

CONSERVATION RESTRICTION AND EASEMENT

_____, 2010

AP Cambridge Partners II, LLC, a Delaware limited liability company, having a usual address c/o O'Neill Properties Group, 2701 Renaissance Boulevard, Fourth Floor, King of Prussia, PA 19406 ("Grantor"), acting pursuant to Section 31 *et seq.* of Chapter 184 of the General Laws, hereby grants to the Town of Belmont, a Massachusetts municipal corporation having an address at 455 Concord Avenue, Belmont, Massachusetts 02478 acting by and through its Conservation Commission, pursuant to Section 8C of Chapter 40 of the General Laws ("Grantee") in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction and Easement on a parcel of land located in the Town of Belmont, Massachusetts, constituting approximately _____ () acres, said parcel being described on the plan entitled " _____ " (the "Plan") attached hereto as Exhibit A and made a part hereof [OR RECORDED HERewith (AS A SEPARATE PLAN)] the "Premises".

WHEREAS, the Grantor is the owner of record of the Premises by virtue of a deed from Arthur D. Little Real Estate Corporation. Said deed is registered with the Middlesex South District of the Land Court and recorded in the Middlesex South Registry of Deeds as document no. 1111887 and Book 30386, Page 240, respectively.

WHEREAS, the Grantor desires to convey to the Grantee a Conservation Restriction and Easement over the Premises for the purposes of conservation and protection of open space.

WHEREAS, the Premises contain unusual, unique or outstanding qualities, the protection of which in their natural or open condition will be of benefit to the public. These qualities include: wetlands and floodplains areas, wooded upland habitat, native grasses and wildflowers, and significant habitat for native plants and wildlife, as well as scenic beauty and opportunities for passive recreation consistent with the protection of open space and habitat. The views across Little Pond are important for their scenic values. The diversity of natural habitats on the Premises, and its location abutting the Division of Conservation and Recreation (the "DCR") Alewife Reservation, make this a parcel of ecological and conservation value. Baseline documentation of the conservation values of the Premises has been prepared by Grantor and approved by Grantee and is available for review in the offices of Grantee.

WHEREAS, the Grantor agrees to grant to the Grantee a Conservation Restriction and Easement for the purposes and upon the terms set forth herein.

NOW THEREFORE, in full consideration of the mutual covenants set forth hereinafter, the Grantor and Grantee agree as follows:

1. Purposes.

The Grantee hereby acquires this Conservation Restriction and Easement as hereby authorized by Sections 31-33 of Chapter 184 of the General Laws of the Commonwealth of Massachusetts, as amended, and as otherwise authorized by any and all powers and authorities.

The purpose of this Conservation Restriction and Easement are to ensure that the Premises are preserved and protected in perpetuity, in the name of and on behalf of the Town of Belmont, and are retained predominantly in their natural, scenic and undeveloped condition for habitat protection, watershed protection, and other conservation uses consistent with the spirit and intent of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and to prevent any use of the Premises that will significantly impair or interfere with the conservation values thereof.

2. Prohibited Acts and Uses.

Except as otherwise provided herein, the Grantor shall neither perform nor permit others to perform any of the following acts and uses on the Premises:

- a) Constructing or placing of any building, fences, asphalt or concrete pavement, sign, utility pole, tower, conduit, line or other temporary or permanent structure or facility on or above the Premises;
- b) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit unless in accordance with Section 3(b) hereof;
- c) 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 or the installation of underground storage tanks;
- d) Cutting, removing or otherwise destroying trees, grasses or other vegetation, unless in accordance with Sections 3(a), 3(b), 3(c) or 3(f) hereof or as otherwise approved by the Grantee;
- e) The subdivision of the Premises; except as permitted in Section 3, below, no portion of the Premises may be built upon, provided that it may be used towards calculations of open space, green space, and other zoning or regulatory calculations in conjunction with the development of Grantor's adjacent property;
- f) Activities detrimental to drainage, flood control, water, conservation, erosion control or soil conservation; and
- g) Any other use of the Premises or activity which would materially impair significant conservation interests unless necessary for the protection of the conservation interests that are the subject of this Conservation Restriction and Easement.

3. Exceptions to Otherwise Prohibited Acts and Uses.

The following acts and uses otherwise prohibited in paragraph 2 are permitted, but only if such acts or uses do not materially impair significant conservation interests as determined by the Grantee:

- a) The construction, erection and maintenance of storm water maintenance systems, including, without limitation, stormwater detention basins and floodplain compensation areas, to serve the adjacent land of the Grantor are permitted with prior notice to the Grantee provided that such systems are located and constructed in a manner which minimizes the impact on the conservation values of the Premises and provided that the Grantor shall promptly restore the site of such installation, as nearly as may be practicable, to an ecologically improved condition as determined during the approval process with the Belmont Zoning Board of Appeals or Massachusetts Housing Appeals Committee;
- b) The restoration and maintenance of the wetlands areas and the enhancement of certain uplands areas on the Premises in accordance with the plan entitled "Open Space Maintenance Plan, Belmont Uplands Site, Acorn Park Drive and Frontage Road, Belmont" dated September 2, 2010, prepared by Epsilon Associates;
- c) The general maintenance of, including, but not limited to, the mowing of grass and the selective removal of invasive wetland species within, any stormwater detention basins and floodplain compensation areas to ensure that the capacity of such basins and compensation areas are not diminished and the ecological value of the vegetation is retained as much as may be practicable, so long as the same is scheduled and conducted in a manner which avoids the nesting season of birds located at the Premises;
- d) The right, but not the obligation, to monitor and study, or to permit others to monitor and study, plant and animal populations, plant communities, natural habitats and landscape features on the Premises with prior written approval from Grantee;
- e) The right to conduct, or permit others to conduct, management of the Premises for the benefit of native fauna (including ecologically appropriate methods to promote native species and to manage invasive species) and/or for the purpose of identifying and restoring landscape and/or native plant features within the Premises, with prior written approval from Grantee; and
- f) The installation, maintenance and use of new underground public utilities to serve the adjacent land of the Grantor is permitted with prior notice to the Grantee provided that such utilities are located and constructed in accordance with all applicable laws, ordinances, by-laws, codes and regulations and in a manner which minimizes the impact on the conservation values of the Premises and provided that the Grantor shall promptly restore the site of such installation, as nearly as may be practicable, to an ecologically improved condition.

4. Permitted Acts and Uses.

All acts and uses not prohibited by Paragraphs 3 and 4 are permissible if they are clearly consistent with the conservation purposes of this Conservation Restriction and Easement and with the prior approval of Grantee. All uses must comply with local, state, and federal laws.

5. Notice and Approval.

Whenever notice to or approval by Grantee is required under the provisions of Paragraphs 3 or 4, Grantor shall notify Grantee in writing not less than ninety (90) days prior to the date Grantor intends to undertake the 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 Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction and Easement. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within ninety (90) days of receipt of Grantor's written request therefor. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction and Easement. Failure of Grantee to respond in writing within such ninety (90) days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time.

6. Access.

The Grantee through its duly designated officers, directors, members, employees, representatives, or agents shall have the right to enter the Premises, following reasonable notice and at reasonable times and in a reasonable manner for the purpose of inspecting the Premises, determining compliance with the terms of this Conservation Restriction and Easement and preventing, abating, or remedying any violations thereof.

7. Use by Others.

Except as provided in the foregoing paragraph, no rights to enter the Premises are granted hereby to the Grantee, to the public or to any other person.

8. Legal Remedies of Grantee.

- a) Legal and Injunctive Relief. The rights hereby granted shall include the right to enforce this Conservation Restriction and Easement 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 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 the Grantee.

