

**HEARINGS, MEETINGS, LICENSES**  
**5-17-10**

## Jacqueline Shanley

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**From:** Patricia Cassady  
**Sent:** Friday, May 07, 2010 10:06 AM  
**To:** Jacqueline Shanley  
**Subject:** Ja Mar Conservation Restriction

Hi Jackie,

There were additional changes to the Ja Mar (Turkey Farm) Conservation Restriction and so now I need to have the BOS sign a new copy of the CR.

Could I be put on the May 17<sup>th</sup> agenda (I figure you are having a meeting that night since we are not having the Town Meeting now)?

Thanks so much.

Tricia

Patricia J. Cassady, Agent  
Middleborough Conservation Commission  
20 Centre Street, 2nd Floor Bank Building  
Middleborough, Ma. 02346

[pcssdy@middleborough.com](mailto:pcssdy@middleborough.com)

508-946-2406

**CONSERVATION EASEMENT a/k/a CONSERVATION RESTRICTION**

**to the  
Middleborough Conservation Commission**

**A. GRANTOR CLAUSE:**

**Candace M. Gordon as Trustee of 483 Plymouth Street Realty Trust** under a Declaration of Trust dated September 25, 2003 and recorded at the Plymouth County Registry of Deeds in Book 26723, Page 85, having an address at 10 Owl Drive, Sharon, MA 02067 its successors and assigns (hereinafter the "Grantor"), hereby grants with QUITCLAIM COVENANTS for nominal consideration to the Middleborough Conservation Commission (Middleborough Town Hall, Nickerson Avenue, Middleborough, MA 02346), its successors and permitted assigns (hereinafter the "Grantee"), in accordance with M.G.L. Ch. 40, Sec. 8C in perpetuity and exclusively for conservation purposes in accordance with and subject to the provisions of Article 97 of the Amendments to the Massachusetts Constitution, a Conservation Restriction [hereinafter the "Conservation Restriction"] on portions of the land of the Grantor in said Middleborough shown on a plan of land entitled "Lot Layout Sheet, Ja-Mar Farm Estates Definitive Subdivision in Middleborough, Massachusetts", which plan is dated September 23, 2004 and is recorded at the Plymouth County Registry of Deeds as Plan No. 42 of 2007 in Plan Book 52, Page 851. A reduced version is attached hereto as Exhibit "B" "Conservation Restriction Plan, Ja-Mar Farm Estates, Middleboro, Massachusetts". The portions of the land of the Grantor that are affected by the Restriction are as described in Exhibit "A" attached hereto and are also shown on a plan entitled "Conservation Restriction Plan, Ja-Mar Farm Estates, Middleboro, Massachusetts" and attached hereto as Exhibit "B". Said affected portions of the Grantor's property as described above and as set forth in Exhibit "A" are sometimes hereafter referred to collectively as the "Premises". For Grantor's title see the deed from Louis F. Stanzione and Sharon M. Stanzione dated November 14, 2003 recorded in Plymouth County Registry of Deeds, Book 27024, Page 99 and the deed from AGS Development Corporation dated September 26, 2003 recorded in Plymouth County Registry of Deeds, Book 26723, Page 90.

The terms and conditions of this Conservation Restriction shall be binding upon and inure to the benefit of the Grantor and the Grantee and their respective successors and assigns.

The terms and conditions of this Conservation Restriction are as follows:

**B. THE PREMISES:**

The Premises consist of approximately 434,553 square feet (9.976 acres) of land located off Plymouth Street in Middleborough, Plymouth County, Massachusetts and are part of the subdivision known as "Ja-Mar Estates". The Premises, as described above, are located in the Nemasket River Corridor and contain unusual, unique or outstanding qualities the protection of which, in their predominately natural or open conditions, will be of benefit to the public. The Premises contribute towards the preservation of the Town's rural character by conserving large blocks of open space and clustering residential development on smaller lots. These qualities and the purposes which will be protected include:

- a. Preservation of open spaces within an area of development.
- b. Preservation of scenic vistas.
- c. Maintenance of open areas used for active and passive recreation and visual enjoyment.
- d. Preservation of historically, archaeologically, culturally, and scientifically significant areas within the Nemasket River corridor.
- e. Preservation of Resource Areas protected under the Massachusetts Wetlands Protection Act, Massachusetts General Laws Chapter 131 Section 40, which may be important to regional water quality, water supply, and wildlife habitat issues.
- f. Preservation of land to prevent construction of residences on potential habitat of several species now or formerly protected under the Massachusetts Endangered Species Act, Massachusetts General Laws Chapter 131A ("MESA"), including four-toed salamanders (*Hemidactylium scutatum*), eastern box turtles (*Terrapene c. carolina*) and spotted turtles (*Clemmys guttata*), and other wildlife.

