

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 ____ day of _____, 2013 by the Inhabitants of the TOWN OF LENOX, with an address at 6 Walker Street, Lenox, MA 01240, its successors and assigns (collectively "Grantor"), in favor of 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) BNRC being a Massachusetts charitable corporation with a post office address at 20 Bank Row, Pittsfield, MA 01201, its 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 also deed of Berkshire Natural Resources Council, Inc. dated _____, recorded in said Registry in Book _____, Page _____ [legal description to be confirmed by counsel].**

WITNESSETH:

WHEREAS, Grantor, acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the General Laws, grants, for ten dollars (\$10.00) and other consideration, with quitclaim covenants, to Grantee, in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction on a parcel of land located in the Towns of Lenox and Richmond, County of Berkshire, Commonwealth of Massachusetts constituting approximately 965 acres, said parcel being particularly described in Exhibit A attached hereto and incorporated by this reference, (hereinafter 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 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 Premises consist of approximately 965 acres 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, and which may be used in the future to supplement the aforementioned reservoirs; and

WHEREAS, the protection of the Premises will accomplish the primary purpose of helping to safeguard the quality of the water flowing into these reservoirs and thus the public drinking water supply for the Town of Lenox; 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 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 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 on _____, 19 __, 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, Grantor intends that the preservation of the Premises should constitute a non-federal cost-share match for other Forest Legacy Program acquisitions in the Stockbridge Yokun Ridge Reserve and other Legacy Areas within 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 respective landowners, 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 right to preserve and protect the watershed, scenic and conservation values of the Premises in perpetuity; 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;

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 gifts, grants and conveys 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. Purpose. It is the purpose of this Conservation Restriction to ensure that the Premises will be retained forever predominantly in their natural, scenic, and open space condition for conservation purposes including, but not limited to, fish and wildlife conservation, native habitat protection, forest management, water supply, passive recreation, 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, and to prevent any use of the Premises that will significantly impair or interfere with the above stated conservation, water supply and scenic values of the Premises and the Premises' natural resources and associated ecosystems.

2. Rights of Grantee. 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.

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

- (a) constructing or placing of any temporary or permanent building, communication tower, wind turbine, mobile home, sign, billboard or other advertising display, or other temporary or permanent structure or facility of any nature or description whatever on or above or below 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) using the Premises 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;
- (d) 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;

- (e) 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;
- (f) cutting, removing or otherwise destroying trees, grasses, or other vegetation;
- (g) using, parking or maintaining boats, camping trailers, motor homes, motorized vehicles or unregistered or non-operative motor vehicles on the Premises;
- (h) using automobiles, trucks, motorcycles, motorized trail bikes, snowmobiles, or any other motorized vehicles for uses other than maintenance or the Premises by the Grantor or Grantor's agents;
- (i) subdividing the Premises;
- (j) more than *de minimis* commercial recreational use of the Premises;
- (k) commercial, industrial or institutional use;
- (l) activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or any activity that impairs water quality; and
- (m) any other use of the Premises or activity which would materially impair the conservation interests set forth herein.

4. Reserved Rights. The provisions of paragraph 3 notwithstanding, the following rights, uses, and activities are reserved by the Grantor and shall be deemed not inconsistent with the purpose of this Conservation Restriction provided that they do not materially impair the conservation value of the Premises:

- (a) the right to use the Premises as a Public Water Supply for the 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 public water supply 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:

- i) Construction, maintenance and repair 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 paragraph;
- ii) Construction, maintenance and repair of facilities including expanded and/or new reservoirs and wells and associated infrastructure, including associated underground distribution pipes and water storage tanks; to provide treatment, disinfection or filtration of water supplies as needed for compliance with applicable Federal or State laws, including but not limited to the Safe Drinking Water Act;
- iii) Construction, installation, maintenance, repair and replacement of equipment and associated infrastructure for the production of renewable energy used to provide electricity necessary for the production, treatment and delivery of potable water only, provided said equipment and infrastructure does not adversely impact the conservation values of the Premises, including scenic values. While the intent of this reserved right is to allow for the production of renewable electricity 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 without violating the terms of this Conservation Restriction.

Within the "Operations Envelope," which is more particularly described in Exhibit A, 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.

