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DEPARTMENT OF ENVIRONMENTAL PROTECTION
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MODEL (draft) ZONE A CONSERVATION RESTRICTION

For Protecting Surface Waters Used as Public Drinking Water Sources
2009

INTRODUCTION

This Model is designed to assist public water suppliers in developing a Conservation Restriction to protect land located near and around surface waters used for public drinking water supplies. This Model focuses on protecting land located in a Zone A but may be modified to protect land in a Zone B and/or Zone C. This Model additionally provides for public recreation, maintenance of vegetation, wildlife habitat and trails, and archeological investigations.

What You Need to Know

- Conservation Restrictions (CR) established pursuant to M.G.L. c.184, s.32 require approval by MassDEP AND the Executive Office of Energy and Environmental Affairs (EOEEA).
- Draft CRs must be reviewed by MassDEP prior to acceptance by the public water supplier (PWS).
- CRs must be placed under the control of the Board of Water Commissioners OR the Board of Selectmen (acting as the Board of Water Commissioners).
- A MassDEP public hearing and Notification is required. MassDEP assists with this process.
- PWS must submit a Permit application [BRP WS-26] for land acquisition. This is available with instructions at <http://www.mass.gov/dep/water/approvals/dwsforms.htm#landacq>. MassDEP assists with this process.
- EOEEA requires a CR application to be completed. In some cases a Baseline Survey must also be completed. Information and assistance with these requirements are available from the Division of Conservation Services, (617) 626-1138 or <http://www.mass.gov/envir/dcs/Restrictions/default.htm>
- Modifications to this Model require MassDEP review and approval.

How to Use this Model

1. **Fill in underlined blanks** with the correct information and remove underline.
2. **Replace** [bracketed words] with the requested information and remove brackets
3. **Choose** the correct choice of [underlined terms/words] and remove underlines and brackets.
4. **Delete** all notes and footnotes.
5. **Do not remove** words in "quotations" or (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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**CONSERVATION RESTRICTION
FOR PUBLIC DRINKING WATER SUPPLY PROTECTION**

date of draft

[I/We] _____, of [Name of Municipality], [Name of County] Massachusetts, being [the sole owner/all of the 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] of [Name of Municipality] by and through its Board of Water Commissioners¹ pursuant to Massachusetts General Laws Chapter 40 Section 41, its permitted successors and assigns, “Grantee”, for _____ dollars (\$__ .00) and other consideration, in perpetuity and exclusively for public drinking water supply protection, the following Conservation Restriction on a parcel of land, “Premises”, located in the [Town/City] of [Name of Municipality], Massachusetts constituting approximately__ acres ² and more particularly described in Exhibit A and attached Plan of Land³. For Grantor’s title see [Name of County] Registry of Deeds Book # _____ page # _____.

Grantee acquires this Conservation Restriction subject to the approval of the 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.

- *Notes:*
 - i. *If there is a mortgage on the Premises, a subordination ⁴ attached a subordination as an Exhibit.*
 - ii. *If there are building envelopes or other structural exclusions, identify them in the above paragraph.*
 - iii. *Draft CRs should be dated with page numbers; the final executed copy should not be dated.*
 - iv. *If the CR is funded by a state grant or purchased with Community Preservation funds; the grant documents and a certified or attested copy of any municipal meeting votes regarding the purchase and expenditure of funds should be referenced and attached as an exhibit.*
 - v. *The M.G.L. referenced in this Model are provided at the end of this document.*

I. PURPOSE

This Conservation Restriction is defined in and authorized by Sections 31 through 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purpose of this Conservation Restriction is to protect and maintain the drinking water quality of the [Name Water Supply] [Source ID#], approved by the Massachusetts Department of Environmental Protection as a source of public drinking water, and to ensure the Premises will be maintained in its current condition, as set forth in the Baseline Survey⁵, 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 conservation and preservation values as a public drinking water supply source.

Note: If the land to be acquired under this CR borders land previously acquired by the municipality for public use/Article 97; include the following sentence under the Purpose section: “Permits for the change

¹ Or Board of Selectman acting as the Board of Water Commissioners

² State if the CR covers only a portion of the lot/parcel; e.g “ 2 acres of a 4 acre lot”

³ Or other map suitable for recording.

