

Thomas M. Bowes  
President  
District 3

Shannon L. Hume  
At Large

CHARLES B. Ryan  
At Large

CHARLES C. Kokoros  
District 1

JOHN C. MULLANEY  
District 2



Sean E. Powers  
Vice President  
At Large

Stephen C. O'Brien  
District 4

Michael J. Owens  
District 5

PAUL "DAN" CLIFFORD  
District 6

## OFFICE OF THE TOWN COUNCIL

### - AGENDA -

**December 16, 2014** • Horace T. Cahill Auditorium, Town Hall • Starting Time: 7:30<sub>PM</sub>

#### PLEDGE OF ALLEGIANCE/MOMENT OF SILENCE

#### ANNOUNCEMENTS

- 086 14 Councilor Hume: Recognition: Linda Silowan/Kevin Bears

#### APPROVAL OF MINUTES

- December 2, 2014

#### CORRESPONDENCE

- 096 14 Council President: Clerk of the Council – 6 Month Evaluation

#### CITIZEN CONCERNS/COUNCIL RESPONSE

#### COMMUNICATIONS AND REPORTS FROM THE MAYOR AND TOWN BOARDS

- 097 14 Council President Discussion Town Charter Article 8 Section 8-5 Periodic Review of Charter and Ordinances
- 098 14 Town Clerk: Travel Policy – Assistant Town Clerk - MMA Conference
- 099 14 Council President: Travel Policy – Councilors/Clerk of the Council – MMA Conference

#### OLD BUSINESS

- 14 072 Mayor: Possible Town Land Sale or take up any action relative thereto (**PUBLIC HEARING**)

#### NEW BUSINESS

None

**Refer to Committee on Ways & Means**

- 14 076 Pond Street CPA Conservation Restriction Braintree CR #4 or take up any action relative thereto
- 14 077 Franklin Street CPA Conservation Restriction Braintree CR #5 or take up any action relative thereto

**Topics the Chair does not reasonably anticipate will be discussed**

**UPCOMING MEETINGS:**

Committee on the Department of Public Works - **WEDNESDAY, DECEMBER 17, 2014 @ 4:00pm**

Committee on Ordinance & Rules - **TUESDAY, JANUARY 6, 2014 @ 6:00pm**

Committee on Ways & Means - **TUESDAY, JANUARY 6, 2014 @ 7:00pm**

COUNCIL - **TUESDAY, JANUARY 6, 2014 @ 7:30pm**

**ADJOURNMENT**



Thomas M. Bowes  
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## OFFICE OF THE TOWN COUNCIL

### December 2, 2014

## MINUTES

A meeting of the Town Council was held in the Horace T. Cahill Auditorium, Braintree Town Hall, on Tuesday, December 2, 2014 beginning at 7:30p.m.

Council President Bowes was in the chair.

The Clerk of the Council conducted the roll call.

Present: Thomas Bowes, President  
Sean Powers, Vice President  
Stephen O'Brien  
Michael Owens  
Paul Dan Clifford  
Charles Kokoros  
John Mullaney  
Charles Ryan

Not Present: Shannon Hume

Others: Michael Coughlin, Chief of Staff  
Peter Morin, Town Solicitor  
Christine Stickney, Director Planning & Community Development  
Marybeth McGrath, Director Municipal Licensing  
Richard McDermott, Harbormaster  
Gary Rosen, Assistant Harbormaster

### **ANNOUNCEMENTS**

### **APPROVAL OF MINUTES**

- November 18, 2014

**Motion:** by Councilor Powers to approve

**Second:** by Councilor Kokoros

**Vote:** For (8), Against (0), Absent (1-Hume)

## CITIZEN CONCERNS/COUNCIL RESPONSE

### COMMUNICATIONS AND REPORTS FROM THE MAYOR AND TOWN BOARDS

#### OLD BUSINESS

- **14 069 Mayor: Supplemental Appropriations FY 15 (tabled to December 2, 2014 at 7:30pm) or take up any action relative thereto**

Council President stated we need a Motion to take Order 14 069 Item #14 OFF the table.

**Motion:** by Councilor Powers to take Order 14 069 Item #14 OFF the table

**Second:** by Councilor Kokoros

**Vote:** For (8), Against (0), Absent (1- Hume)

**Motion:** by Councilor Powers to continue public hearing on Order 14 069 Item #14

**Second:** by Councilor Kokoros

**Vote:** For (8), Against (0), Absent (1- Hume)

Mike Coughlin, Chief of Staff presented Council with a spreadsheet describing what other towns/cities have this position and which department is this position placed in those towns. The priorities for this Zoning Administrator would be communication, research and review. It will enhance work that needs to get done in a timely manner.

Councilor O'Brien stated I have the data. I rise in support. I hope both departments work together. I hope this position ends up in Planning.

Council President stated this position will streamline support for our residents.

Council President asked if any member of the Council or anyone from the public would like to speak on 14 069 Item #14. Hearing none.

**Motion:** by Councilor Powers to close public hearing

**Second:** by Councilor Kokoros

**Vote:** For (8), Against (0), Absent (1- Hume)

Councilor Powers read Motion.

14. Planning and Development- To establish and fund Zoning Administrator position to staff and support the ZBA.

**MOTION:** That the sum of \$35,000 be transferred from the Town's Stabilization Fund the Planning and Development Department/ Program 04- Planning / Zoning Administrator account.

**Motion:** by Councilor Powers to approve tabled item 14 069 (14)  
**Second:** by Councilor O'Brien  
**Vote:** For (8), Against (0), Absent (1- Hume)

• **14 071 Mayor: Appointment - Assistant Harbormaster or take up any action relative thereto**

Motion by Councilor Powers to approve the appointment of Gary Rosen to Assistant Harbormaster.

**Motion:** by Councilor Powers to approve Order 14 071  
**Second:** by Councilor Kokoros  
**Vote:** For (8), Against (0), Absent (1-Hume)

**NEW BUSINESS**

None

Councilor Kokoros proposed "SAME NIGHT" action tonight on the three re-appointments to the Arts Lottery Council.

Council President asked if there are any objections. With no objections, we will vote on Order 14 073, Order 14 074 and Order 14 075.

Councilor Powers read the following Motions:

• **14 073 Mayor: Re-Appointment-Arts Lottery Council - or take up any action relative thereto**

MOTION:

To approve the re-appointment of Joan Carroll to the Arts Lottery Council pursuant to Section 3-3 of the Charter of the Town of Braintree.

**Motion:** by Councilor Powers to approve Order 14 073  
**Second:** by Councilor Kokoros  
**Vote:** For (8), Against (0), Absent (1-Hume)

• **14 074 Mayor: Re-Appointment-Arts Lottery Council - Nancy Venezia or take up any action relative thereto**

MOTION:

To approve the re-appointment of Nancy Venezia to the Arts Lottery Council pursuant to Section 3-3 of the Charter of the Town of Braintree.

**Motion:** by Councilor Powers to approve Order 14 074  
**Second:** by Councilor Kokoros  
**Vote:** For (8), Against (0), Absent (1-Hume)

- **14 075 Mayor: Re-Appointment–Arts Lottery Council – Jonathan Young or take up any action relative thereto**

MOTION:

To approve the re-appointment of Jonathan Young to the Arts Lottery Council pursuant to Section 3-3 of the Charter of the Town of Braintree.

Motion: by Councilor Powers to approve Order 14 075

Second: by Councilor Kokoros

Vote: For (8), Against (0), Absent (1-Hume)

**Council President stated before Adjourning I would just like to thank Bill Needham with BCAM and all your hard work. Thank you!**

### **ADJOURNMENT**

It was unanimously voted to adjourn the meeting at 7:58p.m.