**C. PURPOSES:**

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws. The Grantor and the Grantee acknowledge and agree that the Premises have a scenic and wildlife habitat value in the present state thereof as natural land and wetlands. The Premises have not been subjected to development incompatible with its features and resources, and constitute a unique and valuable Massachusetts landscape embodying the special character of the region, the protection of which in their predominately natural condition will provide valuable benefits to the public and prevent any use of the Premises that will significantly impair or interfere with the conservation

values of the Premises consistent with the spirit and intent of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts and the purposes and requirements of Conservation and Management Permit No. 006-097.DFW.

The Grantor and the Grantee share the common purpose of conserving the natural, cultural, historic, archaeological, and scientific values of the Premises for the present generation and future generations. The shared purpose is to assure that the Premises will be retained in perpetuity predominantly in their natural and scenic condition for habitat and historic and archaeological resource preservation. The public benefits resulting from conservation of the Premises include, without limitation:

- (1) Wildlife habitat protection: Conservation of the Premises will protect habitat used by a variety of wildlife, and as the potential habitat of several species protected under the Massachusetts Endangered Species Act, Massachusetts General Laws Chapter 131A ("MESA"), including four-toed salamanders (*Hemidactylium scutatum*), eastern box turtles (*Terrapene c. carolina*) and spotted turtles (*Clemmys guttata*), and other wildlife.
- (2) Scenic landscape preservation: The Premises comprise part of a scenic landscape associated with a natural, undisturbed environment. The open space conservation land protected under this Conservation Restriction is an important public resource. The preservation of the Premises, by prohibiting significant alterations to the natural character thereof, will further protect and enhance the area's scenic and open space attributes and the recreational, human enjoyment, and ecological value of the hundreds of acres of conservation land and open space.
- (3) Water quality protection: Preserving the natural, undisturbed environment will provide for groundwater recharge and protect wetland resource areas.
- (4) Nearby natural areas: The Premises provide upland forest and wetland habitat for native wildlife and plant species and communities, including many species of native plants, lichens, mammals, birds, reptiles, amphibians, and invertebrates. The preservation of the forest and wetland resources on the Premises will protect these habitats.
- (5) The Premises are located within close proximity to the Nemasket River Corridor wetland system, an important riparian habitat for many native animal and plant species.
- (6) Historic and archaeological resources: The Premises contain significant archaeological evidence of ancient Native American habitation and land use. The preservation of the Premises will conserve these resources.
- (7) Furtherance of governmental policy: Protection of the Premises is consistent with the Town of Middleborough's open space and recreational

plan which advocates for the protection of the town's scenic landscape and forest and historic and archaeological resources.

**D. PROHIBITED ACTS AND USES:**

The Grantor will neither perform nor allow others to perform the following acts and uses which are expressly prohibited on the Premises.

- (1) Constructing, placing or allowing any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, storage tank, sign, fence, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility 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, archaeological artifact, specimen, or antiquities, except as incidental to the conduct of archaeological investigations approved by the Massachusetts State Archaeologist or successor official.
- (3) Placing, filling, storing or dumping on the Premises of refuse, trash, vehicle bodies or parts, rubbish, debris, junk, solid or chemical waste or the installation of underground storage tanks or other unsightly or offensive substance or material whatsoever on or below the Premises.
- (4) Cutting, removing or otherwise destroying trees, shrubs, grasses or other vegetation.
- (5) The disruption, removal, or destruction of the stone walls on the Premises;
- (6) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, protection of groundwater, wildlife habitat or archaeological conservation.
- (7) The use of bicycles and off-road and motorized vehicles, except as reasonably necessary in exercising any of the reserved rights in Section E, or as required by the police, firefighters, or other governmental agents in carrying out their lawful duties.
- (8) Commercial, industrial, institutional or residential use.
- (9) Subdivision of the Premises into lots that could be conveyed into separate ownership. The Premises consist of portions of individual lots. The individual lots will be conveyed into separate ownership. This prohibition shall not affect the conveyance of the lots into separate ownership but shall prohibit any further subdivision of any portion of the Premises, or the use of the premises towards further building requirements on this or any other parcel.
- (10) Creating displays or exhibitions using captive, live animals.
- (11) Any other use or activity which would materially impair significant conservation interests unless in emergency circumstances, it is necessary for the protection of the conservation interests that are the subject of this Conservation Restriction.

## E. PERMITTED ACTS AND USES:

Notwithstanding the provisions of Paragraph D, the following activities and uses by Grantor and Grantor's successors, lessees, assigns, agents and contractors are permitted on the Premises as specified herein provided that they do not materially impair the purposes of this restriction and that all such activities and uses are in full conformity with all applicable local, state and federal laws and regulations.

