

56 DMW



New Hampshire Fish and Game Department

11 Hazen Drive, Concord, NH 03301-6500
Headquarters: (603) 271-3421
Web site: www.WildNH.com

TDD Access: Relay NH 1-800-735-2964
FAX (603) 271-1438
E-mail: info@wildlife.nh.gov

Glenn Normandeau
Executive Director

November 10, 2014

Her Excellency Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, NH 03301

Requested Action

Authorize the New Hampshire Fish and Game Department to accept certain rights of enforcement as the beneficiary of the Restated and Amended Declaration of Restrictive Covenants with the Pointe at Riverfront Unit Owners' Association in Manchester, NH. There is no cost nor obligation associated with the acceptance of this instrument.

Explanation

The Pointe at Riverfront Unit Owners' Association seeks to modify and re-establish certain restrictive covenants on its property in Manchester that are intended to protect bald eagle habitat on a small point of land on the Merrimack River. The Fish and Game Department worked with the Association over the summer to negotiate this document.

Respectfully submitted,

Glenn Normandeau
Executive Director

Kathy Ann LaBonte, Chief
Business Division

RESTATED AND AMENDED DECLARATION OF RESTRICTIVE COVENANTS

This Restated and Amended Declaration of Restrictive Covenant ("Declaration") is made as of this 6th day of November, 2014, by The Pointe at Riverfront Unit Owners' Association (the "Declarant"), 55 Riverfront Drive, City of Manchester, County of Hillsborough, State of New Hampshire, 03102, by and through its duly authorized Board of Directors, for the benefit of the State of New Hampshire Department of Fish and Game, 11 Hazen Drive, City of Concord, County of Merrimack, State of New Hampshire, 03301 (the "Beneficiary").

RECITALS

WHEREAS, GFI Manchester Riverfront, LLC ("GFI") was the fee owner of certain real property located at 55 Riverfront Drive in the City of Manchester, County of Hillsborough, State of New Hampshire (the "Property") by virtue of a deed recorded in the Hillsborough County Registry of Deeds at Book 7328, Page 1719;

WHEREAS, the Property abuts both the Merrimack River and Black Brook;

WHEREAS portions of the Property have been used by bald eagles;

WHEREAS, GFI, as declarant, submitted the Property to the condominium form of ownership pursuant RSA 356-B and The Pointe at Riverfront Condominium (the "Condominium") was created upon the recording of the Declaration, The Pointe at Riverfront (the "Condominium Declaration") in the Hillsborough County Registry of Deeds at Book 7486, Page 2879, together with other condominium instruments;

WHEREAS, the portions of the Property abutting the Merrimack River and Black Brook became portions of the common area of the Condominium;

WHEREAS, after the recording of the Condominium Declaration, GFI recorded a

Declaration of Restrictive Covenants dated October 26, 2005 in the Hillsborough County Registry of Deeds at Book 7574, Page 2726 (the "First Declaration") purporting to encumber certain portions common areas adjacent to the Merrimack River and Black Brook;

WHEREAS the rights under the First Declaration were never conveyed to any governmental body or any entity having a purpose to conserve land as GFI reserved the rights and easements thereunder onto itself;

WHEREAS the First Declaration was not subsequently conveyed to any governmental body or any entity having a purpose to conserve land and no easement of record was ever conveyed pursuant to the First Declaration;

WHEREAS GFI's interest in the Property ended and the Association succeeded to its interest under the Condominium Declaration;

WHEREAS, the Declarant, as the successor-in-interest to GFI, recorded a Release of Declaration of Restrictive Covenants Recorded at Book 7574, Page 2726 (the "Release") in the Hillsborough County Registry of Deeds;

WHEREAS, the Declarant currently desires to install, maintain, and access two (2) seasonal docks on the Merrimack River adjacent to the portion of the common area purportedly encumbered by the First Declaration and has sought State approvals for the same;

WHEREAS, the Beneficiary desires to preserve the bald eagle habitat adjacent to the Merrimack River and Black Brook; and

WHEREAS, while the parties dispute the effect of the Release, the Declarant is willing to convey certain rights, easements and restrictions to preserve the bald eagle habitat and the Beneficiary is willing to allow the Declarant to install, maintain, and access seasonal docks over a portion of the common area purportedly subject to the First Declaration.

NOW THEREFORE, the Declarant grants to the Beneficiary, the rights, easements and the right to enforce the restrictions and covenants declared herein.

