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Grantor: Town of Lenox
Grantee: Berkshire Natural Resources Council, Inc.
Town of Lenox Conservation Commission
Address of Premises: Reservoir & West Mountain Roads
Lenox and Richmond, MA as described herein

Title Reference:
Recorded in the Middle Berkshire Registry of Deeds
Book 531, Page 545, dated December 31, 1947
Book 5880, Page 148, dated December 13, 2016

CONSERVATION RESTRICTION

from

TOWN OF LENOX

to

TOWN OF LENOX, Acting by and through its CONSERVATION COMMISSION

and

BERKSHIRE NATURAL RESOURCES COUNCIL, INC.

THIS GRANT DEED OF CONSERVATION RESTRICTION is made this 14th day of December, 2016 by the TOWN OF LENOX, by and through its Board of Selectmen, acting as the Board of Water Commissioners, with an address at 6 Walker Street, Lenox, MA 01240, its successors and assigns ("Grantor"), to the TOWN OF LENOX, acting by and through its Conservation Commission ("Conservation Commission") by authority of Massachusetts General Laws, Chapter 40, Section 8C, of the same address as Grantor, and BERKSHIRE NATURAL RESOURCES COUNCIL, INC. ("BNRC"), a Massachusetts charitable

corporation, with an address at 20 Bank Row, Pittsfield, MA 01201, their successors and permitted assigns (collectively, the "Grantee").

For Grantor's title, see deed of Lenox Water Company dated December 31, 1947, recorded in the Berkshire Middle District Registry of Deeds in Book 531, Page 545 and additional deeds of other parties, more particularly described in Exhibit A attached hereto and incorporated by this reference, also referenced by the Massachusetts Department of Environmental Protection (MassDEP) as Upper Root Reservoir (1152000-04S) and Lower Root Reservoir (1152000-01S).

WITNESSETH:

WHEREAS, Grantor is charged with the management, improvement and control of certain land, water rights and other property acquired, taken, and/or held by the Town of Lenox for Water Supply Functions as that term is defined and used herein; and

WHEREAS, Grantor, owner of a parcel of land located in the Towns of Lenox and Richmond, Berkshire County, Commonwealth of Massachusetts, constituting approximately 965 acres, said parcel particularly described in Exhibit A-1, attached hereto and incorporated herein (the "Premises"), desires to convey to Grantee, in perpetuity and exclusively for conservation purposes pursuant to Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws, for ten dollars (\$10.00) and other consideration, a perpetual conservation restriction on the Premises; and

WHEREAS, Berkshire County in general and the Towns of Lenox and Richmond in particular, have in recent years come under increasing development pressure, and such development destroys or otherwise severely impacts the natural resources, scenic beauty, and open character of the area; and

WHEREAS, the Premises possess significant water supply, native habitat, wildlife, forest, recreational, natural, scenic and open space values (collectively, "Conservation Values") of great importance to the Grantor and the inhabitants of the Towns of Lenox and Richmond and Berkshire County; and

WHEREAS, the Premises contain two reservoirs (Upper and Lower Root Reservoirs) that are used as the primary public drinking water supply for the Town of Lenox; and

WHEREAS, the protection of the Premises will accomplish the primary purpose of helping to safeguard the Premises for water supply purposes and functions; and

WHEREAS, the Premises consist of upland forest and associated wetlands extending approximately two miles along the ridgeline of Lenox Mountain, comprising the bulk of the watershed for the two aforementioned reservoirs; and

WHEREAS, the Premises include additional watershed and water resources that have historically been used for water supply purposes and functions, and which may be used in the future to supplement the aforementioned reservoirs; and

WHEREAS, the Premises provide a relatively undeveloped forested habitat for native wildlife and plant communities, including stream and wetland habitat for waterfowl and freshwater fish communities; and

WHEREAS, records of the Massachusetts Natural Heritage and Endangered Species Program note that the Premises contain habitat for three state-listed species (the Eastern Veined White Butterfly *Pieris oleracea*, Wood Turtle *Glyptemys insculpta*, and Jefferson Salamander *Amystoma jeffersoniana*) and several potential vernal pools; and

WHEREAS, the Premises are classified entirely as BioMap Core Habitat for 22 rare plant species, 2 rare invertebrate species, 8 rare vertebrate species and 4 exemplary natural communities, a classification based on the findings of "BioMap 2: Conserving the Biodiversity of Massachusetts in a Changing World" published by the Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries and Wildlife and the

Massachusetts Program of The Nature Conservancy (2010), and protection of the Premises will further the protection of biodiversity on the Premises; and

WHEREAS, the Premises' upland forest consists of mixed hardwoods and conifers interspersed with wooded swamps and areas of open marsh, part of which forest habitat is located within an area identified as Forest Core in "BioMap 2," Forest Core being identified in said "BioMap 2" as being the "best example of large, intact forests that are least impacted by roads and development, providing critical habitat for numerous woodland species," (BioMap 2, DFW & TNC, 2010), and the protection of the Premises will contribute to the preservation of some of the Commonwealth's most viable natural communities and habitat; and

WHEREAS, the Premises are classified as Living Waters Critical Supporting Watershed, a classification based on the findings of "Living Waters: Guiding the Protection of Freshwater Biodiversity in Massachusetts" published by the Natural Heritage & Endangered Species Program, Massachusetts Division of Fisheries and Wildlife (2003) and protection of the Premises will help further protect the freshwater resources on, and related to, the Premises; and

WHEREAS, the Premises comprise the central portion of a bloc of land, approximately 4,100 acres in size, on Lenox Mountain, that has been the object of land protection efforts for over 50 years, and the Premises are adjacent or in close proximity to 770 acres of protected conservation land owned by Berkshire Natural Resources Council, 1,291 acres owned by Massachusetts Audubon Society, and another 565 acres known as Kennedy Park owned by the Grantor, and the protection of the Premises will help further protect this 4,100 acre bloc of open space, recreation land, fish and wildlife habitat and public water supply watershed from development; and

WHEREAS, portions of the Premises are located in an area designated as Scenic in the Massachusetts Geographic Information System (MassGIS), a designation based on findings of the "Massachusetts Landscape Inventory" published by the Department of Environmental Management (DEM) (1981), scenic landscapes being defined as areas of important visual

quality in the Commonwealth and protection of the Premises will help to preserve the scenic quality of this region; and

WHEREAS, the Premises are visible from numerous travelled public ways, including Routes 7, 20 and 41, state highways, as well as numerous municipal public ways in the City of Pittsfield, the Towns of Lenox and Richmond, and elsewhere, and protection of the Premises will protect scenic vistas available to the general public from said travelled public ways and will add to the value of Lenox Mountain as a scenic resource for Berkshire County and the Commonwealth of Massachusetts; and

WHEREAS, the portion of the Premises located in the Town of Lenox is situated almost entirely within an area delineated by the Town of Lenox as "Scenic Mountain Act Mapped Mountain Regions," pursuant to the Town's adoption and implementation of the Scenic Mountains Act (MGL, Ch. 131, Section 39A), as amended at Special Town Meeting, December 18, 1985 and as approved by the Commonwealth's Department of Conservation and Recreation on January 29, 2009, and protection of the Premises will further the goals of said Act; and

WHEREAS, the portion of the Premises located in the Town of Richmond is situated entirely within an area delineated by the Town of Richmond as "Scenic Mountain Map," pursuant to the Town's adoption of the Scenic Mountains Act (MGL, Ch. 131, Section 39A) at Town Meeting, April 26, 1976 and as approved by the Commonwealth's Department of Environmental Management effective April 5, 2001, and protection of the Premises will further the goals of said Act; and

WHEREAS, the Premises are located within the Stockbridge Yokun Ridge Reserve Forest Legacy Area, as designated by the United States Secretary of Agriculture pursuant to Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (P.L. 101-624:104 stat. 3359), also referred to as the 1990 Farm Bill, and preservation of the Premises will contribute to purposes of the Forest Legacy Program in the Commonwealth of Massachusetts; and

WHEREAS, the protected conservation land adjacent or in close proximity to the Premises is available for non-motorized public recreation under management of the Grantor, BNRC and the Massachusetts Audubon Society, protection of the Premises will complement and add value to the use by the public of Lenox Mountain as a passive recreational resource managed to allow for such uses while protecting significant natural resources, including public water supply watershed, on Lenox Mountain; and

WHEREAS, the Grantor and the Grantee agree that the specific Conservation Values of the Premises are set forth in a report on file in their respective offices and incorporated herein by this reference (hereinafter, the "Baseline Documentation Report"), which report consists of documentation that Grantor and Grantee agree provides, collectively, an accurate representation of the condition and the Conservation Values of the Premises at the Effective Date of this Conservation Restriction, and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Conservation Restriction; and

WHEREAS, Grantor intends, as owner of the Premises, to convey to the Grantee the nonexclusive (*i.e.*, subject to Grantor's reserved rights, in Paragraph 4 below) right to preserve and protect the Conservation Values of the Premises in perpetuity; and

WHEREAS, the Conservation Commission and BNRC have both approved and signed a Memorandum of Understanding, as may be amended by the parties, a copy of which is on file in their respective offices, which Memorandum consists of a prescription of principles and practices that the Conservation Commission and BNRC agree will aid in the administration and enforcement of the Conservation Restriction; and

WHEREAS, the Lenox Conservation Commission has been duly established by the Town of Lenox pursuant to the laws of the Commonwealth of Massachusetts and in particular Section 8C of Chapter 40 of the General Laws for the purpose of promotion and development of the natural resources and for the protection of watershed resources of said Town; and

WHEREAS, BNRC is a charitable corporation formed to protect and preserve the natural beauty and ecological integrity of the Berkshires for public benefit and enjoyment; and

WHEREAS, the Town of Lenox, by action of its Board of Selectmen, pursuant to the vote taken under Article 22 of the 2013 Annual Town Meeting on May 2, 2013, has determined that the grant of the within Conservation Restriction, the terms and conditions of which are set forth below, would be in the best interests of the Town;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the Commonwealth of Massachusetts and in particular Sections 31-33 of Chapter 184 of the General Laws, Grantor hereby voluntarily grants and conveys for consideration of ten dollars (\$10.00) to the Grantee and its successors and permitted assigns, with quitclaim covenants, a Conservation Restriction in perpetuity and for conservation purposes, over the Premises of the nature and character and to the extent hereinafter set forth ("Conservation Restriction").

