



4007

2002 00008379

Bk: 4007 Pg: 173 Doc:RESTR
Page 1 of 17 05/17/2002 04:02PM

173

CONSERVATION RESTRICTION
AND CONSERVATION EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS that RODNEY WHIPPLE, a/k/a RODNEY F. WHIPPLE Individually and as Administrator of the Estate of Nellie F. Whipple, by authority granted in License to Sell Real Estate, Franklin County Probate No. 01P0262AD1, of 447 Orange Road, Warwick, MA, 01378, HOPE STERBINSKY of 815 Royalston Road, Philipston, Massachusetts 01331-9706, BESSIE STOWELL of 50 Clifton Street, Orange, Massachusetts, 01364, DONALD WHIPPLE of 66 Lincoln Avenue, Orange, Massachusetts, 01364, BENJAMIN W. SKINNER, Jr., Executor of the Estate of Eva-Rae Skinner, Worcester County Probate No. 92P0369E1, by power conferred by said Will and by every other power, of Hardwick Road, P.O. Box 783, Petersham, Massachusetts 01386, JAMES LEVI WHIPPLE A/K/A JAMES WHIPPLE, of 3463 State Street PMB 252, Santa Barbara, California, 93105-2603, as tenants in common (hereinafter "Owner"), which term includes the Owner's successors, agents, and assigns with respect to the ownership of the Premises described below), in consideration paid of One Hundred Thousand dollars and 00/100 (\$100,000.00) (\$100.00 of which is to be paid to the Estate of Nellie F. Whipple), the receipt and sufficiency of which is hereby acknowledged, hereby grants with QUITCLAIM COVENANTS, in perpetuity and for the purposes set forth in Article 97 of the Amendments to the Massachusetts Constitution, to the Commonwealth of Massachusetts, acting by and through its Department of Environmental Management, with a usual place of business at 251 Causeway Street, Boston, Massachusetts, its successors and assigns, (hereinafter "DEM" or "Department"), which term includes the DEM's successors, agents, and assigns with respect to the Premises described below), a Conservation Restriction and Conservation Easement (hereinafter "CR") as described in Chapter 184, Sections 31-33, and in accordance with Chapter 132A, Section 3, of the General Laws, upon land in Warwick, Franklin County, Massachusetts comprised approximately 181± acres namely as described below and in Exhibit A attached hereto and incorporated herein by reference (hereinafter "Premises").

Richmond Road, Warwick, MA
Assessor's Map 402 Lot 46

Property Address:

Meaning and intending to grant hereby a conservation easement and restriction in, on and to the above Premises, lying in the Commonwealth of Massachusetts but excluding such land of the Owner lying in the State of New Hampshire, howsoever the same may be bounded and described and further releasing any and all interest of James Levi Whipple a/k/a James Whipple as Trustee of James Levi Whipple Trust and/or James Levi Whipple Revocable Trust, and being the same land described in deed recorded with the Franklin Registry of Deeds at Book 972, Page 235 and as subsequently described in Book 2282, Page 162 illustrated as Town of Warwick Assessor's Map 402 Lot 46 but excluding approximately 13±/- acres, of land designated as "Unrestricted Area" as shown on a sketch plan attached hereto as Exhibit Plan #1.

I. PURPOSE: This CR granted in perpetuity for the purposes and protections of Article 97 of the Amendments to the Massachusetts Constitution and including the following purposes:

1. to retain the Premises predominantly in its natural, scenic and open condition while preserving and enhancing appropriate and responsible agricultural and forestry uses, hunting, fishing and passive recreation on the Premises;
2. to protect and conserve the natural resources of the Premises;
3. to protect and promote the conservation of biological diversity, forests, agricultural lands, wetlands, soils, natural watercourses, ponds, water supplies and wildlife thereon;
4. to protect and maintain the scenic values and wildlife habitat values, water quality, and riparian ecosystem of the nearby Tully River and its tributary streams;
5. to protect and maintain areas that have been identified by the Massachusetts Natural Heritage and Endangered Species Program as providing potential habitat for rare wildlife;

HAVEN AND ODDY
ATTORNEYS AT LAW
220 EXCHANGE STREET
ATHOL, MASSACHUSETTS 01331-1800
1-878-248-7811

Page 1 of 17

2002 MAY 17 PM 4:02

6. to allow for sustainable and sound management of the forestry and agricultural resources, and to encourage the long-term, professional stewardship of these resources in a manner that minimizes negative impacts on conservation values such as water quality, wildlife habitat and biological diversity, and public recreation;
7. to promote fish and wildlife conservation, native habitat protection and associated public recreation, fishing, hunting and other conservation uses;
8. to provide passive recreational access to the general public, including use of the Tully Loop and associated trails, and enjoyment of the wildlife and open space resources of the Premises.
9. to preserve and enhance surrounding conservation areas, in part, through creating larger un-fragmented open space and conservation areas.

