

January 2015

*Be sure to leave a 3" margin on the right above the heading for recording information.*

Grantor:

Grantee:

Address of Premises:

For title see:

***If there is a mortgage, a subordination must be recorded prior to the CR (see sample) The Grantor must state marital status, and on signature page that any Homestead rights are waived or subordinated to the CR and any spouse/benefitted parties must also sign that they are waiving or subordinating their Homestead rights to the CR***

### CONSERVATION RESTRICTION

*(when sending drafts, date the draft and number pages)*

*(be certain to include the **bold** provisions)*

\_\_\_\_\_ and \_\_\_\_\_, husband and wife as tenants by the entirety (state marital status and ownership status), (address), Massachusetts, and \_\_\_\_\_, for our successors and assigns ("Grantor"), grant with Quitclaim Covenants to \_\_\_\_\_ [name & address]\_\_ [or, if to a municipality, "the Town of \_\_\_\_\_, [address] acting by and through its Conservation Commission, by authority of Chapter 40 Section 8C], and its permitted successors and assigns ("Grantee"), for *(state the consideration)*, in perpetuity and exclusively for conservation purposes, the following Conservation Restriction on a parcel of land constituting approximately \_\_\_\_ acres [OR "a \_\_\_\_ acre portion of a \_\_\_\_ acre parcel" *if the CR is over a portion of one or more parcels*] ("Premises") located in the Town of \_\_\_\_\_, (address), Massachusetts, more particularly described in Exhibit A and attached plan/sketch plan. ("the Premises"). (add additional title, probate information, or plans you want to reference that is not in the title block at the top of the page.)

*[If the CR was required as part of a permit, mention the permit, including recording information..]*

*[If there are building envelopes or exclusions, mentioned them; they must be defined by a metes and bounds description; a survey and boundary markers or alternate legal language is necessary.]*

*[If the CR is for a charitable deduction,, make sure you have included IRS language, make sure the purposes and prohibited acts comply with IRS requirements and are not inconsistent]*

#### I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the

In all cases except where the Conservation Commission is the Grantee, the Conservation Commission's certificate must be obtained to give notice to them that the land will be protected.

WRONG: Conservation Easement  
RIGHT: Conservation Restriction OR  
Conservation Restriction and Easement

ALL owners must be listed and sign the CR.  
All those who may have the benefit of a Homestead, whether or not they are an owner, must subordinate their Homestead rights to the CR. (MA is an automatic Homestead law state)

"successors and assigns" **must precede** "Grantor" and "successors and permitted assigns" **must precede** "Grantee".

Town CRs must be held by the Conservation Commission or other agency **whose purposes include holding conservation or recreation lands**. A town cannot hold a CR over its own property, as that leaves no one to enforce the CR.

Area of CR must be stated and whether the CR is over all or a portion of one or more parcels.

Must have an Exhibit A metes and bounds legal description or a recorded or registered plan showing boundaries (see M.G.L. c. 184 sec. 26(c)). The restricted area on plans must be labeled as a Conservation Restriction.

BASELINE SURVEYS apply to Conservation

General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, 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.

*[State if the CR was purchased with or required by a grant or Community Preservation Act ("CPA") funds. If so, include the statutory reference/authority (i.e, M.G.L. c. 44B for the CPA) and an attested copy of any town meeting votes showing the purpose of the purchase as an exhibit. Town meeting votes should include authorization for the granting of a CR. A vote for a CPA purchase should state that the purchase is for specific categories within "open space", rather than just "open space purposes," to avoid later disputes over the intended uses, such as active vs. passive recreation.]*

These values include the following: *[THIS SHOULD REFLECT THE ATTRIBUTES OF YOUR CR AND SHOULD BE SPECIFIC TO THE CR PREMISES]:*

Examples of values:

- **Open Space Preservation.** *[Mention if this ties in to an Open Space Plan. Example:]* The protection of the Premises contributes to the protection of the scenic and natural character of \_\_\_\_\_ and the protection of the Premises will enhance the open-space value of these lands.
- **Scenic Protection.** The Premises are located within the 1992 Massachusetts Landscape Inventory listed as being important for its natural, scenic, and historic features.
- **Flood Plain Protection.** The majority of the Premises lies within the 100-year floodplain. The protection of this floodplain will ensure the continued availability of this flood storage during major storm events.
- **Protection of Wildlife Habitat.** The entire Premises falls within an area designated as "Priority Habitat for State-Protected Rare Species" by the Massachusetts Natural Heritage Program. The Premises contains approximately 3 acres of wooded wetlands and an approximately 1/2-acre vernal pool.
- **Furtherance of Government Policy.** Protection of the Premises furthers the Town of xxx's 2014 Open Space and Recreation Plan: the protection of the Town's scenic landscape (Objective 2a), the protection of forest and farmland (Objective 2b), the protection of the Town and Region's water resources (Objectives 3a & 5a), and provides extra protection to the Town's most fragile resources (Objective 3b). *[If the CR is a charitable deduction, it should identify any federal, state, regional or local initiatives or policies; i.e., the BioMap2, Natural Heritage, Living Waters, etc.]*
- **Public access trails** for passive recreation, education, and nature study.

Commissions as well as land trusts, to be completed prior to the grant.

#### PURPOSES

Need to identify the specific attributes of the CR that are being protected. If the CR is required as a condition of a permit, the permit restrictions and items that are listed as needing protection should be incorporated into the CR, and a copy of the permits provided with the draft CR. If the CR is a charitable donation or bargain sale for which a tax deduction will be sought, listing any state or local government programs that have identified the area, or local, state or federal investment in or grants that have assisted with the protection of nearby areas is strongly advised]

The Conservation Commission certification is some evidence of furtherance of local initiatives or policies. (not required if the Conservation Commission is the Grantee)

If trails and passive recreation are for the

<p>II. PROHIBITED ACTS AND USES, EXCEPTIONS, AND PERMITTED USES</p> <p>A. Prohibited Acts and Uses</p> <p>Subject to the exceptions set forth herein, the Grantor will not perform or permit the following acts and uses which are prohibited on, above, and below the Premises:</p> <p>(1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;</p> <p>(2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise make topographical changes to the area;</p> <p>(3) Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;</p> <p>(4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;</p> <p>(5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation;</p> <p>(6) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for public safety vehicles necessary in carrying out their official duties;</p> <p>(7) The disruption, removal, or destruction of the stone walls or granite fence posts on the Premises <i>[if applicable]</i>;</p> <p>(8) Subdivision; conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel.</p>	<p>benefit of the owner, but not the public, it goes in the “reserved rights” section, not in the purposes section, since private use is not a public benefit.</p> <p>Prohibited Acts Acts must explicitly be listed as “prohibited on, above and below the Premises.”</p> <p>Alternate language <b>Grantor will not perform, and will take reasonable actions to prevent others from performing the following acts and uses, which are prohibited, on above or below the Premises”</b></p> <p>or</p> <p><b>“Grantor will not allow, either by explicit permission or tacit approval”</b></p> <p>Parties to the CR may want to add other prohibitions, tailored to their circumstances. If the parties want to allow a use that is prohibited in this section, it should go in the Reserved Rights section, rather than here. So, if forestry and cutting cordwood is allowed, you would still leave item #4 here, and then just allow the desired activity, tailored to the agreement of the parties, in the reserved rights section.</p> <p>The parties may want to consider whether or not to allow bicycles, snowmobiles, etc.</p>
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(9) The use of the Premises for more than *de minimis* commercial recreation, business, residential or industrial use of the Premises.

(10) 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).

(11) Any other use of the Premises or activity thereon which is inconsistent with the purpose of this Conservation Restriction or which would materially impair its conservation interests.

#### B. Reserved Rights and Exceptions

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 or purposes of this Conservation Restriction:

*[Insert appropriate reservations of rights, such as the following examples]*

(1) Recreational Activities. Hiking, horseback riding, cross-country skiing and other non-motorized outdoor passive recreational activities that do not materially alter the landscape, do not degrade environmental quality; (if for an IRS post mortem tax deduction, add “or do not involve more than *de minimis* use for commercial recreational activities”)

(2) Vegetation Management. In accordance with generally accepted forest management practices, selective *de minimis* removing of brush, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including vistas, woods roads, fence lines and trails and meadows; [*Vistas and woods roads needs to be defined to prevent clear cutting for a 360° vista; multiple 50’ wide woods roads, etc. – tie in to a defined area, by using language such as “as shown on Baseline Survey” (make sure the survey exists)*]

*[If forestry is to be allowed, must be conducted in accordance with a forest management plan and Forest Cutting Plan approved by The Department of Conservation and Recreation acting by and through its State Forester (or any successor agency) and designed to protect and enhance the conservation values of the Premises, including, without limitation, water quality, water features, scenic views, wildlife habitat, etc.]*

(3) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to

#### Subdivision

If the CR is required as part of a permit process, the wording would be “no portion of the Premises may be used towards **further** building or development requirements on this or any other parcel.” Or “no portion of the Premises may be used towards building or development requirements on this or any other parcel other than those required by the permits mentioned herein.”

#### Preferred:

“All acts and uses not specifically allowed are prohibited.”

#### Alternate:

“All acts and uses not prohibited herein are permissible, **but only if such uses and activities do not materially impair the purpose of this Conservation Restriction or other significant conservation interests.**”

If allowed activities will involve the use of motor vehicles (such as forestry or agriculture) and the parties wish to make it clear that vehicles used for these purposes are allowed: Use of motorized vehicles only as necessary (1) to conduct [the permitted activities such as forestry, agriculture, etc.] but not including recreational activities, and provided such use is not detrimental to water quality, wetland integrity, fragile habitat, and soil, wildlife, and plant conservation, and that such use is

<p>surrounding, non-target species and preserves water quality.</p> <p>(4) <u>Composting</u>. The stockpiling and composting of stumps, trees and brush limbs and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not have a deleterious impact on the purposes (including scenic values) of this Restriction;</p> <p>(5) <u>Wildlife Habitat Improvement</u>. 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;</p> <p>(6) <u>Archaeological Investigations</u>. 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;</p> <p>(7) <u>Trails</u>. The marking, clearing, maintenance and construction of not more than 2 unpaved footpaths Trails are to be not wider than ____ feet;</p> <p>(8) <u>Signs</u>. 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; and,</p> <p>If the CR is for the MA Conservation Land Tax Credit, need to add:</p> <p>Safeguarding Historic and Archaeological Resources:</p> <p>(9) New construction, demolition, or rehabilitation activity in support of permitted uses, and any other activity in support of permitted uses that proposes disturbance to the surface or subsurface of the ground, shall require prior approval of the Massachusetts Historical Commission (or appropriate successor official) to prepare a protocol and procedures to identify, evaluate, and adopt feasible alternatives to avoid, minimize, or mitigate any adverse effects to historic and archaeological assets.</p> <p>(10) Grantor and Grantee shall make every reasonable effort to prohibit any person from conducting archaeological field investigation including metal detecting, digging, or artifact collecting without approval of the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official), and shall promptly report any such prohibited activity to the State Archaeologist</p>	<p>restricted to designated areas such as roads or trails designated as suitable with approval of Grantee. (Where appropriate) (2) to allow Grantee to carry out inspection of the Premises.</p> <p>To allow maximum flexibility for unforeseen circumstances or needs, you may want to consider:</p> <p>“Such other non-prohibited activities requested by the Grantor and expressly approved in writing by the Grantee, in its sole and exclusive discretion, which permission may only be given if the Grantee expressly finds that the activity is consistent with, and does not materially impair, the purposes or conservation values of the Premises.”</p> <p><b><u>Consent for prohibited activities will generally require an amendment which must be approved by the Secretary of EOEEA and recorded (to avoid title issues and later claims of violations).</u></b></p>
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of the Massachusetts Historical Commission (or appropriate successor official). Grantor and Grantee shall include the prohibition against digging, artifact collecting, or metal detecting in any list of rules for visitors to the Premises.

(11) Permits. The exercise of any right reserved by Grantor under this Paragraph B shall be in compliance with zoning, the Wetlands Protection Act, and all other applicable 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 whether such permit should be issued.

C. Notice and Approval. Whenever notice to or approval by Grantee is required under the provisions of paragraphs A or B, Grantor shall notify Grantee in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction. Failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice but only on the condition that the requested actions are not prohibited under Section II and the actions will not materially impair the purposes or conservation values of this CR.

### III. 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 will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. The Grantee shall have the right to pursue third party violations, and the Grantor agrees to cooperate. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.

#### Notice and Approval

Any provisions requiring notice to and approval by the Grantee must allow a minimum of 60 days if the Grantee is a governmental entity.

If there are co-holders of the CR, there generally must be a primary, ultimate decision maker – "tie-breaker". There are various ways to do this – the secondary holder may have 30 days to respond to the primary decision maker, who can adopt the secondary's decision, amend it, or decide something entirely different. In the case of a Community Preservation Act CR, where the municipality owns the land, and the CR is co-held by the Conservation Commission and a land trust, the land trust must be the primary decision maker. Otherwise, enforceability is a problem because the Conservation Commission is under the municipality and is unlikely to be able to use municipal counsel to enforce the CR against the municipality or hire their own counsel to do so.

#### Legal Remedies.

There are some good mandated mediation clauses in the alternative provisions list that may also be used.

If the CR is over a portion of a parcel, permanent boundary markers must be installed. In the event that is not possible, the following language must be used:

Grantor covenants and agrees to reimburse to 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 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 not caused by the Grantee or its agents.

**E. 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 and feasible to restore the Premises, the parties will cooperate in attempting to do so. \

**D. Survey Disputes**

In the event of a dispute over the location of the boundaries, the Grantor shall be responsible for a survey and the placement of permanent boundary markers delineating the boundaries of the Conservation Restriction.

**"In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and permanent monumentation of the boundaries.**

Language that suggests the Grantee has no obligation to enforce the CR is unacceptable; a Grantee must have the ability and obligation to monitor and enforce CRs.

#### IV. ACCESS

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

#### V. EXTINGUISHMENT

A. 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 after review and approval by the Secretary. 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 after complying with the terms of any gift, grant, or funding requirements. 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 donation 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][use bracketed language only if a charitable deduction or tax credit is being sought], bears to the value of the unrestricted property [at that time. Such proportionate value of the Grantee's property right shall remain constant.] The distribution of any proceeds will occur only after complying with the terms of any gift, grant, or funding requirements. [The Grantor has provided (or will provide) the Grantee with a copy of the appraisal or other evidence of the proportional values which Grantee will keep on file as evidence of same.]

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

Whenever all or any part of the Premises or any interest therein is taken by public authority

Access: Check to see if the Grantee needs an access easement over unrestricted land to get to the restricted area. If so, the grant of that access should be included in the access section..

Any public access and limitations on public access should go here.

If the CR Grantor will seek a deduction for their gift or bargain sale, or there is a grant requiring this, the provision for a proportional value "determined at the time" of the gift for distribution of proceeds is required (based on an appraisal done at the time of the gift). Otherwise, the proportional value can be determined at the time of the extinguishment or eminent domain taking, or the parties can decide between themselves who gets what % or a specific amount.

Where the CR is both required by or for the purposes of obtaining a permit AND it is imposed on portions of house lots (as opposed to an entirely separate open space lot), the percentage that goes to the Grantee is often minimal, so the homeowner will be able to relocate if their land is taken or destroyed. The homeowner should not be left



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 proceeds after complying with the terms of any gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

## VI. ASSIGNABILITY

### A. Running of the Burden

The burdens of this 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 run to the Grantee, 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. Any assignment will comply with article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## VII. SUBSEQUENT TRANSFERS

with insufficient funds to acquire a new home..

Do not say "for purposes of this paragraph" - G.L. c. 184 sec. 32 says "conservation restrictions are interests in land" – for ALL purposes.

Under certain conditions, it may be appropriate to state that in the event of an extinguishment or eminent domain taking, the Grantee receives nothing, or if the Grantee has contributed monies, this section can also provide for reimbursement to the Grantee of their contributions.

