

Acorn Park Drive, Belmont & Cambridge, MA

## CONSERVATION RESTRICTION

**KNOW ALL PERSONS BY THESE PRESENTS** that A.P. Cambridge Partners II, LLC, a Delaware limited liability company, having a usual place of business at 2701 Renaissance Boulevard, Fourth Floor, King of Prussia, PA 19406, its successors and assigns, (hereinafter “**Grantor**”), in consideration of \$1.00 paid, the receipt of which is hereby acknowledged, and in fulfillment of the Town of Belmont Zoning Board of Appeals Comprehensive Permit, pursuant to M. G. L. ch. 40B, Sections 21-23, recorded at Middlesex Southern District Registry of Deeds in Book 54728, Page 1 and in the Registered Land Sections as Document 1532991, (“**Comprehensive Permit**”), does hereby grant with QUITCLAIM COVENANTS, in perpetuity and for conservation purposes as set forth in Article 97 of the Amendments to the Massachusetts Constitution, a Conservation Restriction (“**CR**”) pursuant to Chapter 184, Sections 31 and 32, and Chapter 92, Sections 33 and 79, of the General Laws, to the Commonwealth of Massachusetts, acting by and through its Department of Conservation and Recreation, 251 Causeway Street, Boston, Massachusetts 02114 (hereinafter “**Grantee**”), upon land located east and west of Acorn Park Road (a private way) and south of Frontage Road “A” and the Concord Turnpike, in Cambridge and Belmont, Middlesex County, Massachusetts, comprised of three parcels of land totalling \_\_\_\_\_ acres, more or less, and more particularly described in **Exhibit A**, attached hereto and incorporated by reference, and shown on a plan of land entitled “Conservation Restriction at Acorn Park, Belmont/Cambridge, Massachusetts Department of Conservation and Recreation,” (“Conservation Restriction Plan”), recorded at Middlesex Southern District Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_, a reduced copy of which is set forth in **Exhibit B**, attached hereto and incorporated herein by reference (“**Premises**”).

**I. PURPOSE:** The purposes of this CR are to retain the Premises in perpetuity predominantly in its natural, scenic and open space condition; to protect the natural resources of the Premises including but not limited to protecting and promoting the conservation of wooded upland habitat, wetlands and floodplain areas, soils, natural watercourses, water supplies, native grasses, wildflowers, wildlife, and biological diversity thereon; to protect and enhance the natural, scenic and open space character and ecological integrity of the area; to allow access by the public for passive recreational use and enjoyment of the wildlife and open space resources of the Premises; to allow for sustainable and sound management of the forest resources; and to prevent any use of the

Premises that will impair or interfere with the conservation values thereof. The views across Little Pond are important for their scenic values. The diversity of natural habitats on the Premises, and its location abutting the Grantee's Alewife Reservation, make this a parcel of unique and outstanding ecological and conservation value.

These conservation values of the Premises and the public benefits of this CR shall be described in more detail in a **Baseline Documentation Report** prepared by Grantee, and approved by Grantor, following the issuance of a Certificate of Occupancy by the Town of Belmont, with copies to be kept on file at the offices of Grantor and Grantee. Grantor and Grantee agree that this Report shall provide an accurate representation of the condition and conservation values of the Premises at the time of completion of construction, and is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this CR as described herein.

**II. PROHIBITED ACTIVITIES:** The Grantor shall refrain from and will not permit any activity that is inconsistent with the aforesated purposes of this CR or that is detrimental to water quality, soil conservation, native wildlife conservation, native forest and plant health, scenic landscape protection, or that is otherwise harmful to the natural resources of the Premises. Except as set forth in "RESERVED RIGHTS," Article III, below, the Grantor covenants for itself and its legal representatives, mortgagees, successors and assigns that the Premises will at all times be held, used and conveyed subject to and not in violation of the following prohibitions:

A. Construction or placing of any building, dwelling, barn, shed, mobile home, parking area, tennis court, swimming pool, artificial water impoundment, septic or leaching systems or fields, antenna, utility pole tower including "cell" and other telecommunications tower, conduit or line, wind turbines, billboard, sign or other advertising display, roadway, asphalt, concrete or other impermeable pavement or surfacing, or any other temporary or permanent structure or facility on, above or below the Premises.