I. LAND SUBJECT TO DECLARATION

Those portions of the common area of the Condominium located north of the existing chain link fence shown on a plan set entitled "Tax Map TPK 7, Lot 42, Site Plan, The Pointe At River Front, Manchester, New Hampshire, Owned and Prepared for The Pointe at River Front Condominium," dated October 16, 2013 and revised through May 22, 2014 by TFMoran, Inc. (collectively, the "Site Plan") as well as all land south of the same fence within fifty feet (50') of the edge of water for the Merrimack River shown on the same Site Plan; a copy of which shall be maintained at the offices of the Declarant or its property manager and the Beneficiary.

For purposes of this Declaration only, the portions of the common area north of the existing chain link fence and subject to this Declaration shall be referred to as the "Point." The remaining portion of the common areas subject to this Declaration shall be referred to as the "Shoreland." The Point and the Shoreland shall collectively be referred to as the "Land."

II. CONSERVATION PURPOSES

This Declaration is hereby made pursuant to NH RSA 477:45-47, for the conservation purposes of preserving and protecting in perpetuity the existing natural vegetation, soils, hydrology, natural habitat and the scenic and aesthetic character as they exist as of the date hereof of the Land so that the Land retains its natural qualities and functions; and preventing any further future development or construction on the Land, except as specified herein. In particular, the Point is believed to have been used by bald eagles and this Declaration is created in large part to protect the remaining natural habitat for bald eagles.

III. EXISTING IMPROVEMENTS AND USES

It is recognized that the Point is improved by an existing walking trail. For purposes of this Declaration only, the existing walking trail shall be deemed to be three feet (3') in width. It is further recognized that the Shoreland has landscaping, lawn, brick patios, rip rap and a walking trail installed throughout portions of the Shoreland and such improvements are used for residential purposes, including, without limitation, recreational activities commonly associated with residential yards. The existing improvements within the Shoreland are generally shown on the Site Plan.

IV. USE LIMITATIONS AND CONSERVATION MEASURES

A. General Limitations and Measures

1. That portion of the Land which is undeveloped shall be maintained in perpetuity in an undeveloped and natural condition, except as specifically provided herein. To that end, the remaining natural vegetation on the Land shall be maintained and shall not be replaced with lawn or other landscaping. However, Declarant may engage in limited pruning and removal of invasive species to the extent physically marked and expressly approved in advance by the Beneficiary. The Beneficiary shall have the right, but not the obligation, to manage any such activities. Activities may include cutting, pruning, planting, and girdling of vegetation. The Beneficiary may also access the Land at reasonable times to assess habitat conditions and conduct habitat management in order to improve conditions for bald eagles or other species of documented conservation concern.

2. No industrial or commercial activities shall be conducted upon the Land. No other activity which is inconsistent with the intent of this Declaration shall be permitted on the Land; provided, however, the activities and uses allowed herein shall not be deemed to be inconsistent with this

Declaration to the extent that they are conducted in accordance with the terms of this Declaration.

3. Except as provided in Article V, no new structure or improvement, including, without limitation, a dwelling, any portion of a septic system, tennis court, swimming pool, aircraft landing strip, tower, commercial facility, conduit or utility line, billboard or other means of advertising display, driveway, or road made of asphalt or other impervious surface, mobile home or other temporary or permanent structure or improvement, shall be constructed, placed, or introduced onto the Land other than what currently exists, which may be maintained, repaired, or replaced by Declarant.

4. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed, except in connection with any improvements made pursuant to the provisions of Article V, unless such activities:

- i. Are commonly necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Land specifically reserved by Declarant and as allowed under Articles IV(A)(1) and VI(A) of this Declaration; and
- ii. Do not harm state or federally recognized rare, threatened, or endangered species, such determination of harm to be based upon information from the New Hampshire Natural Heritage Inventory or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species;
- iii. Do not impact wetland vegetation, soils, hydrology or habitat; and
- iv. Are not detrimental to the purposes of this Declaration.

Prior to commencement of any such activities, all necessary federal, state, and local permits and approvals shall be secured and such notices as may be required under Article VI of this Declaration shall be delivered.

5. No outdoor signs shall be displayed on the Land.

6. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Land, except in connection with any improvements made pursuant to the provisions of Articles IV(C)(1) and V herein. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Land.

7. There shall be no dumping, injection, burning, or burial of refuse, trash, rubbish, debris, junk, yard waste, waste, man-made materials or materials then known to be environmentally hazardous, including vehicle bodies or parts, or other similar substances.

