

## BARNSTABLE COUNTY

In the Year Two Thousand and Three

Ordinance 03-17

To place a Conservation Restriction on a portion of a parcel of land known as the Barnstable County Hospital Property, of approximately 50 acres, located in the Town of Bourne.

*Barnstable County hereby ordains:*

### Conservation Restriction

Barnstable County, a political subdivision of the commonwealth of Massachusetts having its principal place of business as Superior Court House, Route 6A, Barnstable, Massachusetts, acting through the Barnstable County Commissioners and the Assembly of Delegates, to the extent that the County holds any and all interest, and their successors and assigns holding any interest in the premises as hereinafter defined (Grantor's), grant to the Town of Bourne Conservation Commission, a public instrumentality with a principal place of business at Bourne Town Hall, 24 Perry Avenue, Buzzards Bay, Massachusetts, its successors and permitted assigns, (Grantee) IN PERPETUITY and exclusively for conservation purposes, the following described CONSERVATION RESTRICTION, on a portion of a parcel of land known as the Barnstable County Hospital property, of approximately 50 acres, located in the Town of Bourne, County of Barnstable, Commonwealth of Massachusetts, said parcel being described in Exhibit A attached (Premises).

Purpose. This Conservation restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws. Its purpose is to assure that the premises will be retained in perpetuity in their natural, scenic and open condition and to prevent any use of the premises that will significantly impair or interfere with the conservation values of the premises. The conservation of the premises will yield a significant public benefit for the following reasons:

WHEREAS, in 1998 Barnstable County committed to placing approximately 50 acres of the Barnstable County Hospital property under a conservation restriction; and,

WHEREAS, the Cape Cod Commission Regional Policy Plan (2001) provided an Open Space and Recreation action to "protect high priority areas" defined, in part, as missing links between open space areas identified on the Capewide Open Space/Greenbelt map; and,

WHEREAS, on February 20, 2003, the Cape Cod Commission approved the Assisted Living Senior residence project as a Development of regional Impact (Project #TR-02051), which required, *inter alia*, in Condition NR/OS .1, that 37 upland acres located on the project site be preserved as permanent open space through a conservation restriction consistent with M.G.L. Chapter 184, sections 31-33; and,

WHEREAS, THE Town of Bourne wishes to see the premises preserved, managed and controlled by the Conservation Commission of the Town of Bourne, pursuant to the provisions of Massachusetts General Laws Chapter 40, Section 8C, as amended and supplemented; and,

WHEREAS, accordingly, the premises possesses significant open, natural and scenic values (collectively, "conservation values") of great importance to the Grantee and the people of Bourne and the Commonwealth of Massachusetts; and,

WHEREAS, the Town of Bourne has in recent years come under increasing pressure for development, and such development can destroy or otherwise severely impact the open character, natural resources, and scenic beauty of the area; and,

WHEREAS, the Grantor intends, as owners of the Premises, to convey to the Grantee the right to preserve and protect the conservation values of the Premises in perpetuity.

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NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, the Grantor and the Grantee voluntarily agree that the CONSERVATION RESTRICTION described herein is an appropriate means to achieve the community's open space goals and objectives and to protect and enhance natural and scenic values of Cape Cod.

The terms of this CONSERVATION RESTRICTION are as follows:

A) Prohibited Uses. Except as to reserved rights set forth in paragraph B below, neither the Grantee nor their heirs, devisees, successors or assigns will perform or permit the following acts or uses on the Premises:

1) Constructing or placing of any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, fence, billboard or other advertising display, antenna (including satellite receiving dish), tower, fuel storage tank, wells, any part of a sewage disposal system or effluent spray irrigation system, or other temporary or permanent structure or facility on, under or above the Premises, except for as permitted in paragraph B below;

2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit;

3) Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, wood chips, tree cuttings generated off-site, junk, waste or other substance or material whatsoever, except as provided in paragraph B below;

4) Cutting, removing or otherwise destroying trees, grasses or other vegetation, except in accordance with forestry management practices and invasive species reduction as provided in paragraph B below;

5) Activities detrimental to drainage, water or soil conservation, wildlife habitat, erosion control, or the quality of groundwater;