Construction (or expansion) of 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 and Grantee, and shall be approved in writing by both parties and shall be designed to hew closely to the footprint of the new improvement while allowing enough space on the ground to permit practical maintenance and operation of the new improvements. Modification of the boundaries as described in this subparagraph shall not constitute an amendment to this Conservation Restriction.

No building, facility or structure other than dam, reservoir, water storage tank, well or associated infrastructure shall be located outside the Operations Envelope, unless otherwise stated specifically in this paragraph 4.

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 quickly as possible to the approximate condition prior to said disturbance.

This paragraph shall be liberally construed for the purposes of developing and implementing the treatment, disinfection, and filtration systems contemplated hereunder but narrowly construed for any other appurtenant or auxiliary purpose, and shall not authorize facilities or activities not specifically required by law or reasonably subsidiary to achieve the purposes of this paragraph. By way of example, construction of facilities non-essential to water supply purposes, such as general equipment storage, vehicle maintenance or general office facilities are tangential to Public Water Supply purposes and shall not be authorized on the Premises.

- (b) If the Premises cease to be used as a public water supply, the Operations Envelope, and the rights to use and activity within the Envelope described in this paragraph 4, excepting activities necessary for security, safety, maintenance, decommissioning and removal of improvements, shall be terminated. If a cessation in use of the Premises as a public water supply is being considered, Grantor agrees to refrain from exercising its rights to new construction during the period of consideration; 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 subsection (4)(d) below; and

- (d) the right to conduct, or permit others to conduct, sound silvicultural uses of the Premises, including management for purposes of public water supply production, 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, subject to approval of the Grantor and the Grantees, in keeping with advances in the scientific knowledge of water supply protection, forest ecology, silvicultural and forest management practices. 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), Grantor retains the right to pursue certain non-commercial and generally accepted forest 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 selectively cut or clear vegetation for habitat protection, fire protection, unpaved trail and road maintenance, tick control, disease control, mitigation or repair of damages caused by natural events, or otherwise to preserve the present condition of the Premises. The Grantor shall conduct all forest product-harvesting operations in accordance with applicable law; and

- (e) 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
- (f) 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 a) uses adequate erosion control measures, and b) 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

- (g) 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, 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
- (h) the right of Grantor to use motorized vehicles for conducting any of the management uses and activities permitted herein, and as necessary for the Grantor or public safety officials to respond to emergencies or otherwise carry out their lawful duties; and
- (i) 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
- (j) the right to conduct archaeological investigations and activities, including without limitation surveys, excavations and artifact retrieval, under the direction of a qualified organization or person in accordance with all local, state and federal regulations, policies and protocols for archaeological investigation; and
- (k) the right to construct, maintain and repair publicly-accessible parking areas along or adjacent to existing ways passable by vehicle; and
- (l) 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

(m) any other dispersed outdoor 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 law, 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 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 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 will have 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. Should a dispute arise as to the boundaries of the Conservation Restriction, the Grantor shall be responsible for a survey and permanent boundary markers. 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 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.

5.2 Grantee's Discretion. 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.

5.3 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.

5.4 Access by the Public. This Conservation Restriction grants to the public the right 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. Upon written notice to Grantee explaining the need for its actions, Grantor may, from time to time, close or otherwise limit or redirect access to certain pathways or areas of the Premises for reasons of public health or safety, but Grantor shall not prohibit access to the Premises entirely. The public's right to access the Premises on foot 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 granted by this Conservation Restriction is limited to pedestrian use for recreation, nature study, wildlife observation and quiet enjoyment, and does not include the right to camp, hunt, swim, fish or ride horses, uses which are managed by the Grantor at its sole discretion and which 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 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. Grantor shall notify Grantee within twenty-four (24) hours of imposing any such limitation related to water quality degradation with an explanation for the imposition. If the 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 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 property right is thirty-five percent (35%) of the value of the unrestricted Premises, and further agree that this proportionate value shall remain constant.

7.2 Right of the Grantee to Recover Proportional Value at Disposition. If any occurrence ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then the Grantee, on a subsequent sale, exchange or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds equal to such proportionate value of the Conservation Restriction, subject, however, to any applicable law which expressly provides for a different valuation, after complying with the terms of any gift, grant, or funding requirements.

