

## Appendix C: Model Conservation Restriction

GRANTOR:

GRANTEE:

ADDRESS OF AFFECTED PROPERTY:

FOR TITLE SEE:

### FOREST CONSERVATION RESTRICTION

Address: 000 Street/Road, Municipality, MA

I, [*Owner's Legal Name*], with an address of [000 Street/Road, Municipality, Massachusetts, 00000, hereinafter "Grantor" which term in each instance shall mean the Grantor and Grantor's heirs, legal representatives, successors and assigns, for consideration paid of [XXX] Dollars (\$000,000.00), the receipt and sufficiency of which is hereby acknowledged, does hereby grant, with QUITCLAIM COVENANTS, in perpetuity and for conservation purposes as set forth in, dedicated and subject to Article 97 of the Amendments to the Massachusetts Constitution, a Conservation Restriction (hereinafter "CR") as provided in Massachusetts General Laws (hereinafter "G.L.") Chapter 184, Sections 31, 32, 33, to the Franklin Land Trust, Inc., a Massachusetts non-profit corporation having the power to acquire interests in land in accordance with said General Laws, with a principal office in Shelburne, Massachusetts, and a mailing address of P.O. Box 450, Shelburne Falls, Massachusetts 01370, its permitted successors and assigns ("Grantee"), and to the [Municipalities Name, a Massachusetts municipal corporation with an address at Address of Municipality, acting by and through its Conservation Commission established pursuant to Mass. General Laws Chapter 40, Section 8C,], its suc-

cessors and permitted assigns (hereinafter "Grantee"), upon land located in the Town of [XXX], [XXX] County, Massachusetts, containing approximately [XXX] +/- acres, said land being described in Exhibit [X], and shown in Exhibit [Y], excepting the parcel of land shown in Exhibit [Z], prepared by [XXX], recorded in Franklin County Registry of Deeds Book [XXXX] Page [XX] and described in Exhibit [X]. All exhibits attached hereto and incorporated herein by reference (hereinafter "Premises").

This purchase has been funded [add "in part" if only partially funded with USFS funds] through the United States Department of Agriculture, Forest Service.

This Conservation Restriction is defined in and authorized by Sections 31–33 of Chapter 184 and Section 8C of Chapter 40 of the General Laws and otherwise by law. Its purpose is to assure that the Premises will be retained in perpetuity predominately in their natural, scenic and forested condition, and to prevent any use of the Premises that will significantly impair or interfere with the conservation values of the Premises. The Premises contain unusual, unique or outstanding qualities the protection of which in their predominately natural or open condition will be of benefit to the public.

#### I. PURPOSE

The purpose of this CR is to retain the Premises in perpetuity for the purposes and protections set forth in and subject to Article 97 of the Amendments to the Massachusetts Constitution; to carry out the purposes of the XXX Forestry Program administered by the United States Forest Service; to retain the Premises in its natural, scenic, and open condition; to protect and promote the con-

servation of biological diversity, forests, soils, natural watercourses, ponds, wetlands, water supplies, and wildlife thereon; to protect the natural resources of the Premises; to protect and enhance the natural resource value of abutting and nearby conservation areas; to protect the scenic qualities of the open space resources of the Premises; to allow passive recreational use; to encourage sustainable and sound management of the forest resources, and to encourage the long-term professional stewardship of these resources in a manner consistent with Best Management Practices (BMPs), applicable local, state and federal law, and in conformance with an approved Forest Stewardship Plan.

The Grantor and the Grantee agree that all boundaries, natural features and man-made structures existing on the Premises at the time of the execution of this CR, as well as the specific conservation values of the Premises, shall be documented in a report to be on file in the offices of the Grantee (“Baseline Documentation Report”). This Baseline Documentation report shall consist of documentation that the Grantor and the Grantee collectively agree provides 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.

This Conservation Restriction is intended to prevent any use of the Premises that will impair or interfere with the conservation values of the Premises. The public benefits resulting from conservation of the Premises include, without limitation:

*A. Preserves Working Landscapes.* The Premises protect approximately XXX acres of forestland and open land currently being managed for forest wood products and wildlife habitat. This land has been managed responsibly for over XX years, and under a chap-

ter 61 forest management plan for XX years, and contains primarily second growth red oak, white pine, hemlock, sugar maple, red maple, white ash and black cherry.

*B. Expansion of Conserved Forest Blocks.* The Premises help to protect significant interior forest blocks, linking the XXX acre XXX State Forest with the XXX acre XXX Wildlife Management Area .

