



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

**MODEL ZONE I RESTRICTION
FOR PUBLIC DRINKING WATER SUPPLY PROTECTION**

7/2010

For compliance with Massachusetts Drinking Water Regulations 310 CMR 22.00

INTRODUCTION

Massachusetts Drinking Water Regulations require public water systems to own or control the Zone I land area of their drinking water wells. When ownership of the entire Zone I is not possible, MassDEP may determine that a Zone I Restriction is necessary. This Model is designed to assist businesses and other investor owned entities, who have been designated as a public water system¹, in developing a Restriction to protect and access their Zone I.² For further assistance in developing a Restriction, please contact the Drinking Water Program staff person in your regional office. Assistance is also available through the Boston office, 617-292-5770.

What You Need to Know

- A draft of the Zone I Restriction must be submitted to MassDEP for review and approval.
- MassDEP approval of the Restriction is required to operate a new source.
- Modifications to the Restriction require approval by MassDEP.
- A copy of the recorded Restriction with Exhibits must be provided to MassDEP.

How to Use this Model

1. **Provide** the addresses and map information under the heading of the document.
2. **Fill in** _____ with the correct information AND remove underline.
3. **Replace underlined words** with the requested information AND remove underline.
4. **Choose** the correct word / words AND remove underline.
5. **Keep OR Remove** *{bracketed phrases in italics}*. To keep, remove brackets AND change the phrase to non-italics.
6. **Refer** to the last page of the Model for an explanation of the Exhibits.
7. **Label** all Exhibits appropriately on separate pages.

¹ This includes all non-community systems (i.e. stores, schools, restaurants, campgrounds etc) and community systems that are not municipal water systems or non-municipal water districts (i.e. condos, nursing homes, residential institutions etc).

² For municipal water systems and non-municipal water districts, a Model Zone I Conservation Restriction is available online at <http://www.mass.gov/dep/water/drinking/sourcewa.htm#ground>.

GRANT OF PUBLIC WATER SUPPLY ZONE I RESTRICTION

Addresses

Grantor property: _____.

Mailing address (if different) : _____.

Grantee property: _____.

Mailing address (if different): _____.

Map/Lot/Parcel #

Grantor property: _____.

Grantee property: _____.

This Grant of Public Water Supply Zone I Restriction is made as of this ____ day of _____, 20____, by and between Name of Landowner(s)³ of Town/City of _____, _____ County, Massachusetts, as Grantor (hereinafter referred to as the “Grantor”) and Name of Public Water Supplier of Town/City of _____, _____ County, Massachusetts (hereinafter referred to as the “Grantee”).

WHEREAS, Grantor is the owner in fee simple of that certain parcel of *{vacant}* land located in Town / City of _____, _____ County, Massachusetts, *{with the buildings and improvements thereon}*, pursuant to a deed from _____ to Grantor/Grantors, dated _____, and recorded with _____ County Registry of Deeds in Book _____, Page _____ *{and/or pursuant to Certificate of Title No. _____ issued by the Land Registration Office of the _____ Registry District}* said parcel/parcels of land being more particularly bounded and described in **Exhibit A**, attached hereto and made a part hereof *{and being shown on a Plan entitled, _____ dated _____, prepared by _____, recorded with _____ County Registry of Deeds as Plan No. _____ in Plan Book _____ and/or registered as Land Court Plan No. _____, on file with the Land Registration Office of the _____ County Registry District}* (hereinafter referred to as the “Grantor’s Property”);

WHEREAS, Grantee is the owner in fee simple of that certain parcel of *{vacant}* land located in Town/City of _____, _____ County, Massachusetts, *{with the buildings and improvements thereon}*, pursuant to a deed from _____ to Grantee, dated _____, and recorded with _____ County Registry of Deeds in Book _____, Page _____ *{and/or pursuant to Certificate of Title No. _____ issued by the Land Registration Office of the _____ Registry District}* said parcel / parcels of land being more particularly bounded and described in **Exhibit B**, attached hereto and made a part hereof *{and being shown on a plan entitled “ _____” dated _____, prepared by _____, recorded with _____ County Registry of Deeds as Plan No. _____ in Plan Book and/or registered as Land Court Plan No. _____, on file with the Land Registration Office of the _____ County Registry District}* (hereinafter referred to as the “Grantee’s Property”);

WHEREAS, Grantee owns and operates a public drinking water supply well identified as Name of Well *{and Well ID No. _____}* located on Grantee’s Property (hereinafter referred to as the “PWS Well”);

³ Include all landowner names.

