

CONSERVATION RESTRICTION
TO THE
CITY OF NEWTON



Bk: 47213 Pg: 317 Doc: REST
Page: 1 of 11 04/03/2008 09:54 AM

11 B
1 - rest
1 - acc
1 - sp.
1 - AP

1. Grantor Clause.

KESSELER DEVELOPMENT, LLC, a Massachusetts limited liability company with its principal place of business at 725 Canton Street, Norwood, Massachusetts 02062 (hereinafter, together with successors in title and assigns or any other interest, collectively called the "Grantor"), being the owners of a certain parcel of vacant land in Newton, Middlesex County, Massachusetts, such parcel having frontage on Brookline Street and Harwich Road, and being shown as Lot H on a plan entitled "Subdivision Plan of Land in Newton, MA," dated November 26, 2003 prepared by Toomey-Munson & Associates, Inc., recorded with the Middlesex South District Registry of Deeds as Plan in Record Book 2004, Page 347 ("Exhibit A"), acting pursuant to Sections 31-33 of Chapter 184 of the General Laws of Massachusetts, grant, with Quitclaim Covenants, to the CITY OF NEWTON, Middlesex County, a Municipal Corporation in the Commonwealth of Massachusetts, acting by and through its Conservation Commission, with an address at City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts (hereinafter, with successors and permitted assigns, called the "Grantee"), in perpetuity and exclusively for conservation purposes, the following described conservation restrictions on said Lot H.

A. A conservation restriction, all as more specifically set forth below, over a portion of said Lot H, shown more specifically on a plan entitled "Plan of Land Showing Conservation Restriction Area & Easement Area in Newton, MA," by Toomey-Munson & Associates, Inc., Civil Engineers & Land Surveyors, dated January 13, 2004, revised through 4-1-01 recorded as Plan in Record Book 2004, Page 348 (which restricted area is hereinafter called the "Conservation Restriction Area").

For Grantor's title, see Deed from Boston Edison Company dated April 7, 2004 and recorded with the Middlesex South District Registry of Deeds as Book 42435, Page 200.

2. Purposes.

The purposes of this Conservation Restriction are to ensure that the Conservation Restriction Area will be retained, in perpetuity, predominantly in its natural and scenic condition and to prevent any use of the Conservation Restriction Area that will significantly impair or interfere with the conservation values of the Conservation Restriction Area. The intent of the Conservation Restriction Area is to preserve the wildlife habitat and protect the wetlands and floodplains associated with Saw Mill Brook and the South Branch Saw Mill Brook.

The Conservation Restriction Area consists of a total of approximately 483,657 square feet of land and contains unusual, unique or outstanding qualities the protection of which in their predominately natural or open condition will be of benefit to the public for the following reasons:

RETURN TO:

Bernard F. Shadrawy, Jr., Esq.
Shadrawy & Rabinovitz
15 Broad Street, Suite 512
Boston, Massachusetts 02109

LOT H BROOKLINE STREET AND HARWICH RD., NEWTON, MA

- A. The Conservation Restriction Area has a significant amount of wildlife habitat due to its diversity of vegetation and wetland resource areas; and
- B. The Conservation Restriction Area in its undeveloped state serves to protect water quality.

Creation of this Conservation Restriction was agreed to by and between City of Newton and Cornerstone Corporation, in connection with their cooperative purchase of Kessler Woods. As designee of Cornerstone Corporation, Grantor has acquired ownership of said Lot H. This Conservation Restriction will provide permanent protections of the Conservation Restriction Area and serve to further and promote the conservation values on adjacent and neighboring parcels of land owned by the City of Newton.

