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**CONSERVATION RESTRICTION**

*location: 303 Nahanton St  
Newton*

The City of Newton, with an address at City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts, in consideration of \$1.00, hereby grants with quitclaim covenants to The Newton Conservators, Incorporated in perpetuity this conservation restriction having the terms and conditions hereinafter set forth ("conservation restriction") with respect to certain land known as "Angino Farm" and located in the City of Newton, Middlesex County, Massachusetts, said land containing approximately 2.23 acres, more or less, said land being shown on the attached sketch, which is entitled "Sketch for Conservation Restriction, Angino Farm, Compiled Plan of Land, 303 Nahanton Street, Newton, MA" prepared by City of Newton DPW/Engineering dated April 20, 2005.

Hereinafter the term "Grantor" shall mean the said City of Newton and its successors and assigns; the term "Grantee" shall mean The Newton Conservators, Incorporated; the term "Plan" shall mean the plans referred to above; and, the term "conservation area" shall mean the parcel shown on the plan above referenced.

Grantor's title being by a deed from Joseph Mitchell, Carol Vercollone and Eric Holsapple as Executors on behalf of the Estate of Jerry Angino, to be recorded herewith.

Purpose

This Conservation Restriction is defined 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 for farming operations and public outdoor recreational purposes, both as herein defined, in its natural, scenic, and open condition and to prevent any use of the conservation area that will significantly impair or interfere with the conservation values of the conservation area. The conservation values of the conservation area, and the corresponding public benefits are as follows:

- (1) The conservation area represents a unique historic landscape as the last surviving family-owned farm in the City of Newton, said farm remarkably unaltered since at least 1874;
- (2) The conservation area is significant to the history and culture of the City, reflecting the agricultural tradition of South Newton, which dates back to the 1670s;
- (3) Preservation of the land in its natural state serves to protect water quality in downstream wetland resource areas and the Charles River;
- (4) Preservation of an intact farmscape provides continuity along Nahanton Street, a designated scenic highway.

*City of Newton Law Department  
1000 Commonwealth Avenue  
Newton Centre, MA 02459*

*Plan # 627 of 2005*



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## Terms

A. *Prohibited Uses.* Except as to reserved rights set forth in paragraph B below, the following acts and uses are expressly prohibited in the conservation area:

1. The permanent or illegal dumping of refuse, including the placing, filling, storing or dumping in the conservation area of any soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other like substances, or the installation of underground storage tanks.
2. Mining, excavating, dredging or removing from the conservation area soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit, except as permitted under paragraph B or as reasonably necessary in connection with activities permitted under paragraph B;
3. Cutting, removing or otherwise destroying trees, grasses or other vegetation except as permitted under paragraph B or as reasonably necessary in connection with activities permitted under paragraph B;
4. Activities detrimental to drainage, flood control, wildlife habitat, water conservation, water quality, erosion control, soil conservation or scenic views;
5. Hunting or trapping;
6. Any conveyance, easement or other transfer of any part or portion of the conservation area or division or subdivision of the conservation area (as compared to conveyance of the conservation area in its entirety, which shall be permitted) without the prior express written consent of Grantee; and
7. The construction of any buildings or structures except consistent with conservation purposes and as permitted under paragraph B or as reasonably necessary in connection with activities permitted under paragraph B;
8. Any other use of the conservation area or activity thereon which is inconsistent with the purposes of this conservation restriction and which would materially and significantly impair the conservation or public recreation interests served by this conservation restriction.

B. *Reserved Rights.* Nothing in this conservation restriction shall prohibit the following acts and uses:

1. The conservation area was purchased for use as a farm, and this parcel has been used in that manner since 1849, and as part of a larger farming

homestead since 1679. Grantor herein reserves the right to carry on such agricultural or farming activities and operations, or such related activities and operations, including but not limited to floriculture, horticulture, beekeeping, animal husbandry, demonstration gardens, community gardens, farmstands, and educational programs related to such agricultural or farming activities and operations. To this end, Grantor herein reserves the right to build, repair, remodel, expand, and relocate structures and improvements related to and necessary in connection therewith, including but not limited to a farmstand(s), sheds, outbuildings, barn(s), greenhouses, coldframes, fences, signs, parking areas, and facilities for irrigation. If the conservation area should no longer be used in farming or agricultural operations as described in this paragraph, Grantor reserves the right to allow the public to carry on, in the conservation area, public outdoor recreational activities, including but not limited to hiking, walking, jogging, bicycling, sledding, and skiing, or use as a playground, playing fields or tennis courts, ice-skating rink, swimming pool, or other recreational use.

