BUFFER ZONE TREE CUT RESTRICTION

Pulte Homes of New England LLC, a Michigan limited liability company registered to do business in Massachusetts with an office at 115 Flanders Road, Westborough, Massachusetts 01581 and their successors and assigns (the “Grantor”), for and in consideration of One Dollar ($1.00), and of other good and valuable consideration, the receipt of which is hereby acknowledged, hereby grants, with quitclaim covenants, to the Town of Milton, Norfolk County, Massachusetts, acting by and through its Planning Board (the “Town”), having a usual business address of 525 Canton Avenue, Milton, MA 02186, the following described perpetual “Buffer Zone Tree Cut Restriction”.

That the land hereinafter described shall be kept in an open and natural state and shall not be built upon or cleared in any way for any uses contrary to or incompatible with the use of land intended to be kept and maintained in an open natural state, subject to the reserved rights as set forth below:

The said land to which this “Buffer Zone Tree Cut Restriction” applies being described and shown on the attached Exhibit “A” as follows:

Rear portions of Lots 13-23 shown on Exhibit “A” as “Buffer Zone Tree Cut Restriction” being portions of certain parcels of land in the Town of Milton, Norfolk County, Massachusetts (the “Restricted Area”), located on Baker Street in said Milton being a portion of Lots 13-23 on a plan of land entitled “Definitive Subdivision Plan Milton Woods in Milton, MA,” dated October 26, 2016, revisions through ______________, drawn by Marchionda & Associates, L.P. and filed with Norfolk County Registry of Deeds (the “Registry”) in Plan Book __________, Page(s) ______________ (the “Plan”).

The terms and provisions of this Buffer Zone Tree Cut Restriction are as follows:
1. **Prohibited Activities**: Except as otherwise herein provided, the Grantor shall neither perform nor permit others to perform any of the following activities on the Restricted Area:
   a. Any structure requiring a building permit from the Town of Milton Building Department;
   b. Swimming pools;
   c. Tennis courts, basketball courts;
   d. Removal or destruction of trees 4” or greater in diameter measured 5 ft. above ground surface;
   e. Asphalt or concrete pavement; or
   f. Grading, filling of soil, or altering the shape of the Restricted Area
   g. Other acts or uses detrimental to the preservation of the Restricted Area in its open and natural state.

2. **Reserved Rights**: Notwithstanding anything contained in Paragraph 1 above the Grantor reserves to itself, its successors, assigns and lessees, the right to conduct or permit the following activities on the Restricted Area:
   a. Vegetation management, removal of brush, pruning and cutting to prevent, control, remove hazards, disease, insect or fire damage, or to preserve and enhance the present condition;
   b. Black vinyl chain link, or wooden post and rail fencing, and stone walls;
   c. Removal of non-native or invasive species;
   d. Stockpiling and composting of stumps, trees and brush limbs, grass, and similar biodegradable materials originating on the Restricted Area or it’s lot;
   e. Plantings and gardens
   f. Anything commonly permitted on residential private property that is not restricted above and is not detrimental to the preservation of the Restricted Area in its open and natural state;
   g. Access and maintenance to electric utility within Eversource Electric utility easement proposed on Lot 16

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**Commented [MM1]**: If possible, we would like to keep the black vinyl chain link fence. It disappears in the woods and we don’t feel like it would compromise the purpose of the buffer.
3. **Access by Planning Board; Enforcement; Access by Public:** The Buffer Zone Tree Cut Restriction hereby conveyed shall not operate to grant to the residents of the Town of Milton or to the general public any right to enter onto the Restricted Area, except that: the Planning Board, Planning Staff, and the Building Department through one or more duly designated member(s) or agent(s) shall have the right to enter the Restricted Area at reasonable times and in a reasonable manner after reasonable advance notice to the lot owner for the purpose of inspecting the Restricted Area to insure compliance with the terms of this Buffer Zone Tree Cut Restriction and to prevent, abate or remedy any violations thereof.

4. **Duration of Buffer Zone Tree Cut Restriction:** Grantor intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Buffer Zone Tree Cut Restriction and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Restricted Area in perpetuity, and are binding upon Grantor's successors in title, (ii) are not merely personal covenants of Grantor, and (iii) shall bind Grantor, its successors and assigns and inure to the benefit of the Town and its successors and assigns in perpetuity. The term of this Buffer Zone Tree Cut Restriction shall be perpetual.