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.

7.4 Allocation of Expenses upon Disposition. The proceeds thus received shall be distributed between the Grantor and the Grantee in shares based on the proportionate value of their respective interests as set forth in paragraph 7.2 above.

7.5 Continuing Trust of the Grantee's Share of Proceeds of Conservation Restriction Disposition. The Grantee shall use its share of the proceeds 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 the Grantee may jointly amend this Conservation Restriction; provided that said amendments serve to strengthen the original conservation restriction or will have a neutral effect upon the provisions of the conservation

restriction. No amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of the 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, and any amendment shall be consistent with the purpose of this Conservation Restriction, and shall not affect its perpetual duration. Any such amendment shall be approved by the parties herein, 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 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. 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. 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 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.

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:
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
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.

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. Where Grantee's approval is required, the Conservation Commission, its successor or assign, shall, within thirty (30) 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 thirty (30) 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.

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

14. 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.

15. 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.

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

IN WITNESS WHEREOF Grantor and the Grantee have set their hands under seal on the day and year first above written.

No documentary stamps are required as this Conservation Restriction is a gift.

TOWN OF LENOX
GRANTOR

Chair, Board of Selectmen

COMMONWEALTH OF MASSACHUSETTS

Berkshire,ss. _____, 2013

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

Notary Public
My Commission Expires:

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this ____ day of _____, 2013.

CONSERVATION COMMISSION, TOWN OF LENOX

BY: _____

Chairman

BY: _____

Member

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE,ss. _____, 2013

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

Notary Public
My Commission Expires:

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this ____ day of _____, 2013.

BERKSHIRE NATURAL RESOURCES COUNCIL, INC.

BY: _____
Theodore H. Ames
President

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE,ss. _____, 2013

Then personally appeared the above-named Theodore H. Ames and proved to me through satisfactory evidence of identification, which was _____, 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.

Notary Public
My Commission Expires:

APPROVAL and ACCEPTANCE OF GRANT BY LENOX SELECTMEN

We, the undersigned members of the Board of Selectmen of the Town of Lenox, being duly sworn, certify that the following is a true copy of the vote taken by this Board of Selectmen at its duly called meeting on _____ 2013, and that said vote has not been rescinded.

Voted to approve the grant of Conservation Restriction to the Town of Lenox, acting by and through its Conservation Commission and Berkshire Natural Resources Council, Inc., over land of the Town of Lenox, and voted to accept the grant of Conservation Restriction to the Town of Lenox, acting by and through its Conservation Commission, pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Subscribed and sworn to this _____ day of _____, 2013.

Chairman, Board of Selectmen

Selectman

Selectman

Selectman

Selectman

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE,ss. _____, 2013

Then personally appeared before me the above-named _____ and proved to me through satisfactory evidence of identification, which was _____, 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.

Notary Public
My Commission Expires:

APPROVAL OF GRANT BY RICHMOND SELECTMEN

We, the undersigned members of the Board of Selectmen of the Town of Richmond, being duly sworn, certify that the following is a true copy of the vote taken by this Board of Selectmen at its duly called meeting on _____ 2013, and that said vote has not been rescinded.

Voted to approve the grant of Conservation Restriction to the Town of Lenox, acting by and through its Conservation Commission and Berkshire Natural Resources Council, Inc., over land of the Town of Lenox, pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Subscribed and sworn to this _____ day of _____, 2013.

Chairman, Board of Selectmen

Selectman

Selectman

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE,ss. _____, 2013

Then personally appeared before me the above-named _____ and proved to me through satisfactory evidence of identification, which was _____, 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.

Notary Public
My Commission Expires:

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 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.

Said approval 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.

Date: _____, 2013

Secretary of Energy & Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

_____, 2013

Then personally appeared before me the above-named _____ and proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the document and acknowledged to me that s/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:

Exhibit A (Page 1 of 3)

Legal Description [to be prepared by town counsel]

Exhibit A (Page 2 of 3)

Sketch showing land of the Town of Lenox subject to the foregoing Conservation Restriction. Sketch is shown for informational purposes and is not to be used for conveyancing. (Please note: Sketch attached in this draft is best available at time of this draft and may be replaced.)