II. EASEMENTS AND RESTRICTIONS: In order to carry out the purposes set forth in Article I above, the Owner grants the following easements and restrictions on use of the Premises. Owner shall refrain from and will not permit any activity which shall be inconsistent with the aforesaid purposes of this CR or which is detrimental to water quality, soil conservation, wildlife conservation and/or forestry management practices or which is otherwise wasteful of the natural resources of the Premises.

Except as affected by Article III below, the Owner 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 easements, restrictions or prohibitions:

1. No constructing or placing of any building, tennis court, landing strip, mobile home, swimming pool, fences, asphalt or concrete pavement, sign (including "posting" of the property to prohibit hunting, fishing, or trespassing, billboard or other advertising display, antenna, septic or leaching systems or fields, utility pole, tower, conduit, line or other temporary or permanent structure or facility shall be permitted on, above or under the Premises;
2. No mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit shall be permitted;
3. No placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks shall be permitted on the Premises;
4. No placing, dumping, storing, stockpiling, or use of hazardous substances, wastes or materials, oil, petroleum products, pesticides and herbicides, manure and fertilizers shall be permitted;
5. No tillage;
6. No grazing or sheltering of livestock or animals shall be permitted;
7. No commercial uses, including commercial recreational, institutional or industrial uses shall be permitted, and no motorized or vehicular use (including but not limited to cars, trucks, motorcycles, all terrain vehicles and snowmobiles) shall be permitted;
8. No cutting, removing or otherwise destroying or harvesting trees, shrubs, grasses or other vegetation or planting of non-native or invasive plant species shall be permitted;
9. No conveyance of a part or portion of the Premises, or division or subdivision of the Premises shall be permitted;

10. No division or subdivision of the Premises, and no use of any portion of the Premises in calculating or satisfying zoning or other development rights, purposes or requirements (except for a primary residence of the Owner to be located on land that abuts the Premises), including the Subdivision Control Law (G.L. c. 41, ss. 81K-GG), shall be permitted; and,
11. No other acts or uses detrimental to such Premises, as determined by the duly authorized representatives of said Department, its successors or assigns or such other authority which shall for any time legally control or hold said restriction and easement.
12. The Conservation Easement hereby granted, includes for the benefit of the Commonwealth, acting by and through the Department, its successors and assigns, an easement and the right to enter upon the Premises at any time for the purposes of:
 - (a) conducting rare species and natural community research, including
 - (1) locating, collecting samples, and otherwise studying and documenting any rare species, vernal pools, and natural communities which exist on the Premises,
 - (2) conducting biological surveys, and
 - (3) monitoring the natural communities, habitats and species thereon, provided that no such activities by the Commonwealth may unreasonably interfere with the use of the Premises by the Owner in accordance with the terms of this Conservation Easement;
 - (b) inspecting the Premises and enforcing the foregoing restrictions and easements and remedying any violations of same. This latter right shall be in addition to any other remedies available to the Department, its successors, assigns or other authority, for the enforcement of the foregoing restrictions and easements and the remedying of any violations or same.
13. Access by the General Public. The Conservation Easement hereby granted to the Commonwealth includes for the benefit of the Commonwealth, acting by and through the Department, and the general public, an easement and the right to enter upon and use, and pass and repass, upon the Premises for non-motorized, (except motorized wheelchairs and other disabled assistance devices) educational and passive noncommercial recreation uses (such as but not limited to hiking, canoeing and non-motorized boating, snowshoeing, bicycling on any trail area designated, cross-country skiing, hunting, fishing, bird watching, and nature study) in accordance with reasonable rules or regulations that the Department may develop or promulgate governing such access. The Department shall attempt to consult the Owner during the development of any such rules or regulations. Said rules or regulations may (1) address or ensure that public access preserves or promotes wildlife habitat and the natural resource values of the Premises; (2) limit or prohibit the time, manner and conduct of such public access; and (3) provide for temporary periods of partial or total prohibition of public access to all or a portion of the Premises for public health or safety purposes, including accommodating approved forestry, agricultural or other expressly permitted uses of the Premises by the Owner pursuant to Section III. Limitations or prohibitions upon public access by the Owner, which shall be solely temporary in nature, must be approved in writing by the Department, at its discretion, following a written request made within 14 days of the proposed commencement of any otherwise approved and permitted activity, such as harvesting forest products. Said easement and right of public access does not include: the right of overnight camping, the right to use amplified music or public address systems, the right to create or maintain open fires on the Premises.

The Parties acknowledge that such public access is subject to the limited liability provisions of Section 17C of Chapter 21 of the General Laws.

14. **Designated Trails.** In addition to the rights granted in Section II(13), within the area, if any, designated as "trail area", the Conservation Easement hereby granted, includes for the benefit of the Commonwealth, acting by and through the Department, an easement and the right to enter upon and use, pass and repass, to design, layout, construct, reconstruct, repair and maintain, at its discretion but with no obligation to do so, new or existing trails for use by the general public or the Commonwealth pursuant to the easement and rights granted under Section II(13). Said trails shall not exceed 10 feet in width and shall be located, designed and constructed in a reasonable manner in order to minimize the potential detrimental effects on the purposes of this Conservation Easement, as well as upon the Owner's permitted or otherwise allowable use of the Premises.

III. PERMITTED ACTIVITIES: Subject to the rights, including easements, privileges and appurtenances, contained in this Conservation Easement, the Department permits the following acts and uses (otherwise not permitted in Section II above), the approval of which shall be obtained in writing if expressly required by the Conservation Easement, which shall be obtained in accordance with Section IV of this Conservation Easement and which shall not be unreasonably withheld to the Owner. In any event and regardless of whether written approval is required, the following acts and uses are permitted, in accordance with the described requirements and limitations, only to the extent that such acts and uses do not materially impair the purposes of this Conservation Easement:

1. **Forestry.** Commercial timber cultivating and harvesting or tree cutting conducted in compliance with the Massachusetts Forest Cutting Practices Act (M.G.L. c. 132, as amended) and associated regulations promulgated at 304 CMR 11.00, and in accordance with: prudent and sound forest management practices; Forest Management Standards as provided in Exhibit B attached hereto and incorporated herein by reference (hereinafter "Forestry Standards") using all required best management practices and, as possible, the recommended guidelines pursuant to the Massachusetts Forestry Management Practices Manual (Kittredge and Parker, 1996) and subsequent versions if approved of by the Department (hereinafter "Forestry BMPS"); and, a Massachusetts Forest Stewardship Plan (only required if any proposed cutting/harvesting may exceed ten thousand ("M" = 1000) board feet ("bf") or ten cords of wood during any rolling 12 month period) (hereinafter "Stewardship Plan") and a Cutting Plan (hereinafter "Cutting Plan"), approved under the Forest Cutting Practices Act, provided further that:
 - a. Owner shall include a copy of this CR with its application to the state forester for approval of said Stewardship Plan. Any Cutting Plan prepared must be consistent with the Forest Stewardship Plan, and with the terms of this CR. Said Forest Stewardship Plan shall be prepared by a Massachusetts licensed Forester licensed through the Massachusetts Department of Environmental Management ("DEM"). Owner shall update the Stewardship Plan at least every ten (10) years thereafter. Unless Owner seeks, and the Department grants, express written approval to conduct other forestry activities. The Department's written approval under this subparagraph is only required for: (a) proposed cutting/harvesting in excess of 10 Mbf or 10 cords of wood harvested by the Owner for use on the Premises or at its primary residence, or (b) otherwise for any proposed cutting/harvesting in excess of 25 Mbf or 10 cords of wood. Owner shall conduct only those activities consistent with and authorized by the approved Stewardship Plan and Cutting Plan;
 - b. The Stewardship Plan must be consistent with the provisions of section 5(f) of the Cooperative Forestry Assistance Act of 1978, 16 U.S.C. § 2103a(f), as amended, and

with the Massachusetts Forest Stewardship Plan Guidelines and approved in writing by DEM, Division of Forests and Parks, and the Department, in consultation with the state forester, pursuant to the procedure set forth in Section IV; and,

- c. Any temporary buildings, structures and equipment necessary to conduct permitted forest management shall be included in the Stewardship Plan for the Premises, and shall not be permitted, or installed or utilized, on the Premises until such plan is approved.
 - d. Reasonable use of pesticides, herbicides, manure and fertilizers shall be permitted to the extent necessary to conduct approved and permitted forestry activities.
2. **Agriculture.** Agricultural acts and uses, including storage and use of any equipment and temporary structures reasonably necessary to conduct such activities: animal husbandry operations carried on in accordance with sound agricultural management practices; cultivation of existing fields, the mowing and grazing of existing meadows and the installation of fences, and with the prior written approval of the Department, the creation or expansion of new fields and meadows for such purposes provided that
- a. Any activities with the potential to effect water quality and soil erosion shall be described in a USDA Natural Resource Conservation Service Farm Management Plan (hereinafter "Farm Management Plan"), approved by the conservation district for the locality in which the Premises is located and subsequently approved by the Department in accordance with Section IV;
 - b. Any such activities shall be conducted in a manner that minimizes to the maximum extent possible any adverse effects on the natural resources on the Premises, including but not limited to any watercourse or wetlands on the Premises;
 - c. Any temporary buildings, structures and equipment necessary to conduct permitted agricultural activities shall be included in the Farm Management Plan for the Premises, and shall not be permitted, or installed or utilized, on the Premises until such plan is approved; and,
 - d. Reasonable use of pesticides, herbicides, manure and fertilizers shall be permitted to the extent necessary to conduct approved and permitted agricultural activities.
3. **Improvements.** The maintenance and use of existing unpaved trails, fences, bridges, culverts, gates and stone walls (collectively "improvements") on the Premises, substantially in their present condition. The construction, relocation, replacement or repair of improvements reasonably necessary in conducting permitted activities on the Premises. Any trails constructed on the Premises shall not exceed ten (10) feet in width, and shall be designed, located and constructed in a manner which minimizes potential negative impacts that may materially impair the purposes of this Conservation Easement. None of Owner's activities permitted pursuant to this section shall impair or frustrate permitted access by the public, except for temporary periods necessary to ensure public safety.
4. **New Ways.** The maintenance and use or discontinuance of existing unpaved woods roads and the construction, relocation, replacement and repair or discontinuance of new unpaved woods roads for forestry or agricultural purposes with a travel surface not to exceed twenty (20) feet in width, so long as such roads are located, designed and constructed in a manner that will minimize negative impacts on the conservation and recreational purposes of this Conservation Easement, and are in accordance with the approved Stewardship Plan and the Cutting Plan and/or the Farm Management Plan and Forestry BMPs. The Stewardship Plan and/or Farm Management Plan must demonstrate (1) that the road improvements are necessary to provide reasonable forest management and agricultural access to the Premises, (2) that the system of existing woods roads is not adequate, and (3) that such improvements do not materially impair the purposes of this

