

CONSERVATION RESTRICTION

Boxford Common Recreational Fields

THE TOWN OF BOXFORD, 7A Spofford Road, Boxford, Massachusetts 01921, being the sole owner of the below-described property, its successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, hereby grants to the BOXFORD ATHLETIC ASSOCIATION, INC., a Massachusetts not for profit organization with a principal place of business at 7 Elm Street, Boxford, Massachusetts 01921 ("Grantee") for consideration of \$1.00, in perpetuity and exclusively for conservation and recreational purposes,, the following Conservation Restriction on a parcel of land located in the Town of Boxford, Massachusetts constituting approximately **15.786 acres or "Restricted Area G"** ("Premises"), and more particularly described in Exhibit A and shown on the attached plan/sketch plan. For Grantor's title see Order of Taking recorded with the Essex South District Registry of Deeds in Book 27401, Page 149 (the "Property"), a copy of which is attached hereto, as exhibit B-1.

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 conservation purposes, and also for recreational purposes as open playing fields for sports of all type, including, but not limited to football, baseball, softball, lacrosse, soccer, tennis field hockey and any other field or court (basketball, etc.) sport, as well as playgrounds and trails/footpaths, for walking, jogging, running, non-motorized biking, cross-country skiing, show shoeing and ice skating and to prevent any use or change that would materially impair or interfere with its recreational use and values.

The Property was purchased with CPA funds (Community Preservation Act G.L.C. 44B, Section 11), as authorized by the vote taken under Article 13 of the October 23, 2007 Special Town Meeting, a copy of which is attached hereto, as Exhibit B-2. It was further voted, under Article 13 of the May 11, 2010 Annual Town Meeting, a copy of which is attached hereto, as Exhibit B-3, to dedicate the Premises to conservation and recreational purposes. The property is shown as Parcel 2 on a plan entitled "Plan of Land in Boxford, MA, property of Charles W. Haynes, trustee, Elmlea Partnership Trust," dated November 12, 2007, prepared by Donohoe and Parkhurst, Inc., attached as Exhibit C, or recorded with the Essex South Registry of Deeds in Plan Book 411, Page 10.

The Conservation Restriction furthers government policy, as set forth in the Town of Boxford's Open Space and Recreation Plans of 2001 and 2008.

This Conservation Restriction is subject to the requirements set forth in the MA Endangered Species Act (G.L. c.131A) Conservation and Management Permit No. 009-131.DFW, dated April 22, 2010 (NHESP File No. 04-16989), issued by the Commonwealth of Massachusetts Division of Fisheries and Wildlife acting

through the Natural Heritage and Endangered Species Program ("Division") attached hereto as Exhibit D and incorporated herein by reference ("Permit").

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 permit the following acts and uses which are prohibited on, above, and below the Premises:

(1) Constructing, placing or allowing to remain buildings and structures, except as may be permitted in Section B below, landing strips, mobile homes, , billboards or other advertising display not in conformance with Boxford By-laws, antennas, towers on, above or under the Premises;

(2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the Premises, except as may be permitted in Section B(5) below;

(3) Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, tires whatsoever;

(4) Cutting, removing or otherwise destroying trees, grasses or other vegetation, except as may be reasonably necessary to enable the construction, operation, maintenance, repair and replacement of athletic fields, courts, playgrounds, and recreational trails/footpaths;

(5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation, provided, however, Grantor may engage in the activities specified in Section 5(B)(6), to the extent they are not detrimental to water quality;

(6) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their lawful duties, and with the exceptions set forth in Section B(5) and Section B(7);

(7) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel.

(8) Any other use of the Premises or activity thereon which is inconsistent with the purpose of this Conservation Restriction or which would materially impair its conservation and recreational purposes

B. Reserved Rights and Exceptions

All acts and uses not specifically allowed are prohibited.