### 1. Permitted Acts

- a. Recreational Activities. Passive, non-motorized outdoor recreational activities that do not disturb the topography of the Premises or diminish or impair its conservation values, including hiking, nature observation, picnicking, and cross-country skiing and do not involve commercial recreational use.
- b. Trails. The maintenance and marking of existing unpaved trails for pedestrian and passive recreation use.
- c. Forestry and Vegetation Removal. In accordance with generally accepted forest management practices, selective pruning and cutting of trees and other vegetation solely to control or remove hazards along approved trails, damage caused by disease, or insects or fire.
- d. Wildlife Habitat Management. Any activities determined necessary or desirable by the Natural Heritage and Endangered Species Program (NHESP) of the Commonwealth's Division of Fisheries and Wildlife Law Enforcement (hereinafter referred to as "the Division") for conducting research on or protecting species protected under MESA or their habitats.
- e. Signs. The erection of signs a.) identifying the Premises, b.) educating the public about the significance of the Premises, the conservation values protected, and/or any limitations relating to public access to the Premises or portions thereof, and c.) identifying the Grantee as holder of this Conservation Restriction, the owner of the underlying fee, and the donor(s) of the Premises.
- f. Easements and Leases. Activities authorized under easements and leases [or notices thereof] of record at the time of the granting of this Conservation Restriction, including an easement over a portion of the premises to the Middleborough Gas & Electric

Company as recorded at the Plymouth County Registry of Deeds. The easement area is shown on the plan attached hereto as Exhibit "B".

- g. Motorized Vehicles. The use of motorized vehicles necessary for a) activities authorized under Paragraph E herein, b) as necessary by the Grantee and the Commonwealth to carry out its duties, rights, and responsibilities under this Conservation Restriction, and c) as necessary by the police, firemen, and other governmental agents in carrying out their lawful duties.
- h. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit, archaeological artifact, specimen, or antiquities, but only to the extent that it is incidental to the conduct of archaeological investigations approved by the Massachusetts State Archaeologist or successor official.

The exercise of any permitted use by Grantor and Grantor's successor, lessees, assigns, agents and/or contractors hereunder shall be in compliance with all applicable local, state, and federal laws and regulations. The inclusion of any permitted use requiring approval and/or a permit from a public agency does not imply that Grantee or the Commonwealth takes any position on whether such permit should be issued, other than those in Paragraph D.

Any use or activity not expressly permitted herein is prohibited without the express written consent of the Grantee.

#### **F. LEGAL RIGHTS AND REMEDIES OF GRANTEE:**

This Conservation Restriction shall be enforceable by the Grantee.

The rights hereby granted to Grantee include the right to 1) access the Premises including the use of the subdivision roads and to monitor activities and uses of the Premises for compliance with the terms and provisions of this Conservation Restriction, 2) carry out all rights and responsibilities of Grantee set forth herein, and 3) enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations thereof, 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 will 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.

In the event that Grantee becomes aware of a violation of this Conservation Restriction, Grantee shall notify Grantor in writing of such violation. Grantor shall have 30 days after receipt of such notice to undertake actions, including the restoration of the Premises to its condition prior to the time of the violation complained of, that are reasonably determined as appropriate to swiftly correct the condition(s) constituting said violation and to repair any damages to the Premises resulting from said violation. If the Grantor fails to take such corrective action within said 30-day period after notice from Grantee, the Grantee may undertake whatever actions, including appropriate legal proceedings which include obtaining injunctive and other equitable relief that Grantee determines are reasonably necessary to effect such corrections and otherwise enforce the terms of this Conservation Restriction.

Grantor covenants and agrees to reimburse Grantee for all reasonable costs and expenses (including without limitation counsel fees) incurred by Grantee in enforcing this Conservation Restriction and/or in remedying or abating any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.

In the event of a dispute over the location of the boundaries of the Conservation Restriction, Grantor shall be responsible for a survey and permanent boundary markers.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee, and any 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.

Nothing herein shall preclude Grantor's and Grantee's rights to pursue other parties for damages to the Premises for vandalism, trespass, or any other violation of the terms of this Conservation Restriction.

