


 ✓ PLAN MARG. REF.
 BOOK 115
 PAGE 21
GRANT OF CONSERVATION RESTRICTION

We, Robert and Evelyn Schuyler, of 95 Amherst Road, Leverett, Massachusetts, 01054 ("the Grantors"), do hereby grant, with quitclaim covenants, in perpetuity and exclusively for conservation purposes, to **THE RATTLESNAKE GUTTER TRUST, INC.**, a Massachusetts non-profit corporation located in Leverett, Massachusetts ("the Grantee"), and its successors and permitted assigns, a Conservation Restriction pursuant to the provisions of M.G.L. Chapter 184, sections 31-33 as described below with respect to a certain parcel of land located in Leverett, Massachusetts. The 16.517 acre parcel is designated and shown on a "Plan of Land ... for Evelyn Schuyler" prepared by SVE Associates (dated 11/02/02), and attached hereto as Exhibit A (the "Property"), as "Portion of Locus Parcel To Be Placed Under Conservation Restriction Area = 16.517 Acres," and further described as a portion of the full *Schuyler* holding of 38.651 acres recorded at the Franklin County Registry of Deeds at Book 3733 , Page 194.

WHEREAS, the Grantors and the Grantee recognize the natural, scenic, aesthetic, and special character of the Property and have the common purpose of preserving the conservation values of the Property by conveyance to the Grantee of a Conservation Restriction on, over, under, and across the Property which will preserve the natural values of the Property and prevent any use of the Property that would significantly impair or interfere with the conservation values of the Property and the Property's natural resources, and

WHEREAS, the Property is in proximity to the East Leverett Meadow, already owned and managed by the Grantee, and as such constitutes an extension of open space devoted to conservation purposes and

WHEREAS, the Property provides significant habitat for, and functions as wildfire corridor for numerous species of birds, mammals, reptiles, and amphibians, including bear, deer, fishers, coyotes, wild turkeys, owls, grouse, red fox, porcupine, bobcats, pileated woodpeckers, and a variety of salamanders, turtles, and snakes, and

WHEREAS, the Property will be available to the public for limited hiking and other passive recreational and educational activities.

1. Purpose

The intent and purpose of this Conservation Restriction is to protect and preserve the Property in its present natural, scenic, and forested condition; to promote the conservation of forests, wetlands, lands, soils, natural watercourses, and wildlife thereon, to the benefit to the public. The Property provides habitat for a wide variety of animals and functions as part of a wildlife corridor extending to the already protected East Leverett Meadow. As a buffer to development preparations begun on its southwestern border, the protected Property would constitute an extension of open spaces and conservation areas. The Property, mainly upland forest, has elements of geological, horticultural, and historical interest, as described in "Baseline Data Report" by Mary Alice Wilson, on file with Grantee, and will be available to the public for recreational and educational activities.

2. Binding Effect and Prohibited Activities

The Grantors covenant for themselves and their heirs, devisees, mortgagees, legal representatives, successors, and assigns that the Property will at all times be held, used, and conveyed subject to the following restrictions, which shall run with the Property in perpetuity, except as said restrictions may be limited or affected by the provisions of Section 3 below.

(a) The Property, (including, without limitation, any body of water thereon) excluding any public way or existing private right of way, shall continue to be used substantially as at present without residential, industrial, or commercial use or development.

(b) No residential dwelling, mobile home or residential trailer, tennis court, artificial swimming pool, asphalt driveway, improved roads associated with development, utility pole, tower, conduit or line, equipment, fixture, trailer, antenna, or other temporary or permanent structure or improvement shall be placed or permitted to remain on, over, or under the Property except for structures expressly permitted herein. [These prohibitions do not apply to any utility pole, tower, conduit or line whose installation is mandated by the Town or a utility company.]

(c) No loam, peat, gravel, soil, sand, rock or other mineral resource or natural deposit shall be excavated, dredged, or removed from the Property, unless related to the uses, activities and purposes expressly permitted herein including but not limited to, the construction of recreation trails, and the conduct of sound forestry and wildlife management practices.

(d) No trees, shrubs, or other vegetation on the Property shall be cut, removed, or destroyed except that the Grantors, their heirs, devisees, successors, or assigns may perform at their expense or authorize others to perform such as cutting, pruning, mowing, and removal as shall be dictated by sound horticultural, silvicultural, or wildlife management practices and as otherwise expressly permitted herein.

(e) No substantial changes may be made to the historic well on the Property except as is consistent with safety.