B. Subdivision of the Premises under Chapter 41, Section 81K et seq., of the Massachusetts General Laws or any subsequent town or state subdivision laws and as from time to time amended; or division or conveyance of a part or portion of the Premises alone (as compared to conveyance of the Premises in its entirety which shall be permitted); or use or assignment of the dimension, area or acreage of the Premises for purposes of subdivision or development of unrestricted land, whether or not such land is adjacent to the Premises and whether or not such land is owned by the Grantor, her successors and assigns; except the acreage of the Premises shall be used toward calculations of open space and density development in fulfillment of the Comprehensive Permit. It is the intent of this paragraph that the Premises shall be conveyed as a unit, whether or not said Premises are comprised, as of the date of this CR, of more than one separate legal parcel.

C. Dumping, placing or storing of equipment, mobile home, trailer, automotive vehicle or other vehicle bodies or parts, soil, sand, rock, refuse, trash, rubbish, debris, junk, waste, septic

systems, leach fields, tillage, toxic waste, radioactive waste, hazardous waste, chemicals either toxic or otherwise harmful to humans, native wildlife, native vegetation, water quality and the other natural resources thereon, or the installation of aboveground or underground storage tanks on or in the Premises.

D. Storage, stockpiling or use of hazardous materials, petroleum products, pesticides and herbicides, manure and fertilizers.

E. Excavating, mining, dredging or removing any loam, peat, gravel, soil, sand, rock or other mineral substance, or natural deposit from the Premises, or altering any natural contours or features whatsoever; except during construction of the improvements in accordance with the terms of the Comprehensive Permit, and consistent with Site Plan/Landscape Plan attached hereto as Exhibit C.

F. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or other acts or uses detrimental to retention of land and water resources.

G. Removal, destruction or cutting of native trees, seedlings, grasses, shrubs, or other native vegetation on the Premises.

H. Purposeful introduction of animals, plants or other species that are not native to Middlesex County, as defined by current published lists of native species, including *The Vascular Plants of Massachusetts: A County Checklist*, by Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (1999) or as amended or contained in a similar professionally acceptable publication available in the future.

I. Use, parking or storage of motorized or power-driven vehicles of any kind, including without limitation automobiles, trucks, motorcycles, motorized bikes, all-terrain vehicles and snowmobiles.

J. Commercial or industrial use of any kind, including but not limited to commercial camping, commercial fishing, commercial hunting or commercial trapping.

K. Other uses of the Premises or activities that would significantly impair the conservation interests protected by this CR or which are prohibited by federal, state or local law or regulation or which are inconsistent with the intent that the Premises remain, in the reasonable opinion of Grantee, predominantly in its natural condition, except for the use of the Premises for approved management, educational, or recreational purposes in accordance with the provisions of Article III below and otherwise consistent with the provisions of this CR.

**III. RESERVED RIGHTS:** Notwithstanding any provisions herein to the contrary, the Grantor reserves to itself, successors and assigns the right to conduct or permit the following

activities on the Premises so long as such uses and activities do not materially impair the purposes of this Conservation Restriction or other significant conservation interests:

A. Use of the Premises by the Grantor and its invitees for non-commercial, passive recreational activities such as hiking, snowshoeing, cross-country skiing, nature study, and other like recreational and educational activities, so long as such activities are carried out in a manner that does not impair the conservation purposes of this CR.

B. Installation, maintenance and use of new underground public utilities, underground storm water detention basins and above ground floodplain compensation areas as shown on the Utility Plan attached hereto as Exhibit D, to serve the Excluded Land shown on the Conservation Restriction Plan, with placement which minimizes the water quality, soil conservation, wildlife conservation and forest health or is otherwise harmful to the conservation values protected by this CR. Maintenance and use of such utilities, storm water detention basins, floodplain compensation areas, as well as foot trails, stone walls or curbing allowed under this CR, and replacement, maintenance and repair of such improvements in substantially their as-built condition, size and location. Vegetative management within stormwater detention basins and floodplain compensation areas shall comply with Paragraph C.2 below.

C. Vegetative Management.

1. *De minimus* planting, cutting, pruning and removal of native trees, shrubs and other vegetation for ordinary maintenance of the Premises, including the maintenance of trails, and management of native vegetation and native wildlife habitat, to prevent threat of injury or damage to persons or property, to prevent or mitigate pest infestation, blight or disease, or to control, manage or eradicate non-native invasive species.

