

Southern Middlesex - 20/20 Perfect Vision i2 Document Detail Report

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Doc#	Document Type	Town	Book/Page	File Date	Consideration
978	DEED		34362/68	12/19/2001	
Property-Street Address and/or Description					
180 ELGIN SEE RECORD					
Grantors					
WILMERDING ALEXANDER					
Grantees					
NEWTON CITY OF CNSVN COMM					
References-Book/Pg Description Recorded Year					
44360/413 ASM 2004, 44360/413 AMEND 2004					
Registered Land Certificate(s)-Cert# Book/Pg					

DEED OF CONSERVATION RESTRICTION

I, **ALEXANDER WILMERDING**, of 180 Elgin Street, Newton, Massachusetts 02459, who with my successors in title to all or any portion of the Property more particularly described at Exhibit A (the "Property") am herein collectively referred to as "Grantor," acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the General Laws, grant with quitclaim covenants to **THE CITY OF NEWTON, MASSACHUSETTS**, a municipal corporation, **BY AND THROUGH THE NEWTON CONSERVATION COMMISSION** (hereinafter "**the Grantee**"), City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts 02459 and its successors and permitted assigns in perpetuity this Deed of Conservation Restriction. The Grantee, a governmental entity of the Commonwealth of Massachusetts, accepts this conveyance for public purposes in accordance with M. G. L. Chapter 40, Section 8C. Except where otherwise expressly indicated herein, this Conservation Restriction (hereinafter "Conservation Restriction") is to be administered on behalf of the Grantee by the Newton Conservation Commission (hereinafter, "the Commission").

PREAMBLE

A. Grantor intends, as owner of the Property, to convey to Grantee the

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 MSB 12/19/04 11:52:49
 180 Elgin Street, Newton, MA 02459
 Property Address:

right to preserve and protect the conservation values (hereinafter defined) of the Property in perpetuity.

B. The primary purpose of the Commission, as an entity of Grantee, is the protection of the natural and scenic resources of the City of Newton.

C. The Grantee is authorized to acquire land and interests therein in furtherance of the purposes of the Commission in accordance with M. G. L. Chapter 40, Section 8C and Grantee is a "governmental unit" as that term is defined in Section 170(b)(1)(A)(v) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code"), a "political subdivision" as that term is defined in Section 170(c)(1) of the Code, and a "qualified organization" as that term is defined in Section 170(h)(3) of the Code.

D. Grantee and the Commission warrant that they are committed to the protection of the Property's conservation values and the Purpose of this Conservation Restriction, and that they have the resources to enforce this Conservation Restriction, as required of a "qualified organization" as that term is defined in Section 170(h) of the Code.

E. Because the Property meets the requirements of Section 2031(c) of the Code, the Property qualifies for the benefits of said Section 2031(c) upon the effective date of this Conservation Restriction.

F. Grantor, the Commission and Grantee recognize the relatively natural, scenic, and open space character of the Conservation Area of the Property, and have the common purpose of the conservation and protection in perpetuity of the Property

through the use of restrictions on the Property and with the transfer from Grantor to Grantee of affirmative rights for the protection of the Property, intending the grant of such restrictions and rights to qualify as a "qualified conservation contribution" as that term is defined under Section 170(h)(2)(C) of the Code.

G. Grantor, the Commission and Grantee recognize the importance of the Property to the protection of the integrity of those conservation values shared by the Property and the City of Newton's contiguous Charles Cohen Conservation Area of nearly 7.59 acres which is set aside as conservation land and for limited, passive public recreation.

PURPOSE

1. **Purpose.** It is the Purpose of this Conservation Restriction to assure that the Conservation Area (hereinafter described) of the Property will be retained forever predominantly in its relatively natural, scenic, and open space condition for conservation purposes, and to prevent any use or development of the Property that will significantly impair or interfere with the conservation values (hereinafter defined) of the Property's Conservation Area.

