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# AMENDED AND RESTATED CONSERVATION RESTRICTION

To

The Trustees of Reservations

Mirror Lake and Esker Parcel, Devens, Massachusetts

The Massachusetts Development Finance Agency, a Massachusetts body politic and corporate, established and existing under Chapter 23G of the Massachusetts General Laws, successor in interest to the Government Land Bank under Chapter 289 of the Acts of 1998, notice of which was recorded on October 7, 1998, with the Worcester District Registry of Deeds in Book 20505, Page 279, having its principal place of business located at 160 Federal Street, 7<sup>th</sup> Floor, Boston, Massachusetts 02110, being all the owners of the granted premises and intending hereby to bind themselves and their heirs, successors and assigns, who, together with the said Massachusetts Development Finance Agency, are collectively referred to herein as "Grantor", acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, hereby grants, with quitclaim covenants, to The Trustees of Reservations, a Massachusetts charitable corporation established under Chapter 352 of the Acts of 1891, qualified to hold Conservation Restrictions in accordance with Chapter 184 of the Massachusetts General Laws, and having an address at 572 Essex Street, Beverly, Massachusetts 01915, its successors and permitted assigns ("Grantee"), in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction (hereinafter, the "Conservation Restriction" or the "Restriction") on parcels of land of approximately 207.1 acres located in the Devens Regional Enterprise Zone, Town of Harvard, County of Worcester, Massachusetts, said parcels being described in Exhibits A and B attached ("Premises"). For Grantor's title to the Premises, see the Worcester District Registry of Deeds Book 29378, Page 64 and Book 17907, Page 1.

Relationship to the Original Conservation Restriction: This Restriction amends and restates the Conservation Restriction granted by the Massachusetts Development Finance Agency to The Trustees of Reservations, dated October 16, 2003, approved by the Devens Enterprise Commission, the Joint Boards of Selectmen from the Towns of Harvard, Ayer and Shirley, and the Secretary of Environmental Affairs, and recorded in the Worcester District Registry of Deeds Book 34280, Page 28 ("the 2003 Restriction"), in order to include additional abutting parcels consisting of approximately 21.48 acres as shown as "Areas to be Added" in Exhibits A-1 and B-1, and to clarify the rights and obligations of the Grantee and Grantor. Said Conservation Restriction shall henceforth provide in its entirety as hereinafter set forth.

## WITNESS THAT

WHEREAS, pursuant to the Defense Base Realignment and Closure Act of 1990 (Public Law 101-510, as amended, and codified at 10 U.S.C. 2687, note), the United States Department of the Army (the "Army") closed the military installation located at Fort Devens, Massachusetts ("Devens"), and made a final disposal decision with respect

Return to:  
Lee S. Smith, Esq.  
Mass Development  
160 Federal St  
Boston, MA 02110

thereto; and

WHEREAS, pursuant to Chapter 498 of the Massachusetts Acts of 1993, as amended from time to time, the Grantor, was granted the exclusive authority to oversee and implement the civilian reuse of Devens in accordance with a locally approved reuse plan and bylaws; and

WHEREAS, the Army transferred a certain parcel of land commonly referred to as Parcel A-27 located in the Devens Regional Enterprise Zone, Town of Harvard, County of Worcester Massachusetts, to the Grantor by quitclaim deed dated February 11, 2003 recorded with the Worcester District Registry of Deeds in Book 29378, Page 64, and

WHEREAS, the Army transferred a certain parcel of land located in the Devens Regional Enterprise Zone, Town of Harvard, County of Worcester, Massachusetts, to the Grantor by quitclaim deed dated May 9, 1996, recorded with the Middlesex County, Southern District, Registry of Deeds in Book 26317, Page 3, and with the Worcester District Registry of Deeds in Book 17907, Page 1, said parcel commonly referred to as "Parcel 1"; and

WHEREAS, portions of Parcel 1 and Parcel A27, consisting of approximately 154.4 acres of land (the "Mirror Lake Parcel") as shown on a plan attached hereto as Exhibit A-1 contain unique qualities; and

WHEREAS, a portion of Parcel 1, consisting of approximately 52.7 acres of land (the "Esker Parcel") as shown on a plan attached hereto as Exhibit B-1 contains unique qualities; and

WHEREAS, the Grantor has determined that both the Esker Parcel and the Mirror Lake Parcel contain unusual, unique and outstanding qualities and recreational opportunities the protection of which will be in the public interest; and

WHEREAS, the parties hereto desire to expand the size of the Original Conservation Restriction parcels by placing additional land adjacent to the Mirror Lake Parcel and the Esker Parcel under conservation restriction hereby.

NOW THEREFORE, for consideration the receipt and sufficiency of which is hereby acknowledged, the Grantee and the Grantor hereby agrees as follows:

Purpose. This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. Its purpose is to assure that the Premises will be retained in perpetuity predominantly in their natural, scenic, and open condition and to prevent any use of the Premises that will significantly impair or interfere with the conservation values of the Premises. These purposes shall collectively be referred to as the "Conservation Interests".