**G. ENFORCEMENT AUTHORITY OF MASSACHUSETTS ATTORNEY GENERAL:**

Grantor and Grantee hereby recognize the authority of the Massachusetts Attorney General pursuant to M.G. L. c.12, §§ 3, 7 and 11D to, among other things, prevent or remedy damage to the environment and to prosecute informations or other processes against persons who intrude on the land, rights or property of the Commonwealth of Massachusetts (hereafter "Commonwealth"), or commit or erect a nuisance thereon. The Parties also recognize the interests of the Commonwealth in approving, enforcing and supporting conservation and other restrictions and the benefits to the public conferred by such restrictions acquired pursuant to M.G.L. c. 184, §§ 23 and 25-32. Accordingly, the Parties hereby consent to the Attorney General's enforcing the provisions of this restriction pursuant to M.G.L. c. 12, §§ 3,7, and 11D, and M.G.L. c. 184, §§ 23 and 25-32. Such enforcement may include, among other things, the right to commence or intervene in any legal proceeding in order to secure the rights of the holder of a conservation

restriction and the Commonwealth conferred under M.G.L. c. 184, §§ 23 and 25-32; the right to remedy past damage or prevent future damage to the environment as a result of actions or inactions on the part of an owner of land upon which a conservation or other restriction has been recorded; and the right to appeal any decision in any legal proceeding taken by any party that may affect the state interest and public benefit conferred by a restriction created pursuant to M.G.L. c. 184, §§ 23, 25-32.

#### H. ACCESS BY GRANTEE:

The Grantee, acting through its officers, directors, employees, representatives, contractors and agents are hereby granted the right to enter and traverse the Premises at reasonable times and in a reasonable manner, including access by foot and, if necessary, by motorized vehicle, to 1) exercise the rights granted herein to Grantee, 2) monitor and inspect the Premises, 3) determine compliance with the terms of this Conservation Restriction, and 4) prevent, remedy and/or abate any violations thereof and otherwise enforce the terms of this Conservation Restriction, all as provided in this Conservation Restriction. Grantees are granted an easement of access over the subdivision roads for these purposes.

The owners of each of the lots in Ja-Mar Farm Estates as shown on the plan of land entitled "Lot Layout Sheet, Ja-Mar Farm Estates Definitive Subdivision in Middleborough, Massachusetts", which plan is dated September 23, 2004 and is recorded at the Plymouth County Registry of Deeds as Plan No. 42 of 2007 in Plan Book 52, Page 851, shall have access over those portions of the Premises that that are shown as Proposed Access Easements on said above referenced plan. There are proposed access easements over portions of Lot 4 and Lot 5 as follows:

- a. that portion of Lot 4 that is shown as "Proposed Access Easement , A = 1,159 S.F." on said plan; and
- b. that portion of Lot 4 that is shown as "Proposed Access Easement , A = 7,310 S.F." on said plan; and
- c. that portion of Lot 5 that is shown as "Proposed Access Easement , A = 3,838 S.F." on said plan; and
- d. that portion of Lot 5 that is shown as "Proposed Access Easement , A = 3,070 S.F." on said plan; and

The four access easement areas described above together make up an access trail that goes from the cul-de-sac of Turkey Circle over portions of Lot 4 and Lot 5 to a point of terminus. The access easements are also delineated on Exhibit "B" attached hereto.

The rights of the lot owners in Ja-Mar Farm Estates are subject to the conditions and restrictions regarding the use of the Premises as set forth herein.

The Premises are also subject to a Preservation Restriction to be granted to the Massachusetts Historical Commission pursuant to Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws over that portion of the Premises that are shown on

Exhibit "B" as "Preservation Restriction Area, A = 2,012 S.F.". Said Preservation Restriction allows access to the said Massachusetts Historical Commission to maintain and preserve the Unmarked Grave Site, located within the preservation restriction area described above.

Except for their own activities on the Premises, the Grantee is not responsible for and does not undertake any liabilities or obligations relating to public access or the condition of the Premises pertaining to public access or any damages to the Premises arising from such public access.

The liability of Grantor with respect to any public access on said Premises shall be subject to the provisions of Section 17C of Chapter 21 of the General Laws.

#### **I. NOTICE AND APPROVAL:**

Whenever notice to or approval by the Grantee is required under the provisions of this Conservation Restriction, except in the case of an emergency, Grantor shall give said notice in writing by certified mail, return receipt requested, to the Grantee not less than sixty (60) days prior to the date the Grantor intends to undertake the proposed activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee 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.

Where the Grantee's approval is required, said notice shall state that said approval is needed and the timetable for response to said notice. The Grantee shall grant or withhold its approval by written notice sent by certified mail, return receipt requested, to the Grantor within sixty (60) days of receipt of the written request therefore. Grantee's approval, as appropriate, shall not be unreasonably withheld but shall only be granted upon a showing by Grantor that the proposed activity will not materially impair the purposes of this Conservation Restriction and the conservation values of the Premises. Provided that the required notice to Grantee sets forth the provision of this paragraph in that failure to respond within sixty (60) days after receipt of said notice is deemed approval of the proposed activity, if Grantee does not respond to the Grantor's request within said sixty (60) days in accordance with the provisions of this paragraph, then Grantor's request shall be deemed approved as to the party that did not respond.