1. Grant; Purpose. This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. Grantor, acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws, grants, with quitclaim covenants, to Grantee, in perpetuity and exclusively for conservation purposes, a conservation restriction upon the Premises, on the terms and conditions set forth herein. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in their natural, scenic, and open space condition for conservation purposes including, but not limited to, water supply, fish and wildlife conservation, native habitat protection, forest management, passive recreation, preservation of scenic beauty, 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, i.e. its Conservation Values, and to prevent any use of the Premises that will materially impair or interfere with the Premises' Conservation Values and the above stated

purposes of water supply, fish and wildlife conservation, native habitat protection, forest management, passive recreation and preservation of scenic beauty of the Premises and the Premises' natural resources and associated ecosystems.

2. Rights of Grantee. Subject to the reserved rights set forth in paragraph 4 below, to accomplish the purpose of this Conservation Restriction, the Grantor hereby grants to the Grantee the right to prevent any activity on or use of the Premises that is inconsistent with the purpose of this Conservation Restriction and to require the restoration of such areas or features of the Premises that may be damaged by an inconsistent activity or use. The Grantor and Grantee acknowledge and agree that this Conservation Restriction is subject to the authority, rights, and obligation of the Grantor to provide continuous adequate service to water supply customers under routine and emergency operating conditions, including emergencies concerning the contamination of sources of supply, failure of the distribution system and shortage of supply, and to comply with all state and federal statutes and regulations regarding water supply purposes and functions (hereinafter collectively referred to as "Water Supply Functions"). Grantor and Grantee understand and agree that this Conservation Restriction does not seek to, nor shall it, impair any existing or future rights and obligations related to Water Supply Functions, including MassDEP's right of entry onto the Premises without a warrant pursuant to 310 CMR 22.18.

3. Prohibited Uses. Subject to the reserved rights set forth in paragraph 4 below, the following are prohibited and neither the Grantor nor the successors or assigns of the Grantor will perform or permit others to perform the following acts or uses on, over or under the Premises:

- (a) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, sign, fence, billboard or other advertising display, antenna, utility pole, tower,

- conduit, line, communication tower, wind turbine, or other temporary or permanent structure or facility on, above or under the Premises;;
- (b) using or occupying any temporary structure, trailer, vehicle, tent, shack or outbuilding as a residence, either permanently or temporarily, on the Premises;
 - (c) mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit, including subsurface extraction of same or otherwise making topographical changes to the area;
 - (d) placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or the installation of underground storage tanks;
 - (e) cutting, removing or otherwise destroying trees, grasses, or other vegetation;
 - (f) using, parking or maintaining boats, camping trailers, motor homes, motorized vehicles or non-operative motor vehicles on the Premises;
 - (g) using automobiles, trucks, motorcycles, motorized trail bikes, snowmobiles, or any other motorized vehicles on the Premises with the exception of those necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or motorized wheelchairs or other mobility devices for the disabled as required by law;
 - (h) 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 for the purpose of development or transferring development rights to any other property, whether or not adjacent to the Premises or for use in calculations involving development of this or any other property;

- (i) commercial, industrial or institutional use;
- (j) activities detrimental to drainage, flood control, archaeological conservation, water conservation, erosion control, soil conservation or any activity that impairs water quality; and
- (k) any other use of the Premises or activity which would materially impair the conservation values set forth herein; and.
- (l) any use prohibited by the Massachusetts Drinking Water Regulations at 310 CMR 22.20C (2).

4. Reserved Rights. Grantee acknowledges Grantor's pre-existing authority, rights and obligations regarding Water Supply Functions, as described in Paragraph 2, and further acknowledges that this Conservation Restriction is intended to protect the Premises' Conservation Values without impairing such Water Supply Functions. Notwithstanding any other provision of this instrument, the following rights, uses, and activities are reserved and excepted from the within grant of this Conservation Restriction by the Grantor, and shall be deemed neither inconsistent with the purpose of this Conservation Restriction, nor to materially impair the Conservation Values of the Premises:

- (a) the right to use the Premises as a public water supply for Water Supply Functions, including but not limited to the withdrawal, storage, filtration, disinfection, treatment and distribution of potable water for public use and consumption, for both non-emergency and emergency circumstances, by the Town of Lenox and its water customers, including the construction, maintenance, repair and replacement of dams and associated infrastructure and the use, construction, operation, maintenance, and repair of existing and new buildings, facilities and infrastructure directly related to operation, maintenance, or expansion of public water supply, delivery of water, and treatment of water to applicable drinking water standards subject to and in

accordance with all applicable state and federal laws, regulations, permits and other requirements, including but not limited to ongoing review or approval by the Commonwealth's Department of Environmental Protection, and continued enforcement of the Surface Water Supply Protection regulations delineated in 310 CMR 22.20B, as applicable.

Said uses may include, but shall not be limited to:

- i) Construction, installation, maintenance, repair and replacement of pumphouses and appurtenant facilities and associated underground and aboveground utilities to service said pumphouses and facilities, as required for the activities authorized in the prior subparagraph;
- ii) Construction, installation, maintenance, repair and replacement of facilities including expanded and/or new reservoirs and wells and associated infrastructure, including associated underground distribution pipes and water storage tanks in order to improve or increase water production, improve or expand delivery and storage, or to provide treatment, disinfection or filtration of water supplies, for both non-emergency and emergency situations, in order to meet Grantor's Water Supply Functions or as needed for compliance with applicable Federal or State laws and regulations;
- iii) Construction, installation, maintenance, repair and replacement of equipment and associated infrastructure for the production of renewable energy used to provide electricity for facilities and equipment located on the Premises that are necessary for the production, treatment and delivery of potable water. While the intent of this reserved right is to allow for the production of renewable electricity only on the Premises for purposes of producing drinking water and not for other municipal purposes, it is understood that from time to time surpluses may be created by high

electricity production rates or by increased efficiencies in the water production equipment, and that from time to time reasonable energy surpluses above the needs of drinking water production may be delivered to the electrical grid.

Within the "Water Supply Operations Envelope" (hereinafter the "Operations Envelope"), which is more particularly shown in Exhibit A-3, attached hereto and made a part hereof, the above-mentioned activities, together with and including management of vegetation and nuisance animal populations, may be pursued without notice to or approval of the Grantee. The Grantor shall make good-faith efforts to construct all water supply infrastructure within the Water Supply Operations Envelope when feasible.

Construction (or expansion) of water supply infrastructure, including but not limited to new dams, reservoirs, water storage tanks and wells, together with associated infrastructure (including activities related to planning and feasibility testing for said improvements), and the maintenance, repair and replacement thereof, may be conducted outside the Operations Envelope following written notice to the Grantee, which shall be provided no fewer than ninety (90) days prior to the start of construction or the associated activity. The boundaries of the Operations Envelope shall be modified to include said improvements. The new boundaries shall be negotiated in good faith by the Grantor with Grantee, and shall be designed to conform closely to the footprint of the new improvement(s) while allowing enough space on the ground to permit practical maintenance and operation of the new improvement(s). Negotiation of new boundaries is not subject to the

provisions of Paragraph 12 below and the Grantor retains the final decision making authority over any changes needed to carry out Water Supply Functions. Modification of the boundaries as described in this subparagraph shall represent an administrative modification, and shall not constitute an amendment to this Conservation Restriction pursuant to paragraph 8 below. If such modification occurs, the parties shall prepare a revised Exhibit A-3 for recordation.

Grantor shall design, construct, and maintain said facilities so as to minimize adverse impacts upon the Conservation Values protected by this Conservation Restriction, and any disturbance of the surface due to installation of underground systems or other activities shall be restored as soon as reasonably possible to the approximate condition prior to said disturbance.

Grantee acknowledges that from time to time circumstances may demand that Grantor take significant action to repair, remediate, restore or otherwise address Water Supply Functions or other management issues on the Premises outside the Operations Envelope in which time is of the essence and requirements of notice to Grantee might inhibit or prevent timely action by the Grantor. Grantor agrees to take such actions without providing the otherwise-required notice only in circumstances in which, by its own good-faith judgment, Grantor determines that the delay created by provision of notice would interfere with Water Supply Functions on the Premises or would adversely impact the conservation purposes of this Conservation Restriction. In such circumstances, Grantor shall provide notice to the Grantee of its actions within forty-eight (48) hours of commencement. Notwithstanding the notice provisions specified herein, in any situation where the Water Supply Functions warrant prompt action, no prior notice shall be required.