*C. Protection of Wildlife Habitat.* The Premises contain high quality habitats, which includes, Biomap2 Core Habitat, Supporting Natural Landscape, Living Waters Core Habitat, and Critical Supporting Watershed as designated by NHESP. The Premises includes significant wildlife habitat, providing breeding and feeding areas suitable for grouse, turkey, migratory songbirds, moose, deer, bear, coyote, and freshwater fish and invertebrate species.

*D. Water Resources.* The Premises contains XXX Brook, a major tributary to the Deerfield River. The Premises also lies with the XXX drinking water well zone for the Town of XXX.

*E. Recreational Resources.* The Premises contains....

*F. Carbon Sequestration.* The Premises supports the carbon sequestration in forests and wood products which helps to offset sources of carbon dioxide to the atmosphere, from activities such as deforestation, forest fires, and fossil fuel emissions. Sustainable forestry practices can increase the ability of forests to sequester atmospheric carbon while enhancing other ecosystem services, such as improved soil and water quality.

*G. Agricultural Resources.* The Premises contains XX acres of agricultural fields, including XX acres of prime and state important soils, managed for agricultural products and XXX acres of Prime Forest Soils.

## II. PROHIBITED USES

In order to carry out the purposes set forth in Article I above, the Grantor shall refrain from and will not permit any activity that will be inconsistent with the aforesated purposes of this CR. Except as set forth in “RESERVED RIGHTS,” Article III, below, Grantor covenants that the Premises will at all times be held, used and conveyed subject to and not in violation of the following prohibitions on, above and below the Premises:

A. Constructing, placing, or allowing any temporary or permanent building, residential dwelling, tennis court, ball field, bench, well, septic or sewerage disposal system, artificial water impoundment, roadway, asphalt or concrete pavement, landing strip, mobile home, swimming pool, billboard or other advertising display, antenna, paved parking area, utility or telecommunication pole, tower, conduit or line, windmill, wind turbines, satellite dish, above or underground storage tanks, or any other temporary or permanent structure or facility on, below, or above the Premises; and

B. Mining, excavating, dredging, or removing from the Premises of soil, loam, peat, gravel, sand, rock, or other mineral resource or natural deposit, or alteration of any natural contours or features whatsoever, including the excavation of holes, the dislocation or removal of stone walls, cellar holes, granite fence posts, or other features on the landscape; and

C. Archeological surveys or investigations except under an Archeological Field Investigation Permit issued by the State Archeologist authorized pursuant to G.L. Chapter 9, Section 26A and associated regulations; and

D. Placing, filling, storing or dumping on the Premises of soil, snow, sand, rock, mineral or ore, refuse, trash, equipment, mobile

home, trailer, vehicle bodies or parts, rubbish, debris, junk, waste, tillage or other substance or material whatsoever; and

E. Storage, stockpiling, or use of hazardous materials, petroleum products, pesticides and herbicides, manure, fertilizers, or any other materials, except as provided for in the Reserved Rights; and

F. Cutting, removing or otherwise destroying trees, grasses, shrubs or other natural vegetation, except as provided for in the Reserved Rights; and

G. Planting of any exotic invasive, or nuisance species, and the purposeful introduction of species prohibited by federal and state laws and regulations, such as those species included in the "Massachusetts Prohibited Plant Species List" published by the Massachusetts Department of Agricultural Resources, or as identified in a similar, professionally acceptable publication available in the future, except as provided for in the Reserved Rights and as recommended in a Forest Stewardship Plan and/or a USDA Farm Conservation Plan “Conservation Plan”; and

H. Commercial or industrial use of any kind, including but not limited to commercial camping, commercial fishing, hunting or trapping, and other commercial recreational activities, except as provided for in the Reserved Rights; and

I. Tillage of soil and grazing or sheltering of livestock, including horses, except as provided for in the Reserved Rights; and

J. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or archaeological conservation; and

K. The use, parking, or storage of motorcycles, motorized trail bikes, snowmobiles, and all other motor vehicles, except as nec-

essary by the police, firefighters, or other governmental agents in carrying out their lawful duties and mobility assistance devices for disabled persons, except as provided for in the Reserved Rights; and

L. Conveyance of a part or portion of the Premises, as compared to conveyance of the Premises in its entirety, which is allowed; and

