

012NOV30

**EDMOND G. COOGAN LAW OFFICE, P.C.**

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VINEYARD HAVEN, MASSACHUSETTS 02568

TELEPHONE 508-693-3200  
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EDMOND G. COOGAN, ESQ., 1984-2001  
GEOGHAN E. COOGAN, ESQ.  
VIRGINIA N. COOGAN, ESQ.

October 30, 2012

Timothy R. Carroll  
P.O. Box 119  
Chilmark, MA 02535-0119

Re: Conservation Restriction

Dear Mr. Carroll,

In connection with the above, please find enclosed the CR for Coleman for the Town's execution. If you have any questions, please do not hesitate to contact our office.

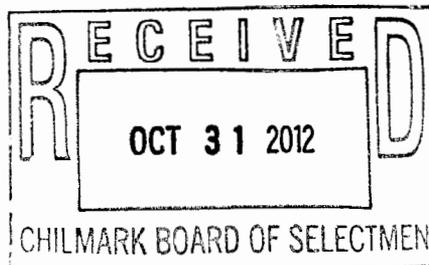
Very truly yours,



Laura E. Townes

LET/let

*Pam ConCom Signed  
(I Notarized 11/27/12 pg 16)  
-Dan*



012NOV30



www.chilmarkma.gov

# TOWN OF CHILMARK CHILMARK, MASSACHUSETTS

**TOWN OFFICES:**  
Beetlebung Corner  
Post Office Box 119  
Chilmark, MA 02535  
508-645-2100  
508-645-2110 Fax

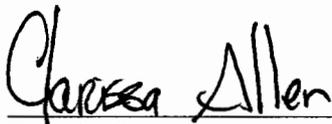
November 28, 2012

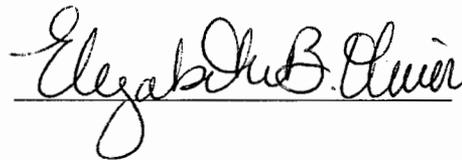
Board of Selectmen  
Town of Chilmark

Dear Selectmen:

The Board of Assessors has reviewed the proposed Coleman Conservation Restriction and determined that placing a CR on 5.52 acres wouldn't reduce the property value because the two parcels are already considered unbuildable.

The Board supports this conservation restriction as preservation of open space.

  
\_\_\_\_\_  
Board of Assessors

  
\_\_\_\_\_

  
\_\_\_\_\_

## *CONSERVATION RESTRICTION*

1. Parties and Preamble.

I, RICHARD COLEMAN, of 101 Plaza Real South #824 Boca Raton Fl 33432, being the sole owner, for myself, my successors and assigns (hereinafter called the "Grantor"), acting pursuant to Massachusetts General Laws Chapter 184, Sections 31-33, for consideration of less than one hundred (\$100.00) dollars paid, hereby grant to the THE TOWN OF CHILMARK, acting by and through its Conservation Commission pursuant to Massachusetts General Laws Chapter 40 Section 8C, with a mailing address of \_\_\_\_\_, its permitted successors and assigns (hereinafter called the "Grantee"), in perpetuity, and exclusively for conservation purposes, the following described Conservation Restriction (hereinafter called the "Conservation Restriction" or the "Restriction") on two parcels of land totaling (5.52) acres located off of Meeting House Way, Chilmark, Dukes County, Massachusetts, such Premises being more particularly described on *Exhibit "A"* and such Premises being illustrated on *Exhibit "B"*, each of which exhibits is attached hereto and incorporated herein by reference.

For my title, see deed recorded in Dukes County Registry of Deeds in Book 1205, Page 825.

*WHEREAS* the Premises has significant natural, open space, scenic and agricultural values (collectively, "conservation values") of great importance to the Grantor, Grantee, the people of Martha's Vineyard Island and the Commonwealth of Massachusetts; and

*WHEREAS* the protection of the Premises will create a natural buffer of forest land and meadow between neighboring properties, which itself contains valuable wildlife habitat such as birds, moths, deer and other species native to the island of Martha's Vineyard, will enhance the wildlife habitat value and ecological viability of the land.