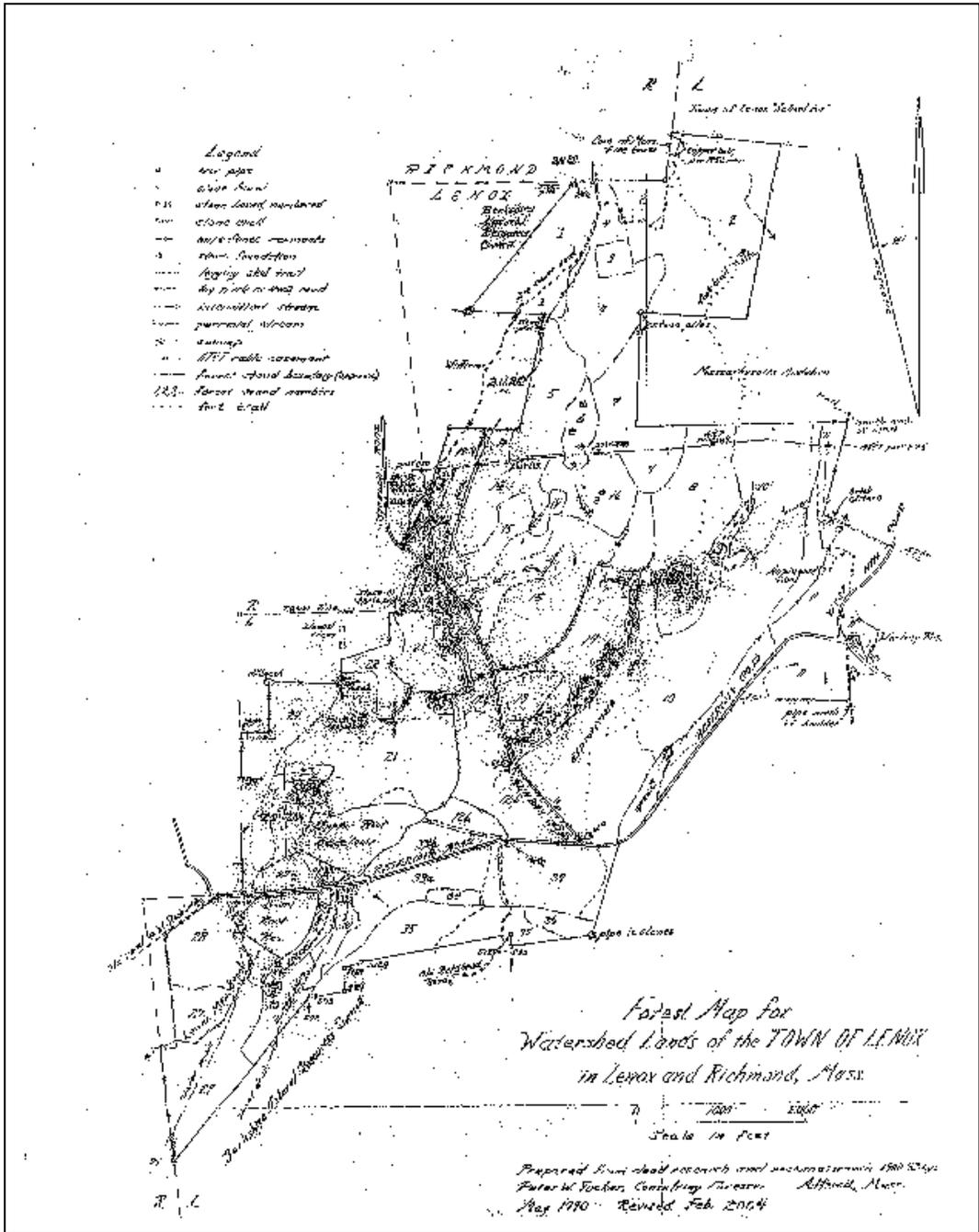


Exhibit A (Page 3 of 3)

Sketch showing Operations Envelope, pursuant to Paragraph 4(a)iii of the foregoing Conservation Restriction. Sketch is attached for informational purposes and is not to be used for conveyancing. (Please note: Sketch attached to this draft is conceptual, based on field inspection and remote mapping. If Town Meeting approves the conveyance, a sketch plan to scale will be prepared by a professional engineer, using the boundaries shown here as a guide.)