Any notice that either party desires or is required to give to the other shall be sent addressed as follows:

To Grantor:                   483 Plymouth Street Realty Trust  
                                  10 Owl Drive  
                                  Sharon, MA 02067  
                                  Attention: Candace M. Gordon, Trustee

To Grantee: Middleborough Conservation Commission  
Middleborough Town Hall  
Nickerson Avenue  
Middleborough, MA 02346

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

#### J. EXTINGUISHMENT:

(1) Grantee's Receipt of Property Right. Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise for purposes of this paragraph to a real property right, immediately vested in Grantee, with a fair market value at any time that is equal to 80% of the then-current fair market value of the Premises as if unencumbered by this Conservation Restriction (minus any increase in value after the date of this grant attributable to improvements). Said ratio shall remain constant.

(2) Court Proceedings and Right of Grantee to Recover Portion of Proceeds at Disposition. If any occurrence ever gives rise to extinguishment or other release of this Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange or involuntary conversion of the Premises, shall be entitled to 80% of the proceeds in accordance with subparagraph J(1) above, subject, however to any applicable law which expressly provides for a different disposition of proceeds and provided, however, that if the Town of Middleborough shall be the owner of the fee interest in the Premises, it shall be entitled to 100% of such proceeds.

(3) Condemnation. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then Grantor and Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by Grantor and Grantee shall first be paid out of any recovered proceeds. The remaining proceeds shall be distributed between Grantor and Grantee in shares equal in proportion to the aforementioned ratio (though if a less-than-fee interest is so taken, the proceeds shall be equitably allocated according to the nature of the interest taken).

(4) Continuing Trust of Grantee's Share of Proceeds. Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes of this grant.

#### K. DURATION AND ASSIGNABILITY:

The burdens of this Conservation Restriction shall run with the Premises and shall be enforceable in perpetuity against Grantor, Grantor's successor's and assigns, and any subsequent record owner of the Premises. Grantee and the Commonwealth are authorized

to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction.

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by Grantee, except in the following instances from time to time: (i) as a condition of any assignment, Grantee requires that the purposes of this Conservation Restriction continue to be carried out, and (ii) the assignee, at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the General Laws, as an eligible donee to receive and hold this Conservation Restriction. Grantee will comply with Article 97 of the Amendments to the Constitution of Massachusetts, if applicable.

#### **L. 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 resulting from such causes.

#### **M. SUBSEQUENT TRANSFERS:**

Grantor agrees to expressly incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which Grantor conveys any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer.

Grantee shall give written notice to Grantor at least twenty (20) days prior to any assignment of this Conservation Restriction.

Failure of Grantor or Grantee to do so shall not impair the validity of this Conservation Restriction or limit its enforceability in any way.

#### **N. TERMINATION OF RIGHTS AND OBLIGATIONS:**

Notwithstanding anything to the contrary contained herein, the rights and 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 1) liability for acts or omissions occurring prior to transfer and 2) liability for the transfer itself if the transfer is in violation of this Conservation Restriction shall survive the transfer.

**O. ESTOPPEL CERTIFICATES:**

Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor a written certificate of compliance in a form suitable for recording, stating whether and with what exceptions or limitations the Premises or any portion thereof complies with the terms and conditions of this Conservation Restriction, and which otherwise evidences the status of this Conservation Restriction.

**P. EFFECTIVE DATE:**

This Conservation Restriction shall be effective when Grantor and Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and this Conservation Restriction has been recorded in the Registry of Deeds. Until such execution, all parties agreed to abide by the limitation and restrictions herein.

**Q. MISCELLANEOUS:**

(1) Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

(2) 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 this Conservation Restriction and the policy and purpose of Mass. Gen. Laws Chapter 184, Sections 31-33 and of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts. If any provision in 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.

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

(4) 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.

(5) Joint Obligation. The obligations imposed by this Conservation Restriction upon the parties that together comprise "Grantor" shall be joint and several.

(6) Pre-existing rights of the Public. Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises. Any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

(7) Grantee's Disclaimer of Liability. By its acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises not caused by the Grantee or its agents.

(8) Grantor's Rights. Except as expressly provided herein, Grantor shall not have any obligation to maintain the Premises but shall have the right to do so if it so elects in accordance with this Conservation Restriction.

(9) No Merger. No transfer of Grantor's or Grantee's interest in the Premises and no acquisition of any additional interest in the Premises by Grantor or Grantee shall be made if it will cause this Conservation Restriction to merge with the fee or have the effect of causing any of the terms hereof to be rendered unenforceable by reason of the so-called "doctrine of merger." Any such deed or transfer will not be effective until a like Conservation Restriction has been assigned to avoid merger.