- This paragraph shall be liberally construed for the purposes of Water Supply Functions but narrowly construed for any other appurtenant or auxiliary purpose, and shall not authorize facilities or activities that are not specifically required by law or that are not reasonably subsidiary to meet Water Supply Functions. By way of example, construction of facilities that provide office space for Water Department staff or storage space for equipment and parts related to water supply facilities are reasonably subsidiary to Water Supply Functions and shall be authorized, while general equipment or materials storage or general office facilities are tangential to public Water Supply Functions and shall not be authorized on the Premises; and
- (b) if the Grantor, with the approval of the Massachusetts Department of Environmental Protection, pursuant to M.G.L. c. 40, § 15B, and 310 CMR 22.00, or as otherwise then provided by law or regulation, elects to cease the use of or abandon the Upper Root Reservoir (1152000-04S) and the Lower Root Reservoir (1152000-01S) for public drinking water supply and is not required by MassDEP to maintain these reservoirs as emergency sources, then the rights of the Grantor with respect to the Operations Envelope described in this paragraph 4, excepting activities necessary for security, safety, maintenance, decommissioning and removal of improvements, or as otherwise provided in MassDEP's approval, shall be terminated. Upon submission of a request or application by Grantor to the Massachusetts Department of Environmental Protection to abandon or cease use of the Premises for public water supply Grantor agrees to refrain from exercising its rights to new construction during the pendency of any such request or application; and
- (c) the right to maintain existing woods roads, bridges, culverts, fences, gates, and stone walls, and the right to construct, install, maintain, repair and replace fences, gates and stone barriers thereon. Relocation of existing woods roads, and construction of new woods roads, bridges, culverts, fences, gates and stone barriers are permitted if such

activities are conducted in accordance with a Forest Management Plan pursuant to subparagraph (4)(d) below; and

- (d) the right to conduct, or permit others to conduct, sound silvicultural uses of the Premises, including management for fulfillment of Water Supply Functions, commercial harvest of forest products, and related or similar forest product operations in accordance with a Forest Management Plan (hereinafter the "Management Plan"), prepared by a Massachusetts licensed professional forester who shall certify, to the Grantee, that said Management Plan is in accordance with the terms and restrictions in this Conservation Restriction, including, but not limited to, the Guidelines and Plan Elements for the Management Plan attached hereto and made a part hereof as Exhibit B. The Guidelines and Plan Elements for the Management Plan may be changed from time to time. Any changes unrelated to Grantor's Reserved Rights in Paragraph 4 are subject to approval of the Grantor and the Grantee, in keeping with advances in the scientific knowledge of water supply protection, forest ecology, silvicultural and forest management practices. Grantor and Grantee acknowledge that the Guidelines and Plan Elements included in Exhibit B do not comprise a comprehensive protocol for management of forests for Water Supply Functions, and that said Guidelines and Plan Elements may from time to time be augmented or superseded by management practices related to Water Supply Functions. The Management Plan shall also provide for management of the Premises in a manner consistent with generally accepted Massachusetts "Best Management Practices," as those practices may be identified from time to time by appropriate governmental or educational institutions, and in a manner not wasteful of soil resources or detrimental to water quality or conservation. In circumstances in which a Forest Cutting Plan is required in order to carry out a practice included in the Management Plan a copy of said cutting plan shall be provided to the Grantee no later than thirty (30) days prior to the anticipated commencement of harvesting activities. Timber harvesting and other associated forest management

activities are a right and not a requirement of this Conservation Restriction, and nothing in the Management Plan for the Premises shall be construed as a requirement that the Grantor harvest timber. The Management Plan shall be updated every ten (10) years or sooner if new information or new knowledge is obtained that promotes or enhances the Conservation Values and sound silvicultural management of the Premises.

Notwithstanding the provisions of this subparagraph 4(d), The Grantor shall conduct all forest product-harvesting operations in accordance with applicable law; and

- (e) the right to pursue certain non-commercial and generally accepted vegetation management activities without preparation of a forest management plan, or written notice to or approval of the Grantee, including, but not limited to, the right to conduct activities related to Water Supply Functions, selectively cut or clear vegetation for habitat protection, fire protection, unpaved trail and road maintenance, insect control, disease control, mitigation or repair of damages or threats to Water Supply Functions caused by natural events, *de minimis* non-commercial uses, or otherwise to preserve the present condition of the Premises; and
- (f) the right to cut, mark, maintain and relocate trails and associated improvements such as scenic overlooks and signage for non-motorized, passive recreational use provided that cutting, marking, maintenance and relocation of trails shall be designed to avoid or minimize adverse impacts on wildlife habitat, soil and water quality, or other conservation and scenic values of the Premises; and
- (g) the right to remove gravel, sand, soil and rocks from sites on the Premises for use on the Premises for activities and purposes expressly authorized herein and in the Forest Management Plan, such as improvements to existing woods roads, or the construction of new woods roads on the Premises, provided Grantor i) uses adequate erosion control measures, and ii) restores to a natural condition all areas from which said gravel, sand, soil and rocks are removed. The restoration of the gravel, sand, soil and rock area to its natural condition shall include but not necessarily be limited to the

grading of cut banks to a natural angle of repose, the respreading of topsoil over the disturbed area, the stabilization of said area against erosion, and the revegetation of the disturbed area with native plant species. Any topsoil removed in said activities shall be stockpiled to be used in restoration of the removal site. No gravel, sand, soil, rocks or topsoil shall be removed from the Premises. This subparagraph also permits the dredging of sediments from the reservoirs and the respreading of the sediments on the Premises, all in keeping with the above requirements; and

- (h) the right to install, use, maintain, repair and replace one (1) communications tower and associated infrastructure and the right to install, use, maintain, repair and replace communications equipment thereon exclusively for use by the Grantor for purposes of public works management for the Town of Lenox, provided that Grantor shall not proceed with any process to site such a tower without first demonstrating, in writing and to the written satisfaction of the Grantee, that the desired improvement in communications cannot be achieved by installing equipment on an existing communications tower or facility elsewhere on Lenox Mountain or environs, or by use of other technology to satisfy the same purpose; and
- (i) the right of Grantor to use motorized vehicles for conducting any of the management uses and activities permitted herein, including but not limited to those related to Water Supply Functions, and as necessary for the Grantor or public safety officials to respond to emergencies or otherwise carry out their lawful duties; and
- (j) the right to control, manage and eradicate species not native to the Commonwealth of Massachusetts, in accordance with the above-mentioned Forest Management Plan, or alternatively in accordance with a Non-Native Species Control Plan, a copy of which shall be provided to the Grantee at least thirty (30) days prior to implementation, and which shall be attached to and made a part of the Forest Management Plan; and

- (k) the right to remove or control nuisance animals, and to repair or remove any damage or threat to Water Supply Functions created by said animals without notice to the Grantee; and
- (l) the right to apply pesticides and herbicides on the Premises provided such application is in compliance with all applicable law and regulation, and provided also that if such application is not part of a plan previously noticed to Grantee, that Grantor shall provide notice of the application to Grantee within forty-eight (48) hours of the application; and
- (m) with thirty (30) days prior written notice to Grantee, the right to conduct measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species; and
- (n) with thirty (30) days prior written notice to the Grantee, the right to conduct archaeological activities, including without limitation survey, excavation and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official); and
- (o) the right to construct, maintain and repair unpaved publicly-accessible parking areas not to exceed three thousand six hundred (3,600) square feet in the aggregate, in areas along or adjacent to existing ways passable by vehicle; and
- (p) the right to post a reasonable number of regulatory or interpretive signs advising the public of Grantor's ownership of the Premises and pertinent information thereto; and
- (q) the right to conduct and allow outdoor passive recreational activities, provided these activities are non-motorized, do not materially alter the landscape, do not degrade environmental quality, or do not involve more than minimal use for commercial recreational activities; and
- (r) any other non-commercial recreational activities not inconsistent with the purpose of this Conservation Restriction.

The exercise of any right reserved by Grantor under this paragraph 4 shall be in compliance with all applicable federal, state and local laws, including but not limited to regulations governing the operation of a public drinking water supply promulgated from time to time by the Massachusetts Department of Environmental Protection or other authorized regulatory agency. The inclusion of any reserved right in this paragraph 4 requiring a permit from a public agency does not imply that Grantee or the Commonwealth takes any position on whether such permit should be issued.

5. Grantee's Access Easement and Remedies. The rights hereby granted shall include the Grantee's right to enter the Premises at reasonable times and in a reasonable manner for the purpose of inspecting the same to determine compliance herewith, and the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Premises to its condition at the time of this grant (it being agreed that the Grantee has no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee. The Grantee shall further have the right to post a reasonable number of regulatory signs on the Premises for the purpose of identifying itself as the holder of this Conservation Restriction and enforcing the terms of same.

5.1 Legal and Injunctive Relief. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. 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.

5.2 Cost of Enforcement. In connection with any action to enforce the terms of this Conservation Restriction, Grantor and Grantee shall each be responsible for their own respective costs of enforcement and attorney's fees.

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.

5.3 Non-Waiver. Enforcement of the terms of this Conservation Restriction shall be at the discretion of the Grantee, and any forbearance by the Grantee to exercise its rights under this Conservation Restriction in the event of any breach of any term of this Conservation Restriction by Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Restriction or of any of the Grantee's rights under this Conservation Restriction. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

5.4 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.

5.5 Acts Beyond Grantor's Control. Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any action against Grantor for any injury to or change in the Premises resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. Notwithstanding this provision, Grantor and Grantee agree that it is desirable that they cooperate in efforts to develop and implement a reasonable

and feasible plan to mitigate any such damages, including remediation and restoration of the Premises to the extent feasible.

5.6 Access by the Public. This Conservation Restriction reaffirms the existing rights of the public to enter the Premises on foot (including ski or snowshoe) or non-motorized bicycle to pass and repass along trails, paths, roads and wood roads, consistent with 310 CMR 22.00. Upon written notice to Grantee explaining the need for its actions, Grantor may, from time to time, close or otherwise limit, regulate or redirect access to or use of certain pathways or areas of the Premises for reasons of public health or safety, compliance with best management practices for water supply lands, or any other Water Supply Function, but Grantor shall not prohibit access to the Premises entirely. The public's right to access the Premises on foot or bicycle extends to trails, roads, woods roads and other pathways, and does not constitute a general right of access to the entirety of the Premises. The public's right of access reaffirmed by this Conservation Restriction is limited to pedestrian and bicycle use for recreation, nature study, wildlife observation and quiet enjoyment, and does not include the right to pursue uses or activities including, but not limited to, camping, hunting, swimming, fishing or riding horses. Such uses are managed and enforced by the Grantor at its sole discretion and are neither permitted nor prohibited by this Conservation Restriction. Permitted activities shall not involve the use of motorized vehicles, shall not be detrimental to the purposes of or violate the terms of this Conservation Restriction, and shall not degrade the quality of the water, including creation of turbidity, or otherwise interfere with authorized uses of the Premises by the Grantor.