WHEREAS, Grantee is a Massachusetts Public Water System, as such term is defined by the Massachusetts Drinking Water Regulations, 310 CMR 22.00 (hereinafter referred to as the “Regulations”) has been assigned Public Water System Identification No. _____ by the Massachusetts Department of Environmental Protection “MassDEP”, and is subject to the Regulations;

WHEREAS, the Regulations at 310 CMR 22.21(3)(b) require that a protective radius of land be established around a public water supply well or wellfield for the purpose of protecting the water from contamination, such protective radius of land being defined under the Regulations as the ‘Zone I’, and that the Zone I be obtained by a supplier of water through the ownership or control of sufficient land around wells, infiltration galleries, springs and similar sources of ground water used as sources for drinking water. Such requirement is generally deemed by MassDEP to be satisfied if all land within the Zone I is under the ownership or control of the supplier of water;

WHEREAS, the parcel/parcels of *{vacant}* land *{with the buildings and improvements thereon}*, constituting the MassDEP approved Zone I area of the PWS Well (hereinafter referred to as the “Zone I Area”) is/are more particularly bounded and described in **Exhibit C**, attached hereto and made a part hereof, and are shown on a plan entitled ‘Public Water Supply Zone I Area Plan ’, dated _____, prepared by _____, recorded with said Deeds in Plan Book _____, Plan _____ a copy of said Plan being attached hereto as **Exhibit D**;

WHEREAS, *{a portion of}* Grantor’s Property constitutes a portion of the Zone I Area (hereinafter referred to as the “Partial Zone I Area”) said Partial Zone I Area being more particularly bounded and described in **Exhibit D** is shown as the ‘Partial Zone I Area’ on the ‘Public Water Supply Zone I Area Plan’; and

WHEREAS, the Grantee, pursuant to the requirements of 310 CMR 22.21(3)(b), desires to obtain control over this portion of the Partial Zone I Area;

NOW THEREFORE, _____, Grantor, does hereby GRANT to _____, Grantee, for consideration of \$_____ paid, the receipt and sufficiency of which are hereby acknowledged, with QUITCLAIM COVENANTS, a PUBLIC WATER SUPPLY ZONE I RESTRICTION “Restriction” in, on, upon, through, over and under the Partial Zone I Area (hereinafter referred to as the “Restricted Area”).

The purpose of this Restriction is to protect the public drinking water supply provided by the PWS Well from contamination in accordance with 310 CMR 22.21(3)(b). Said Restriction is subject to the following terms and conditions:

1. **PROHIBITED ACTIVITIES AND USES** Except as permitted in Paragraph 2, Grantor shall not perform, suffer, allow or cause any person to perform any of the following activities and uses in, on, upon, through, over or under the Restricted Area, or any portion thereof, or any of the following uses to be made of the Restricted Area, or any portion thereof:
 - i. Operation, parking, or storage of motorized vehicles of any kind except as necessary for emergency police and fire vehicles in pursuit of official duties and as minimally necessary to exercise the rights delineated in Paragraph 2;
 - ii. Transportation, use, storage, application, disposal, or discharge, in any manner or to any extent, of

fertilizers or pesticides as defined by the Federal Insecticide, Fungicide and Rodenticide Act of 1947, as amended, or any toxic or hazardous substances, materials or wastes, except those chemicals necessary for the operation and maintenance of the drinking water supply;

- iii. Access by the general public;
- iv. Installation or construction of any temporary or permanent building, structure, facility, road, driveway, pavement or improvement not related to the operation, maintenance or protection of the public drinking water supply;
- v. Mining, excavating, dredging or removing from the Restricted Area soil, loam, peat, gravel, sand, rock, landfill or other mineral resource or natural deposit, and constructing, bulldozing, excavating or drilling of dikes, ditches, holes, swales or other alterations in the natural topography of the Restricted Area;
- vi. Placing, filling, storing or dumping on the Restricted Area soil, loam, peat, gravel, sand, rock, landfill, mineral substance, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, wood chips, tree cuttings, septage or other unsightly or offensive materials, waste or other substance or material whatsoever;
- vii. Any commercial or industrial use; horses and horseback riding; any animal husbandry or horse paddocking or stables, paddocks, grazing areas or other enclosures and the storage or dumping of manure or other animal wastes;
- viii. Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- ix. Activities detrimental to drainage, flood control, water or soil conservation, erosion control or the quality of surface or ground water; and
- x. Any other use or activity which is inconsistent with the purpose of this Restriction and/or which is determined by MassDEP to pose a threat to drinking water quality.