Respectfully submitted,

Susan M. Cimino  
Clerk of the Council

## **Documents provided for Meeting**

- November 18, 2014 Council Meeting Minutes
- 14 069 Mayor: Supplemental Appropriations FY 15 or take up any action relative thereto
- 14 071 Mayor: Appointment - Assistant Harbormaster or take up any action relative thereto
- 14 073 Mayor: Re-Appointment-Arts Lottery Council - Joan Carroll or take up any action relative thereto
- 14 074 Mayor: Re-Appointment-Arts Lottery Council - Nancy Venezia or take up any action relative thereto
- 14 075 Mayor: Re-Appointment–Arts Lottery Council – Jonathan Young or take up any action relative thereto

## SECTION 8-5: PERIODIC REVIEW OF CHARTER AND ORDINANCES

Not later than the first day of July, at 5-year intervals, in each year ending in a 5 or in a zero, the mayor and town council shall provide for a review to be made of the ordinances of the town for the purpose of preparing a proposed revision or recodification of them, without substantive change. This review shall be made by a special committee to consist of 9 members, 4 of these members shall be appointed by the town council president and 5 of the members shall be appointed by the mayor. At least 2 of the persons appointed by the town council president shall be members of the town council and the remaining members shall be voters of the town. The special committee shall file its report with the clerk of the council, not later than the first day of May in the year following the year in which the committee is appointed. The recommendations of the special committee shall appear on the town council agenda for action before the fifteenth day of June in that year and, if not so scheduled by the clerk of the council, the matter shall come before the town council for action at its next meeting held following the said fifteenth day of June, and no other business shall be in order until the report has been acted upon, by roll call vote.

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The review of town ordinances shall be under the supervision of the town solicitor. A revision, recodification or republication of the ordinances shall be made at 5-year intervals. Copies of the revision, recodification or republication shall be made available to the public at a cost not to exceed the actual cost of such reproduction. In each year between such reenactments, an annual supplement shall be published which shall contain all ordinances and amendments to ordinances adopted in the preceding year.

Not later than the first day of July, at 10-year intervals, in each year ending in a 9, the mayor and town council shall provide for a review to be made of the charter. This review shall be made by a special committee to consist of 9 members, 4 of these members shall be appointed by the town council president and 5 of the members shall be appointed by the mayor. At least 2 of the persons appointed by the town council president shall be members of the town council, and the remaining members shall be voters of the town. The special committee shall file its report with the clerk of the council, not later than the first day of May in the year following the year in which the committee is appointed. The recommendations of the special committee shall appear on the town council agenda for action before the fifteenth day of June in that year and, if not so scheduled by the clerk of the council, the matter shall come before the town council for action at its next meeting held after the said fifteenth day of June, and no other business shall be in order until the report has been acted upon, by roll call vote.

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REQUESTOR: **Debra Starr**

DEPARTMENT: **Town Clerk**

DATE OF MEETING OR CONFERENCE: **January 23-24, 2015**

Name and Description of Conference: **Massachusetts Municipal Association 2015 Annual Meeting & Trade Show**

- 1) Agenda or course description: **Various workshops covering the latest developments affecting local government**
- 2) Number of days for conference: **1**
- 3) Relativity to job function: **Opportunity to exchange ideas and problem solving with peers**
- 4) Expected value to Council member or employee including continuing education credits: **Learning, problem-solving, and sharing ideas that increase the effectiveness and efficiency of local government throughout Massachusetts.**
- 5) Expected value to the Individual and Town expressed both quantitatively and qualitatively: **Exchanging ideas and problem solving with peers. Insight of working through board collaboration as well as attend discussion forums on key emerging issues. Discussion with Exhibitors on the latest products and services tailored to Massachusetts communities.**
- 6) Number of days out of the office due to conference and meeting travel: **1**
  - a) Meeting Cost: **\$189 (Conference Registration/Friday Dinner Event)**
  - b) Travel Cost: **30 (Parking)**
  - c) Lodging Cost: **0**
  - d) Total Cost: **\$219**
  - e) Comparable costs showing the most economical choice is presented for pre-approval: **Not Applicable – Annual Local Function**

  
 \_\_\_\_\_  
 Authorized Signature (Requestor)

\_\_\_\_\_  
 Town Council President certifying favorable vote

**Meeting Expense Line Item funded via FY2015 Budget**

Approval date \_\_\_\_\_

You are here: [Home](#) > Workshops

## Workshops

36th MMA Annual Meeting & Trade Show  
January 23 & 24, 2015  
Hynes Convention Center & Sheraton Boston Hotel

A central feature of the MMA Annual Meeting is the wide selection of workshops covering the latest developments affecting local government

The 2015 MMA Annual Meeting will feature a total of 20 workshops covering a range of legal, financial, economic development, social, environmental and technological issues important to local governments.

In addition, there will be lively discussions during three Emerging Issues Forums.

The workshops, to be held during two afternoon time slots, will allow ample time for questions from attendees. To gain the most benefit from the workshops, Annual Meeting attendees from the same community are encouraged to attend different sessions and then share information with their colleagues

The Emerging Issues Forums will feature a panel of speakers, but they are typically less presentation-based and more interactive. The forums made their debut at the 2013 MMA Annual Meeting.



### First session, Friday, Jan. 23, 2-3:30 p.m.

- Emergency Planning for People, Pets and Property
- Executing the Business of Towns Through Board Collaboration: A Case Example
- Going Green: Getting Energy Efficiency Right
- Labor Law Update
- Lessons and Landmines: Navigating Interviews and Internal Investigations
- Roofs, Roads, Runoffs and Regulations: New Standards for Treating Stormwater and Drinking Water
- Seven Minutes with a Highly Effective Manager
- State Budget and Economic Outlook
- The CPA: What Makes It Great
- The Value of Creativity: Cultural Assets as Economic Drivers

### Second session, Saturday, Jan. 24, 1:45-3:15 p.m.

- Best Practices for Interacting With the Mentally Ill
- Everything You Want to Know About STIP
- Financial Trend Monitoring and Revenue Forecasting
- Housing that Fits: Meeting the Needs of Your Community
- Infrastructure Financing Programs: How to Pay for Improvements and Innovation
- How to Be Successful at the Joint Labor-Management Committee
- Municipal and Open Meeting Law Update
- New Rules for Improving Veterans' Services
- Underwater
- Unfunded Mandates

### Emerging Issues Forums, Friday, Jan. 23, 3:45-5:15 p.m.

- Driving Economic Development: What Matters to the Private Sector
- Modernizing Personnel Benefits: Sustainability and Flexibility for Cities and Towns
- Understanding the Opioid Crisis in Our Communities



**Massachusetts Municipal Association** One Winthrop Square, Boston, Massachusetts 02110  
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**TOWN OF BRAINTREE  
OFFICE OF THE MAYOR**

One JFK Memorial Drive  
Braintree, Massachusetts 02184  
Tel: 781-794-8145

Joseph C. Sullivan  
Mayor

RECEIVED TOWN CLERK  
BRAINTREE, MA  
2014 NOV 17 PM 4:33

To: Thomas Bowes, President Town Council  
Clerk of the Council  
Town Clerk

From: Joseph C. Sullivan, Mayor *JCS*

Cc: Michael T. Coughlin, Chief of Staff  
Peter J. Morin, Town Solicitor  
Edward J. Spellman, Director of Municipal Finance

Date: November 14, 2014

RE: Motion to Authorize Request for Proposal

Over the past several years, we have been active, individually and in concert with Weymouth officials, in pursuing ways to improve existing properties and to revitalize properties in the Landing. Initiatives have included designating the area as the Braintree-Weymouth Landing Zoning District, securing PWED funds to upgrade the streetscape and lighting, offering grants and low interest loans to support property owners in replacing signage and awnings with more aesthetically appealing exteriors, and the construction of the Monatiquot Riverwalk. We have also engaged in numerous discussions with the East Braintree Civic Association, the Braintree and South Shore Chambers of Commerce, current and prospective property owners, prospective developers and their representatives to try to attract compatible and complimentary uses to the area, including residential, retail and restaurant establishments.