The public benefits resulting from conservation of the Premises include, without limitation:

The Premises contain unusual, unique or outstanding qualities the protection of which in their predominately natural or open condition will be of benefit to the public. These qualities include

wildlife (native and migrating species), geologic (eskers and kettle-holes), wetlands, cultural (historical features relating to past military activities), educational (scientific and cultural resources), water quality (contributing to the underlying aquifer), aesthetic (vistas and buffer areas) and recreational (hiking, biking, wildlife observation, swimming and exercise) benefits, many of which contribute significantly to adjacent landscapes.

- In addition, the Mirror Lake Parcel may contain an appropriate location for a productive water supply well to serve the Devens community.

- In addition, the Mirror Lake Parcel provides an unusual opportunity for water-based recreation in the Devens community, as well as a black spruce bog containing uncommon and sensitive wetland habitat meriting special attention. This parcel provides protection of the watershed of Mirror Lake (a Great Pond) and also abuts land owned by the United States Fish and Wildlife Service managed as part of the Oxbow National Wildlife Refuge.

- In addition, the Esker Parcel provides an example of a glacial esker and contributes to the water quality of nearby Robbins Pond. One or more potential vernal pools on the parcel provide habitat for certain amphibians and invertebrates, including some that may be rare and/or endangered.

The terms of this Restriction are as follows:

A. Prohibited Uses. Except as provided in the reserved rights set forth in section B below, the Grantor will neither perform nor allow others to perform the following acts and uses, which are expressly prohibited on, above and under the Premises:

- (1) Constructing or placing any temporary or permanent building, tennis court, concession stand, showers, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;
- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit; alteration of the existing natural topography of the Premises.
- (3) Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation;

(6) Activities within the zone I of adjacent public water supply wells (as shown on Exhibit A-1) which are not directly related to the public water supply well or which are otherwise prohibited by current applicable water supply protection laws, rules or regulations;

(7) The use, temporary or permanent parking of or storage of motorcycles, motorized trail bikes, snowmobiles and all other motor vehicles except as reasonably necessary in exercising any of the reserved rights in section B below or as necessary for the police, firefighters or other federal, state or local governmental agents to carryout their lawful duties;

(8) Conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises without the written consent of the Grantee; conveyance of the Premises in its entirety shall be permitted, provided that any such conveyance is subject to, and consistent with, the terms of this Conservation Restriction;

(9) Use of the Premises in connection with building or development requirements on this or any other parcel except as may be required to allow the maximum allowable development of previously disturbed areas in the adjacent Salerno Circle area.

(10) Any other use of the Premises or activity thereon that would materially impair the purpose of this Restriction or other significant conservation interests, unless the use or activity is necessary for the preservation of the premises in an emergency and is temporary in duration.

B. Reserved Rights. All acts and uses not prohibited in paragraph A are permissible, provided that such acts and uses do not materially impair the purpose of this Restriction or other significant conservation interests. The following acts and uses, otherwise prohibited in Paragraph A, are permitted, provided that such activities are carried out to minimize environmental impacts:

1. Fishing, swimming, picnicking, boating, hiking, cross-county skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape nor degrade environmental quality.

2. In accordance with generally accepted forest management practices, selective pruning and cutting to prevent, control or remove hazards, disease or insect damage, fire, or to preserve the present condition of the Premises, including vistas, woods, roads and trails.

3. Vegetation management of a limited scope along roadsides, trails, and the beach edge to maintain the current condition of the Premises and which does not materially impair the purposes of this Conservation Restriction.

4. Erection, maintenance, repair and replacement of signs by the Grantor and/or Grantee identifying the Premises, its conservation values or any limitations relating to

public access or use or the Grantee's role in conservation of the Premises with the prior written approval of other party, which approval shall not be unreasonably withheld or delayed

5. With the prior written approval of Grantor and Grantee, which approval shall not be unreasonably withheld or delayed, the erection, maintenance, repair and replacement of interpretive signs, bulletin boards and displays for use by the public for educational purposes, provided that such signs, bulletin boards and displays are designed and located so as not to have a deleterious impact on the conservation purposes (including scenic values) of this Restriction.

6. Education and similar activities which do not impair significant Conservation Interests.

7. With the prior written approval of the Grantee, which approval shall not be unreasonably withheld or delayed, scientific research, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species, and similar activities which do not impair significant Conservation Interests.

8. Construction, use, and maintenance of trails for passage on foot, horseback, skis or other means not destructive of significant Conservation Interests, including the installation and maintenance of bridges, signs and facilities reasonably necessary to the use of such trails.

9. Subject to the prior written approval of the Grantee, which approval shall not be unreasonably withheld or delayed, conservation activities to remedy soil erosion, habitat degradation or environmental impairment on the Premises.

10. On the Mirror Lake Parcel, swimming, fishing, and boating, including electric motor boating, in and adjacent to Mirror Lake shall be permitted.

11. Motorized access to designated locations on Mirror Lake but only for drop-off and pick-up of boats shall be permitted, provided that no new paved or unpaved parking areas shall be permitted except as needed for compliance with the Americans with Disabilities Act Standards.

12. On the Mirror Lake Parcel, with prior written notice to the Grantee, the existing boat launch area and access road may be relocated or replaced by an area of similar size or smaller.