2. General maintenance and mowing of grass and the selective removal of invasive wetland species within stormwater detention basins and floodplain compensation areas to ensure that the capacity of such basins and compensation areas are not diminished and the ecological value of the vegetation is retained as much as may be practicable, so long as the same is scheduled and conducted in a manner which avoids the nesting season of birds located at the Premises.

3. Restoration and maintenance of wetlands areas and the enhancement of certain uplands areas in accordance with the "Open Space Maintenance Plan, Belmont Uplands Site, Acorn Park Drive and Frontage Road, Belmont/Cambridge, Massachusetts" prepared by Epsilon Associates, dated September 2, 2010, as subsequently updated in consultation with Grantee ("Open Space Maintenance Plan").

4. The right, to conduct, study or monitor plant and animal populations, plant communities, natural habitats and landscape features on the Premises for the benefit of native fauna (including ecologically appropriate methods to promote native species and to manage invasive species) and/or for the purpose of identifying and restoring landscape and/or native plant features within the Premises, with prior written approval from Grantee, and right to permit

others to do the same.

D. Use of motorized or power-driven vehicles for the activities as permitted above, and as minimally necessary for the purpose of upkeep and maintenance of the Premises, and as required by police, fire fighters, and other governmental agents responding to emergencies or otherwise carrying out their lawful duties. Under no circumstances shall motorized or power-driven vehicles be used for recreational purposes on the Premises.

The exercise of any permitted activity or use by Grantor under this Article III shall be in compliance with then current laws applicable to the Premises, the Wetlands Protection Act (General Laws Chapter 131, Section 40) and all other applicable federal, state and local environmental protection and other laws and regulations. The inclusion of any permitted activity or use in this Article III requiring a permit from a public agency does not imply that the Commonwealth takes a position on whether such permit should be issued.

Any activity or use not permitted herein is prohibited without the express written consent of Grantee under Article V below stating that such activity or use is not inconsistent with the conservation purposes of the CR. Any request by Grantor for approval of such activity or use shall contain a detailed description of why such activity or use is consistent with the conservation purposes of the CR. In the event Grantee disapproves the requested activity or use, Grantee shall provide a detailed written explanation of why said activity or use is inconsistent with the conservation purposes of this CR.

#### **IV. OBLIGATIONS OF GRANTOR.**

In exchange for the acceptance of this CR by Grantee, Grantor, which term includes its successors and assigns, hereby agrees to complete the following activities at the following times:

A. Grantor shall prepare a Conservation Restriction Plan of Land for recording as a plan on the unregistered side and as an attachment to the CR for recording on both the registered side and unregistered side, and shall install monumentation pursuant to the plan prior to the issuance of a Certificate of Occupancy by the Town of Belmont.

B. Grantor shall work with Grantee's land use planner to develop landscape features within its Site Plan/Landscape Plan, such as stone walls or curbing, grading or plantings, to provide a visual border, which will foster the protection of the Premises from encroachment by users of the Excluded Land shown on the Conservation Restriction Plan.

C. Grantor shall coordinate with Grantee's ecology staff to update the Open Space Maintenance Plan, and shall specify those tasks to be completed by Grantor with completion dates, and those tasks to be performed by Grantor or its successors and assigns on a periodic basis.

D. With the exception of the invasive species inspection and control, Grantor shall complete all of the enhancements set forth in the Open Space Maintenance Plan, prior to the issuance of a Certificate of Occupancy by the Town of Belmont. Grantor or its successors and assigns shall complete the invasive species inspection and control within five years following the issuance of a Certificate of Occupancy by the Town of Belmont.

## V. RIGHT OF ACCESS AND INSPECTION

A. Public Access: The CR hereby conveyed includes the grant of the right to Grantee, its successors and assigns, to enter upon the Premises, and to permit the public to enter upon and use the Premises for the purposes set forth in Article III, Paragraph A above, in accordance with the rules and regulations of Grantee, which may be from time to time amended. This right of public access will commence upon completion of construction as evidenced by a Certificate of Occupancy issued by the Town of Belmont. The right of public access does not include overnight camping, the right to use amplified music or public address systems, the right to create or maintain open fires, the right to consume alcoholic beverages, the right to damage or degrade real or personal property, the right to impair the quiet and peaceful enjoyment and the reasonable privacy of the Grantor, or the right to engage in any unlawful, destructive or reckless behavior of any kind, including without limitation hunting on the Premises. Grantor may temporarily restrict public access to areas of the Premises for safety purposes during permitted construction and management activities as reasonably required to prevent injury to persons or property, provided that following completion of construction, Grantor shall notify Grantee twenty-one (21) days in advance of precluding public access, in accordance with Article V below. Notice shall state the nature, extent and duration of such activities. Grantor shall post notice of such restriction near or within the area affected.