The location of entry points and associated improvements for public access, such as off-road parking, if necessary, shall be determined by mutual agreement of the Grantor and Grantee.

Notwithstanding the above, Grantor shall have the right to immediately limit public access to the Premises upon a substantiated finding of water quality degradation, or to carry out other Water Supply Functions. Grantor shall notify Grantee within twenty-four (24) hours of

imposing any such limitation with an explanation for the imposition. If any water quality degradation is related to public access activities, Grantor and Grantee shall cooperate to correct the cause of the degradation, and, in accordance with all applicable law and regulation, shall cooperate to reopen the Premises to permitted public access upon satisfactory completion of corrective measures.

6. Costs, Liabilities and Taxes. Grantor and Grantor's successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Premises, including the maintenance of general liability insurance coverage. Grantee shall maintain liability insurance as to its use, allowed use and / or activities on the Premises. Grantor shall keep the Premises free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor. Grantor and Grantor's successors and assigns shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Premises by competent authority (collectively "taxes"), and shall furnish the Grantee with satisfactory evidence of such payment upon request.

7. Extinguishment.

7.1 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 Energy and Environmental Affairs. 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 7.2 below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and 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.

7.2 Grantee's Receipt of Property Right. The Grantor and the Grantee agree that the donation of this Conservation Restriction gives rise for purposes of this paragraph to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction bears to the value of the unrestricted Premises. Grantor and Grantee, having reviewed previous appraisals of the Premises, agree that the value of Grantee's proportionate value of the property right is thirty-five percent (35%) of the value of the unrestricted Premises (to be divided equally between the Conservation Commission and BNRC), and further agree that this proportionate value of the property right shall remain thirty-five percent (35%).

7.3 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 accordance with paragraph 7.2 above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

8. 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, and shall be approved by the parties herein, MassDEP (unless Grantor abandons and is not required by MassDEP to maintain these reservoirs as emergency sources), and the Secretary of the Executive Office of Energy and Environmental Affairs, and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and shall comply with the provisions of any gifts, grants or funding requirements, and shall be recorded in the Berkshire County Registry of Deeds.

9. Assignability.

(a) Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

(b) Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree to execute any such instruments upon request.

(c) Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except Grantee may upon notice to and approval of Grantor, and MassDEP pursuant 310 CMR 22.24, assign this Conservation Restriction in the following instances: As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried

out; and the assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the General Laws of Massachusetts as an eligible donee to receive this Conservation Restriction directly. For as long as the Town of Lenox owns the Premises, BNRC shall not assign its interest to the Town of Lenox Conservation Commission because such an assignment would result in merger of this Conservation Restriction into the fee; any assignment by either BNRC or the Grantee shall ensure that the assignee, or at least one of the Conservation Restriction's co-holders, is independent of the fee owner of the Premises, and is not itself a fee owner. Notwithstanding anything to the contrary in this Conservation Restriction, if the Grantee, or its successor or assigns, ceases to exist or no longer qualifies as a holder of this Conservation Restriction under Section 170(h) of the Code, and has failed to transfer this Conservation Restriction under applicable state law, a court of competent jurisdiction shall transfer this Conservation Restriction to another qualified organization having similar purposes that agrees to assume the responsibilities imposed by this Conservation Restriction as such terms are defined in Section 170(h) of the Code and Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

10. Subsequent Transfers. Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to the Grantee of the transfer of any such interest, if approved by MassDEP pursuant to 310 CMR 22.24, at least twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Restriction or limit its enforceability in any way. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

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

11. Estoppel Certificates. Upon request by the Grantor, the Grantee shall within twenty (20) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

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

To Grantor:
Board of Selectmen, Town of Lenox
6 Walker Street,
Lenox, MA 01240

With copy to:

Director, Lenox Dept. of Public Works
275 Main Street
Lenox, MA 01240

To Grantee:
Chairman, Lenox Conservation Commission
Town Hall
6 Walker Street
Lenox, MA 01240

Berkshire Natural Resources Council, Inc.
20 Bank Row
Pittsfield, MA 01201

or to such other address as either party from time to time shall designate by written notice to the other or that is reasonably ascertainable.

Except as otherwise provided herein, whenever notice to or approval by Grantee is required under the provisions of this Conservation Restriction, Grantor shall notify both the Conservation Commission and BNRC in writing not less than ninety (90) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Modification(s) of a proposed activity shall not require a new ninety (90) day notice period provided the modification addresses an unforeseen circumstance and the modification does not result in a material change to the scope, design, or location of the proposed activity. Where Grantee's approval is required, the Conservation Commission, its successor or assign, shall, within forty-five (45) days of receipt of Grantor's request, notify BNRC, its successor or assign, of the Conservation Commission's decision. Following receipt of the Conservation Commission's decision, but in no case later than ninety (90) days following BNRC's receipt of Grantor's written request, BNRC shall either affirm, modify or reverse the decision of the Conservation Commission. BNRC's decision shall in all cases be final and controlling as to Grantee. In the event that no decision is received from the Conservation Commission within said forty five (45) days, BNRC shall proceed to issue its decision within ninety (90) days of receipt of Grantor's written request. Failure of BNRC to act within said ninety (90) days shall be deemed to constitute approval of either the Conservation Commission's decision, if one has been issued, or, in the absence of a Conservation Commission decision, of Grantor's request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time in the notice, the requested activity is not prohibited herein, and the activity will not materially impair the conservation values or purposes of this Conservation Restriction.

The same hierarchy of decision-making described above (though not necessarily the same timeline) shall apply to all matters requiring response or action from the Grantee,

including, but not limited to, administrative responses, resolution of disputes between Grantor and Grantee, enforcement, remedy of violations, and amendment.

13. Non Merger. At the time of this grant, the Conservation Commission, one of the Grantees that co-holds this Conservation Restriction, being a body of the Town of Lenox, is also a fee owner of the Premises. The parties agree upon a process of decision-making in paragraph 12 above that ensures that this Conservation Restriction will be enforceable by a non-fee owner of the Premises. The parties intend that the Conservation Commission's role as Grantee shall not constitute or result in merger of the Conservation Restriction into the fee. Further, the parties intend that any future acquisition or transfer 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, with the above-noted exception of the Conservation Commission, 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.

14. Effective Date. This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been timely recorded in the Berkshire County Registry of Deeds.

15. Recordation. The Grantees shall record this instrument in timely fashion in the official records of Berkshire County Registry of Deeds and may re-record it at any time as may be required to preserve its rights in this Conservation Restriction.

16. General Provisions.

(a) Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of the Grantee. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Restriction shall not be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 8.

17. Miscellaneous.

(a) Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

(b) Attachments. Attached hereto and incorporated herein by reference are the following:

Signature pages:

Grantor (Town of Lenox)

Grantee Acceptance (Conservation Commission)

Grantee Acceptance (BNRC)

Approval by Lenox Board of Selectmen

Approval by Richmond Board of Selectmen

Approval of the Secretary of Energy and Environmental Affairs

Exhibits:

Exhibit A-1, Legal Description

Exhibit A-2, Sketch Plan

Exhibit A-3, Sketch of Operations Envelope

Exhibit B, Forest Management Plan Guidelines and Required Plan Elements

Certified Copies of Vote(s):

Exhibit C-1, Article 22, 2013 Annual Town Meeting

Exhibit C-2, Article 28, 2017 Annual Town Meeting

Exhibit D, Department of Environmental Protection Approval with Conditions

No documentary stamps are required pursuant to G.L.c. 64D, § 1.

TO HAVE AND TO HOLD unto the Grantee, their successors and assigns forever.

[Signature Pages Follow]

IN WITNESS WHEREOF Grantor and the Grantee have set their hands under seal on the day and year first above written, Grantor having voted to execute this Conservation Restriction at a public meeting duly held on DECEMBER 14, 2016, pursuant to the vote taken under Article 22 of the 2013 Annual Town Meeting, a certified copy of which is attached hereto.

TOWN OF LENOX,
By and Through Its Board of Selectmen,
Acting as the Board of Water Commissioners
Grantor

Warren Archey, Chair

Ken Fowler

David Roche

Ed Lane

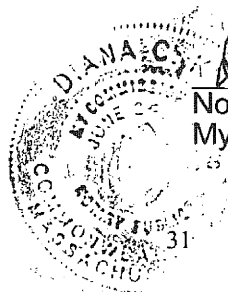
Channing Gibson

COMMONWEALTH OF MASSACHUSETTS

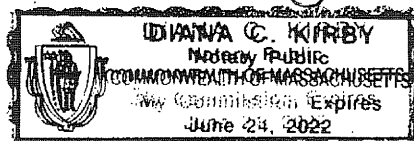
Berkshire, ss.

Dec 14, 2016

Then personally appeared the above-named Selectmen and proved to me through satisfactory evidence of identification, which was personally known, to be the person whose name is signed on the document and acknowledged to me that he signed it voluntarily as a member of the Lenox Board of Selectmen, acting as the Board of Water Commissioners, Grantor, for its stated purpose.



Notary Public
My Commission Expires:



ACCEPTANCE OF GRANT

We the undersigned, being a majority of the Conservation Commission of the Town of Lenox, Massachusetts, hereby certify that at a public meeting duly held on JANUARY 5, 2017, the Conservation Commission voted to approve and accept the foregoing Conservation Restriction from the Town of Lenox, pursuant to Massachusetts General Laws, Chapter 40, Section 8C, and pursuant to the vote taken under Article 22 of the 2013 Annual Town Meeting, a certified copy of which is attached hereto.

TOWN OF LENOX,
Acting by and through its Conservation Commission
Grantee

Neal Carpenter
Neal Carpenter, Chair

Rosemarie Fitzgerald Casey
Rosemarie Fitzgerald Casey

Richard Ferren

Vince Ammendola
Vince Ammendola

David Lane
David Lane

Tim Flahagan
Tim Flahagan

Joe Strauch

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

January 5, 2017

Then personally appeared the above-named Conservation Commission and proved to me through satisfactory evidence of identification, which was personally known, to be the person whose name is signed on the document and acknowledged to me that he/she signed it voluntarily as a member of the Conservation Commission, Town of Lenox, for its stated purpose.

