

101 EAST ST.

Bk: 43272 Pg: 110


 2008 0003
 Bk: 43272 Pg: 110
 Page: 1 of 16 09/03/20

**CONSERVATION RESTRICTION AND
WATERSHED PRESERVATION RESTRICTION**

Address: 101 East Street (Rear) & Shaw Road, Petersham

KNOW ALL PERSONS BY THESE PRESENTS that Frederick F. Day, Trustee of the Day Family Trust, under declaration of trust dated December 23, 1996, as recorded in Book 18505, Page 255, with an address of 101 East Street, Petersham MA 01366, its successors and assigns, (hereinafter "Grantor"), for consideration paid of One Hundred Twenty Thousand Dollars (\$120,000.00), paid by a grant from the Forest Legacy Program of the United States Department of Agriculture, the receipt and sufficiency of which is hereby acknowledged, does hereby grant, with QUITCLAIM COVENANTS, in perpetuity and for the purposes set forth in Article 97 of the Amendments to the Massachusetts Constitution, a Conservation Restriction and Watershed Preservation Restriction (hereinafter "CR/WPR"), in accordance with Chapter 184, Sections 31-33, Chapter 92A ½, Section 17 and Chapter 132A, Section 3 of the General Laws, to the Commonwealth of Massachusetts, acting by and through its Department of Conservation and Recreation, 251 Causeway Street Boston, Massachusetts 02114, (hereinafter "Grantee") upon land located in the Town of Petersham, Worcester County, Massachusetts, containing approximately 11 +/- acres, said parcel being described in Exhibit A, and shown as "CR/WPR Area +/- 11.0 Acres," excepting the parcel of land shown as "Exclusion Area +/- 5.0 Acres, on the sketch map entitled Exhibit B, both exhibits attached hereto and incorporate herein by reference, (hereinafter "Premises").

This CR/WPR shall be enforced by the Grantee in its sole discretion. This purchase has been wholly funded through the USDA Forest Service Forest Legacy Program. The management of the property and the enforcement of the CR/WPR shall follow an approved Forest Stewardship Plan, further described in Article IV below.

Bk: 43272 Pg: 111

I. PURPOSE:

A. The purpose of this CR/WPR is to retain the Premises in perpetuity for the purposes and protections set forth in Article 97 of the Amendments to the Massachusetts Constitution, to carry out the purposes of the Forest Legacy Program to retain the Premises predominantly in its natural, scenic, and open condition; to protect and promote the conservation of biological diversity, forests, soils, natural watercourses, ponds, wetlands, water supplies, and wildlife thereon; to protect the natural resources of the Premises; to protect and enhance the natural resource value of abutting and nearby conservation areas, namely the Nashua River Greenway Forest Legacy Area, and to create an unfragmented corridor linking the Quabbin Reservoir watershed lands with the Ware River Reservoir watershed lands to the East; to protect the scenic qualities of the open space resources of the Premises; to allow passive recreational use; to allow for sustainable and sound management of the forest resources; and to encourage the long-term professional stewardship of these resources in a manner consistent with Best Management Practices (BMPs), applicable state and federal law, and in conformance with an approved Forest Stewardship Plan.

These purposes are consistent with the open space conservation goals and objectives stated in the Forest Legacy Program, as established in Section 1217 of Title XII of the Food, Agriculture Conservation and Trade Act of 1990 (16USC Section 2103c) which was created "to protect environmentally important private forest land threatened with conversion to non-forest uses." The Premises is within the Nashua River Greenway Forest Legacy Area and protection of the Premises will contribute to the purposes of the Forest Legacy Program in the Commonwealth of Massachusetts as stated in the Forest Legacy Needs Assessment for Massachusetts, approved by the Secretary of the U.S. Department of Agriculture on August 9, 1993 and in the Nashua River Greenway Forest Legacy Area, "Application for Legacy Area Expansion" as approved by the Forest Northeastern Area Director of the USDA Forest Service on June 1, 2001.