M. Any subdivision of the Premises including but not limited to the subdivision of the Premises under G.L. Chapter 41, Section 81K et seq.; or the use of the Premises or any portion thereof to satisfy zoning requirements, or to calculate permissible building density or lot yield, or to transfer development rights, or for purposes of subdivision or development of the Premises or any other property, whether or not such property is owned by the Grantor or is adjacent to the Premises. This paragraph should not be construed to prohibit agreements to resolve bona fide boundary disputes or ambiguities, with the prior written consent of the Grantee, which consent shall not be unreasonably withheld; and

N. Any other use of the Premises or activity that would materially impair the conservation interests protected by this CR or that is prohibited by federal, state or local law or regulation, or that is inconsistent with the intent that the Premises remain in its natural condition, or that is otherwise inconsistent with the purposes of this CR; and

O. The conversion of forest land to non-forest land, except as provided for in the Reserved Rights.

### III. RESERVED RIGHTS

Notwithstanding the provisions of Article II above and subject to and in accordance with applicable laws, regulations and bylaws,

Grantor reserves the following rights, uses and activities on the Premises, but only to the extent that such acts and uses do not materially impair the purposes of this CR:

#### A. *Improvements.*

1. The maintenance, use, and repair of existing driveways, farm roads, fences, bridges, culverts, gates and stone walls, identified in the Baseline Documentation Report and the approved Forest Stewardship Plan for the Premises; and the construction, relocation, or replacement of like improvements necessary in conducting permitted activities on the Premises, provided such new construction, relocation, or replacement shall be identified in the approved Forest Stewardship Plan or Conservation Plan for the Premises, or approved by Grantee in each instance in accordance with Article IV, below; and

2. Woods Roads and Log Landings: The maintenance, use and repair, or discontinuance of, existing unpaved woods roads identified in the Baseline Documentation Report and the approved Forest Stewardship Plan for the Premises, substantially in their present condition; and the construction, relocation, replacement of new unpaved woods roads and log landings [and, if necessary, the importation of soil, gravel, sand, rock or other mineral resource or natural deposit (hereinafter “road building materials” to construct such roads] for forestry purposes with a travel surface not to exceed twelve (12) feet in width, provided such new unpaved woods roads and log landings are in the approved Forest Stewardship Plan for the Premises and any required Forest Cutting Plan described in Article III.H, below, are consistent with Forestry Best Management Practices (BMPs), [and, if necessary, that

imported road building materials are only used when insufficient resources are available for excavation or extraction on the Premises.]. The approved Forest Stewardship Plan for the Premises must demonstrate (1) that the road improvements are necessary to provide reasonable forest management access to the Premises, (2) that the system of existing woods roads and log landings is not reasonably adequate, [(3) that the natural deposits on the Premises are suitable for extraction or excavation and use as road building materials], and (4) that such road improvements and construction activities do not materially impair the purposes of this CR. Upon discontinuance of any unpaved woods roads, Grantor shall restore the roadbed, bridges, culverts and any disturbed abutting areas to a natural state, with even contour and in such a manner so as not to cause erosion, in order that re-forestation and re-vegetation may occur. Such restoration of woods roads shall be in accordance with Forestry BMPs and the approved Forest Stewardship Plan for the Premises. [Soil, sand, gravel and other materials may be placed on, moved to, and added to the Premises for the purposes described in this Paragraph III. A. 2. provided BMPs are used to prevent the introduction of species that are not native to the region (see II. G. above) and that such action is included in an approved Forest Stewardship Plan for the Premises]; and

3. Trails: The maintenance, use, and repair, or discontinuance of, existing unpaved trails identified in the Baseline Documentation Report and the approved Forest Stewardship Plan for the Premises, substantially in their present condition; and the construction, relocation, replacement of new unpaved trails, provided such new unpaved trails shall not have a travel sur-

face that exceeds (5) five feet in width and are described in the approved Forest Stewardship Plan for the Premises and

4. Any maintenance, use, repair, construction, relocation, replacement, or

discontinuance of improvements, woods roads, farm roads, or trails under this Article III.A shall be designed, located and constructed in a manner that will minimize negative impacts to water quality, soil conservation, wildlife conservation, cultural resources, and is not wasteful of the natural resources of the Premises, or detrimental to the purposes of this CR.

