



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

DEVAL L. PATRICK  
Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

IAN A. BOWLES  
Secretary

LAURIE BURT  
Commissioner

**ZONE II MODEL EASEMENT AND CONSERVATION RESTRICTION  
FOR DRINKING WATER SUPPLY PROTECTION**

Updated 7/2008

INTRODUCTION

This Model is designed to assist public water suppliers (PWS) in developing an Easement and Conservation Restriction to protect land located in the Zone II of their drinking water wells. PWS seeking to develop a Conservation Restriction or Easement for land located in the Zone I should refer to the MassDEP Models available at <http://www.mass.gov/dep/water/drinking/protect.htm>.

What You Need to Know

- Conservation Restrictions for public drinking water supply purposes require MassDEP approval and approval by the Executive Office of Energy and Environmental Affairs (EOEEA).
- Draft restrictions must be reviewed by MassDEP prior to Acceptance (signature) by the PWS.
- Conservation Restrictions must be held by the Board of Water Commissioners, or the Board of Selectmen *acting* as the Board of Water Commissioners.
- A MassDEP public hearing and Abutter Notification is required. MassDEP assists with this process.
- PWS must submit a Permit application [BRP WS-26] for land acquisition. Available with instructions at <http://www.mass.gov/dep/water/approvals/dwsforms.htm#landacq>. MassDEP assists with this process.
- EOEEA requires a Conservation Restriction application and Baseline Survey. Information and assistance with this requirement is available from the Division of Conservation Services, (617) 626-1138, or visit <http://www.mass.gov/envir/dcs/default.htm>.

How to Use this Model

1. Fill in underlined \_\_\_\_\_ blanks with the correct information.
2. Replace [bracketed words] with the requested information and remove brackets.
3. Choose the correct choice of [terms/words] and remove brackets.
4. Delete all Notes and Footnotes.
5. Modify the Model language so that it is specific to the property being protected.
6. Date and page number the draft restriction.
7. Do not remove (parenthesized words and phrases).

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD Service - 1-800-298-2207.

MassDEP on the World Wide Web: <http://www.mass.gov/dep>

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**ZONE II EASEMENT AND CONSERVATION RESTRICTION  
FOR DRINKING WATER SUPPLY PROTECTION<sup>1</sup>**

*date of draft*

[I/We] [Name], of [Municipality, County] Massachusetts, being the [sole owner/owners] for my successors and assigns “Grantor”, acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, hereby grant to the [Town/City]<sup>1</sup> of [Municipality] acting by and through its Board of Water Commissioners<sup>2</sup> pursuant to Massachusetts General Laws Chapter 40 Section 41, and its permitted successors and assigns “Grantee”, for consideration of \_\_\_\_\_ dollars (\$\_\_ .00), a perpetual EASEMENT and CONSERVATION RESTRICTION “Restriction” exclusively for public drinking water supply protection, on and across a [lot/parcel] of land located in the [Town/City] of [Municipality], Massachusetts constituting approximately [#] acres of a [#] acre [lot/parcel]<sup>3</sup> (“Premises”), and identified as [lot/parcel #] on Map [#] and more particularly described in Exhibit A on the attached Plan of Land. For Grantor’s title see [County] Registry of Deeds Book [#] page [#].

- NOTE: IF THERE ARE ANY BUILDING ENVELOPES OR STRUCTURAL EXCLUSIONS ON THE PREMISES, IDENTIFY THEM HERE.

Grantee acquires this Restriction subject to the approval of the Massachusetts Department of Environmental Protection pursuant to Massachusetts General Laws Chapter 40 Sections 39B and 41 and subject to the approval of the Secretary of Energy and Environmental Affairs pursuant to Massachusetts General Laws Chapter 184, Section 32.

**I. PURPOSE:**

This Restriction is defined in and authorized by Sections 31 - 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purpose of this Restriction is to provide for the perpetual protection of the drinking water quality of the [Name of Well, ID #] (a designated public drinking water source approved by the MassDEP) and to ensure the Premises will be maintained in its current condition, as set forth in the Baseline Survey, in perpetuity, predominantly in a natural, scenic and undeveloped condition and to prevent any use or change that would materially impair or interfere with its value as a public drinking water supply.

- NOTE: IF THE PREMISES WILL BE OPEN TO THE PUBLIC, INCLUDE A PARAGRAPH WHICH IDENTIFIES THE USES AND LIMITATIONS OF THE PREMISES. i.e:

*The purpose of this Restriction is for public open space and passive recreational activities including fishing, boating, hiking, horseback riding, bird-watching, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape or degrade drinking water quality and the maintenance and use of trails and roads located within the Premises for passive recreational purposes. No hunting of any kind is allowed on the Premises.*

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<sup>1</sup> Or Name of Water District

<sup>2</sup> Or Board of Selectman if acting as the Board of Water Commissioners

<sup>3</sup> Identify the # acres the CR will cover and state whether the CR covers all (or just a portion) of a lot or parcel.

## II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, PERMITTED USES

### **A. Prohibited Acts and Uses**

Subject to the exceptions set forth herein, the Grantor will neither perform nor allow others to perform the following acts and uses that are prohibited on, above, or below the Premises:

1. No building, mobile home, road, sign or other advertising display, swimming pool, tennis court, utility services, poles and equipment, or other permanent or temporary structures shall be constructed, placed or permitted to remain on said Premises below or above the ground.
2. No soil, loam, peat, gravel, sand, rock, landfill, mineral substance, refuse, trash, debris, junk, waste, vehicle parts or bodies, septage or other unsightly or offensive materials shall be placed, stored or dumped therein the Premises, nor any nuisances allowed to be present on the Premises.
3. No soil, loam, peat, gravel, sand, rock, landfill or other mineral substance or natural deposit shall be excavated, or removed from the Premises.
4. No snowmobiles, motorcycles, mopeds, all-terrain vehicles, or other motor vehicles of any kind shall be used, stored, maintained, operated or otherwise allowed on the Premises except for vehicles required for public safety, (i.e., fire, police, ambulance).
5. No pesticides as defined by the Federal Insecticide, Fungicide and Rodenticide Act of 1947, as amended, shall be transported, used, stored, or applied in any manner or to any extent on or under the Premises.
6. No toxic or hazardous substances, material or wastes, shall be transported, used, stored, applied or disposed of in any manner or to any extent on or under nor transported over or through the Premises.
7. No fuel storage tanks of any kind shall be installed, placed or allowed to remain on the Premises.
8. Notwithstanding the foregoing provisions with regard to specific prohibited uses and activities, but in addition thereto, no other use shall be made of the Premises and no activity permitted thereon which, in the opinion of the Grantee, is or may become inconsistent with or threatening to the purpose and intent of this Restriction as herein before stated.

### **B. Permitted Uses, Reserved Rights and Exceptions <sup>4</sup>**

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not materially impair the conservation values of the purpose of this Restriction for protecting the drinking water quality of the [Name of Well].

Agricultural Non-intensive haying and organic crop cultivation.

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<sup>4</sup> Uses to be retained by the Grantor are listed in this section. Retained uses must be consistent with protecting drinking water quality. Paragraph B may be omitted if the Grantor is not retaining any rights.

Wildlife Habitat Improvement. With the prior written permission of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species.

Trails The marking, clearing and maintenance of existing footpaths and trails.

Brush Removal Pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, and to maintain existing trails.

Composting Stockpiling and composting of stumps, trees and brush limbs and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not degrade drinking water quality.

### **C. Notice and Approval**

Whenever notice to or approval by Grantee is required under the provisions of paragraphs A or B, Grantor shall notify Grantee in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. 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 Grantee to make an informed judgment as to its consistency with the purposes of this Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Restriction. Failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice.

## **III. LEGAL REMEDIES OF THE GRANTEE**

### **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 Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Restriction.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.

## **B. Non-Waiver**

Enforcement of the terms of this Restriction shall be at the discretion of 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.

## **C. Disclaimer of Liability**

By acceptance of this Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

## **D. Acts Beyond the Grantor's Control**

Nothing contained in this Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises 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 Premises resulting from such causes.

## IV. ACCESS

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

## V. EXTINGUISHMENT

### **A. Termination**

If circumstances arise in the future such as render the purpose of this Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law. If any change in conditions ever gives rise to extinguishment or other release of the Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with paragraph B below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

### **B. Proceeds<sup>ii</sup>**

Grantor and Grantee agree that the donation of this Restriction gives rise 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 Restriction, determined at the time of the gift, bears to the value of the unrestricted property at that time. Such proportionate value of the Grantee's property right shall remain constant.

