*This CR excerpt is the handout for Session 1G, Analyzing Exciting Boilerplate Clauses in CRs*

**I. PURPOSE**

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition and to prevent any use or change that would materially impair or interfere with its conservation and preservation values herein described (“Conservation Values”).

The Conservation Values include the following:

1. Protection of Wildlife Habitat. The entire Premises is part of an extensive, forest block containing diverse wildlife habitat and open space within the meaning of the Code. The entire property is identified as BioMap 2[[1]](#footnote-1) Critical Natural Landscape by the Massachusetts Natural Heritage and Endangered Species Program and provides habitat for wide-ranging native species including grouse, turkey, migratory songbirds, birds of prey, moose, deer, bear, coyote, beaver, otter, mink, muskrat, fishers, turtles, and amphibians.
2. Prime Forests. Nearly the entire property is classified by the Department of Natural Resources Conservation at the University of Massachusetts at Amherst as Prime 2 forest, meaning the land is some of the most productive forest in the state when evaluated for timber productivity. This classification considers topography, land cover, and the presence of wetlands and watercourses.
3. Climate Change Resilience. The property is noted for its climate change adaptation and resilience characteristics, particularly its calcareous soils and role in maintaining connectivity among in-tact wildlife habitat.
4. Government Purpose. The protection of the Premises is pursuant to a clearly delineated state conservation policy and will yield significant public benefit in accordance with 26 U.S. C. 170(h)(4)(A)(iii)(II) acknowledged by a determination of eligibility by the Massachusetts Conservation Land Tax Credit Program, 301 CMR 14.00.

The protection of the above enumerated Conservation Values is in fulfillment of, and consistent with the corresponding conservation purposes that are required to be protected under the Code.

These Conservation Values of the Premises and the public benefits of this Conservation Restriction are described in a Baseline Documentation Report (BDR) to be kept on file at the office of Grantees, with a copy provided to the Grantor, and incorporated herein by this reference. Grantor and Grantees hereby acknowledge that the BDR provides an accurate representation of the condition of the Premises and the Conservation Values at the time of the granting of this Conservation Restriction and is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction.

**II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO; and PERMITTED USES:**

1. Prohibited Acts and Uses.

Subject to the exceptions set forth in section B of this Article II (Permitted Uses and Exceptions to Otherwise Prohibited Acts and Uses), the Grantor will neither perform nor allow others to perform the following acts and uses which are hereby prohibited on, above, and below the Premises:

1. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel including transferring any development rights from the Premises to any other location. Grantor may subdivide and convey the excluded portion of the property separately from the premises encumbered by this Conservation Restriction.
2. The use of the Premises for more than *de minimis* commercial recreation, business, residential or industrial use.
3. Permitted Uses and Exceptions to Otherwise Prohibited Acts and Uses.

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not materially impair the Conservation Values or purposes of this Conservation Restriction.

1. Permits. The exercise of any permitted use by Grantor under this Paragraph B shall be in compliance with current zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.

1. Other. All acts and uses not prohibited in Paragraph A are permissible so long as they do not materially impair the Conservation Values or purposes of this Conservation Restriction.
2. Legal and Injunctive Relief

The rights hereby granted to the Grantees shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain immediate injunctive and other equitable relief against any violations, including without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being hereby acknowledged that Grantees 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 Granteesfor the enforcement of this Conservation Restriction. Grantees agree 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 Grantees determine there is no ongoing diminution of the conservation values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked. Grantees agree that they shall not duplicate enforcement efforts and shall make every effort to cooperate with each other and to act jointly.

1. Estoppel Certificates.

Upon request by Grantor, Grantee shall within forty-five (45) days execute and deliver to Grantor any document, including an estoppel certificate, that certifies the status of Grantor's compliance with any obligation of Grantor contained in this Conservation Restriction, or that otherwise evidences the status of this Conservation Restriction, as may reasonably be requested by Grantor.

1. Non Merger. The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.
2. Amendment. If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General laws of Massachusetts. Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, if applicable, and any gifts, grants or funding requirements. Any such amendment shall be recorded in the Hampshire County Registry of Deeds.
3. Effective Date. This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative Approvals required by Section 32 of Chapter 184 of the M.G.L. have been obtained, and it has been recorded in the Middlesex County Registry of Deeds in a timely manner.
4. Acts of Nature Beyond Grantor's Control.

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

Nothing herein should be construed to preclude or limit Grantor’s and/or Grantees rights to recover damages from any third party for trespass or other violation of their respective rights in this Conservation Restriction and in the Premises. Each party hereby acknowledges the other’s standing to pursue such damages, and each party is obligated hereby to cooperate with the other’s action to recover such damages.

Executed under seal this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201X

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

Grantor

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,201X.

LAND TRUST, INC.

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

President

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

Treasurer

APPROVAL OF SELECTBOARD

We, the undersigned, being a majority of the Selectboard of the Town, Massachusetts, hereby certify that at a public meeting duly held on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201X, the Selectboard voted to approve the foregoing Conservation Restriction to Land Trust, Inc., pursuant to M.G.L. Chapter 184, Section 32.

Selectboard Members

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APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS

THE COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to Hilltown Land Trust, Inc., has been approved in the public interest pursuant to M.G.L. Chapter 184, Section 32. *Any proposed modification, release, or partial release to this conservation restriction must be approved by the then-acting Secretary of EOEEA in accordance with applicable law and policy that maintain the Conservation Values of this Conservation Restriction.*

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201X \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Matthew A. Beaton

Secretary of Energy & Environmental Affairs

1. BioMap2 is a currently recognized identification of lands of importance to a diversity of species and ecosystems, published by the Massachusetts Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program, and The Nature Conservancy. [↑](#footnote-ref-1)