*[Note: Paragraph B below will only be included on a case-by-case basis, and only when it is determined that the Premises has the capacity to provide the materials necessary to carry out “Improvements” identified in III. A. above in a manner that would minimize any impacts from excavation on the purposes of the CR.]*

B. *Excavation.* Excavation or extraction of soil, gravel, sand, rock or other mineral resource or natural deposit from the Premises solely for use in the construction, repair, maintenance or relocation of unpaved woods roads and trails on the Premises, provided that:

1. The Grantor’s proposal for any such excavation or extraction and associated use shall be included in the Forest Stewardship Plan for the Premises, and shall not be permitted unless such excavation or extraction and associated use are deemed compatible with and in support of forest management and are described in the approved Forest Stewardship Plan; and

2. No excavated or extracted material shall be removed from the Premises; and

3. No excavation or extraction shall be permitted from within the filter strips associated with rivers, streams, lakes, ponds, or wetlands described in the Forestry BMPs, or within five hundred feet (500') of any vernal pool identified in the approved Forest Stewardship Plan; and 4. Grantor shall restore all areas affected by said excavation or extraction to a state that reasonably matches and blends in with the natural topography and condition. Said restoration to a state blending with the natural topography and condition shall include, but not necessarily be limited to, the grading of cut banks to a natural angle of repose, the spreading of topsoil over the affected areas, the stabilization of the affected and adjacent areas against erosion, and the re-vegetation of affected areas with native plant species or conservation grass seed mix. Any topsoil removed during excavation or extraction shall be stockpiled onsite and used in the restoration of affected areas. Extraction and excavation must be conducted in accordance with Forestry BMPs.

C. *“Compatible Non-Forest Uses.”* Maintaining, mowing and grazing of existing pasture, grassland, fields (including hay production), meadows, and shrubland; grazing and pasturing of animals, and raising of crops; and, provided that:

1. The activities are conducted within the areas identified in Exhibit XX as Existing Compatible Non-Forest Uses Areas and those areas containing Prime Agricultural Soils or Prime Forest Soils, so long as these areas are not more than the majority of the acreage being conserved in the CR, and attached hereto and incorporated herein, the Baseline Documentation Report, and the approved Forest Stewardship Plan and/or Conservation Plan for the Premises; and

2. Any activities with the potential to affect water quality and soil erosion shall be described in a USDA Natural Resources Conservation Service Conservation Plan for the Premises (hereinafter “Conservation Plan”) approved by the conservation district for the locality in which the Premises is located, provided further that (a) the Conservation Plan is approved by Grantee pursuant to Article IV, below; and (b) the Grantor submits a copy of this CR with the proposed Conservation Plan to the conservation district; and (c) the Conservation Plan is not inconsistent with the Purposes of this CR; and

3. The activities are carried out in accordance with sound agricultural management practices, and do not occur within 100 feet of any stream or wetland, unless such activities are identified in the landowners approved Conservation Plan and carried out in accordance with said Conservation Plan; and

4. The activities shall be conducted in a manner that minimizes to the maximum extent practicable any adverse effects on the natural resources on the Premises, including but not limited to any watercourse or wetlands on the Premises; and

5. The reasonable use of pesticides, herbicides, manure and fertilizers within the existing agricultural areas is limited to the extent necessary to conduct agricultural activities identified in the Conservation Plan for the Premises, provided that such use does not occur within wetland buffer zone unless such activity is carried out in accordance with the Conservation Plan and is based on best management practices, and is in conformance with manufacturer’s directions; and 6. No structures are erected; and

D. *Recreational Activities.* Non-motorized recreational activities

such as hiking, horseback riding, snowshoeing, cross-country skiing, bird watching, nature study or research, trapping, hunting and fishing and motorized outdoor recreational activities limited to snowmobiling, as otherwise allowed by law, provided that such uses do not materially alter the landscape and are carried out in a reasonable manner that does not impair the purposes of this CR.

*E. Archaeological Resources.* The conducting 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), and subject to approval by the Grantee in accordance with Article IV, below.

*F. Signs.* The erection and maintenance of non-electronic signs no larger than two (2) square feet in size, with respect to hunting, trespass, trail access, historical, cultural, and ecological interests, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, and the protected conservation values, and in addition, one sign no larger than X feet by X feet to advertise Grantor's products;

*G. Vegetation Management.* The ordinary improvement and maintenance of landscape features of the Premises, including trimming, maintaining or replacing trees, shrubs or other plantings, and the de minimis dispersal and/or piling of these organic materials on the Premises; removing diseased or insect damaged trees or vegetation, removing limbs and trees that are a hazard to private property or public or private health or safety; controlling or eliminating insect infestations or invasive plant species, and cutting, mowing, or replacing grasses and other vegetation in accordance with estab-

lished horticultural practices. The use or application of pesticides, herbicides, insecticides and fungicides, shall be allowed to carry out the activities authorized in this paragraph, provided that: (i) such substances are used in a way that minimizes impacts to and contact with non-target species, streams, vernal pools, wetlands, lakes and any other water bodies on the Premises, (ii) such use does not occur within 100 feet of any stream or wetland, and (iii) such use is based on prudent and sound silvicultural and horticultural principles, as applicable, in conformance with manufacturer's directions, and in accordance generally accepted "Best Management Practices", as outlined in the Massachusetts Forestry Best Management Practices Manual by David Kittredge and Michael Parker, (or successor document). All activities under this section must be described in the approved Forest Stewardship Plan and/or Conservation Plan or obtain the approval of the Grantee in accordance with Article IV hereof.

*H. Forestry.* Long term forest management activities including cultivation and harvesting of timber and non-timber forest products including tree cutting, maple sugaring, agro-forestry, wildlife habitat improvement, water quality management, recreational management, soil conservation, and other forestry-related activities, provided that:

- a. Grantors, or others permitted by Grantors, conduct sound silviculture on the Premises in accordance with generally accepted "Best Management Practices", as outlined in the Massachusetts Forestry Best Management Practices Manual by David Kittredge and Michael Parker, (or successor document), including removing of brush, pruning, selective de minimis cutting for non-commercial use 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 (as shown in the Baseline Documentation Report);

b. The cutting of trees for personal use, pursuant to the Forest Cutting Practices Act under M.G.L. Chapter 132 (or successor statute) to provide non-commercial forest products for personal use, *below* a volume of XX cords or XX,000 board feet (XX mbf) per year and where no wood leaves the Premises and is not sold. Such use is permitted, provided that the cutting is not inconsistent with the purposes of this Conservation Restriction.

c. The cutting and harvesting of trees for commercial timber production or for personal use equal to or above XX cords or XX,000 board feet (XX mbf) and no more than 50 cords or 25,000 board feet (25mbf) per year, pursuant to the Forest Cutting Practices Act under M.G.L. Chapter 132 (or successor statute) and in accordance with a 10-year Forest Stewardship Plan prepared by a Massachusetts licensed professional forester, and designed to protect the conservation values of the Premises, including, without limitation, water quality, water features, scenic views, and wildlife habitat.

d. The cutting and harvesting of trees *at volumes equal to or above 50 cords or 25,000 board feet (25 mbf)* but only if carried out with a Forest Cutting Plan prepared by a licensed forester and in accordance with a 10-year Forest Stewardship Plan prepared by a Massachusetts licensed professional forester, and designed to protect the conservation values of the Premises, including, without limitation, water quality, water features, scenic views, and wildlife habitat.

e. All Forest Stewardship Plans and any amendments to said

Plans shall reference this Conservation Restriction and support the purposes of this Conservation Restriction and be submitted to the Grantee for review but this review shall not require any approvals by the Grantee. No provisions in the Forestry Stewardship Plan or the Cutting Plan shall change the meaning or terms of this CR, and in the case of any conflict between this CR and the Stewardship Plan or the Cutting Plan, the CR shall govern.

f. Premises remain private land and nothing herein shall be construed to be subject to National Environmental Policy Act (NEPA) or the National Forest Management Provisions for allowing public right to appeal management actions.

I. *Temporary Forestry Related Structures.* Constructing or placing temporary structures for forestry related uses including but not limited to portable saw mill, firewood processor, shelters for equipment, or sugarhouse. For the purposes of this section, a temporary structure is defined as a structure that does not have a permanent foundation, or does not substantially alter or otherwise affect the soil profile, but only with the written consent of the Grantee, which consent shall not be unreasonably withheld, conditioned or delayed provided it shall be reasonable for Grantee to withhold consent if the design or location of such structure, in its good faith judgment reasonably exercised, substantially impairs or interferes with the conservation values set forth herein. All such structures shall be for use for materials originating on the Premises, and use of such equipment is done in such a manner as to protect the scenic values, water quality, water features and conservation values of the Premises.

J. *Motor Vehicles.* The use of motorized or power-driven vehicles

for all forest management activities in the approved Stewardship Plan for the Premises, and by the Grantor, Grantor's invitees, or Grantor's employees and/or agents as necessary to carry out activities permitted under this CR, for access by Grantee as set forth in Article VI, hereof, and for access by police, fire, emergency, public works or other governmental personnel in carrying out their official duties.

*K. Surveys and Boundaries.* Conducting field and instrument surveys of the Premises and installing necessary and appropriate monumentation, including surveys to more accurately depict perimeter boundaries, stands or forestry boundaries, or other boundaries which may be needed to properly manage the Premises and carry out or abide by the terms of this CR; to enter into agreements to resolve bona fide boundary disputes or ambiguities, with prior notice and approval (Section IV.) to Grantee, which consent shall not be unreasonably withheld.

*L. 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 Grantee or the Commonwealth takes any position on whether such permit should be issued.

*M. Other Rights.* Any activity not prohibited in Article II, or use not reserved herein is allowed only with the express written approval of the Grantee stating that such activity or use is not inconsistent with the purposes of the CR. Any request by Grantor for approv-

al to conduct, undertake or allow an activity or use not otherwise reserved shall be presented in accordance with Article IV, below.

**IV. NOTICE AND APPROVAL:** Unless otherwise provided herein or by law, the Grantor shall notify Grantee in writing, sent certified mail, return receipt requested, ninety (90) days before allowing or undertaking any uses or activities on the Premises which require the approval of the Grantee. Grantor shall also in the same manner notify the Grantee before allowing or undertaking any uses or activities which may impair the conservation interests found within the Premises or are contrary to the purposes of this CR. Notice from the Grantor 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 the CR. Grantor shall submit to Grantee such plans and other information as Grantee shall reasonably require in determining whether the use or activity is consistent with the purposes of this CR. Grantor shall also provide the State Forester or his designated representative a copy of all notices. Approval from the State Forester is also required as indicated in above sections. All communications in this regard should be mailed to:

Conservation Commission  
Town of XXXX  
[Insert Appropriate Address]

with copies to:

Board of Selectmen  
Town of XXXX  
[Insert Appropriate Address]

and

To Grantee: Franklin Land Trust, Inc.  
P.O. Box 450  
Shelburne Falls, Massachusetts 01370

or, if said notice is returned to the sender as undeliverable, a good faith effort shall be made to ascertain a valid address and notice to be re-sent.

With respect to those activities or uses that require Grantee's approval, Grantee shall grant or withhold its approval in writing within ninety (90) days of receipt of Grantor's written request therefore. Grantee's approval may be withheld only upon a reasonable determination by the Grantee, that the action as proposed would be inconsistent with the purposes of this CR, would materially impair the conservation purposes to be protected by this CR, or would violate any statute, ordinance, bylaw, rule or regulation. Failure of Grantee to respond within ninety (90) days of receipt of written request from Grantor shall be deemed to constitute approval of Grantee, provided that: (i) the request sets forth the provisions of this paragraph relating to approval having been deemed given after the passage of time; and (ii) such activities are not prohibited in Article II or clearly contrary or detrimental to the purposes of this CR. If both of these provisos are not satisfied, Grantee approval cannot be assumed or claimed by the Grantor. In the event the activity proposed is necessary to address an emergency situation, either to avert environmental degradation, ecological damage or risk to public health and safety, Grantee shall respond forthwith and with all deliberate speed.

## V. LEGAL REMEDIES OF THE GRANTEE

The rights hereby granted shall include the right to enforce this

CR 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 its 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. 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.

### A. Costs of Enforcement

Grantor covenants and agrees to reimburse to Grantee for all reasonable costs and expenses (including without limitation reasonable attorneys fees) incurred by the Grantee in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof. The provisions of this paragraph shall not preclude any other remedies available at law or in equity.

### B. Acts Beyond The Grantor's Control

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of such an occurrence, the parties will co-

operate in the restoration of the Premises, if it is determined that restoration is desirable and feasible.

### C. Non-Waiver

If for any reason there is a failure of the Grantee to enforce the terms of this CR, it shall not result in a waiver of the right to enforce.

## VI. RIGHT OF ACCESS; INSPECTION

This Conservation Restriction does not grant to the Grantee, to the public, or to any other person or entity any right to enter upon the Premises, except as follows:

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 Grantors also grant to the Grantee, after notice of a violation and failure of the Grantors 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.

## VII. COSTS, TAXES, LIABILITY

### A. Taxes

Grantor shall pay and discharge when due any and all real property taxes and other assessments levied by competent authority on the Premises.