5. **Legal Remedies of Town.**

   A. **Legal and Injunctive Relief**

      The rights hereby granted shall include the right to enforce this Buffer Zone Tree Cut Restriction by legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Restricted Area. Notwithstanding the foregoing, and, provided that Grantor ceases the objectionable actions upon notice from Town and Town determines that there is no ongoing diminution of the conservation values of this Buffer Zone Tree Cut Restriction Area, Town agrees that, except in the event of an emergency, it shall not take any actions hereunder to remedy or abate any violation hereof or initiate any litigation or enforcement proceedings unless (a) Town has given Grantor written notice of the violation, and (b) Grantor has failed to cure the same within 90 days from such notice, or, if the violation is of such a nature that it cannot reasonably be cured within said 90 day period, Grantor has failed to commence the cure within said 90 day period or failed to pursue it to completion within a reasonable time.

   B. **Non-Waiver**
Enforcement of the terms of this **Buffer Zone Tree Cut** Restriction shall be at the discretion of Town. Any election by the Town as to the manner and timing of its right to enforce this **Buffer Zone Tree Cut** Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

C. **Disclaimer of Liability**

By acceptance of this **Buffer Zone Tree Cut** Restriction, the Town does not undertake any liability or obligation relating to the condition of the Restricted Area pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Town or its agents.

D. **Acts Beyond the Grantor’s Control**

Nothing contained in this **Buffer Zone Tree Cut** Restriction shall be construed to entitle the Town to bring any actions against the Grantor for any injury to or change in the Restricted Area 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 the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Restricted Area resulting from such causes. The parties agree that in the event of damage to the Restricted Area from acts beyond the Grantor’s control, that Grantor shall not be held responsible.

6. **Extinguishment**

A. **Extinguishment of Buffer Zone Tree Cut Restriction**

If circumstances arise in the future that render the purposes of this **Buffer Zone Tree Cut** Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction.

B. **Cooperation Regarding Public Action**

Whenever all or any part of the Restricted Area 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 Town shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Town shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed to the Grantor.

7. **Running of the Benefit**
The benefits of this Buffer Zone Tree Cut Restriction shall run to the Town, shall be in gross and shall not be assignable by the Town.


A. Controlling Law

The interpretation and performance of this Buffer Zone Tree Cut Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal Construction

Any general rule of construction to the contrary notwithstanding, this Buffer Zone Tree Cut Restriction shall be liberally construed in favor of the grant to effect the purpose of this Buffer Zone Tree Cut Restriction. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Buffer Zone Tree Cut Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability

If any provision of this Buffer Zone Tree Cut Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Buffer Zone Tree Cut Restriction shall not be affected thereby.

D. Entire Agreement

This instrument sets forth the entire agreement of the parties with respect to this Buffer Zone Tree Cut Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Buffer Zone Tree Cut Restriction, all of which are merged herein.

No documentary stamps are required, the consideration for this conveyance being nominal.

SIGNATURE PAGE TO FOLLOW
Executed as a sealed instrument this ______ day of ____________, 201__.

Pulte Homes of New England LLC

By:________________________________________
   Reid A. Blute
   Authorized Signatory

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this ______ day of ____________, 201__ before me, the undersigned notary public, personally appeared Reid A. Blute, Authorized Signatory for Pulte Homes of New England LLC who proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily, in the capacity indicated, and that he has the authority to sign in that capacity.

________________________________________
Notary Public
My Commission Expires:
APPROVAL OF THE MILTON PLANNING BOARD

We, the undersigned Planning Board of the Town of Milton, Massachusetts, approve the foregoing conveyance to said Town.

__________________________
Bryan W. Furze

__________________________
Alexander Whiteside

__________________________
April Lamoureux

__________________________
Michael E. Kelly

__________________________
Cheryl Tougias

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

On this ______ day of ________________, 201___ before me, the undersigned notary public, personally appeared ________________, member of the Milton Planning Board, who proved to me through satisfactory evidence of identification, which was ________________, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, in the capacity indicated, and that he/she has the authority to sign in that capacity.

__________________________
Notary Public

My Commission Expires: