

ATTACHMENT 2

Upon recording, mail to:  
Bureau of Resource Protection, Wastewater Management  
Department of Environmental Protection  
[applicable Regional Office address]

GRANT OF TITLE 5 NITROGEN LOADING RESTRICTION AND EASEMENT  
ON NITROGEN CREDIT LAND

(where Grantee seeks nitrogen credit land from third party Grantor)

310 CMR 15.216

This GRANT OF TITLE 5 Nitrogen Loading Restriction AND EASEMENT on Nitrogen Credit Land made as of this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_ County, Massachusetts ("Grantor").

WITNESSETH

WHEREAS, Grantor being the owner(s) in fee simple of that [those] certain parcel(s) of [vacant] land located in \_\_\_\_\_, \_\_\_\_\_ County, Massachusetts, with the buildings and improvements thereon, pursuant to a deed from \_\_\_\_\_ to Grantor, dated \_\_\_\_\_, and recorded with \_\_\_\_\_ County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_ [source of title other than by deed] and/or pursuant to Certificate of Title No. \_\_\_\_\_ issued by the Land Registration Office of the \_\_\_\_\_ County Registry District, said parcel(s) of land being more particularly bounded and described in Exhibit A, attached hereto and made a part hereof, and being shown on a plan entitled, " \_\_\_\_\_", dated \_\_\_\_\_, prepared by \_\_\_\_\_, recorded with \_\_\_\_\_ County Registry of Deeds as Plan No. \_\_\_\_\_, in Plan Book \_\_\_\_\_ and/or registered as Land Court Plan No. \_\_\_\_\_, on file with the Land Registration Office of \_\_\_\_\_ County Registry District ("Property"); and

WHEREAS, \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_ County, Massachusetts, ("Grantee of the Benefited Property") being the owner(s) in fee simple of that [those] certain parcel(s) of [vacant] land located in \_\_\_\_\_, \_\_\_\_\_ County, Massachusetts, with the buildings and improvements thereon, pursuant to a deed from \_\_\_\_\_ to Grantee of the Benefited Property, dated \_\_\_\_\_, and recorded with \_\_\_\_\_ County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_ [source of title other than deed] and/or pursuant to Certificate of Title No. \_\_\_\_\_ issued by the Land Registration Office of the \_\_\_\_\_ County Registry District, said parcel(s) of land being more particularly bounded and described in Exhibit B, attached hereto and made a part hereof, and being shown on a plan entitled, " \_\_\_\_\_", dated \_\_\_\_\_, prepared by \_\_\_\_\_, recorded with \_\_\_\_\_ County Registry of deeds as Plan No. \_\_\_\_\_, in Plan Book \_\_\_\_\_ and/or registered as Land Court Plan No. \_\_\_\_\_, on file with the Land Registration Office of \_\_\_\_\_ County Registry District ("Benefited Property"); and

WHEREAS, the Benefited Property has the benefit of a Nitrogen Loading Restriction and Easement, being more particularly bounded and described in, a Grant of Title 5 Nitrogen Loading Restriction and Easement on Facility Land, recorded with the \_\_\_\_\_ County Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_ [or on file with the Land Registration Office of \_\_\_\_\_ County Registry District] [or to be recorded/filed for registration herewith] ("Facility Land Restriction and Easement"); and

WHEREAS, the Nitrogen Loading Facility Aggregation Plan has been approved by the \_\_\_\_\_ Board of Health [insert appropriate town/city] [and, if required, the Massachusetts Department of Environmental Protection ("MassDEP" or "Department")] in accordance with the Department's "Guidelines for Title 5 Aggregation of Plans and Nitrogen Loading;" said approval being based upon the agreement by Grantor to incur certain obligations regarding the number of bedrooms, as defined in 310 CMR 15.002, and/or the wastewater discharge design flow in any improvements located on the Property and maintenance of the Facility Land Restriction and Easement to ensure protection of the nitrogen loading limitation of 440 gpd/acre discharge standard pursuant to 310 CMR 15.214 in nitrogen-sensitive areas or in areas serving new construction where the residential use of both on-site systems and drinking water supply wells are proposed; and to grant to the Grantee of the Benefited Property and to the municipality acting by and through the \_\_\_\_\_ Board of Health [insert appropriate town/city] a perpetual easement to ensure maintenance of the Property as nitrogen credit land including, but not limited to, removal of any prohibited uses and in connection herewith a perpetual easement to pass and repass over the Property for purposes of inspection to ensure compliance with and fulfillment of the terms of this Nitrogen Credit Land Restriction/Easement as hereafter set forth;

NOW, THEREFORE, pursuant to the provisions of 310 CMR 15.216, Grantor does hereby GRANT to the Grantee of the Benefited Property and to the Town/City of \_\_\_\_\_, a Massachusetts municipal corporation situated in \_\_\_\_\_ County, having an address at \_\_\_\_\_, Massachusetts, acting by and through its Board of Health ("Local Approving Authority") for nominal, non-monetary consideration, with QUITCLAIM COVENANTS, a TITLE 5 NITROGEN LOADING RESTRICTION AND EASEMENT on NITROGEN CREDIT LAND ("Nitrogen Credit Land Restriction/Easement") consisting of approximately \_\_\_\_\_ acres in, on, upon, through, over and under the Property, the terms and conditions of which are as follows:

PURPOSE:

The purpose of this restriction and easement is to protect and preserve the quality and quantity of ground water resources in the area of the public and private wells in the Town/City of \_\_\_\_\_, Massachusetts in order to ensure a safe and healthy public and private water supply for the present and future inhabitants of the area. It shall also be for the specific purpose of limiting the introduction of nitrogen and other pollutants into, and maintaining the natural uptake of pollutants and the recharge of the ground water which takes place on the Property for the said water supply and for the specific benefit of the above referenced Benefited Property.

OBLIGATIONS AND EASEMENT:

1. Prohibitions. Grantor agrees to maintain the Property as nitrogen credit land by prohibiting activities which have a detrimental effect on nitrogen loading on the Property, including but not limited to wastewater discharges, the use of nitrogen fertilizer, the introduction of artificial impervious surfaces, the raising, breeding or keeping of animals, livestock or poultry for commercial purposes, and the creation or introduction of land under water. A change in the condition of the Property which results in the Property or a portion thereof being within a Velocity Zone or a Regulatory Floodway will render the Property or said portion thereof ineligible for nitrogen credit pursuant to 310 CMR 15.216.

2. Easements. In creating this Nitrogen Credit Land Restriction and Easement, Grantor hereby grants to the Grantee of the Benefited Property and to the Local Approving Authority, its agents, contractors, subcontractors and employees a perpetual EASEMENT to enter upon and the right to bring equipment onto the Property to do any and all acts deemed necessary to maintain the Property as nitrogen credit land, together with a right to pass and repass by foot and by vehicle over Property for said purposes, and for purposes of inspecting the Property to ensure compliance with and fulfillment of the terms of this Nitrogen Credit Land Restriction/Easement.

3. Severability. If any court or other tribunal determines that any provision of this instrument is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

4. Enforcement. Grantor expressly acknowledges that a violation of the terms of this instrument could result in the following:

(i) upon determination by a court of competent jurisdiction, in the issuance of criminal and civil penalties, and/or equitable remedies, including, but not limited to, injunctive relief, such injunctive relief could include the issuance of an order to modify or remove any improvements constructed upon the Property in violation of the terms of this Nitrogen Credit Land Restriction/Easement; and

(ii) in the assessment of penalties and enforcement action by the Local Approving Authority and DEP to enforce the terms of this Nitrogen Credit Land Restriction/Easement, pursuant to Title 5; M.G.L. c.111, §§ 17, 31, 122, 124, 125, 125A, 127A through 127O, and 129; and M.G.L. c.83, §11.

5. Provisions to Run with the Land. This Nitrogen Credit Land Restriction/Easement sets forth the rights, liabilities, agreements and obligations upon and subject to which the Property or any portion thereof, shall be left unimproved or according to which said Property may be improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. The rights, liabilities, agreements and obligations herein set forth shall run with the Property and the Benefited Property, as applicable thereto, and any portion thereof and shall inure to the benefit of and be binding upon Grantor, Grantee of the Benefited Property, and all parties claiming by, through or under the Local Approving Authority or Grantor. The rights hereby granted to the Grantee of the Benefited Property, the Local Approving Authority, and their respective

successors and assigns, constitute their perpetual right to enforce this Nitrogen Credit Land Restriction/Easement. Grantor hereby covenants for himself/herself/itself and his/her/its executors, administrators, heirs, successors and assigns, to stand seized and hold title to the Property, as applicable thereto, and any portion thereof, subject to this Nitrogen Credit Land Restriction/Easement, provided, however, that a violation of this Nitrogen Credit Land Restriction/Easement shall not result in a forfeiture or reversion of Grantor's title to the Property, as applicable thereto.

6. Concurrence Presumed. It being agreed that Grantor and all parties claiming by, through or under Grantor shall be deemed to be in accord with the provisions herein set forth and to agree for and among themselves and any party claiming by, through or under them, and their respective agents, contractors, sub-contractors and employees, that the Nitrogen Credit Land Restriction/Easement herein established shall be adhered to and not violated and that their respective interests in the Property and the Nitrogen Credit Land Restriction and Easement, as applicable thereto, shall be subject to the provisions herein set forth.

7. Incorporation into Deeds, Mortgages, leases and Instruments of Transfer. Grantor hereby agrees to incorporate this Nitrogen Credit Land Restriction/Easement, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Property, or any portion thereof, is conveyed.

8. Recordation. Grantor shall record and/or register this Nitrogen Credit Land Restriction/Easement with the appropriate Registry of Deeds and/or Land Registration Office within 30 days of the latter of: receipt from the Local Approving Authority of the approved Restriction/Easement or the expiration of the 60-day DEP constructive approval period pursuant to 310 CMR 15.216. Grantor shall file with the Local Approving Authority and the DEP a certified Registry copy of this Nitrogen Credit Land Restriction/Easement as recorded and/or registered within 30 days of its date of recordation and/or registration.

9. Amendment and Release. This Nitrogen Credit Land Restriction/Easement may be amended or released only upon approval by the Local Approving Authority. Release of this Nitrogen Credit Land Restriction/Easement shall be granted by the Local Approving Authority in the event the Benefited Property is connected to a municipal sewer system and the septic system serving the Benefited Property is abandoned in accordance with 310 CMR 15.354 or the Benefited Property is no longer located within a nitrogen sensitive area pursuant to 310 CMR 15.215. Any such amendment or release shall be recorded and/or registered with the appropriate Registry of Deeds and/or Land Registration Office and a certified Registry copy of said amendment or release shall be filed with the Local Approving Authority and the DEP within 30 days of its date of recordation and/or registration.

10. Term. This Nitrogen Credit Land Restriction/Easement shall run in perpetuity and is intended to conform to M.G.L. c.184, §26, as amended.

11. Rights Reserved. This Nitrogen Credit Land Restriction/Easement is granted to the Grantee of the Benefited Property and the Local Approving Authority in connection with the approval of a Nitrogen Loading Facility Aggregation Plan pursuant to 310 CMR 15.216 and the Department's "Guidelines for Title 5 Aggregation of Flows and Nitrogen Loading." It is expressly agreed that acceptance of the Nitrogen Credit Land Restriction/Easement by the Local Approving Authority [or constructive approval of the Nitrogen Loading Facility Aggregation Plan by the Department of Environmental Protection] shall not operate to bar, diminish, or in any way affect any legal or equitable right of the Local Approving Authority or DEP to issue any future order with respect to the Property and the Benefited Property, as applicable thereto, or in any way affect any other claim, action, suit, cause of action, or demand which the Local Approving Authority or DEP may have with respect thereto. Nor shall acceptance of Nitrogen Credit Land Restriction/Easement serve to impose any obligations, liabilities, or any other duties upon the Local Approving Authority.

12. Effective Date. This Nitrogen Credit Land Restriction/Easement shall become effective upon its recordation and/or registration with the appropriate Registry of Deeds and/or Land Registration Office.

WITNESS the execution hereof under seal this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Grantor

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, §§

\_\_\_\_\_, 19 \_\_\_\_

Then personally appeared the above-named \_\_\_\_\_ and acknowledged the foregoing instrument to be \_\_\_\_\_ free act and deed before me.

\_\_\_\_\_  
Notary Public:  
My commission expires:

The \_\_\_\_\_ [insert Local Approving Authority] hereby approves and accepts this Grant of Title 5 Nitrogen Loading Restriction and Easement on Nitrogen Credit Land.

\_\_\_\_\_  
Local Approving Authority

Date: \_\_\_\_\_