If improvements to the property are allowed, the parties may want to agree to take into account any increased value due to the improvements by using "equal to such proportionate value exclusive of any improvements" or "subsequent improvements", as applicable.

**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 either shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after his or her ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this CR shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

#### VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within thirty (30) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with the terms of this Conservation Restriction.

#### IX. 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 to a non-fee owner to ensure that merger does not occur and that the Conservation Restriction will continue to be enforceable. No grant will be effective until this Conservation Restriction is assigned to avoid merger and preserve enforcement of the terms of this Conservation Restriction by a non-fee owner.

#### X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would 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 31-33 of Chapter 184 of the General laws of Massachusetts. Any amendments to this conservation restriction shall occur only in

The requirement to reference the CR and its recording information in any deeds, easements, or other grants is frequently overlooked, but it is a violation to fail to do so. An attorney's affidavit should be recorded in the chain of title, referencing that the deed is subject to the CR, with the recording information for both so they will be properly indexed. A buyer and seller, engaging in appropriate due diligence, can allocate among themselves an escrow, sales price adjustment, or other method to resolve violations, whereas a land trust (and the public) would be left with little ability and great expense in resolving any violations in the case of Grantor who sells.

exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the \_\_\_\_\_ Registry of Deeds.

## **XI. 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 the \_\_\_\_\_ Registry of Deeds. The Grantee shall record this instrument in timely manner in the \_\_\_\_\_ Registry of Deeds.

## **XII. NOTICES**

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor:

To Grantee:

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

## **XIII. GENERAL PROVISIONS**

### **A. Controlling Law**

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

### **B. Liberal Construction**

## **Amendment**

The Amendment clause is optional. If included, it should be made clear that an amendment requires far more than the agreement of the parties, and may not be allowed by one or more of the Sec. 32 approvals. The fact that other land may be offered 'in trade' for the CR does not guarantee approval; CRs are perpetual and not freely amendable.

The Grantor and Grantee may be required to obtain additional approvals to comply with the terms of any funding, grants, donations, or permits if the CR was required as a condition of a permit; if there is a mortgage on the property a subordination will be necessary.

If the CR was donated, a bargain sale, or bequeathed, and a charitable trust was established, the permission of a court of competent jurisdiction after consultation and advice of the Massachusetts Attorney General may be required.

Any provisions requiring notice to and approval by the Grantee should allow a minimum of 60 days if the Grantee is a governmental entity, but 30 days is acceptable if the governmental entity agrees.

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 31-33. 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.

E. Homestead

The Grantor(s) and any benefitted parties, by their signatures hereto, subordinate and waive any Homestead Act rights and benefits they may have to this Conservation Restriction. The Grantor(s) certify and attest under penalties of perjury that: (check with DCR as to which of these or other provisions or affidavits are needed)

\_\_\_\_ the Grantor is single and has no ex-spouse or children who are benefitted by the Homestead Act

\_\_\_\_ There are parties benefitted by the Homestead Act who reside or intend to reside on or near the Premises, and they have affixed their signatures below, subordinating and waiving their Homestead rights and benefits as to this Conservation Restriction.

XIV. MISCELLANEOUS

- A. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Energy and

Executed mortgage subordinations or assents must be included in the final CR sent to EOEEA, unless there is a representation that there is no lien on the Premises. **Grantee should not rely on Grantor's representation – Grantee should check for the existence of any liens of record.**  
Suggested language:

**Grantor represents that the Premises are free from 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 by any third party.**

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. Included herewith and incorporated herein are the following:

1. Signatures of the Grantor, Grantee, Selectmen of the Town of \_\_\_\_\_, and the MA Secretary of Energy and Environmental Affairs
2. Exhibit A legal description
3. Exhibit B "Sketch Plan"
4. Exhibit C Town Meeting Vote approving the acquisition of the restricted land and expenditure of Community Preservation Act Funds in its purchase
5. MA Executive Office of Energy and Environmental Affairs LAND Grant agreement

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

\_\_\_\_\_  
Name(s) & signatures (*of spouse or occupant of the Premises who is entitled to Homestead Act benefits*)

If the Grantor is a trust, must show authority to convey the CR, either by having all trustees sign and stating that they are all the trustees, or by attaching a vote allowing the grant, or if a recorded trust document provides the authority, reference it and its recording information.

#### COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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:

ACCEPTANCE OF GRANT

Grantor signature

If the Grantor or Grantee is signing on behalf of an organization or trust, authorization must be shown. For instance, "duly authorized" or "duly authorized by vote" & attach vote, if required by organization

Use the "new" notary language. All signatures on the CR must be properly notarized.

The above Conservation Restriction was accepted by \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

OR (if applicable):

At a public meeting duly held on \_\_\_\_\_, 20\_\_, the Conservation Commission of the Town of \_\_\_\_\_ voted to accept the above Conservation Restriction.

By: \_\_\_\_\_

Its: \_\_\_\_\_, duly authorized

*(INSERT NOTARIZATION)*

#### APPROVAL OF SELECT BOARD

We, the undersigned, being a majority of the Select Board of the Town of \_\_\_\_\_, hereby certify that at a public meeting duly held on \_\_\_\_\_, 20\_\_, the Select Board voted to approve the foregoing Conservation Restriction to the \_\_\_\_\_ pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts. (If the CR is to the Conservation Commission, the Selectmen must also vote to accept the CR pursuant to M.G.L. c. 40 sec. 8C.)

Select Board

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

*(INSERT NOTARIZATION)*

#### 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 of \_\_\_\_\_ has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 20\_\_

Secretary of Energy and Environmental Affairs

(INSERT NOTARIZATION)

## Exhibit A

Legal, metes and bounds description, and/or a reference to a recorded or registered plan showing the boundaries. If there is a recorded plan, state where it is recorded, or, “to be filed herewith”. Attach an 8 ½ x 11 copy of the plan as an Exhibit, labeled as “sketch plan.” “As further shown on the Plan/Sketch Plan, attached hereto.”

Mention area of CR; “all of a 6 acre lot” or if it is a portion of a lot, say “an \_\_\_\_ acre portion of a \_\_\_\_ acre lot”. For building envelopes or exclusions, a legal description of the exclusion(s) is needed, and show on the plan.

Said land is subject to (*mention any easements and or mortgages and their recording information*).

Said land has the benefit of (*mention any easements or other benefits and where they are recorded*).

(*A general statement that the CR is “subject to all rights, easements and restrictions of record, so far as still in force and effect” is insufficient*)

Other Exhibits, as appropriate: Survey or metes and bounds plan of any exclusions, Town Meeting Vote, Subordination Agreement, Baseline Survey, Forestry Plan, etc.

## Exhibit A

Exhibit A should be the metes and bounds description. If none is available, a reduced copy of a survey plan, with a reference to the plan’s recording information, is adequate.

**If the CR is over a portion of a parcel, copying the metes and bounds description from the original deed is not acceptable; a metes and bounds description of the portion that is subject to the CR is required.**

For all CRs, attach a plan or sketch plan showing the location of the CR. If there is no survey or other plan, use an assessors map showing the lot and the CR. The words “Conservation Restriction” must be used to label the CR (“Conservation Restriction Area” or “Conservation Restriction Open Space” are also acceptable).

If the CR references a driveway, or a tool shed that is restricted from being relocated or enlarged, draw it in and label it as “approximate location” or noting its dimensions (if you don’t have a survey plan showing the exact location.). If changes in the size of structures are restricted, the dimensions must be shown or referenced in the CR and/or in Exhibit A.

**(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]*

Subordination should be a separate document, recorded prior to or simultaneous with, the CR.

Some banks may have their own form, but this is one example.

It is a good idea to record the Baseline Documentation referred to in the CR, or an excerpt of the relevant pages with a copy of a sketch plan showing the location of “fixed” items that the parties have mentioned in the CR will also helpful in 100 years – things like roads, stone walls, structures, etc.

Any other agreements, management plans, etc. that are desired to be binding on future owners/successors and assigns, should also be recorded, even if they contemplate the ability to periodically review and revise.