(10) Grantor's Liability Regarding Public Access. The liability of Grantor with respect to any public access on said Premises shall be subject to the provisions of Section 17C of Chapter 21 of the General Laws.

No documentary stamps are required, as this Conservation Restriction is a gift.

Executed under seal this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**483 Plymouth Street Realty Trust**

By: \_\_\_\_\_  
**Candace M. Gordon as Trustee**

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss \_\_\_\_\_, 2010

On this day before me, the undersigned notary public, personally appeared Candace M. Gordon, proved to me through satisfactory evidence of identification which was a Massachusetts driver's license to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it in his stated capacity, duly authorized and voluntarily, as Trustee of **483 Plymouth Street Realty Trust**.

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

**ACCEPTANCE OF GRANT**

The Conservation Restriction granted by **Candace M. Gordon as Trustee of 483  
Plymouth Street Realty Trust** is accepted this        day of        , 2010 by the  
Middleborough Conservation Commission

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**THE COMMONWEALTH OF MASSACHUSETTS**

On this        day of        , 2010, before me, the undersigned notary  
public, personally appeared  
known personally by me, to be the person whose name is signed on the preceding or  
attached document, and acknowledged to me that he/she signed it voluntarily for its stated  
purpose as one of the members of the Town of Middleborough Conservation Commission.

\_\_\_\_\_  
Notary Public:

My commission expires:

**APPROVAL BY SELECTMEN**

We, the undersigned, being a majority of the Board of Selectmen of the Town of Middleborough hereby certify that a meeting duly held on \_\_\_\_\_, the Board voted to approve the foregoing Conservation Commission Restriction as being in the public interest pursuant to M.G.L. Ch. 184, sections 31-33.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

Plymouth, ss \_\_\_\_\_, 2010

On this day before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be a Selectmen of the Town of Middleborough whose name is signed on the preceding document, and acknowledged to me that he/she signed it in his/her stated capacity, duly authorized and voluntarily, on behalf of the Town of Middleborough for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to \_\_\_\_\_ has been approved in the public interest pursuant to M.G.L. Ch. 184, Section 32.

Date \_\_\_\_\_, 2008

\_\_\_\_\_  
Secretary of Energy and Environmental  
Affairs

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss \_\_\_\_\_, 2010

On this day before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the Secretary of the Executive office of Energy and Environmental Affairs of the Commonwealth of Massachusetts whose name is signed on the preceding document, and acknowledged to me that he signed it in his stated capacity, duly authorized and voluntarily, for its stated purpose.

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

## EXHIBIT A

### PROPERTY DESCRIPTION

Certain portions of the land of the Grantor in Middleborough, Plymouth County, Massachusetts as shown on a plan of land entitled "Lot Layout Sheet, Ja-Mar Farm Estates Definitive Subdivision in Middleborough, Massachusetts", which plan is dated September 23, 2004 and is recorded at the Plymouth County Registry of Deeds as Plan No. 42 of 2007 in Plan Book 52, Page 851. The portions of the land of the Grantor that are affected by the Restriction and that comprise the Premises hereunder are described as follows:

- a. that portion of Lot-3 that is shown as "Conservation Restriction Zone A = 97,054 +/- S.F." on said plan; and
- b. that portion of Lot-4 that is shown as "Conservation Restriction Zone A = 66,215 +/- S.F." on said plan; and
- c. that portion of Lot-4 that is shown as "Conservation Restriction Zone A = 6,161 +/- S.F." on said plan; and
- d. that portion of Lot-5 that is shown as "Conservation Restriction Zone A = 110,321 +/- S.F." on said plan; and
- e. that portion of Lot-6 that is shown as "Conservation Restriction Zone A = 52,828 +/- S.F." on said plan; and
- f. that portion of Lot-7 that is shown as "Conservation Restriction Zone A = 64,912 +/- S.F." on said plan; and
- g. that portion of Lot-8 that is shown as "Conservation Restriction Zone A = 37,062 +/- S.F." on said plan.

For Grantor's title see the deed from Louis F. Stanzione and Sharon M. Stanzione dated November 14, 2003 recorded in Plymouth County Registry of Deeds, Book 27024, Page 99 and the deed from AGS Development Corporation dated September 26, 2003 recorded in Plymouth County Registry of Deeds, Book 26723, Page 90.

