

**CONSERVATION RESTRICTION  
Bear Hole Watershed, West Springfield and Holyoke MA**

KNOW ALL PERSONS BY THESE PRESENTS that the **Town of West Springfield** (including William Reichelt, Mayor of the Town of West Springfield as he constitutes the West Springfield Board of Water Commissioners), a Massachusetts municipal corporation with a principal address of 26 Central Street, West Springfield, Hampden County, Massachusetts, which in each instance shall mean the Grantor and its successors and assigns (hereinafter “Grantor” or “Town”), in consideration of One Million Dollars (\$1,000,000.00), paid herewith by the Commonwealth of Massachusetts, acting by and through its Department of Conservation and Recreation, (\$700,000.00) and the Massachusetts Audubon Society, Inc. (\$300,000), the receipt and sufficiency of which is hereby acknowledged, does hereby grant to the **Commonwealth of Massachusetts, acting by and through its Department of Conservation and Recreation**, 251 Causeway Street, Boston, Massachusetts 02114, and the **Massachusetts Audubon Society, Inc.**, with an address of 208 South Great Road, Lincoln, Middlesex County, Massachusetts, 01773, and their successors and assigns, (hereinafter collectively “Grantees”), IN PERPETUITY and for the purposes set forth in Article 97 of the Amendments to the Massachusetts Constitution, a CONSERVATION RESTRICTION (hereinafter “CR”), in accordance with Massachusetts General Laws, (hereinafter “G.L.”) Chapter 184, Sections 31 and 32 and G.L. Chapter 132A, Section 3, upon land in West Springfield and Holyoke, Hampden County, Massachusetts, consisting of 34 parcels and totaling approximately 1465.81 ± acres, said land being further described in **Exhibit A**, and on the sketch map shown as **Exhibit B**, both attached hereto and incorporated herein by reference (collectively referred to as the “**Premises**”).

WHEREAS, the Town of West Springfield has been a steward of the area known as the Bear Hole Watershed Property for over for one hundred years, previously as a surface drinking water reservoir and currently, as a location for passive recreational uses by its residents;

WHEREAS, in order to ensure protection of this beloved asset of residents and conservation of its natural terrestrial, flora, fauna and aquatic resources, the Town is entering into this partnership to better protect and manage the natural treasure that is Bear Hole; and

WHEREAS, the Grantor and Grantees have developed a partnership to cooperatively work together toward the common goal of protecting the conservation values of Bear Hole, which are more succinctly outlined in the report titled *A Community Vision for the Bear Hole Conservation Area, West Springfield's Natural Treasure*, prepared by the Massachusetts Audubon for the West Springfield Conservation Commission, dated November 2019.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and in furtherance of this cooperative effort to assist the Grantor to better manage and steward the property in perpetuity, the Grantor does hereby irrevocably grant and convey to the Grantees in perpetuity this Restriction over the Premises for the following purposes:

- I. **PURPOSES:** This CR is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purposes of this CR are to assure that, while permitting passive recreation and other permitted acts and uses described in Section III herein including use as a public water supply as described herein, the Premises will be subject to the prohibitions described in Section II hereof so that the Premises is retained in perpetuity predominantly in its natural, scenic, and open condition for wildlife conservation, native habitat protection, management of forest resources as described herein, associated public recreation, and other conservation uses consistent with the spirit and intent of and subject to the protections of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and to prevent in perpetuity any use of the Premises that will significantly impair or interfere with the conservation values thereof. The conservation and permanent protection of the Premises will yield a significant public benefit for the following purposes:
  - A. to protect the Premises, which has become a beloved asset to the residents of the Town of West Springfield as an important public resource in an area where residential and commercial development is rapidly destroying the remaining open spaces;
  - B. to retain the Premises predominantly in their natural, scenic and open condition while preserving and enhancing appropriate passive recreational uses on the Premises as further described in this CR;
  - C. to protect and conserve natural resources of the Premises, to enhance the protection of the adjacent conservation lands; to protect and preserve the historic and archaeological resources on the Premises, including without limitation: ways, foundations, stone walls, historic features and property bounds and other sensitive archaeological resources;
  - D. to manage the property for the benefit of both wildlife and human populations;

- E. to document the intention of the Town of West Springfield to exercise its local control to manage and protect Bear Hole in perpetuity in accordance with the purposes herein described by this CR, which will be further described in a management plan required by this CR, hereinafter the “Town Plan” described in Article VII below;
- F. to manage Bear Hole to protect its natural resource, economic and health benefits to the community;
- G. to protect, maintain, promote and conserve biological diversity, scenic, historic and cultural resources, forests, wetlands, soils, natural watercourses, surface and groundwater supplies and quality, wildlife habitat and wildlife therein, including flora and fauna and the natural communities they compose;
- H. to further protect the watershed known as Bear Hole Reservoir, which is a former public drinking water supply for the Town of West Springfield that may be reactivated as an active source of public drinking water as described herein, the protection of which will help to safeguard the quality of the water flowing into this reservoir;
- I. to protect and maintain areas that have been identified by the Massachusetts Natural Heritage and Endangered Species Program as providing potential habitat for rare species on the Premises and adjacent lands;
- J. to protect 23 rare species of plants and animals known to occur in Bear Hole and its direct vicinity, including reptiles, butterflies and vascular plants; to protect a large cluster of vernal pools; to protect the Metacomet Ridge which features an important natural woodland community;
- K. to allow for sustainable and sound management of the forest resources including the diverse forests in the northern section; the high plant diversity on the site; more than 30 forest stands; a 91-acre stand of Eastern Hemlock which is an uncommon forest type that provides habitat for a wide range of animal species;
- L. to protect and provide access to the New England Scenic Trail;
- M. to allow recreational access to the general public, including low impact use of trails, and enjoyment of the wildlife, open space resources and scenic views of and from the Premises, compatible with the conservation values and purposes of this CR and in accordance with the terms of this CR; and
- N. to prevent any use of the Premises that will significantly impair or interfere with the conservation values thereof.

The Grantor and Grantees agree that the specific conservation values of the Premises shall be documented in a report to be maintained in the records of the Grantor and Grantees (hereinafter the “*Baseline Documentation Report*”). This report shall consist of documentation that the Grantor and Grantees agree provides, collectively, an accurate representation of the condition and the conservation values of the Premises at the time this CR is recorded and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this CR and shall be binding upon the Grantor and Grantees.

**II. PROHIBITED ACTIVITIES:** In order to carry out the purposes set forth in Article I above, the Grantor covenants for itself and its legal representatives, mortgagees, successors and assigns that the Premises will at all times be held, used and conveyed subject to and not in violation of this CR. The Grantor shall refrain from and will not permit any activity which shall be inconsistent with the afore stated purposes of this grant or which is detrimental to water quality, soil conservation, wildlife and habitat conservation, scenic landscape protection or which is otherwise wasteful of the natural resources of the Premises.

Except as to reserved rights set forth in Article III below, the Grantor shall refrain from and will not perform or permit the following acts or uses, which are prohibited, in, on, over or under the Premises:

- A. Construction: Construction or placing of any temporary or permanent building, structure, facility or other improvement on under or above the Premises, including but not limited to any dwelling or appurtenant structure, tennis court, ball field, golf course or driving range, septic or sewerage or waste disposal system, swimming pool, artificial water impoundment, roadway, asphalt or concrete pavement, parking area, landing strip or pad, mobile home, billboard, sign or other advertising display, antenna, utility pole, tower, conduit or line, fences, walls or other barriers, telecommunication tower or equipment, windmill, wind turbines, photovoltaic facility or array, satellite dish; mineral, or fuel extraction structure, facility, or mechanism, including without limitation hydraulic fracturing or deep well injection system, or any other temporary or permanent structure or facility in, on or above the Premises.
- B. Clearing or Cutting: Removal, destruction or cutting of trees, shrubs or other natural vegetation, including cutting for firewood or commercial harvesting and lumbering activities, or for roads, driveways, trails or paths, or removal or movement of soil.
- C. Excavation: Excavation, mining, dredging drilling for or removal of any loam, peat, gravel, soil, sand, rock or other mineral substance, or natural deposit from the Premises, including gas or other fuel or fuel source.

- D. Dumping: Placing, filling, storing, stockpiling or dumping of soil, tree stumps, slash, yard waste or other vegetative debris, snow, sand, rock, mineral or other substance or material, equipment, mobile home, trailer, vehicle bodies or parts, refuse, trash, rubbish, junk, debris, , petroleum products, pesticides and herbicides, or any type of waste, including solid, liquid, radioactive and hazardous waste.
- E. Alteration: Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, natural habitat, archaeological conservation or ecosystem function.
- F. Planting: Planting invasive or non-native species or other species that are genetically modified or replicated or not deemed native to Hampden County by current published lists of native species, including *The Vascular Plants of Massachusetts: A County Checklist*, First Revision, by Melissa Dow Cullina, Bryan Connolly, Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (2011) or as amended or contained in a similar professionally acceptable publication available in the future. Other species, not yet considered native in the above reference, or the then-governing reference source, may only be planted with written mutual agreement of Grantor and Grantees.
- G. Motorized Vehicles: Use, parking or storage of motorized or power-driven vehicles of any kind, included but not limited to automobiles, trucks, motorcycles, motorized trail bikes, motorbikes, snowmobiles or all-terrain vehicles.
- H. Commercial or Industrial Use. Commercial or industrial use of any kind, including but not limited to commercial camping, commercial fishing or aquaculture, commercial hunting or commercial trapping.
- I. Agriculture: Tillage of soil or grazing or sheltering of livestock or fowl.
- J. Density Calculation: No portion of the Premises may be used towards building or development requirements on this or any other parcel.
- K. Division or Subdivision: It is the parties' intent to keep the Premises in single ownership. Therefore, subdivision or conveyance of a part or portion of the Premises is not permitted.
- L. Cultural Features: The dislocation, removal, filling in or alteration of stone walls, stone foundations, cellar holes or other landscape features on the Premises, archeological investigations or activities, including the collection, alteration or removal of archaeological artifacts (prehistoric and/or historic) except by formal

approval of the Massachusetts Historic Commission (MHC) described in Article III, Paragraph J, below.

- M. Chemical Substances: The use, storage, mixing or preparation for use of pesticides, herbicides, insecticides, fungicides, or other chemicals or similar substances.
- N. Inconsistent Uses: Any other use of the Premises or activities not permitted in Article III below that are (a) inconsistent with the purposes of this CR or (b) would harm the conservation values protected by this CR, or (c) are prohibited by federal, state or local law or regulation, are prohibited.

**III. PERMITTED ACTIVITIES:** Notwithstanding any provisions herein to the contrary, the Grantor reserves to itself and to its legal representatives, successors and assigns the right to conduct or permit the following activities and uses on the Premises, provided that they are conducted in accordance with applicable local, state and federal laws and regulations, are carried out in a reasonable manner consistent with the purposes of this CR, and do not materially impair the natural, scenic, historic or archaeological resources on the Premises.

- A. Passive Recreation: Use of the Premises by the Grantor and the general public, for non-commercial, low impact, passive outdoor recreational activities such as hiking, snowshoeing, cross-country skiing, bird and wildlife observation, fishing, non-motorized boating and other non-motorized recreational, educational and nature study use (except mobility assistance devices when used by persons with a disability shall be allowed), provided that such activities do not materially alter the landscape and are carried out in a reasonable manner that does not impair the purposes of this CR. Grantor may promulgate rules and regulations for the use of the Premises in consultation with and approval by Grantees, as are reasonably necessary to protect public safety and the natural values of the Premises. Grantor shall not discriminate as to use of Premises as between the general public and others having special membership or other status.

With prior notification to the Grantor, Grantees may offer environmental education programs and services on the Premises to further public access, understanding and appreciation of the property and current environmental and conservation topics.

- B. Maintenance of Recreational Improvements: The right to use, maintain, repair and replace, but not enlarge, the existing unpaved footpaths, ways, trails, fences, gates and stone walls, culverts, bridges, and similar improvements identified in the Baseline Documentation Report and as shown in Exhibit B, substantially in their present condition and location, or as reasonably necessary for the uses permitted herein, excepting structures within Building Envelope described in Article III. H. below, so

long as such use is not significantly detrimental to water quality, soil conservation, or wildlife conservation or otherwise wasteful of the natural resources of the Premises.

C. Trails, Minor Recreational Structures, and Signs: In accordance with the approved Town Plan, the right to make minor improvements to the property for recreational and educational purposes to facilitate the uses permitted in Article III A. above, so long as such recreational improvements are consistent with the purposes of this CR and do not materially impair the conservation, recreation, and scenic values of the Premises protected by this CR. Such Recreational Improvements include the following:

1. *Trails*: Construction, reconstruction, and marking of unpaved woodland trails for non-motorized trail uses including the installation of minor trail structures such as non-illuminated directional and trailhead signage, trailside benches, minor bridges, culverts, stone steps, and scenic vistas provided, however, that such trails shall be no greater than ten (10) feet in width, and that such trail and minor trail structures and vistas are designed, located and constructed in accordance with DCR Trail Guidelines and Best Practices Manual dated October 21, 2008, and updated March 2012, or subsequent versions as may be approved by the Grantees and in a manner that will minimize negative impacts to the conservation and recreational values protected by this CR.
2. *Minor Structures*: The construction, maintenance, repair and replacement of minor structures for use by the public for educational and passive recreational purposes, such as but not limited to gates, exhibits, benches, and viewing platforms provided that such structures do not have foundations and are designed and located to minimize any deleterious impact on the conservation purposes of this CR.
3. *Signs and Informational Kiosks*: The right to install and maintain permanent or temporary boundary markers, small, interpretive signs, no larger than two feet by two feet, and informational kiosks consisting of two informational panels no larger than three feet by five feet at the existing parking areas (6) on the Premises, for purposes of identifying ownership interests of Grantor and Grantees, its status as a conservation area, the restrictions or regulations governing the use of the Premises (including hunting and fishing), the identity or location of trails, areas of interest, natural features or other characteristics of the Premises, including historical and archaeological information, to mark property boundaries, and for providing other like information. All signs and kiosks shall be non-illuminated and the number, design and location of such signs and informational kiosks shall be planned in consultation with Grantees.

In the absence of an approved Town Plan, construction of any new recreational improvements as described above shall be subject to Grantee's prior approval pursuant to Article IV below.

- D. Vegetation Management: The cutting, removal, planting or replacement of native trees, shrubs or other native vegetation to prevent threat of injury or damage to persons or property; to prevent, control or eliminate insect infestation, blight or disease; to control, manage or eradicate invasive species not native to Hampden County; to restore native biotic communities; to maintain, enhance or restore wildlife habitat, rare or endangered species, or water quality; and to construct and maintain approved recreational improvements as described in Article III.C above. The use or application of pesticides, herbicides, insecticides and fungicides, but not the storing, mixing or preparation for use thereof, shall be allowed to carry out the activities authorized in this paragraph, provided that: (i) such use is based on prudent and sound silvicultural, horticultural, and ecological principles, as applicable, and in conformance with manufacturer's directions, and (ii) such substances are used in a way that minimizes impacts to and contact with streams, vernal pools, wetlands, lakes and any other water bodies on the Premises, and such use shall not occur within one hundred feet (100') of any stream or wetland. Use of such substances within wetlands and the hundred-foot buffer (100') may be permitted for management and eradication of invasive species, but subject to an approved CR Management Plan described in Article VII below, and in accordance with best management practices as they are promulgated and updated from time to time
- E. Forestry: Forest management and commercial harvesting or lumbering activities, including cutting or harvesting for firewood, provided such cutting and removal is conducted in compliance with:
1. Prudent and sound forest management practices, using all required Best Management Practices and to the extent possible the recommended guidelines pursuant to the Massachusetts Forestry Best Management Practices Manual (Catanzaro, Fish, Kittredge, 2013) and subsequent versions as may be approved by the Commonwealth (hereinafter "Forestry BMPS");
  2. A Forest Stewardship Plan, prepared in accordance with "Directions for the preparation of new Chapter 61 Forest Management and Forest Stewardship/Green Certification Plans" and subsequent versions as may be approved by the Commonwealth, and approved in writing by the State Forester;
  3. A Forest Cutting Plan, prepared by a forester licensed pursuant to 304 CMR 16.00 et. seq. in accordance with M.G.L. c. 132, s.40 - 46 as amended, ("Licensed Forester"), and reviewed for approval in writing by the State

Forester, who will consult with co-grantee Mass Audubon if any proposed cutting/harvesting is to exceed ten thousand board feet or 25 cords of wood during any rolling 12 month period, notwithstanding the thresholds described in M.G.L. c. 132, s.44; and

4. Such statutes, regulations and directions in effect at the time of approval of the said plans.

A copy of this CR shall accompany the Grantor's application, proposed Forest Stewardship Plan and/or proposed Cutting Plan to the State Forester for approval, together with a statement in writing from the Licensed Forester, signed by Grantor, that the proposed Forest Stewardship Plan and/or Cutting Plan is consistent with the terms and purposes of this CR and the associated Town Plan.

Any Cutting Plan prepared must be consistent with the approved Stewardship Plan, the purposes and terms of this CR, and with the associated Town Plan. Reasonable use of pesticides, herbicides, manure and fertilizers in accordance with manufacturer's specifications and BMPs shall be permitted to the extent necessary to conduct approved and permitted forestry activities.

- F. Forest Roads: The construction, maintenance, use, improvement, repair, and discontinuance of unpaved roads for forestry purposes, consistent with Forestry BMPs, with a travel surface not to exceed fifteen (15) feet in width, so long as such roads are located, designed, constructed and used in a manner that will minimize negative impacts on the conservation and recreational purposes of this CR, are consistent with the Town Plan, and are included in the approved Stewardship Plan and any required Cutting Plan. To construct or improve a road, the Stewardship Plan must demonstrate (1) that the road is necessary to provide reasonable forest management access to the Premises, (2) that the system of existing woods roads is not adequate, and (3) that the construction or improvement will not materially impair the purposes of this CR. Notice to and approval of the Grantees shall be deemed granted for the construction of new woods roads if such roads are contained in the approved Forest Stewardship Plan, and any approved Cutting Plan. Upon the discontinuance of woods roads, Grantor shall restore the roadbed, and any bridges, culverts and disturbed abutting areas shall be returned to a natural state with even contour and in such a manner so as not to cause erosion, in order that re-forestation and vegetation may naturally occur. Such reclamation of wood roads shall be in accordance with Forestry BMPs, the Stewardship Plan, and the Town Plan.
- G. Future Public Water Supply Use: *[New language subject to revision by the Town]*  
The right to restore and utilize a portion of the Premises for public water supply purposes within the Future Public Water Supply Facilities Area as shown on Exhibit C attached hereto, and in accordance with then applicable public drinking water

supply laws and regulations. Permitted activities include but are not limited to the storage and withdrawal of water for public use and consumption, and construction, maintenance, repair and replacement of dams, pipes, water pumping and treatment facilities, roads and associated infrastructure (hereinafter “public water facilities”) directly related to public water supply. Grantor shall to the greatest extent possible locate the public water facilities within the Existing Building Envelope described in III.H below, and design, construct and maintain such facilities so as to minimize adverse impacts on the conservation values protected by this Conservation Restriction. Any ground disturbance due to installation of underground systems or other activities shall be restored to the approximate conditions prior to said disturbance. Public Water Supply use shall not include the construction of structures ancillary to water supply purposes such as, for example, office buildings, vehicle storage and maintenance facilities, .Grantor shall notify Grantees of its intent to utilize the Premises for Water Supply purposes 60 days prior to commencing such activities. Grantees may provide non-binding recommendations to Grantor aimed at minimizing the impact of such use on the conservation values and purposes of this CR.

H. Existing Building Envelope: Within the area shown as “Existing Building Envelope” on the sketch in Exhibit C Grantor reserves the right to conduct or permit the following activities and uses provided that said uses are described in an approved CR Management Plan described below in Article VII:

1. The right to use, maintain, and repair, but not enlarge the footprint of the existing brick building and 2 garage buildings previously used in connection with water treatment, supply, and maintenance of the Premises, as documented in the Baseline Report, for environmental education or conservation purposes, and for storage of equipment needed and used to maintain of the Premises as permitted in this CR;
2. The right to demolish and remove said structures and restore the area within the building envelop to its natural condition.
3. The right to use, upgrade, maintain and construct Public Water Facilities if Grantor re-activates the public water supply , as described above in Article III.G and in accordance with all applicable laws and regulations

I. Resource and Habitat Management: In accordance with the approved Town Plan or with the prior written approval of Grantees pursuant to the procedures set forth in Article IV, below, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species. Such measures may include hunting.

- J. Archaeology: The right to conduct archaeological field investigations, including surveys, systematic excavation, and removal of archaeological samples and specimens, provided that such research is undertaken in accordance with a research design and methodology permitted and approved by the Massachusetts State Archaeologist of the Massachusetts Historical Commission or successor official, in accordance with G. L. Chapter 9, Section 27C, and 950 CMR 70.00, or as amended, and the concurrence of the Grantees pursuant to the notice procedure set forth in Article IV below.
- K. Human Remains: Notwithstanding the foregoing permitted activities, if any human remains are discovered during any activities on the Premises, then the activities resulting in such discovery shall cease immediately. Grantor shall notify Office of the Chief Medical Examiner, the Massachusetts State Archaeologist and the Grantees immediately, and shall follow the procedures delineated under the Massachusetts Unmarked Burial Law (G.L. Chapter 38, Section 6; Chapter 9, Sections 26A and 27C and Chapter 7, Section 38A, as amended).
- L. Motor Vehicles and Parking: The right to use motor vehicles by the Grantor or its employees and agents as reasonably necessary to carry out activities permitted under this CR, but not for recreational activities (other than parking as described in this paragraph); for access by Grantees for purposes set forth in Article VI, below; and for access by police, fire, emergency, public works, or other government personnel carrying out their official duties. The right by Grantor to construct, maintain, mark and use the existing unpaved parking areas with gravel or other pervious surface, to provide off-street parking associated with the public recreational use of the Premises, the design, size, specific location and materials shall be included in an agreed upon Town Plan as described in Article VII below or in the absence thereof, subject to the approval of Grantees pursuant to Article IV below.
- M. Legal Compliance. The exercise of any right reserved by the Grantor under this Article III shall be in compliance with the then-current Zoning By-Law applicable to the Premises, the Wetlands Protection Act (G.L. Chapter 131, Section 40), and all other applicable federal, state, and local laws and regulations. The inclusion of any reserved right in this Article III requiring a permit from a public agency does not imply that the Grantees take any position on whether such permit should be issued.
- N. Any other use not permitted is prohibited unless approved by Grantee in accordance with the procedure set forth in Article IV, below. Any request by Grantor, shall not be unreasonably withheld by Grantees in accordance with Article IV below.

#### **IV. NOTICE BY GRANTOR:**

A. Procedure for Notifying Grantees: Whenever notice to or approval by Grantees is required under Article III, Grantor shall notify Grantees in writing, not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. Notice from the Grantor shall:

1. Describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity;
2. Describe how the proposed activity will not harm the purposes or Conservation Values;
3. Certify that the proposed activity is consistent with the terms of this Conservation Restriction; and
4. Describe any other material aspect of the proposed activity in sufficient detail to permit Grantees to make an informed judgment as to the activity's consistency with the purposes of this Conservation Restriction.

B. Procedure for Grantees' Approval: Grantees shall use reasonable diligence to respond in writing within 60 days of receipt of Grantor's Notice. Grantees' approval shall be granted upon a showing that each of the conditions enumerated above have been met and the proposed activity shall not materially impair the purposes and conservation uses of this Conservation Restriction. If the Grantees fail to respond within 60 days, Grantor shall send a second Notice to the Grantees and the Grantees shall have another 30 days from said second Notice to respond. Failure of the Grantees to respond in writing within said 30 days shall be deemed to constitute approval by the Grantees.

C. Notices: Any notice, demand, request, consent, approval or communication that any party desires or is required to give to the others shall be in writing and either served personally or sent by certified mail, return receipt requested, addressed as follows:

To Grantees:

Department of Conservation and Recreation  
Commissioner  
Department of Conservation and Recreation  
251 Causeway Street, Suite 900  
Boston, MA 02114-2104

With a copy to:

Conservation Restriction Stewardship Coordinator  
Department of Conservation and Recreation  
251 Causeway Street  
Boston, MA 02114-2104

and

Mass Audubon  
Director of Land Conservation  
Mass Audubon  
208 South Great Road  
Lincoln, MA 01773

With copy to:

Conservation Restriction Stewardship Specialist  
Mass Audubon  
208 South Great Road  
Lincoln, MA 01773

To Grantor:

Town of West Springfield  
Attn: Conservation Commission  
26 Central Street, Suite 12  
West Springfield, MA 01089

With a copy to:

Town of West Springfield  
Attn: Town Attorney  
26 Central Street, Suite 32  
West Springfield, MA 01089

or to such other address or addresses as may from time to time be designated by any party by written notice to the others, as prescribed under this Article IV.

- V. RIGHT OF ACCESS; MANAGEMENT; INSPECTION:** This CR includes the grant of the right to Grantees, its successors and assigns, to enter upon and permit the public to enter upon and to use the Premises for the activities set forth in Article III A above.

Grantees shall have the right but not the obligation to erect signs on the Premises in conjunction with public access to and use of the Premises, in posting the boundaries of the Premises, and in posting notice and use of the Premises at any public access point to the Premises. Grantees shall coordinate their activities in designing and erecting signs with

any similar activities of the Grantor to avoid duplication and unnecessary signs on the Premises.

This CR also includes the grant of the right to Grantees, their successor and assigns to enter upon the Premises in a reasonable manner, including by motor vehicle, and at reasonable times, with prior notice, for the purpose of inspecting the Premises to determine compliance with the terms of this CR. A representative of the Town may accompany the Grantees during such inspections. In the event Grantees observe any violation, Grantees may pursue their remedies as described in Article VI below.

- VI. REMEDIES; WAIVER:** The Grantees shall have the power to enforce this CR by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including relief requiring restoration of the Premises to its condition prior to the time of the injury complained of, and shall be in addition to and not in limitation of any other rights and remedies available to the Grantees by law.

This CR shall be enforced by Grantees in their sole discretion. Nothing herein shall impose upon the Grantees any affirmative obligation or liability relating to the condition of the Premises. Failure by the Grantees to enforce any provision or condition set forth herein, or to exercise any rights hereby conveyed, shall not constitute a release or waiver of any such right or condition.

In the event that the Grantees discover a violation during an inspection as set forth in paragraph V. above, Grantees must within ten (10) business days notify Grantor in writing describing the details of the violation(s) and request Grantor to remedy such violation. (This notice requirement shall not apply in any case where there is imminent risk of irreparable harm to the Premises. In such a case, Grantees may seek a preliminary and permanent injunction requiring the Grantor to cease and desist (it being agreed that the Grantees would have no adequate remedy at law.))