Notwithstanding the foregoing, the Grantor reserves the right to conduct or permit the following activities and uses on the Premises:

(1) **Recreational Activities.** Use of athletic fields for active recreational activities of all type, including, but not limited to, football, baseball, softball, lacrosse, soccer, tennis field hockey and any other field or court (basketball, etc.) for organized sports, playgrounds and recreational trails/footpaths for walking, jogging, running, non-motorized biking, cross-country skiing, show shoeing, ice skating and horseback riding, that do not materially degrade environmental quality;

(2) **Routine Athletic Field Maintenance.** Activities reasonably necessary for routine athletic field maintenance including but not limited to seeding, mowing, fertilizing, aerating, field marking, grass cutting, sod repair, trenching, de-thatching, and use of herbicides/pesticides. Any pesticide product used on the Premises shall be used only pursuant to the provisions of Federal, State laws and regulations, the label, and pursuant to generally accepted Integrated Pest Management (IPM) practices; the placing of water conduits, sprinkling systems and the installation and maintenance of wells within the limit of work for turf and field irrigation purposes (see also (8));

(3) **Non-native or nuisance species.** The removal of non-native or invasive species, the inter-planting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;

(4) **Composting.** The stockpiling and composting of stumps, trees and brush limbs, grass clippings, leaves and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not have a deleterious impact on the purposes (including scenic values) of this Restriction;

(5) **Parking Areas.** Parking areas may be created to the north of the westernmost multi-purpose field as shown on "Haynes Recreational Fields, 100% Construction Documents, Layout and Materials Plan, Drawing #1.12" attached as Exhibit E. Parking areas may be flooded during the winter season for ice skating;

(6) **Removing/adding** of topsoil, loam, gravel, sand, stone dust, bark mulch, rock, and alteration of topography exclusively to allow the construction, operation, maintenance, repair and replacement of athletic fields, playgrounds and courts, access roads/driveways and parking areas, recreational trails/footpaths and the necessary parking lots and access roads/driveways for public access to athletic fields and recreational areas permitted under the Permit;

(7) **Motorized Vehicles.** Use of motorized vehicles on roads/driveways and parking areas to access athletic fields and courts, playgrounds, and recreational trails/footpaths. Use of motorized vehicles as reasonably necessary to construct, operate, maintain, repair and replace athletic fields and courts, playgrounds, access roads/driveways and parking areas, recreational trails/footpaths, and the associated storm water management and field sub-drainage systems, irrigation systems, fencing and utilities. Use of motorized vehicles for the handicapped to access the athletic facilities. Provided such uses are not detrimental to water quality, and that such uses are restricted to designated areas;

(8) **MESA Conservation and Management Permit.** All actions and activities required or authorized by Grantor, Grantee, and /or the Division in the Permit., including all activities reasonably necessary to complete the construction and installation of the athletic fields and courts, playgrounds, access roads/driveways and parking areas, recreational trails/footpaths, and associated storm water management and athletic field sub-drainage systems, fencing and utilities;

(9) **Activities reasonably necessary** for the periodic replacement and/or refurbishment of the athletic fields and courts, playgrounds, access roads/driveways and parking areas, recreational trails/footpaths and associated storm water management systems, irrigation systems, the installation and maintenance of wells within the limit of work for turf and field irrigation purposes and fencing and utilities;

(10) **Installation,** maintenance and replacement of structures and equipment, including but not limited to spectator seating; player benches; scoreboards; flag poles; fencing as well as the installation of security lighting; playground equipment, port-o-potties, picnic tables sport nets, football goal posts and all other equipment, and signs, all as detailed on "Haynes Recreational Fields, 100% Construction Documents" prepared by Huntress Associates, Inc., dated June 17, 2015, and up to two (2) storage chests/sheds per field not to exceed the size which would require a building permit for storage of athletic equipment; one shed for the storage of field maintenance equipment;

(11) **Trails.** The marking, clearing and maintenance of trails/ footpaths and roads with prior written approval of the Division and Grantee;

(12) **Signs.** The erection, maintenance and replacement of signs with respect to hunting, trespassing, field, trail and playground access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, identity of donors and sponsors, the protected conservation and recreational use values;

(13) **Permits.** The exercise of any right reserved by Grantor under this Section B shall be in compliance with zoning, the Wetlands Protection Act, the MA Endangered Species Act (MGL c131A), the Town of Boxford Wetlands Bylaw, the Town of Boxford Zoning By-law 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.

C. Notice and Approval. Whenever notice to or approval by Grantee and/or Division is required under the provisions of paragraphs A or B, Grantor shall notify Grantee and/or Division 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 and/or Division to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee and/or Division's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee and/or Division's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this

Conservation Restriction. Failure of Grantee and/or Division to respond in writing within 60 days shall be deemed to constitute approval by Grantee and/or Division 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.

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. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the recreation values of the Conservation Restriction. 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.

