

CERTIFY

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William P. O'Donnell
WILLIAM P. O'DONNELL, REGISTER

CONSERVATION COVENANT
GLEN ELLEN CONDOMINIUM
MILLIS, MA

I. GRANTOR CLAUSE:

Toll MA Land III Limited Partnership, a Massachusetts limited partnership with an office at 116 Flanders Road, Suite 1200, Westborough, MA 01581, its successors and assigns (“Grantor”), in consideration of less than One Hundred Dollars (\$100.00) paid,

hereby grants, with Quitclaim Covenants,

to the Town of Millis (“Grantee”), a municipal corporation of Norfolk County, Massachusetts acting by and through its Conservation Commission established under Section 8C of Chapter 40 of the General Laws of Massachusetts, its successors and permitted assigns,

in perpetuity and exclusively for conservation and passive recreation purposes, the following described Conservation Covenant, in accordance with those certain conditions set forth in the Special Permit, issued by the Millis Planning Board, for a Senior Residential Community, filed with the Norfolk Registry District as Document No. 1251936 and recorded with the Norfolk Registry of Deeds in Book 29942, Page 472, as amended by Decision of the Planning Board, filed as Document No. 1399591, and recorded at Book 35947, Page 303, as amended at Book 36855, Page 488, Book 37068, Page 480, Book 37068, Page 485 (the “Special Permit”), together with a Decision of the Millis Planning Board on the Application for Approval of the Definitive Plan, filed with the Norfolk Registry District as Document No. 1399592, and recorded with the Norfolk Registry of Deeds at Book 35947, Page 337, as amended as amended at Book 36855, Page 492 (the “Definitive Plan Approval”).

II. PROPERTY DESCRIPTION:

The open space to the east of Bogastow Brook, and including the public parking area and that portion of the open space trail to the west of Bogastow Brook leading from said public parking area, covering approximately 78.24 acres of land, more or less (the “Premises”), and identified on that certain plan entitled: “Open Space Plan,” prepared by ESE Consultants, Inc., dated August 28, 2019 (the “Open Space Plan”), recorded herewith.

III. PURPOSES:

The Premises contains unusual, unique or outstanding qualities, the protection of which in their predominantly natural or open condition will be a benefit to the public. The Open Space Parcels are distinguished for their wildlife habitat, and potential value for passive recreation. The unusual, unique or outstanding qualities of the Premises include:

Glen Ellen Condominium, Millis, MA

SEE PLAN FILED IN

PLAN BOOK 685 PAGE 21

VI. ACCESS: N O T N O T
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The Conservation Covenant hereby conveyed ~~grants~~ to the Grantee and its representatives the right to enter the Premises at reasonable times and in a reasonable manner for the purposes of inspecting the same to determine compliance herewith.

The Conservation Covenant hereby grants public access to the Premises as identified on the Open Space Plan, subject to the terms and conditions of this Covenant, including reasonable rules and regulations regarding hours of use, rubbish disposal, parking and other operational requirements, provided that said rules and regulations are applied equally to the unit owners at the Glen Ellen Condominium, guests of said unit owners, and members of the public.

VII. EXTINGUISHMENT:

- A. Grantee's Receipt of Property right
The Grantor and the Grantee agree that the donation of this Conservation Covenant gives rise for purposes of this paragraph to a real property right immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Covenant determined at the time of the gift bears to the value of the unrestricted Premises at that time.
- B. Value of Grantee's Property Right
Such proportionate value of the Grantee's property right shall remain constant.
- C. Grantor/Grantee Cooperation Regarding Public Action
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 the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action.

VIII. ASSIGNABILITY:

- A. Running of the Burden
The burdens of this Conservation Covenant 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 Covenant; the Grantor on behalf of themselves and their successors an assigns appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on their behalf. Without limiting the foregoing, the Grantor and their successors and assigns agree themselves to execute any such instruments upon request.

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C. ~~Running of the Benefit~~

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The benefits of this Conservation Covenant shall be in gross and shall not be assignable by the Grantee, except in the following instances and from time to time:

- (i) 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 26 of Chapter 184 of the General Laws as a "Governmental Body," and
- (ii) Grantee complies with Amend, Art. 97 of the Massachusetts Constitution.

IX. SUBSEQUENT TRANSFERS:

The Grantor agrees to incorporate by reference the terms of this Conservation Covenant in the Master Deed to the Glen Ellen Condominium. Failure of the Grantor to do so shall not impair the validity of this Conservation Covenant or limit its enforceability in any way. Nothing contained herein shall be deemed to preclude Grantor from conveying the fee interest in the affected property, subject at all times, to the terms and conditions of this Conservation Covenant.

X. ESTOPPEL CERTIFICATES:

The Grantee shall within thirty (30) days of written request by Grantor, execute and deliver to the Grantor an estoppel certificate, which certifies the Grantor compliance with any obligation of the Grantor contained in this Conservation Covenant.

XI. MISCELLANEOUS:

A. Controlling Law

The interpretation and performance of this Conservation Covenant shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal Construction

Any general rule of construction to the contrary notwithstanding, this Conservation Covenant shall be liberally construed in favor of the grant to effect the Purposes of this Conservation Covenant. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purposes of this Conservation Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Entire Agreement

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

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D. ~~Joint~~ ~~Obligation~~ I A L O F F I C I A L
The obligations imposed by this Conservation Covenant upon the parties that together comprise "Grantors" shall be joint and several.

E. 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.

F. Pre-existing Rights of the Public
Approval of this Conservation Covenant by any municipal officials 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, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Covenant.

G. Compliance with Applicable Law
The exercise of any right reserved by Grantor, their successors and assigns of this Conservation Covenant shall be in compliance with the then-current Zoning By-Law of the Town of Millis, and all other applicable federal, state, and municipal law.

H. Notices
Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantee: Town of Millis
Conservation Commission
900 Main Street
Millis, MA 02054

With a copy to: Jason R. Talerman
Mead, Talerman & Costa, LLC
730 Main Street, Suite 1F
Millis, MA 02054
jay@mtclawyers.com

To Grantor: Toll MA Land III Limited Partnership
116 Flanders Road, Suite 1200
Westborough, MA 01581

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XII. EFFECTIVE DATE AND TERM:

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This Conservation Covenant shall be effective when the Grantor and the Grantee have executed it and it has been recorded with the Norfolk Registry of Deeds. Per the cases, *Killorin v. Zoning Board of Appeals of Andover*, 80 Mass. App. Ct. 655, 657 (2011) and *Samuelson v. Planning Board of Orleans*, 86 Mass. App. Ct. 901 (2014), this Covenant is granted as a condition of the Special Permit and Definitive Plan Approval and shall serve as a perpetual restriction on the Premises. Any expiration of this Covenant shall not affect the perpetual nature of the condition. Notwithstanding the perpetual nature of this Covenant, the Town at its option, may renew the Covenant, by recording a notice of continuation, pursuant to M.G.L. c.184, Section 27.

XIII. RECORDATION

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

For the Grantor's title, see the Owner's Certificate of Title No. 197974 filed with the Norfolk Registry District of the Land Court, and the Deed recorded with the Norfolk Registry of Deeds at Book 35958, Page 222; See also Notices of Voluntary Withdrawal of Land from the Registration System, filed as Document 1413337, and recorded at Book 36479, Page 454.

For Certificate of Vote of Toll Northeast LP Company, Inc., see Certificate recorded at Book 36657, Page 114.

IN WITNESS WHEREOF, the undersigned on behalf of Toll MA Land III Limited Partnership has hereunto set his hand and seal as of August 28, 2019.

Toll MA Land III Limited Partnership
By: Toll Northeast LP Company, Inc., General Partner



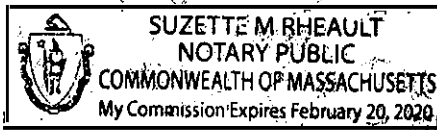
By: David G. Bauer, Division President

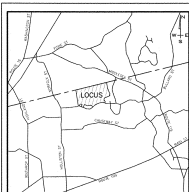
N O T N O T
COMMONWEALTH OF MASSACHUSETTS

Worcester, ss. O F F I C I A L O F F I C I A L

On this 29th day of August, 2019, before me, the undersigned notary public, personally appeared David G. Bauer, Division President of Toll Northeast LP Company, Inc., General Partner of Toll MA Land III Limited Partnership, personally known to me and acknowledged to me that he signed the foregoing document voluntarily on behalf of Toll MA Land III Limited Partnership, for its stated purpose.


Notary Public





NOTES:

1. REFER TO AMENDMENT TO DECISION OF PLANNING BOARD OF 8/18/10 PERMITTED RECORDED IN NORFOLK REGISTRY OF DEEDS BOOK 2887 PAGE 387.
2. REFER TO DECISION OF PLANNING BOARD AND SPECIAL PERMIT DECISION OF NORFOLK REGISTRY OF DEEDS BOOK 2887 PAGE 387.
3. REFER TO DECISION OF PLANNING BOARD FOR APPROVAL OF DEFINITIVE PLAN RECORDED IN NORFOLK REGISTRY OF DEEDS BOOK 2887 PAGE 387.
4. THESE SHALL BE A PERPETUAL RESTRICTION ON THE 19.24 ACRES SHOWN HEREBIN AND DELINEATED AS OPEN SPACE-OBSERVATION RESTRICTED.
5. PUBLIC SHALL HAVE PERMANENT PUBLIC ACCESS FROM THE PARKING LOT AND TRAIL LEADING TO BOGASSTON BROOK, AND OPEN SPACE EAST OF THE CENTERLINE OF THE BOGASSTON BROOK.

OPEN SPACE PLAN OF ENANTIA

LEGEND

- PUBLIC OPEN SPACE
- OPEN SPACE- CONSERVATION RESTRICTED (19.24 AC)
- OPEN SPACE - COMMON AREA (29.3 AC)

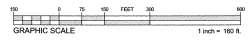
*TOTAL OPEN SPACE=48.5 ACRES ±

MILLS
 MAP L1075-2344
 MAP D. LOT 30
 TOLL MA LAND III LIMITED
 PARTNERSHIP
 CERTIFICATE NO. 197114.4
 DEED BK. 3090 PG. 222
 TOTAL LOT AREA
 229.46 ACRES



**Norfolk Registry of Deeds
 Dedham, Mass.**
 Recorded September 17, 2019
 With G-1411
 Toll MA Land III Limited
 Partnership To Town of Mills
 Filed as Page 21
 PL BK 655
 Attest: *[Signature]* Registrar

REGISTRY USE



CERTIFICATION:
 I HEREBY CERTIFY THAT THIS PLAN HAS MADE IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTRARS OF DEEDS.
 I HEREBY CERTIFY THAT THE PROPERTY LINES SHOWN ARE THE LINES DIVISIONS EXISTING OWNERSHIP AND THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS AND SHOWS (D.B.L. CH 4; SEC 81A)



[Signature] Shawn L. Gray, P.L.S. 8/20/19 DATE

ESE CONSULTANTS
 ENGINEERING • PLANNING • ARCHITECTURE • ENVIRONMENTAL

THE FINCHER HOUSE • 14401 STATE STREET • WESTBOROUGH, MA 01581
 T: 508.352.8100

DATE	DESCRIPTION

OPEN SPACE PLAN
 PREPARED FOR
 TOLL MA LAND III
 LIMITED PARTNERSHIP
 IN
 MILLS, MASSACHUSETTS

DATE	SCALE
08/20/19	1"=100'
DRAWN BY	SCALE
SKB	1/8"=1"
CHECKED BY	DATE
SKB	08/20/19
DATE	SCALE
08/20/19	1"=100'
DATE	SCALE
08/20/19	1"=100'