The entire Property - and in particular the Property's "Conservation Area" of approximately 14,525 square feet, more particularly shown on Exhibit B attached hereto and incorporated herein by this reference - has significant relatively natural habitat, open space and scenic values (collectively, "conservation values") of great importance to Grantor, the Commission and Grantee and to the people of Newton, Middlesex County, and the Commonwealth of Massachusetts, which conservation

values are more particularly described as follows:

A. The Property is an important link in a relatively natural corridor including the contiguous Charles Cohen Conservation Area (which is itself contiguous to adjacent parks administered by the Metropolitan District Commission ("M. D. C.)) for the migration, foraging and dispersal of fauna and avian wildlife and for the public's enjoyment of all the linked properties; and,

B. The scenic character of the Property in relation to the Charles Cohen Conservation Area along Carlisle Street extended (a. k. a. Charles Path), which forms one of the means of public access to the Charles Cohen Conservation Area and the adjacent M. D. C. reservations, is enjoyed by many area residents and tourists from the greater Boston region, and therefore the protection of such scenic character in relation to such Conservation Area and M. D. C. reservations from Carlisle Path is a significant public benefit and fulfills a significant public purpose; and

C. The Property includes an intermittent stream and associated wetlands of importance to nesting and migrating birds and other species; and

D. The preservation of the open space located within the Property's Conservation Area through this Conservation Restriction furthers the open space policies of the City of Newton Open Space and Recreation Plan of 1995, accepted and approved by the City of Newton and the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts in 1995 (with draft update pending in 2001), which policies encourage and seek to implement the permanent protection of open space and the retention of privately owned open space, particularly where such open space is adjacent to public park and conservation land, and is therefore pursuant to clearly delineated

governmental policy and yields a significant public benefit; and

E. The Property lies within the Charles River watershed, includes and is contiguous to wetland and an intermittent stream whose outflow feeds into the Charles River, and is therefore significant in the maintenance of surface and ground water quality and the protection of the water quality of the Charles River; and

F. Unrestricted development of the Property would lead to or contribute to the degradation of the relatively natural, scenic and open space character of the Property in relation to the Charles Cohen Conservation Area and the M. D. C. reservations; and

G. The specific conservation values of the Property are documented in the set of materials (hereinafter, "Baseline Documentation") set out at Exhibit C hereof, which Baseline Documentation is to be kept on file at the offices of the Commission and is incorporated herein by this reference. By their signatures to this Conservation Restriction the parties also acknowledge that the Baseline Documentation provides an accurate representation of the Property as of the effective date of this grant and serves as an objective information baseline for monitoring compliance with the terms of this grant.

PROHIBITED ACTIVITIES AND USES; RESERVED RIGHTS

2. **Prohibited Activities and Uses, Exceptions Thereto, and Permitted Uses.**

A. **Prohibited Activities and Uses Within the Conservation Area.** The following acts or uses are expressly forbidden on, over, or under the Conservation Area as shown and depicted on Exhibit B, attached hereto and made a part hereof, except as otherwise provided in paragraph 2.B.:

- (1) mining, excavating, dredging, or removing of soil, loam, peat, gravel, sand, hydrocarbons, rock, or other mineral resource or natural deposit;
- (2) residential, commercial or industrial use;
- (3) constructing, placing, or maintaining any improvement, building, swimming pool, tennis court, mobile home, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, transmission or receiving tower, conduit, line, or other temporary or permanent structure or facility;
- (4) the installation of underground storage tanks or the placing, filling, storing, or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other substance, whether or not generated on the Property;
- (5) the alteration of topography, wetlands, or habitat;
- (6) activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archeological conservation;
- (7) the division or subdivision of the Conservation Area, meaning and intending that the Conservation Area shall remain undivided and the ownership of the Conservation Area shall remain unified in its entirety with that of the Limited Building Site as depicted and shown on Exhibit B, attached hereto and made a part hereof, which Limited Building Site in its entirety constitutes the balance of the Property which is not included within the Conservation Area;
- (8) cutting, removing, or otherwise destroying trees, grasses, or other vegetation; and
- (9) any other use of or activity in the Conservation Area which would materially impair significant conservation values unless such use or activity is

necessary for the protection of the conservation values that are the subject of this Conservation Restriction.

