

11/27/06 - (13)

**CONSERVATION RESTRICTION
TO
TOWN OF ACTON**

I. Grantor Clause:

Avalon Acton, Inc., a Maryland corporation (hereinafter, together with successors in title or any other interest in or to any or all of the Premises, called the "**Grantor**"), grant, with quitclaim covenants, to the TOWN OF ACTON, MIDDLESEX COUNTY, A MUNICIPAL CORPORATION. IN THE COMMONWEALTH OF MASSACHUSETTS, ACTING BY AND THROUGH ITS CONSERVATION COMMISSION with an address at Town Hall, 472 Main Street, Acton, Massachusetts 01720 (hereinafter, with successors and permitted assigns, called the "**Grantee**"), pursuant to G.L. c. 40 Section 8C, in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction on certain parcels of land located at and off of Nagog Park, Acton, Middlesex County, Massachusetts, (herein called the "Premises") being described in Exhibit A hereto attached and made a part of hereof. For Grantor's Title, see deeds recorded in the Middlesex South District Registry of Deeds in Book _____ Page _____.

II. Purposes:

The purposes of this Conservation Restriction are to assure that the Premises will be retained, in perpetuity, predominantly in their natural, scenic and wooded condition and to prevent any use of the Premises that will significantly impair or interfere with the conservation values of the Premises.

III. Prohibited Acts and Uses, Exceptions Thereto, and Permitted Uses:

A. Prohibited Acts and Uses:

Subject to the exceptions set forth in paragraph B below, the following acts and uses are expressly prohibited on the Premises:

- (1) Constructing, placing or allowing to remain any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, satellite dish, tower, conduit line, or other temporary or permanent structure 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;
- (3) 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;

- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) The further subdivision of the Premises;
- (6) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation or archaeological conservation; and
- (7) 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 interests unless necessary for the protection of the conservation interests that are the subject of this Conservation Restriction.

B. Reserved Rights and Exceptions to Otherwise Prohibited Acts and Uses:

The following acts and uses otherwise prohibited in paragraph A are permitted but only if such acts and uses do not materially impair the purposes of this Conservation Restriction or other significant conservation interests (except for the uses listed in subparagraph B.1, which shall be permitted in accordance with their terms in any case).

1. Excavation and removal from the Premises of soil, gravel or other mineral resource or natural deposit as may be incidental to the installation or maintenance or removal of underground tanks, septic systems, utilities, and other underground structures or to the maintenance of good drainage, soil conservation practices or to other permissible use of the Premises.
2. Installation and maintenance of drainage facilities, septic facilities and underground utilities of all types and kinds including but not limited to gas, electric, water and cable television lines and any and all appurtenances thereto.
3. Selective cutting of trees for fire protection, unpaved trail and road maintenance, tick control, or otherwise to preserve the present condition of the Premises, including vistas.
4. Erection of signs by the Grantor or Grantee identifying the Grantee as holder of the restriction and to educate the public about the conservation values protected and any limitations relating to public access.
5. Passive Recreation which shall be defined as trails for walking and hiking.

The exercise of any right reserved or permitted by the Grantor under this paragraph B shall be in compliance with the then-current Zoning by-law of the Town of Acton, the Wetlands Protection Act (General Laws Chapter 131, Section 40), and all other applicable federal, state and local law. The inclusion of any reserved or permitted right in this paragraph B requiring a permit from a public

agency does not imply that the Grantee takes any position on whether such permit should be issued.

IV. 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 its condition prior to such violation 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.

B. Reimbursement of Costs of Enforcement

Grantor and, thereafter, its successors and assigns, covenants and agrees to reimburse Grantee all reasonable costs and expenses (such as reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy or abate any violation thereof, provided that a court of competent jurisdiction determines that there has been a violation of this Conservation Restriction by the Grantor or its successors and assigns.

C. Grantee Disclaimer of Liability

By its acceptance of this Conservation Restriction, Grantee does not undertake any liability or obligation relating to the condition of the Premises.

D. Severability Clause

If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.

E. Non-Waiver

Any forbearance or election by 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.

F. Acts Beyond Grantor's Control

Nothing contained in this Conservation Restriction shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Premises resulting from causes beyond Grantor's control, including, but not limited to, fire, flood, storm and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises from such causes.

V. Access:

This Conservation Restriction does not grant to Grantee, to the general public, or to any other persons any right to enter upon the Premises except there is granted to the Grantee and its representatives the right to enter the Premises at reasonable times and in a reasonable manner for the purpose of inspecting the same to determine compliance herewith.

VI. Assignability:

A. Running of the Burden with the Premises

(1) The burdens of this Conservation Restriction shall run with the Premises and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises. This Restriction and all of the covenants, agreements and restrictions contained herein shall be deemed to be a conservation restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c. 184, §§ 26, 31, 32 and 33. In the event that the Grantee seeks the approval of the Secretary of the Executive Office of Environmental Affairs (“EOEA”) to this form as provided under G.L. c. 184, § 32, the Grantor shall cooperate fully with those efforts and in making any and all technical (non-substantive) modifications that are necessary to obtain said approval. This Restriction shall also be deemed an “other restriction held by any governmental body” as that term is used under G.L. c. 184, § 26 notwithstanding EOEA’s approval or disapproval of this Restriction. The term of this Restriction shall be perpetual.