B. Enhancement of Natural Resources: The CR hereby conveyed includes the grant of the right of Grantee, its successors and assigns, but not the obligation, to enter upon the Premises, to perform, ecological enhancements proposed in consultation with Grantor. Such enhancements shall include, but not be limited to, the installation of bird boxes on cedar posts.

C. Inspection and Enforcement: The CR also includes the grant of the right of Grantee, its successors and assigns, to enter upon the Premises in a reasonable manner, including by motor vehicle via Acorn Park Road if appropriate, and at reasonable times for the purpose of inspecting the Premises to determine compliance with the terms of this CR. In the event of any violation, Grantee must notify Grantor thereof and request Grantor to remedy such violation. If the violation is not remedied within 30 days of receipt of written notice, or such additional time as may be reasonable under the circumstances as determined by Grantee, Grantee may enter upon the Premises in order to remedy or abate such violation, in which event Grantor, her successors and assigns, covenants and agrees to reimburse the Grantee for all reasonable costs and expenses incurred by Grantee, including without limitation counsel fees, in enforcing this CR or in remedying or abating any violation of this CR. The provisions of this paragraph shall not preclude any other remedies available at law or in equity.

**VI. NOTICE AND APPROVAL:** Unless otherwise provided herein or by law, Grantor shall notify Grantee in writing, sent certified mail, return receipt requested, no less than sixty (60) days before allowing or undertaking any uses or activities on the Premises for which notice or approval of Grantee is required under the terms of this CR. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to the consistency of said proposed activity with the purposes of this Conservation Restriction, and to enable Grantee to adequately monitor the proposed activity. All communications in this regard should be mailed to:

Commissioner  
Department of Conservation and Recreation  
251 Causeway Street, Suite 600-900  
Boston, MA 02114

With a copy to:

Director of Land Protection  
Department of Conservation and Recreation  
251 Causeway Street, Suite 600  
Boston, MA 02114

With respect to those activities or uses that require Grantee's approval, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's written request therefore. Grantee's approval may be withheld upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purposes of this CR, or would materially impair the conservation interests protected by this CR or would violate any statute, ordinance, by-law, rule or regulation.

**VII. REMEDIES; WAIVER:** The rights hereby granted shall include the right to enforce this CR 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 its condition prior to the time of the injury complained of, it being agreed that 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 Grantee.

This CR shall be enforced by Grantee in its sole discretion. Nothing herein shall impose upon Grantee any affirmative obligation or liability relating to the condition of the Premises. Failure by Grantee to enforce any provision or condition set forth herein, or to exercise any rights hereby conveyed, shall not constitute a release or waiver of any such right or condition.

**VIII. COSTS AND TAXES; LIABILITY:** Grantor agrees to pay and discharge when and if due any and all real property taxes and other assessments levied by competent authority on the Premises.

**IX. BINDING EFFECT; RELEASE; RECORDATION:** The burden of this CR shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the Grantor's successors and assigns holding any interest in the Premises. This CR may only be released, in whole or in part, by Grantee pursuant to the procedures established by Chapter 184, Section 32 of the General Laws, and in accordance with Article 97 of the Amendments to the Massachusetts Constitution.

**X. SUBSEQUENT TRANSFERS:** The Grantor agrees to incorporate the terms of this CR, in full or by reference, in any deed or other legal instrument by which Grantor conveys or transfers any interest in all or a portion of the Premises, including without limitation, a leasehold interest. The Grantor shall notify Grantee in writing at least thirty (30) days before conveying or transferring the Premises, or any interest therein (including a lease).

**XI. ESTOPPEL CERTIFICATES:** Upon request by the Grantor, 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.

**XII. EXTINGUISHMENT; EMINENT DOMAIN:**

A. The transfer of this CR gives rise to a property right, immediately vested in Grantee which has a fair market value equal to the amount by which the CR reduces, at the time of the grant, the appraised fair market value of the Premises as if unrestricted. Such proportionate value shall remain constant.