2. Use of the conservation area for any outdoor recreation use, public gatherings, or for any other purpose recognized under the laws of the commonwealth as a conservation or recreation use, and any activity or use reasonably accessory or incidental thereto, including without limitation the installation, demolition and maintenance of trails, fences, gates, signs, viewing stands or other seating facilities, parking areas, and kiosks; and including as necessary, regrading and reshaping of the land for public recreational purposes or the return to farming or natural conditions.
3. Use of the conservation area by the Grantor to conduct any activity which is consistent with accepted professional agricultural or land management practices, including, but not limited to, irrigation, pesticide application, and the selective pruning and cutting of trees or brush to prevent, control or remove hazards, disease, insect damage or fire, or to preserve or improve the condition of the conservation area, including vistas, woods, and trails;
4. Management of the conservation area for the benefit of wildlife (including without limitation the planting and cultivation of wildlife cover and food crops), and cutting, mowing, pruning, burning, and removal of vegetation to enhance and promote varied types of wildlife habitat consistent with sound wildlife and forestry management practices;
5. Installation of underground utilities; provided that the land is returned to its natural state; and
6. Use of motor vehicles reasonably necessary in agricultural or recreation land management of the conservation area, or as necessary to the mobility of persons with disabilities visiting the conservation area, or as required by the police, firefighters or other governmental agents in carrying out their lawful

duties.

The exercise of any right reserved by Grantor under this paragraph B shall be in compliance with the Wetlands Protection Act (General Laws Chapter 131, Section 40) and all other applicable federal, state and local laws and regulations. The inclusion of any reserved right in this paragraph B requiring a permit from a public agency shall not be construed to preclude the Grantee from opposing the issuance of such a permit on grounds consistent with this instrument.

C. *Notice and Approval.* Any notices sent under this conservation restriction shall be sent to the parties at the addresses listed above. Any party may provide a new address by sending a notice containing the new address to the other parties. Whenever notice to or approval by Grantee is required hereunder, Grantor shall notify Grantee in writing not less than sixty 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 Grantee to make an informed judgment as to its consistency with the purposes of this conservation restriction. The notice shall state that a Grantee's failure to respond within sixty days shall constitute constructive approval of the request. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within sixty days of receipt of Grantor's written request therefor. Failure of Grantee to respond in writing within such 60 days shall be deemed to constitute approval by such Grantee of the request as submitted. Grantee's approval shall not be unreasonably withheld, but Grantee may withhold its approval if the proposed activity will materially impair the terms of this conservation restriction. If Grantee disapproves of Grantor's proposed activity, Grantee shall set forth in its written notice the grounds for such disapproval. Any written notice required or permitted hereunder shall be deemed delivered if sent by certified mail, return receipt requested, postage prepaid, to the parties at the addresses set forth at the beginning of this instrument or, with respect to assignees, to the address set forth in a recorded instrument transferring title to the conservation area or rights hereunder, or to such other addresses as the parties may designate in writing from time to time.

D. *Release.* The Grantor and Grantee agree that the grant of this conservation restriction gives rise to a legal interest in the Grantee for purposes of enforcing the terms of this conservation restriction but does not vest any beneficial interest or property right in the Grantee. If any change in conditions ever gives rise to a release by the Grantee of the conservation restriction under applicable law, then Grantee, on a subsequent sale, exchange, conversion or taking by any public authority under power of eminent domain or other act of public authority, shall not be entitled to any portion of any such sale, exchange, conversion or taking.

E. *Access.* In addition to any access which the Grantor may permit to the public generally, the conservation restriction hereby grants to Grantee and its representatives the right to enter the conservation area at reasonable times, with reasonable notice and in a reasonable manner for the purpose of inspecting the conservation area to determine compliance herewith.

*F. Legal Remedies of Grantees*

(1) Grantee may enforce this conservation restriction by appropriate legal proceedings and may obtain injunctive and other equitable relief against any violations hereof, including without limitation relief requiring restoration of the conservation area to its condition prior to such violation, it being agreed that Grantee will have no adequate remedy at law. Grantee's rights under this paragraph F shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee. Enforcement of the terms of this conservation restriction shall be at the discretion of the Grantee. No forbearance by the Grantee to exercise its rights under this conservation restriction shall be deemed or construed to be a waiver and no waiver on one occasion shall obligate a Grantee to grant an additional waiver. No waiver shall be valid unless it is written and signed by Grantee, except as to constructive approvals provided for in paragraph C above.