The owners of each of the lots in Ja-Mar Farm Estates as shown on the plan of land entitled "Lot Layout Sheet, Ja-Mar Farm Estates Definitive Subdivision in Middleborough, Massachusetts", which plan is dated September 23, 2004 and is recorded at the Plymouth County Registry of Deeds as Plan No. 42 of 2007 in Plan Book 52, Page 851, shall have access over that portion of the Premises that that are shown as Proposed Access Easements on said above referenced plan. There are proposed access easements over portions of Lot 4 and Lot 5 as follows:

- e. that portion of Lot 4 that is shown as "Proposed Access Easement , A = 1,159 S.F." on said plan; and
- f. that portion of Lot 4 that is shown as "Proposed Access Easement , A = 7,310 S.F." on said plan; and

- g. that portion of Lot 5 that is shown as "Proposed Access Easement , A = 3,838 S.F." on said plan; and
- h. that portion of Lot 5 that is shown as "Proposed Access Easement , A = 3,070 S.F." on said plan; and

The four access easement areas described above together make up an access trail that goes from the cul-de-sac of Turkey Circle over portions of Lot 4 and Lot 5 to a point of terminus. The access easements are also delineated on Exhibit "B" attached hereto.

The rights of the lot owners in Ja-Mar Farm Estates are subject to the conditions and restrictions regarding the use of the Premises as set forth herein.

The premises are also subject to a Preservation Restriction to be granted to the Massachusetts Historical Commission pursuant to Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws over that portion of the Premises that are shown on Exhibit "B" as "Preservation Restriction Area, A = 2,012 S.F.". Said Preservation Restriction allows access to the said Massachusetts Historical Commission to maintain and preserve the Unmarked Grave Site, located within the preservation restriction area described above

**Jacqueline Shanley**

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**From:** Patricia Cassady  
**Sent:** Tuesday, May 11, 2010 10:07 AM  
**To:** Jacqueline Shanley  
**Subject:** RE: Ja Mar Conservation Restriction

Hi Jackie,

Sounds great, I will see the BOS on the 17<sup>th</sup> then at 7:20. It shouldn't take more than 10 minutes.

They have already signed for this CR it is just the last a final version. I think we will be done with this now – I hope.

Tricia

(I will e-mail you a copy of it for the BOS)

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**From:** Jacqueline Shanley  
**Sent:** Monday, May 10, 2010 11:05 AM  
**To:** Patricia Cassady  
**Subject:** RE: Ja Mar Conservation Restriction

Hi Tricia,

Hope you had a nice Mother's Day!

If I put you on 5/17 agenda at 7:20, do you think you would be done by 7:30 PM? I'm just trying to find a time around some other appointments.

Thanks.

Jackie

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**From:** Patricia Cassady  
**Sent:** Friday, May 07, 2010 10:06 AM  
**To:** Jacqueline Shanley  
**Subject:** Ja Mar Conservation Restriction

Hi Jackie,

There were additional changes to the Ja Mar (Turkey Farm) Conservation Restriction and so now I need to have the BOS sign a new copy of the CR.

Could I be put on the May 17<sup>th</sup> agenda (I figure you are having a meeting that night since we are not having the Town Meeting now)?

Thanks so much.

Tricia

Patricia J. Cassady, Agent

5/11/2010

Middleborough Conservation Commission  
20 Centre Street, 2nd Floor Bank Building  
Middleborough, Ma. 02346

[pcssdy@middleborough.com](mailto:pcssdy@middleborough.com)

508-946-2406

## Jacqueline Shanley

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**From:** Joanna Ford [Joanna.Ford@state.ma.us]

**Sent:** Tuesday, May 11, 2010 11:54 AM

**To:** Abington; Wareham; Bridgewater; Carver; Brockton; East Bridgewater; Hanover; Hanson; Hingham; Kingston; Lakeville; Marion; Mattapoisett; Jacqueline Shanley; Rockland; Duxbury; Halifax; Hull; Plympton; Scituate; Plymouth; Marshfield; Norwell; Pembroke; Rochester; West Bridgewater; Whitman

**Subject:** REMINDER: Upcoming ABCC Seminar

*If you have already registered for the seminar please disregard this reminder.*

Dear members of the local licensing authorities, administrative staff, and city solicitors/town counsel:

The ABCC would like to invite you to an information-sharing seminar on Tuesday, May 18, 2010, at 11:00 AM at 1 Ashburton Place, Boston in the Ashburton Cafe, located next to the cafeteria in the basement. We are going to discuss the upcoming launch of:

- 1.The recently revised retail license application,
- 2.The revised and updated ABCC website and,
- 3.The impact of the new law on Privacy Protection under M.G.L. c. 93H.

As these seminars are well attended and capacity is limited, please register on line at <http://www.mass.gov/abcc/education/training.htm>, along with your staff and any interested law enforcement officials. Thank you for your attention and continuing cooperation in the ABCC's efforts to share information with all our partners in licensing at the municipal level of government. If you have any questions, please feel free to contact our office at 617-727- 3040 x 31. For your convenience, directions are listed below.