*WHEREAS* the Premises contains important environmental resources, containing Species of Special Concern on Massachusetts BioMap 2, Core Habitat, Critical Natural Landscape and NHESP Priority Habitat for Rare Species.

*NOW THEREFORE*, in consideration of the above purposes, and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the commonwealth of Massachusetts, in particular Sections 31 - 33 of Chapter 184 of the General Laws and Chapter 736 of the Acts of 1985, as amended, Grantor hereby voluntarily grants and conveys to Grantee and its permitted successors and assigns, with quitclaim covenants, this Restriction in perpetuity for the benefit of the public over the Premises, of the nature and character and to the extent hereinafter set forth.

2. Purpose of Restriction.

The purpose of this Restriction is to assure that the Premises will be retained in perpetuity in their natural, scenic and open condition and to prevent any use of the Premises that would significantly impair or interfere with the above-listed conservation values of the Premises.

3. Prohibited Acts and Uses.

In furtherance of the purpose of the Restriction as set forth above, Grantor will not perform or permit the following acts and uses, which are prohibited on, above or below the Premises, except as otherwise reserved to Grantor in Section 4 hereof:

- (a) mining, excavating, dredging or removing from the Premises any soil, loam, peat, gravel, sand, hydrocarbons, rock, clay or other mineral resource or natural deposit, or otherwise make topographical changes to the area;
- (b) commercial or industrial uses of the Premises, including but not limited to commercial recreational uses;
- (c) constructing, placing or allowing to remain any temporary or permanent building, structure, recreational play pad (such as a tennis or basketball court), landing strip, swimming pool, mobile home, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, utility pole, transmission or receiving tower, conduit, line or other temporary or permanent structure or facility on, above or below the Premises;
- (d) the installation of underground or aboveground storage tanks or the placing, filling, storing or dumping on the Premises of any soil, refuse, trash, vehicle bodies or parts, rubbish, débris, junk, waste or any other substance or materials, whether or not generated on the Premises;
- (e) activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation or archeological conservation;
- (f) the division or subdivision of the Premises;
- (g) including the Premises or any portion thereof as part of the gross area of this or any property other than the Premises for the purposes of determining density, lot coverage or open space requirements under otherwise applicable

laws, regulations or ordinances controlling land use and building density; and the development rights that are encumbered and extinguished by this Restriction shall not be transferred to any other property pursuant to a transfer-of-development rights plan, cluster-development arrangement or otherwise;

- (h) the blocking or impairment of the view (by fencing, mature trees, vegetation or any other means), of the Premises;
- (i) use, parking or storage of motorized vehicles, including, but not limited to, motorcycles, mopeds, snowmobiles, and all-terrain vehicles on the Premises, except for vehicles necessary (i) for public safety (i.e., fire, police, ambulance, and other governmental officials) in carrying out their lawful duties.
- (j) any other use of or activity on the Premises which is inconsistent with the purpose of this Restriction or which would materially impair its conservation interests.

4. **Reserved Rights and Exceptions to Prohibited Acts in the Premises.**

All acts and uses not prohibited or circumscribed by Section 3 are permissible, including the following acts and uses but only if such uses and activities do not materially impair the conservation values or purposes of this Restriction, and the following acts and uses, which, while specifically prohibited by Section 3, are permissible to the extent specifically noted below. The values and purposes that must not be materially impaired include Species of Special Concern, Core Habitat, Critical Natural Landscape and Priority Habitat for Rare Species.

- (a) Retention or replacement of selective Specimen Trees, in the event of disease or death of such trees, may be retained or replaced, from time to time, provided that they, in the sole discretion of the Grantee, do not obstruct or threaten to obstruct the then-current view of the Premises.
- (b) The right to construct, place, maintain, repair, renovate, demolish and/or replace any building, structure and improvement which is compatible with traditional Martha's Vineyard architecture, such as fences or a shed for the normal maintenance of the property, provided that the size and nature of such building, structure, and improvement, and the location thereof, are pre-approved by the Grantee after consultation with NHESP or a biologist expert in the conservation values and purposes of this CR to establish no material impairment to be paid for by Grantor and chosen by the Grantee, which approval shall be delivered to Grantor in writing which (i) specifically references the plans submitted, and (ii) includes a sketch plan showing any changes to the size or location of the building, structure or improvement necessary to avoid material impacts to the purposes or values as determined by NHESP or an expert biologist. There shall be no more than one "shed" style structure on the property. Such approval, if given, shall be memorialized in writing as aforesaid within thirty (30) days after a request has been made by the Grantor, and shall not be granted unless it is determined any impact on the purposes will be minimal.