Conservation Easement. Notice to and approval of the Department shall be deemed granted for the construction of new woods roads if such roads are contained in the Forest Cutting Plan or Farm Management Plan submitted to and approved by the Department.

5. Vegetation control: Cordwood. Trimming, maintaining or replacing trees, shrubs or other plantings in accordance with established horticultural practices, removing diseased or insect damaged trees or vegetation, controlling or eliminating invasive plant species, or removing hazards to private property or public or private health or safety, and cutting, mowing, or replacing grasses in accordance with established landscaping practices. Harvesting of trees, not to exceed 10 Mbf or 10 cords of wood in any rolling 12 month period, to provide non-commercial firewood or construction materials for use by the Owner on the Premises or at its primary residence. Vegetation control and management practices shall be based on prudent and sound silvicultural principles.
6. Signs. Posting of signs that identify the property owner and DE&M's interest, the nature, limits and conduct of permitted uses, including forestry, agriculture, hunting, fishing and other recreation. Signs must be consistent with the easements, restrictions, privileges and other rights associated with the terms of this grant, particularly any designated areas shown.
7. Motorized vehicles. Use of motorized vehicles on the Premises as necessary for police, fire, ambulance or other emergency personnel or governmental agents in the performance of their official duties; and use of motorized vehicles to conduct approved agricultural or forestry and other expressly permitted and approved uses of the Premises.
8. Archaeological investigations. Conducting archaeological investigations and activities, including without limitation surveys, excavation and artifact retrieval, under the direction of a qualified organization or person, following submission of an archaeological field investigation plan and its approval by State Archaeologist of the Massachusetts Historical Commission, and in accordance with Massachusetts Regulations 950 CMR 70.00.
9. Surface water and wells. Constructing, maintaining and using fire, farm or wildlife habitat ponds; and alteration of existing drainage patterns only pursuant to an approved Stewardship Plan or Farm Management Plan. Subject to the written approval of the Department pursuant to Section IV, and provided the Department determines that proposed activities under this subparagraph will not adversely affect the Purposes of this Conservation Easement or any associated natural resources protected by this Conservation Easement, Owner may install, maintain and use groundwater extraction wells and associated equipment and utilities, so long as such equipment and utilities are appropriately screened from view, for permitted acts and uses occurring on the Premises under this Section.
10. Excavation. Excavation or extraction of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit from the Premises solely for use in the construction, repair, maintenance or relocation of woods roads and trails on the Premises or for other acts and uses permitted under this Section provided that:

- (1) the Owner's proposal for any such excavation or extraction, and associated use, shall be described in the Stewardship Plan or Farm Management Plan, as applicable;
- (2) if neither a Stewardship Plan nor a Farm Management Plan is required, the Owner shall submit (in accordance with Section IV) to the Department for written approval (which may be withheld in the Department's discretion) its proposal that describes the

proposed excavation or extraction, and associated use, and includes (to the Department's satisfaction) adequate erosion control measures for all affected areas:

(3) No excavated or extracted material shall be removed from the geographical area of the Premises;

(4) No excavation or extraction shall be permitted within the filter strips associated with rivers, streams, lakes, ponds, or wetlands described in the Forestry BMPs; and,

(5) Owner shall restore all areas affected by said excavation or extraction either to the natural topography and condition (which means as existing prior to the excavation or extraction) or to a state that reasonably matches and blends in with the natural topography and condition. Said restoration to the natural topography and condition shall include, but not necessarily be limited to, the grading of cut banks to a natural angle of repose, the resspreading of topsoil over the affected areas, the stabilization of said and adjacent areas against erosion, and the revegetation of affected areas with native plant species. Any topsoil removed during excavation or extraction shall be stockpiled onsite and used in the restoration of affected areas. Extraction and excavation will be conducted in accordance with Forestry BMPs and Exhibit B.