### B. 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.

## VIII. EXTINGUISHMENT, EMINENT DOMAIN, REVERSION OF FUNDS

The grant of this CR gives rise to a real property interest immediately vested in the Grantee which has a fair market value equal to the amount by which the CR reduces, at the time of the grant, the appraised fair market value of the Premises as if unrestricted. Such proportionate value of this CR at the time of the grant is [*Insert Percentage: i.e., ninety*] percent (??.??%), which proportionate value shall remain constant.

### A. Extinguishment

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 Massachusetts Secretary of the Executive Office of Energy and Environmental Affairs and the Secretary of the United States Department of Agriculture as provided in paragraph B below. 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 and only 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. Reversion of Funds

The Grantee acknowledges that this CR was acquired with Federal funds under the XXX Forest Program), and that the interest acquired cannot be sold, exchanged, released, or otherwise disposed, except in accordance with the XXX Forest Program grant requirements, and unless the United States is reimbursed the market value of the CR at the time of disposal; provided, however, the United States Secretary of Agriculture may exercise discretion to consent to such sale, exchange, release or disposition upon the State's tender of equal valued consideration acceptable to the Secretary, or as the Secretary of Agriculture otherwise approves. 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, Grantee shall be entitled to its 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, and subject to the provisions of the XXX Forest Program and subject also to the terms of any gifts, grants or funding requirements. The Grantor and Grantee 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 Grantee shall pursue their remedies separately.

#### C. Proceeds

The recovery of proceeds by the Grantor and Grantee, if any, shall be governed by the proportionate value of the CR, as hereinabove defined, as determined by an appraisal at the time of the extinguishment.

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 on the basis of the value of the Premises as restricted by this CR, then the proceeds from such taking shall be payable in their entirety to Grantor. Grantee shall use any proceeds in a manner consistent with this CR and the Forest Legacy Program.

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

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in shares equal to such proportionate value. 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 set forth herein. and in accordance with paragraph B above, subject however, to any applicable law which expressly provides for a different disposition of the proceeds and only after complying with the terms of any gift, grant or funding requirements.

### X. RUNNING OF THE BURDEN; EXECUTION OF INSTRUMENTS; RUNNING OF THE BENEFIT; ASSIGNABILITY; BINDING EFFECT; AMENDMENT AND DURATION

#### 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. Running of the Benefit; Assignability

The benefits of this Conservation Restriction run to the Grantee, are not appurtenant to any particular parcel of land, and shall be in gross and shall not be assignable by the Grantee, except as follows: 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, 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, MGL c. 184 sec. 32, and the Forest Legacy Program; provided further that such entity has among its purposes the conservation and preservation of land or water and agrees to and is capable of enforcing the conservation purposes of this CR. Any such assignee shall have the like power of assignment.

#### C. Binding Effect

This CR and all terms and provisions hereof shall be deemed to run with the land and be binding upon the Grantor and Grantee, and the successors and assigns of both the Grantor and Grantee.

#### D. Amendment and Duration

This CR may only be amended by the Grantee, or amended by the parties, consistent with G.L. Chapter 184, Section 32, Article 97 of the Amendments to the Massachusetts Constitution, and the XX Forest Program. No amendment may be made that will be inconsistent with the purposes of this CR, affect its perpetual dura-

tion thereof, or adversely materially affect any of the conservation values of the Premises. Any such amendment shall be approved by the Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs, the Secretary of the United States Department of Agriculture, and recorded with the Franklin Registry of Deeds where the land lies.

#### E. Execution of Instruments

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of themselves and their successors and assigns, appoint the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on her behalf. Without limiting the foregoing, the Grantor and their successors and assigns agree themselves to execute any such instruments upon request.

#### F. 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 he will not grant title, and the Grantee agrees that it will not accept title, to any part of the Premises without having first assigned this Conservation Restriction to ensure that merger does not occur.

### XI. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this CR in any deed or other legal instrument by which it divests the Grantor of any interest in the Premises, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of such transfer at least thirty (30) days prior to the date of such transfer. Grantor shall also provide the State For-

ester or his designated representative a copy of all such notices. Failure to do any of the above by the Grantor or Grantee, as the case may be, shall not impair this CR or its enforceability in any manner or the effectiveness of such transfer or leasehold interest.

## XII. SEVERABILITY

If any Article or provision of this CR shall be held to be unenforceable by any court of competent jurisdiction, this CR shall be construed as though such section had not been included in it. If any Article or provision of this CR shall be susceptible of two constructions, one of which would render such Article or provision invalid, then such Article or provision shall be given the construction that would render it valid. If any Article 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, the requirements of the Forest Legacy Program established pursuant to Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990, Public Law 101-624:104 stat. 3359, and G.L. Chapter 184, Section 32.