2. PERMITTED ACTIVITIES AND USES Grantor expressly reserves the right to perform, suffer, allow or to cause any person to perform any of the following activities and uses in, on, through, over or under the Restricted Area, or any portion thereof, but only if such activities and uses do not impair the protection of the public water supply provided by the PWS Well:

- i. Activities necessary and incidental to the construction, installation, operation, maintenance, inspection, repair, replacement and protection of the PWS Well and any replacement wells and associated infrastructure necessary and incidental to the use of the PWS Well and any replacement wells as a public water supply, including, but not limited to, facilities for water withdrawal, water treatment, and water storage and distribution;
- ii. Maintenance and repair of existing structures *{identify any existing structures}*
- iii. Selective cutting or pruning of trees, brush and other vegetation to prevent, control, or remove hazards, disease, insect damage, fire damage, storm damage or invasive species; and
- iv. Maintenance mowing.

3. **EASEMENTS** In establishing this Restriction, Grantor hereby grants to Grantee, Grantee's agents, contractors, subcontractors, and employees the following easements in, on, over, under and through the Restricted Area for the term of this Grant:
- i. The right to establish, construct, install, operate, maintain, inspect, repair, replace and protect the PWS Well and any replacement wells, and associated infrastructure;
 - ii. The right to bring equipment and materials necessary and incidental to the establishment, construction, installation, operation, maintenance, inspection, repair, and protection of the PWS Well and any replacement wells and associated infrastructure;
 - iii. The right to place, establish, install or construct water supply protection measures, including, but not limited to, signs, berms, fences, drainage systems, holding tanks, chemical treatment storage, and other measures deemed by MassDEP to be necessary or beneficial for the operation, maintenance, protection and replacement of the PWS Well and associated infrastructure;
 - iv. The right to do any and all acts deemed by MassDEP to be necessary or incidental to protecting the drinking water quality of the PWS Well and any replacement wells;
 - v. The right to enter the Restricted Area and to permit MassDEP personnel to enter the Restricted Area, with reasonable notice to Grantor, for the purpose of inspecting the Restricted Area to determine compliance with, or to enforce, the terms and conditions of this Restriction, or to take any and all actions as may be necessary or appropriate with or without order of court, to remedy or abate any violation; and
 - vi. The right to pass and re-pass, by foot or by vehicle, in order to conduct the activities identified in Sub-paragraphs (i) through (v), inclusive, of this Paragraph.
 - vii. Grantor and Grantee agree that the Restricted Area may not be relocated without the written consent of both parties and the prior written approval of MassDEP.
4. **SEVERABILITY** Grantor hereby agrees, in the event that a court or other tribunal determines that any provision of this instrument is invalid or unenforceable;
- i. That any such provision shall be deemed automatically modified to conform to the requirements for validity and enforceability as determined by such court or tribunal; or
 - ii. That any such provision that, by its nature, cannot be so modified, shall be deemed deleted from this instrument as though it had never been included.

In either case, the remaining provisions of this instrument shall remain in full force and effect.

5. **ENFORCEMENT** Grantor expressly acknowledges that a violation of the terms of this instrument could result, upon a determination by a court of competent jurisdiction, in the issuance of criminal and civil penalties, and/or equitable remedies, including, but not limited to, injunctive relief, and such injunctive relief could include the issuance of an order to modify or remove any improvements constructed upon the Restricted Area in violation of the terms of this Restriction.
6. **PROVISIONS TO RUN WITH THE LAND** This Restriction establishes certain rights, liabilities, agreements, and obligations for the Restricted Area, and any portion thereof, which shall run with the

Restricted Area, and any portion thereof, for the term of this Restriction.