No structure shall be used for human habitation, nor shall any structure materially impair the ability of the public to fully view the Premises. In considering whether to grant location approval under this section, Grantor shall seek to site structures on the periphery, so that the openness of the Premises

is emphasized and protected and that the environmental purposes are not impacted.

- (c) The granting of trail easements and/or trailhead easements to the Grantee, or to another conservation entity satisfactory to Grantee in consultation with NHESP or an expert biologist, for public use, and if so granted, the marking, clearing and maintenance of such public trails by Grantee. Public use shall be confined to education, nature study, hiking, horseback riding, cross-country skiing, and other non-motorized outdoor recreational activities that do not degrade environmental quality.
- (d) Family gatherings of Grantor's family, such as wedding parties or celebrations.. All parking shall be located on the Grantors adjacent property with is not a part of this agreement.
- (e) The erection, maintenance, and replacement of signs with respect to hunting, trespass, trail access, identity, or the Grantee's interest in the Premises.

The exercise of any right reserved or permitted under this Section 4 shall be in compliance with the then-current zoning bylaws of the town of Chilmark, the wetlands protection act (Massachusetts General Laws Chapter 131 Section 40) and all other applicable federal, commonwealth and local laws. The inclusion of any reserved or permitted right in this Section requiring a permit does not imply that the Grantee or the commonwealth takes any position as to whether that permit should be issued.

5. Access.

There is granted to the Grantee and its representatives the right to enter the Premises for purposes of inspecting the Premises to determine compliance herewith, or to perform any maintenance or other act required or permitted hereunder, at reasonable times, and following reasonable notice (not less than forty-eight (48) hours prior) except in an emergency. No right is hereby granted to the general public to enter the Premises, however, the Grantor reserves the right to grant such right in the future.

6. Legal Remedies.

- (a) Legal and injunctive relief. 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 area to its condition prior to the time of the injury complained of (its being agreed that the Grantee shall have no adequate remedy at law) in addition to, and not in limitation of, any other rights and remedies available to the Grantee.
- (b) Reimbursement of the costs of enforcement. In connection with any action to enforce the terms of this Restriction, Grantor and Grantee shall each be responsible for their own respective costs of enforcement or defense unless the Grantor acknowledges in writing or a court or tribunal of competent jurisdiction determines that the Grantor has violated the terms of this Restriction, in which event the Grantor, including the successors and assigns of Grantor, covenant and agree to reimburse the enforcing party for all reasonable costs and expenses (including without limitation, reasonable counsel fees) incurred in enforcing this Restriction or in remedying or abating the violation complained of.
- (c) Right to inspect. In addition to all other use and management rights hereunder,

Grantee has the right to enter the Premises to monitor Grantor's compliance with, and otherwise to enforce the terms of, this Restriction, which entry shall take place at reasonable times, and following reasonable notice (not less than forty-eight (48) hours prior) except in an emergency.

- (d) Acts Beyond Grantor's Control. Nothing contained in this Restriction shall be construed to entitle either party to bring any action against the other party for any injury to or change in the Premises resulting from causes beyond such other party's control including, without limitation, fire, flood, storm and earth movement, or from any prudent action taken by Grantor or Grantee under emergency conditions to prevent, abate or mitigate significant injury to the Premises resulting from such causes. In the event of such damage, Grantor and Grantee agree to cooperate in the restoration of the Premises, if feasible and desirable.
  
- (e) Acts of third party trespassers. Nothing contained in this Restriction shall be construed to entitle either party to bring any action against the other party for any injury to or change in the Premises resulting from causes beyond such other party's control including, without limitation, trespass by third persons, or from any prudent action taken by Grantor or Grantee under emergency conditions to prevent, abate or mitigate significant injury to the Premises resulting from such causes. Notwithstanding the foregoing, nothing herein shall preclude Grantor's and Grantee's rights to pursue any third party for damages to the Premises from vandalism, trespass or any other violation of the terms of this Restriction, and each shall cooperate with the other in such efforts and in the restoration of the Premises, if desirable and feasible.
  
- (f) Grantee disclaimer of liability. Notwithstanding its acceptance of this Restriction,

the Grantee does not undertake any liability or obligation relating to the condition of the Premises on the effective date of this grant not caused by the Grantee or its agents.

- (g) Severability clause. If any provision of this Restriction shall to any extent be held invalid, the remainder shall not be affected.
- (h) Non-waiver. Enforcement of the terms of this Restriction shall be at the discretion of the Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

7. Extinguishment.

- (a) Grantee's receipt of property right. The Grantor and Grantee agree that the grant of this Restriction gives rise for all purposes under Massachusetts General Laws Chapter 184, Section 32, to a property right, immediately vested in the Grantee, with a fair market value at least equal to the proportionate value that this Restriction, determined as of the effective date of the grant, bears to the unrestricted value of the Premises at that time.
- (b) Value of Grantee's property right. Such proportionate value of the Grantee's property right shall remain constant.
- (c) Right of Grantee to recover proportional value at disposition. If any occurrence arises in the future which renders the purpose of this Restriction impossible to accomplish, then this Restriction can be terminated, in whole or in part, but only by judicial proceedings in a court of competent jurisdiction after review and

approval by the Secretary of Energy and Environmental Affairs and in accordance with applicable law. Thereafter the Grantee, on a subsequent sale, exchange or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds equal to such proportionate value subject, however, to any applicable law or the terms of any gift, grant or funding requirements, which expressly provides for a different disposition of proceeds.

- (d) Grantor/Grantee's cooperation regarding public action. Whenever any or all parts of the Premises or any interest therein is taking by public authority under power of eminent domain or other act of public authority, the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action.
- (e) Allocation of expenses upon disposition. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds and the remaining proceeds shall be distributed between the Grantor and the Grantee in shares equal to such proportionate value, after complying with the terms of any gift, grant, or funding requirements.
- (f) Continuing trust of Grantee's share of proceeds of conservation restriction disposition. The Grantee shall use its share of the proceeds in a manner consistent with the conservation and preservation purposes of this grant.

8. 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 Grantor holding any interest in the Premises

in perpetuity.

- (b) Execution of instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Restriction. The Grantor, on behalf of itself and its successors and assigns, appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.
- (c) Running of the benefit. The benefits of this Restriction shall run to the Grantee, shall be in gross and shall not be assignable by Grantee, except in the following instances, from time to time, and at no cost to Grantor:
- (i) as a condition of any assignment, the Grantee requires that the purpose of this Restriction continue to be carried out; and
  - (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) the Grantee complies with the provisions required by Article 97 of the Amendments to the Commonwealth Constitution; and
  - (iv) at least twenty (20) days prior to any assignment, Grantee delivers written notice to Grantor at Grantor's address first given above or such

other address known to Grantee of the intended assignment, or that is reasonably ascertainable, such notice to include sufficient information to allow Grantor to identify and discuss with the intended assignee the terms of the assignment and this Restriction.

Any attempted assignment by Grantee of the benefits of this Restriction contrary to the terms hereof shall be invalid but shall not operate to extinguish this Restriction or its enforceability in any manner.

9. Subsequent Transfers.

The Grantor agrees to incorporate by reference the terms of this Restriction in any deed or other legal instrument by which it divests itself 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 will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after his or her ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation 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.

10. Estoppel Certificates.

Upon request by the Grantor, the Grantee shall within thirty (30) days 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 Restriction.

11. Effective Date.

This 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 Massachusetts General Laws have been obtained and it has been recorded in the Dukes County Registry of Deeds.

12. Recordation.

The Grantee shall record this instrument in timely fashion with the Dukes County registry of deeds.