- b) Reimbursement of Costs and Enforcement. The Grantor, and thereafter the successors and assigns of the Grantor, covenant and agree to reimburse the Grantee for all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Conservation Restriction and Easement or in remedying or abating any violation thereof. The reimbursement obligation of any party hereunder shall be limited to violations caused or permitted by said party within a portion of the Premises then owned by such party.
- c) Grantee's Disclaimer of Liability. By its acceptance of this Conservation Restriction and Easement, the 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 and Easement shall to any extent be held invalid, the remainder shall not be affected.
- e) Non-Waiver. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction and Easement or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

9. Assignability.

- a) Running of the Burden. The burdens of this Conservation Restriction and Easement shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.
- 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 and Easement. 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 and its successors and assigns agree themselves to execute any such instruments upon request.
- c) Running of the Benefit. The benefits of this Conservation Restriction and Easement shall be in gross and shall not be assignable by the Grantee, except in the following instances and from time to time:
 - (i) as a condition of any assignment, the Grantee requires that the purpose of this Conservation Restriction and Easement continue to be carried out;
 - (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 this Conservation Restriction and Easement directly; and

- (iii) the Grantee complies with the provisions required by Article 97 of the Amendments to the State Constitution.

10. Subsequent Transfers.

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction and Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises.

11. Acts Beyond the Grantor's Control.

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

12. Termination of Rights and Obligations.

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

13. Estoppel Certificates.

Upon request by the Grantor, the Grantee shall within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction and Easement.

14. Amendment.

If circumstances arise under which an amendment to or modification of this Conservation Restriction and Easement would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction and Easement; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction and Easement or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Section 31-33 of Chapter 184 of the General Laws of Massachusetts, and any amendment shall be consistent with the purposes of this Conservation Restriction and Easement, shall not affect its perpetual duration, and shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts,

grants or funding requirements. Any such amendment shall be approved by the parties herein and recorded in the Middlesex Registry of Deeds.

15. Effective Date.

This Conservation Restriction and Easement shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded, or if registered land, it has been registered.

16. Recordation.

The Grantor shall record this instrument in timely fashion in the Middlesex County Registry of Deeds.

Executed under seal this ____ day of _____, 2010.

AP CAMBRIDGE PARTNERS II, LLC

By: AP Cambridge Partners Management Co., LLC

By: _____
Name: J. Brian O'Neill
Title: Manager

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

_____, 2010

Then personally appeared the above-named J. Brian O'Neill, manager of AP Cambridge Partners Management Co., LLC, a Delaware limited liability company, which limited liability company is a manager of AP Cambridge Partners II, LLC, a Delaware limited liability company (the "LLC"), proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of AP Cambridge Partners Management Co., LLC, in its capacity as manager of the LLC, before me.

NOTARIAL SEAL

Notary Public
My Commission Expires: _____

ACCEPTANCE OF GRANT

The Town of Belmont, acting by and through its Conservation Commission pursuant to the provisions of G.L. c.40, §8C, hereby accepts the above Conservation Restriction and Easement from AP Cambridge Partners II, LLC on this _____ day of _____, 2010.

TOWN OF BELMONT
By its Conservation Commission

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. _____, 2010

Then personally appeared the above-named _____, member of the Belmont Conservation Commission and, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged the foregoing instrument to be his/her free act and deed, before me.

Notary Public
My Commission Expires:

APPROVAL BY BELMONT BOARD OF SELECTMEN

We, the undersigned, being a majority of the Board of Selectmen of the Town of Belmont, Massachusetts, hereby certify that at a meeting duly held on _____, 2010 the Selectmen voted to approve the foregoing Conservation Restriction and Easement to the Town of Belmont Conservation Commission pursuant to G.L. c. 184, §32.

TOWN OF BELMONT
By its Board of Selectmen

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. _____, 2010

Then personally appeared the above-named _____, member of the Belmont Board of Selectmen and, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged the foregoing instrument to be his/her free act and deed, before me.

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 and Easement to the Town of Belmont has been approved in the public interest pursuant to Massachusetts General Laws Chapter 184, Section 32. Said approval is not to be construed as representing the existence or non-existence of any pre-existing rights, if any, in and to the Premises, and any such pre-existing rights if any, are not affected by the granting of this Conservation Restriction and Easement.

Date: _____

Secretary, Executive Office of
Environmental Affairs

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