IV. ACCESS

The public has access, in perpetuity, to the land defined in this Conservation Restriction, subject to reasonable rules and regulations established by the Grantor. The Grantor hereby grants to the Grantee and or Division, 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 in no way limits, amends or alters the legal authority of the Grantee and/or Division to access the property of the Grantor, its successors and assigns.

V. EXTINGUISHMENT

A. If circumstances arise in the future such as 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. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with paragraph B below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds. Grantee shall use its share of the proceeds in a manner consistent with the recreation purpose set forth herein.

B. Proceeds.

Grantor and Grantee agree that the donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, determined at the time of the gift, bears to the value of the unrestricted property at that time. Such proportionate value of the Grantee's property right shall remain constant.

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 the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in shares equal to such proportionate value. 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. ASSIGNABILITY

A. Running of the Burden

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

B. Execution of Instruments

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoint the Grantee 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 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; 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 by which it divests itself of any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee within "equal to such proportionate value exclusive of any improvements" or "subsequent improvements", as Applicable, within 20 days of such transfer. Failure to do so 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 his or her 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 twenty (20) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

IX. 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 ensure that merger does not occur.

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 Holder 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 Article 97 of the Amendments to the Massachusetts Constitution. Any amendment shall be recorded in the South Essex 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 the Southern Essex County Registry of Deeds. The Grantee shall record this instrument in timely manner in the Southern Essex County Registry of Deeds.

Notice and Approval

Used if any activities require notice, or notice and approval of the Grantee. 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 prepaid, addressed as follows:

To Grantor: Town of Boxford, 7A Spofford Road, Boxford, MA 01921

To Grantee: Boxford Athletic Association, Inc., 7 Elm Street, Boxford, MA 01921

To the Division: Natural Heritage Endangered Species Program, Mass. Division of Fisheries & Wildlife, North Drive, Route 135, Westborough, MA 01581

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

Any provisions requiring notice to and approval by the Grantee must allow a minimum of 60 days.

XII. 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 Massachusetts General Laws Chapter 184, Sections 31-33. 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.

XIII. MISCELLANEOUS

- A. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 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.

XIV. ATTACHMENTS

- Exhibit A Plan of Premises
- Exhibit B-1 Order of Taking Deed
- Exhibit B-1 Town Meeting Vote of October 23, 2007
- Exhibit B-3 Town Meeting Vote of May 11, 2010
- Exhibit C Plan of Property
- Exhibit D MESA Conservation & Management Permit
- Exhibit E Plan of parking lots

GRANTING OF CONSERVATION RESTRICTION

WITNESS my hand and seal this _____ day of 200_.

Name(s) & signatures (of ALL owners)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

On this _____ day of , 201_, before me, the undersigned notary public, personally appeared , proved to me through satisfactory evidence of identification which was _____ 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:

ACCEPTANCE OF GRANT

Grantor represents that the Premises are free from any mortgage, promissory note, loan, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Property by any third party.

Grantor signature

Use the "new" notary language. All signatures on the CR must be properly notarized.

The above Conservation Restriction was accepted by _____

this _____ day of , 200_.

By: _____

Its: _____, duly authorized

(INSERT NOTARIZATION)

APPROVAL OF SELECT BOARD

We, the undersigned, being a majority of the Board of Selectmen of the Town of Boxford, hereby certify that at a meeting duly held on _____, 200_, the Board of Selectmen voted to approve the foregoing Conservation Restriction to the Boxford Athletic Association, Inc. pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

Boxford Board of Selectmen

(INSERT NOTARIZATION)

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS

COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the

Town of _____ has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 200__ _____

Ian A. Bowles

Secretary of Energy and Environmental Affairs

(INSERT NOTARIZATION)

ACKNOWLEDGEMENT BY THE MA DIVISION OF FISHERIES AND WILDLIFE

This grant of Conservation Restriction set forth above to the Boxford Athletic Association, Inc. by the Town of Boxford is acknowledged this _____ day of _____, 200__. The MA Division of Fisheries and Wildlife (DFW) acknowledges the reserved rights and obligations of the Division set forth herein.

Wayne MacCallum, Director or Jack Buckley

Date: _____

COMMONWEALTH OF MASSACHUSETTS

On this _____ day of _____, 2006, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was personally known to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose as _____ of the Commonwealth of Massachusetts Division of Fisheries and Wildlife.

SEAL

Notary Public

My commission expires: _____