B. Specific Requirements and Restrictions for the Point

1. The use of the Point shall be limited to seasonal, passive recreational use by foot. The existing walking trail shall be narrowed to a width of three feet (3') through the manual removal of mulch by wheelbarrow and rake consistent with a plan entitled "Tax Map TPK 7 Lot 42, Point Stabilization & Planting Plan, The Pointe at Riverfront, Manchester, New Hampshire, Owned and Prepared for The Pointe at Riverfront Condominium" dated June 5, 2014 and revised through July 21, 2014 by TFMoran, Inc. (the "Stabilization and Planting Plan") and no additional mulch shall be placed upon the Point. The Declarant may maintain the walking path, as narrowed, in a safe and passable condition, including limited pruning, removal of nuisance flora like poison ivy, and the removal of debris therefrom. The walking trail on the Point shall only be accessible from May 1 to September 15 of each year and the gate affording access to the Point through the existing chain link fence, as it may be replaced, shall be locked during the remainder of the calendar year.

2. No structures or furniture shall be placed, permanently or temporarily, on the Point and any existing furniture on the Point shall be removed upon the execution of this Declaration.

3. Notwithstanding any provision to the contrary herein, the Declarant shall have the right to access the Point for the purpose of stabilizing the banks of Black Brook and the Merrimack River and planting such shrubs or trees thereon in accordance with the Stabilization and Planting Plan, a copy of which shall be maintained in the offices of the Declarant or its property manager and the Beneficiary.

C. Specific Requirements and Restrictions for the Shoreland

1. The Declarant may maintain, repair, and replace existing improvements within the Shoreland, including lawns and landscaping. The existing improvements within the Shoreland shall not be expanded or enlarged such that they come to encumber any undeveloped portion of the Shoreland without the express written consent of the Beneficiary. The improved portions of the Shoreland may be used for activities commonly associated within the residential use of the Condominium, including, without limitation, recreational activities generally associated with residential yards.

V. DOCKS

A. Notwithstanding any provision of this Declaration to the contrary, the Declarant may install, attach, construct, maintain, repair, and replace a path, a set of concrete stairs with handrails, and such other improvements necessary to secure two (2) seasonal docks to the Land as shown on and at the locations shown on the Site Plan in order to facilitate the installation of and provide access to such seasonal docks, including, without limitation, for their seasonal removal, as may be approved by the New Hampshire Department of Environmental Services.

B. No other portion of the Land, including the portion of the Land referenced in the First

Declaration, shall be used to access any docks and the path and concrete stairway referenced in Article V(A) shall represent the sole means of access to any approved dock.

C. Notwithstanding the language of Article V(A), the Declarant shall not cut or remove any tree on the Land in connection with the installation, maintenance, repair, replacement, or operation of the seasonal docks without the prior written consent of the Beneficiary.

VI. RIGHTS RESERVED TO DECLARANT

A. The Declarant reserves the right to make the improvements permitted pursuant to Article V and to conduct maintenance, repairs, and replacements pursuant to Article IV(B)(1), (C)(1).

B. The Declarant reserves the right to take any prudent action under emergency conditions to prevent, abate, or mitigate significant injury to the Property or persons thereon. resulting from unauthorized actions by third parties or natural disasters such as fire, flood, storm, and earth movement. The Declarant shall provide the Beneficiary with notice of any action conducted under this section as soon as circumstances reasonably allow.

C. The parties acknowledge that the Land forms part of the common area of the Condominium and, as such, the Land will be owned by all of the owners of the said Condominium and governed by the Declarant. The conveyance of condominium units, including an undivided interest in the common areas thereof, is specifically allowed hereunder without notice to any party. Owners of the units within the Condominium shall have the right to freely convey and mortgage their Condominium units and the appertaining interest in the common area to others without the requirement of notice to any party. In addition, except as specifically provided herein, nothing in this Declaration shall be construed to grant the Beneficiary the right to review or approve the Declarant's exercise of its authority over the common areas of the Condominium. The Declarant reserves its general authority under the condominium instruments and RSA Chapter 356-B to maintain and govern the common areas of the Condominium, including the Land, without notice to or approval by the Beneficiary, provided however, the Declarant shall not violate the terms of this Declaration through the exercise of that authority.

VII. RIGHTS RESERVED TO THE BENEFICIARY

A. The Beneficiary shall be under no obligation to maintain the Land or pay any taxes or assessments thereon.

B. Except as otherwise provided in this Declaration, Declarant shall notify the Beneficiary in writing ten (10) days before exercising its rights under Article V(A) and any right reserved in Article VI. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the determination of whether the proposed activity is in accord with the purposes of this Declaration. The failure to respond to such notification within thirty (30) days shall be deemed as assent to the proposed activity;

provided, however, that any limbs or trees downed on the Shoreland or on the Point's walking path due to storms or flooding may be cleared at Declarant's discretion without notice. Further, Declarant shall not be required to give notice for the purposes of repairing, replacing or maintaining existing landscaping or structures or using the same for purposes commonly associated with the use of residential structures and yards on the Shoreland only as long as no natural habitat is impacted.