### **C. Grantor/Grantee Cooperation Regarding Public Action**

Whenever all or any part of the Premises 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 Grantee 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 Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in shares equal to such proportionate value. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

## **VI. ASSIGNABILITY**

### **A. Running of the Burden**

The burdens of this Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

### **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 herself and her successors and assigns, appoint the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on her behalf. Without limiting the foregoing, the Grantor and her successors and assigns agree themselves to execute any such instruments upon request.

The benefits of this Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instance: As a condition of any assignment, the Grantee shall require that the purpose of this Restriction continues to be carried out; and the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

## **VII. SUBSEQUENT TRANSFERS**

The Grantor agrees to incorporate by reference the terms of this Restriction in any deed or other legal instrument by which he divests himself of any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee within 20 days of such transfer. Failure to do so shall not impair the validity or enforceability of this 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 CR 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.

### VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within twenty (20) 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.

### IX. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Restriction to ensure that merger does not occur.

### X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, Grantor and Grantee may jointly amend this Restriction; provided that no amendment shall be allowed that will affect the qualification of this Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendments to this Restriction shall occur only in exceptional circumstances. The Holder will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the [County] Registry of Deeds.

### XI. 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 General Laws have been obtained, and it has been recorded in the [County] Registry of Deeds. The Grantee shall record this instrument in timely manner in the [County] Registry of Deeds.

### XII. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows (To Grantor: or To Grantee:) or to such other address as any of the above parties shall designate from time to time by written notice to the other or that is reasonably ascertainable by the parties.

XIII. GENERAL PROVISIONS

**A. Controlling Law**

The interpretation and performance of this 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 Restriction shall be liberally construed in favor of the grant to affect the purpose of this Restriction and the policy and purposes of Massachusetts General Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this 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 Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Restriction shall not be affected thereby.

**D. Entire Agreement**

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

XIV. MISCELLANEOUS

**A. Pre-existing Public Rights**

Approval of this Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Energy and 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 Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Restriction.

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Name(s) & signatures (of ALL owners)

COMMONWEALTH OF MASSACHUSETTS

[COUNTY]

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned notary public, personally appeared [Name of Grantor(s)] proved to me through satisfactory evidence of identification which was [my personal knowledge/drivers license] to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as Grantor(s).

\_\_\_\_\_  
Notary Public  
My Commission Expires:

ACCEPTANCE OF RESTRICTION

The Board of Water Commissioners of the [Water District] located in the [Town/City] of [municipality] hereby accepts the foregoing Restriction in accordance with Massachusetts General Laws, Chapter 184, Section 32. Witness our hands and seals this \_\_\_\_\_ day of 200\_.

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COMMONWEALTH OF MASSACHUSETTS

[COUNTY]

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned notary public, personally appeared [name(s)] proved to me through satisfactory evidence of identification which was [my personal knowledge/or drivers license] to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as Board of Water Commissioner.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

ACCEPTANCE OF RESTRICTION

The [Select Board/City Council] of the [Town/City] of [Municipality] hereby accepts the foregoing Restriction in accordance with Massachusetts General Laws, Chapter 184, Section 32. Witness our hands and seals this \_\_\_\_\_ day of 200\_.

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COMMONWEALTH OF MASSACHUSETTS

[COUNTY]

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned notary public, personally appeared [name(s)] and proved to me through satisfactory evidence of identification which was [personal knowledge/drivers license] to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as [Select Board/City Council] for the [Town/City] of [Municipality].

\_\_\_\_\_  
Notary Public  
My Commission Expires:

APPROVAL BY COMMISSIONER OF  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Commissioner of the Massachusetts Department of Environmental Protection of the Commonwealth of Massachusetts, hereby certifies that the foregoing Restriction to the [Town/City/Water District] of [Municipality] has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 200\_

\_\_\_\_\_  
Laurie Burt  
Commissioner of MassDEP

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned notary public, personally appeared Laurie Burt and proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose as Commissioner of MassDEP.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Restriction to the [Town/City/Water District] of [Municipality] has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 200\_

\_\_\_\_\_  
Ian A. Bowles  
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned notary public, personally appeared Ian A. Bowles and proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Secretary of Energy and Environmental Affairs for the Commonwealth of Massachusetts.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## Exhibits

### **Exhibit A. Description of the Premises**

Attach an 8 ½ x 11 draft Plan of Land (or municipal Assessors map).