Sincerely,

Kim Gainsboro  
Chairman

### DIRECTIONS TO:

McCormack Building, One Ashburton Place, Boston, MA 02108

MapQuest Directions

Google Directions (<http://maps.google.com/maps?hl=en&tab=w>)

By car from the North

Take Interstate 93 SOUTH to Exit 26, Storrow Drive and North Station. Stay in the LEFT lane and follow signs to Storrow Drive. Once out of the tunnel stay in LEFT lane and take the first exit on the LEFT towards Government Center and Kendall Square. At the end of the exit ramp, go straight across under the Red Line tracks following signs to Government Center which bears to the left onto Cambridge Street. At the seventh light (a little under a half a mile) turn right onto Somerset Street. Somerset Street turns onto Ashburton Place at the top of the hill. One Ashburton Place will be on the RIGHT.

By car from the South

Take Interstate 93 NORTH. Take Exit 23, Government Center. Stay in the LEFT lane of the exit ramp and turn left at the first light onto North Street. Go straight through one set of lights. At the second set of lights, turn LEFT onto Congress Street. At the first intersection turn RIGHT onto State Street. State Street turns into Court Street. Turn LEFT onto Tremont Street. At the first light turn RIGHT onto Beacon Street. Turn RIGHT onto Somerset Street. Turn LEFT onto Ashburton Place. One Ashburton Place will be on the RIGHT.

By car from the West

Take the Massachusetts Turnpike (Interstate 90) EAST through the Boston tolls. Take Exit 22, Copley Square/Prudential. Stay in the RIGHT lane and follow the signs for Copley Square. This will lead you to Stuart Street. Continue straight through five lights. At the sixth light, turn LEFT on Charles Street South. Continue through two traffic lights passing by Boston Common. At the third light, make a RIGHT on Beacon Street. The State House will be on your LEFT. Take the second LEFT after the State House onto Somerset Street. Turn LEFT onto Ashburton Place. One Ashburton Place will be on the RIGHT.

By car from the Northwest

Take Route 2 East into Cambridge, MA. Take the Fresh Pond Parkway (this is a winding road) and follow signs for downtown Boston and Storrow Drive EAST. Take Storrow Drive for approximately 5 miles. Take the Government Center and Cambridge Street exit. At the end of the ramp at the traffic light, go straight across following signs to Government Center which bears to the left onto Cambridge Street. At the seventh light (a little under a half a mile) turn right onto Somerset Street. Somerset Street turns onto Ashburton Place at the top of the hill. One Ashburton Place will be on the RIGHT.

### DIRECTIONS TO:

McCormack Building, One Ashburton Place, Boston, MA 02108

By Public Transportation (MBTA)

Red Line (from Alewife, Ashmont or Braintree Stations)

Take the Red Line to Park Street Station. Once outside the station walk up Park Street toward the State House. Turn RIGHT onto Beacon Street. Make the first LEFT onto Bowdoin Street. Take the next RIGHT onto Ashburton Place. One Ashburton Place will be on the LEFT.

Orange Line (from Oak Grove or Forest Hills Stations)

Take train to Downtown Crossing. Walk up Winter Street (away from Filenes and Macys) and turn RIGHT onto Tremont Street. Take first

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LEFT onto Park Street. Walk up Park Street to the State House. Turn RIGHT onto Beacon Street. Make the first LEFT onto Bowdoin Street. Take the next RIGHT onto Ashburton Place. One Ashburton Place will be on the LEFT.

Blue Line (from Wonderland or Airport Stations)

Take train to Government Center Station. At Government Center Station, take a LEFT onto Cambridge Street, which turns into Tremont Street. Take first RIGHT onto Beacon Street. Take the next RIGHT onto Somerset Street. Turn LEFT onto Ashburton Place. One Ashburton Place will be on the RIGHT.

Green Line (from the Riverside, Cleveland Circle, Boston College and Arborway Lines)

Take the Green Line to Park Street Station. Once outside the station walk up Park Street toward the State House. Turn RIGHT onto Beacon Street. Take the first LEFT onto Bowdoin Street. Turn RIGHT onto Ashburton Place. One Ashburton Place will be on the LEFT.

Commuter Rail (take train to either South Station or North Station)

From South Station, take the Red Line to Park Street Station. Once outside the station walk up Park Street toward the State House. Turn RIGHT onto Beacon Street. Make the first LEFT onto Bowdoin Street. Take the next RIGHT onto Ashburton Place. One Ashburton Place will be on the LEFT.

From North Station, take the Green Line to Government Center Station. At Government Center Station, take a LEFT onto Cambridge Street, which turns into Tremont Street. Take first RIGHT onto Beacon Street. Take the next RIGHT onto Somerset Street. Turn LEFT onto Ashburton Place. One Ashburton Place will be on the RIGHT.