

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

VOTE

Authorizing the City Manager to Execute the Lowell Riverwalk Permanent Conservation Easement Agreement between the City of Lowell and Massachusetts Mills III Limited Partnership (“Mass Mills”) to allow for the extension of the Lowell Riverwalk along the Merrimack River for the purposes of extending parkland and promoting recreational use by the public.

The extension of the Lowell Riverwalk along the Merrimack River requires access through several parcels of land owned by Mass Mills, located at 159 Bridge Street, 169 Bridge Street and 169.3 Bridge Street.

BE IT VOTED BY THE CITY COUNCIL OF THE CITY OF LOWELL, as follows:

That the City Manager is hereby authorized to execute the Lowell Riverwalk Permanent Conservation Easement Agreement between the City of Lowell and Massachusetts Mills III Limited Partnership (“Mass Mills”) to allow for the extension of the Lowell Riverwalk along the Merrimack River for the purposes of extending parkland and promoting recreational use by the public. Said Conservation Easement Agreement shall be in the form or substantially the form attached hereto (Appendix “A”).

BE IT FURTHER VOTED:

That said Easement Agreement and vote shall be recorded by the Grantee.

LOWELL RIVERWALK PERMANENT CONSERVATION EASEMENT AGREEMENT

This Agreement is entered into by and between the City of Lowell ("City"), a Massachusetts municipal corporation, with its principal offices located at 375 Merrimack Street, Lowell, MA 01852, and Massachusetts Mills III Limited Partnership ("Mass Mills"), with a principal office address of 31 St. James Avenue, Suite 940, Boston, MA 02116 (collectively "the Parties").

WHEREAS, the City seeks to extend the Lowell Riverwalk further along the Merrimack River for the purposes of extending parkland and promoting recreational use by the public.

WHEREAS, the extension of the Lowell Riverwalk further along the Merrimack River requires access through several parcels of land owned by Mass Mills, located at 159 Bridge Street, 169 Bridge Street, and 169.3 Bridge Street.

WHEREAS, Mass Mills recognizes that the City wishes to extend the Lowell Riverwalk along these parcels.

WHEREAS, the City and Mass Mills now wish to enter into an agreement to establish a conservation easement along these parcels for the purpose of extending the Lowell Riverwalk.

NOW, therefore, for consideration of the mutual covenants contained herein and other valuable consideration, and intending to be legally bound hereby, the Parties agree to the following:

1. Mass Mills agrees to grant to the City a Permanent Conservation Easement to permit the extension of the Lowell Riverwalk along parcels it owns on or about 159 Bridge Street, 169 Bridge Street, and 169.3 Bridge Street for public recreational use as a walking trail.
2. This Agreement shall be governed in accordance with the Laws of the Commonwealth of Massachusetts and any dispute hereunder shall be directed to the appropriate court for the adjudication.
3. Amendments, or waivers of any additional term, condition, covenant, duty or obligation contained in this Agreement may be made only by written amendment executed by all signatories to the original Agreement, prior to the effective date of the amendment.
4. If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal, or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

5. This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither the City nor Mass Mills shall assign or transfer any interest in the Agreement without the written consent of the other.
6. City will provide 30 days of notice to Mass Mills before performing any maintenance in said easement area.
7. This Agreement constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

IN WITNESS WHEREOF, this Agreement is executed as a sealed instrument this ____ day of _____ 2018.

CITY OF LOWELL:

MASSACHUSETTS MILLS III LIMITED
PARTNERSHIP

Eileen Donoghue, City Manager

Joseph R. Mullins, on behalf of JRM-Mass
Mills III Inc, General Partner of Massachusetts
Mills III Limited Partnership

APPROVED AS TO FORM:

Christine P. O'Connor
City Solicitor



Eileen M. Donoghue
City Manager

April 18, 2018

Mayor William Samaras
and
Members of the City Council

SUBJECT: Permanent Conservation Easement Agreement, Permanent Conservation Easement, and Construction Access Agreement between Massachusetts Mills III Limited Partnership and the City of Lowell

Dear Mayor Samaras and Members of the City Council:

Attached please find a (1) Permanent Conservation Easement Agreement between Massachusetts Mills III Limited Partnership and the City of Lowell, (2) Conservation Easement between Massachusetts Mills III Limited Partnership and the City of Lowell, and (3) Construction Access Agreement (159 Bridge Street).

These instruments are intended to work together to facilitate the Merrimack Riverwalk Phase II project. This project is anticipated to begin construction summer 2018 and include an extension of the Riverwalk on the existing sewer interceptor box culvert; a cantilevered overlook at the confluence of the Merrimack and Concord Rivers; incorporation of an existing Riverwalk section built by Massachusetts Mills on its property along the Concord River; and a bridge over the Concord River to Lowell Memorial Auditorium.

The attached instruments would allow the City of Lowell or its contractors to enter upon Massachusetts Mills property, stage and store construction materials in certain areas of its property, and construct permanent elements of the Riverwalk such as the bridge footing on its property.

The permanent conservation easement and agreement would maintain public access over Massachusetts Mills property within the easement area along the Concord River. It would also allow the City to enter onto this easement area for Riverwalk maintenance projects with advance notice. Massachusetts Mills has proposed donating the easement and access rights to the City of Lowell in support of the project.

Please contact Diane Tradd at dtradd@lowellma.gov or 978-674-4252 or me with questions about these instruments.

Sincerely,

Eileen M. Donoghue
City Manager

EMD/ns
Attachment

cc: Diane Tradd, Assistant City Manager/Director DPD
Christine P. O'Connor, City Solicitor
Christopher Glenn Hayes, Transportation Project Manager
Joseph R. Mullins, Massachusetts Mills Limited Partnerships I, II, and III
Jon Rudzinski, MM Picker, LLC