B. The Grantor and the Grantee agree that all man-made structures, boundaries and natural features existing on the Premises at the time of the execution of this CR/WPR as well as the specific conservation values of the Premises shall be documented in a report to be on file in the offices of the Grantor and the Grantee ("Baseline Documentation Report"). This Baseline Documentation report shall consist of documentation that the Grantor and the Grantee collectively agree, provides an accurate representation of the condition and the conservation values of the Premises at the time this CR/WPR is recorded and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this CR/WPR.

II. PROHIBITED USES: In order to carry out the purposes set forth in Article above, the Grantor shall refrain from and will not permit any activity which shall be

inconsistent with the aforesated purposes of this CR/WPR. Except as set forth "RESERVED RIGHTS", Article III below, Grantor covenants for itself and its leg representatives, mortgagees, successors and assigns that the Premises will at all time be held, used and conveyed subject to and not in violation of the followin prohibitions:

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

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

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

D. Placing, filling, storing or dumping on the Premises of soil, snow, refuse, trash, equipment, mobile home, trailer, automotive vehicle or parts, vehicle bodies or parts, rubbish, debris, junk, waste, septic systems, leach fields, tillage or other substance or material whatsoever or the installation of above or underground storage tanks;

E. Storage, stockpiling, or use of hazardous materials, petroleum products, pesticides and herbicides, manure and fertilizers;

F. Cutting, removing or otherwise destroying trees, grasses, shrubs or other natural vegetation, except for vegetative management as provided in an approved Forest Stewardship Plan described in Article IV below;

G. Planting or broadcasting any genetically modified or replicated organisms or species, or any exotic species, defined as species that are not native to Worcester County by current published lists of native species, including The Vascular Plants of Massachusetts: A County Checklist, by Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (1999) or as amended or contained in a similar professionally acceptable publication available in the future, without prior written approval of DCR in accordance with "NOTICE AND APPROVAL", Article V hereof; and the purposeful introduction of those species prohibited by Federal and State laws and regulations, such as those species on the Department of Agriculture

Bk: 43272 Pg: 113

Resources, Division of Regulatory Services, Bureau of Farm Products and Plant Industries, "Massachusetts Prohibited Plant Species List";

H. Commercial or industrial use of any kind, including but not limited to commercial camping, commercial fishing, commercial hunting, or commercial trapping, and other commercial recreational activities;

I. Tillage of soil and grazing or sheltering of livestock, including horses;

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

K. The use of motorcycles, motorized trail bikes, snowmobiles, and all other motor vehicles, except as reasonably necessary in exercising any of the reserved rights in Article III, or as required by the police, firefighters, or other governmental agents in carrying out their lawful duties;

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

M. The subdivision of the Premises under Chapter 41, Section 81K et seq. of the General Laws; or the use of the Premises or any portion thereof to satisfy zoning requirements, or to calculate permissible building density, lot yield or transfer of development rights, for purposes of subdivision or development of the Premises or any other property, whether or not such property is owned by the Grantor, heirs, successors and assigns or is adjacent to the Premises;

N. The installation and maintenance of groundwater extraction wells and associated equipment and pipelines and similar equipment for use in extracting groundwater collecting surface water and transporting said water for sale or use on or off the Premises.

O. Any other use of the Premises or activity that would materially impair the conservation interests protected by this CR/WPR or which are prohibited by federal, state or local law or regulation, or which are inconsistent with the intent that the Premises remain, in the reasonable opinion of the Grantee, predominantly in their natural condition or otherwise inconsistent with the Purposes of this CR/WPR.

P. In no event shall "Compatible Non-Forest" use (cultivated farmland, pasture, grassland, shrubland, open water and wetlands, as defined by the Forest Legacy Program Implementation Guidelines, June 2003) exceed twenty-five percent (25%) of the total land area of the Premises. Once any existing "Compatible Non-Forest" land is converted to forest land it will not be allowed to be converted back to "Compatible Non-Forest" land, and no existing forest land shall be converted to "Compatible Non-Forest" land.

III. RESERVED RIGHTS: Notwithstanding the provisions of Article II hereof and subject to and in accordance with applicable laws, regulations and bylaws, Grantor reserves to himself and to his heirs, devisees, legal representatives, successors and assigns the following rights, uses and activities on the Premises, but only to the extent that such acts and uses do not materially impair the purposes of this CR/WPR.