13. Pre-Existing Public Rights.

Approval of this Conservation Restriction pursuant to Massachusetts General Laws Chapter 184 Section 32 by any municipal officials and the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or the non-existence of any pre-existing rights of the public, if any, in and to the Premises; and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

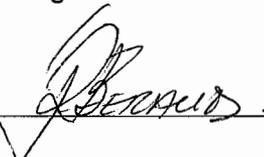
EXECUTED under seal this 15<sup>th</sup> day of October, 2012.

  
\_\_\_\_\_  
RICHARD COLEMAN

*FLORIDA*  
COMMONWEALTH OF MASSACHUSETTS.

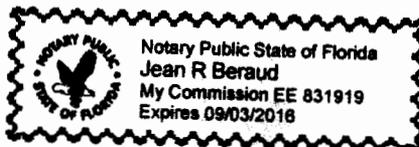
*Palm Beach* County, ss.

On this 15<sup>th</sup> day of October, 2012, before me, the undersigned notary public, personally appeared RICHARD COLEMAN, proved to me through satisfactory evidence of identification, viz., C455-753-51-062-0, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose.

  
\_\_\_\_\_

Notary Public

My commission expires: 09/03/2016

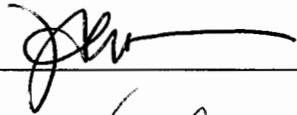


ACCEPTANCE OF GRANT  
BY TOWN OF CHILMARK CONSERVATION COMMISSION

WE, the undersigned, being a majority of the BOARD OF THE CONSERVATION COMMISSION OF THE TOWN OF CHILMARK, Massachusetts hereby certify that at a public meeting duly held on NOVEMBER 14, 2012, the Commission voted to approve the foregoing Conservation Restriction to The Town of Chilmark pursuant to M.G.L. Chapter 184, Section 32.

TOWN OF CHILMARK

BY ITS CONSERVATION COMMISSION:

  
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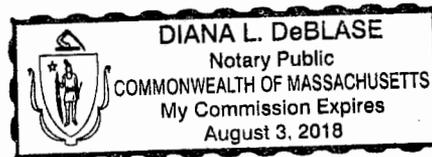
COMMONWEALTH OF MASSACHUSETTS

Dukes County, ss.

On this 27 day of November, 2012, before me, the undersigned notary public, personally appeared Jean Malkin, Wesley Cottle, AND Alexandra Broyard, CONSERVATION COMMISSION OF THE TOWN OF CHILMARK, proved to me through satisfactory evidence of identification, viz., personal acquaintance, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Diana L. DeBlase  
Notary Public

My commission expires: August 3 2018



**ACCEPTANCE OF GRANT  
BY TOWN OF CHILMARK BOARD OF SELECTMEN**

WE, the undersigned, being a majority of the **SELECTMEN OF THE TOWN OF CHILMARK,** Massachusetts hereby certify that at a public meeting duly held on \_\_\_\_\_, the Selectmen voted to approve and accept the foregoing Conservation Restriction to The Town of Chilmark pursuant to M.G.L. Chapter 184, Section 32.

**TOWN OF CHILMARK**

**BY ITS BOARD OF SELECTMEN:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Dukes County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned notary public, personally appeared \_\_\_\_\_, \_\_\_\_\_, AND \_\_\_\_\_, SELECTMEN OF THE TOWN OF CHILMARK, proved to me through satisfactory evidence of identification, viz., personal acquaintance, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My commission expires:

**APPROVAL BY THE MASSACHUSETTS  
SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS**

The undersigned Secretary of the Executive Office of Energy and Environmental Affairs hereby certifies that the foregoing Conservation Restriction to the TOWN OF CHILMARK has been approved in the public interest pursuant to Massachusetts General Laws Chapter 186 Section 32.

date: \_\_\_\_\_

\_\_\_\_\_

Richard K. Sullivan  
Secretary of Energy and  
Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned notary public, personally appeared Richard K. Sullivan as the Secretary of the Executive Office of Energy and Environmental Affairs (EOEEA), proved to me through satisfactory evidence of identification, viz., personal acquaintance, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as said Secretary, that he accepted and signed the above and foregoing instrument for and on behalf of the EOEEA and not individually and that he has full power and authority to do so as the voluntary act and deed of the EOEEA.

\_\_\_\_\_  
Notary Public

My commission expires: