**Sample (2024)**

**GRANT OF ZONE I EASEMENT**

**FOR PUBLIC WATER SUPPLY PURPOSES**

**Introduction**

This Sample ‘Grant of Zone I Easement’ was developed to assist those public water systems who cannot obtain a Conservation Restriction (CR) pursuant to Massachusetts General Law c.184 s.31-33[[1]](#footnote-1). Such water systems include water companies, condo associations, businesses with their own source of water, and other for-profit water systems. Public water systems that are able to obtain a CR may not use an easement to protect their Zone I without prior approval from the Massachusetts Department of Environmental Protection, Drinking Water Program.

An easement is a property right that gives the person or entity holding it a nonpossessory interest in another person’s land. It is set forth in writing and signed by all parties. An Easement does not give the public water supplier fee ownership or absolute control of the Zone I. The landowner (the Grantor) retains ownership, possession and use of the land for all purposes except those that are inconsistent with the ‘Rights’ granted to the public water supplier as set forth in the Grant of Easement. For protecting public drinking water supplies, easements must be for a period of ninety-nine (99) years and must be recorded with the appropriate Registry of Deeds.

Easements do not require approval from the Massachusetts Executive Office of Environmental Affairs. All proposed easements for public drinking water purposes must be reviewed and approved by the MassDEP Drinking Water Program.

**How to Use this Sample**

* Fill in underlined blanks with the correct information.
* Replace [bracketed words] with the requested information and remove brackets.
* Choose the correct choice of [terms/words] and remove brackets.
* Do not include footnotes or footnoted material in the final document.
* Modify the Sample language as needed to be site specific.
* Number the pages.
* Do not remove (parenthesized words and phrases).

Grantor(s):

Grantee:

Address of Easement Area:

Address of Grantor (if different):

For Title, see [County], Registry of Deeds Book # Page # .

**GRANT OF ZONE I EASEMENT**

**FOR PUBLIC WATER SUPPLY PURPOSES**

This Grant of Zone I Easement is made this \_\_\_ day of \_\_\_\_, 20\_\_, by and between [name of landowner][[2]](#footnote-2) of [Town/City] of , County, Massachusetts, and [name of public water supplier] of [Town/City] of , County, Massachusetts.

[I/We] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(hereinafter the “Grantor)”) [for consideration of $00][[3]](#footnote-3) grant to [name of public water system] (hereinafter the “Grantee”), a Massachusetts public water system, a right and easement to access, operate, maintain, inspect, repair, replace, and protect a public drinking water supply well designated by the Massachusetts Department of Environmental Protection Drinking Water Program (hereinafter “MassDEP/DWP”) as [PWS#-Well#] (hereinafter the “Well”), and to do all acts necessary or incidental to protecting the drinking water quality of the Well, for a period of ninety-nine (99) years.

For the aforesaid consideration, the Grantor and their successors and assigns grant to the Grantee an Easement to, under and across a parcel of land located in the [Town/City] of , Massachusetts identified on the [Town/City] Assessor Map# as [Lot/Parcel] # . The easement (hereafter the “Easement Area”) constitutes approximately [#square feet] and is [completely/partially] located in the MassDEP/DWP approved Zone I of the Well and is further described in **Attachment A** on a mapentitled \_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_.

IF THE GRANTEE IS NOT YET AN APPROVED PUBLIC WATER SYSTEM, USE THE FOLLOWING ALTERNATIVE LANGUAGE

[I/We] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(hereinafter the “Grantor)”) [for consideration of $00] grant to [name of public water system] (hereinafter the “Grantee”), a Massachusetts public water system, a right and easement to access, operate, maintain, inspect, repair, replace, and protect a proposed public drinking water supply well (hereinafter the “Well”), and to do all acts necessary or incidental to protecting the drinking water quality of the Well, for a period of ninety-nine (99) years.

For the aforesaid consideration, the Grantor and their successors and assigns grant to the Grantee an Easement to, under and across a parcel of land located in the [Town/City] of , Massachusetts identified on the [Town/City] Assessor Map# as [Lot/Parcel] # . The easement (hereafter the “Easement Area”) constitutes approximately [#square feet] and is [completely/partially] located in the MassDEP/DWP approved Zone I of the Well and is further described in **Attachment A** on a mapentitled \_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_.

**I. PURPOSE**[[4]](#footnote-4)

The purpose of this Grant of Easement is to provide the Grantee with access to the Well in order to operate, maintain and protect the public drinking water supply. The Grantee shall have the right to conduct the following activities in the Easement Area:

1. Create and maintain a path as needed for continued access to the Well as shown in Attachment A;
2. Post water supply protection signs;
3. Conduct routine inspections;
4. Place, install or construct water supply protection measures, including but not limited to berms, fences, drainage systems, holding tanks, chemical treatment storage and other measures deemed by the MassDEP/DWP to be necessary or beneficial for the operation, maintenance and protection of the Well; and
5. Install and/or replace as needed the public drinking water well and/or water supply related infrastructure.

**II. CONDITIONS**

A. PROHIBITED USES[[5]](#footnote-5)

The Grantor and Grantee agree, that with the exception of the RESERVED RIGHTS set forth in Paragraph B, non-water supply related activities or uses may not occur or be made in the Easement Area. Without limitation, the Grantee and Grantor agree that the following uses and activities are not allowed in the Easement Area:

1. Motorized vehicles of any kind;
2. Disposal or discharges of hazardous materials or wastes;
3. Storage of hazardous materials except those chemicals necessary for the operation, maintenance of the drinking water supply;
4. Storage or use of fertilizers or pesticides;
5. Access by the general public;
6. Installation or construction of structures not related to the operation, maintenance or protection of the public drinking water supply; and
7. Other uses or activities determined by MassDEP/DWP to pose a threat to drinking water quality.