11. Recreation. Non-commercial or commercial passive recreation (for example, a snow-shoeing class) and education activities (for example, a guided nature study) of the type described in Section II(13) of this grant, provided that:

(1) such activities are conducted in accordance with the provisions of this grant (including that such activities do not involve the construction of any structures or improvements or the use of motorized vehicles);

(2) such activities do not interfere with or effect in any way the rights of the Department or the public, particularly the rights described in Section II(13) of this grant;

(3) participation in such activities, including the payment of any fee, is entirely elective on the part of the Department or members of the public, and will not, in any way, function as a condition precedent to access to the Premises, associated use and enjoyment, or exercise of any rights of the Department or public under this grant, particularly those rights described in Section II(13); and,

(4) such activities are conducted in a reasonable manner which does not impair the purposes of this Conservation Easement.

IV. NOTICE AND APPROVAL PROCEDURE Unless otherwise provided herein or by law, any act or use of the Premise otherwise prohibited in Section II but which may be permitted by the Department in accordance with Section III must be approved in writing by the Department following a written request. The Department shall only accept such a request from the current Owner of the fee interest in the Premises. The written request must be sent to the Department via certified mail, return receipt requested, at least sixty (60) days prior to the proposed or anticipated undertaking of any uses or activities on the Premises, and said request must provide a detailed description of the proposed acts and uses to be permitted pursuant to Section III, including the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Department to determine whether approval of the requested acts and uses is permitted and appropriate. Said approval, if granted, may include appropriate conditions to ensure that the proposed acts and uses will not impair the purposes of this Conservation Easement and the easements, restrictions and other rights granted thereunder. All communications under this section shall be mailed to:

GRANTEE:

Commissioner
Department of Environmental Management

180

251 Causeway Street Suite 600-700
Boston, MA 02114

with a copy to:

Regional Director
DEM, Division of Forests and Parks
P.O. Box 484,
Commonwealth Avenue
Amherst, MA 01004

GRANTOR:

c/o Rodney F. Whipple
477 Orange Road
Warwick, MA 01364

James L. Whipple
3463 State St. PMB252
Santa Barbara, CA 93105-2603

Hope N. Sterbinsky
815 Royalston Road
Philipston, Ma 01331-9706

Bessie A. Stowell
50 Clifton Street
Orange, MA 01364

Donald E. Whipple
66 Lincoln Avenue
Orange, MA 01364

Benjamin Skinner
Hardwick Road
Persharn, MA 01366

V. ACCESS FOR MONITORING AND COMPLIANCE; LEGAL REMEDIES OF DEM: The provisions of this CR shall inure to and be binding upon the Owner, its heirs, executors, administrators, devisees, successors and assigns, and any other person or governmental entity holding any interest in or to the Premises as the case may be and shall be restrictions and easements running with the land in perpetuity; and the Premises shall be held, used and conveyed and otherwise transferred or disposed subject to this CR.

Should the Commonwealth, its successors or assigns, come to own all or a portion of the fee interest subject to this CR, (i) the doctrine of merger shall not apply to or extinguish the CR, and (ii) and the owner of the fee interest shall be bound by the obligations, easements and restrictions imposed upon the Premises by this CR. By this grant of the rights, restrictions, and easements contained herein, the Commonwealth, including the DEM, does not undertake any liability or obligation relating to the condition of the Premises. Any election by the Commonwealth, through the DEM, as to the manner and timing of its right to enforce the easements, restrictions, and other rights contained in this CR or any exercise of its rights hereunder shall not be deemed or construed to be a waiver of such rights or of other rights.

The rights hereby granted to the Commonwealth, through the DEM, shall include the right to enforce the easements, restrictions, and other rights contained in 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 the Commonwealth may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Commonwealth.

VI. COSTS AND TAXES; LIABILITY: Owner 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.

VII. BINDING EFFECT; RELEASE; RECORDATION: The burden of this CR shall run with the Premises in perpetuity, and shall be enforceable against the Owner and the Owner's successors and assigns holding any interest in the Premises. This CR may only be released, in whole or in part, by the

DEM pursuant to and in accordance with Article 97 of the Amendments to the Massachusetts Constitution.

The DEM is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this CR. The Owner, for itself and its successors and assigns, appoints the DEM its attorney-in-fact, coupled with an interest, to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Owner, its successor and assigns, agrees to execute any such instrument upon request.

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

IX. EXTINGUISHMENT; EMINENT DOMAIN: The Owner and DEM agree that the grant of this CR gives rise to a property right that vests immediately in the DEM and which has a fair market value that is equal to the value by which the CR reduces, at the time of the grant, the value of the property as a whole. Such proportionate value of the DEM's property right at the time of the grant shall remain constant.

Should this CR be extinguished over all or any portion of the Premises by judicial decree or by act of public authority, the DEM shall be entitled to a portion of the proceeds equal to the proportionate value of the CR, subject, however, to any applicable law which expressly provides for a different disposition of proceeds. If the conservation interests protected hereby are unaffected by the taking, and the only interest taken by public authority is the Owner's interest, and recovered proceeds are awarded on the basis of the value of the Premises as restricted by this CR, then the proceeds from such taking shall be payable in their entirety to Owner.