VIII. BURDEN AND ACCESS

A. The burden of the Declaration conveyed hereby shall run with the Property and shall be enforceable against any and all parties, including any and all future owners, mortgagees and tenants in perpetuity.

B. The Beneficiary shall have the right to access the Land and all of its parts for such inspections as may be necessary to determine compliance with and to enforce this Declaration and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Declaration; provided that such inspections are conducted at reasonable hours.

C. Members of the general public shall not have a right to access the Land.

IX. LEGAL REMEDIES

A. When a breach of this Declaration, or conduct by anyone inconsistent with this Declaration, comes to the attention of the Beneficiary, it shall notify the Declarant in writing of such breach or conduct, delivered in hand or by certified mail, return receipt requested.

B. The Declarant shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach, or to terminate said conduct, and to repair any damage. The Declarant shall promptly notify the Beneficiary of its actions taken under this section.

C. If the Declarant fails to take such proper action under the preceding paragraph, the Beneficiary shall, as appropriate to the purposes of this Declaration, undertake any actions that are reasonably necessary to cure such breach or to repair any damage in the Declarant's name or to terminate such conduct. The cost thereof, including, but not limited to, the Beneficiary's reasonable expenses, expert fees, court costs, and legal fees, shall be paid by the Declarant, only if the Beneficiary is the prevailing party in any final award and the Declarant is found to be directly or primarily responsible for the breach in said award.

D. Nothing contained in this Declaration shall be construed to entitle the Beneficiary to bring any action against the Declarant for any injury to or change in the Property resulting from

causes beyond the Declarant's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, and earth movement, or from any prudent action taken by the Declarant under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

E. The parties shall negotiate in good faith to resolve any disputes.

F. The Beneficiary and the Declarant reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the conservation purposes of this Declaration.

G. No delay or omission by Beneficiary in the exercise of any right or remedy upon any breach by Declarant shall impair Beneficiary's rights or remedies or be construed as a waiver.

H. Beneficiary shall have the right, but not the obligation, to enforce this Declaration by appropriate legal means and to obtain injunctive and other equitable relief against any violations, including without limitation, relief requiring restoration of the Land to its condition prior to the time of the violation, and shall be in addition to, and not limitation of, any other rights and remedies available to the Beneficiary.

I. Beneficiary, by its acceptance of this Declaration, does not undertake any liability or obligation relating to the condition of the Land.

X. COVENANTS TO RUN WITH THE LAND

A. The terms and conditions of this Declaration shall run with the Property in perpetuity, and shall be enforceable against the Declarant or any other person or entity holding any interest in the Property. The Declarant shall record this Declaration in the Hillsborough County Registry of Deeds.

B. The Beneficiary is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Declaration. The Declarant agrees to execute any such instrument upon the Beneficiary's request.

C. The benefits of this Declaration shall be in gross and the Beneficiary shall not assign them.

XI. NOTICES

All notices, requests and other communications, required or permitted to be given under this Declaration shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Declarant or the Beneficiary may hereafter

designate by notice given in accordance herewith. Notices or communications to the Declarant shall be directed to the Board of Directors of The Pointe at Riverfront Condominium Unit Owners' Association. Notices or communication to the Beneficiary shall be directed to its Executive Director. Notices shall be deemed to have been given when so delivered or so mailed. Whenever the Declarant is notified, a copy of such Notice shall be sent also to Cronin, Bisson & Zalinsky, P.C., 722 Chestnut Street, Manchester, New Hampshire 03104.

XII. SEVERABILITY

If any provision of this Declaration, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Declaration or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

XIII. CONDEMNATION

A. The donation of this Declaration will give rise to a real property right, immediately vested in the Beneficiary with a fair-market value that is equal to the proportionate value that this Declaration, determined at the time of the gift, bears to the value of the unrestricted Property at that time. Such proportionate value of the Beneficiary's property right shall remain constant. Declarant's conveyance of any portion of the Property "subject to" this Declaration will not entitle the Beneficiary to share in any proceeds of sale.

B. Notwithstanding the foregoing, if all or any part of the Property or any interest therein is taken by public authority under power of eminent domain and all or any part of the interests created by this Declaration are thereby extinguished by act of public authority, then the owner(s) of the fee title shall be entitled to the entirety of any award.

