

EASEMENT/RESTRICTION

This Agreement for an Easement ("Agreement") is made as of this (date) _____ of (month) _____, (year) _____ by and between _____ ("Grantors") and Friends of Newburyport Trees, Inc. ("Grantee"), for the purpose of conservation of the natural character, scenic qualities, and environmental significance of the certain tree located on Grantor's property for the enjoyment and well-being of the residents of the City of Newburyport.

RECITALS

WHEREAS, the Grantors are the owners in fee simple of the property located at _____ Street, in Newburyport, Essex County, Massachusetts, on which the tree is located. The legal description of the Grantor's property and the approximate location of the tree are contained in Exhibit A attached hereto and can be found at Book _____, Page ____ of the Essex County Registry of Deeds;

WHEREAS, the tree is a (Species), approximately ____ tall. The tree is of sufficient age, size and rarity that it constitutes a significant scenic and natural resource;

WHEREAS, this Agreement is entered into pursuant to Massachusetts General Laws Chapter 184, §§26 and 23;

WHEREAS, Grantors, as owners of the tree, are granting property interests described in this Agreement to Grantee for the purpose of restricting the removal or destruction of the tree and assuring that the natural, environmental and scenic value of the tree is conserved and maintained forever.

WHEREAS, Grantee is a 501 (c)3 nonprofit corporation formed pursuant to Massachusetts General Laws Chapter 180.

The Grantee's purposes include, but are not limited to, preservation and protection of trees, shrubs and other flora which may be of historical, aesthetic or ecological value.

For the reasons stated above, and in consideration of the promises made in this Agreement, the Grantors hereby grant to the Grantee and the Grantee hereby accepts, a restrictive easement consisting of the following rights and restrictions:

1. GRANTEE'S RIGHTS

A. The Grantee shall have the right to preserve and protect in perpetuity the tree for the benefit and enjoyment of the general public. Enforcement of the terms of this Agreement shall be in the discretion of the Grantee, and any decision not to enforce these terms shall not be construed to be a waiver of the Grantee's rights.

B. The Grantee shall have the right to enter upon the Grantors' property after giving reasonable notice to the Grantors for the purpose of inspecting the tree to assure compliance with this Agreement.

2. GRANTORS' RIGHTS

A. Grantors reserve the right to use the Grantors' property and the tree for all uses that are consistent with the purpose of this Agreement. Grantors shall continue to be solely responsible for the upkeep and maintenance of the tree, including pruning, watering, and protection of the root zone as necessary for the continued health of the tree.

B. The Grantors agree to maintain the tree in a manner which (1) prevents personal injury and property damage, (2) maintains the natural and scenic appearance of the tree, and (3) otherwise ensures the healthy growth of the tree. The tree may be removed only under circumstances described in Section 3 of this Agreement.

C. Other than as specified herein, this Agreement is not intended to impose any legal, financial or other responsibility on the Grantee or its members, officers, directors or agents, or in any way transfer to Grantee any existing obligation of the Grantors as owners of the tree.

GRANTORS' RIGHTS

A. Grantors reserve the right to use the Grantors' property and the tree for all uses that are consistent with the purpose of this Agreement. Grantors shall continue to be solely responsible for the upkeep and maintenance of the tree, including pruning, watering, and protection of the root zone as necessary for the continued health of the tree.

B. The Grantors agree to maintain the tree in a manner which (1) prevents personal injury and property damage, (2) maintains the natural and scenic appearance of the tree, and (3) otherwise ensures the healthy growth of the tree. The tree may be removed only under circumstances described in Section 3 of this Agreement.

C. Other than as specified herein, this Agreement is not intended to impose any legal, financial or other responsibility on the Grantee or its members, officers, directors or agents, or in any way transfer to Grantee any existing obligation of the Grantors as owners of the tree.

