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|  |
| Maura T. Healey  Governor  Kimberley Driscoll  Lieutenant  Governor | Rebecca L. Tepper  Secretary  Bonnie Heiple  Commissioner |

MODEL CONSERVATION RESTRICTION

**FOR ZONE I OF PUBLIC GROUNDWATER WELLS**

3/2023

MassDEP Drinking Water Regulation 310 CMR 22.21(3)(b), requires public water suppliers to own or control the Zone I of a public well. This Model Conservation Restriction (CR) is designed to assist public water suppliers in meeting MassDEP’s Zone I requirement. This Model is based on the Model CR developed by the Massachusetts Division of Conservation Services (DCS). To develop a CR to protect water supply protection Zones II, III or an IWPA, please visit [Groundwater, Wellhead Protection, and Surface Water Supplies | Mass.gov](https://www.mass.gov/lists/groundwater-wellhead-protection-and-surface-water-supplies). To develop a CR for any purpose other than drinking water please contact the [Division of Conservation Services | Mass.gov](https://www.mass.gov/orgs/division-of-conservation-services). For questions about this Model or the Zone I requirement, please contact: [Director.Program-DWP@Mass.Gov](mailto:Director.Program-DWP@Mass.Gov); Subject: Zone I.

What You Need to Know

* CRs for public water supply require review from MassDEP and DCS and approval from the Executive Office of Energy and Environmental Affairs (EEA).
* To ensure an expedient review process, please use this Model and submit the draft CR and Exhibits to the MassDEP Drinking Water Program.
* The land protected by the CR must be under the control of the Board of Water Commissioners.
* The MassDEP CR approval process requires submittal of permit application BRP WS26. For new wells please contact your regional MassDEP office prior to submitted this permit application.

**How to Use This Model**

* Read through the Model prior to using it.
* Remove the cover page, page breaks and non-applicable signature pages.
* Fill in and remove underlines.
* Keep applicable {language}and remove braces.
* Delete non applicable {language}.
* Enter the requested [information] and remove brackets.
* Delete all *Notes*, footnotes and endnotes.
* Do not delete parenthesizes.
* Delete page breaks and add page numbers.
* Do not sign the CR until all reviews are completed. For assistance call the MassDEP or email [Program.Director-DWP@mass.gov](mailto:Program.Director-DWP@mass.gov) Subject: Drinking Water CR.

**MassDEP Offices**

Western Region: Springfield, 413-784-1100 Northeast Region: Woburn, 978-694-3200

Central Region: Worcester, 508-792-7650 Southeast Region: Lakeville, 508-946-2700

Boston: 857-303-6360, 617-292-5770

*This first page must have a top margin of 3 inches for recording purposes.*

GRANTOR:

GRANTEE:

ADDRESS OF PREMISES:

FOR GRANTOR’S TITLE SEE: [Name of Registry of Deeds]

Registry of Deeds Book\_\_\_\_\_\_\_\_, Page \_\_\_\_\_\_\_\_\_,

**CONSERVATION RESTRICTION**

Zone I of a Public Groundwater Well

1. **PREAMBLE**

[I/We] [Name/s] being [unmarried/married] having an address of [County], being the [sole owner/joint owners] of the Premises as defined herein, constituting all of the owners of the Premises as defined herein, for my successors and assigns (“Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant with QUITCLAIM COVENANTS to the {Town/City of } {Name of Water District**[[1]](#footnote-1)**} a Massachusetts [municipality/public water system] having an address of through its Board of Water Commissioners **[[2]](#footnote-2)** by authority of Section 41 of Chapter 40 of the Massachusetts General Laws**[[3]](#endnote-1)**, their permittedsuccessors and assigns (“Grantee”), for consideration of **[[4]](#footnote-3)**, IN PERPETUITY AND EXCLUSIVELY FOR drinking water supply protection AND CONSERVATION PURPOSES, the following Conservation Restriction on land located in containing a [X] acre parcel of land **[[5]](#footnote-4)** (“Premises”), which Premises is more particularly described in Exhibit A**[[6]](#endnote-2)** and shown on a Sketch Plan in Exhibit B **[[7]](#endnote-3)**. A map of the ‘Premises and Water Supply Protection Zones’ is shown in Exhibit C **[[8]](#endnote-4)**. All Exhibits are incorporated herein and attached hereto.