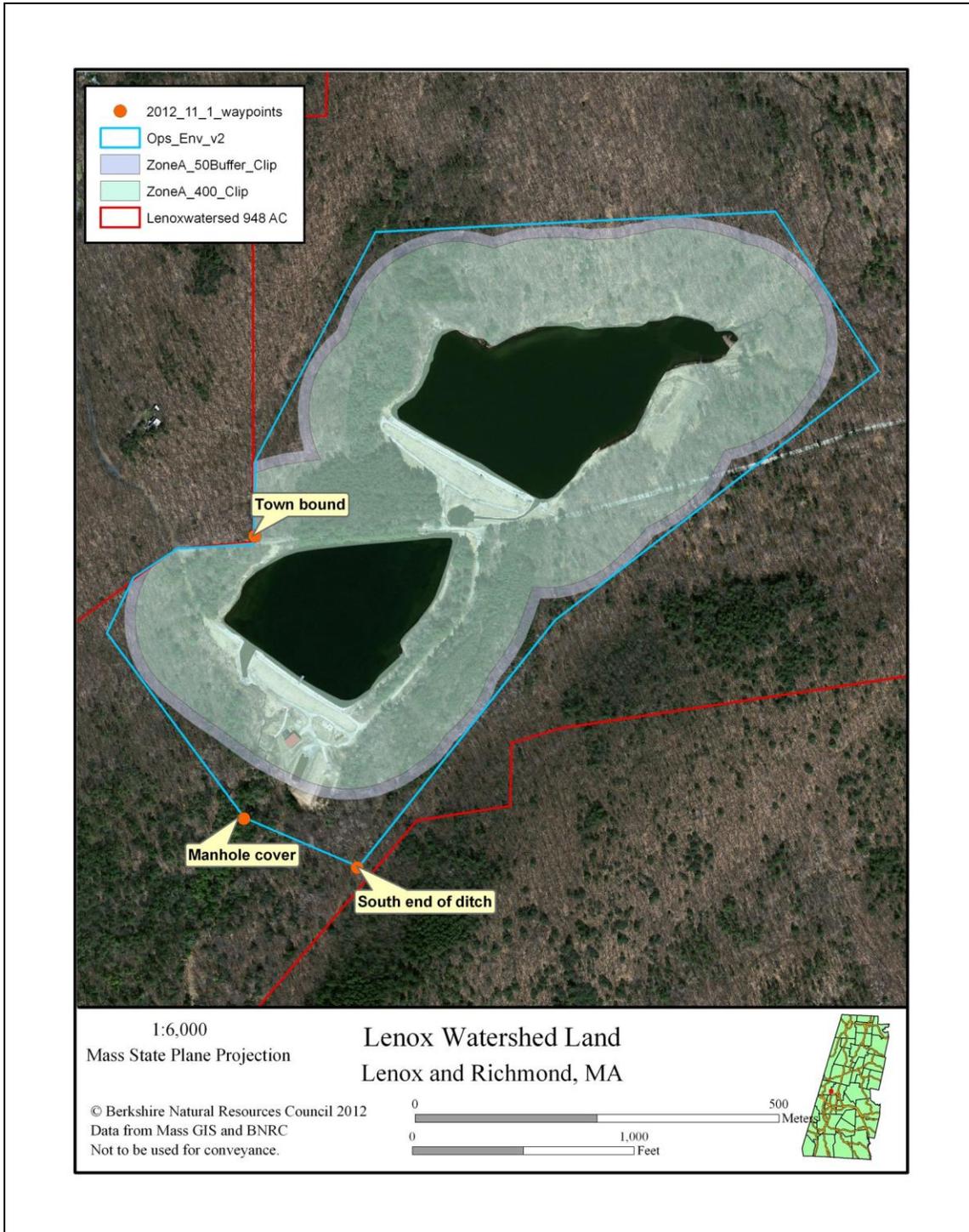


EXHIBIT B

Forest Management Plan

Guidelines and Required Plan Elements

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 forgoing 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 years after consultation with a Massachusetts licensed professional forester or by other individual with written approval by Grantee.