Whenever all or any part of the Premises or any interest therein is taken by a public authority (other than The Commonwealth) under power of eminent domain, or if all or any part of this CR is extinguished by act of public authority (other than The Commonwealth), then the Owner and DEM shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. If the public authority is The Commonwealth, the Owner and DEM shall pursue their remedies separately.

X. AMENDMENT: If circumstances arise under which amendment to or modification of this CR would be appropriate, Owner and DEM may by mutual written agreement jointly amend this CR; provided that no amendment may be made that will be inconsistent with the purposes of this CR, affect its perpetual duration, nor adversely affect any of the significant conservation values of the Premises. Any such amendment shall be recorded with the Franklin Registry of Deeds in Greenfield, Massachusetts.

XI. 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. If any section or provision of the CR shall be susceptible of two constructions, one of which would render such section or provision invalid, then such section or provision shall be given the construction that would render it valid. If any section or provision of this instrument is ambiguous, it shall be

182

interpreted in accordance with the policies and provisions expressed in Chapter 184, Sections 31 - 33 and Chapter 132A of the General Laws.

IN WITNESS WHEREOF, the said Rodney F. Whipple a/k/a Rodney Whipple, individually and as Administrator of the Estate of Nellie F. Whipple caused these presents to be signed and acknowledged on this 29 day of March, 2002.

Rodney F. Whipple
Rodney F. Whipple, individually and
as Administrator of the Estate of Nellie F. Whipple

COMMONWEALTH OF MASSACHUSETTS

Worcester, SS

March 29, 2002

Then personally appeared the above-named Rodney Whipple a/k/a Rodney F. Whipple, Individually and as Administrator as aforesaid and acknowledged the foregoing instrument to be his/her free act and deed before me.

Kathie Jean Ziminski
Notary Public Kathie Jean Ziminski,
Commission Expires: September 12, 2008

IN WITNESS WHEREOF, the said Bessie Stowell caused these presents to be signed and acknowledged on this day of March, 2002.

Bessie Stowell
Bessie Stowell

COMMONWEALTH OF MASSACHUSETTS

Worcester, SS

March 18, 2002

Then personally appeared the above-named Bessie Stowell and acknowledged the foregoing instrument to be his/her free act and deed before me.

Pamela E. Oddy
Notary Public Pamela E. Oddy
Commission Expires: December 20, 2007

Commission Expires:

IN WITNESS WHEREOF, the said Hope Sterbinsky caused these presents to be signed and acknowledged on this 1st day of April, 2002.

Hope Sterbinsky
Hope Sterbinsky

COMMONWEALTH OF MASSACHUSETTS

Worcester

, SS

April 1, 2002

Then personally appeared the above-named Hope Sterbinsky and acknowledged the foregoing instrument to be his/her free act and deed before me.

Kathie Jean Ziminski
Notary Public Kathie Jean Ziminski
Commission Expires: September 12, 2008

IN WITNESS WHEREOF, the said Benjamin Skinner, individually and as Executor of the Estate of Eva-Rae Skinner caused these presents to be signed and acknowledged on this 3rd day of April, 2002.

Benjamin Skinner
Benjamin Skinner, individually
and as Executor of the Estate of Eva-Rae Skinner

COMMONWEALTH OF MASSACHUSETTS

Worcester, SS

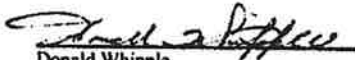
April 3, 2002

Then personally appeared the above-named Benjamin Skinner individually and as Executor of the Estate of Eva-Rae Skinner, and acknowledged the foregoing instrument to be his/her free act and deed before me.

Kathie Jean Ziminski
Notary Public Kathie Jean Ziminski
Commission Expires: September 12, 2008

184

IN WITNESS WHEREOF, the said Donald Whipple caused these presents to be signed and acknowledged on this 27 day of March, 2002.

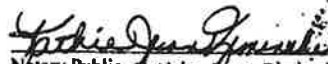

Donald Whipple

COMMONWEALTH OF MASSACHUSETTS

Worcester, SS

March 27, 2002

Then personally appeared the above-named Donald Whipple and acknowledged the foregoing instrument to be his/her free act and deed before me.


Notary Public Kathie Jean Ziminaki
Commission Expires: September 12, 2008



IN WITNESS WHEREOF, the said James Levi. Whipple a/k/a James Whipple, individually has caused these presents to be signed and acknowledged on this 22 day of March, 2002, and further releases any and all interest as Trustee of James Levi Whipple Trust and/or James Levi Whipple Revocable Trust.


James Levi. Whipple, individually
and as Trustee as aforesaid

STATE OF CALIFORNIA

Santa Barbara, SS

March 22, 2002

Then personally appeared the above-named James Levi. Whipple a/k/a James Whipple, individually and as Trustee as aforesaid and acknowledged the foregoing instrument to be his/her free act and deed before me.