⁴ A subordination allows a debt or claim that has priority to take second position behind another debt, particularly a new loan.

⁵ Omit if a Baseline Survey is not completed.

in use must be secured from all departments including, but not limited to [Name of Municipal Boards] which is protected under [cite applicable Massachusetts General Law and Code of Massachusetts Regulation] and in accordance with Article 97 of the Amendments to the Massachusetts Constitution and otherwise by law”.

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 or expansion of buildings. No 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) and individual transportation vehicles (ITV) necessary for the mobility of persons with disabilities ⁶.
5. No pesticides as defined by the Federal Insecticide, Fungicide and Rodenticide Act of 1947, as amended, shall be mixed or stored on or under the Premises.
6. No fertilizers or animal manure shall be stored or used on the Premises.
7. No animal grazing, stabling, hitching, standing or feeding shall occur on the Premises.
8. 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.
9. No underground or above-ground fuel storage tanks shall be installed, placed or allowed to remain on the Premises.
10. 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 Conservation Restriction as herein before stated.

⁶ An exception for ITVs must be included if the Premises will be open to the public.

B. Permitted Uses, Reserved Rights and Exceptions ⁷

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 Water Supply]. Activities under this section shall be in compliance with all federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position of whether such permit should be issued.

Note: The following Permitted activities and uses are examples. These and other uses and activities (such as forestry and low intensive agriculture) may be allowed on a case-by case basis. Considerations include the proximity of the use/activity to the drinking water supply and site-specific conditions, such as areas subject to flooding,, steep slopes, erodible soils and other features that may impact drinking water quality. Uses and activities inconsistent with 310 CMR 22.20 will not be allowed.

1. Passive Public Recreational Activities On shore fishing, hiking, 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.

2. Pruning and Invasive Species

- (a). Removal of brush by pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, and/or to preserve the present condition of the Premises.
- (b). Removal of non-native or invasive flora and planting of indigenous species.

3. 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.

4. Archaeological Investigations The conduct of archaeological activities, including without limitation survey, excavation and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official).

5. Trails and Signs

- (a). The marking, clearing and maintenance of existing footpaths and trails.
- (b). The erection, maintenance and replacement of signs with respect to hunting, trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, and the protected Conservation values.

⁷ Uses to be retained by the Grantor are listed in this section. Retained uses must be consistent with protecting drinking water quality. Section Paragraph B may be omitted if the Grantor is not retaining any rights.

III. NOTICE AND APPROVAL

Whenever notice to or approval by Grantee is required under the provisions of Sections II and III, Grantor shall notify Grantee in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The Grantors hereby shall not commence any use or activity that requires prior written approval without having obtained Grantee's approval according to the procedures set forth hereunder:

1. 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 Conservation Restriction.
2. 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 Conservation Restriction.
3. 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.
4. Any notice, request, consent, or communication required hereunder shall be in writing and either served personally or sent by certified mail, return receipt requested, and postage prepaid.

IV. LEGAL REMEDIES OF THE GRANTEE

A. Legal and Injunctive Relief

The rights hereby granted shall include the right to enforce this Conservation 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 may 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 Conservation Restriction. The Grantee shall attempt to resolve issues concerning violations through negotiations with the Grantor prior to resorting to legal means. In the event of a dispute over the boundaries of the Conservation Restriction, the Grantor shall pay for a survey and permanent monumentation of the boundaries.

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

B. Non-Waiver

Enforcement of the terms of this Conservation 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 Conservation 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 Conservation 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 which are not caused by the Grantee or anyone acting under the direction of the Grantee.

D. Acts Beyond the Grantor's Control

Nothing contained in this Conservation 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. The parties to this Conservation Restriction agree that in the event of damage to the Premises from acts beyond the Grantor's control, that if it is desirable that the Premises be restored, the parties will cooperate in attempting to restore the Premises if feasible.

V. ACCESS

The Grantee is hereby granted a permanent easement of access to enter the Premises, or to permit personnel from the Massachusetts Department of Environmental Protection a duly constituted agency organized under the laws of the Commonwealth of Massachusetts, to enter the premises, with reasonable notice to the landowners, for the purpose of inspecting the same to determine compliance with or to enforce this Conservation Restriction, or taking any and all actions with respect to the Premises as may be necessary or appropriate with or without order of court, to remedy or abate any violation.

VI. EXTINGUISHMENT

A. Termination

If circumstances arise in the future such as render the purpose of this Conservation 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 Conservation 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

Grantor and Grantee agree that the grant of this Conservation 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 Conservation 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.⁸ *Note: For an explanation of paragraphs A and B above, see Notes at end of document*

⁸ For an explanation of paragraphs A and B, see Notes at end of document

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.

VII. 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 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 Conservation 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.

C. Running of the Benefit

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances: As a condition of any assignment, the Grantee shall require that the purpose of this Conservation 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 Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts.

VIII. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation 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 Conservation Restriction.

The Grantor shall be liable to only for violations occurring during or his or her ownership, or for any transfer, if in violation. 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.

IX. 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 Conservation Restriction.

X. NON MERGER

The parties intent that any future acquisition of the Premises shall not result in a merger of the Conservation 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 Conservation Restriction to ensure that merger does not occur. If it is determined that a transfer or assignment of any interest will result in a merger, no deed shall be effective until this Conservation Restriction has been assigned or other action taken to avoid a merger and preserve the terms and enforceability of this Conservation Restriction. It is the intent of the parties that the Premises will be subject to the terms of this Conservation Restriction in perpetuity, notwithstanding any merger.

XI. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction may be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation 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, 32 and 33 of Chapter 184 of the General Laws of Massachusetts.

Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. The Holder will consider amendments only to correct an error or oversight, to clarify an ambiguity, and in circumstances where in granting an amendment 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 Conservation Restriction, shall not affect its perpetual duration, shall be approved by MassDEP and the Secretary of EOEEA and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution. Any amendment shall be recorded in the [Name of County] Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when:

- (a). The Grantor and the Grantee have executed it;
- (b). The administrative Approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and;
- (c). It has been recorded in the [Name of County] Registry of Deeds.

XII. RECORDATION

The Grantee shall record this instrument in timely fashion in the [Name of County] Registry of Deeds.

XIII. 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: [address] To Grantee: [address] or to such other address as any of the above parties shall designate from time to time by written notice to the other.

XIV. GENERAL PROVISIONS

A. Controlling Law

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

D. Entire Agreement

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

XV. MISCELLANEOUS

A. Pre-existing Public Rights

Approval of this Conservation Restriction pursuant to Massachusetts General Law 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 Conservation Restriction.

B. Subordination of Mortgage

The Grantor shall record at the appropriate County Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Property.

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

Name(s) & signatures of ALL owners

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

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

Notary Public
My Commission Expires:

ACCEPTANCE OF GRANT

The above Conservation Restriction was accepted by [Grantee] this _____ day of 200_.

By: [Board of Water Commissioners/Select Board]

Its: _____, duly authorized

COMMONWEALTH OF MASSACHUSETTS

_____, ss:

On this _____ day of _____, 200_, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification which was _____ 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.

Notary Public
My Commission Expires:

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APPROVAL OF BOARD OF WATER COMMISSIONERS
(OR ACTING SELECT BOARD)

We, the undersigned, being a majority of the [Board of Water Commissioners/Select Board] of the [Town/City] of [Name of Municipality] Massachusetts, hereby certify that at a meeting duly held on _____, 200_, the Board voted to approve the foregoing Conservation Restriction to the pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

[Board of Water Commissioners/Select Board]

COMMONWEALTH OF MASSACHUSETTS

_____, ss:

On this _____ day of _____, 200_, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was personal knowledge 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 [Board of Water Commissioners/Select Board] for the [Town/City] of [Name of Municipality].

Notary Public
My Commission Expires:

APPROVAL BY COMMISSIONER OF
DEPARTMENT OF ENVIRONMENTAL PROTECTION

The undersigned, Commissioner of the Massachusetts Department of Environmental Protection of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the [Town/City/] of [Name of Municipality] has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 40, Sections 15B and 41.

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 Conservation Restriction to the [Town/City] of [Name 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 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 or other map suitable for recording).

- (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/Map:
- 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]. 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.

(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.

Exhibit D

If one is required, attach the Baseline Survey

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/city or water 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 restrictionas 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 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.

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.