13. On the Mirror Lake Parcel, existing grills, picnic facilities, guard-rail fencing, paving and playground equipment may be maintained, replaced or removed, provided that the area is restored to a natural condition following removal. With prior written approval of the Grantee, existing guard-rail fencing may be replaced with more aesthetic fencing for



*safety and visitor management purposes.*

14. On the Mirror Lake Parcel, the construction, use, maintenance, repair and replacement of a bathhouse building, including all necessary utilities (telephone, electricity, water and sewage), provided that the existing structures are removed prior to occupancy of the new structures, and the bathhouse building shall not exceed 800 gross square feet of floor area and a height of 25 feet as measured from mean natural grade.

15. On the Mirror Lake Parcel, the construction, use, maintenance, repair and replacement of a pavilion, provided that the pavilion shall not exceed a footprint of 800 square feet and a height of 25 feet as measured from mean natural grade.

16. Passive recreation (walking, hiking, cross country skiing, bicycling) which has no significant impact on water quality within the zone I's of adjacent public water supply wells;

17. Military training activities on Mirror Lake and access to Mirror Lake for such training activities are permitted, provided that they are conducted in accordance with the reserved rights retained by the United States in the Deed, Lease, and Notice of Lease from the United States of America to the Government Land Bank dated May 9, 1996 (recorded with the Worcester District Registry of Deeds at Book 17907, Page 001 and with the Middlesex County, Southern District, Registry of Deeds at Book 26317, Page 003).

18. On the Mirror Lake Parcel, use, maintenance, repair and replacement of the existing visitor parking area and associated structures substantially in their present condition; and with prior approval of the Grantee, which approval shall not be unreasonably withheld or delayed, the redesign, reconstruction and expansion of the visitor parking area, provided that the total number of spaces provided shall not exceed 125.

19. The use, operation, maintenance, repair, replacement and upgrade of existing utilities within the Premises with rights of ingress and egress thereto, including the right to use and operate such vehicles and equipment necessary to perform the functions permissible hereunder, provided that that the Grantor will use the minimum amount of equipment necessary to accomplish the above, together with the right to trim and cut from time to time trees and underbrush along said lines and to use said utility lines for the above purposes.

20. Subject to the prior written approval of the Grantee, which shall not be unreasonably withheld or delayed, and subject to all applicable permitting and regulatory requirements of the Massachusetts Department of Environmental Protection, the design, construction and operation of a new public water supply well to replace an existing well located in Devens along with necessary connections to the water distribution system. A request for approval of a replacement well must be accompanied by any environmental impact studies deemed reasonably necessary by Grantee to determine the impact of the activity on the Conservation Interests.

21. The right to receive and/or grant easements for any of the reserved rights or otherwise permitted activities if necessary due to conveyance of the Premises or the facilities thereon (i.e., sale or transfer of utility systems).

The exercise of any right reserved by Grantor under this paragraph B shall be in compliance with the then-current Devens Zoning By-Laws, Open Space Plan, the Wetlands Protection Act (Massachusetts General Laws Chapter 131, Section 40) and all other applicable federal, state and local law. The inclusion of any reserved right in this paragraph B requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position as to whether such permit should be issued.

C. Notice and Approval. Whenever notice to or approval by Grantee/Grantor is required under the provisions of Sections A or B, notice shall be given in writing, delivered to the appropriate party at the address provided herein, by Certified Mail, return receipt requested, not less than thirty (30) days prior to the commencement of the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit an informed judgment as to its consistency with the purposes of this Restriction. Where approval is required, it shall be granted or withheld in writing within thirty (30) days of receipt of written request thereof unless approval is granted for a time extension, which approval shall not be unreasonably withheld. Approval shall not be unreasonably withheld, but shall be granted only upon a showing that the proposed activity will not materially impair the purposes of this Restriction. If approval is withheld, the notice shall clearly indicate the reasons therefore. Failure to respond in writing within such 30 days to a request which complies with the requirement of this paragraph shall be deemed to constitute approval of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time.

D. Extinguishment.

1. Grantee's Receipt of Property Right. The Grantor(s) and the Grantee agree that the donation of this Conservation Restriction gives rise for purposes of this paragraph to a real property right, immediately vested in the Grantee, for the sole purpose of being able to enforce the provisions hereunder.

2. 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.

3. Allocation of Expenses upon Disposition. All reasonable and documented related expenses incurred as a result of provisions of paragraph D.2 by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be paid to the Grantor.

E. Access. The Restriction hereby conveyed does not grant to Grantee, to the public generally, or to any other person any right to enter upon the Premises except as follows: Grantor hereby grants to the Grantee and its representatives the right to enter the Premises (a) at reasonable times and in a reasonable manner for the purpose of regular monitoring and inspecting the same to determine compliance herewith, including the right to access the Premises over roads and rights of way owned by the Grantor and any rights of way or other access ways now or hereafter available to Grantor for access to the Premises, and (b) after 30 days' prior written notice, to take any and all actions with respect to the Premises as may be necessary or appropriate, with or without order of court, to remedy, abate or otherwise enforce any violation hereof. The Conservation Restriction grants to the Grantee and to the general public an easement to pass and re-pass upon the Premises, for those acts and uses provided for in Section B., but only if such acts or uses do not materially impair the purposes of this Restriction.

F. Grantee's Right to Post Identifying Signage. The Grantee shall have the right to erect and from time to time replace, at appropriate locations on the Premises mutually agreed upon, suitable signs identifying the Grantee and its interest in the Premises, and informing the public of the nature and public benefit of the conservation of the Premises, providing such activities are carried out to minimize environmental impacts.

G. Legal Remedies of Grantee. The rights hereby granted shall include the right to enforce this 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 their condition prior to such violation (it being agreed that Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee. Grantor covenants and agrees to reimburse Grantee for all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Restriction or in taking reasonable measures to remedy or abate any violation thereof, provided that a violation of this Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. By its acceptance of this Conservation Restriction, Grantee does not undertake any liability or obligation relating to the condition of the Premises, including with respect to compliance with hazardous materials or other environmental laws and regulations. Any election by the Grantee as to the nature and timing of its actions pursuant to 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.

H. Acts Beyond Grantor's Control. Nothing contained in this Restriction shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including, but not limited to, fire, flood, storm and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes; or the actions of any other person or agency acting with proper authority. The parties to this Conservation Restriction agree that in the event of damage to the Premises from acts beyond the Grantor's control, if it is desirable that the Premises be restored, the parties will cooperate in attempting to restore the Premises if feasible.



I. Duration and Assignability. The burdens of this Restriction shall run with the Premises and shall be enforceable against Grantor in perpetuity. Grantee is authorized, subject to prior written notice, to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Restriction. The Grantor appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor agrees itself to execute any such instruments upon request. The benefits of this Restriction shall be in gross and shall not be assignable by Grantee, except under the following conditions: (i) as a condition of any assignment, Grantee requires that the purpose of this Restriction continue to be carried out; (ii) the assignee, at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the Massachusetts General Laws, as an eligible donee to receive this Restriction directly; and (iii) any such assignment complies with the provisions required by Article 97 of the Amendments to the State Constitution, if applicable. In the event an assignee and/or successor is not immediately named or fails to accept such assignment by the Grantee, the Grantee and the Devens Enterprise Commission ("DEC") or local conservation commission shall act as interim successor of this Restriction.

J. Subsequent Transfers. The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which he divests himself of any interest in all or a portion of the Premises, including a leasehold interest, and to notify the Grantee within twenty (20) days of such transfer. Failure to do so shall not impair the validity or enforceability of this Conservation Restriction. Any transfer shall comply with article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

K. Termination of Rights and Obligations. Notwithstanding anything to the contrary contained herein, the rights and obligations under this Restriction of any party holding any interest in the Premises terminate upon transfer of that party's interest, except that liability for acts or omissions occurring prior to transfer, and liability for the transfer itself if the transfer is in violation of this Restriction, shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

L. Estoppel Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, that certifies the status of Grantor's compliance with any obligation of Grantor contained in this Restriction, or that otherwise evidences the status of this Restriction, as may reasonably be requested by Grantor.

M. Amendment. If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee 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 Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986 as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendment shall occur only in exceptional circumstances. Any amendment shall be consistent with the purposes

of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs or as required by applicable statutes in effect at the time of the proposed amendment and, if applicable, shall comply with the provisions of Article 97 of the Massachusetts Constitution. Any such amendment shall be recorded in the Worcester County Registry of Deeds.

N. Effective Date. This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in the Worcester County Registry of Deeds.

O. Recordation. The Grantee shall record this instrument in timely fashion in the Worcester County Registry of Deeds.

P. Notices: Any notice, 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 pre-paid, addressed to the party to be notified at the address last known to the notifying party.

Q. Miscellaneous.

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

(2) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Restriction shall be liberally construed in favor of the grant to effect the purpose of this Restriction and the policy and purpose of Mass. Gen. Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

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

(5) Joint Obligation. The obligations imposed upon the parties hereto by this Restriction shall be joint and several.

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

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

(8) No Merger. The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take, title to any part of the premises without having first assigned this Conservation Restriction, in accordance with Paragraph J, above (if necessary to avoid merger), to ensure that merger does not occur.

(9) Baseline Documentation: In order to establish the present condition of the Premises and the conservation values thereon which are protected by this Conservation Restriction, so as to enable the Grantee to monitor future uses of the Property and to assure compliance with the terms hereof, Grantor and Grantee have prepared an inventory of the relevant features and conditions of the Premises (the "Baseline Documentation Report"), and agree that the same is an accurate representation of the condition of the Premises as of the date of the execution of this Conservation Restriction. Verified originals of the Baseline Documentation Report will be deposited with the Grantor and in the permanent records of the Grantee. If the originals of said Baseline Documentation Report are subsequently destroyed by casualty or other circumstance, other evidence may be offered by the parties to establish the condition of the property as of the date of this Restriction.

(10) Subordination. Grantor represents, and Grantee relies on Grantor's representation, that the Premises are free from any lien, encumbrance, or other interest by any third party in the Premises, except as set forth in Section B, Paragraph 16 and/or Exhibit A. Any such interests which would disqualify this conveyance for treatment as a qualified conservation contribution in accordance with Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, are subordinated to this Conservation Restriction by subordination documents recorded herewith

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

Executed under seal this 15<sup>th</sup> day of August, 2011.

GRANTOR

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY

By: Martha L. Jones  
Name: Martha L. Jones  
Title: President and CEO

By: John L. Champion  
Name: John L. Champion  
Title: Treasurer and Chief Financial Officer

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

August 15, 2011

On this 15<sup>th</sup> day of August, 2011, before me, the undersigned notary public, personally appeared Martha L. Jones who proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Lee S. Smith  
Notary Public  
My commission expires: 

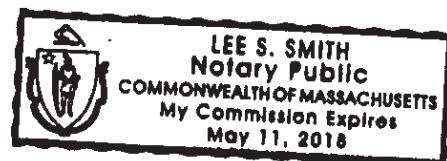
COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

August 15, 2011

On this 15<sup>th</sup> day of August, 2011, before me, the undersigned notary public, personally appeared John L. Champion who proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Lee S. Smith  
Notary Public  
My commission expires:



## ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this 27 day of June, 2011.

## THE TRUSTEES OF RESERVATIONS

By: 

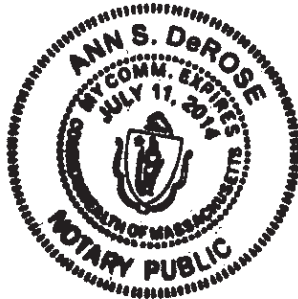
Name: Andrew Kendall

Title: President

## COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.June 27, 2011

On this 27 day of June, 2011, before me, the undersigned notary public, personally appeared Andrew Kendall proved to me through satisfactory evidence of identification, which was known to me personally, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

  
Notary Public

My commission expires:

July 11, 2014



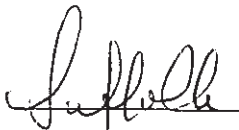
APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS

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

Date: Oct 25, 2011

  
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

, ss.

Oct 25, 2011

On this 25 day of October, 2011, before me, the undersigned notary public, personally appeared Richard & Sadima, Jr., proved to me through satisfactory evidence of identification, which was personally known to me, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

  
Notary Public

My commission expires: 12/15/2011

## MUNICIPAL CERTIFICATION

Mirror Lake & Esker Parcels  
Patton Road, Devens (Harvard), MA

We, the Devens Enterprise Commission, acting in our role as the Conservation Commission for the Devens Regional Enterprise Zone, (the certifier/holder), hereby certify that the proposed conservation restriction is in the public interest in that:

The Premises contain unusual, unique or outstanding qualities the protection of which in their predominately natural or open condition will be of benefit to the public. These qualities include wildlife (native and migrating species), geologic (eskers and kettle-holes), wetlands, cultural (historical features relating to past military activities), educational (scientific and cultural resources), water quality (contributing to the underlying aquifer), aesthetic (vistas and buffer areas) and recreational (hiking, biking, wildlife observation, swimming and exercise) benefits, many of which contribute significantly to adjacent landscapes.

- In addition, the Mirror Lake Parcel may contain an appropriate location for a productive water supply well to serve the Devens community.
- In addition, the Mirror Lake Parcel provides an unusual opportunity for water-based recreation in the Devens community, as well as a black spruce bog containing uncommon and sensitive wetland habitat meriting special attention. This parcel provides protection of the watershed of Mirror Lake (a Great Pond) and also abuts land owned by the United States Fish and Wildlife Service managed as part of the Oxbow National Wildlife Refuge.
- In addition, the Esker Parcel provides an example of a glacial esker and contributes to the water quality of nearby Robbins Pond. One or more potential vernal pools on the parcel provide habitat for certain amphibians and invertebrates, including some that may be rare and/or endangered.

The conservation of the Premises will add to previously protected lands in the Devens Regional Enterprise Zone, enhance the magnitude and effect of Devens Regional Enterprise Zone conservation and protected open space properties, as recommended in the 2008 Devens Open Space and Recreation Plan and contribute to the protection and resource value of the abutting Oxbow National Wildlife Refuge and the nearby Nashua River.

This Conservation Restriction will eliminate uses and activities associated with residential, commercial, or industrial development of the Premises and related adverse effects on the conservation values of the Premises and adjacent lands and will preserve the parcel in it's undisturbed condition. This will help preserve and enhance the water quality in the Nashua River water shed and will enhance the aesthetic value of the surrounding public and private lands.



[REDACTED]

[REDACTED]

**Exhibit A**

Mirror Lake Parcel  
Legal Description

[REDACTED]

[REDACTED]

[REDACTED]

**Legal Description**  
**"Mirror Lake" Conservation Restriction Area**

A certain conservation restriction area of land located in the Devens Regional Enterprise Zone, in the Town of Harvard, County of Worcester, Massachusetts situated southerly of Patton Road. Said area of land being shown as "Mirror Lake" Conservation Restriction Area" on a plan entitled, "Plan of Conservation Restriction – Devens Mirror Lake Parcel", prepared for Massachusetts Development Finance Agency and prepared by WSP Sells dated June 22, 2010 and last revised September 8, 2011. Said plan to be recorded in the Worcester County Registry of Deeds *IN BOOK 891 PAGE 92*

Beginning at a point being the northwestern corner of the area of land described herein. Said point having coordinates of Northing: 3,017,767.16 Easting: 625,553.23; thence,

Along land now or formerly The Government Land Bank (Parcel 1) the following twenty one courses:

S 81° 42' 41" E two hundred thirty four and 66/100 feet (234.66') to a point; thence,

S 14° 30' 55" W three hundred twenty six and 89/100 feet (326.89') to a point; thence,

N 82° 51' 02" E seven hundred twenty nine and 10/100 feet (729.10') to a point; thence,

N 68° 24' 38" E nine hundred fifty two and 48/100 feet (952.48') to a point; thence,

Along a non-tangent curve to the right; said arc having a radius of four hundred twenty and 00/100 feet (420.00) and a length of five hundred fifteen and 12/100 feet (515.12'). The chord bearing of the curve is S 59° 19' 19" E and chord length of four hundred eighty three and 44/100 feet (483.44') to a point; thence;

S 67° 13' 48" E five hundred sixty one and 67/100 feet (561.67') to a stone bound with drill hole found; thence,

S 15° 27' 38" W eight hundred one and 42/100 feet (801.42') to a point; thence,

S 37° 30' 40" W two hundred ninety one and 72/100 feet (291.72') to a point; thence,

S 30° 08' 13" W one hundred seventy nine and 34/100 feet (179.34') to a point; thence,

S 23° 04' 34" E one hundred seventy two and 62/100 feet (172.62') to a point; thence,

S 35° 07' 28" W three hundred nineteen and 68/100 feet (319.68') to a point; thence,

S 47° 55' 40" W one hundred fifty four and 09/100 feet (154.09') to a point; thence,

S 08° 44' 25" W one hundred three and 32/100 feet (103.32') to a point; thence,



S 29° 47' 35" W two hundred forty eight and 28/100 feet (248.28') to a point; thence,  
 N 65° 48' 29" W four hundred fifty eight and 91/100 feet (458.91') to a point; thence,  
 S 85° 53' 39" W two hundred eighty and 73/100 feet (280.73') to a point; thence,  
 S 36° 17' 01" W two hundred eighty nine and 90/100 feet (289.90') to a point; thence,  
 S 14° 56' 23" E three hundred ninety eight and 79/100 feet (398.79') to a point; thence,  
 S 19° 30' 49" W three hundred thirty six and 61/100 feet (336.61') to a point; thence,  
 N 75° 36' 05" W four hundred thirty eight and 66/100 feet (438.66') to a point; thence,  
 S 73° 48' 24" W thirty two and 61/100 feet (32.61') to a point along land now or formerly  
 The Government Land Bank (Lot W-2); thence,

Along a non-tangent curve to the right on land now or formerly The Government Land  
 Bank (Lot W-2); said arc having a radius of four hundred twenty and 00/100 feet  
 (420.00) and a length of eight hundred two and 54/100 feet (802.54') The chord bearing  
 of the curve is N 85° 01' 09" W and chord length of six hundred eighty five and 90/100  
 feet (685.90') to a stone bound with drill hole to be set on the northerly sideline of  
 Sheridan Road, thence;

Along the northerly sideline of Sheridan Road the following four courses:

Along a curve to the left; said arc having a radius of two thousand three hundred seventy  
 two and 00/100 feet (2,372.00) and a length of three hundred thirty four and 32/100 feet  
 (334.32') to a point, thence;

N 55° 42' 09" W four hundred ninety seven and 93/100 feet (497.93') to a point; thence,

Along a curve to the left; said arc having a radius of one thousand six hundred twenty  
 two and 00/100 feet (1,622.00) and a length of three hundred thirty and 35/100 feet  
 (330.35') to a point, thence;

N 67° 22' 18" W one hundred eighty seven and 27/100 feet (187.27') to a point along  
 land now or formerly Federal Bureau of Prisons (Parcel A) ; thence,

Along land now or formerly Federal Bureau of Prisons (Parcel A) the following thirteen courses:

N 59° 32' 33" E nine hundred twenty four and 33/100 feet (924.33') to a point; thence,

S 86° 51' 39" E three hundred five and 96/100 feet (305.96') to a point; thence,

N 56° 55' 05" E two hundred seventy seven and 76/100 feet (277.76') to a point; thence,

N 07° 24' 27" E one hundred eighty two and 20/100 feet (182.20') to a point; thence,

N 82° 50' 53" W fifty six and 70/100 feet (56.70') to a point; thence,

Along a curve to the right; said arc having a radius of one hundred seventy three and 13/100 feet (173.13) and a length of three hundred sixty three and 42/100 feet (363.42') to a point; thence;

N 37° 25' 24" E seventy five and 58/100 feet (75.58') to a point; thence,

Along a curve to the left; said arc having a radius of one hundred fourteen and 21/100 feet (114.21') and a length of eighty eight and 03/100 feet (88.03') to a point; thence;

N 06° 44' 26" W two hundred eight and 56/100 feet (208.56') to a point; thence,

N 06° 44' 26" W one hundred fifteen and 15/100 feet (115.15') to a point; thence,

Along a curve to the right; said arc having a radius of five hundred twenty five and 73/100 feet (525.73) and a length of two hundred eight and 22/100 feet (208.22') to a point; thence;

N 15° 57' 06" E three hundred ninety and 90/100 feet (390.90') to a point; thence,

Along a curve to the left; said arc having a radius of one hundred seventy two and 43/100 feet (172.43) and a length of one hundred fifty eight and 49/100 feet (158.49') to the point of beginning.