The Landing's proximity to the Greenbush commuter rail line lends itself to a Transit-Oriented Development (TOD) that would begin additional revitalization of the area. In order to accomplish this goal, an RFP (request for proposal) for the possible sale of a portion of our public land, currently used for municipal parking, to a prospective developer will give us a sense of the marketplace and redevelopment appetite that many believe exists in the Landing. In testing the market, through the solicitation of proposals to create a TOD, we are utilizing a public asset to receive money for our town and significant economic value through the potential redevelopment of existing properties.

Let us be clear about the intent of this proposal. We are not proposing an unrestricted sale of the Town-owned parking lot; rather, I am asking that the Town be able to entertain proposals for the possible sale of the property to an entity that presents a plan for a Transit-Oriented Development in the Landing. Additionally, any proposal would need to promote the goals and objectives of the Braintree-Weymouth Landing Zoning District while preserving public parking spaces available for use at all times by the general public.

We have worked hard over the past few years to offer a vision for infusing energy into our Landing. This RFP will take us another step closer to an exciting future for the Landing. Accordingly, I ask for your favorable action on the following motion:

**MOTION:** Pursuant to General Laws Chapter 30B, Section 16 and General Laws Chapter 40, Section 15, to transfer the care, custody and control of certain parcels of land located off Quincy Avenue and the F.L. Wright Connector Road, commonly referred to as the Municipal Parking Lot, as shown on Braintree Assessors' Map No. 3006 as plot 12C and consisting of 1.265 acres, more or less, from the Mayor and held for general municipal purposes to the Mayor for the purposes of selling said parcel, and further, to authorize the Mayor to dispose of said parcel by sale, under the terms and conditions deemed favorable to the Town by the Mayor, and further, to authorize the Mayor to execute any documents necessary to carry out this motion.

Grantor: Town of Braintree  
Grantee: Wildlands Trust, Inc.  
Address of Property: off Pond Street  
For title, see Book 25277, Page 270

**TOWN OF BRAINTREE  
CONSERVATION RESTRICTION  
UNDER THE COMMUNITY PRESERVATION ACT  
  
POND STREET CPA CONSERVATION RESTRICTION  
BRAINTREE CR #4**

**I. GRANTOR CLAUSE:**

The TOWN OF BRAINTREE, a municipal corporation with an address of 1 JFK Memorial Drive, Braintree, Massachusetts 02184, acting by and through its duly authorized Town Council, for its successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the General Laws, for consideration of One Dollar (\$1.00), paid, grants, with Quitclaim Covenants, to WILDLANDS TRUST INC., a Massachusetts non-profit corporation with an address at 3 Village Green North, Suite C8, Plymouth, Massachusetts 02360, and to its successors and permitted assigns ("Grantee") in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction on a parcel of land located off Pond Street in the Town of Braintree, Massachusetts, consisting of approximately 34,590 square feet, said parcel being described in Exhibit "A" hereto attached (the "Premises") and is shown as Lot 2 on a Plan of Land entitled "Approval Not Required Plan of Land, 165 Pond Street, in Braintree, Massachusetts, dated November 24, 2008", Prepared by BSC Group, 384 Washington Street, Norwell, Massachusetts 02061, recorded with the Norfolk County Registry of Deeds in Plan Book 589, Page 99. For Grantor's title, see Deed recorded with said Norfolk Registry at Book 25277, Page 270. The Grantee is a tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation, protection or enhancement of land in its natural, scenic, historical, agricultural, forested, and/or open space condition.

## II. PURPOSES:

The Town of Braintree, at a duly called Special Town Meeting held on May 8, 2007, while acting on Article 12F of the Warrant, voted to authorize the Town Council to acquire the Premises for preservation, open space, conservation and passive recreation purposes, and to utilize Community Preservation Act (Ch. 293 of the Acts of 1999, as amended) funds for the purposes of the Article and to grant a Conservation Restriction on the Premises to Wildlands Trust, Inc. An attested copy of said Town Meeting vote is attached hereto as Exhibit "C".. Pursuant to the Vote under Article 112F of the May 8, 2007, Special Town Meeting, and in accordance with Section 12 of the Community Preservation Act, the Grantor is hereby granting a Conservation Restriction on the Premises to the Grantee,

The Grantor intends that this Conservation Restriction will assure that, while permitting uses described in Section III below, the Premises will be retained forever predominately in its natural, scenic, forested and open space condition consistent with land held by the Braintree Conservation Commission for uses and activities consistent with the promotion and development of the natural resources and for the protection of watershed resources. Further, that this Conservation Restriction will preserve and protect in perpetuity the wildlife, aesthetic, agricultural, ecological and environmental values of the Premises.

The Premises, comprised of approximately 34.590 square feet, contains unusual, unique or outstanding qualities, the protection of which in their predominately natural or open condition will be of benefit to the public. The conservation values protected by the terms of this Conservation Restriction include the following:

- A. Passive Recreational Opportunities. The Premises provides access to Sunset Lake for a wide range of passive recreational pursuits, including nature study, fishing, and kayaking.
- B. Aquifer Protection. The Premises are just north of areas identified by the Commonwealth of Massachusetts as "Medium Yield" and "High Yield" Aquifer Areas.
- C. Protection of Surface Water Quality. The preservation of the Premises will help protect the water quality of Sunset Lake, a great pond in the Town of Braintree that is used for a wide range of recreational uses, including swimming, fishing, and boating.
- D. Preservation of Important Wildlife Habitat. The Premises have ninety feet of frontage on Sunset Lake, which is entirely within an area identified by the Commonwealth of Massachusetts' Natural Heritage and Endangered Species Program ("NHESP") as BioMap 2 "Core Habitat" and "Critical Natural Landscape", "Estimated Habitats of Rare Wildlife", and "Priority Habitats of Rare Species" ("PH 1053").

- E. Congruence with Public Policy Goals: The protection of the Premises is consistent with several of the goals and objectives contained in the 2014 Town of Braintree Open Space and Recreation Plan, including Goal 1: Protect Remaining Open Space and Goal 3: Improve Environmental Quality of the Town, specifically 3A: Address Water Quality Problems at Sunset Lake.
- F. Prevention of development or use of the Premises for any Purposes except as elsewhere herein allowed.

The specific Conservation Values of the Premises are documented in an inventory of relevant features of the Premises, acknowledged by the signatures of Grantor and Grantee, and to be filed at the offices of Grantee, said inventory consisting of reports, maps, photographs, and other documentation (hereinafter referred to as "Baseline Documentation"), which the parties agree provide an accurate representation of the Premises at the time of this conveyance and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Conservation Restriction.

### **III. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES:**

**A. Prohibited Acts and Uses:** Subject to the exceptions set forth in Paragraph B, "Reserved Rights and Responsibilities of the Grantor", and Section V, "Access", below, the Grantor will neither perform nor allow the following acts and uses which are prohibited on, above and below the Premises:

1. Constructing or placing of any temporary or permanent building, tennis courts or athletic fields, landing strip, mobile home, swimming pool, billboard or other advertising display, antenna, tower, or other temporary or permanent structure or facility on, below or above the Premises;
2. Mining, excavating, dredging or removing from the Premises soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit;;
3. Placing, filling, storing or dumping of refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
4. The storage, dumping or other disposal of toxic and/or hazardous materials or of non-compostable refuse on the Premises;
5. The operation, parking, or storage of snowmobiles, motorcycles, all-terrain vehicles, off road vehicles or other motorized vehicles;

6. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, historic preservation, wildlife habitat or aquatic communities;
7. Subdivision of the Premises for any purpose; no portion of the Premises may be used toward building requirements on this or any other parcel.
8. Any other act, activity or use of the Premises which may materially impair the conservation interests that are the subject of this Conservation Restriction.