The rights granted hereunder do not provide, however, that a violation of this Restriction shall result in a forfeiture or reversion of Grantor's title to the Restricted Area.

7. **CONCURRENCE PRESUMED** It is agreed that:
 - i. Grantor and all parties claiming by, through or under Grantor shall be deemed to be in accord with the provisions of this document; and
 - ii. all such parties and any party claiming by, through, or under them, and their respective agents, contractors, sub-contractors and employees, also agree that the Restriction herein established shall not be violated and that their respective interests in the Restricted Area shall be subject to the provisions herein set forth.

8. **INCORPORATION INTO DEEDS, MORTGAGES, LEASES AND INSTRUMENTS OF TRANSFER** Grantor hereby agrees to incorporate this Restriction, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Restricted Area, or any portion thereof, is conveyed. Grantor agrees to give written notice to Grantee of any proposed transfer of interest in the Restricted Area [or interest in land adjacent to the Restricted Area and owned by Grantor], at least sixty (60) days prior to the proposed date of such transfer.

Grantor warrants that this Restriction is free and clear of all liens or encumbrances, that Grantor has good, clear and marketable title to transfer the same, and that Grantor will defend the same against claims of all persons.

9. **RECORDATION** Grantee shall record and/or register this Restriction with the appropriate Registry of Deeds and/or Land Registration Office within thirty (30) days of receiving approval from MassDEP to operate the PWS Well. Grantee shall file with MassDEP a certified Registry copy of this Restriction as recorded and/or registered within thirty (30) days of its date of recordation and/or registration.

10. **AMENDMENT AND RELEASE** This Restriction may be amended or released only upon approval by MassDEP. Release of this Restriction shall be granted by Grantee upon MassDEP's written determination that the PWS Well, or any replacement wells, no longer is a source of public drinking water. Any such amendment or release shall be recorded and/or registered with the appropriate Registry of Deeds and/or Land Registration Office and a certified Registry copy of said amendment or release shall be filed with MassDEP within thirty (30) days of its date of recordation and/or registration.

11. **TERM** This Restriction shall run for a period of thirty (30) years, with a notice of extension to be recorded by Grantee in accordance with the provisions of M.G.L. c.184, § 27.

12. **RIGHTS RESERVED** It is expressly agreed that constructive approval of this Restriction by MassDEP shall not operate to bar, diminish, or in any way affect any legal or equitable right of MassDEP to issue any future order with respect to the Restricted Area, or in any way affect any other claim, action, suit, cause of action, or demand which MassDEP may have with respect thereto.

13. **EFFECTIVE DATE** This Restriction shall become effective upon its recordation and/or

registration with the appropriate Registry of Deeds and/or Land Registration Office.

WITNESS the execution hereof under seal this ____ day of _____, 20____.

(Grantor's Name)

COMMONWEALTH OF MASSACHUSETTS

_____,ss

_____, 20____

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared Grantor's Name and 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 for its stated purpose.

Notary Public:

My Commission Expires:

The Exhibits

- **Exhibit A** is the legal description (metes and bounds) of the Grantor's property. Exhibit A may also include a Plan of Land (plan) of the Grantor's property as recorded with the Registry of Deeds and/or Land Registration Office
- **Exhibit B** is the legal description of the Grantees's property (the public water supplier) and may also include a plan of the Grantor's property as recorded with the Registry of Deeds and/or Land Registration Office
- **Exhibit C** is a description of the Zone I pursuant to MassDEP specifications. This description includes the Zone I definition, the Zone I approved radius, and the coordinates (longitude/latitude) of the well.
- **Exhibit D** is the plan of the Grantor's property with the Zone I restriction. The plan should display the following information:
 - Zone I boundary
 - Zone I radius and acreage
 - Property boundaries of both the Grantor and Grantee, however scale of the plan should not be less than 1" = 150'
 - Property owner names (the grantor and grantee)
 - The Restricted Area of the Zone I identified
 - Acreage of the Restricted Area
 - The map/lot or parcel # (from tax assessors map)
 - Title of Plan 'Public Water Supply Zone I Area'
 - Surveyor's name and date of survey
 - Notes: "This land is restricted for Public Drinking Water Supply Purposes pursuant to Massachusetts Drinking Water Regulations 310 CMR 22.00. Changes to this plan require approval from MassDEP"