City's beach area located in front of the retaining wall; and that upon the City's acquisition of said property pursuant to the following order, the City's Public Works Department intends to enter the property and abate the safety risk;

THEREFORE, the following measure shall be and hereby is adopted as an Emergency Measure which shall take effect immediately upon adoption.

ORDER OF TAKING

WHEREAS, upon the recommendation of the Community Preservation Committee and His Honor the Mayor, and in the opinion of the Board of Aldermen of the City of Newton, the public necessity and convenience require the acquisition by eminent domain of the parcel of land, together with improvements thereon, known as 20 Rogers Street ("the Parcel"); and

WHEREAS, the Parcel consists of 44,449 square feet, as shown as Lot B1 on a plan entitled, "Plan of Land in Newton, Mass." dated July 13, 1950, by Henry F. Bryant & Son, Engineers, recorded with the Middlesex, South, Registry of Deeds at Book 7616 Book 159, being the same premises conveyed in a deed dated July 24, 2002 from Joseph Wm. Viola and Virginia G. Viola to Patrick J. Hannon, recorded with said Registry at Book 36206 Page 167; and

WHEREAS, the City has authorized and received an independent professional appraisal of the value of the Parcel; and

WHEREAS, the Community Preservation Committee has determined that acquisition of the Parcel, which borders Crystal Lake, a Great Pond, constitutes acquisition of land for recreational use; and the Board of Aldermen hereby approves expenditure of Community Preservation funding for such purpose;

THEREFORE, by vote of the Board of Aldermen, acting on behalf of the City of Newton under chapter Chapter 79 of the Massachusetts General Laws, it is hereby

*20 Rogers St.
Newton, MA*

A True Copy
Attest
[Signature]
City Clerk of Newton, Mass.

RECEIVED

MAY 08 2007

MAYOR'S OFFICE

Return to:
City of Newton Law Department
1000 Commonwealth Ave., Newton MA 02459

Exhibit C - City Vote Authorizing the Use of CPA Funds (Page 2)

Bk: 49418 Pg: 164

88-07 & 88-07(2)

Page 2

ORDERED: That the Parcel be and hereby is taken in fee, together with all rights, title and interest in the Parcel. So far as is known to the Board, the owner and mortgagee for the Parcel are as follows:

Record Owner: Patrick J. Hannon
Bk 36209 Pg 167

Mortgagee: Merrill Lynch Credit Corp.
Bk 36209 Pg 169; Bk 44823 Pg 529; Bk 48691 Pg 260

In accordance with General Laws Chapter 79, it is further


ORDERED: That upon the recommendation of the Community Preservation Committee and His Honor the Mayor, the award of damages in the amount of Two Million Three Hundred Thousand Dollars (\$2,300,000) is hereby made as a result of this eminent domain taking, to be paid to the persons entitled thereto; and the expenditure therefor by the Director of Planning and Development is authorized and approved; and it is further

ORDERED: That in accordance with General Laws chapter 79 section 1, the trees upon and structures affixed to said land are hereby included as part of this taking; and it is further

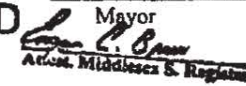
ORDERED: That the Parcel is taken for recreational use; and that custody and management of the Parcel is hereby assigned to the Parks & Recreation Department; and it is further

ORDERED: That for the purpose of paying costs of acquiring the property located at 20 Rogers Street for passive recreational uses, and more formally described as Section Block Lot # 62001 0002 on the records of the City of Newton Board of Assessors, and for the payment of any and all other costs associated therewith, there be and hereby is appropriated and authorized to be borrowed under and pursuant to Chapter 44B of the General Laws (the Community Preservation Act), or pursuant to any other enabling authority, the sum of Two Million Three Hundred Thousand Dollars (\$2,300,000), provided, however, that any long term bonds issued pursuant to this order shall be for a maximum term of ten (10) years, exclusive of the term of any bond anticipation notes that may be issued prior to the issuance of any long term bonds for this purpose.

Under Suspension of Rules
Readings Waived and Emergency Measure and Appropriation Approved
22 yeas, 0 nays, 1 absent (Ald. Burg), 1 recused (Ald. Coletti)


(SGD) DAVID A. OLSON
City Clerk


(SGD) DAVID B. COHEN
Mayor

RECEIVED
MAY 08 2007
MAYOR'S OFFICE

Acting Middlesex S. Registrar

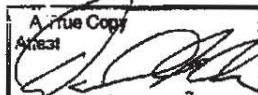
A True Copy
Attest

City Clerk of Newton, Mass.

Exhibit D – City Vote Authorizing the Use of CPA Funds

88-07(4)

#88-07(4)

CITY OF NEWTON

IN BOARD OF ALDERMEN

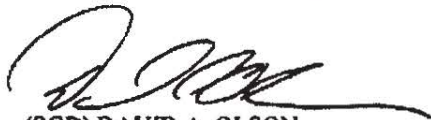
September 7, 2010

ORDERED:

That, in accordance with the recommendations of the Community Preservation Committee through its Chairman Nancy Grissom; the Committee on Community Preservation through its Chairman Alderman Susan Albright; and, the Finance Committee through its Chairman Alderman Leonard J. Gentile, the sum of four hundred fifty-two thousand dollars (\$452,000) be appropriated from the Community Preservation Fund's fiscal 2011 general reserve and expended under the direction and control of the Director of Planning and Development, to satisfy a court judgment adjusting the purchase price for 20 Rogers Street as an addition to public recreation land at Crystal Lake.

FROM:	CPA General Reserve	
	(21R10498-5790).....	\$452,000
TO:	20 Rogers Land Acq.	
	(21D11409-5810).....	\$452,000

Under Suspension of Rules
Readings Waived and Approved
22 yeas 1 nay (Alderman Sangiolo) 1 absent (Alderman Albright)


(SGD) DAVID A. OLSON
City Clerk


(SGD) SETTLE WARREN
Mayor