**B. Reserved Rights and Responsibilities of the Grantor:** The following acts, activities and uses otherwise prohibited in Paragraph A above are reserved by the Grantor, and such acts, activities and uses by the Grantor are expressly permitted, but only if such acts, activities or uses do not materially impair the interests protected by this Conservation Restriction. They are:

1. With prior approval of the Grantee, which approval shall not be unreasonably withheld, structures and improvements incidental to the use of the Premises for conservation and passive outdoor recreation purposes may be constructed and maintained, including structures such as restroom facilities; an information kiosk; benches; parking areas; trails, including handicapped accessible trails; bridges and boardwalks; and water and utility lines thereto, providing they are underground and solely for use on the Premises.
2. Use of motorized vehicles as necessary solely for the purpose of property maintenance, restoration, monitoring and enforcement activities pursuant to the Conservation Restriction, to be kept to the extent feasible on woods roads or trails, or as necessary by police, fire prevention personnel or other government agencies carrying out their lawful duties.
3. With prior notification to Grantee, the construction, maintenance, and marking of trails for pedestrian use.
4. Erection of signs by the Grantor or Grantee identifying the Grantee as holder of the Conservation Restriction and to educate the public about the conservation values protected and any limitations relating to public access.
5. With prior written approval of the Grantee and after consultation with the Massachusetts Natural Heritage and Endangered Species Program, measures designed to restore native biotic communities including but not limited to aquatic wildlife, or to maintain, enhance, or restore wildlife, wildlife habitat, or rare or endangered species.
6. Use for passive recreational activities, including but not limited to, walking, hiking, cross-country skiing, snow shoeing, bird watching, and nature study.

7. The placing of sight-pervious fences that do not interfere with the passage of wildlife and that are reasonably necessary by Grantor for permissible uses of the Premises and that do not interfere with the conservation purposes of this Conservation Restriction.
8. Subject to the approval of the Grantee, which approval shall not be unreasonably withheld, management to benefit natural plant communities and selective cutting of trees for fire protection, trail maintenance, tick control, or otherwise to preserve the present condition of the Premises, or to provide for vistas.
9. With prior notification to the Grantee, the conduct of archeological activities, including, without limitation, survey, excavation, and artifact retrieval, following submission of an archeological field investigation plan by the Grantor and its approval in writing by the State Archeologist of the Massachusetts Historical Commission or appropriate successor official (M.G.L. Ch. 9, Section 27C, 950 CMR 70.00).

All acts and uses not prohibited by subparagraphs A and B are permissible, provided they do not materially impair the conservation values of this Conservation Restriction.

**C. Notice of Intention to Exercise Reserved Rights and Certain Permitted Acts and Uses.**

The Grantor shall give prior written notice to Grantee in advance of undertaking any activities referred to in III.B. (3) and (11) above, and receive prior written approval from the Grantee in advance of undertaking any activities referred to in III.B. (1), (6) and (9) above. Such approval shall not be unreasonably withheld. The purpose of requiring the Grantor to notify the Grantee and receive approval from the Grantee prior to undertaking certain permitted activities is to afford the Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purposes of this Conservation Restriction. Whenever notice is required, the Grantor shall notify the Grantee in writing not less than 60 days prior to the date the Grantor intends to undertake the activity in question. Notice must be made in writing, by hand delivery with a receipt or Certified Mail (return receipt requested) to Wildlands Trust Inc., 3 Village Green North, Suite C8, Plymouth, MA 02360. The notice shall describe the nature, scope, design, location, timetable, and any other material aspects of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. If Grantee's approval is required, this judgment shall be rendered within 60 days of the receipt of a complete notice. If no response is delivered to the Grantor within sixty (60) days of receipt of said notice, then it is deemed that Grantee approved of such activity, provided the notice contains this provision as to deemed approval, and that the requested activity is not prohibited herein and will not materially impair the purposes or conservation values in this Conservation Restriction. Normal maintenance activities, shall not require notice or approval of the Grantee.

#### IV. LEGAL REMEDIES:

**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 the time of the injury complained of (it being agreed that the 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 the Grantee and the Grantor.

If the Grantee finds that the Grantor is causing or permitting a violation of this Restriction, the Grantee shall immediately notify the Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either (a) immediately cease the activity constituting the violation and promptly restore the property to its condition prior to the violation to the reasonable satisfaction of Grantee or (b) immediately cease the activity and provide a written explanation to Grantee of the reason why the alleged violation should be permitted.

If the condition described in clause (b) above occurs, both parties agree to attempt to resolve the dispute in accordance with the Dispute Resolution provisions of Section IV (F) below.

**B. Reimbursement of Costs of Enforcement:** The Grantor, and thereafter the successors and assigns of the Grantor covenant and agree to reimburse the Grantee to the extent permitted by operation of law for all reasonable costs and expenses (including without limitation counsel fees) incurred in enforcing this Conservation Restriction or in remedying or abating any violation thereof. Any enforcement action will not be undertaken until the parties have completed dispute resolution procedures set forth in Section IV (F) below.

**C. Grantee Disclaimer of Liability:** By 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.

**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 election by the Grantee or the Grantor 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. Dispute Resolution:** Either party may, at any time, call a meeting for the purpose of resolving disputes or problems arising under this Conservation Restriction. Each party shall make every reasonable effort to resolve problems or disputes to the satisfaction of both parties. Notwithstanding the foregoing, in the event of a dispute pursuant to this Conservation Restriction, the parties agree that prior to pursuing other available

remedies, but excluding the giving of notices of default by the other party and subject to the provisions of Paragraph IV(A) above, they will attempt to negotiate resolution of their dispute directly with each other. If negotiation is unsuccessful, they agree to participate in at least three hours of mediation to be facilitated by a mediator mutually acceptable to them and under the mediation procedures set by the mediator. If no such mutually acceptable mediator is agreed upon, the Real Estate Bar Association for Massachusetts or its successor shall be requested to designate such a mediator. The mediation session shall be conducted within thirty days of the date on which a mediator receives the request and agrees to mediate. The cost of such mediation shall be shared equally by the parties.

**G. Acts Beyond Grantor's Control:** Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring action against the Grantor for any injury to or change in the Restricted Premises resulting from causes beyond the Grantor's control, including but not limited to, 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. If such an event occurs, the parties will cooperate in restoring the Premises if they determine it is desirable and feasible.

## **V. ACCESS**

**A.** It is the intention of the parties hereto that the general public may enter upon the Premises for passive outdoor recreational and educational uses and activities which are consistent with the protection of its natural resources. It is also the intention of the parties that any public use which is permitted by the terms of this Conservation Restriction constitutes permission to use the Premises for purposes described in Chapter 21, Section 17C of the Massachusetts General Laws, and that the parties hereto benefit from exculpation from liability to the extent provided in such section.

**B.** With advance notice to the Grantor, 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 monitoring and enforcing this Conservation Restriction.

**C.** The Grantee and its agents and assigns may enter the Premises for the purposes of habitat improvement, to include measures designed to restore native biotic communities, or to maintain, enhance, or restore wildlife, wildlife habitat, or rare or endangered species. Said improvement may include mechanical and chemical manipulation and shall require the prior approval of the Grantor and the Massachusetts Natural Heritage and Endangered Species Program.

## **VI. EXTINGUISHMENT:**

The Grantor and Grantee agree that the grant of this Conservation Restriction gives rise to a legal interest in the Grantee. If any occurrence gives rise to an extinguishment or other release of the Conservation Restriction under applicable law, and after review and

approval by the Secretary of Environmental Affairs or successor official, the Grantor and Grantee shall be reimbursed from the proceeds, once recovered, for their respective share of reasonable legal expenses, if any, associated with the recovery of said proceeds. The remaining balance of the proceeds shall be deposited into the Grantor's Community Preservation Fund for the purchase of interests in open space in accordance with the Community Preservation Act. In the event the Town of Braintree votes to remove itself from the provisions of the Community Preservation Act, or in the event that any non-Community Preservation funds are yielded by extinguishment, then such funds shall be applied to the acquisition of additional interests in open space.