Notary Public: Diane K. Zamora
Commission Expires: 8-30-04

EXHIBIT A

Exhibit A concerning the Premises subject to the Conservation Restriction and Conservation Easement by the Commonwealth of Massachusetts by and through its Department of Environmental Management on lands in Franklin County, Massachusetts

Easement Area

Meaning and intending to include and cover all lands lying in the Commonwealth of Massachusetts (but excluding those lands lying in the State of New Hampshire) (Premises) in a deed recorded at Book 972, Page 235 and as subsequently described in Book 2282, Page 162 in the Franklin Registry of Deeds and illustrated as Town of Warwick Assessor's Map 402 Lot 46, but *excluding* an approximately 13 acre area, measuring approximately 721.00 feet by 1094.16 by 721.00 by 64.5 feet *all as shown on the sketch plan of the Parcel designated "Excluded Area" which sketch is attached hereto as Exhibit Plan #1 and incorporated herein as part of the Conservation Restriction.*

Said Premises described in said deed as follows:

The land in Warwick, in the County of Franklin and the Commonwealth of Massachusetts, bounded and described as follows:

Beginning at a stake and stones on the westerly side of the highway leading from Richmond, New Hampshire to Warwick, Massachusetts at land formerly of Nils Ohlson;

Thence westerly along land formerly of said Ohlson and land now or formerly of the New England Box Company to a stake and stones at land now or formerly of prior grantees;

Thence northerly along land now or formerly of said prior grantees to a stake and stones;

Thence westerly along land now or formerly of said prior grantees to a stake and stones at land now or formerly of the New England Box Company;

Thence northerly along land now or formerly of the New England Box Company and land now or formerly of Kellam and Handy to a stake and stones at a corner;

Thence westerly along land now or formerly of said Kellam and Handy to a stake and stones;

Thence northerly to the State line between Massachusetts and New Hampshire;

Thence easterly by the State line between Massachusetts and New Hampshire to a stone post at the State Line;

Thence easterly along land formerly of Dickinson and Jennings to a stake and stones to land formerly of Oscar Thompson;

Thence southerly along land formerly of said Thompson to the end of a stone wall;

Thence easterly along land formerly of said Thompson to the first mentioned highway;

Thence southerly along the highway to the first mentioned bound.

EXHIBIT PLAN #1

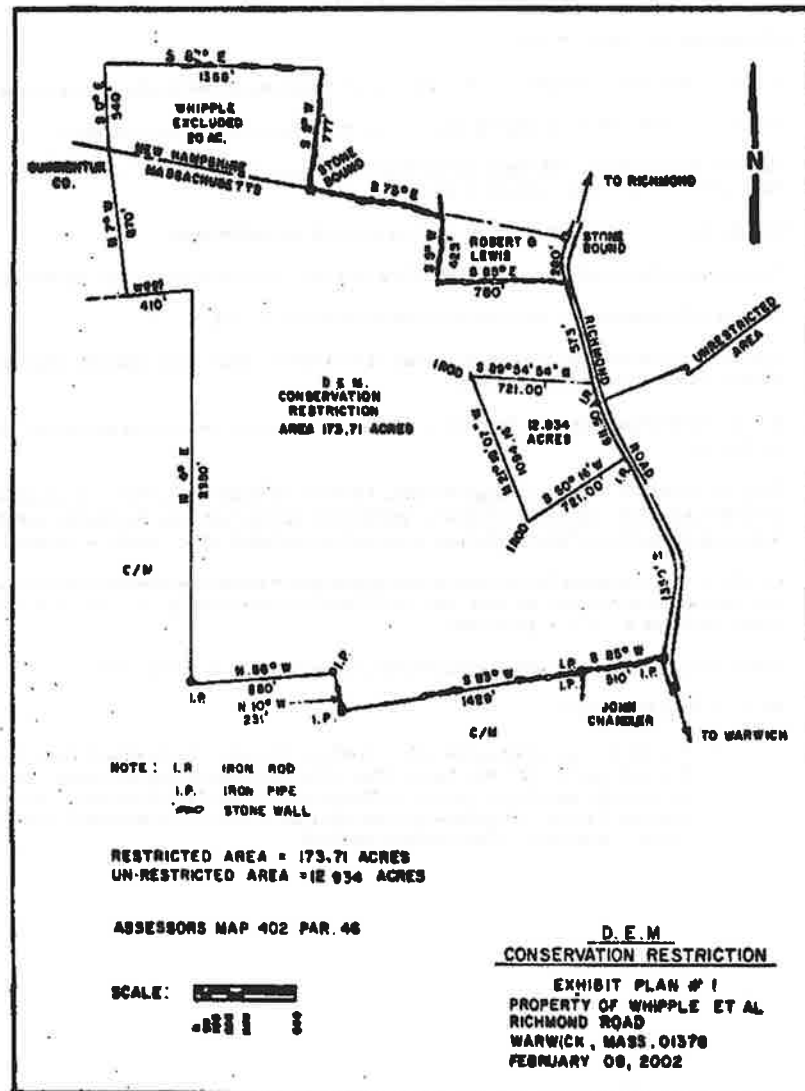


EXHIBIT B**Forest Management Standards for EOE Conservation Restrictions****GENERAL RECOMMENDATIONS:**

Manage in a landscape context and, if practical, try to provide features that are absent in the surrounding area.