(2) The Grantor intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Restriction and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Premises for the term of this Restriction, and are binding upon the Grantor’s successors in title, (ii) are not merely personal covenants of the Grantor, and (iii) shall bind the Grantor, its successors and assigns and enure to the benefit of the Grantee and its successors and assigns for the term of the Restriction. Grantor hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Restriction to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

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, appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor agrees itself 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 Grantee.

VII. Subsequent Transfers:

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed of the Premises, or any part thereof, including, without limitation, a leasehold interest.

VIII. Termination of Rights and Obligations:

Notwithstanding anything to the contrary contained herein, the obligations under this Conservation Restriction of any party holding any interest in the Premises shall terminate upon transfer of that party's interest, except that liability for acts of omissions occurring prior to transfer, and liability for the transfer itself if the transfer is in violation of this Conservation Restriction, shall survive the transfer.

IX. Estoppel Certificates:

Upon request by Grantor, or its successors and assigns, Grantee shall within twenty (20) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Conservation Restriction.

X. Effective Date:

This Conservation Restriction shall be effective when it has been executed by the Grantor, accepted by the Grantee, approved by the Selectmen of the Town of Acton, and recorded in the Middlesex District Registry of Deeds.

XI. Title; Authority:

The Grantor hereby represents, covenants and warrants as follows:

- (a) The Grantor (i) is a business corporation duly organized under the laws of the State of Maryland, and is qualified to transact business under the laws of this Commonwealth, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Restriction.
- (b) The execution and performance of this Restriction by the Grantor (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Grantor is a party or by which it or the Premises is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

- (c) The Grantor will, at the time of execution and delivery of this Restriction, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance, except those permitted by the Grantee listed in Exhibit B attached hereto. The Grantor represents and warrants that it has obtained the consent of all existing mortgagees of the Premises to the execution and recording of this Restriction and to the terms and conditions hereof, and the subordination of all existing mortgages to this Restriction, and that all such consents and subordinations are attached hereto and made a part hereof.

XII. Miscellaneous:

A. Controlling Law

The interpretation and performance of this Conservation Restriction shall be governed by the law of the Commonwealth of Massachusetts.

B. Liberal Construction

If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Captions

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

D. Entire Agreement

This instrument sets forth the entire agreement of the parties with respect to the Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

No documentary stamps are required as this Conservation Restriction is without consideration.

IN WITNESS WHEREOF, the said Avalon Acton, Inc, has signed, acknowledged and delivered this Conservation Restriction in its name and behalf by _____ its _____, duly authorized this _____ day of _____, 2006.

Avalon Acton, Inc.

By: _____
Name:
Title:

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this ____ day of _____, 2006 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 preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

ACCEPTANCE OF GRANT OF CONSERVATION RESTRICTION

The Conservation Restriction dated _____, 2006, and recorded with the Middlesex South District Registry of Deed in Book _____, Page _____ is accepted hereby accepted by the Acton Conservation Commission this ____ day of _____ 2006.

CONSERVATION COMMISSION OF
THE TOWN OF ACTON

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this ____ day of _____, 2006 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 preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the Conservation Commission of the Town of Acton.

Notary Public
My commission expires:

APPROVAL OF SELECTMEN

We, the undersigned, being a majority of the Selectmen of the Town of Acton, Massachusetts, hereby certify that at a meeting duly held on _____, 2006, the Selectmen voted to approve the grant of the Conservation Restriction to the Town of Acton acting by and through its Conservation Commission pursuant G.L. c. 40, §8C dated _____, 2006 and recorded with the Middlesex South District Registry of Deed in Book _____, Page _____.

TOWN OF ACTON
BOARD OF SELECTMEN

Walter M. Foster, Chairman

F. Dore' Hunter

Lauren S. Rosenzweig

Peter K. Ashton

Andrew D. Magee

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS. _____, 2006.

On this ____ day of _____, 2006 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 preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the Board of Selectmen of the Town of Acton

Notary Public
My commission expires:

EXHIBIT A

Premises Description

The Premises, which are subject to this Conservation Restriction consist of the following parcels of land in Acton, Middlesex County, Massachusetts:

That land shown as "Town of Acton Conservation Restriction Easement Area 3" on the plan entitled Conservation Restriction Easement Plan of Land in Acton and Westford Massachusetts", prepared by Stamski and McNary, Inc., Scale 1" = 100' dated June 21, 2006, as revised, and recorded in the Middlesex South District Registry of Deeds as Plan Number _____ of 200__..

Said land contains approximately 3.9647 acres of land, more or less, according to said plan.

EXHIBIT B

List of Permitted Encumbrances

NONE.