The Grantee acquires this Conservation Restriction subject to the approval of the Massachusetts Department of Environmental Protection (“MassDEP”) pursuant to Sections 38, 39B and 41 of Chapter 40 of the Massachusetts General Laws, and subject to the approval of the Secretary of Energy and Environmental Affairs pursuant to Section 32 Chapter 184 of the Massachusetts General Laws.

**II. PURPOSES**

This Conservation Restriction is defined in and authorized by Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purposes of this Conservation Restriction (“Purposes”) are to ensure that the Premises will be maintained in perpetuity for the protection of the [name of well or wellfield] (“Well”) approved by MassDEP as a source of public drinking water [source ID**[[9]](#footnote-5)**], in its natural, scenic condition and to prevent any use or change that would materially impair the Conservation Values as defined below.

{The Conservation Restriction was acquired utilizing in part Community Preservation Act funds pursuant to Chapter 44B of the Massachusetts General Laws which funds were authorized for such purposes by a [vote/order] of the [Municipal Name] [Town Meeting/City Council] on [date]. A copy of the municipal vote authorizing the use of these funds for this purpose is attached as Exhibit D.[[10]](#footnote-6)}

{The Conservation Restriction was acquired utilizing, in part, assistance from the Drinking Water Supply Protection Grant Program pursuant to Chapter 312 of the Acts of 2008, Section 2A, 2200-7017 and is subject to a project grant agreement recorded with the [County] Registry of Deeds, Book\_\_\_, Page \_\_.**[[11]](#footnote-7)**}

{The Conservation Restriction was acquired utilizing the Conversation Land Tax Credit Program authorized under Chapter 509 Acts of 2008 Sections 1- 4 as amended by Chapter 409 Acts of 2010 Sections 4-13 of the Massachusetts General Court.**[[12]](#footnote-8)**}

**The Conservation Values protected by this Conservation Restriction include the following [[13]](#footnote-9)**

*Note: List only those Conservation Values applicable to the Premises.*

## Drinking Water Quality. The Premises is located in the Zone I of the Well which MassDEP identifies as the area that must be protected to maintain clean drinking water and which is further described in Exhibit B. This Well provides drinking water to the [Town/City] of whose residents and businesses rely on this source for their drinking water needs.

Medium-High Yield Aquifer. The Premises overlies a significant source of groundwater. Conservation of the Premises will help to protect the water quality of the aquifer for current and future water supplies.

Open Space Preservation. The Premises contributes to the protection of the scenic and natural character of the community and will enhance the open-space value of these and nearby lands.

Wildlife Habitat. The Premises includes areas designated by the MA Division of Fisheries and Wildlife acting by and through its Natural Heritage and Endangered Species Program (NHESP) as “Priority Habitats of Rare and Endangered Species”, the protection of which aligns with NHESP’s wildlife and habitat protection objectives.**[[14]](#footnote-10)**

Wetlands. The wetlands on the premises provide valuable habitat for a diverse array of wildlife species as well as provide the many other public benefits of wetlands protection recognized by the Commonwealth of Massachusetts, Section 40 of Chapter 131 of the Massachusetts General Laws.

**III. PROHIBITED AND PERMITTED ACT AND USES**

1. **Prohibited Acts and Uses**
2. Subject to the exceptions set forth in Paragraph III.B. all activities and uses of the Premises are prohibited.
3. Any use of the Premises or activity which is inconsistent with the Purpose of this Conservation Restriction for public drinking water supply purpose or would materially impair its Conservation Values is prohibited.
4. **Permitted Acts and Uses**

Notwithstanding the Prohibited Acts and Uses described in Paragraph III.A the Grantor may conduct or permit the following acts and uses on the Premises, provided they do not materially impair the Purposes and/or Conservation Values. In conducting any Permitted Act and Use, Grantor shall minimize impacts to the Conservation Values to ensure any such impairment thereto is not material.