B. **Exceptions to Otherwise Prohibited Acts and Uses within the Conservation Area.** The prohibited uses of paragraph 2.A, notwithstanding, consistent with the Purpose of this Conservation Restriction and applicable provisions of federal, state and local law (in particular but not limited to the Wetland Protection Act (General Laws Chapter 131, Section 40)) the following rights, uses, and activities of or by Grantor shall be permitted by this Conservation Restriction within the Conservation Area but only if such acts or uses do not materially impair significant conservation values:

(1) **Acts and Uses Not Otherwise Prohibited or Conditioned;**

Affirmative Obligation. The right to engage in all acts or uses not expressly prohibited herein that are not inconsistent with the Purpose of this Conservation Restriction and not inconsistent with the affirmative obligation, subject to all other rights reserved in this paragraph, to maintain the Conservation Area in its current undeveloped, unlandscaped and natural condition;

(2) **Woods Management.** The right to maintain vistas from the Limited Building Site and property contiguous to the Property across the Conservation Area to the Charles Cohen Conservation Area in accordance with current regulations for "vista pruning" at 310 CMR 10.04 which state in material part as follows: "Vista Pruning means the selective thinning of tree branches or understory shrubs to establish a specific "window" to improve visibility. Vista pruning does not include the cutting of trees which would reduce the leaf canopy to less than 90% of the existing crown cover and does not

include the mowing or removal of understory brush.”

(3) **Outdoor Recreational Activities.** The right to engage in domestic, non-commercial outdoor recreational activities that do not materially alter the landscape nor degrade environmental quality including, but not limited to walking, cross country skiing and snowshoeing, provided, however, that there shall be no mountain biking or use of motorized vehicles of any type (other than as may be necessary for “vista pruning” in accordance with the previous subparagraph 2.B(2)) within the Conservation Area; and

(4) **Posting.** In consultation with the Grantor, the Commission reserves the right and at Grantor’s request has the obligation and responsibility to post the Conservation Area with signs that state in material part as follows: “RESERVATION BOUNDARY. Please respect the property rights and privacy of our neighbors and remain on reservation land”, or such alternative language to which Grantor and the Commission agree.

The exercise of any right reserved by Grantor under this paragraph shall be in compliance with the then current zoning and building laws of the City of Newton, the Wetlands Protection Act (General Laws Chapter 131, Section 40) and all other applicable federal, state and local laws.

C. **Uses and Activities within the Limited Building Site.** The following acts or uses are expressly permitted on, over, or under the Limited Building Site as shown and depicted on Exhibit B, attached hereto and made a part hereof, except as otherwise provided in this paragraph:

Subject to the provisions of this paragraph, Grantor reserves the right to

conduct all activities permitted under the laws and regulations of the Commonwealth of Massachusetts and the City of Newton on that portion of the Property identified as the Limited Building Site as shown and depicted on Exhibit B, attached hereto and made a part hereof. Meaning and intending that the Limited Building Site is not restricted in any manner that is not restricted under the laws and regulations of the Commonwealth of Massachusetts and the City of Newton EXCEPT that, subject to the next sentence of this paragraph, the Limited Building Site and the Conservation Area may not be divided, may not be divided from each other and must be retained in single ownership in their entirety. Notwithstanding the previous sentence, the common property line between the Limited Building Site and the contiguous property identified as Lot A on Exhibit B and on a plan entitled "Subdivision of Land in Newton, Belonging to Stephen A. Stone," dated September, 1971, Avis Airmap Project #619, recorded with the Middlesex South District Registry of Deeds as Plan 1445 of 1971, a copy of which appears at Book 12129, Book 192 of said Registry, may be adjusted once, such boundary adjustment to allow no more than one thousand (1,000) square feet of the Limited Building Site to be annexed (appended) to and made a part of said Lot A (such boundary adjustment hereinafter referred to as the "Limited Building Site Boundary Adjustment"). At such time as the Limited Building Site Boundary Adjustment is effected by an instrument recorded in the Middlesex South District Registry of Deeds in accordance with the laws and regulations of the Commonwealth of Massachusetts and the City of Newton, Grantor shall also record a revised Exhibit B in the Middlesex South Registry of Deeds depicting accurately the Limited Building Site Boundary Adjustment and the revised Limited Building Site. As a reserved right

hereunder, said Limited Building Site Boundary Adjustment and the recording of a revised Exhibit B shall not constitute an amendment of this Conservation Restriction but merely the exercise of a reserved right.

Notwithstanding the foregoing paragraph, nothing herein shall be construed as constituting a determination by the City of Newton of the suitability or legality of: (1) the Limited Building Site as a building site, or (2) Grantor's planned or future development of the Limited Building Site under the zoning and building laws of the City of Newton, the Wetlands Protection Act (General Laws Chapter 131, Section 40) and all other applicable federal, state and local laws.