If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantees, the Grantees can request that the Grantor meet in an effort to resolve the alleged violation. If the Grantor refuses to meet within thirty (30) days after the Grantees' request, or if, despite the good faith efforts of the parties, the Grantor and the Grantees fail to resolve a dispute regarding the alleged violation at such meeting, then the Grantees may pursue their remedies as described in this Article VI.

In the event that Grantor fails to meet as indicated above to resolve violations and/or fails to take reasonable and prudent measures to address the alleged violations, Grantor would then covenant and agree to reimburse Grantees for all reasonable costs and expenses, including reasonable attorneys' fees, incurred in enforcing this CR or in taking reasonable measures to remedy or abate any violation thereof.

**VII. TOWN PLAN:** The Town Plan prepared in conjunction with this Conservation Restriction will set forth Grantor's short and long-term management goals for the property and include specific actions that Grantor may take to achieve those goals. The intent of the Town Plan is to guide the ongoing stewardship of the Premises in a way that is consistent with the purposes, conservation values, and terms identified in the CR. Grantor is not obligated to carry out any or all actions proposed in the Town Plan.

- A. Requirement for and Initial Submission of Town Plan: The Grantor shall prepare a Town Plan for the Premises whose primary purpose shall be to ensure that land management activities are consistent with the terms and purposes of this Conservation Restriction. The Town Plan shall be prepared in accordance with the template attached hereto in Exhibit D. Grantor shall prepare and deliver the first draft of Town Plan to Grantees within six (6) months from the date of recording of this CR (open to more time if needed).
- B. Review by Grantees: The Grantor shall submit a draft of the Town Plan (or a request to amend the agreed upon Town Plan in place at that time, as described in Paragraph E below) to the Grantees for review. Upon receipt of said draft Town Plan, the Grantees shall have sixty (60) days to conduct their review, provide feedback and agree to the draft Town Plan. The purpose of said review is to ensure that the Town Plan is consistent with the terms of this CR, and to allow for Grantees to provide suggestions to Grantor on resource protection and land management activities. Grantees' agreement to said Town Plan shall not be unreasonably withheld, delayed or conditioned, provided the following conditions are met:
1. The Town Plan is prepared following the template attached hereto in Exhibit C;
  2. The activities described in the Town Plan further the Purposes of the CR and are consistent with the Permitted Activities described in Article III of this CR;
  3. Proposed activities are described in enough detail to provide a clear understanding of the scope and location of such activities and how they may impact the Premises.

If these conditions are not met, Grantees may request revisions to the draft Town Plan, and will specify what additional information may be needed.

- C. Collaboration: For the purposes of reviewing or revising the Town Plan and periodic consultations regarding progress made and/or challenges associated with achieving the goals or objectives identified in the Town Plan, the Grantor and Grantees shall be

represented by the persons designated in Article IV, or such designees provided by notice pursuant to Article IV.

- D. Town Plan Effective Time Period: Once mutually agreed upon by Grantor and Grantees, the Town Plan shall be adopted by both parties and shall be effective for a period of five (5) years (the “Effective Period”), unless a shorter timeframe is desired and mutually agreed to by both parties and shall be reviewed, revised if necessary, and adopted by agreement of the Grantor and Grantees at subsequent 5-year intervals. Said Effective Period may be shortened or extended by written mutual agreement of both parties but in no event shall be longer than 10 years. No less than sixty (60) days prior to the expiration of the Effective Period, the Grantor shall submit a request to the Grantees to renew or revise the Town Plan. Any requested revisions shall be developed by Grantor and subject to the terms for review set forth in paragraph B above. If a renewed or revised Town Plan is not submitted or agreed to prior to the expiration of the Effective Period, the last approved TOWN Plan shall govern the management activities until a new plan is agreed upon.
- E. Town Plan Amendments: The Grantor may submit a request to the Grantees to amend the Town Plan at any time during the Effective Period. Any requested amendments to the Town Plan shall be subject to the terms for review set forth in paragraph B above.
- F. Recordkeeping: The effective Town Plan shall be kept on file in the offices of the Grantor and Grantees.
- G. Implementation: Any management actions by Grantor as permitted under the Town Plan, and any revisions or alteration made to the Town Plan as agreed by Grantor and Grantees, shall further the purposes of the CR, particularly native biodiversity conservation and preservation, water supply protection, improvement of native fish and wildlife habitat, and assurance of safe public access to the Premises without discrimination based on race, color, age, sex, religion, physical ability, nationality or place of domicile. Such management actions shall be designed to minimize negative impacts on or alterations to the conservation values and natural conditions on the Premises under then-current understandings of ecology and conservation biology, and will take into consideration both the Premises and the surrounding landscape as appropriate.
- H. Nothing in the Town Plan or revisions or amendments thereto shall be interpreted to alter the meaning or terms of this CR, and in the case of any conflict between this CR and the Town Plan, the CR shall govern.