(f) Other than that which may exist at the time of this grant, no refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, low level radioactive or hazardous waste, or other similar substances or material whatsoever shall be placed, dumped, or stored on the Property.

(g) No soil shall be placed, dumped, or stored on the Property unless related to the uses, activities, and purposes expressly permitted herein.

(h) No use shall be made of the Property and no activity shall be permitted thereon which is or may be inconsistent with the intent of this grant, being the perpetual protection and preservation of the Property and its natural resources. No activity (including, but not limited to, drainage or flood control activities) shall be authorized or carried out which is significantly detrimental to the natural resources of the Property or to water quality, soil conservation, wildlife conservation or sound forestry management practices or which is otherwise wasteful of the natural resources of the Property.

(i) No hunting of any kind shall be permitted on the Property, nor commercial camping, commercial fishing, or commercial trapping. No campfires or fires of any kind shall be permitted except as authorized by the Grantors and their heirs, devisees, successors or assigns.

(j) The Property may not be used for transferring development rights to any property, whether or not adjacent to the Property or for use in calculations involving development of any other property whether or not adjacent to the Property, in any manner whatsoever.

3. Reserved Rights

Notwithstanding any provisions of this instrument to the contrary, the Grantors hereby reserve for themselves and their heirs, devisees, legal representatives, successors, and assigns all other customary rights and privileges of ownership including the right to privacy and the right to conduct or permit the following activities on the Property. Reserved rights shall be exercised with respect to and in compliance with all applicable state, local, and federal laws.

(a) The right to conduct or permit others to conduct sound horticultural or silvicultural uses of the Property, to manage any part of the Property for the benefit of wildlife (including, without limitation, the planting and cultivation of native wildlife cover), the cutting, pruning, or removal of vegetation to enhance and promote varied types of wildlife habitat consistent with sound wildlife management practices.

(b) The right to maintain and use currently existing trails, rights of way, fences, bar ways, bridges, gates, stone walls, farm and woods roads on the Property, substantially in their present condition, or as reasonably improved, if necessary for the uses hereinafter permitted, or necessary and desirable in controlling unauthorized use or facilitating authorized use of the Property. Permanent boundary fences may be erected to control unauthorized use. Temporary ways may be constructed, maintained, and closed in conformity with sound erosion control practices to facilitate authorized uses for purposes of forest management.

(c) The right to cut trees for fire protection, trail maintenance, tick control or other activities that preserve the present condition of the premises.

(d) The right to maintain piles of limbs, brush, leaves and similar biodegradable materials provided that such piles are not conspicuous or otherwise interfere with the conservation purposes of the restriction.

(e) The right to dig or drill for water, and to maintain water wells necessary to support sound horticultural or silvicultural uses of the Property.

(f) The right to construct, erect, and maintain signs setting forth restrictions on the use of the Property or identifying trails, locations or natural features, or similar items.

(g) The right to construct, maintain, or close trails for hiking access to adjacent land of the Grantors, or trails designed for increasing knowledge and appreciation of wildlife and the natural world. If public access is granted for use of such trails, continuing access shall not be construed as causing them to become public rights-of-way.

4. Grantee Disclaimer or Liability

By its acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Property, or to the enforcement of any obligation or requirement hereunder.

5. Access

This Conservation Restriction grants to the general public, only under supervision of the Grantee, the right to enter upon the Property for the purposes of hiking, bird watching, cross-country skiing, snow shoeing, and other passive recreational activities as long as such access is carried out on foot and is in a manner which does not impair the purposes of this Conservation Restriction, expose people to unreasonable danger, or confer possessory rights upon the users. Supervision by the Grantee is construed to mean organized and scheduled group access to the Property, with reasonable prior notice given to, and not unreasonably rejected by, the Grantors. The Grantors and their heirs, successors and assigns shall have the right to prohibit access during hunting season and during major Property maintenance operations. This grant of access does not extend to camping or the building of campfires, nor does it include any overnight stay on the property by a member of the public, such overnight stays being expressly prohibited. M.G.L. Chapter 21, section 17C protects the landowner from any liability resulting from public access so long as no entry fee is charged.

6. Enforcement

(a) The Grantors hereby grant to Grantee, its successors, and assigns, an easement of access to enter the property for the purposes of inspecting the Property and enforcing the foregoing restrictions and covenants and remedying any violation thereof. The easement granted shall be in addition to any other remedies available for the enforcement of the foregoing restrictions and covenants (which shall include, without limitation, the right to bring proceedings in law or in equity against any party or parties violating or attempting to violate the terms hereof, to enjoin them from so doing, and to cause any such violation to be remedied, after written notice to the then owner of the property). Every act, omission to act or condition which violates the terms of this grant of restrictions shall constitute a nuisance and every remedy available in law or in equity for the abatement of public or private nuisances shall be available to the party to enforce this grant of restrictions.

(b) Any election by the Grantee 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.

7. Prior Notice to the Grantee

The Grantors and their heirs, devisees, successors, or assigns agree to notify the Grantee in writing at least forty-five (45) days before exercising any right reserved herein, the exercise of which could reasonably be expected to significantly impair any conservation interests associated with the Property. The notice shall be mailed postage prepaid or hand delivered to the Grantee, and shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to enable the Grantee to make an informed judgment as to the consistency of such activity with the purposes of this Conservation Restriction. The Grantee shall review the proposed activity and notify the Grantors within thirty (30) days, in writing, of its approval or disapproval of such activity. Approval shall not be unreasonably withheld but shall only be granted upon a showing that the proposed activity will not have a significant impact on the purposes of the Conservation Restriction. If the Grantee disapproves of the activity, it shall specify the reasons for such disapproval in writing.

8. Extinguishment

(a) The Grantors 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, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction at the time of the gift bears to the value of the Property if unrestricted at that time.

(b) Such proportionate value of the Grantee's property right shall remain constant.

(c) If any occurrence ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then the Grantee, on a subsequent sale, exchange, or involuntary conversion of the Property, shall be entitled to that portion of the proceeds equal to such proportionate value, subject, however, to any applicable law which expressly provides for a different disposition of proceeds.

(d) Whenever all or part of the Property or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantors or their heirs, devisees, successors, and assigns as the case may be and the Grantee shall cooperate in recovering full value of all direct and consequential damages resulting from such action.

(e) All related expenses incurred by the Grantors or their heirs, devisees, successors, and assigns as the case may be and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantors and Grantee in shares equal to such proportionate values.

(f) The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes of this grant.

9. Subsequent Transfers

The Grantors, for themselves and their heirs, devisees, successors, and assigns agree to incorporate the terms of this Conservation Restriction in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. The Grantors further agree to give written notice to the Grantee of the proposed transfer of any such interest at least twenty (20) days prior to the date of such transfer. Failure of the Grantors to do so shall not impair the validity of such deed, transfer, or this Conservation Restriction or limit its enforceability in any way or give rise to any action for damages.

10. Assignability

(a) The Conservation Restriction hereby imposed is in gross and is not for the benefit of or appurtenant to any particular land and shall be assignable, after notification to the Grantors, to any other governmental or nongovernmental nonprofit organization whose primary purposes include the conservation of Massachusetts lands, natural areas, and horticultural, silvicultural, and wildlife resources, provided that as a condition of any such assignment, such assignee shall agree to enforce the purposes of this Conservation Restriction. The Grantee and its successors and assigns shall have the right to assign its right, title, and interest hereunder to a "Qualified Organization" as defined in Section 170(h)(3) of the Internal Revenue Code provided that at the time of the assignment such assignee shall also be an eligible donee of a Conservation Restriction as set forth in Chapter 184, Section 32 of the General Laws of Massachusetts, and provided further that, as a condition of such assignment, the assignee agrees to give written notice to the Grantors, and their heirs, devisees, successors, and assigns of any assignment of this Conservation Restriction at least

twenty (20) days prior to the date of such transfer. Failure to give such notice shall not impair the validity of such assignment or this Conservation Restriction or limit its enforceability in any way or give rise to any action for damages. If the Rattlesnake Gutter Trust, Inc. fails to be a qualified organization under Section 32 of Chapter 184 of the General Laws of Massachusetts and Section 170(h)3 of the Internal Revenue Code, and a prior assignment is not made pursuant to this paragraph, then the rights and obligations under this Conservation Restriction shall vest in such organization as a court of competent jurisdiction shall direct under the doctrine of cy pres and with due regard to the requirements for assignment pursuant to this paragraph.

(b) The burdens of this Conservation Restriction shall run with the Property in perpetuity, and shall be enforceable against the Grantors, their heirs, devisee, successors and assigns holding any interest in the Property.

(c) The Grantee is authorized to record or file any notices or instruments appropriate assuring the perpetual enforceability of this Conservation Restriction. The Grantors on behalf of themselves and their heirs, devisees, successors and assigns hereby appoint the Grantee as attorney-in-fact to execute, acknowledge, and deliver any such instruments on their behalf. Without limiting the foregoing, the Grantors for themselves and their heirs, successors and assigns agree to execute any such instruments upon request of the Grantee.

11. Estoppel Certificate

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

12. Effective Date

This Conservation Restriction shall become effective when the Grantors 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.

13. Recordation

The Grantors shall record this instrument in a timely fashion in the Franklin County Registry of Deeds.

14. Severability

Invalidity of any of these covenants and restrictions or any part thereof by judgments of court or court orders shall in no way affect the validity of any of the other provisions hereof, which shall remain in full force and effect.

15. Miscellaneous

Approval of this Conservation 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 Property, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

IN WITNESS WHEREOF, Robert and Evelyn Schuyler (Grantors) have executed this instrument this 20 day of October, 2003

Grantor(s):

[Signature]
Robert Ten Eyck Schuyler

[Signature]
Evelyn K. Schuyler

COMMONWEALTH OF MASSACHUSETTS

Franklin, ss. Oct. 20, 2003

Then personally appeared the above-named Robert and Evelyn Schuyler acknowledged the foregoing instrument to be their free act and deed, before me.

[Signature]
Notary Public
My Commission Expires: 2/25/05

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this 20 day of Oct.,
2003.

Rattlesnake Gutter Trust, Inc.

By: Margaret J Sanders

Its: Trustee

COMMONWEALTH OF MASSACHUSETTS

Franklin, ss. Oct. 20, 2003

Then personally appeared the above-named Margaret Sanders and
acknowledged the foregoing instrument to be their free act and deed, before me.

Dise Bradford

Notary Public

My Commission Expires:

2/25/05

APPROVAL BY SELECTBOARD

We, the undersigned Selectpersons of the Town of Leverett, Massachusetts, hereby certify that we approve of the foregoing Conservation Restriction to RATTLESNAKE GUTTER TRUST, INC. in the public interest for the preservation of the natural, , and scenic resources of said Town pursuant to M.G.L. Chapter 184, Section 32.

Date 10/27/03

[Signature]
James Perkins
[Signature]

COMMONWEALTH OF MASSACHUSETTS

Franklin, ss. Oct. 27, 2003

Then personally appeared the above-named Select Board Members and acknowledged the foregoing instrument to be their free act and deed, before me.

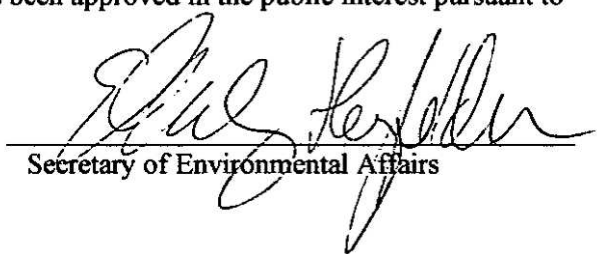
[Signature]
Notary Public
My Commission Expires: 6/20/08



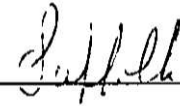
**APPROVAL BY SECRETARY OF ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS**

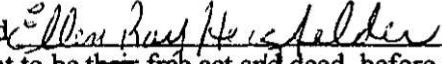
The undersigned, Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to RATTLESNAKE GUTTER TRUST, INC. has been approved in the public interest pursuant to M.G.L. Ch. 184, Section 32.

Date: Nov. 12, 2003

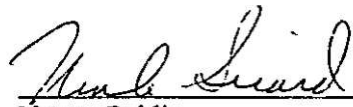

Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

, ss. Nov. 12, 2003

Then personally appeared the above-named 
and acknowledged the foregoing instrument to be their free act and deed, before me.

HER


Notary Public
My Commission Expires:

NICOLE SICARD
Notary Public
My Commission Expires December 31, 2004

EXHIBIT "A"

The 16.517 acre parcel of land in Leverett, Massachusetts designated and shown on "Plan of Land ... for Evelyn Schuyler" prepared by SVE Associates (dated 11/02/02) as "Portion of Locus Parcel To Be Placed Under Conservation Restriction Area=16.517 Acres" owned by *Schuyler* as a portion of full holding described in a deed recorded at the Franklin County Registry of Deeds at Book 3733, Page 194, is subject to this Conservation Restriction.

SEE ATTACHED