XIV. AMENDMENT

This Declaration may only be amended by a notarized writing signed by both parties. In addition, any amendment is subject to such review and approval by New Hampshire Department of Justice, Charitable Trust Bureau. Any such amendment shall be recorded in the Hillsborough County Registry of Deeds.

This is a conveyance to the State pursuant to NH RSA 78-B:2 and is exempt from the New Hampshire Real Estate Transfer Tax.

[SIGNATURES AND ACKNOWLEDGMENT ON FOLLOWING PAGE]

IN WITNESS WHERE, I have hereunto set my hand this 17th day of October, 2014.

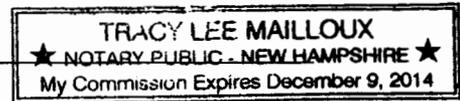
DECLARANT,
The Pointe at Riverfront Unit Owners' Association,
By and through its Board of Directors,

By: *Michael Gardner*
Michael Gardner
Its duly authorized President

STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS.

This instrument was acknowledged before me on this 17th day of October, 2014
by Michael Gardner as President of The Pointe at Riverfront Unit Owners' Association's Board of
Directors.

Tracy Lee Mailloux Justice
of the Peace/Notary Public
My commission expires: _____



ACCEPTED on this 23 day of October, 2014.

BENEFICIARY
State of New Hampshire Fish and Game Department

By: *[Signature]*
Its *Executive Director*

STATE OF NEW HAMPSHIRE
MERRIMACK, SS.

This instrument was acknowledged before me on this 23 day of October, 2014
by *Glenn Normandeau* as *Exec. Director* of the State of New Hampshire Fish
and Game Department.

Tanya L. Haskell
Justice of the Peace/Notary Public
My commission expires: _____

TANYA L. HASKELL, Notary Public
My Commission Expires October 6, 2015

Approved by the Attorney General's Office as to Form, Substance and Execution:

By: Chita G. Ricci Date: 11/6/14

Approved by the Governor and Executive Council:

By: _____ Date: _____

CERTIFICATE OF VOTE AND DIRECTORS

I, Moe Morin, the duly elected and acting Clerk/Secretary of The Pointe at Riverfront Drive Condominium Unit Owners' Association, the unit owners' association for The Pointe at Riverfront Drive Condominium (the "Association"), which is also referred at times within the Restated and Amendment Declaration of Restrictive Covenants as The Pointe at Riverfront Condominium Unit Owners' Association or The Pointe at Riverfront Unit Owners' Association, but all being the same association, hereby certify by vote on August 15, 2013, the following resolution was duly adopted, as required by the Association's Bylaws, by at least a majority of the members in the Association at the special meeting on August 15, 2013.

VOTED: To approve the project of Phase "A" for water access including but not limited to the proposed engineering, aquatic organism mitigation, permitting, dock installation, and landscape improvements. With Phase "A" being defined as common area and accessible by all Unit Owners. The project will be funded by way of special assessment in a total amount of \$855.31 per Unit payable in monthly installments over a period of twelve (12) months.

The Recorded Vote was Yes: 36 No: 26.

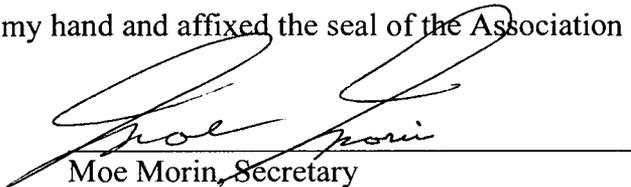
I, Moe Morin, hereby further certify that the Association's Waterfront Committee, pursuant to a vote of at least a quorum of that committee, voted on July 22, 2014 to recommend approval of the Restated and Amended Declaration of Restrictive Covenant to the Association's Board of Directors and, pursuant to the vote of August 15, 2013 and RSA 356-B:42, at least a quorum of the five-member Board of Directors for the Association voted on July 28, 2014 to approve the Restated and Amended Declaration of Restrictive Covenants on behalf of the Association.

The Recorded Vote was Yes: 4 No: 0 No Vote: 1.

I, Moe Morin, hereby further certify that, pursuant to a vote of at least a quorum of the Association's membership at the June 14, 2014 annual meeting of the Association, Michael Gardner, was elected to the Association's Board of Directors and was duly elected as the President of the Board of Directors at a July 1, 2014 meeting of the Association's Board of Directors.

The resolutions and votes described above are unmodified and continue to be in full force and effect and neither the Association nor its Board has adopted further resolutions in respect of the subject matter thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of the Association this 5 th day of November, 2014.


Moe Morin, Secretary