A. Improvements.

1. The maintenance and use of existing unpaved trails, fences, bridges, culvert gates and stone walls, identified in the Baseline Documentation Report and approved Forest Stewardship Plan, (hereinafter "Improvements"), on the Premises, substantially in their present condition.

2. The construction, relocation, replacement or repair of like Improvements (as defined in III A. 1.) reasonably necessary in conducting permitted activities on the Premises, provided such new construction or relocation shall be approved by Grantee in each instance in accordance with Article V hereof, with the exception of forestry related improvements, including new woods roads, which are included in the approved original or amended Forest Stewardship Plan.

3. One permanent or temporary building or structure, provided such building or structure is deemed compatible with and in support of forest management activities in a Forest Stewardship Plan approved by the State Forester or representative as further described in Article IV, does not exceed 900 square feet and is approved by the Grantee in each instance in accordance with Article V.

Any such maintenance, use, and construction under this Article III A shall not be detrimental to water quality, soil conservation, wildlife conservation, or cultural resources protected by this CR/WPR, or otherwise wasteful of the natural resources of the Premises:

B. Recreational Activities. The non-commercial use of the Premises by Grantor and Grantor's invitees for passive recreational and educational activities such as hiking, fishing, tent camping, canoeing and non-motorized boating, snowshoeing, horseback riding, bicycling, cross-country skiing, and other like non-motorized (except for facilitating access for persons with disabilities) outdoor recreational activities that do not materially alter the landscape, and are carried out in a reasonable manner which does not impair the conservation, watershed and recreation values protected by this CR/WPR. Grantor may use the Premises for the permitted uses enumerated herein, incidental to compatible commercial operations (such as a bed and breakfast) on Grantor's unrestricted land adjacent to the Premises; provided, however, such unrestricted land and the Premises are held under the same ownership.

C. Signs. The erection and maintenance of signs no larger than six (6) square feet identifying ownership interests of the Premises, Grantee as holder of the CR/WPR

sources of contribution, the restrictions on the use of the Premises, the identity and location of trails, areas of interest, natural features, historic significance, to map property boundaries and for providing other like information. The design and location of such signs shall be approved by the Grantee in accordance with Article V below. Every effort shall be made to keep sign size and number to a minimum.

D. Vegetation Management. Trimming, maintaining or replacing trees, shrubs and other plantings for ordinary improvement and maintenance of the Premises; removing diseased or insect damaged trees or vegetation, removing limbs and trees that are a hazard to private property or public or private health or safety; controlling or eliminating invasive plant species. The use or application of pesticide herbicides, insecticides, and fungicides, but not the storing, mixing or preparation for use thereof, shall be allowed to carry out the activities authorized in this paragraph provided that: (i) such substances are used in a way that minimizes impacts to an area in contact with the many streams, vernal pools, and wetlands and lakes on the Premises; (ii) such use does not occur within 100' of any stream or wetland, and (iii) such use is approved by the Grantee in accordance with Article V hereof. Vegetation control and management and the use or application of pesticides, herbicides, insecticides and fungicides shall be based on prudent and sound silvicultural and horticultural principles, as applicable.

E. Archaeology. Conducting archaeological investigations and activities, including without limitation surveys, excavation, and artifact retrieval, under the direction of a qualified organization or person, following submission of an archaeological field investigation plan and its approval by State Archaeologist of the Massachusetts Historical Commission, and in accordance with M.G. L. Chapter 9, Section 27C and 950 CMR 70.00. Such activities shall be approved by the Grantee in accordance with Article V below.

F. Motor Vehicles. Motor vehicles used by the Grantor or its employees and agents as reasonably necessary to carry out activities permitted under this CR/WPR, but not for recreational activities; for access by Grantee for purposes set forth in Article V below, and for access by police, fire, emergency, public works or other government personnel in carrying out their official duties.

G. Surveys. The boundaries of the Premises may in the future be more accurately depicted on plans using on-the-ground field surveys.

H. Legal Compliance. The exercise of any right reserved by the Grantor under this Article III shall be in compliance with the then-current Zoning By-Law applicable to the Premises, the Wetlands Protection Act (Chapter 131, Section 40 of the General Laws) and all other applicable federal, state, and local laws and regulations. The inclusion of any reserved right in this Article III requiring a permit from a public agency does not imply that the Grantee takes any position on whether such permit should be issued.

Bk: 43272 Pg: 116

I. Other Rights. Any activity or use not reserved herein is prohibited without the express written approval of the Grantee stating that such activity or use is not inconsistent with the conservation and watershed purposes of the CR/WPR. Any request by Grantor for approval of such activity or use shall contain a detailed description of such right or use and an explanation of why such right or use is not inconsistent with the conservation purposes of this CR/WPR. In the event the Grantee disapproves of such right or use, the Grantee shall provide a detailed explanation of why such right or use is inconsistent with the conservation and watershed purposes of this CR/WPR. Any request for approval under this paragraph shall be made in accordance with Article V herein below.

J. Harvesting for Personal Use. The cutting of trees, not to exceed 10 MBF or 1 cord of wood in any rolling 12 month period, to provide non-commercial forest products for personal use or for improvements permitted under Article III. A. herein provided that said silvicultural treatment is contained within the approved Forest Stewardship Plan of the Premises. Notwithstanding the thresholds described in s. 4 of the Cutting Practices Act, if any proposed cutting/harvesting exceeds 10 MBF or 10 cords of wood during any rolling 12 month period, Grantor shall submit a Forest Cutting Plan as further described in Article IV. B. below.

IV. FORESTRY MANAGEMENT

A. FOREST STEWARDSHIP PLAN:

Prior to the expiration date of the current Massachusetts Forest Stewardship Plan Grantor shall prepare a new Massachusetts Forest Stewardship Plan (hereinafter "Stewardship Plan") for the Premises consistent with the provisions of section 5(f) of the Cooperative Forestry Assistance Act of 1978, 16 U.S.C. § 2103a(f), and with the Massachusetts Forest Stewardship Plan Guidelines as described in "Directions for the preparation of the Chapter 61 Forest Management Plans and Forest Stewardship Plans" or such statute and guidelines in effect at the time of the approval of such Stewardship Plan. The Stewardship Plan shall reference this CR/WPR and shall set management goals that are consistent with the terms and purposes of this CR/WPR. The Stewardship Plan shall describe in detail plans for carrying out activities permitted under this CR, including but not limited to, forest management improvements, new uses, and recreation, as provided hereinbelow. Grantor shall first submit said Stewardship Plan for review and approval by the Grantee, for compliance with the purposes of this CR/WPR. Thereafter, Grantor shall submit said Stewardship Plan for review and approval by the State Forester or his representative. Written authorization stating that said plan conforms to the purpose of this CR/WPR from the Grantee and a copy of this CR/WPR shall accompany the Stewardship Plan along with Grantor's application to the State Forester for approval of said Stewardship Plan.

Bk: 43272 Pg: 117

The Stewardship Plan shall remain in effect for the balance of the 10-year period and shall be subsequently resubmitted once every ten (10) years. Each subsequent amendment and/or resubmitted ten (10) year Stewardship Plan shall be prepared and submitted by the Grantor for approval through the process described in this Article IV A. By mutual agreement of the parties, the 10-year Stewardship Plan may be revised at any time by written amendment, subject to the provisions of Article IV.

B. FOREST CUTTING PLAN

If any proposed timber or tree cultivating and/or harvesting exceeds ten thousand ("M" = 1000) board feet ("bf") or 10 cords of wood during any rolling 12 month period, notwithstanding the thresholds described in s.44 of the Cutting Practices Act, the Grantor shall submit a Forest Cutting Plan, prepared by a Massachusetts Forester licensed in accordance with M.G.L. c. 132, s. 50, and 304 CMR 10.00 as amended for approval in writing by the State Forester or authorized designee (hereinafter "Cutting Plan"). Said Forest Cutting Plan shall be prepared in compliance with the Massachusetts Forest Cutting Practices Act, M.G.L. c. 132, s.40-46 as amended, 304 CMR 11.00, related Department [DCR] policies and consistent with the approved Stewardship Plan and the purposes and terms of this CR/WPR.

1. Commercial Harvesting. Commercial timber or tree cultivating and/or harvesting shall be conducted in compliance with (a) prudent and sound forest management practices, using all required Best Management Practices and to the extent possible the recommended guidelines pursuant to the Massachusetts Forestry Best Management Practices Manual (Kittredge and Parker, 1996) and subsequent versions as may be approved by the Department (hereinafter "Forestry BMPS"); (b) the approved Stewardship Plan; (c) the approved Cutting Plan; and (d) the purposes and terms of this CR/WPR.

The Grantor shall include a copy of this CR/WPR with its application to the State Forester, or authorized designee, for approval of said Cutting Plan.

2. New Ways. The maintenance and use or discontinuance of existing unpaved woods roads and the construction, relocation, replacement and repair or discontinuance of new unpaved woods roads on the Premises for forestry purposes with a travel surface not to exceed twelve (12) feet in width, so long as such roads are located, designed and constructed in a manner that will minimize negative impacts on the conservation and recreational purposes of this CR/WPR, and are included in the approved Stewardship Plan and any Cutting Plan required, and are consistent with Forestry Best Management Practices. The Stewardship Plan must demonstrate (1) that the road improvements are necessary to provide reasonable forest management access to the Premises, (2) that the system of existing woods roads is not reasonably adequate, and (3) that such improvements do not materially impair the purposes of this CR/WPR. Notice to and approval of the Grantee shall be deemed granted for the

Bk: 43272 Pg: 118

construction of new woods roads if such roads are contained in the approved Stewardship Plan, and any approved Cutting Plan required. Otherwise, approval of the Grantee shall be obtained in accordance with Article V. Upon the discontinuance of any existing or new unpaved woods roads, Grantor shall restore the roadbeds, bridges, culverts and any disturbed abutting areas to a natural state with even contours and in such a manner so as not to cause erosion, in order that re-forestation and vegetation may naturally occur. Such reclamation of wood roads shall be in accordance with Forestry BMPs and the Stewardship Plan.

No provisions in or revisions to the Stewardship Plan or to the Cutting Plan shall change the meaning or terms of this CR/WPR, and in the case of any conflict between this CR/WPR and the Plan, the CR/WPR shall govern.

V. NOTICE AND APPROVAL: Unless otherwise provided herein or by law, the Grantor shall notify Grantee in writing, sent certified mail, return receipt requested, forty five (45) days before allowing or undertaking any uses or activities on the Premises which require the approval of the Grantee under Article III, above. Grantor shall also in the same manner notify the Grantee before allowing or undertaking any uses or activities which may significantly impair the conservation interests found within the Premises and are contrary to the purposes of this CR/WPR. Notice from the Grantor shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of the CR/WPR. Grantor shall submit to Grantee such plans and other information as Grantee shall reasonably require determining whether the use or activity is consistent with the purposes of this CR/WPR. Grantor shall also provide the State Forester or his designated representative a copy of all notices. All communications in this regard should be mailed to:

Commissioner
Massachusetts Department of Conservation and Recreation
251 Causeway Street, Suite 600
Boston, MA 02114-2104

with copies to:

Regional Director
Division of Water Supply Protection
Department of Conservation and Recreation
180 Beaman Street
West Boylston, MA 01583

and

State Forester
Massachusetts Department of Conservation and Recreation
251 Causeway Street, Suite 600

Bk: 43272 Pg: 119

Boston, MA 02114-2104

With respect to those activities or uses that require Grantee's approval, Grantee shall grant or withhold its approval in writing within forty-five (45) days of receipt of Grantor's written request therefore. Grantee's approval may be withheld only upon reasonable determination by the Grantee, that the action as proposed would be inconsistent with the purposes of this CR/WPR, would materially impair the conservation interests to be protected by this CR/WPR, or would violate any statute, ordinance, bylaw, rule or regulation. Failure of Grantee to respond within forty-five (45) days of receipt of written request from Grantor shall be deemed to constitute approval of Grantee, provided that: (i) the request sets forth the provisions of this paragraph relating to approval having been deemed given after the passage of time; (ii) the activities or uses for which approval is sought are not prohibited under the terms of this CR/WPR; and (iii) that such activities are not clearly contrary or detrimental to the purposes of this CR/WPR. In either event Grantee approval cannot be assumed or claimed by the Grantor. In the event the activity proposed is necessary to address an emergency situation, either to avert environmental degradation, ecological damage or risk to public health and safety, Grantee shall respond forthwith and with all deliberate speed.

VI. REMEDIES; WAIVER: The rights hereby granted shall include the right to enforce this CR/WPR by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of (being agreed that the Grantee may 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.

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

VII. RIGHT OF ACCESS; MANAGEMENT; INSPECTION: The CR/WPR includes the grant of the right to Grantee, its successor and assigns, to enter upon the Premises in a reasonable manner and at reasonable times for the purpose of inspecting the Premises to determine compliance with the terms of this CR/WPR. In the event of an violation, Grantee must within ten (10) business days notify Grantor in writing describing the details of the violation(s) and request Grantor to remedy such violation.

If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, the Grantee can request that the Grantor meet in an effort to resolve the alleged violation. If the Grantor refuses to meet within thirty (30) days after the Grantee's request, or if, despite the good faith efforts of the parties, the Grantor and the Grantee fail to resolve a dispute regarding the alleged violation at such meeting, then the Grantee may enter upon the Premises to take reasonable measures to remedy or abate the violation, and

Bk: 43272 Pg: 120

may pursue its remedies as described herein in Article VI and this Article VII.

Grantor, and thereafter the heirs, successors, and assigns of the Grantor, covenant and agree to reimburse Grantee for all reasonable costs and expenses (including without limitation reasonable attorneys fees) incurred in enforcing this CR/WPR or in taking reasonable measures to remedy or abate any violation thereof.

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

IX. EXTINGUISHMENT; EMINENT DOMAIN: The grant of this CR/WPR gives rise to a real property interest immediately vested in the Grantee and which has a fair market value equal to the amount by which the CR/WPR reduces, at the time of the grant, the appraised fair market value of the Premises as if unrestricted. That is, using the before and after appraisal method, the Grantee's share equals the market value of the property before the CR/WPR is placed upon the Premises less the market value of the remainder property after the CR/WPR is placed upon the Premises. Such proportional value of the Grantee's property right at the time of the grant is ninety-one and eighty-two hundredths percent (91.82%), which proportionate value shall remain constant.

If any change in conditions, including a taking by a public authority (other than the Commonwealth) under power of eminent domain, gives rise to extinguishment or other release of this CR/WPR under applicable law, then the Grantor and Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. If the public authority is the Commonwealth, the Grantor and Grantee shall pursue their remedies separately.

The recovery of proceeds by the parties, if any, shall be governed by the proportional value of the CR/WPR, as hereinabove defined, as determined by an appraisal at the time of the extinguishment.

If the conservation interests protected hereby are unaffected by the taking, and the only interest taken by public authority is the Grantor's interest, and recovered proceeds are awarded on the basis of the value of the Premises as restricted by this CR/WPR, then the proceeds from such taking shall be payable in their entirety to Grantor.

X. REVERSION CLAUSE: The CR/WPR Holder acknowledges that this CR/WPR was acquired with Federal funds under the Forest Legacy Program (P.L. 101-624; 10 Stat. 3359) and that the interest acquired cannot be sold, exchanged, or otherwise disposed, except as provided in this CR/WPR and unless the United States reimburses the market value of the interest in land at the time of disposal. Provided, however, the United States Secretary of Agriculture may exercise discretion to consent to such sale, exchange, or disposition upon the State's tender of equal valued consideration acceptable to the Secretary.

Bk: 43272 Pg: 121

XI. BINDING EFFECT; AMENDMENT AND DURATION: This CR/WPR and its terms and provisions hereof shall be deemed to run with the land and be binding upon the Grantor, all heirs, successors and assigns of both the Grantor and Grantee. The benefits of this CR/WPR shall not be appurtenant to any particular parcel of land, but shall be gross and assignable or transferable only to a government entity, consistent with Article 97 of the Amendments to the Massachusetts Constitution, Section 170h(1) of the U.S. Internal Revenue Code of 1986, as amended, and the Forest Legacy Program (16 U.S.C. Section 2103(c)), which entity has among its purposes the conservation and preservation of land and water area and agrees to and is capable of enforcing the conservation purposes of this CR/WPR. Any such assignee or transferee shall have the like power of assignment or transfer.

This CR/WPR may only be voluntarily released, in whole or in part, by the Grantee, as amended by the parties, consistent with Chapter 184, Section 32 of the General Law and Article 97 of the Amendments to the Massachusetts Constitution and the Forest Legacy Program: Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101-624:104 stat. 3359). No amendment may be made that will be inconsistent with the purposes of this CR/WPR, affect its perpetual duration thereof, or adversely affect any of the significant conservation values of the Premises. Any such amendment shall be recorded with the Worcester Registry of Deeds.

XII. SUBSEQUENT TRANSFERS: The Grantor agrees to incorporate by reference the terms of this CR/WPR in any deed or other legal instrument by which it divests itself of any interest in the Premises, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of such transfer at least thirty (30) days prior to the date of such transfer. Grantor shall also provide the State Forester or his designated representative a copy of all such notices.

XIII. SEVERABILITY: If any section or provision of this CR/WPR shall be held to be unenforceable by any court of competent jurisdiction, the CR/WPR shall be construed as though such section had not been included in it. If any section or provision of the CR/WPR shall be susceptible of two constructions, one of which would render such section or provision invalid, then such section or provision shall be given the construction that would render it valid. If any section or provision of this instrument is ambiguous, it shall be interpreted in accordance with the policies and provisions expressed in Article 97 of the Amendments to the Massachusetts Constitution and in the requirements of the Forest Legacy Program: Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101-624:104 stat. 3359), and Chapter 184, Section 32 and Chapter 132A of the Massachusetts General Laws.

XIV. MISCELLANEOUS:

A. Excise Stamps. No Massachusetts deed excise tax stamps are required by Chapter 64D, Section 1, as the Commonwealth is a party to this instrument.

Bk: 43272 Pg: 123

IN WITNESS WHEREOF, Frederick F. Day has caused these presents to be signed, acknowledged and delivered as Trustee of the Day Family Trust, this 28th day of August, 2008.

Frederick F. Day
Frederick F. Day, Trustee, as aforesaid

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF Worcester

On this 28th day of August, 2008, before me, the undersigned notary public personally appeared Frederick F. Day, provided to me through satisfactory evidence of identification, which was personal knowledge/a Massachusetts Driver's License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Trustee of the Day Family Trust.

[Signature]
Notary Public: *James M. Ermini, Esq.*
My Commission Expires: *09/26/2014*



Bk: 43272 Pg: 124

EXHIBIT A

A certain tract of land situate about one mile easterly from the Common in said Petersham and bounded and described as follows, to wit: northerly by land of Chas. K. Moulton; easterly by a highway leading to town of Athol and a highway leading from Petersham aforesaid to town of Hubbardston; southerly by last aforesaid highway and land of D.W. Johnson and westerly by land of J. W. Brooks & J. J. Higginson; together with the buildings thereon, and containing about sixteen acres, be the same more or less.

Being and meaning to convey, all of the grantor's right, title and interest in and to Lot No. 1 of the premises conveyed to Annie D. Willson by deed of Joseph Brown dated November 2, 1888 and recorded in Worcester District Registry of Deeds at Book 1280, Page 646. See also probate court records for the estate of Annie D. Willson, Martha Day and Amy Hart.

Excepting and excluding from the above described parcel is all of the land containing 5 acres, more or less, shown as "Exclusion Area +/- 5.0 Acres" on the sketch map entitled Exhibit B attached hereto and incorporated herein by reference.

Being the same premises conveyed by Allen F. Day to Frederick F. Day, Trustee of the Day Family Trust by deed dated December 23, 1996, recorded at said Registry at Book 18505, Page 261, excepting the "Exclusion Area" as described above.

The property is identified as Lot 393 on Tax Assessor's Plat R-202. This information is given for informational purposes only.

Exhibit B