(2) Notwithstanding the foregoing, for any dispute or claim arising out of or relating to the terms of the conservation restriction which cannot be resolved in good faith directly between the Grantor and Grantee, no action shall be filed or prosecuted in any court until the claim or dispute has first been submitted to a mediator, mutually selected by the parties hereto, for at least five hours of mediation. The cost and fees associated with the mediation services shall be shared equally by all parties. The mediator's determinations shall not be binding upon any party. If the mediation is not concluded within thirty days from the time that a dispute is presented to the grantor or grantees, then the party raising the dispute may file an action despite the failure to complete the mediation.

(3) By its acceptance, Grantee does not undertake any liability or obligation relating to the condition of the conservation area, including with respect to compliance with hazardous materials laws or other environmental laws and regulations.

*G. Acts Beyond Grantor's Control.* Nothing contained in this conservation restriction shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the conservation area resulting from causes beyond the Grantor's control, including, but not limited to, fire, flood, storm and earth movement, acts of war whether declared or undeclared, acts of criminals or enemies of the United States, or actions taken in response thereto, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the conservation area resulting from such causes.

*H. Duration and Assignability.* The burdens of this conservation restriction shall run with the conservation area land and shall be enforceable against Grantor and its successors and assigns in perpetuity. Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this conservation restriction, should any such notices or instruments be deemed necessary. Without limiting the foregoing, Grantor agrees to execute any such instruments upon request. The

benefits of this conservation restriction shall be in gross and shall not be assignable by Grantee, except in the following instances from time to time: (i) as a condition of any assignment, Grantee requires that the terms of this conservation restriction continue to be carried out, and (ii) 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 an eligible donee to receive this conservation restriction directly. Upon any dissolution, Grantee may assign its rights to any other non-profit organization which has as one of its principal purposes the advancement of the interests protected by this instrument, subject, however, to consent of the Grantor.

I. *Subsequent Transfers.* Grantor agrees to incorporate by reference the terms of this conservation restriction in any deed or other legal instrument by which Grantor conveys any interest in all or a portion of the conservation area including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least forty-five (45) days prior to the date of such transfer. Failure of Grantor to do so shall not impair the validity of such transfer or of this conservation restriction, and shall not limit the enforceability of this conservation restriction in any way.

J. *Termination of Rights and Obligations.* Notwithstanding anything to the contrary contained herein, and subject to the provisions of paragraph A.6, the rights and obligations under this conservation restriction of any party holding any interest in the conservation area shall terminate upon transfer of that party's interest, except that liability for acts or omissions occurring prior to transfer, and liability for the transfer itself if the transfer is in violation of this conservation restriction, shall survive the transfer.

K. *Estoppel Certificates.* Upon written request by Grantor, Grantee shall within forty-five (45) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this conservation restriction, and which otherwise evidences the status of this conservation restriction as may be requested by Grantor.

L. *Amendment.* This Conservation Restriction may be amended only by written agreement of the parties or their successors in interest. Any such amendment shall require the approval of the Secretary of Environmental Affairs or such successor agency.

M. *Representations of the Grantee.* Grantee represents that it is a private, charitable, non-profit conservation land trust or corporation, that it is a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, that it is organized and operated for the purpose of preserving and conserving natural resources, natural habitats and environmentally sensitive areas and for other charitable, scientific and educational purposes, and that it has both the necessary funds and the commitment to hold this conservation restriction exclusively for conservation and recreation purposes in perpetuity and to enforce its terms.



N. *Miscellaneous:*

1. Controlling Law. The interpretation and performance of this conservation restriction shall be governed by the laws of the Commonwealth of Massachusetts.
2. Severability. If any provision of this conservation restriction shall to any extent be held invalid, the remainder shall not be affected.
3. Entire Agreement. This instrument 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.
4. 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 hereof.
5. Effective Date. Grantor and Grantee intend that the restrictions arising hereunder shall take effect when all requisite signatures pursuant to section 32 of chapter 184 of the General Laws have been obtained and this document has been recorded in the Middlesex South Registry of Deeds.
6. No Merger. No future assignment of Grantor's or Grantee's interest in the conservation area or future acquisition of any additional interest in the conservation area 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".