6) The use of motorcycles, motorized trail bikes, snowmobiles and all other motor vehicles, except as required by police, fire, or other governmental agencies in carrying out their lawful duties or as necessary for forestry management practices as provided in paragraph B below;

7) Any residential, commercial or industrial use; any further subdivision of the Premises;

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 other significant conservation values unless necessary for the protection of the conservation values that are the subject of this Restriction;

9) Any use of the Premises by the Grantors to calculate permissible lot yield or off-site mitigation for other properties owned by the Grantor or their assigns, except for the Assisted Living/Senior Residence project noted above;

10) Substantial improvement, including widening, paving or hardening or grading of any traveled way on the Premises, except as provided in paragraph B below;

11) Animal husbandry, gardening or other agricultural uses;

12) Any activity which interferes with the free migration by wildlife, including fencing and trapping, except as provided in paragraph B below;

13) Hunting, camping, fires, picnicking or alcoholic beverages;

14) Commercial timber harvesting or leasing of timber rights.

B. Reserved Rights. Notwithstanding the provisions of paragraph A, the following acts and uses are permitted but only if such uses and activities do not materially impair the purposes of this

CONSERVATION RESTRICTION:

1) The creation, maintenance and use of walking trails; improvement of trails through the use of boardwalks, stairs or other similar means; maintenance of trails and access ways through cutting of brush with power tools or mowing; slope stabilization; cutting of vegetation for improvement of scenic vistas, and improvements to existing structures;

2) The cutting and collection of diseased, dead or downed timber for consumption as firewood by the Barnstable County AmeriCorps Program; annual selective cutting of standing live timber by the Barnstable County AmeriCorps Program is limited to no more than four cords;

3) Erection and maintenance of small signs, trail identifications and other appropriate signage;

4) Walking, cross country skiing, non-motorized bicycling and horseback riding; other public passive recreational uses.

C. Access. The Conservation restriction hereby conveyed grants to the Grantee, and the public generally, the right to enter upon the Premises under the following conditions:

1. a) Subject to the provisions of Massachusetts General law, Chapter 21, Section 17C, public access is limited to walking, running and jogging, cross country skiing, and horseback riding;
- b) No camping is allowed; access must take place only between the hours of sunrise and sunset; no fires are allowed;
- c) Visitors may be ejected at any time by the Grantor or Grantee for unseemly or loud activities, or failure to abide by the above conditions; and,
- d) No public access via motorized vehicles is allowed
- e) The Conservation Commission shall have discretion to set reasonable hours of operation for the public access upon the Premises.

D. Legal Remedies of the Grantee. In the event that a breach of these restrictions by the Grantor or by a third party comes to the attention of the Grantee, the Grantee must notify the Grantor in writing of such a breach. The Grantor shall have thirty (30) days after receipt of such notice to undertake actions including restoration of the premises that are reasonably calculated to correct the conditions constituting the breach. If the Grantor fails to take such corrective action, the Grantee, at its discretion, shall undertake such actions, including appropriate legal proceedings, as are reasonably necessary to effect such corrections. The cost of such corrections, including the Grantee's expenses, court costs and reasonable legal fees shall be paid by the Grantor, provided the Grantor is determined to be responsible for the breach.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of the Grantee, and any forbearance by the Grantee to exercise its rights under this Conservation Restriction shall not be deemed or construed to be a waiver. If any provision of this Conservation restriction shall to any extent be held invalid, the remainder shall not be affected.

Nothing herein shall be construed or interpreted to preclude or limit in any way the jurisdiction of the

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Town of Bourne Police or Fire Departments from exercising their jurisdiction and authority on and within the subject conservation land.

E. Acts Beyond Grantor's Control. Nothing contained in this Conservation restriction shall be construed to entitle the Grantee to bring any action against the Grantors for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including, but not limited to, fire, road drainage, flood, storm, natural erosion, public recreation, and acts caused by trespass on the Premises not contributed to by acts or omissions of the Grantor, or from any prudent action taken by the Grantor to prevent, abate, or mitigate significant injury to the Premises resulting from such causes.