3. REMOVAL OF THE TREE

A. In the event an act of God or other natural cause kills the tree or substantially damages the tree such that the tree no longer possesses the values intended to be preserved by this Agreement, or if such event creates a substantial risk of personal injury or of significant damage to property, the tree may be removed at the Grantor's expense twenty-eight (28) days after notice is provided to Grantee. Pruning and restoration alternatives that will protect people and property while preserving the scenic value of the tree are preferred to removal and shall be duly considered prior to removal and implemented where feasible.

B. An Affidavit, dated after the required notice period specified in A above, by the Grantor, stating that proper notice was given to the Grantee, and that the Grantee has not taken any action pursuant to said notice, and the recording of said Affidavit with the Essex South District Registry of Deeds, with a marginal reference to the Grantors' deed, shall act as a termination of this Easement/Restriction unless notice to the contrary is recorded by the Grantee within the said twenty-eight (28) day notice period.

4. REMEDIES

A. If a dispute arises between the Grantors and Grantee concerning the consistency of any proposed activity with the purpose of this Agreement, the parties shall meet together to discuss the dispute and attempt resolution. Thereafter, the parties shall submit to mediation by a mediator agreed to by both parties. The parties agree not to proceed with the proposed activity after being notified of the dispute orally or in writing until the dispute is resolved in accordance with this Agreement.

B. The cost of mediation shall be shared equally by the parties to this Agreement.

A. If a dispute arises between the Grantors and Grantee concerning the consistency of any proposed activity with the purpose of this Agreement, the parties shall meet together to discuss the dispute and attempt resolution. Thereafter, the parties shall submit to mediation by a mediator agreed to by both parties. The parties agree not to proceed with the proposed activity after being notified of the dispute orally or in writing until the dispute is resolved in accordance with this Agreement.

B. The cost of mediation shall be shared equally by the parties to this Agreement.

5. TRANSFERS OF INTEREST

A. The provisions and covenants of this conservation easement shall run with the Grantors' property for a period of ninety-nine (99) years; provided that this Agreement or another Agreement is executed by the parties and recorded once every thirty (30) years at the Essex South District Registry of Deeds. This Agreement shall be binding upon and benefit the heirs, successors, and assigns of all parties.

5. TRANSFERS OF INTEREST

A. The provisions and covenants of this conservation easement shall run with the Grantors' property for a period of ninety-nine (99) years; provided that this Agreement or another Agreement is executed by the parties and recorded once every thirty (30) years at the Essex South District Registry of Deeds. This Agreement shall be binding upon and benefit the heirs, successors, and assigns of all parties.

B. Grantors agree to incorporate the terms of this Agreement in any deed or legal instrument by which Grantors divest themselves of any interest in all or a portion of the Grantors' property, including but not limited to, a leasehold interest, and shall notify Grantee in writing of any such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Agreement or limit its enforceability in any way.

6. MISCELLANEOUS

A. Severability. If any provision of this Agreement is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality, or enforceability of the remaining provisions of this Agreement.

B. Notice. Any notices required by this Agreement shall be in writing and shall be delivered by first class mail, postage prepaid, to Grantors and Grantee respectively at the following address:

To the Grantor: _____ Name
_____ Street
_____ City

To the Grantee: Edward Taylor
Friends of Newburyport Trees, Inc.

C. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties hereto and supercedes all prior written and oral agreements and understandings between the parties regarding the subject matter hereof.

Executed on this (date) of (month), (year)

Name Edward Taylor
President
On behalf of the Friends of

Name Newburyport Trees, Inc.

Name
COMMONWEALTH OF MASSACHUSETTS
Essex County

On this ____ day of ____ Month, ____ YEAR, before me, the undersigned notary public, personally appeared _____ Names of Grantee(s) and Edward Taylor, and proved to me through satisfactory evidence of identity, which were Massachusetts driver's licenses, to be the persons whose names are signed on the preceding or attached document in my presence, and acknowledged to me that they signed it voluntarily for its stated purpose.

, Notary Public
My commission expires:

[ATTACH EXHIBIT A—DEED OF _____ STREET PROPERTY]

[ATTACH PLOT PLAN WITH LOCATION OF TREE CLEARLY MARKED]