LEGAL REMEDIES OF GRANTEE

3. **Rights of Grantee.** Grantor hereby grants the following enforcement and monitoring rights to Grantee:

(a) to prevent Grantor or third persons (whether or not claiming by, through, or under Grantor) from conducting any activity on or use of the Property that is inconsistent with the Purpose of this Conservation Restriction, and to require of Grantor or third persons the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use to the condition that existed prior to any such violation (it being agreed that Grantee will have no adequate remedy at law);

(b) to enter upon the Property (excluding interiors of any future buildings) at reasonable times, upon prior reasonable notice and in a reasonable manner in order to monitor Grantor's compliance with and otherwise enforce the terms of this Conservation Restriction. Grantee in the exercise of its monitoring rights shall not unreasonably

interfere with Grantor's use and quiet enjoyment of the Property. The rights granted in this paragraph 3(b) shall be exercised by consultants, advisors and agents of the Grantee only and do not grant to the general public or to any other person or entity any right to enter the Property;

(c) to enforce this Conservation Restriction in the case of breaches by Grantor or by third persons (whether or not claiming by, through, or under Grantor) by appropriate legal proceedings, including injunctive and other equitable relief, after providing Grantor with reasonable notice and a reasonable opportunity to cure; and

(d) to take such other action which may be necessary or appropriate, with or without order of court, to remedy or abate any violation of this Conservation Restriction.

3.1 **Reasonable Forbearance Not a Waiver.** Any reasonable forbearance by the Grantee to exercise its rights under this Conservation Restriction in the event of any breach of any term of this Conservation Restriction by Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Restriction or of any of the Grantee's rights under this Conservation Restriction. No reasonable delay or omission by the Commission or the Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

3.2 **Acts Beyond Grantor's Control.** Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, trespass by third persons, fire,

flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Notwithstanding the foregoing, nothing herein shall preclude Grantor's and Grantee's rights to pursue any third party for damages to the Property from vandalism, trespass, or any other violation of the terms of this Conservation Restriction.

3.3 **Cost of Enforcement.** In connection with any action to enforce the terms of this Conservation Restriction, Grantor and Grantee shall each be responsible for their own respective costs of enforcement and attorneys' fees unless Grantor acknowledges or a court of competent jurisdiction determines that a violation of this Conservation Restriction has occurred, in which event Grantor agrees to reimburse Grantee all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy or abate any violation thereof.

3.4 **Disclaimer of Liability.** By its acceptance of this Conservation Restriction, the City of Newton does not undertake any liability or obligation relating to the condition of the Conservation Area.

EXTINGUISHMENT

4. **Extinguishment.** If circumstances arise in the future that render the Purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Unless otherwise required by

applicable law at the time, in the event of any sale of all or a portion of the Property (or any other property received in connection with an exchange or involuntary conversion of the Property) after such termination or extinguishment, and net of any costs or expenses associated with such sale, Grantor and Grantee shall divide the proceeds from such sale (minus any amount attributable to the value of improvements made by Grantor after the effective date of this Conservation Restriction, which amount is reserved to Grantor) in accordance with their respective percentage interests in the fair market value of the Property, as such percentage interests are determined under the provisions of paragraph 4.1, adjusted, if necessary, to reflect a partial termination or extinguishment of this Conservation Restriction. Grantor shall bear responsibility for satisfaction of any prior claims or liens against the Property. All such proceeds received by Grantee shall be applied first to the payment of indebtedness in accordance with M. G. L. Chapter 44, Section 63, and the balance used by the Grantee in a manner consistent with the Commission's primary purposes unless otherwise required by said Chapter 44, Section 63 or other provisions of law. This paragraph shall survive any extinguishment of this Conservation Restriction.

4.1 **Percentage Interests.** For purposes of this paragraph, the parties hereto stipulate that as of the effective date of this grant the Conservation Restriction and the restricted fee interest in the Property each represent a percentage interest in the fair market value of the Property. Said percentage interests shall be determined by the ratio of the value of the Conservation Restriction on the effective date of this grant to the value of the Property, without deduction for the value of the Conservation Restriction, on the effective date of this grant. The values on the effective date of this

grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Code. The parties shall include the ratio of those values with the Baseline Documentation of the Property (on file at the Commission's offices) and shall amend such values, if necessary, to reflect any final determination thereof by the Internal Revenue Service or court of competent jurisdiction. For purposes of this paragraph, the ratio of the value of the Conservation Restriction to the value of the Property unencumbered by the Conservation Restriction shall remain constant, and the percentage interests of Grantor and Grantee in the fair market value of the Property thereby determinable shall remain constant.