## XIII. MISCELLANEOUS

A. Pre-existing Public Rights: Approval of this CR pursuant to G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existing 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 CR.

B. Excise Stamps: No Massachusetts deed excise tax stamps are required by G.L. Chapter 64D, Section 1, as the [Commonwealth] [Municipality] is a party to this instrument.

C. Matters of Record: This CR is conveyed subject to and together with matters of record at the Franklin Registry of Deeds.

D. Homestead: All Grantor's rights as to the estate of homestead as to the Premises described in Exhibit "A" are hereby waived and subordinated to this Conservation Restriction and particularly to Article VIII. B. above. Grantor specifically reserves the estate of homestead as to the XXX acres not herein conveyed.

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

## XV. EFFECTIVE DATE

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 appropriate Registry of Deeds. The Grantee shall record this instrument in timely manner in the Franklin Registry of Deeds.

IN WITNESS WHEREOF, [*Insert Grantor's Name*] has/have caused these presents to be signed, acknowledged and delivered as [*Insert Grantor's Name*], this [ ] day of [ ], 202\_.

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[*Insert Grantor's Name*], as aforesaid

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF \_\_\_\_\_

On this [ ] day of [ ], 202\_, before me, the undersigned notary public, personally appeared [*Insert Grantor's Name*], who provided to me through satisfactory evidence of identification, which was personal knowledge/a [\_\_\_\_\_] Driver's License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she/he signed it voluntarily for its stated purpose as [*Insert Grantor's Name*].

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires \_\_\_\_\_

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ACCEPTANCE OF CONSERVATION RESTRICTION

The undersigned Conservation Commission of the Town of [*Insert Name of Municipality*], pursuant to a VOTE taken at a Public Meeting duly held on \_\_\_\_\_, 202\_, authorizing the acceptance of the foregoing Conservation Restriction, hereby accept said Conservation Restriction pursuant to Section 8C of Chapter 40 of the General Laws of Massachusetts.

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

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

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

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APPROVAL AND ACCEPTANCE BY SELECT BOARD

I, \_\_\_\_\_, Clerk of the Town of [*Insert Name of Municipality*], hereby certify that at a public meeting of the [*Insert Name of Municipality*] Board of Selectmen duly held on \_\_\_\_\_, 202\_, the Board voted to approve and accept the foregoing Conservation Restriction, pursuant to Section 32 of Chapter 184 and Section 8C of Chapter 40 of the General Laws of Massachusetts.

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

CLERK

TOWN OF [*Insert Name of Municipality*]

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ACCEPTANCE OF GRANT

The above Conservation Restriction accepted this \_\_\_\_ day of \_\_\_\_\_, 202\_.

FRANKLIN LAND TRUST, INC.

By \_\_\_\_\_  
Thomas S. Curren, Executive Director  
For authority see Book 4678, Page 35.

THE COMMONWEALTH OF MASSACHUSETTS

Franklin, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 202\_, before me, the undersigned notary public, personally appeared Thomas S. Curren, Executive Director, proved to me to be the person whose name is signed above through satisfactory evidence of identification which was personal knowledge, and acknowledged to me that he signed it voluntarily for its stated purpose as Executive Director of the Franklin Land Trust, Inc., before me,

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires \_\_\_\_\_

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APPROVAL BY SECRETARY OF THE  
MASSACHUSETTS EXECUTIVE OFFICE OF  
ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

The undersigned, [*Insert Name of EEA Secretary: i.e., Richard K. Sullivan*], 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 [*Insert Name of Municipality*] has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 202\_

\_\_\_\_\_  
Richard K. Sullivan  
Secretary of Energy and Environmental Affairs

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COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

On this day of \_\_\_\_\_, 202\_, before me, the undersigned notary public, personally appeared [*Insert Name of EEA Secretary: i.e., Richard K. Sullivan*], who proved to me through satisfactory evidence of identification, which was personal knowledge of identity, 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 \_\_\_\_\_

\*\*\*

EXHIBIT [A]  
(*Metes and Bounds Description or Survey of the Premises*)

EXHIBIT [B]  
(*Metes and Bounds or Survey Sketch of the Exclusion, if any*)

EXHIBIT [C]  
(*Sketch of areas in compatible non-forest use, if any*)