1. Activities conducted by the [Name of water system] which are necessary and incidental to the construction, installation, operation, maintenance, inspection, repair, replacement, and protection of the Well and associated infrastructure necessary and incidental to the use of the Well as a public water supply consistent with the requirements of Massachusetts Drinking Water Regulations 310 CMR 22.00.
2. Non-native, Nuisance, or Invasive species. Removing non-native, nuisance, or invasive species, interplanting native species, and controlling species in a manner approved by MassDEP that preserves drinking water quality and minimizes damage to surrounding, non-target species.
3. Vegetation Management. Maintaining vegetation as approved by MassDEP including pruning, trimming, cutting, mowing, and removing brush to prevent, control, and manage hazards, disease, insect, or fire damage, and to preserve drinking water quality and maintain the condition of the Premises.
4. {Passive Recreation. Walking, hiking, cross country skiing, and bicycling.}[[15]](#footnote-11)

1. **Site Restoration**

Upon completion of any ‘Permitted Acts and Uses’ under Paragraph III.B, any disturbed areas shall be restored substantially to the conditions that existed prior to said activities, including with respect to soil material, grade, and vegetated ground cover.

1. **Compliance with Permits, Regulations, Laws**

The exercise of any ‘Permitted Acts and Uses’ under Paragraph III.B shall be in compliance with all applicable federal, state and local laws, rules, regulations, zoning, and permits, and with the Constitution of the Commonwealth of Massachusetts. The inclusion of any ‘Reserved Right’ requiring a permit, license or other approval from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit, license, or other approval should be issued.

1. **Notice and Approval**
2. Notifying Grantee. Whenever notice to or approval by Grantee is required, Grantor shall notify or request approval from Grantee, by a method requiring proof of receipt, in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question, unless a different time period is specified herein. The notice shall:
3. Describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity;
4. Describe how the proposed activity complies with the terms and conditions of this Conservation Restriction, and will not materially impair the Purposes and/or Conservation Values;
5. Identify all permits, licenses, or approvals required for the proposed activity, and the status of any such permits, licenses, or approvals; and
6. Describe 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 Conservation Restriction Purposes and Conservation Values.
7. Grantee Review Where Grantee’s approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor’s request. Grantee’s approval shall only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.
8. Resubmittal. Grantee’s failure to respond within sixty (60) days of receipt shall not constitute approval of the request. Grantor may subsequently submit the same or a similar request for approval.

**IV. INSPECTION AND ENFORCEMENT**

1. **Entry onto the Premises**

The Grantor hereby grants to the Grantee 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.

1. **Legal and Injunctive Relief**
2. Enforcement. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain compensatory relief, including without limitation, compensation for interim losses, and equitable relief against any violations, including, without limitation, injunctive relief and relief requiring restoration of the Premises to its condition prior to the time of the injury (it being agreed that the Grantee will have no adequate remedy at law in case of an injunction). 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.
3. Notice and Cure. In the event the Grantee determines that a violation of this Conservation Restriction has occurred and intends to exercise any of the rights described herein, the Grantee shall, before exercising any such rights, notify the Grantor in writing of the violation. The Grantor shall have thirty (30) days from receipt of the written notice to halt the violation and remedy any damage caused by it, after which time Grantee may take further action, including instituting legal proceedings and entering the Premises to take reasonable measures to remedy, abate or correct such violation, without further notice. Provided, however, that this requirement of deferment of action for thirty (30) days applies only if Grantor immediately ceases the violation and Grantee determines that there is no ongoing violation. In instances where a violation may also constitute a violation of local, state, or federal law, the Grantee may notify the proper authorities of such violation.
4. Reimbursement of Costs and Expenses of Enforcement. Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including counsel fees) incurred by the Grantee in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey by a Massachusetts licensed professional land surveyor and to have the boundaries permanently marked.
5. **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.

1. **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 not caused by the Grantee or its agents.

1. **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. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises if desirable and feasible.

**V. PUBLIC ACCESS**

*Note: Use this paragraph if public access is prohibited*

{This Conservation Restriction does not grant any right of access to the general public and the Grantor retains its rights to prohibit access to the Premises by the general public.}

*Note: Use this paragraph if public access is allowed, requires* ***prior*** *MassDEP approval.*

{The Grantor grants access to the Premises as shown in Exhibit B, to the general public and agrees to take no action to prohibit or discourage access to and use of the Premises by the general public, but only for daytime use and only as described in Paragraph III.B provided that such agreement by Grantor is subject to the Grantor’s reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the protection of the Purposes and Conservation Values. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in Paragraph III.B. The Grantor’s right to grant public access across the Premises is subject to the restrictions described in this Conservation Restriction. The Grantee may require the Grantor to post the Premises against any use by the public that results in material impairment of the Conservation Values.}

**VI. TERMINATION/RELEASE/EXTINGUISHMENT**

1. **Procedure**

If circumstances arise in the future that render the Purposes impossible to accomplish, this Conservation Restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, or successor official (“Secretary”), and any other approvals as may be required by Section 32 of Chapter 184 of the Massachusetts General Law, and by MassDEP pursuant to Chapter 40 Section 15B of the Massachusetts General Laws.

1. **Grantor and Grantee Rights to Recover Proceeds**

If any change in conditions ever gives rise to termination, release, or extinguishment of this 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 VI.C., subject, however, to any applicable law which expressly provides for a different disposition of the proceeds, and after complying with the terms of any gift, grant, or funding requirements. The Grantee shall use its share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

1. **Grantee’s Receipt of Property Right**

*Note: if the CR is donated choose one of the following paragraphs*

*If a tax deduction will be taken.*

{Grantor and Grantee agree that the conveyance 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 conveyance, bears to the value of the unrestricted Premises. The proportionate value of the Grantee’s property right as of the Effective Date [date] was determined to be [%]. {Such proportionate value of the Grantee’s property right shall remain constant.} {The proportionate value of the Grantee’s property right is as of the Effective Date [date] and will be determined by an appraisal.}}

*If a tax deduction will not be taken*.

{Grantor and Grantee agree that the conveyance 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 bears to the value of the unrestricted Premises. The proportionate value of the Grantee’s property right will be determined as of the date of termination, release, or extinguishment.}

*If the Grantee is not receiving proportionate value.*

{Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, for the purpose of enforcing this Conservation Restriction, but does not entitle Grantee, upon extinguishment, release, or termination, to any proceeds received by the Grantor from the subsequent sale, exchange or involuntary conversion of the Premises. Any proceeds that result from any such extinguishment, release, or termination will be distributed only after complying with the terms of any gift, grant, or other funding requirements.}

1. **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 accordance with Paragraph VI.B. and Paragraph VI.C. 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 any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

**VII. DURATION & ASSIGNABILITY**

1. **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.

1. **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 themselves and their 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 their successors and assigns agree themselves to execute any such instruments upon request.

1. **Running of the Benefit.**

The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except when all of the following conditions are met:

1. The Grantee requires that the Purposes continue to be carried out;
2. The assignee is not an owner of the fee in the Premises;
3. The assignee, at the time of the assignment, qualifies under and 26.U.S.C. 170(h), and applicable regulations thereunder, if applicable, and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws; and
4. The assignment complies with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

**VIII. SUBSEQUENT TRANSFERS**

1. **Procedure for Transfer**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) days prior to the effective date of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. If the Grantor fails to reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, then the Grantee may record, in the applicable registry of deeds, or registered in the applicable land court registry district, and at the Grantor’s expense, a notice of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

1. **Grantor’s Liability**

The Grantor shall not be liable for violations occurring after their ownership. 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 thirty (30) days **[[16]](#footnote-12)**  execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor’s compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

**X. NON-MERGER**

The parties intend 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 following the terms set forth in Paragraph VII.C to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

**XI. AMENDMENT**

1. **Limitations on Amendment**

Grantor and Grantee may amend this Conservation Restriction only to correct an error or oversight, clarify an ambiguity, maintain or enhance the overall protection of the Conservation Values, or add real property to the Premises **[[17]](#footnote-13)**, provided that no amendment shall:

1. affect this Conservation Restriction’s perpetual duration;
2. be inconsistent with or materially impair the Purposes of the Conservation Restriction;
3. affect the qualification of this Conservation Restriction as a “qualified conservation contribution” or “interest in land” under any applicable laws, including 26 U.S.C. Section 170(h), and related regulations;
4. affect the status of Grantee as a “qualified organization” or “eligible donee” under any applicable laws, including 26 U.S.C. Section 170(h) and related regulations, and Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws; or
5. create an impermissible private benefit or private inurement in violation of federal tax law, as determined by an appraisal, conducted by an appraiser selected by the Grantee, of the economic impact of the proposed amendment; or
6. alter or remove the provisions described in Paragraph VI (Termination/Release/Extinguishment); or
7. cause the provisions of this Paragraph XI to be less restrictive; or
8. cause the provisions described in Paragraph VII.C (Running of the Benefit) to be less restrictive.
9. **Amendment Approvals and Recording**

No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor, approved by the [Town/City] of and by the Secretary in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, and recorded in the applicable registry of deeds or registered in the applicable land court registry district.

**XII. EFFECTIVE DATE**

This Conservation 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 a timely manner in the [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: Name(s)

Address

Municipality, State, Zip code

To Grantee **[[18]](#footnote-14)**: Name(s)

Address(es)

Municipality, State, Zip code

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

**XIV. GENERAL PROVISIONS**

1. **Controlling Law**

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

1. **Liberal Construction**

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in order to affect the Purposes and the policy and purposes of Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the Purposes that would render the provision valid shall be favored over any interpretation that would render it invalid.

1. **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.

1. **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. Baseline Documentation Report**

The Conservation Values, as well as the natural features, current uses of, and existing improvements on the Premises, such as, but not limited to, trails, woods roads, structures, meadows or other cleared areas, agricultural areas, and scenic views, as applicable, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report ;

1. is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction,
2. is intended to fully comply with applicable Treasury Regulations,
3. is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein, and
4. may be supplemented as conditions on the Premise change as allowed over time. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant in addition to the Baseline Report.

**XVI. MISCELLANEOUS**

1. **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.

1. **Release of Homestead**

*Note: Choose one of the following paragraphs and delete the other*

{The Grantor attests that there is no residence on or abutting the Premises (including Special Use Areas excluded from the Premises) that is occupied or intended to be occupied as a principal residence by a spouse, former spouse, or children of the grantor, or a spouse, former spouse, or children of a beneficiary of the trust, if Premises is owned by a trust.}

{The Grantor hereby releases, agrees to waive, subordinate, and release any and all Homestead rights pursuant to Chapter 188 of the Massachusetts General Laws it may have in favor of this Conservation Restriction with respect to any portion of the Premises affected by this Conservation Restriction, and hereby agrees to execute, deliver and/or record any and all instruments necessary to effectuate such waiver, subordination and release. In all other respects, the Grantor reserves and retains any and all Homestead rights, subject to this Conservation Restriction, pursuant to Section 10(e) of Chapter 188 of the Massachusetts General Laws.}

*Note: Choose one of the following paragraphs and delete the other.*

**{C. Subordination**

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

{**C**. **No Surety Interest**

The Grantor attests that there is no mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.}

1. **Prior Encumbrances**

This Conservation Restriction shall be in addition to and not in substitution of any other restrictions or easements of record affecting the Premises.

1. **Attached hereto and incorporated herein by reference are the following:**

Signature pages

* Grantor **[[19]](#footnote-15)**
* Grantee Acceptance
* Approval by {Select Board or City Council and Mayor}
* Approval of the Secretary of Energy and Environmental Affairs

Exhibits:

* Exhibit A: Description of Premises
* Exhibit B: [Sketch Plan or Draft Plan of Land]
* {Exhibit B1 Reduced Copy of Plan of Land}
* {Exhibit C: Location Map}
* {Exhibit D: Town or City Vote}
* {Other Exhibits as applicable}

WITNESS my hand and seal this \_\_\_\_day of [month, year],

, duly authorized

[Name of Grantor and Title if the Grantor is a corporate entity or Trust.] **[[20]](#footnote-16)**

COMMONWEALTH OF MASSACHUSETTS

[COUNTY], ss:

On this day of [month, year], before me, the undersigned notary public, personally appeared [Name], 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 s/he signed it voluntarily for its stated purpose.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My Commission Expires:

**ACCEPTANCE OF GRANT**

*This page applies to all CRs*

The foregoing Conservation Restriction from [Grantor] was accepted by the [public water system], Board of Water Commissioners, on this day of [month, year].

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name] Chair, Board of Water Commissioners, duly authorized

COMMONWEALTH OF MASSACHUSETTS

[COUNTY], ss:

On this day of [month, year], before me, the undersigned notary public, personally appeared [Name], 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 [s/he] signed it voluntarily for its stated purpose.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My Commission Expires:

**APPROVAL OF TOWN OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SELECT BOARD**

The undersigned, [Chairman/Chair] of the Select Board of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereby certifies that at a public meeting duly held on [month, day, year], the Select Board voted to approve the foregoing Conservation Restriction from [Grantor] to [Grantee], acting by and through its Board of Water Commissioners in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

[Name], Select Board [Chairman/Chair], duly authorized.

COMMONWEALTH OF MASSACHUSETTS

[COUNTY], ss:

On this day of [month, year], before me, the undersigned notary public, personally appeared [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 [s/he] signed it voluntarily for its stated purpose as Select Board [Chairman/Chair].

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My Commission Expires:

**APPROVAL OF MAYOR OF \_\_\_\_\_\_\_\_\_\_\_**

*Approval by both the Mayor and City Council is required for CRs located in cities.*

The undersigned, Mayor of the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereby approves the foregoing Conservation Restriction from [Grantor] to [Grantee], acting by and through its Board of Water Commissioners, in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name], Mayor of the City of duly authorized

COMMONWEALTH OF MASSACHUSETTS

[COUNTY], ss:

On this day of [month, year], before me, the undersigned notary public, personally appeared [Name], 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 [s/he] signed it voluntarily for its stated purpose as Mayor.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My Commission Expires:

**APPROVAL OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ CITY COUNCIL**

The undersigned, President of the City Council of the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hereby certifies that at a meeting duly held on [month, day, year] the City Council voted to approve the foregoing Conservation Restriction from [Grantor] to the [Grantee], acting by and through its Board of Water Commissioners in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name], City Council President, duly authorized

COMMONWEALTH OF MASSACHUSETTS

[COUNTY], ss:

On this day of [month, year], before me, the undersigned notary public, personally appeared [Name], 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 [s/he] signed it voluntarily for its stated purpose as a City Counselor.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My Commission Expires:

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS**

**OF THE COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts hereby certifies that the foregoing Conservation Restriction from [Grantor] to [Grantee], acting by and through its Board of Water Commissioners, has been approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name], Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this day of [month, year], before me, the undersigned notary public, personally appeared [Name], 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 [s/he] signed it voluntarily for its stated purpose.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My Commission Expires:

*NOTES*

1. If this is a water department of a Fire District enter the name of the Fire District [↑](#footnote-ref-1)
2. If the Select Board is the BOWC enter ‘Select Board Acting as the Board of Water Commissioners’. [↑](#footnote-ref-2)
3. M.G.Ls relative to *Board of Water Commissioners;* <https://malegislature.gov/Laws/GeneralLaws>

   C.40 S.39B Acquisition of Land and Water;

   C.40 S.39E Management of water system;

   C.40 S.41 Protection of water supplies;

   C.41 S.69A Establishment of Board;

   C.41 S.69B Powers and Duties;

   C.41 S.69D Board of Public Works;

   C.111 S.173B Authority to enter watershed. [↑](#endnote-ref-1)
4. If the CR is donated enter ‘nominal’ or ‘less than one hundred dollars’. [↑](#footnote-ref-3)
5. If the CR covers a portion of a property, enter ‘a X acre portion of a X acre parcel of land’. [↑](#footnote-ref-4)
6. **EXHIBIT A**

   Legal Description of Premises

   * Legal Description of Premises

   *Provide a written description of the Premises with metes and bounds matching the survey plan.*

   **OR**

   *If there is a recorded surveyed plan of land, the following description is recommended.*

   The Premises subject to this Conservation Restriction is the [entirety/a portion] of a parcel of land located in the [Town/City]of  [County], Commonwealth of Massachusetts, containing a total of [X] acre{s}, shown as [parcel # or lot#]on a plan of land entitled [name of plan] dated , prepared by [name and address], said plan is recorded at the [County], Registry of Deeds Book Page , a reduced copy of which is attached hereto in Exhibit .