Diana C. Kirby
Notary Public
DIANA Kirby
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
June 24, 2022

ACCEPTANCE OF GRANT

This Conservation Restriction from the Town of Lenox is accepted by Berkshire Natural Resources Council, Inc. this 14 day of December, 2016.

BERKSHIRE NATURAL RESOURCES COUNCIL, INC.
Grantee

BY: Theodore H. Ames
Theodore H. Ames
President

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss. December 14, 2016

Then personally appeared the above-named Theodore H. Ames and proved to me through satisfactory evidence of identification, which was Personally Known, to be the person whose name is signed on the document and acknowledged to me that he signed it voluntarily as President of Berkshire Natural Resources Council, Inc., for its stated purpose.



JEFFREY R. LYNCH
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires
November 7, 2019

Jeffrey R. Lynch
Notary Public Jeffrey R. Lynch
My Commission Expires: 11-7-2019

APPROVAL OF GRANT BY LENOX BOARD OF SELECTMEN

We, the undersigned, being a majority of the Board of Selectmen of the Town of Lenox, hereby certify that at a public meeting duly held on DECEMBER 14, 2016, the Board of Selectmen voted to approve the foregoing Conservation Restriction from the Town of Lenox to the Berkshire Natural Resources Council, Inc. and Town of Lenox, acting by and through its Conservation Commission pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

Subscribed and sworn to this 14th day of DECEMBER, 2016.

TOWN OF LENOX,
By and Through Its Board of Selectmen

Warren Archey, Chair

[Signature]
Ken Fowler

[Signature]
Channing Gibson

[Signature]
Ed Lane

[Signature]
David Roche

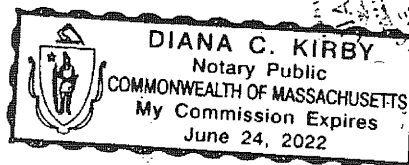
COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

Dec 14, 2016

Then personally appeared before me the above-named Selectmen and proved to me through satisfactory evidence of identification, which was personally known to be the person whose name is signed on the document and acknowledged to me that he/she signed it voluntarily as Selectman for the Town of Lenox, for its stated purpose.

[Signature]
Notary Public
My Commission Expires



APPROVAL OF GRANT BY RICHMOND BOARD OF SELECTMEN

We, the undersigned, being a majority of the Board of Selectmen of the Town of Richmond, hereby certify that at a public meeting duly held on 2/8, 2017, the Board of Selectmen voted to approve the foregoing Conservation Restriction from the Town of Lenox to the Berkshire Natural Resources Council, Inc. and Town of Lenox, acting by and through its Conservation Commission pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

Subscribed and sworn to this 13 day of February, 2017.

Robert Manzolotto
Chair, Select Board

Alan B. Hansen
Selectman

Neal Pilson
Selectman

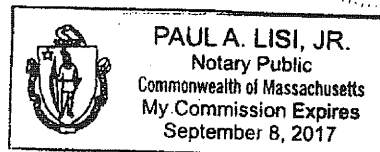
COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

February 13, 2017

Then personally appeared before me the above-named Robert Manzolotto, Alan Hansen, Neal Pilson and proved to me through satisfactory evidence of identification, which was MA Drivers License, to be the person whose name is signed on the document and acknowledged to me that he/she signed it voluntarily as Selectman for the Town of Richmond, for its stated purpose.

Paul A. Lisi, Jr.
Notary Public
My Commission Expires September 8, 2017



APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
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 from the Town of Lenox to the Town of Lenox, acting by and through its Conservation Commission and Berkshire Natural Resources Council, Inc. has been approved in the public interest pursuant to M.G.L. Chapter 184, Section 32.

Date: _____

12/12, 2017



Matthew A. Beaton

Secretary of Energy & Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

December 12, 2017

Then personally appeared before me the above-named Matthew A. Beaton and proved to me through satisfactory evidence of identification, which was MA Driver's License, to be the person whose name is signed on the document and acknowledged to me that he signed it voluntarily as Secretary of Energy and Environmental Affairs for the Commonwealth of Massachusetts, for its stated purpose.



Notary Public

My Commission expires: 12/28/23

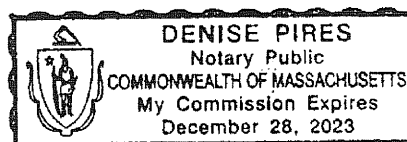


Exhibit A (Page 1 of 3)

Exhibit A-1, Legal Description

PARCEL ONE

All of the rights, privileges, easements, water rights or other interests in real estate located in Lenox and Richmond, Berkshire County Massachusetts acquired by the Town of Lenox by through and under the deed from the Lenox Water Company to the Town of Lenox dated December 31, 1947 and recorded in the Berkshire Middle District Registry of Deeds in Book 531, Page 545c.

Excepting from Parcel One the property subject to a taking by the Commonwealth of Massachusetts Department of Conservation dated August 11, 1952 and recorded in the Berkshire Middle District Registry of Deeds in Book 588, Page 8 & c. Said property to be more fully described in a "Plan of Land in Richmond and Lenox, Massachusetts to be taken by the Commonwealth of Massachusetts Department of Conservation, August 11, 1952, Scale 1" = 200', as recorded in said Registry of Deeds in Volume 417-B/139.

Subject to an easement granted by the Town of Lenox to the American Telephone and Telegraph Company dated July 1, 1964 and recorded in the Berkshire Middle District Registry of Deeds in Book 788, Page 252c.

Subject to the discontinuance of Reservoir Road from its intersection with West Mountain Road to its intersection with Dunbar Road, a distance of approximately 3800 feet and discontinuance and abandonment of Dunbar Road from its intersection with Reservoir Road northwesterly to the Richmond Town Line a distance of approximately 3000 feet all as more particularly described in the meeting minutes of the county commissioners recorded in the Berkshire Middle District Registry of Deeds in Book 1010, Page 953 &c.

PARCEL TWO

All of the rights, privileges, easements, water rights or other interests in real estate located in Lenox, Berkshire County, Massachusetts conveyed to the Inhabitants of the Town of Lenox from Marion F. Tillotson et. al. dated January 20, 1948 and recorded in the Berkshire Middle District Registry of Deeds in Book 848, Page 384 &c.

PARCEL THREE

All of the rights, privileges, easements, water rights or other interests in real estate located in Lenox, Berkshire County, Massachusetts conveyed to the Inhabitants of the Town of Lenox from C.R. O'Connor & Sons, Inc. dated February 25, 1950 and recorded in the Berkshire Middle District Registry of Deeds in Book 558, Page 245 &c.

PARCEL FOUR

INTENTIONALLY DELETED AS LYING OUTSIDE APPLICABLE AREA

PARCEL FIVE

All of the rights, privileges, easements, water rights or other interests in real estate located in Lenox, Berkshire County, Massachusetts conveyed to the Inhabitants of the Town of Lenox from Edward M. O'Connor, et. al. dated October 25, 1955 and recorded in the Berkshire Middle District Registry of Deeds in Book 636, Page 591.

PARCEL SIX

All of the rights, privileges, easements, water rights or other interests in real estate located in Lenox, Berkshire County, Massachusetts conveyed to the Inhabitants of the Town of Lenox from Edward M. O'Connor, et. al. dated July 31, 1956 and recorded in the Berkshire Middle District Registry of Deeds in Book 644, Page 338. Reference is further made to a Corrective Deed recorded in said Registry of Deeds in Book 657, Page 188 &c. Parcel Six is subject to an

easement granted by the Town of Lenox to the American Telephone and Telegraph Company dated July 1, 1964 and recorded in the Berkshire Middle District Registry of Deeds in Book 788, Page 250.

PARCEL SEVEN

All of the rights, privileges, easements, water rights or other interests in real estate located in Richmond, Berkshire County, Massachusetts conveyed to the Inhabitants of the Town of Lenox from Meryl Schwartz dated July 15, 1987 and recorded in the Berkshire Middle District Registry of Deeds in Book 1201, Page 913.

PARCEL EIGHT

All of the rights, privileges, easements, water rights or other interests in real estate located in Lenox, Berkshire County, Massachusetts conveyed to the Town of Lenox from Berkshire Natural Resources Council, Inc. dated December 13, 2016 and recorded in the Berkshire Middle District Registry of Deeds in Book 5880, Page 148.

The above-described property was acquired and/or is held for Water Supply Functions pursuant to Massachusetts General Laws Chapter 40, Sections 39, 41 and 15B, and Article 97 of the Amendments to the Massachusetts Constitution and is under the control of the Board of Water Commissioners (or Board of Selectmen authorized as such) of the Town of Lenox, Massachusetts.

The property is subject to the foregoing Conservation Restriction.

Massachusetts Department of Environmental Protection approval is required before any portion of this property, including any assignment of the Conservation Restriction, can be transferred to a different ownership or control, or before the property can be changed to a different use.

Exhibit A (Page 2 of 3)

Exhibit A-2, Sketch plan of Drinking Water Supply and Watershed Land ("Premises")

Sketch showing land of the Town of Lenox, 965 acres more or less, subject to the foregoing Conservation Restriction. Sketch is shown for informational purposes and is not to be used for conveyancing.