Said area of land being 6,725,567 S.F. or 154.40 acres of land, more or less.

[REDACTED]

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**Exhibit A-1**

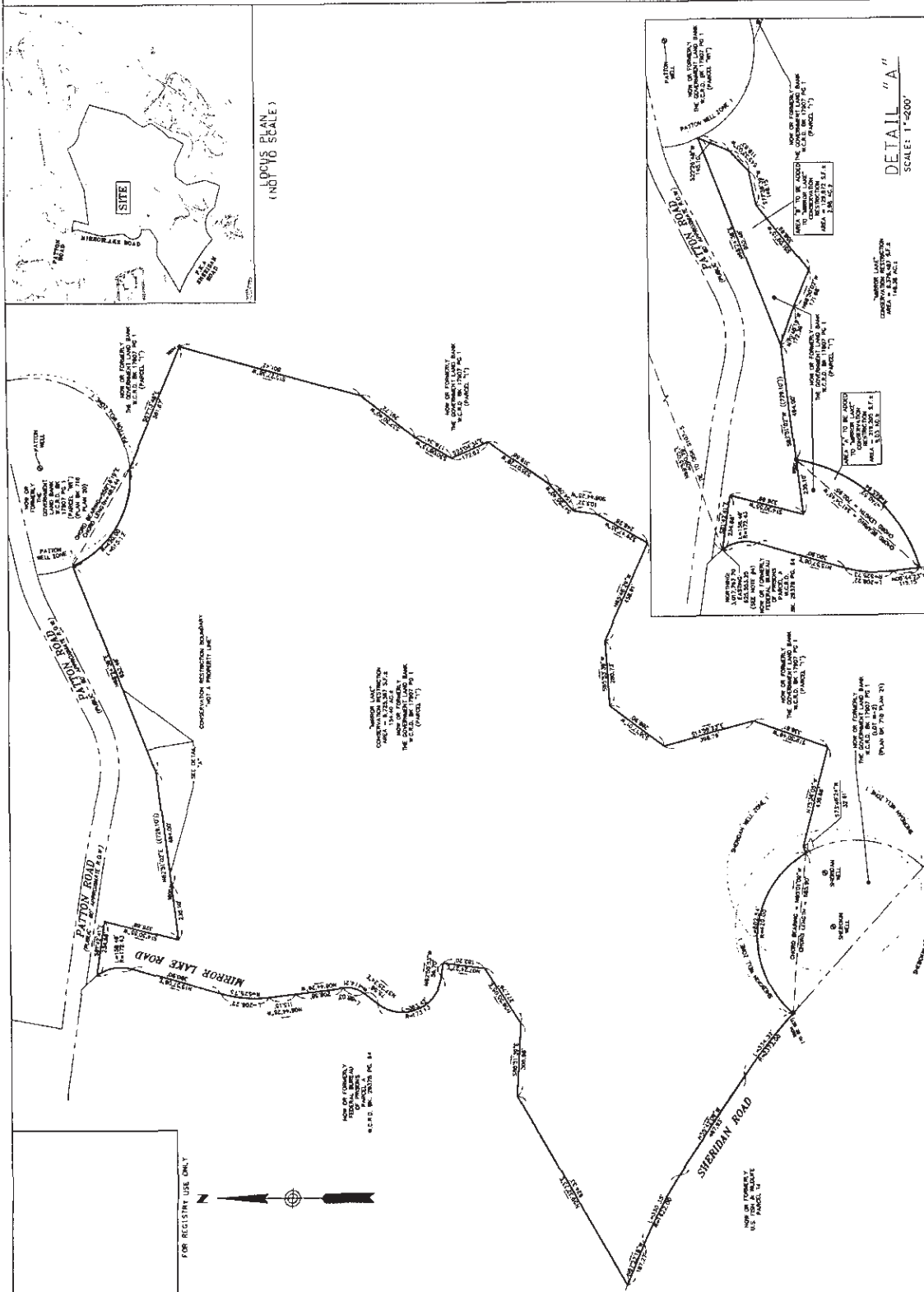
Mirror Lake Parcel  
CR Plan

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NOTES:

## REFERENCES:

1. NAME OF THE COMPANY THE COMPANY INCORPORATED IN THE STATE OF NEW YORK  
 2. DATE OF INCORPORATION 1954  
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 5. NAME OF THE OFFICER JOHN J. HARRIS  
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CERTIFICATION :

TO THE BEST OF MY PROFESSIONAL  
KNOWLEDGE INFORMATION AND BELIEF

I HEREBY CERTIFY THAT THE PROPERTY LINES SHOWN HEREON ARE THE LINES DIVIDING EXISTING OWNERSHIPS, 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 ARE SHOWN.

I FURTHER CERTIFY THAT THIS PLAN WAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS FOR RECORDING AT THE REGISTRY OF DEEDS.



DARREN J. HANCOY, P.L.S.  
REG. NO. 683035  
WSP SELLERS, INC.