   Street Address: . [↑](#endnote-ref-2)
7. **EXHIBITS B**

   Exhibit B is a ‘Sketch Plan of Premises’. The reduced copy of the recorded survey plan may be used to create the Sketch Plan. If there is no recorded plan, or if the reduced copy of the plan is not suitable for creating a sketch plan, an unrecorded survey plan or municipal Assessor’s map may be used. If the Premises is a portion of a property that has not been surveyed, a survey plan of the property must be created.

   The plan must display the following information and features:

   1. Boundaries of the Zone I
   2. Boundaries of the Premises if different than the Zone I.
   3. Boundaries of the property in which the Premises is located.
   4. The Premises labeled as the CR Area.
   5. Property map and lot/parcel number (from Assessor’s office).
   6. At least one street (by Name) nearest the Premises.
   7. Existing and proposed easements or access roads on or to the Premises.
   8. This notation:

   *This Conservation Restriction is acquired for public water supply protection pursuant to M.G.L c.40 s.39B, s.41 and Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts. This property is under the control of the [name of municipality or water district] Board of Water Commissioners, pursuant to M.G.L c.40 s.39B, MassDEP approval is required before any portion of this Conservation Restriction can be transferred to a different ownership or control, changed to a different use, or used for activities other than for the purpose it was acquired.*  [↑](#endnote-ref-3)
8. * Exhibit B1 is a reduced copy of the plan referenced in Exhibit A. The plan must include the following notation:

   ‘*For official full-size plan see [Name of Registry of Deeds] Plan Book \_\_\_\_\_ Page \_\_\_\_\_.*’

   **EXHIBIT C**

   Exhibit C is a ‘Location Map ‘of the premises and Zone I

   This map is to show the location of the Premises and the approved or proposed Zone I boundary. If the boundaries of the Premises and the Zone I are the same, and are clearly shown in Exhibit B, this map is not required. For existing wells, the Location Map can be generated from a local GIS Department or MassMapper; <https://maps.massgis.digital.mass.gov/MassMapper/MassMapper.html>..

   The Zone I is defined in the Massachusetts Drinking Water Regulation, 310 CMR 22.00: <https://www.mass.gov/regulations/310-CMR-22-the-massachusetts-drinking-water-regulations>. and may be cited in Exhibit C. [↑](#endnote-ref-4)
9. e.g., 100000-01G, 02G, 03G etc. [↑](#footnote-ref-5)
10. CPA funds to acquire Zone I land may only be used if the recipient of the CR is a non-municipal public water system (e.g. water district) eligible to hold a CR pursuant to MGL c.184 s.31-33. [↑](#footnote-ref-6)
11. DCS will provide grantees with Project Agreement information. [↑](#footnote-ref-7)
12. <https://www.mass.gov/service-details/commonwealth-conservation-land-tax-credit-cltc>. [↑](#footnote-ref-8)
13. For more Conservation Values see; <https://www.mass.gov/service-details/conservation-restriction-review-program>. [↑](#footnote-ref-9)
14. <https://www.mass.gov/orgs/masswildlifes-natural-heritage-endangered-species-program>. [↑](#footnote-ref-10)
15. Requires prior approval from MassDEP. [↑](#footnote-ref-11)
16. 60 days for municipalities unless otherwise agreed upon. [↑](#footnote-ref-12)
17. Adding property to the Premises requires MassDEP approval. [↑](#footnote-ref-13)
18. Notification must include the Board of Water Commissioners. [↑](#footnote-ref-14)
19. If the Grantor is a Trust attach the Trustee’s Certificate [↑](#footnote-ref-15)
20. If the Grantor is a corporation, the President or Vice Pres. and Treasurer or Assist. Treasurer must sign the CR by adding a second signatory to this page. If only one person signs on behalf of the corp., proof of authority (i.e., certificate of vote) demonstrating that person's authority to act in such capacity on behalf of the corporation, must be provided. [↑](#footnote-ref-16)