4.2 **Condemnation.** If all or a part of the Property is taken, in whole or in part, by exercise of the power of eminent domain, Grantor and Grantee shall be respectively entitled to compensation in conformity with the provisions of paragraphs 4 and 4.1 (with respect to the allocation of proceeds from a sale of the Property under certain circumstances).

ASSIGNMENT BY GRANTEE; TRANSFERS BY GRANTOR

5. **Assignment by Grantee.** The benefits of this Conservation Restriction shall be in gross and shall not be assignable by Grantee, except (i) if as a condition of any assignment, Grantee requires in the instrument of assignment that the Purpose of this Conservation Restriction continues to be carried out, (ii) if the assignee, at the time of assignment, qualifies under Section 170(h) of the Code and the laws of the Commonwealth of Massachusetts (particularly M. G. L. Chapter 184, Section 32) as

an eligible donee to receive this Conservation Restriction directly, (iii) if the assignment is in compliance with the provisions of Article 97 of the Constitution of the Commonwealth of Massachusetts and (iv) if the Grantor approves the proposed assignee in writing prior to assignment, which approval may not be unreasonably withheld. Any attempted assignment by Grantee of the benefits of this Conservation Restriction contrary to the terms hereof shall be invalid but shall not operate to extinguish this Conservation Restriction.

5.1 **Assignment in Connection with Transfer of Title of the Property.**

Grantor and Grantee herein agree that should the Grantee come to own all or a portion of the fee interest subject to this Conservation Restriction, (i) the Grantee as successor in title to Grantor shall observe and be bound by the obligations of Grantor and the restrictions imposed upon the Property by this Conservation Restriction, (ii) this Conservation Restriction shall not be extinguished through the doctrine of merger in whole or in part in view of the public interest in its enforcement, and (iii) the Grantee as promptly as practicable shall assign the Grantee interests in this Conservation Restriction of record to another holder or co-holder. The instrument of assignment shall refer to the provisions of this paragraph 5.1 and shall contain confirmatory language suitable to reimpose this Conservation Restriction to the extent, if any, necessary to continue it in force.

6. **Transfers by Grantor.** Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which Grantor transfers any interest in all or a portion of the Property, including, without limitation, a leasehold interest. The failure of Grantor to perform any act required by

this paragraph shall not impair the validity of this Conservation Restriction or limit its enforceability in any way.

7. **Estoppel Certificates.** Upon request by Grantor, the Commission on behalf of the Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate or compliance certificate, to certify to the best of Grantee's knowledge the status of Grantor's compliance with any obligation of Grantor contained in this Conservation Restriction, or otherwise to evidence the status of this Conservation Restriction.

8 **Effective Date.** Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this **DEED OF CONSERVATION RESTRICTION** is recorded in the Middlesex South District Registry of Deeds, Massachusetts, after all signatures required by Section 32, Chapter 184 of the General Laws of Massachusetts have been affixed hereto. Grantee may re-record this instrument at any time as may be required to preserve its rights in this Conservation Restriction.

GENERAL PROVISIONS

9. **General Provisions.**

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

9.2 **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. If any provision in this instrument is found to be ambiguous, an 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.

9.3 **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 provisions of this Conservation Restriction shall not be affected thereby.

9.4 **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 alteration or variation of this instrument shall be valid or binding unless contained in a written amendment approved in writing by Grantor and Grantee.

9.5 **Successors.** The covenants, terms, and conditions of this Conservation Restriction shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property, provided that (i) the rights and obligations under this Conservation Restriction of any party holding any interest in the Property 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; and (ii) in the event of a Limited Building Site Boundary Adjustment in accordance with paragraph 2.C. hereof and in the event of a subsequent breach of the terms hereof by

the owner or owners of the Property's revised Limited Building Site, no owner or owners of that portion of the Limited Building Site incorporated into Lot A as a consequence of the Limited Building Site Boundary Adjustment shall be liable for such breach or for any costs associated therewith unless such breach is attributable to the owner or owners of such portion of the Limited Building Site incorporated into Lot A in which event the owner or owners of such portion of the Limited Building Site incorporated into Lot A may be liable for such breach or costs jointly with or separately from the owner of that portion of the Property on which the breach occurred.