F. Duration and Assignability. The burdens of this Conservation restriction shall run with the Premises in PERPETUITY and shall be enforceable against the Grantors and the successors and assigns of the Grantors holding any interest in the Premises. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. Without limiting the forgoing, the Grantors and their successors and assigns agree themselves to execute any such instrument upon request.

G. Effective Date. Grantors and Gratee intend that the restrictions arising hereunder take effect on the day and year this Conservation restriction deed is recorded in the official records of the Barnstable County registry of Deeds, after all signatures required by Massachusetts General Laws Chapter 184, Section 32 have been affixed hereto.

H. Controlling Law. The interpretation and performance of this Conservation restriction shall be governed by the laws of the Commonwealth of Massachusetts.

I. 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 purposes of his Conservation and the policies and purposes of the Town of Bourne Conservation Commission. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

J. Amendment. The Grantors and the Grantees may by mutual consent amend any term or provision hereof provided that this Conservation Restriction as thus amended complies with the applicable laws and requirements of the Commonwealth of Massachusetts, Barnstable County, and the Town of Bourne, and provided that any such amendment, together with any approvals necessary to its effectiveness, shall be recorded with the Barnstable County Registry of Deeds. Any amendment shall be consistent with the purposes of this Conservation Restriction and shall not affect its perpetual duration.

K. Law Enforcement. Nothing in this Conservation Restriction shall be construed to limit the access or jurisdiction of law enforcement to enforce federal, state or local laws or ordinances.

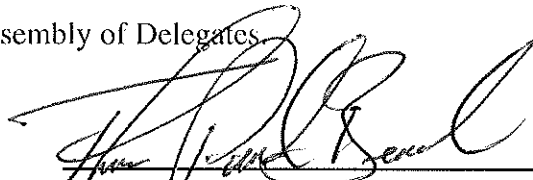
ATTACHMENT "A"

The boundaries of the Conservation Restriction shall be as follows:

Commencing at a point on the westerly side of County Road, on the south easterly corner of the abutting property, N/F Dept. of Mental Health, and the north easterly corner of the subject property, thence S 71° 07' 20" W a distance of 834.2 feet; thence N 32° 36' 10" W a distance of 277.25 feet; thence S 48° 27' 35" W a distance of 541.75 feet; thence S 28° 01' 10" E a distance of 138.92 feet; thence S 62° 47' 30" W a distance of 240.99 feet; thence S 59° 56' 40" W a distance of 92.65 feet; thence S 55° 28' 50" W a distance of 89.67 feet; thence S 00° 48' 10" W a distance of 128.00 feet; thence S 18° 04' 40" W a distance of 128.00 feet; thence S 39° 48' 00" W a distance of 127.26 feet; thence S 02° 50' 00" E a distance of 196.60 feet; thence S 81° 04' 10" a distance of 636.82 feet; thence S 05° 79' 00" a distance of 103.12 feet; thence S 78° 43' 00" E a distance of 349.25 feet; thence S 13° 48' 30" W a distance of 218.79; thence S 83° 22' 40" E a distance of 227.74; thence S 15° 50' 40" W a distance of 219.71 feet; thence S 63° 14' 00" E a distance of 442.56; thence N 26° 47' 50" E a distance of 217.40; thence S 63° 20' 50" E a distance of 235.72 feet; thence N 15° 79' 40" E a distance of 111.35 feet; thence N 22° 33' 00" E a distance of 322.10 feet; thence northerly along the westerly side of Old County Road along an arc of 860.00 feet a distance of 138.72 feet; thence S 19° 30' 20" E a distance of 127.88 feet; thence N 08° 20' 00" w a distance of 131.20 feet; thence N 16° 00' 00" w a distance of 268.80 feet to the point of beginning.

All as shown on a plan entitled "Conservation Restriction Plan Pocasset Assisted Living Scale 1" = 100' Bourne, Massachusetts April 16, 2003" prepared by Coastal Engineering Co., to be recorded with the Barnstable County Registry of Deeds.

Adopted on October 15, 2003 by the Assembly of Delegates.

  
Thomas P. Bernardo, Speaker

Approved by the Board of County Commissioners, October 22, 2003 at 9:30 a.m.  
Date Time