## **VII. ASSIGNABILITY**

**A. Running of the Burden:** The burdens of this Conservation Restriction 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 and the Grantor are authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. Without limiting the foregoing, the parties hereto and their successors and assigns agree themselves to execute any such instruments upon the reasonable request of the other party.

**C. Running of the Benefit:** This Conservation Restriction shall be for the benefit of the Grantee, 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 assignee make a written commitment to carry out the purpose of this Conservation Restriction, and
- (ii) the assignee, at the time of assignment qualifies under Section 32 of Chapter 184 of the General Laws as an eligible donee to receive this Conservation Restriction directly, and has the financial and administrative capacity to perform its obligation as Grantee under this Agreement, and
- (iii) any assignment complies with Article 97 of the Massachusetts Constitution, if applicable.

**VIII. ESTOPPEL CERTIFICATES:** Upon request by the Grantor, the Grantee shall within forty-five (45) days, or sooner if possible, 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.

**IX. EFFECTIVE DATE:** This Conservation Restriction shall be effective when the Grantor and/or 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 in a timely manner in the Norfolk County Registry of Deeds.

**X. MISCELLANEOUS:**

- A. Controlling Law: The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- B. Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to the Conservation Restriction on approximately 34,590 square feet of land off Pond Street in Braintree, MA belonging to the Town of Braintree.
- 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. 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 hand delivered or sent by Certified Mail (return receipt requested), postage prepaid, addressed to the applicable party at the address set forth in Section I above, or at such other address as to which notice has been given as set forth in this Section, or that is reasonably ascertainable. Notice shall be deemed given on receipt.
- E. 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 Restricted Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.
- F. Subsequent Transfers: The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which it divests itself of any interest in the Premises, including, without limitation a leasehold interest. Grantor further agrees to give written notice to Grantee of such transfer at least thirty (30) days prior to the date of such transfer. Failure to do any of the above shall not impair this Conservation Restriction or its enforceability in any manner.

**XI. AMENDMENTS:** If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, the parties may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of the Grantee under any applicable laws, including Section 170 (h) of the Internal Revenue Code of 1986, as amended, Article 97 of the Massachusetts Constitution or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any such amendment shall be consistent with the purpose of this Conservation Restriction, shall not affect its perpetual duration, shall not permit additional development or improvements to be constructed on the Premises other than development or

improvements permitted by this Conservation Restriction on its effective date, and shall not permit any impairment of the conservation values of the Premises. Any such amendment shall be recorded in the Plymouth County Registry of Deeds and must be approved by the Grantor, Grantee, municipal officials and the Massachusetts Secretary of Energy and Environmental Affairs.

Attached hereto and incorporated herein are the following:

Signatures:

Grantor: Town of Braintree Conservation Commission

Town Council of the Town of Braintree

Grantee: Wildlands Trust, Inc.

Secretary of Energy and Environmental Affairs

Exhibit A: Legal Description of the Premises

Exhibit B: Plan of Land

Exhibit C: Attested copy of Article 12F of the May 8, 2007  
Braintree Special Town Meeting

Executed under seal this \_\_\_\_\_ day of \_\_\_\_\_ by the Braintree Town Council.

Town of Braintree  
By its Town Council

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COMMONWEALTH OF MASSACHUSETTS

Plymouth , ss.

On this day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory personal knowledge to the person whose name is signed above, and acknowledged the foregoing instrument to be signed by him/her voluntarily for its stated purpose, on behalf of said Town Council of the Town of Braintree.

\_\_\_\_\_  
Notary Public  
My Commission expires:

CONSENT OF THE BRAINTREE CONSERVATION COMMISSION

We, the undersigned, being a majority of the Braintree Conservation Commission, Town of Braintree, Massachusetts, hereby certify that the Commission voted to assent to the foregoing Conservation Restriction granted to Wildlands Trust, Inc., pursuant to M.G.L. Chapter 184, Section 32.

Town of Braintree  
By its Conservation Commission:

\_\_\_\_\_  
Patrick Flynn, Chair

\_\_\_\_\_  
Matthew Hobin,, Member

\_\_\_\_\_  
Donald Murphy, Vice Chair

\_\_\_\_\_  
Daniel McMorro, Member

\_\_\_\_\_  
Gail Feldman, Member

\_\_\_\_\_  
Alan Weinberg, Member

\_\_\_\_\_  
Diane Francis, Member

COMMONWEALTH OF MASSACHUSETTS

On this day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory personal knowledge to the person whose name is signed above, and acknowledged the foregoing instrument to be signed by him/her voluntarily for its stated purpose, on behalf of said Conservation Commission of the Town of Braintree.

\_\_\_\_\_  
Notary Public  
My Commission expires:

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

WILDLANDS TRUST, INC.

\_\_\_\_\_  
Karen H. Grey, President, As Duly  
Authorized Representative of  
Wildlands Trust, Inc.,

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss. \_\_\_\_\_, 2014

On this day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared Karen H. Grey as President of Wildlands Trust, Inc., proved to me through satisfactory personal knowledge to the person whose name is signed above, and acknowledged the foregoing instrument to be signed by her voluntarily for its stated purpose, on behalf of Wildlands Trust, Inc.

\_\_\_\_\_  
Karyn Lord, Notary Public  
My Commission expires:

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to Wildlands Trust Inc., has been approved in the public interest pursuant to MGL Ch. 184, section 32.

Dated:

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

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

On this day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory personal knowledge to the person whose name is signed above, and acknowledged the foregoing instrument to be signed by him voluntarily for its stated purpose, as Secretary of Environmental Affairs on behalf of the Commonwealth of Massachusetts.

\_\_\_\_\_  
Notary Public  
My Commission expires:

**Exhibit A**Legal Description of the Premises

The Premises consists of approximately 34,590 square feet of land located off the north side of Pond Street in Braintree, Massachusetts and is shown as Lot 2 on a Plan of Land entitled "Approval Not Required Plan of Land, 165 Pond Street, in Braintree, Massachusetts, dated November 24, 2008", Prepared by BSC Group, 384 Washington Street, Norwell, Massachusetts 02061, recorded with the Norfolk County Registry of Deeds in Plan Book 589, Page 99. A copy of said plan is attached hereto as "Exhibit B". For Grantor's title, see Deeds recorded with said Norfolk Registry at Book 25277, Page 270.

# EXHIBIT B

**Exhibit C**

Attested copy of Article 12F of the May 8, 2007  
Braintree Special Town Meeting



OFFICE of the TOWN CLERK

Donna J. Fabiano  
Town Clerk

## THE TOWN OF BRAINTREE

One John Fitzgerald Kennedy Memorial Drive  
Braintree, Massachusetts 02184

TELEPHONE: 781-794-8240 FAX: 781-794-8259

Kathleen R. Brean  
Assistant Town Clerk

TOWN OF BRAINTREE  
SPECIAL TOWN MEETING  
Tuesday, May 8, 2007

### ARTICLE 12F – Community Preservation – 165 Pond Street - Affordable Housing

SO VOTED: That in accordance with the provisions of Chapter 44B of the General Laws and the recommendation of the Community Preservation Committee, the sum of \$240,000 be appropriated from the Community Preservation Committee Open Space Reserve, the sum of \$81,000 be appropriated from Community Preservation Affordable Housing Reserves, and the sum of \$249,000 be appropriated from the Community Preservation Committee Unreserved funds for the purpose of acquiring a parcel of land and the buildings situated thereon located at 165 Pond Street, containing approximately one acre of land as shown on Assessor's Map No. 1041, Plot 8, for the purpose of acquiring and subdividing said property to create approximately 2/3 of an acre for open space conservation land and rehabilitating the house to be sold as affordable housing. Said monies to be expended under the direction of the Conservation Commission and the Board of Selectmen, and further, that the Board of Selectmen be authorized to convey a permanent conservation restriction for the conservation portion of this parcel meeting the requirements of General Laws Chapter 184, Sections 31-32 as required by General Laws Chapter 44B, Section 12 and that the Board of Selectmen be authorized to record an affordable housing deed restriction for the balance of this parcel. Further, that the Conservation Commission be authorized to apply for any available grants pursuant to the provisions of Chapter 132A, Section 11 of the General Laws for the purpose of supplementing the funding for this parcel, and that the Conservation Commission be authorized to enter into any contracts necessary to carry out the objectives of this article.

Attest:

  
Donna J. Fabiano  
Town Clerk

Grantor: Town of Braintree  
Grantee: Wildlands Trust, Inc.  
Address of Property: off Franklin Street  
For title, see Book 25225 , Page 455

**TOWN OF BRAINTREE  
CONSERVATION RESTRICTION  
UNDER THE COMMUNITY PRESERVATION ACT**

**FRANKLIN STREET CPA CONSERVATION RESTRICTION  
BRAINTREE CR #5**

**I. GRANTOR CLAUSE:**

The TOWN OF BRAINTREE, a municipal corporation with an address of 1 JFK Memorial Drive, Braintree, Massachusetts 02184, acting by and through its duly authorized Town Council, for its successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the General Laws, for consideration of One Dollar (\$1.00), paid, grants, with Quitclaim Covenants, to WILDLANDS TRUST INC., a Massachusetts non-profit corporation with an address at 3 Village Green North, Suite C8, Plymouth, Massachusetts 02360, and to its successors and permitted assigns ("Grantee") in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction on two parcels of land located off Franklin Street in the Town of Braintree, Massachusetts, consisting of approximately 5.5 acres, said parcels being described in Exhibit "A" hereto attached (the Premises") and are shown as Lot 4 and Lot 4A on a Plan of Land entitled "Subdivision Plan of Land Being a Subdivision of Lot Shown on Plan No. 9238C, 206 Franklin Street, Braintree, MA, Prepared for Trustees of Thayer Academy, 745 Washington Street, Braintree, MA, 02184, Date: April 11, 2007", Prepared by Daylor Consulting Group, 10 Forbes Road, Braintree, MA, 02184, recorded with the Norfolk County Land Court as Certificate Number 175535. For Grantor's title, see Deeds recorded with said Norfolk Land Court at Book 25225, Page 455. The Grantee is a tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation, protection or enhancement of land in its natural, scenic, historical, agricultural, forested, and/or open space condition.

## II. PURPOSES:

The Town of Braintree, at a duly called Special Town Meeting held on May 8, 2007, while acting on Article 12E of the Warrant, voted to authorize the Town Council to acquire the Premises for preservation, open space, conservation and passive recreation purposes, and to utilize Community Preservation Act (Ch. 293 of the Acts of 1999, as amended) funds for the purposes of the Article and to grant a Conservation Restriction on the Premises to Wildlands Trust, Inc. An attested copy of said Town Meeting vote is attached hereto as Exhibit "C".. Pursuant to the Vote under Article 12E of the May 8, 2007, Special Town Meeting, and in accordance with Section 12 of the Community Preservation Act, the Grantor is hereby granting a Conservation Restriction on the Premises to the Grantee,

The Grantor intends that this Conservation Restriction will assure that, while permitting uses described in Section III below, the Premises will be retained forever predominately in its natural, scenic, forested and open space condition consistent with land held by the Braintree Conservation Commission for uses and activities consistent with the promotion and development of the natural resources and for the protection of watershed resources. Further, that this Conservation Restriction will preserve and protect in perpetuity the wildlife, aesthetic, agricultural, ecological and environmental values of the Premises.

The Premises, comprised of approximately 5.5 acres, contains unusual, unique or outstanding qualities, the protection of which in their predominately natural or open condition will be of benefit to the public. The conservation values protected by the terms of this Conservation Restriction include the following:

- A. Creation of an expanded assemblage of municipal open space. The Premises connect with and expand a sizable area of town-owned open space that connects with the Braintree High School complex.
- B. Aquifer Protection. The Premises are just north of areas identified by the Commonwealth of Massachusetts as "Medium Yield" and "High Yield" Aquifer Areas.
- C. Preservation of Important Wildlife Habitat. The Premises are situated in close proximity to Sunset Lake, which is entirely within an area identified by the Commonwealth of Massachusetts' Natural Heritage and Endangered Species Program ("NHESP") as BioMap 2 "Core Habitat" and "Critical Natural Landscape", "Estimated Habitats of Rare Wildlife", and "Priority Habitats of Rare Species" ("PH 1053").
- D. Congruence with Public Policy Goals: The protection of the Premises is consistent with several of the goals and objectives contained in the 2014 Town of Braintree Open Space and Recreation Plan, including Goal 1: Protect

Remaining Open Space and Goal 3: Improve Environmental Quality of the Town, specifically 3A: Address Water Quality Problems at Sunset Lake.

- E. Scenic Vistas: The Premises provide scenic vistas from Franklin Street, a public way in the Town of Braintree.
- F. Prevention of development or use of the Premises for any Purposes except as elsewhere herein allowed.

The specific Conservation Values of the Premises are documented in an inventory of relevant features of the Premises, acknowledged by the signatures of Grantor and Grantee, and to be filed at the offices of Grantee, said inventory consisting of reports, maps, photographs, and other documentation (hereinafter referred to as "Baseline Documentation"), which the parties agree provide an accurate representation of the Premises at the time of this conveyance and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Conservation Restriction.

### **III. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES:**

**A. Prohibited Acts and Uses:** Subject to the exceptions set forth in Paragraph B, "Reserved Rights and Responsibilities of the Grantor", and Section V, "Access", below, the Grantor will neither perform nor allow the following acts and uses which are prohibited on, above and below the Premises:

1. Constructing or placing of any temporary or permanent building, tennis courts or athletic fields, landing strip, mobile home, swimming pool, billboard or other advertising display, antenna, tower, or other temporary or permanent structure or facility on, below or above the Premises;
2. Mining, excavating, dredging or removing from the Premises soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit;;
3. Placing, filling, storing or dumping of refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
4. The storage, dumping or other disposal of toxic and/or hazardous materials or of non-compostable refuse on the Premises;
5. The operation of snowmobiles, motorcycles, all-terrain vehicles, off road vehicles or other recreational vehicles;

6. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, historic preservation, wildlife habitat or aquatic communities;
7. Subdivision of the Premises for any purpose; no portion of the Premises may be used toward building requirements on this or any other parcel.
8. Any other act, activity or use of the Premises which may materially impair the conservation interests that are the subject of this Conservation Restriction.

**B. Reserved Rights and Responsibilities of the Grantor:** The following acts, activities and uses otherwise prohibited in Paragraph A above are reserved by the Grantor, and such acts, activities and uses by the Grantor are expressly permitted, but only if such acts, activities or uses do not materially impair the interests protected by this Conservation Restriction. They are:

1. With prior approval of the Grantee, which approval shall not be unreasonably withheld,, structures and improvements incidental to the use of the Premises for conservation and passive outdoor recreation purposes may be constructed and maintained, including structures such as restroom facilities; an information kiosk; benches; parking areas; trails, including handicapped accessible trails; bridges and boardwalks; and water and utility lines thereto, providing they are underground and solely for use on the Premises.
2. Use of motorized vehicles as necessary solely for the purpose of property maintenance, restoration, monitoring and enforcement activities pursuant to the Conservation Restriction, to be kept to the extent feasible on woods roads or trails, or as necessary by police, fire prevention personnel or other government agencies carrying out their lawful duties.
3. With prior notification to Grantee, the construction, maintenance, and marking of trails for pedestrian use.
4. Erection of signs by the Grantor or Grantee identifying the Grantee as holder of the Conservation Restriction and to educate the public about the conservation values protected and any limitations relating to public access.
5. With prior written approval of the Grantee and after consultation with the Massachusetts Natural Heritage and Endangered Species Program, measures designed to restore native biotic communities including but not limited to aquatic wildlife, or to maintain, enhance, or restore wildlife, wildlife habitat, or rare or endangered species.
6. Use for passive recreational activities, including but not limited to, walking, hiking, cross-country skiing, snow shoeing, bird watching, and nature study.

7. The placing of sight-pervious fences that do not interfere with the passage of wildlife and that are reasonably necessary by Grantor for any permissible use of the Premises and that do not interfere with the conservation purposes of this Conservation Restriction.
8. Subject to the approval of the Grantee, which approval shall not be unreasonably withheld, management to benefit natural plant communities and selective cutting of trees for fire protection, trail maintenance, tick control, or otherwise to preserve the present condition of the Premises, or to provide for vistas.
9. With prior notification to the Grantee, the conduct of archeological activities, including, without limitation, survey, excavation, and artifact retrieval, following submission of an archeological field investigation plan by the Grantor and its approval in writing by the State Archeologist of the Massachusetts Historical Commission or appropriate successor official (M.G.L. Ch. 9, Section 27C, 950 CMR 70.00).

All acts and uses not prohibited by subparagraphs A and B are permissible provided they do not materially impair the conservation values of this Conservation Restriction.

**C. Notice of Intention to Exercise Reserved Rights and Certain Permitted Acts and Uses.**

The Grantor shall give prior written notice to Grantee in advance of undertaking any activities referred to in III.B. (3) and (11) above, and receive prior written approval from the Grantee in advance of undertaking any activities referred to in III.B. (1), (6) and (9) above. Such approval shall not be unreasonably withheld. The purpose of requiring the Grantor to notify the Grantee and receive approval from the Grantee prior to undertaking certain permitted activities is to afford the Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purposes of this Conservation Restriction. Whenever notice is required, the Grantor shall notify the Grantee in writing not less than 60 days prior to the date the Grantor intends to undertake the activity in question. Notice must be made in writing, by hand delivery with a receipt or Certified Mail (return receipt requested) to Wildlands Trust Inc., 3 Village Green North, Suite C8, Plymouth, MA 02360. The notice shall describe the nature, scope, design, location, timetable, and any other material aspects of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. If Grantee's approval is required, this judgment shall be rendered within 60 days of the receipt of a complete notice. If no response is delivered to the Grantor within sixty (60) days of receipt of said notice, then it is deemed that Grantee approved of such activity, provided the notice contains this provision as to deemed approval, and that the requested activity is not prohibited herein and will not materially impair the purposes or conservation values in this Conservation Restriction. Normal maintenance activities, shall not require notice or approval of the Grantee.

#### IV. LEGAL REMEDIES:

**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 the time of the injury complained of (it being agreed that the 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 the Grantee and the Grantor.

If the Grantee finds that the Grantor is causing or permitting a violation of this Restriction, the Grantee shall immediately notify the Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either (a) immediately cease the activity constituting the violation and promptly restore the property to its condition prior to the violation to the reasonable satisfaction of Grantee or (b) immediately cease the activity and provide a written explanation to Grantee of the reason why the alleged violation should be permitted.

If the condition described in clause (b) above occurs, both parties agree to attempt to resolve the dispute in accordance with the Dispute Resolution provisions of Section IV (F) below.

**B. Reimbursement of Costs of Enforcement:** The Grantor, and thereafter the successors and assigns of the Grantor covenant and agree to reimburse the Grantee to the extent permitted by operation of law for all reasonable costs and expenses (including without limitation counsel fees) incurred in enforcing this Conservation Restriction or in remedying or abating any violation thereof. Any enforcement action will not be undertaken until the parties have completed dispute resolution procedures set forth in Section IV (F) below.

**C. Grantee Disclaimer of Liability:** By 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.

**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 election by the Grantee or the Grantor 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. Dispute Resolution:** Either party may, at any time, call a meeting for the purpose of resolving disputes or problems arising under this Conservation Restriction. Each party shall make every reasonable effort to resolve problems or disputes to the satisfaction of both parties. Notwithstanding the foregoing, in the event of a dispute pursuant to this

Conservation Restriction, the parties agree that prior to pursuing other available remedies, but excluding the giving of notices of default by the other party and subject to the provisions of Paragraph IV(A) above, they will attempt to negotiate resolution of their dispute directly with each other. If negotiation is unsuccessful, they agree to participate in at least three hours of mediation to be facilitated by a mediator mutually acceptable to them and under the mediation procedures set by the mediator. If no such mutually acceptable mediator is agreed upon, the Real Estate Bar Association for Massachusetts or its successor shall be requested to designate such a mediator. The mediation session shall be conducted within thirty days of the date on which a mediator receives the request and agrees to mediate. The cost of such mediation shall be shared equally by the parties.

**G. Acts Beyond Grantor's Control:** Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring action against the Grantor for any injury to or change in the Restricted Premises resulting from causes beyond the Grantor's control, including but not limited to, 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. If such an event occurs, the parties will cooperate in restoring the Premises if they determine it is desirable and feasible.

## **V. ACCESS**

**A.** It is the intention of the parties hereto that the general public may enter upon the Premises for passive outdoor recreational and educational uses and activities which are consistent with the protection of its natural resources. It is also the intention of the parties that any public use which is permitted by the terms of this Conservation Restriction constitutes permission to use the Premises for purposes described in Chapter 21, Section 17C of the Massachusetts General Laws, and that the parties hereto benefit from exculpation from liability to the extent provided in such section.

**B.** With advance notice to the Grantor, 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 monitoring and enforcing this Conservation Restriction.

**C.** The Grantee and its agents and assigns may enter the Premises for the purposes of habitat improvement, to include measures designed to restore native biotic communities, or to maintain, enhance, or restore wildlife, wildlife habitat, or rare or endangered species. Said improvement may include mechanical and chemical manipulation and shall require the prior approval of the Grantor and the Massachusetts Natural Heritage and Endangered Species Program.

## **VI. EXTINGUISHMENT:**

The Grantor and Grantee agree that the grant of this Conservation Restriction gives rise to a legal interest in the Grantee. If any occurrence gives rise to an extinguishment or

other release of the Conservation Restriction under applicable law, and after review and approval by the Secretary of Environmental Affairs or successor official, the Grantor and Grantee shall be reimbursed from the proceeds, once recovered, for their respective share of reasonable legal expenses, if any, associated with the recovery of said proceeds. The remaining balance of the proceeds shall be deposited into the Grantor's Community Preservation Fund for the purchase of interests in open space in accordance with the Community Preservation Act. In the event the Town of Braintree votes to remove itself from the provisions of the Community Preservation Act, or in the event that any non-Community Preservation funds are yielded by extinguishment, then such funds shall be applied to the acquisition of additional interests in open space.

## **VII. ASSIGNABILITY**

**A. Running of the Burden:** The burdens of this Conservation Restriction 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 and the Grantor are authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. Without limiting the foregoing, the parties hereto and their successors and assigns agree themselves to execute any such instruments upon the reasonable request of the other party.

**C. Running of the Benefit:** This Conservation Restriction shall be for the benefit of the Grantee, 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 assignee make a written commitment to carry out the purpose of this Conservation Restriction, and
- (ii) the assignee, at the time of assignment qualifies under Section 32 of Chapter 184 of the General Laws as an eligible donee to receive this Conservation Restriction directly, and has the financial and administrative capacity to perform its obligation as Grantee under this Agreement, and
- (iii) any assignment complies with Article 97 of the Massachusetts Constitution, if applicable.

**VIII. ESTOPPEL CERTIFICATES:** Upon request by the Grantor, the Grantee shall within forty-five (45) days, or sooner if possible, 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.

**IX. EFFECTIVE DATE:** This Conservation Restriction shall be effective when the Grantor and/or 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 in a timely manner in the Norfolk County Registry of Deeds.

**X. MISCELLANEOUS:**

- A. Controlling Law: The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- B. Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to the Conservation Restriction on approximately 5.5 acres of land off Franklin Street in Braintree, MA belonging to the Town of Braintree.
- 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. 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 hand delivered or sent by Certified Mail (return receipt requested), postage prepaid, addressed to the applicable party at the address set forth in Section I above, or at such other address as to which notice has been given as set forth in this Section, or that is reasonably ascertainable. Notice shall be deemed given on receipt.
- E. 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 Restricted Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.
- F. Subsequent Transfers: The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which it divests itself of any interest in the Premises, including, without limitation a leasehold interest. Grantor further agrees to give written notice to Grantee of such transfer at least thirty (30) days prior to the date of such transfer. Failure to do any of the above shall not impair this Conservation Restriction or its enforceability in any manner.

**XI. AMENDMENTS:** If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, the parties may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of the Grantee under any applicable laws, including Section 170 (h) of the Internal Revenue Code of 1986, as amended, Article 97 of the Massachusetts Constitution or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any such amendment shall be consistent with the purpose of this Conservation Restriction, shall not affect its perpetual duration, shall not permit additional development or

improvements to be constructed on the Premises other than development or improvements permitted by this Conservation Restriction on its effective date, and shall not permit any impairment of the conservation values of the Premises. Any such amendment shall be recorded in the Plymouth County Registry of Deeds and must be approved by the Grantor, Grantee, municipal officials and the Massachusetts Secretary of Energy and Environmental Affairs.

Attached hereto and incorporated herein are the following:

Signatures:

Grantor: Town of Braintree Conservation Commission

Town Council of the Town of Braintree

Grantee: Wildlands Trust, Inc.

Secretary of Energy and Environmental Affairs

Exhibit A: Legal Description of the Premises

Exhibit B: Plan of Land

Exhibit C: Attested copy of Article 12E of the May 8, 2007  
Braintree Special Town Meeting

Executed under seal this \_\_\_\_\_ day of \_\_\_\_\_ by the Braintree Town Council.

Town of Braintree  
By its Town Council

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COMMONWEALTH OF MASSACHUSETTS

Plymouth , ss.

On this day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory personal knowledge to the person whose name is signed above, and acknowledged the foregoing instrument to be signed by him/her voluntarily for its stated purpose, on behalf of said Town Council of the Town of Braintree.

\_\_\_\_\_  
Notary Public  
My Commission expires:

CONSENT OF THE BRAINTREE CONSERVATION COMMISSION

We, the undersigned, being a majority of the Braintree Conservation Commission, Town of Braintree, Massachusetts, hereby certify that the Commission voted to assent to the foregoing Conservation Restriction granted to Wildlands Trust, Inc., pursuant to M.G.L. Chapter 184, Section 32.

Town of Braintree  
By its Conservation Commission:

\_\_\_\_\_  
Patrick Flynn, Chair

\_\_\_\_\_  
Matthew Hobin,, Member

\_\_\_\_\_  
Donald Murphy, Vice Chair

\_\_\_\_\_  
Daniel McMorrow, Member

\_\_\_\_\_  
Gail Feldman, Member

\_\_\_\_\_  
Alan Weinberg, Member

\_\_\_\_\_  
Diane Francis, Member

COMMONWEALTH OF MASSACHUSETTS

On this day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory personal knowledge to the person whose name is signed above, and acknowledged the foregoing instrument to be signed by him/her voluntarily for its stated purpose, on behalf of said Conservation Commission of the Town of Braintree.

\_\_\_\_\_  
Notary Public  
My Commission expires:

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

WILDLANDS TRUST, INC.

\_\_\_\_\_  
Karen H. Grey, President, As Duly  
Authorized Representative of  
Wildlands Trust, Inc.,

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss. \_\_\_\_\_, 2014

On this day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared Karen H. Grey as President of Wildlands Trust, Inc., proved to me through satisfactory personal knowledge to the person whose name is signed above, and acknowledged the foregoing instrument to be signed by her voluntarily for its stated purpose, on behalf of Wildlands Trust, Inc.

\_\_\_\_\_  
Karyn Lord, Notary Public  
My Commission expires:

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to Wildlands Trust Inc., has been approved in the public interest pursuant to MGL Ch. 184, section 32.

Dated:

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

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

On this day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory personal knowledge to the person whose name is signed above, and acknowledged the foregoing instrument to be signed by him voluntarily for its stated purpose, as Secretary of Environmental Affairs on behalf of the Commonwealth of Massachusetts.

\_\_\_\_\_  
Notary Public  
My Commission expires:

**Exhibit A**Legal Description of the Premises

The Premises consists of approximately 5.5 acres located off the west side off of Franklin Street in Braintree, Massachusetts and are shown as Lot 4 and Lot 4A on a Plan of Land entitled ""Subdivision Plan of Land Being a Subdivision of Lot Shown on Plan No. 9238C, 206 Franklin Street, Braintree, MA, Prepared for Trustees of Thayer Academy, 745 Washington Street, Braintree, MA, 02184, Date: April 11, 2007", Prepared by Daylor Consulting Group, 10 Forbes Road, Braintree, MA, 02184, recorded with the Norfolk County Land Court as Certificate number 175535. A copy of said plan is attached hereto as "Exhibit B". For Grantor's title, see Deeds recorded with said Norfolk County Land Court as Book 25225, Page 455.

**EXHIBIT B**

**Exhibit C**

Attested copy of Article 12E of the May 8, 2007  
Braintree Special Town Meeting



OFFICE of the TOWN CLERK

Donna J. Fabiano  
Town Clerk

Kathleen R. Brean  
Assistant Town Clerk

**THE TOWN OF BRAINTREE**  
One John Fitzgerald Kennedy Memorial Drive  
Braintree, Massachusetts 02184  
TELEPHONE: 781-794-8240 FAX: 781-794-8259

TOWN OF BRAINTREE  
SPECIAL TOWN MEETING  
Tuesday, May 8, 2007

**ARTICLE 12E STM – Community Preservation – Franklin Street**

SO VOTED: That, in accordance with the provisions of Chapter 44B of the General Laws and the recommendation of the Community Preservation Committee, the sum of \$175,000 be appropriated from the Community Preservation Committee Open Space Reserve for the purpose of acquiring approximately 5 acres of land off Franklin Street, as shown on Assessor's Map No. 1021, Plot 4A and a portion of Plot 4 as shown on the approval under the Subdivision Control Law Not Required Plan prepared by Daylor Engineering, dated March 30, 2007, for use as conservation land. Said sum to be expended under the direction of the Conservation Commission, and further, that the Board of Selectmen be authorized to convey a permanent conservation restriction meeting the requirements of General Laws Chapter 184, Sections 31-32 as required by General Laws Chapter 44B, Section 12, limiting the use of said land for the purpose for which it is acquired. Further, that the Conservation Commission be authorized to apply for any available grants pursuant to the provisions of Chapter 132A, Section 11 of the General Laws for the purpose of supplementing the funding for this parcel, and that the Conservation Commission be authorized to enter into any contracts necessary to carry out the objectives of the article.

Attest:

*Donna J. Fabiano*

Donna J. Fabiano  
Town Clerk