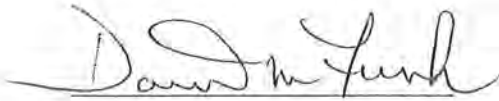
No documentary stamps are required as the city of Newton is a party to this instrument.

Executed under seal pursuant to M.G.L. Chapter 184 Section 32 this 25<sup>th</sup> day of April, 2005.

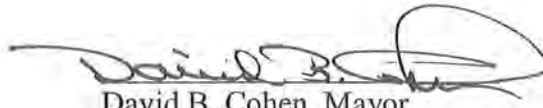
**CITY OF NEWTON**

Approved as to Form:

Approved:



City Solicitor



David B. Cohen, Mayor

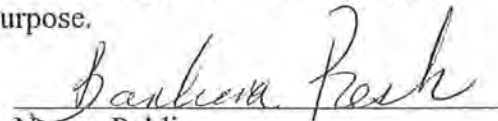
Commonwealth of Massachusetts

Middlesex County, ss

4/25, 2005

On this 25 day of APRIL 2005, before me, the undersigned notary public, personally appeared David B. Cohen, Mayor, acting for the City of Newton, proved to me through satisfactory evidence of identification, which was/were [type of evidence] PERSONAL KNOWLEDGE, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily, in such capacity, for its stated purpose.

[NOTARY SEAL]



Notary Public

Name (Print):

My commission expires:



CITY OF NEWTON

IN BOARD OF ALDERMEN

April 19, 2005

ORDERED:


That, in accordance with the recommendation of the Zoning and Planning Committee through its Chairman Alderman Brian Yates, the Board of Aldermen hereby approves and authorizes His Honor the Mayor to execute a certain perpetual Conservation Restriction, relative to the "Angino Farm" located at 303 Nahanton Street, consisting of approximately 2.23 acres, granted by the City of Newton to the Newton Conservators, Incorporated, a charitable corporation, in accordance with the provision of GL. c. 184, §32, as amended.


Under Suspension of Rules  
Readings Waived and Approved  
23 yeas 0 nays 1 absent (Ald. Hess-Mahan)

EXECUTIVE DEPARTMENT

Approved: April 21, 2005

  
(SGD) EDWARD G. ENGLISH  
*acting* City Clerk LINDA FINLAYNE

  
(SGD) DAVID B. COHEN  
Mayor

A True Copy  
Attest  
  
City Clerk of Newton, Mass.

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this 1st day of April, 2005.

THE NEWTON CONSERVATORS INCORPORATED

By: Theodore T. Kuklinski  
Its: Vice President

Commonwealth of Massachusetts

Middlesex County, ss

April 1, 2005

On this 1 day of April 2005, before me, the undersigned notary public, personally appeared Theodore T. Kuklinski, acting for the Newton Conservators Incorporated, proved to me through satisfactory evidence of identification, which was/were [type of evidence] Ma. Driver's License # S27611012, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily, in such capacity, for its stated purpose.

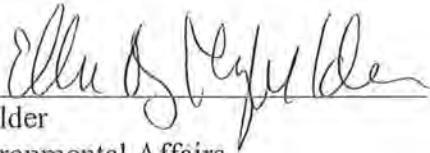
[NOTARY SEAL]

Catherine L. Farrell  
Notary Public  
Name (Print): Catherine L. Farrell  
My commission expires: Jan. 31, 2008



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

The undersigned, Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the Newton Conservators Incorporated has been approved in the public interest pursuant to M.G.L. Chapter 184 Section 32.



\_\_\_\_\_  
Ellen Roy Herzfelder  
Secretary of Environmental Affairs

Commonwealth of Massachusetts

*Suffolk*  
Middlesex County, ss

\_\_\_\_\_ *May 5* \_\_\_\_\_, 2005

On this *5<sup>th</sup>* day of *May* 2005, before me, the undersigned notary public, personally appeared Ellen Roy Herzfelder, acting for Executive Office of Environmental Affairs, proved to me through satisfactory evidence of identification, which was/were [type of evidence] *personal knowledge of identity*, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily, in such capacity, for its stated purpose.

[NOTARY SEAL]



\_\_\_\_\_  
Notary Public

Name (Print):

My commission expires: *12/15/2011*



WINCHESTER STREET



SKETCH FOR  
CONSERVATION RESTRICTION  
ANGINO FARM  
COMPILED PLAN OF LAND  
303 NAHANTON STREET  
NEWTON MA.  
APRIL 20,2005 SCALE 1"=80'  
CITY OF NEWTON DPW/ENGINEERING