B. RESERVED RIGHTS[[6]](#footnote-6)

The Grantor agrees that neither they nor their successors or assigns, will impair or interfere with the purpose of the Easement for public drinking water supply operation, maintenance and protection. Notwithstanding the provisions of Paragraph A, the following rights are reserved by the Grantor:

1. Maintenance, repair, or removal of existing structures in the Easement Area, [identify structures and describe associated activity, eg. repair fence, remove shed etc]; and
2. 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 [include schedule of activity, e.g. biweekly, monthly etc];
3. Maintenance grass mowing [include schedule of activity]; and
4. [identify other uses/activities] must not pose a threat to drinking water quality.

**III. ACCESS AND ENFORCEMEMENT**

The Grantee is granted an easement to enter the Easement Area or to permit personnel from the MassDEP/DWP, a duly constituted agency organized under the laws of the Commonwealth of Massachusetts, to enter the Easement Area with reasonable notice to the landowners, for the purpose of inspecting the same to determine compliance with or to enforce the CONDITIONS of this easement or take any and all actions as may be necessary or appropriate with or without order of court, to remedy or abate any violation. The provisions of this easement, which is executed under seal, shall be in effect for a period of ninety-nine (99) years, and shall be binding upon and may be enforced against both the Grantor and Grantee and their successors and assigns.

**IV. INCORPORATION, TRANSFERS**

The Grantor hereby agrees to incorporate in full or by reference the terms of the easement in all deeds, mortgages, leases, licenses, occupancy agreements or other instrument of transfer by which any interest in all or a portion of the Easement Area is transferred, including but not limited to a lease hold interest. The Grantor agrees to give written notice to the Grantee of any proposed transfer of interest in the Easement Area or interest in the land adjacent to the Easement Area and owned by the Grantor, at least sixty [60] days prior to the proposed date of such transfer. The Grantor warrants that the aforesaid easement is free and clear of all liens or encumbrances, that it has good title to transfer the same, and that they will defend the same against claims of all persons.

**V. AMENDMENTS, RELEASE**

The Grantor intends this easement to be in effect for a period of ninety-nine (99) years. This easement may only be released, in whole or in part, by the Grantee if the Well and any replacement well are permanently abandoned and no longer a source of public drinking water as determined by MassDEP/DWP. Modifications and amendments that do not change the PURPOSE of this easement may be made by a written instrument executed by the Grantor and Grantee, or their successors or assigns. All modifications to this easement must be submitted for notice and approval to the MassDEP/DWP. The Grantor and Grantee agree that the location of the Easement Area may not be relocated without the consent of both parties and approval from MassDEP/DWP. [[7]](#footnote-7)

IN WITNESS THEREOF, the parties hereto have executed this Grant of Zone I Easement this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

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

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

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

Grantor(s)

COMMONWEALTH OF MASSACHUSETTS

[county]

On this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_, before me, the undersigned notary public personally appeared [name of Grantee(s)], and proved to me through satisfactory evidence of identification, which consisted of [personal knowledge/license] to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

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

Notary Public

My Commission Expires:

**ATTACHMENT A[[8]](#footnote-8)**

[map of the Easement Area]

1. CRs for public water supply purposes can only be held by the designated Boards of Water Commissioners (municipality or non-profit water/fire district) and other authorized entities. [↑](#footnote-ref-1)
2. Include all landowner names, if landowner’s residence is different from the easement area, include this address here. [↑](#footnote-ref-2)
3. If the easement is a gift omit the consideration. [↑](#footnote-ref-3)
4. The Purpose section identifies the rights granted to the Grantee. Other rights may be necessary for operating or protecting the water supply as determined on a case-by-case basis. [↑](#footnote-ref-4)
5. Other Prohibitions may be applicable to the site as determined on a case-by-case basis. [↑](#footnote-ref-5)
6. The listed rights in Paragraph B are examples. Other Rights may be applicable as determined on a case-by-case basis. [↑](#footnote-ref-6)
7. (1) A replacement well could alter the Zone I boundaries thereby necessitating a change to the location of the Easement Area, and (2) In 2004 a Massachusetts Supreme Judicial Court decision allows Grantors to relocate an easement as long as it does not significantly lessen the purpose of the easement, M.P.M. Builders, LLC v. Dwyer*, 442 Mass. 87 (2004)* [↑](#footnote-ref-7)
8. * The map may be in the form of a Plan of Land, a municipal assessor’s map, or a detailed sketch of the property.
   * The map must be suitable for recording with the Registry of Deeds and include the following:
   * The Map # and Lot/Parcel #, from the Assessor’s office ;
   * Location of existing structures, sheds, driveways etc., and their dimensions;
   * Location of all activities identified in the Grantor’s Reserved Rights section, such as haying fields, trails, etc;
   * The Easement Area boundary and the Zone I boundary; and
   * A Note stating that the ‘purpose of this Grant of Zone I Easement is for the operation, maintenance and protection of public drinking water supply Well ID#. ]

   [↑](#footnote-ref-8)