(a). The map must identify:

- The Map # and Lot/Parcel #;
- Existing structures (sheds, driveways etc) and their dimensions;
- The location of proposed activities (haying fields, hiking trails etc); and
- Boundaries of building envelopes and other exclusions.

(b). The following Notes must be on the Plan:

- Label the Premises with the words “*Conservation Restriction*”;
- The area of the CR should be identified (i.e. *This CR covers 2 acres of a 6 acre parcel*); and
- *This property is acquired for water supply protection pursuant to Massachusetts General Laws Chapter 40, Sections 39, 41 and 15B and Article 97 of the Amendments to the Massachusetts Constitution. This land is under the control of the Board of Water Commissioners of the [Name of Municipality/Water District]. Massachusetts Department of Environmental Protection (MassDEP) approval is required before any portion of this property can be transferred to a different ownership or control or before the property can be changed to a different use.*

### **Exhibit B. Subordination of Mortgage**

If there is a mortgage on the Premises, attach a subordination. *A subordination allows a debt or claim that has priority to take second position behind another debt, particularly a new loan. A property owner with a loan secured by the property who applies for another loan to make additions or repairs usually must get a subordination of the original loan so the new obligation is in first place.*

#### (Sample) Subordination of Mortgage

I/We, \_\_\_\_\_, Present holder(s) of a mortgage on property located at \_\_\_\_\_ Massachusetts (“Premises”) from \_\_\_\_\_ to \_\_\_\_\_ dated \_\_\_\_\_ and recorded with \_\_\_\_\_ Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, hereby approve of, and subordinate the Mortgage and the obligations secured thereby to the Conservation Restriction covering all/a portion of the Premises to be recorded, to the same extent as if the Conservation Restriction had been executed and recorded before the execution and recording of the Mortgage. In Witness Whereof, the said \_\_\_\_\_ has caused its corporate seal to be hereto affixed and these presents to be signed in its name and behalf by \_\_\_\_\_ its \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

by:

\_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_\_  
*Attach acknowledgement certificate/notarization here*

### **Exhibit C. Funding Approval**

If the CR is funded by a state grant or Community Preservation funds; the grant documents and a certified or attested copy of any municipal meeting votes regarding the purchase of the land and expenditure of funds should be referenced and attached as an Exhibit.

## END NOTES

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### <sup>i</sup> Legal References

MGL c. 40 s. 39B Acquisition of land and water For the purpose of establishing a water supply or water distributing system as authorized by section thirty-nine A, any town, by its board of water commissioners or selectmen authorized to act as such, may take by eminent domain under chapter seventy-nine, or acquire by purchase or otherwise, and hold, the waters, or any portion thereof, of any pond, brook, spring, stream or ground water sources within its limits, not already appropriated for purposes of public water supply, and any water or flowage rights connected therewith; and also for said purpose may take by eminent domain under chapter seventy-nine, or acquire by purchase or otherwise, and hold, all lands, rights of way and other easements necessary for collecting, storing, holding, purifying and treating such water and protecting and preserving the purity thereof and for conveying the same to any part of the town; provided, that no source of water supply and no lands necessary for protecting and preserving the purity of the water shall be taken or used without first obtaining the advice and approval of the department of environmental protection, and that the location and arrangement of all dams, reservoirs, wells.....or other works necessary in carrying out the provisions of sections thirty-nine A to thirty-nine E, inclusive, shall be subject to the approval of said department.

MGL c. 40 s. 41 Protection of water supply Towns and water supply and fire districts duly established by law may, with the consent and approval of the department of environmental protection, given after due notice and a hearing, take by eminent domain under chapter seventy-nine, or acquire by purchase or otherwise, and hold, lands, buildings, rights of way and easements within the watershed of any pond, stream, reservoir, well or other water used by them as a source of water supply, which said department may deem necessary to protect and preserve the purity of the water supply. **All lands taken, purchased or otherwise acquired under this section shall be under the control of the board of water commissioners of the town or district acquiring the same**, who shall manage and improve them in such manner as they shall deem for the best interest of the town or district. All damages to be paid by a town or district by reason of any act done under authority hereof may be paid out of the proceeds of the sale of any bonds authorized by law to be issued by such town or district for water supply purposes or from any surplus income of the water works available therefore. A town may also make a contract to contribute to the cost of building, by any other town situated in the watershed of its water supply, a sewer or system of sewers to aid in protecting such water supply from pollution.

M.G.L c.184 s.31 defines a Conservation Restriction as: “ a right, either in perpetuity or for a specified number of years, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming or forest use, to permit public recreational use, or to forbid or limit any or all (a) construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground, (b) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials, (c) removal or destruction of trees, shrubs or other vegetation, (d) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, (e) surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition, (f) activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or (g) other acts or uses detrimental to such retention of land or water areas”.

MGL c. 184 s 32 Effect, enforcement, acquisition, and release of restrictions No conservation restriction ....as defined in section thirty-one, held by any governmental body or by a charitable corporation or trust whose purposes include conservation of land or water areas or of a particular such area ..... shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of the benefit being assignable or being assigned to any other governmental body or to any charitable corporation or trust with like purposes, or on account of the governmental body the charitable corporation or trust having received the right to enforce the restriction by assignment, provided (a) in case of a restriction held by a city or town or a commission, authority or other instrumentality thereof it is approved by the secretary of environmental affairs if a conservation restriction, and (b) in case of a restriction held by a charitable corporation or trust it is approved by the mayor, or in cities having a city manager the city manager, and the city council of the city, or selectmen or town meeting of the town, in which

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the land is situated, and the secretary of environmental affairs if a conservation restriction, the commissioner of the metropolitan district commission if a watershed preservation restriction, the commissioner of food and agriculture if an agricultural preservation restriction, the Massachusetts historical commission if a preservation restriction, or the director of housing and community development if an affordable housing restriction.

**Article 97** The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the Conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose. The general court shall have the power to enact legislation necessary or expedient to protect such rights. In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefore, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes. Land and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court.

**ii Explanation of Paragraph B in Section V**

The purpose of Paragraph B is to ensure that if the Conservation Restriction is released (extinguished), the Grantee is reimbursed accordingly.

The appraised fair market value of the property before the Conservation Restriction (CR) is  $\$(A)$ . The appraised fair market value of the property after the Conservation Restriction is applied is  $\$(B)$ . The value of the Conservation Restriction is  $\$(A - B = C)$ . The proportionate value of the Conservation Restriction in relation to the fair market value of the parcel before the Conservation Restriction is applied is  $(C/A)$ . Such proportionate value of the Grantee's property right shall remain constant and in the proportion of  $(C/A)$  to the Grantee and  $(B/A)$  to the Grantor, in the event the CR is extinguished.

The fair market value of a CR is the difference between the fair market value of the property before the Restriction is applied. **EXAMPLE:** If the fair market value of a property prior to a CR is \$100,000, and the fair market value is \$10,000 after the CR is applied, then the value of the CR is \$90,000 (or 9/10ths of the fair market value of the parcel before the CR).

The proportionate value of the CR is assumed to remain constant over time, regardless of whether the fair market value of the property increases or decreases. It is this proportionate value (in this example 9/10ths) to which the Grantee is entitled if the CR is released. To determine the value of a CR years after it was established; the fair market value of the parcel must be determined by an appraisal assuming there was no Restriction. Then the ratio (determined at the time the Restriction was established) is applied to the fair market value. For example; if at the time of extinguishment the property is appraised (without the CR) to have a fair market value of \$200,000 (a \$100,000 increase), the Grantee would be entitled to 9/10ths of \$200,000.

In order to calculate the amount of funds due the grantee in the event the Restriction is released: the amount paid for the CR and the fair market value of the property before the Restriction is applied, should be stated in the CR. If the CR is acquired through a gift or bargain sale, then the proportionate value would be the ratio between the fair market value of the property before establishment of the Restriction and the amount the Grantee actually paid, if anything, for the Restriction.