3. Prohibited Acts and Uses of the Conservation Restriction Area; Exceptions.

A. Prohibited Acts and Uses of the Conservation Restriction Area.

Subject to the exceptions set forth in paragraph B below, the following acts and uses are expressly prohibited in and on the Conservation Restriction Area:

- (1) Constructing, placing or allowing to remain any building, tennis or other gaming court, landing strip, mobile home, swimming pool, road, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, light or utility pole, satellite dish, tower, power line, conduit line, or other temporary or permanent structure on, above, or under the Conservation Restriction Area;
- (2) Mining, excavating, dredging or removing from the Conservation Restriction Area of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit in such manner as to affect the surface of said land;
- (3) Placing, filling, storing or dumping on the Conservation Restriction Area of leaves or other tree material, soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever, or the installation of underground storage tanks;
- (4) Cutting, pruning, removing or otherwise destroying trees, shrubs, grasses or other herbaceous vegetation, except in the course of good forestry management practices and only as may be necessary to preserve the present condition of the Conservation Restriction Area subject to the proposed activity receiving the prior approval of the Conservation Commission;
- (5) Use and activities which could be detrimental to wildlife habitat values, including without limitation, site lighting illuminating the Conservation Restriction Area whether direct or indirect;

- (6) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation or archaeological conservation;
- (7) The use of motorized and non-motorized recreational vehicles, to include, *inter alia*, motorcycles, bicycles of any type, all-terrain or other off-road vehicles, scooters and snowmobiles;
- (8) The use of chemical fertilizers, herbicides, or pesticides, unless reviewed and approved by the Conservation Commission in advance and in accordance with the City's Integrated Pest Management Plan;
- (9) The use of fences;
- (10) No further subdivision of the Conservation Restriction Area; and
- (11) Any other use of the Conservation Restriction Area or activity thereon which is inconsistent with the purposes of this Conservation Restriction or which would materially impair other 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 of the Conservation Restriction Area.

- (1) Nothing herein is intended to restrict or affect the existing easement rights held by the City of Newton and the Massachusetts Water Resources Authority.
- (2) Grantor reserves the right to install and maintain underground utilities in the Conservation Restriction Area, subject however to the prior review and approval of the Conservation Commission, which review shall include, without limitation, location of utilities, means of construction and manner of maintenance.

4. Installation of boundary markers.

Within six months following approval of this Conservation Restriction by the Massachusetts Secretary of Environmental Affairs, Grantor, at its expense, shall establish a series of visible permanent bounds and markers so as to mark the Conservation Restriction Area, and provide a plan signed and stamped by a Registered Land Surveyor showing the locations of said bounds and markers. The locations and types of said bounds and markers shall be as reasonably determined by the Conservation Commission.

5. 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 Conservation Restriction Area to its condition prior to

such violation 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, their successors and assigns, covenants and agrees to reimburse the Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking measures to remedy or abate 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 Conservation Restriction Area.

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 forbearance or 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.

F. Acts Beyond Grantor's Control.

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Conservation Restriction Area resulting from causes beyond the Grantor's control, including without limitation, fire, flood, storm and earth movement.

6. Access.

This Conservation Restriction grants the right to enter upon the Conservation Restriction Area to the Grantee and its agents and representatives at reasonable times and in a reasonable manner to inspect same to determine compliance with this Conservation Restriction. The rights of access granted hereunder are in addition to the rights granted to Grantee under an Easement Agreement dated April 7, 2004. There shall be no public access to the Conservation Restriction Area except to areas covered by said Easement Agreement dated April 7, 2004.

7. Assignability.

A. Running of the Burden with the Conservation Restriction Area.

The burdens of this Conservation Restriction granted herein is given in perpetuity and shall run with the Conservation Restriction Area and shall be enforceable against the Grantor and thereafter the successors and assigns of the Grantor holding any interest in the Conservation Restriction Area.

B. Execution of Documents.

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 themselves and their successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on their behalf. Without limiting the foregoing, the Grantor agrees 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 and the successor or assign of the Grantee agree that the purposes of this Conservation Restriction continue to be carried out, and
- (2) the assignee, at the time of the assignment, qualifies under Section 170(b) of the Internal Revenue Code 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the General Laws of the Commonwealth of Massachusetts as an eligible donee to receive this Conservation Restriction directly, and
- (3) the Grantee complies with the provisions required by Article 97 of the Amendments to the Massachusetts State Constitution, as applicable.

8. Subsequent Transfers.

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which the Grantor conveys any interest in the Conservation Restriction area or said Lot H including without limitation, a leasehold interest.

9. Termination of Rights and Obligations.

Notwithstanding anything to the contrary contained herein, the rights and obligations under this Conservation Restriction of any party holding any interest in the Conservation Restriction 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.

10. Estoppel Certificates.

Upon request by the Grantor, or their successors and assigns, 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 with any obligation of the Grantor contained in this Conservation Restriction.

11. 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.

12. Effective Date.

This Conservation Restriction shall be effective when it has been fully executed and it has been recorded with the Middlesex South District Registry of Deeds.

13. Miscellaneous.

A. Controlling Law.

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts. This Conservation Restriction will be recorded in a timely manner.

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 purpose of Section 31 of Chapter 184 of the General Laws of the Commonwealth of Massachusetts. The provisions of Section 26 of Chapter 184 of the General Laws of the Commonwealth of Massachusetts shall apply to this Conservation Restriction and the City of Newton shall be deemed to be a "Governmental Body" as defined therein. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Restriction that would render such provision valid shall be favored over any interpretation that would render it invalid.

C. Pre-Existing Rights.

Approval of this Conservation Restriction by any municipal officials and by the Secretary of 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 Conservation Restriction Area, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

D. 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.

E. 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.

No documentary stamps are required as this Conservation Restriction is for nominal consideration, which, in any event, is less than One Hundred (\$100.00) dollars.

IN WITNESS WHEREOF, KESSELER DEVELOPMENT, LLC has signed under seal, acknowledged and delivered the foregoing instrument on this _____ day of _____ 2004.

KESSELER DEVELOPMENT, LLC

By: Cornerstone Manager, Inc.

By: [Signature]
Its [Signature]
Duly Authorized

Seymour
MIDDLESEX, SS

COMMONWEALTH OF MASSACHUSETTS

April 7, 2004

On this 7th day of April, 2004, before me, the undersigned notary public, personally appeared Paul E. Snyder, proved to me through satisfactory evidence of identification, which were Driver's License, to be the person whose name is signed on the preceding document, and acknowledged that (he) (she) signed it as President of Cornerstone Manager, Inc., on behalf of KESSELER DEVELOPMENT, LLC, voluntarily for its stated purpose.

[Signature]
NOTARY PUBLIC:

My Commission Expires: 12-31-04

ACCEPTANCE BY NEWTON CONSERVATION COMMISSION

The above Conservation Restriction is accepted this 28th day of July, 2005

CONSERVATION COMMISSION OF
THE CITY OF NEWTON:

Rachel Freed _____

Susan Horn _____

[Signature] _____

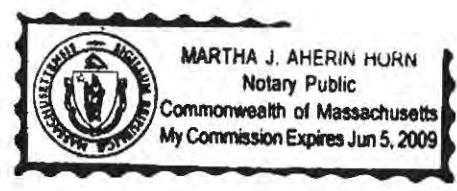
[Signature] _____

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS July 28, 2005

On this 28th day of July, 2005 before me, the undersigned notary public, personally appeared Rachel Freed, proved to me through satisfactory evidence of identification, which were personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged that (he) (she) signed it as Vice Chairman of Conservation Commission of the City of Newton, voluntarily for its stated purpose.

Martha J. Aherin Horn
NOTARY PUBLIC
My Commission Expires:



APPROVAL AND ACCEPTANCE BY BOARD OF ALDERMEN
CITY OF NEWTON (GRANTEE)

LINDA FINLICKA
I, ~~Edward G. English~~, the duly appointed Clerk of the Board of Aldermen of the City of Newton, Massachusetts, hereby attest and certify that at a meeting duly held on SEPT. 19, 2005 the Board of Aldermen voted to approve and accept the foregoing Conservation Restriction pursuant to M.G.L. chapter 40, Section 8C and M.G.L. Chapter 184, Section 32.

Attest: Clerk of the Board of Aldermen,
City of Newton, Massachusetts:

Linda Finlicka

APPROVAL AND ACCEPTANCE BY MAYOR
CITY OF NEWTON (GRANTEE)

I, David B. Cohen, Mayor of the City of Newton, Massachusetts, hereby certify that the foregoing Conservation Restriction has been approved and accepted by the City of Newton, by and through its Conservation Commission, pursuant to M.G.L. Chapter 40, Section 8C and M.G.L. Chapter 184, Section 32.

City of Newton, Massachusetts

By: *David B. Cohen*
David B. Cohen, Mayor

COMMONWEALTH OF MASSACHUSETTS

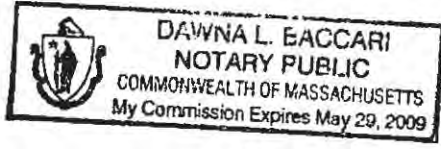
MIDDLESEX, SS

oct 13, 2005

On this 13th day of oct, 2005, before me, the undersigned notary public, personally appeared David B. Cohen, proved to me through satisfactory evidence of identification, which were MASS DRIVERS LICENSE to be the person whose name is signed on the preceding document, and acknowledged that he signed it as Mayor of the City of Newton, voluntarily for its stated purpose.

Dawna L. Eaccari

NOTARY PUBLIC:
My Commission Expires:



**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 has been approved in the public interest pursuant to M.G.L. Chapter 184 Section 32.



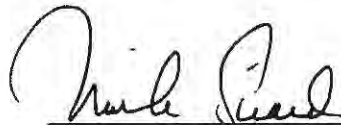
Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

March 3, 2006

On this 3rd day of March, 2006, before me, the undersigned notary public, personally appeared Stephen R. Ratchford, proved to me through satisfactory evidence of identification, which were personal knowledge of identity, to be the person whose name is signed on the preceding document, and acknowledged that (he) ~~(she)~~ signed it as Secretary of Environmental Affairs of the Commonwealth of Massachusetts, voluntarily for its stated purpose.



Notary Public

My commission expires: 12/15/2011

PL # 348

4-1-04 4:57 PM

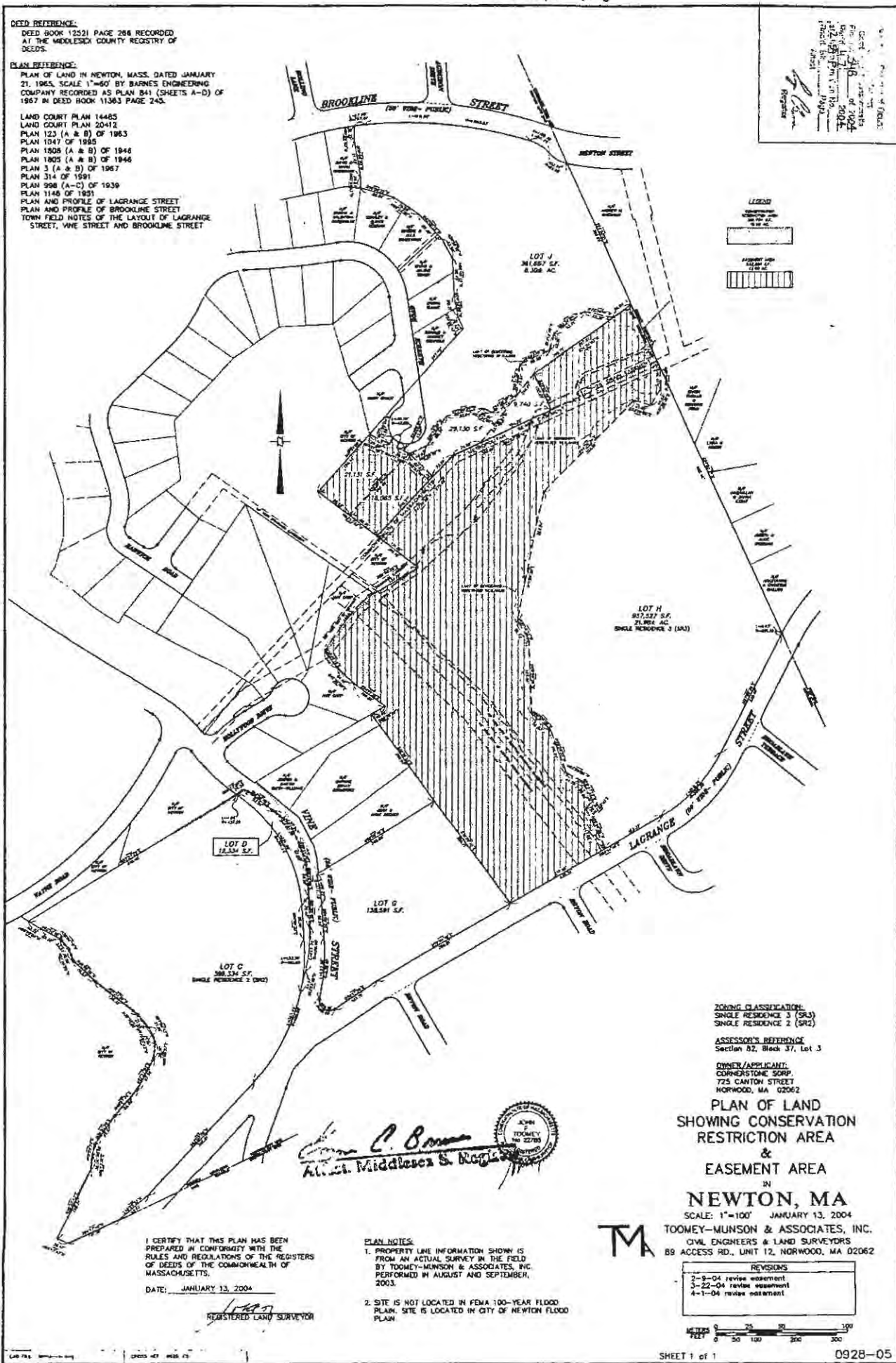
Exhibit A

DEED REFERENCE:
DEED BOOK 12521 PAGE 286 RECORDED
AT THE MIDDLESEX COUNTY REGISTRY OF
DEEDS.

PLAN REFERENCE:
PLAN OF LAND IN NEWTON, MASS. DATED JANUARY
21, 1965, SCALE 1"=50' BY BARNES ENGINEERING
COMPANY RECORDED AS PLAN 841 (SHEETS A-D) OF
1967 IN DEED BOOK 11363 PAGE 245.

LAND COURT PLAN 14485
LAND COURT PLAN 20412
PLAN 123 (A & B) OF 1963
PLAN 1047 OF 1985
PLAN 1808 (A & B) OF 1946
PLAN 1905 (A & B) OF 1946
PLAN 3 (A & B) OF 1967
PLAN 314 OF 1991
PLAN 998 (A-C) OF 1939
PLAN 1140 OF 1993
PLAN AND PROFILE OF LAGRANGE STREET
PLAN AND PROFILE OF BROOKLINE STREET
TOWN FIELD NOTES OF THE LAYOUT OF LAGRANGE
STREET, WHE STREET AND BROOKLINE STREET

PL # 348



ZONING CLASSIFICATION:
SINGLE RESIDENCE 3 (SR3)
SINGLE RESIDENCE 2 (SR2)

ASSESSOR'S REFERENCE:
Section 82, Block 37, Lot 3

OWNER/APPLICANT:
CORNERSTONE SQ. PROP.
725 CANTON STREET
NORWOOD, MA 02062

PLAN OF LAND
SHOWING CONSERVATION
RESTRICTION AREA
&
EASEMENT AREA

IN
NEWTON, MA

SCALE: 1"=100' JANUARY 13, 2004

TOOMEY-MUNSON & ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
89 ACCESS RD., UNIT 12, NORWOOD, MA 02062

REVISIONS	
2-9-04	revise easement
3-22-04	revise easement
4-1-04	revise easement



I CERTIFY THAT THIS PLAN HAS BEEN
PREPARED IN CONFORMITY WITH THE
RULES AND REGULATIONS OF THE REGISTERS
OF DEEDS OF THE COMMONWEALTH OF
MASSACHUSETTS.
DATE: JANUARY 13, 2004

John C. Barnes
REGISTERED LAND SURVEYOR

- EXPLANATIONS:
- PROPERTY LINE INFORMATION SHOWN IS FROM AN ACTUAL SURVEY IN THE FIELD BY TOOMEY-MUNSON & ASSOCIATES, INC. PERFORMED IN AUGUST AND SEPTEMBER, 2003.
 - SITE IS NOT LOCATED IN FEMA 100-YEAR FLOOD PLAIN. SITE IS LOCATED IN CITY OF NEWTON FLOOD PLAIN.