9.6 **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 (with receipt of delivery), or sent by first class certified mail, postage prepaid, return receipt, addressed as follows:

To Grantor:	Alexander Wilmerding 180 Elgin Street Newton, MA 02459
With a copy to:	Stefan Nagel, Esq. Law Office of Stephen J. Small, Esq., P. C. 75 Federal Street, Suite 1100 Boston, Massachusetts 02110 Facsimile: 617-357-1857
To Grantee:	Chairman, Newton Conservation Commission Planning Department – City Hall 1000 Commonwealth Avenue Newton, MA 02459 Facsimile: 617-965-6620

With a copy to:

Law Department
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

or to such other address as any of the above parties from time to time shall designate by written notice to the others.

9.7 **Pre-existing Rights of the Public.** Approval of this Conservation Restriction pursuant to M. G. L. Chapter 184, Section 32 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 Property, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

9.8 **Costs, Liabilities, and Taxes.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of general liability insurance coverage.

9.9 **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 himself and his successors and assigns appoints the Grantee his attorney-in-fact to execute, acknowledge and deliver any such instruments on his behalf. Without limiting the foregoing, the Grantor and his successors and assigns agree themselves to execute such instruments upon request.

9.10 **Reasonable Efforts.** Grantor, Commission and Grantee shall use all reasonable efforts to make any determinations that are necessary or are contemplated

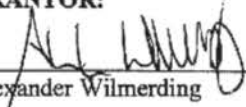
to be made by them (either separately or jointly) under this Conservation Restriction and shall cooperate with one another and shall take all other reasonable action suitable to that end.

9.11 **Counterparts.** This DEED OF CONSERVATION RESTRICTION may be executed in several counterparts and by each signatory on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one document.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever.

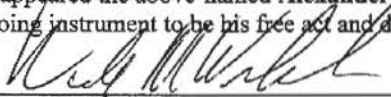
IN WITNESS WHEREOF Grantor, the Commission and the Board of Aldermen and Mayor of the City of Newton (Grantee) have set their hands under seal on the dates set forth below, no Massachusetts deed excise stamps being affixed hereto since this is a gift and no stamps are required.

11/3/01
Date

GRANTOR:

Alexander Wilmerding

COMMONWEALTH OF MASSACHUSETTS,
COUNTY OF MIDDLESEX ss. November 13, 2001

Then personally appeared the above-named **Alexander Wilmerding**, and acknowledged the foregoing instrument to be his free act and deed, before me,


NOTARY PUBLIC
My Commission Expires: _____

Wade M. Welch, Notary Public
My Commission Expires 11-25-05

ACCEPTANCE BY NEWTON CONSERVATION COMMISSION

We, the undersigned, being a majority of the Conservation Commission of the City of Newton, Massachusetts, hereby certify that at a meeting duly held on Nov. 15, 2001, the Conservation Commission voted to accept the foregoing Conservation Restriction pursuant to M. G. L. Chapter 40, Section 8C and M.G.L., Chapter 184, Section 32.

Ira Wallach

Susan H. Junin

Alan Green

Eric Reensterna

Rachel Freed

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX ss.

Nov. 15, 2001

Then personally appeared the above-named Ira Wallach, Alan Green, Eric Reensterna, Rachel Freed, Susan Junin, Commissioners of the Newton Conservation Commission, and acknowledged the foregoing instrument to be their free act and deed, before me,

Matthew J. Ho
NOTARY PUBLIC
My Commission Expires: June 21, 2002

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

I, the undersigned Clerk of the Board of Aldermen of the City of Newton, Massachusetts, hereby attest and certify that at a meeting duly held on Dec 3, 01, 2001, 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:

Edward J. English

**COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX ss.**

December 5, 2001

Then personally appeared the above-named Edward J. English, Clerk of the Board of Aldermen, City of Newton, Massachusetts and acknowledged the foregoing instrument to be his/her free act and deed, and the free act and deed of said Board of Aldermen, before me.