Monitor forest health conditions, including insects, disease and damaging human-caused disturbance.

Choose an appropriate silvicultural system and implement it through the recommendations in the most recent US Forest Service silvicultural guide (see list in appendix).

Consider using longer than normal rotations – both for individual trees and for stands.

Maintain special habitat features such as abandoned apple orchards, permanent openings (fields, log landings, etc.)

Maintain and/or protect cultural features such as cellar holes, stonewalls, wells, etc.

If the property is large enough, try to provide a variety of stand ages and species mixes, especially those that are absent or uncommon in the surrounding area.

Revegetate disturbed areas with bare soil by seeding with native or non-invasive species and fertilizing and liming.

Retain or create den trees. Here, bigger is better. The best candidates are live trees that are greater than 20" DBH and either have cavities or have the potential for having them (large dead limbs, wounds, etc.). If possible, utilize trees of mast-producing species such as oak, beech, cherry or hickory for this purpose.

Consider using no-cut riparian buffers to provide surrogate old-growth habitat. Plan harvesting activities to leave some large woody debris either standing as snags that will eventually fall or, if safety reasons require it, as logs on the ground. As with den trees, bigger is better.

Retain some patches of mature conifers, and create patches of seedling and sapling size conifers.

SPECIFIC REQUIREMENTS:

- 1) Conduct all forest cutting operations for >10 mbf or >10 cords under an approved Forest Stewardship Plan and Chapter 132 Forest Cutting Plan. Utilize both required best management practices and recommended guidelines in the current Massachusetts Forestry Best Management Practices Manual (Kittredge & Parker, 1996 and subsequent versions if approved by the Commonwealth), as appropriate to conserve soil and water quality on managed forestlands.

- 2) Provide a copy of the Chapter 132 Forest Cutting Plan to the DFW Natural Heritage & Endangered Species Program at least 20 days prior to the start of cutting for review of potential impacts on state-listed species and priority natural communities. Implement all appropriate mitigation measures provided by the Commonwealth to limit impacts on state-listed species and priority natural communities. Upon the request of Owner, the DFW Natural Heritage & Endangered Species Program may assist Owner, at Commonwealth's expense, to locate and map all habitats for state-listed species and priority natural communities within a proposed harvest area.
- 3) Locate and map all vernal pools within a proposed harvest area and apply Ch. 132 guidelines for activities in and around certified vernal pools to all vernal pools. Upon the request of Owner, the DFW Natural Heritage & Endangered Species Program may assist Owner, at Commonwealth's expense, to locate, map and certify all vernal pools within a proposed harvest area.
- 4) Retain a portion of overstory trees during all forest cutting operations. Retain a minimum average basal area of ≥ 10 square feet per acre in live trees $\geq 14"$ dbh in clumps or patches in even-age harvest areas. Retain sound, relatively wind-firm trees, and existing den trees and/or snag trees when possible. Retain both mast-producing hardwoods and cover-producing softwoods where possible. Retain some large downed woody material in or near retained groups when possible.
- 5) Utilize uneven-aged silvicultural systems, or even-aged methods that establish a fully stocked stand prior to overstory removal on steep slopes - those that exceed 35% to provide continuous forest cover.

Sources Of Information To Be Used In Preparing Stewardship Plans Relating to EOE Conservation Restrictions

A Management Guide for Oak in New England, Conn. Coop. Extension Publication #83-12
A Silvicultural Guide for Spruce-Fir in the Northeast, USFS GTR-NE-6
A Silvicultural Guide for White Pine in the Northeast, USFS GTR-NE-41
Distribution of Cut Guides for Thinning in Allegheny Hardwoods: a Review, USFS RN-NE-362
Even-aged Silviculture for Upland Central Hardwoods, USFS, Agriculture Handbook 355
Managing Eastern Hemlock - A Preliminary Guide, USFS NA-FR-30
A Method of Applying Group Selection in Central Appalachian Hardwoods, USFS RP-NE-696
NED/SIPS User's Manual, Version 1.0, USFS GTR-NE-205
Number of Residual Trees: A Guide for Selection Cutting, USFS GTR-NE-80
Prescribing Silvicultural Treatments in Hardwood Stands of the Alleghenies (revised), USFS GTR-NE-96
Quantitative Silviculture for Hardwood Forests of the Alleghenies, USFS GTR-NE-183
Silvicultural Guide for Northern Hardwood Forest Types (revised), USFS RP-NE-603
Silvicultural Guide for Paper Birch in the Northeast, USFS RP-NE-535
The Practice of Silviculture: Applied Forest Ecology, ninth edition, 1997.
User's Guide to SILVAN, USFS GTR-NE-162
Guide to Wildlife Tree Management in New England Northern Hardwoods, USFS GTR-NE-118

ATTEST: FRANKLIN COUNTY, MASS. H. Peter Wood, Register