B. If any change in conditions, including a taking by a public authority (other than the Commonwealth) under power of eminent domain, gives rise to extinguishment or other release of this CR under applicable law, Grantee shall be entitled to recover proceeds equal to the amount by which this CR reduced the value of the Premises as determined at the time of extinguishment, subject, however, to any applicable law which expressly provides for a different disposition of proceeds. The Grantor and Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. If the public authority is The Commonwealth, Grantor and Grantee shall pursue their remedies separately.

C. If the conservation interests protected hereby are unaffected by the court's action or a taking, and the only interest affected or taken by public authority is the Grantor's interest, then the proceeds from such court action or taking shall be payable in their entirety to Grantor.

**XIII. AMENDMENT:** If circumstances arise under which an amendment to or modification of this Conservation Restriction is necessary, Grantor and Grantee may jointly amend this CR provided that no amendment shall be allowed that will affect the qualification of this CR or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Art. 97 of the Amendments to the Massachusetts Constitution or Sections 31-33 of Chapter 184 of the General laws of Massachusetts, as amended. Any

amendments to this Conservation Restriction shall occur only in exceptional circumstances. Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this CR, shall not affect its perpetual duration, shall be approved by Grantee if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Middlesex County Registry of Deeds.

**XIV. EFFECTIVE DATE:** This Conservation Restriction shall be effective upon recording in the registered and unregistered sides of the Middlesex Southern District of Deeds.

**XV. 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 CR shall be liberally construed in favor of the grant to effect the purpose of this CR 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 CR that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability: If any section or provision of this CR shall be held to be unenforceable by any court of competent jurisdiction, the CR shall be construed as though such section had not been included in it.

Executed under seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

AP CAMBRIDGE PARTNERS II, LLC

By: \_\_\_\_\_  
Name:  
Title: Manager

**COMMONWEALTH OF MASSACHUSETTS**

, ss.

2014

On this \_\_\_\_\_ day of \_\_\_\_\_ 2014, before me the undersigned notary public, personally appeared \_\_\_\_\_, manager of AP Cambridge Partners II, LLC, a Delaware limited liability company, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed voluntarily as manager of AP Cambridge Partners II, LLC, for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## EXHIBIT A

The Premises are located east and west of Acorn Park Road (a private way) and south of Frontage Road "A" and the Concord Turnpike, in Cambridge and Belmont, Middlesex County, Massachusetts, and consist of three parcels of land totalling \_\_\_\_\_ acres, more or less, shown as "Conservation Restriction" on a plan of land entitled "Conservation Restriction at Acorn Park, Belmont/Cambridge, Massachusetts Department of Conservation and Recreation," ("Conservation Restriction Plan"), recorded at Middlesex Southern District Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_, a reduced copy of which is set forth in Exhibit B, attached hereto and incorporated herein by reference.

The Premises consist of the following parcels; excepting therefrom the "Excluded Parcel" and "Acorn Park Road" (as bordered by the guard rail) shown on the Conservation Restriction Plan:

Registered Land in Belmont and Cambridge shown as Lot 6 on Land Court Plan of Land No. 20345G, and as Lot 16 on the Conservation Restriction Plan, containing 12.43 acres.

Unregistered Land in Belmont, shown as "Area 70,175 Sq. Ft." on a plan entitled "Commonwealth of Massachusetts Metropolitan District Commission, Parks Division Alewife Brook Parkway Belmont" dated November 6, 1950, recorded as Plan No. 2277 of 1950 and shown as Lot 17, 56,000± S.F. on the Conservation Restriction Plan, containing 1.3 acres.

Unregistered Land in Belmont, shown as "abt. 2.5 Acres" on plan entitled "Plan of Land in Belmont, Mass." dated February 18, 1938, Plan No. 163 of 1938, and shown as Lot 18, 84,000± S.F. on the Conservation Restriction Plan, containing 1.93 acres.

For Grantor's title, see deed from Arthur D. Little Real Estate Corporation, dated June 24, 1999 and recorded at Book 30386, Page 240 with Middlesex South District Registry of Deeds and filed as Document No. 1111889 (Certificate of Title 215452), Registered Land Section.

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