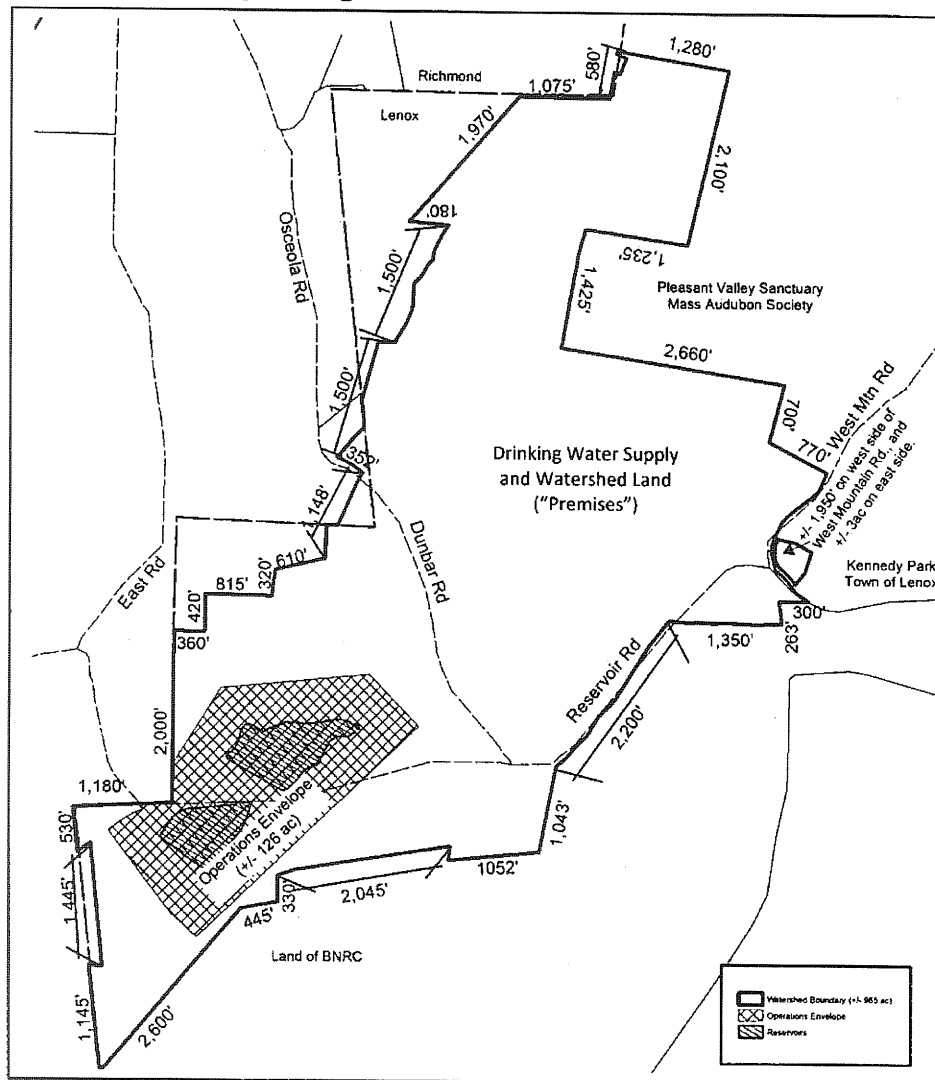


EXHIBIT B

Forest Management Plan

Guidelines and Required Plan Elements

(See Subparagraph 4(d) of the foregoing Conservation Restriction.)

I. Guidelines

The goal is to practice sustainable forest management on the Premises, which is consistent with watershed protection and the Conservation Values protected by the foregoing conservation restriction and which recognizes the importance of all ecological components and values and incorporates them into management policies, plans, and decisions. Timber harvesting is a retained right of the landowner, not a requirement. The following subsections are components to be considered when practicing sustainable forest management, in the event that Grantor engages in timber harvesting or forest modification.

The parties recognize that their understanding of forest ecosystems and how they function is incomplete. It is important to periodically incorporate relevant advances in scientific knowledge into the sustainable forest management program.

Sustainable Timber Production

Grantor will use silvicultural systems, which enhance or maintain the value of the timber asset and provide for a sustained yield of forest products while recognizing that ecological, aesthetic, wildlife, and other non timber values are important components of the forest. Silvicultural prescriptions should be based on sound scientific knowledge and tailored to individual stand conditions. They will strive to maintain stands in a well stocked, productive condition and promote the diversity of natural forests in both species and structure. The full range of

silvicultural prescriptions are available for use on the Premises where appropriate, and include even-aged and uneven-aged systems such as seed tree, shelterwood, clearcut, individual selection and group selection harvest systems. Management of the timber resource shall not eliminate key ecosystem elements.

Forest Diversity

Grantor's goal is to generate sustained yields of forest products from the forest in an economical manner over time while maintaining forest diversity. Sustainable forestry requires that structural and compositional components be maintained in a vigorous and productive condition. The forest management plan will identify areas of unique importance and employ means for assuring their retention.

Riparian Habitats

The Grantor's goal is to maintain the premises as a protected watershed area preserving functional watercourses, wetlands and wildlife habitat with the retention of riparian ecosystems. Best management practices shall be employed to minimize impacts to these areas.

Wildlife Management

The Grantor's goal is to generate sustainable yields of forest products in an economical manner while maintaining healthy wildlife habitat. Wildlife management practices are routinely incorporated into timber management activities to retain or create desirable features including riparian habitat, wildlife cavity trees, mast availability, logs and brush for shelter, vertical and horizontal diversity, vernal pools, coarse woody debris and featured species management. Wildlife management considers all species of wildlife, beyond game and socially important species.

Unique or Fragile Natural Areas

The Grantor's goal is to maintain functional ecosystems that include unique or fragile natural areas. Certain conservation agencies that monitor rare, threatened, endangered, or special concern species are valuable partners in this effort and may help identify these locations and provide technical advice about management practices.

Pesticide and Herbicide Use

The Grantor's goal is to implement management practices designed to minimize or eliminate use of pesticides and fertilizers. In all cases the use of fertilizers, pesticides or herbicides will be conducted in compliance with all local, state and federal laws and regulations.

Invasive species

The Grantor's goal is to reduce or eliminate these species from the Premises where appropriate and possible. Mechanical and non-threatening chemical means of control are viable tools to reduce the threat of invasive species. The introduction and spread of non-native plants with invasive tendencies is a current and growing concern.

Aesthetic Resources

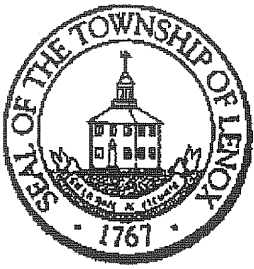
The Grantor's goal is to maintain aesthetic quality in order to maintain or enhance the monetary and scenic value of the Premises. Aesthetic quality is important to maintaining the value of the forest asset.

II. Required Plan Elements

The Management Plan shall include, at a minimum, the following elements:

- (1) the Premises' current owner(s), including their then current mailing address and telephone number(s),
- (2) the Property tax assessor's map number and lot/parcel number, the Premises' total acreage, and acreage subject to this, or any other restriction or easement;
- (3) the deed book and deed page from the Berkshire Middle District Registry of Deeds, and reference to any approved or pending ANR (approval not required) plan, subdivision plan, or any other division of the Premises' ownership interests;
- (4) A history of the Premises and its management, including forestry or agricultural activities engaged in during the previous ten years;
- (5) An inventory of forest resources, including: species, quality, age class distributions, growth rates, potential harvest volumes and values;
- (6) A forest type map, an appropriately scaled and accurate map, which shall delineate: the Premises' boundaries, forest types, estimated locations of any threatened or endangered animal and plant species, unique (geological, hydrological, historical, and cultural) features, existing roads and other access to the Premises, soil types, topography, and aspect;
- (7) A description of the Premises' abutters and any other protected land(s), including areas protected for natural, scenic, forested, agricultural, historical, open space, conservation, or wildlife purposes within a reasonable distance of the Premises;
- (8) A description of the owner's management objectives and practices for the following ten (10) year period, which shall provide for the maintenance and improvement of the overall quality of the timber resource, the maintenance or improvement of soil productivity and the conservation of water quality; There is no requirement of the landowner to conduct commercial timber harvesting.
- (9) The management plan shall be reviewed and updated every ten (10) years after consultation with a Massachusetts licensed professional forester or by other

individual. Written approval by Grantee is only required for revisions that are not related to Water Supply Functions.



TOWN OF LENOX

INCORPORATED 1767

I hereby certify that the following is a true copy of a vote taken at the Annual Town Meeting that was held on May 2, 2013.

ARTICLE 22: It was moved, seconded and after a good deal of discussion, the moderator called for a hand count. The article was voted on and approved by a two-thirds majority vote to grant, at no charge, a Conservation Restriction to be held jointly by the Town of Lenox Conservation Commission and the Berkshire Natural Resources Council on the lands owned by the Town of Lenox that comprise the watershed area surrounding the Upper and Lower Root Reservoirs for the purpose of preserving the scenic and natural resources of the land while allowing for future expansion of town waterworks. Said lands total some 948 acres as depicted on a map on file in the Town Clerk's office along with the proposed conservation restriction.

Count:	Yes	No
	238	112

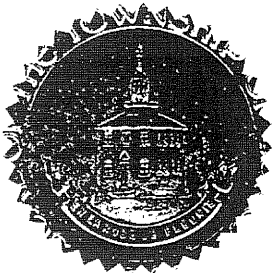
A TRUE COPY ATTEST:

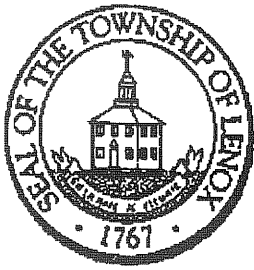
Kerry L. Sullivan

Kerry L. Sullivan

Town Clerk

Town of Lenox





TOWN OF LENOX

INCORPORATED 1767

I hereby certify that the following is a true copy of a vote taken at the Annual Town Meeting that was held on May 4, 2017.

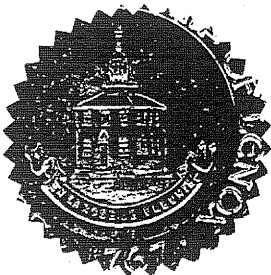
ARTICLE 28.