Dawna L. Baccari
NOTARY PUBLIC
My Commission Expires: 5-24-02

**APPROVAL AND ACCEPTANCE BY MAYOR
CITY OF NEWTON (GRANTEE)**

I, the undersigned 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:
Its Mayor

**COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX ss.**

7 December, 2001

Then personally appeared the above-named David B. Cohen, Mayor, City of Newton, Massachusetts and acknowledged the foregoing instrument to be his/her free act and deed, and the free act and deed of said City of Newton, before me.



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 City of Newton, Massachusetts, By and Through the Newton Conservation Commission has been approved in the public interest pursuant to M.G.L., Chapter 184, Section 32.

Date: 12/13, 2001

Bob Duvall
Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Suffolk ss.

Dec. 15, 2001

Then personally appeared the above-named Bob Duvall and acknowledged the foregoing instrument to be his/~~her~~ free act and deed, before me.

Nicole Sicard
NOTARY PUBLIC
My Commission Expires: _____

NICOLE SICARD
Notary Public
My Commission Expires December 31, 2004

EXHIBIT A
CONSERVATION RESTRICTION
OF
ALEXANDER WILMERDING
TO
THE CITY OF NEWTON

LEGAL DESCRIPTION OF THE PROPERTY

Being a portion of the lands and premises described in the deed dated February 12, 1999, of Jeanne C. Upham and Roland Upham, Trustees, to the Grantor herein, recorded with the Middlesex South District Registry of Deeds at Book 29791, Page 487 on February 12, 1999, and being more particularly described as follows:

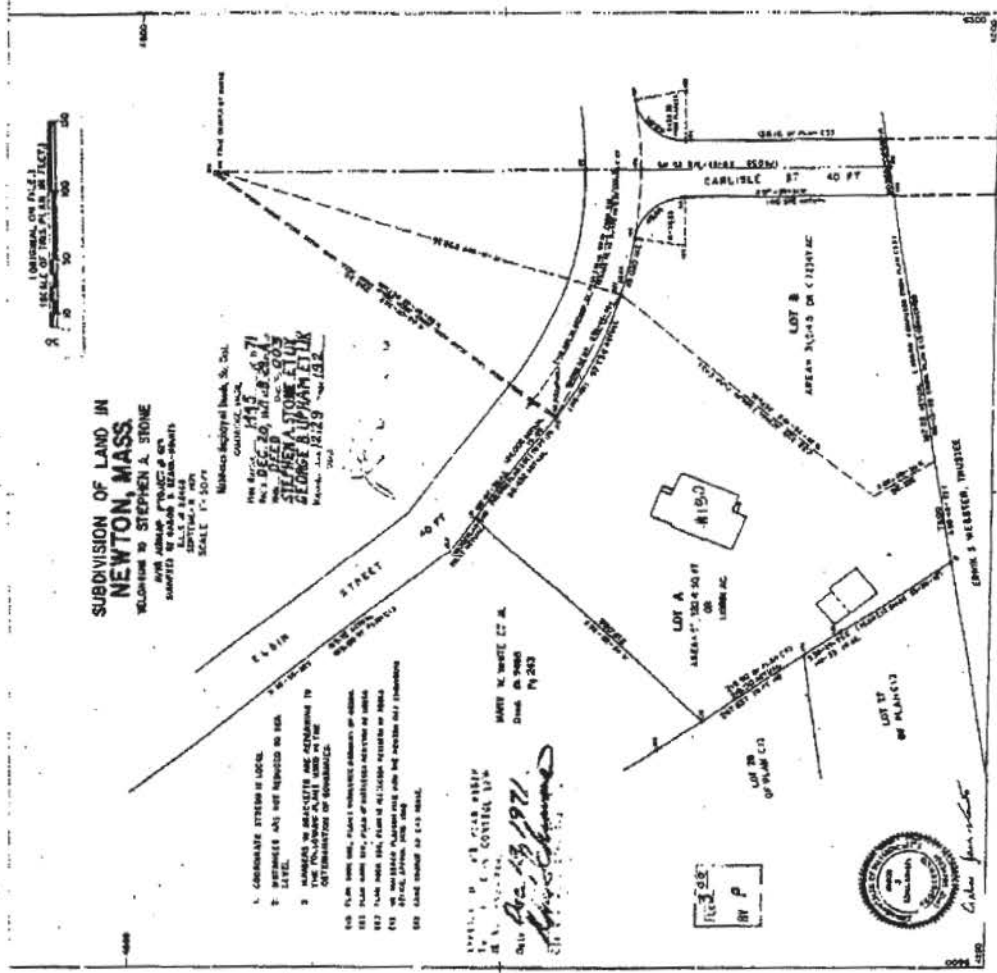
All of that land shown as Lot B of 31,514.50 square feet on a plan entitled "Subdivision of Land In Newton, Belonging to Stephen A. Stone", dated September, 1971, Avis Airmap Project # 619, Scale 1" = 50 ft., recorded with the Middlesex South Registry of Deeds as Plan 1445 of 1971, a copy of which appears at Book 12129, Page 192 of said Registry.

For title, see deed dated February 12, 1999, of Jeanne C. Upham and Roland Upham, Trustees, to the Grantor herein, recorded with the Middlesex South District Registry of Deeds at Book 29791, Page 487 on February 12, 1999, of which the above described Property is a portion.

EXHIBIT B

**CONSERVATION RESTRICTION
OF
ALEXANDER WILMERDING
TO
THE CITY OF NEWTON**

**Two Maps Showing the Property (Lot B), Adjacent Lot A, the Conservation Area of
Approximately 14,525 Square Feet and the Limited Building Site Follow on the Next
Two Pages**



**SUBDIVISION OF LAND IN
 NEWTON, MASS.**

WILMERSDING CONSERVATION RESTRICTION
 TO STEPHEN A. STONE
 400 WILMERSDING STREET
 NEWTON, MASSACHUSETTS
 02459-1000
 SCALE: 1" = 50'

Wilmerding Map of Book 3, Dist.
 County of Middlesex
 No. 1, DEC 20, 1971
 STEPHEN A. STONE
 GEORGE B. WILMERSDING
 1971

- 1. CONSERVATION RESTRICTION IS LOCAL.
- 2. BOUNDARIES AND AREAS SHOWN ON THIS PLAN.
- 3. ALL RIGHTS TO ACQUITTANCE AND RETURNING TO ORIGINAL CONDITION OF BOUNDARIES.

THE PLAN HAS BEEN FILED FOR RECORD IN THE OFFICE OF THE REGISTRAR OF DEEDS, NEWTON, MASSACHUSETTS, ON OCTOBER 13, 1971.
 MARY M. WHITE, CLERK
 Deed in 1970
 P. 283

APPEALS TO THE CLERK OF COURTS
 IN THE COUNTY OF MIDDLESEX
 ON 10/13/71
[Signature]

1445



EXHIBIT C**CONSERVATION RESTRICTION
OF
ALEXANDER WILMERDING
TO
THE CITY OF NEWTON****Baseline Documentation**

Alexander Wilmerding, "Grantor", and the City of Newton, by and through its Conservation Commission, "Grantee", accept and acknowledge the following referenced materials as accurately representing the condition of the protected Property known as Lot B at 180 Elgin Street, Newton, Massachusetts, at the time of the donation of this Conservation Restriction on said Property from Grantor to Grantee. The following referenced materials, identified as the Baseline Documentation in this Conservation Restriction, were made available to Grantee prior to the effective date of the donation of this Conservation Restriction.

The Baseline Documentation consists of:

1. Exhibit B of this Deed of Conservation Restriction;
2. A plan of the property entitled "Subdivision of Land In Newton, Belonging to Stephen A. Stone", dated September, 1971, Avis Airmap Project # 619, Scale 1" = 50 ft., recorded with the Middlesex South Registry of Deeds as Plan 1445 of 1971, a copy of which appears at Book 12129, Page 192 of said Registry and as the second page of Exhibit B of this Deed of Conservation Restriction.
3. A natural resources and property condition inventory of the Property entitled "Site Report, 180 Elgin Street, Lot B, Newton, Massachusetts", dated September 10, 2001, prepared by EcoTec, Inc., Environmental Consulting Services, Worcester, MA, based on a site visit conducted August 14, 2001, and prepared by Scott Jordan, Environmental Scientist, and Paul McManus, PWS, President, which includes, inter alia, the following:
 - a. an excerpt from the USGS map, Boston South Quadrangle (Scale 1:25,000), showing the location of the property; and
 - b. a map captioned "Estimated Habitats of Rare Wildlife and Certified Vernal Pools" produced by the Natural Heritage and Endangered Species Program of the Massachusetts Division of Fisheries and Wildlife
4. The value ratio (to be completed) referenced in paragraph 4.1 of this Deed of Conservation Restriction.