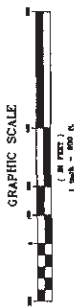
## HARVARD (DEVENS), MASSACHUSETTS

OF CONSERVATION RESTRICTION  
DEVEN'S MIRROR LAKE PARCEL

REV	DATE	DESCRIPTION	BY	DATE	PROJECT	DATE	SCALE	SHEET
REV. 1	09/06/2011	ADDED REFERENCE COORDINATES	ES	09/06/2011	PROJECT 1	09/06/2011	1" = 200'	SHEET 1 OF 1
REV. 2	11/22/2012	ADDED WELL LOCATIONS & ZONE 1 AREA	ON	11/22/2012	PROJECT 1	11/22/2012	1" = 200'	SHEET 1 OF 1
REV. 3								
REV. 4								
REV. 5								

**WSP - SELLS**

**Transportation & Infrastructure**  
55 Main Overlook Rd., Suite 120 & 125 • Nashua, NH 03060 • 603.595.7900  
www.repspeda.com

155 MAIN DUNSTABLE RD.  
DUNSTABLE PA 17829

NOV 1 1965

[REDACTED]

[REDACTED]

[REDACTED]

**Exhibit B**

Esker Parcel  
Legal Description

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



**Legal Description**  
**"Esker" Conservation Restriction Area**

A certain conservation restriction area of land located in the Devens Regional Enterprise Zone, in the Town of Harvard, County of Worcester, Massachusetts situated easterly and southerly of land now or formerly of the United States of America, Department of the Army (Parcel "D"). Said area of land being shown as "Esker" Conservation Restriction Area" on a plan entitled, "Plan of Conservation Restriction – Devens Esker Parcel", prepared for Massachusetts Development Finance Agency and prepared by WSP Sells dated February 13, 2009 and last revised September 8, 2011. Said plan to be recorded in the Worcester County Registry of Deeds. *Book 891 Page 93*

Beginning at a point located on a stone bound with drill hole to be set on land now or formerly of The Department of the Army "Parcel D". Said point being the northwestern corner of the area of land described herein, at a point having coordinates of Northing: 3,020,561.66 Easting: 625,994.68; thence,

Along land now or formerly The Department of the Army Parcel "D"  
 S 39° 53' 39" E seven hundred eighty two and 08/100 feet (782.08') to a point at the corner of land now or formerly of The Government Land Bank, "Parcel 1" ; thence,

Along land now or formerly The Government Land Bank (Parcel 1) the following nineteen courses:

N 89° 04' 29" E one hundred fifty nine and 72/100 feet (159.72') to a stone bound with drill hole to be set; thence,

S 13° 25' 53" E three hundred sixty four and 68/100 feet (364.68') to a point; thence,

S 30° 56' 55" W ninety and 23/100 feet (90.23') to a point; thence,

S 56° 03' 27" W two hundred thirty three and 59/100 feet (233.59') to a stone bound with drill hole found; thence,

N 88° 40' 31" W one hundred eleven and 60/100 feet (111.60') to a point; thence,

S 09° 27' 30" W ninety one and 52/100 feet (91.52') to a stone bound with drill hole found; thence,

S 50° 07' 18" W four hundred and 79/100 feet (400.79') to a stone bound with drill hole found; thence,

S 14° 36' 01" W two hundred twenty six and 16/100 feet (226.16') to a point; thence,

S 35° 29' 59" W one hundred eighty nine and 27/100 feet (189.27') to a point; thence,

S 46° 54' 47" W one hundred twenty seven and 08/100 feet (127.08') to a point; thence,

S 17° 02' 36" W seventy and 17/100 feet (70.17') to a point; thence,

N 90° 00' 00" W two hundred ninety four and 13/100 feet (294.13') to a point; thence,

N 90° 00' 00" W sixty eight and 30/100 feet (68.30') to a point; thence,

N 20° 20' 07" W two hundred ten and 96/100 feet (210.96') to a point; thence,

N 62° 44' 00" W four hundred forty eight and 42/100 feet (448.42') to a point; thence,

N 72° 51' 22" W two hundred sixty one and 52/100 feet (261.52') to a point; thence,

N 49° 26' 55" W eighty two and 64/100 feet (82.64') to a point; thence,

N 41° 34' 47" W one hundred sixteen and 36/100 feet (116.36') to a point; thence,

N 06° 10' 13" E two hundred forty six and 46/100 feet (246.46') to a point along land now or formerly Department of the Army Parcel "D"; thence,

Northerly along land now or formerly Department of the Army Parcel "D" the following five courses:

N 70° 29' 00" E one hundred sixty and 26/100 feet (160.26') to a concrete bound with drill hole found; thence,

N 48° 28' 13" E three hundred eighty and 12/100 feet (380.12') to a point; thence,

N 48° 28' 13" E four hundred seventy four and 70/100 feet (474.70') to a point; thence,

N 48° 28' 13" E two hundred twenty nine and 14/100 feet (229.14') to a point; thence,

N 48° 28' 13" E five hundred ninety two and 96/100 feet (592.96') to a stone bound with drill hole to be set at the point of beginning.

Said area of land being 2,295,497 S.F. or 52.70 acres of land, more or less.

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**Exhibit B-1**

Esker Parcel  
CR Plan

[REDACTED]

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