It was moved, seconded and unanimously approved to authorize the Selectmen to petition the Legislature to enact Legislation relative to placing a conservation restriction on Town owned land as published under Article 28 of the warrant for this Annual Town Meeting provided, that the Legislature may reasonably vary from the form and substance of the requested legislation within the scope of the general public objectives of this petition.

A TRUE COPY ATTEST:

Kerry L. Sullivan

Kerry L. Sullivan
Town Clerk
Town of Lenox





Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Exhibit D
Massachusetts Department of
Environmental Protection Conditional
Approval Letter

Department of Environmental Protection

Western Regional Office • 436 Dwight Street, Springfield MA 01103 • 413-784-1100

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

December 13, 2016

Mr. Christopher Ketchen, Town Administrator
Town of Lenox
6 Walker Street
Lenox, MA 01240

RE: Lenox-DWP
Lenox DPW Water Division
PWS ID# 1152000
Source Protection
Land Acquisition & Property transfer
APPROVAL WITH CONDITIONS

Dear Mr. Ketchen:

This letter is in response to a request by the Town of Lenox ("the Town") for the Department of Environmental Protection ("MassDEP" or "the Department") to approve an application to acquire land for water supply purposes and to grant a conservation restriction in water supply land.

1. Procedural History.

The Department received a permit application, consisting of a letter dated May 22, 2015 and supporting documentation, and a letter dated June 15, 2015 and supporting documentation, from the Town requesting approval for two actions by the Town's Board of Selectmen, acting as its Board of Water Commissioners. In the May 22, 2015 letter, the Board proposes to acquire an approximately 16-acre parcel of land for water supply purposes from a regional conservation organization known as the Berkshire Natural Resources Council ("BNRC"). In the June 15, 2015 letter, the Board proposes to grant a conservation restriction in approximately 965 acres of land (including the proposed acquisition), held for watershed supply purposes, to the BNRC and the Town's Conservation Commission ("the ConComm").

Department approval for such transactions is required pursuant to Sections 39B and 41 of Chapter 40 of Massachusetts General Laws, and Section 22.24 of Chapter 310 of the Code of Massachusetts Regulations.

On July 9, 2015, the Department held a hearing in its Western Region Office at 436 Dwight Street, Springfield Massachusetts, 01103, on the proposed acquisition and grant of conservation restriction. No comments were received in opposition to the proposed acquisition or proposed transfer via Conservation Restriction.

Subsequently, the Department reviewed the Town's letters and supporting documentation. On the matter of the Town's application for approval to acquire land for water supply purposes and to grant a conservation restriction in water supply land, the Department finds as set forth, below.

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2. Land Acquisition.

A. Proposal. The Town seeks to acquire a gift from BNRC of approximately 16 acres of land within its drinking water supply watershed in fee, for water supply purposes. The land in question is referred to in the permit application as the "Berkshire Natural Resources Council Williams" lot (referred to in this letter as the "BNRC-W Parcel") and is shown as "Land to be Conveyed to the Berkshire County Land Trust and Conservation Fund" on a plan entitled "Plan of Land in Lenox, MA" surveyed for Henry H. Williams, Jr. and Joan T. Williams, dated November, 1982 and recorded in the Berkshire Middle District Registry of Deeds in Drawer E, No. 55. This plan was entered into the hearing record as Exhibit #1.

The proposed use of the BNRC-W Parcel is to protect and preserve the purity of the water supply in the Town's Upper Root Reservoir and Lower Root Reservoir watershed, designed to serve the Town's Department of Public Works Water Division. The BNRC-W Parcel is located within the watershed of the Upper Root Reservoir and Lower Root Reservoir. A plan depicting the watershed for this water supply source and the BNRC-W Parcel was entered into the hearing record as Exhibit #2.

B. Department Decision. MassDEP must approve the acquisition of land for water supply purposes. M.G.L. c. 40, §§ 39B and 41; 310 CMR 22.24. The applicant submitted a letter dated May 22, 2015 with supporting materials to illustrate the need for the land acquisition for water supply protection purposes. After reviewing the submittal and available information, the Department has determined that acquisition of the BNRC-W Parcel by the Town will serve to protect the public water supply at the subject location.

The Department hereby APPROVES the Town's acquisition of the BNRC-W Parcel, subject to the following CONDITIONS:

1. A copy of the plan entered into the hearing as Exhibit #1 and the deed transferring title to the Board of Water commissioners or Board of Selectmen authorized as such will be recorded at the Registry of Deeds.
2. The deed must include a notation that the Department has approved the acquisition for water supply protection in an approval letter dated December 13, 2016. The specific notation must state:

This property has been acquired for water supply protection purposes pursuant to M.G.L. c. 40, §§39B, and 41, is subject to M.G.L. c. 40, §15B and Article 97 of the Amendments to the Massachusetts Constitution, and is under the control of the Town of Lenox Board of Selectmen acting as its Board of Water Commissioners. Massachusetts Department of Environmental Protection approval is required before any portion of this property may be transferred to a different ownership or control, and before the property may be changed to a different use.

3. The Town must notify the Department in writing that the acquisition of the BNRC-W Parcel has been completed, no later than five (5) business days after the date of closing.
4. The Town must submit to the Department a copy of the recorded plan and recorded deed, showing the Registry of Deeds recording information for each document, no later than thirty (30) days after the date of closing, unless otherwise agreed to in writing by the Department.
5. The Department's approval of the Town's acquisition of the BNRC-W Parcel, as set forth in this approval letter, shall be effective for a period of two years from the date of this approval letter. The BNRC-W Parcel acquisition must be completed by December 13, 2018.

3. Grant of Conservation Restriction.

A. Proposal. The Town of Lenox requests approval to grant a conservation restriction ("the Conservation Restriction") over existing water supply lands owned by the Town, including the BNRC-W Parcel (once acquired). The Conservation Restriction would be granted to the BNRC and the ConComm.

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The land to be made subject to the Conservation Restriction consists of seven parcels as described below:

Parcel One: All of the rights, privileges, easements, water rights or other interests in real estate located in Lenox and Richmond, Berkshire County Massachusetts acquired by the Town of Lenox by through and under the deed from the Lenox Water Company to the Town of Lenox dated December 31, 1947 and recorded in the Berkshire Middle District Registry of Deeds in Book 531, Page 545c. Excepting from Parcel One the property subject to a taking by the Commonwealth of Massachusetts Department of Conservation dated August 11, 1952 and recorded in the Berkshire Middle District Registry of Deeds in Book 588, Page 8 &c. Said property to be more fully described in a "Plan of Land in Richmond and Lenox, Massachusetts to be taken by the Commonwealth of Massachusetts Department of Conservation, August 11, 1952, Scale 1" = 200', as recorded in said Registry of Deeds in Volume 417 - B/139. Subject to an easement granted by the Town of Lenox to the American Telephone and Telegraph Company dated July 1, 1964 and recorded in the Berkshire Middle District Registry of Deeds in Book 788, Page 252c. Subject to the discontinuance of Reservoir Road from its intersection with West Mountain Road to its intersection with Dunbar Road, a distance of approximately 3800 feet and discontinuance and abandonment of Dunbar Road from its intersection with Reservoir Road northwesterly to the Richmond Town Line a distance of approximately 3000 feet all as more particularly described in the meeting minutes of the county commissioners recorded in the Berkshire Middle District Registry of Deeds in Book 1010, Page 953 &c.

Parcel Two: All of the rights, privileges, easements, water rights or other interests in real estate located in Lenox, Berkshire County, Massachusetts conveyed to the Inhabitants of the Town of Lenox from Marion F. Tillotson et. al. dated January 20, 1948 and recorded in the Berkshire Middle District Registry of Deeds in Book 848, Page 384 &c.

Parcel Three: All of the rights, privileges, easements, water rights or other interests in real estate located in Lenox, Berkshire County, Massachusetts conveyed to the Inhabitants of the Town of Lenox from C.R. O'Connor & Sons, Inc. dated February 25, 1950 and recorded in the Berkshire Middle District Registry of Deeds in Book 558, Page 245 &c.

Parcel Four: INTENTIONALLY DELETED AS LYING OUTSIDE APPLICABLE AREA

Parcel Five: All of the rights, privileges, easements, water rights or other interests in real estate located in Lenox, Berkshire County, Massachusetts conveyed to the Inhabitants of the Town of Lenox from Edward M. O'Connor, et. al. dated October 25, 1955 and recorded in the Berkshire Middle District Registry of Deeds in Book 636, Page 591.

Parcel Six: All of the rights, privileges, easements, water rights or other interests in real estate located in Lenox, Berkshire County, Massachusetts conveyed to the Inhabitants of the Town of Lenox from Edward M. O'Connor, et. al. dated July 31, 1956 and recorded in the Berkshire Middle District Registry of Deeds in Book 644, Page 338. Reference is further made to a Corrective Deed recorded in said Registry of Deeds in Book 657, Page 188 &c. Parcel Six is subject to an easement granted by the Town of Lenox to the American Telephone and Telegraph Company dated July 1, 1964 and recorded in the Berkshire Middle District Registry of Deeds in book 788, Page 250.

Parcel Seven: All of the rights, privileges, easements, water rights or other interests in real estate located in Richmond, Berkshire County, Massachusetts conveyed to the Inhabitants of the Town of Lenox from Meryl Schwartz dated July 15, 1987 and recorded in the Berkshire Middle District Registry of Deeds in Book 1201, Page 913.

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Parcel Eight: all of the rights, privileges, easements, water rights or other interests in real estate located in Lenox, Berkshire County, Massachusetts conveyed to the Town of Lenox from Berkshire Natural Resources Council, Inc. to be recorded in the Berkshire Middle District Registry of Deeds, described in Exhibit #2 at hearing, and identified above in section 2.A. of this conditional approval.

The land subject to the Conservation Restriction totals 965 acres, more or less, and is shown on a Geographic Information System (GIS) depiction entered into the hearing as Exhibit #3. The depiction included an area encompassing the Upper Root Reservoir and the Lower Root Reservoir and additional acreage labeled "Water Supply Operations Envelope."