**VIII. COSTS AND TAXES; LIABILITY:** Grantor agrees to pay and discharge when and if due any and all real property taxes and other assessments levied by competent authority on the Premises.

**IX. EXTINGUISHMENT; EMINENT DOMAIN:**

- A. Procedure for Extinguishment: If circumstances arise in the future that render the Purposes of this Conservation Restriction 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 Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, or successor official (hereinafter the “Secretary”).
- B. Right to Recover Proceeds: If any change in conditions, including a taking by a public authority (other than the Commonwealth) under power of eminent domain, gives rise to extinguishment or other release of this CR under applicable law, Grantees shall be entitled to their proportionate share of the proceeds equal to the proportionate value of the CR, subject, however, to any applicable law which expressly provides for a different disposition of proceeds. The Grantor and Grantees shall cooperate in recovering the full value of all direct and consequential damages resulting from extinguishment, provided that, if the public authority is The Commonwealth, the Grantor and Grantees may pursue their remedies separately.
- C. Division of Proceeds: The grant of this CR gives rise to a real property right, immediately vested in the Grantees, with a fair market value equal to the proportionate value that this CR bears, at the time of the grant, to the fair market value of the Premises as if unrestricted. The proportionate value of the Grantees’ property right is 37%. Such proportionate value shall remain constant. Therefore, the Grantees shall receive 37% of any proceeds resulting from an extinguishment, which percentage shall apply only to the appraised value of the land at the time of the extinguishment. Upon an extinguishment, the Grantor may receive 100% of the proceeds received in excess of the appraised value.<sup>1</sup>
- D. If the conservation interests protected hereby are unaffected by the taking, and the only interest taken by public authority is the Grantor’s interest, and recovered proceeds are awarded based on the value of the Premises as restricted by this CR, then the proceeds from such taking shall be payable in their entirety to Grantor.

**X. BINDING EFFECT; ASSIGNMENT:** This CR and all terms and provisions hereof shall be deemed to run with the land and be binding upon the Grantor, and the successors

---

<sup>1</sup> The fair market value of the Premises is \$2,725,000; the Grantees purchased the development rights in the Premises for consideration of \$1,000,000 which is 37% of \$2,725,000.

and assigns of both the Grantor and Grantees. The benefits of this CR are not appurtenant to any particular parcel of land, and shall be in gross and assignable or transferable, provided such assignment or transfer is limited only to a government entity; is consistent with Article 97 of the Amendments to the Massachusetts Constitution, Section 170h(1) of the U.S. Internal Revenue Code of 1986, as amended, provided further that such entity has among its purposes the conservation and reservation of land and water and agrees to and is capable of enforcing the conservation purposes of this CR. Any such assignee or transferee shall have the like power of assignment or transfer.

- XI. AMENDMENT:** If circumstances arise under which amendment to or modification of this CR would be appropriate, Grantor and Grantees may by mutual written agreement jointly amend this CR, subject to the approval of the Secretary of Energy and Environmental Affairs; provided that no amendment may be made that will be inconsistent with Article 97 on the Amendments to the Massachusetts Constitution, G. L. Chapter 184, Sections 32, the purposes of this CR, nor will affect its perpetual duration, nor adversely affect any of the significant conservation values of the Premises. Any such amendment shall be recorded with the Hampden County Registry of Deeds.
- XII. SEVERABILITY:** If any section or provision of this CR shall be held to be unenforceable by any court of competent jurisdiction, the CR shall be construed as though such section had not been included in it. If any section or provision of the CR shall be susceptible of two constructions, one of which would render such section or provision invalid, then such section or provision shall be given the construction that would render it valid. If any section or provision of this instrument is ambiguous, it shall be interpreted in accordance with the policies and provisions expressed in Article 97 of the Amendments to the Massachusetts Constitution, G.L. Chapter 184, Sections 31 - 33 and G.L. Chapter 132A.
- XIII. MISCELLANEOUS:**
- A. No Massachusetts deed excise tax stamps are required by Chapter 64D, Section 1, as the Commonwealth and the Town of West Springfield are parties to this instrument.
  - B. This CR is conveyed subject to matters of record at the Hampden District Registry of Deeds.