Because a conservation restriction is a property interest, a grant of a conservation restriction from the Town to the BNRC and the ConComm would constitute a transfer of a property interest. Property interest transfers in water supply lands are subject to the Department's approval, through its Drinking Water Program ("DWP"). Such transfers must satisfy the conditions listed in 310 CMR 22.24. Specifically, the Town must demonstrate to DWP that the sale of such land:

will have no significant adverse impact upon the supplier of water's present and future ability to provide continuous adequate service to consumers under routine and emergency operating conditions, including emergencies concerning the contamination of sources of supply, failure of the distribution system and shortage of supply. 310 CMR 22.24(1).

The Town's letter dated June 15, 2015 has been labeled as Exhibit 5B. This letter included a statement and supporting explanation that the granting and acceptance of the Conservation Restriction would present no significant adverse impact upon the supplier of water's present and future ability to provide continuous adequate service to consumers under routine and emergency operating conditions. The Town's explanation is summarized as follows:

1. The Conservation Restriction includes certain overarching provisions providing its other provisions will always be interpreted in favor of protecting water supply functions.
2. The reserved rights listed within the Conservation Restriction affirm that "Grantee acknowledges Grantor's pre-existing authority, rights and obligations regarding Water Supply Functions, as described in Paragraph 2, and further acknowledges that this Conservation Restriction is intended to protect the Premises' Conservation Values without impairing such Water Supply Functions."
3. The Conservation Restriction provides that the Town retains "the right to use the Premises as a public water supply for water supply functions, including but not limited to withdrawal, storage, filtration, disinfection, treatment and distribution of potable public water for public use and consumption by the Town of Lenox and its water customers, including the construction, maintenance, repair and replacement of dams and associated infrastructure and the use, construction, operation, maintenance, and repair of existing and new buildings, facilities and infrastructure directly related to operation, maintenance, or expansion of public water supply, delivery of water and treatment of water to applicable drinking water standards...."
4. The Conservation Restriction provides that the Town may construct, maintain, repair and replace: pumphouses and appurtenant facilities and associated utilities, including expanded and/or new reservoirs and wells, associated infrastructure to improve or increase water production, improve or expand delivery and storage, or to provide treatment, disinfection or filtration of water supplies, and equipment and infrastructure for production of renewable energy used to provide electricity for the production, treatment and delivery of potable water.
5. Most existing water supply infrastructure is located within an area identified as the "Water Supply Operations Envelope". Within this area, the Conservation Restriction provides that the Town has full authority to carry out its water supply functions without notice to the Conservation Restriction holders.
6. Water Supply activities within the parcels subject to the Conservation Restriction, but outside the Water Supply Operations Envelope, such as maintenance, repair or replacement of the facilities, would require 90-days advance notice to the Conservation Restriction holders. The notice period prior to activities is waived if said

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notice "might inhibit or prevent timely action" by the Town. Timely action is based on the Town's "own good-faith judgment" for its activities on the premises outside the Water Supply Operations Envelope, ranging from time-sensitive repairs to emergency response.

7. Silvicultural practices, removal or control of nuisance animals, application of pesticides and herbicides, and management of potential threats of contamination created by public use of the premises are allowable under the Conservation Restriction provisions pursuant to notice provisions, guidance or Town policies, as noted in the Conservation Restriction and its attachments.

8. In its management of public access, the Town retains the right, with notice to the Conservation Restriction holders, "from time to time, to close or otherwise limit, regulate or redirect access to or use of certain pathways or areas of the Premises for reasons of public health or safety, or compliance with best management practices for water supply lands." Further, the recreational activities shall not degrade the quality of the water, including creation of turbidity, or otherwise interfere with authorized uses (such as water supply functions) of the Premises by the Town. The Town retains the right to immediately limit public access to the Premises upon a substantiated finding of water quality degradation, allowing it time to address contamination. The Town notes that low-intensity public use of the water supply lands has been ongoing for nearly 20 years and asserts that it has posed no significant adverse impact on the Town's ability to provide continuous adequate service to its customers.

9. The draft Conservation Restriction provided with the application has been reviewed by the Division of Conservation Services of the Massachusetts Executive Office of Energy and Environmental Affairs.

The draft Conservation Restriction referenced above and entitled "Draft 5/21/2015 Conservation Restriction from Town of Lenox to Town of Lenox, acting by and through its Conservation Commission and Berkshire Natural Resources Council, Inc." with a scrivener error corrected on its Exhibit A-1 (Parcel 1 description book and page corrected), was entered into the Hearing record as "Exhibit 4." Subsequent to the Hearing, the Town refined language in the Conservation Restriction to further address water supply functions, to further describe the purpose of the Conservation Restriction, to include the amount of \$10 as consideration for the Conservation Restriction, to define liability for the property, to ensure a non-fee owner is responsible for the enforcement of the Conservation Restriction and to include additional provisions regarding the resolution of the property interests should the reservoirs or watershed property no longer be used for public water supply purposes. The changes following the hearing were not significant changes to the stated purpose of the property interest transfers covered by the hearing (the acquisition and the conservation restriction), but were changes to meet legal requirements, to further meet the purposes of the conservation restriction and to meet water supply function obligations required for permit approval.

An updated copy of the proposed Conservation Restriction, entitled "Conservation Restriction from Town of Lenox to Town of Lenox, acting by and through its Conservation Commission, and Berkshire Natural Resources Council, Inc." is attached to this approval as **Attachment 1**.

B. Department Decision. After reviewing the submittal and available information, this Department finds that the property interest transfer described above meets the minimum requirements of 310 CMR 22.24 and will not impede the Town's present and future ability to provide continuous adequate service to consumers under routine and emergency operating conditions. Accordingly, the Department hereby **APPROVES** the property interest transfer, subject to the following **CONDITIONS**:

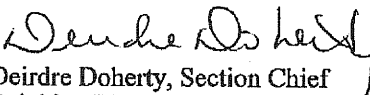
1. The Town shall make this conditional approval letter an attachment to the Conservation Restriction prior to its execution.
2. The Town will execute a conservation restriction substantially identical to the Conservation Restriction contained in Attachment 1 to this Approval with Conditions, and will record the same at the appropriate Registry of Deeds in the chain of title for each associated parcel.
3. The Town must notify the Department in writing that the grant of the Conservation Restriction has been completed, no later than five (5) business days after the date of closing.

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4. The Town must submit to the Department a copy of the recorded Conservation Restriction, showing the Registry of Deeds recording information, no later than thirty (30) days after the date of closing, unless otherwise agreed to in writing by the Department.
5. The Department's approval of the Town's granting the Conservation Restriction, as set forth in this approval letter, shall be effective for a period of two years from the date of this approval letter. The granting of the Conservation Restriction must be completed by December 13, 2018.
6. These parcels may have been acquired for water supply purposes. Therefore, pursuant to Article 97 of the Massachusetts Constitution, any change in use of the land will require a 2/3 majority vote of the Massachusetts Legislature, in addition to MassDEP approval (see 310 CMR 22.24(2)). The BNRC Williams parcel will be explicitly acquired for such "water supply" purposes.

If you have questions about this conditional approval, please contact me at (413) 755-2148.

Respectfully,


Deirdre Doherty, Section Chief
Drinking Water Program

Attachment: Attachment 1-- Proposed Conservation Restriction (Lenox_CR_Ref 13236-FINAL)

W:\brp\ws\permits\Land Sale\Lenox\Lenox property transfer conditional approval Final 2016-12-13

cc: Town of Lenox Conservation Commission, 6 Walker Street, Lenox, MA 01240
Town of Lenox DPW Superintendent, Sean Van Deusen, 275 Main St. Lenox, MA 01240
Town of Lenox, Board of Health, c/o Tri-Town Health Dept., 45 Railroad Street Lee, MA 01238
Tad Ames, BNRC, 20 Bank Row, Pittsfield, MA 01201
John W. Lyons, 1125 Lenox Road, Richmond, MA 01254
Christopher L. Magee, 751 East Road, Richmond, MA 01254
Henry H. Williams III, P.O. Box 66, Lenox, MA 01240
Jenifer Ann Augur, 760 Osceola Road, Richmond, MA 01254
Maud Merton, Inc., P.O. Box 2290, Lenox, MA 01240
Patrick C. Moynihan, 147 Reservoir Road, Lenox, MA 01240
Elizabeth Dovydenas, 319 Under Mountain Road, Lenox, MA 01240
Massachusetts Audubon Society, 472 West Mt. Road, Lenox, MA 01240
Kevin R. Kelly, 831 East Road, Richmond, MA 01254
Pat Callahan and David Dee, 1271 Lenox Road, Richmond, MA 01254
Milton R. Bass, PO Box 204, Richmond, MA 01254
Kristina, Edwin & Elena Powell, 161 Reservoir Rd., Richmond, MA 01254
Time Warner Cable Tax Dept., PO Box 7467, Charlotte, NC 2841-7467
Callahan-Dee Family Rev. Trust c/o D. Dee, 1 Oak Knoll Rd., Kentfield, CA 94904
Eli Seifman & Karen Davis, 35 Sutton Place, New York, NY 10022
Mark Burkhardt, AT&T NE Engineer, 139 Bacon Pond Rd., Woodbury, CT 06798
James and Noreen Blair, 1301 Lenox Rd, Richmond, MA 01254
Kenneth and Linda Keyes, 15949 D'Alene Drive, Delray, FL 33446
Town of Richmond, M. Kerwood, Town Administrator, 1529 State Rd, Richmond, MA 01254
Comm. Of Mass-DCR, 251 Causeway St., Suite 400, Boston, MA 02114-2104
Mr. and Mrs. Timothy Chase, 1175 York Avenue, PH A6, New York, NY 10065
Richmond Land Trust, PO Box 21, Richmond, MA 01254
MassDEP-DWP-Boston, MassDEP-DWP-Boston Kathleen Romero, MassDEP-OGC Deirdre Desmond
MassDEP-WERO K. Longridge