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**GRANT OF CONSERVATION RESTRICTION**

I, David M. Smith, of 55 Woodlawn Street, Hamden, Connecticut 06517 ("the Grantor"), do hereby grant, with quitclaim covenants, in perpetuity and exclusively for conservation purposes, to **THE RATTLESAKE GUTTER TRUST, INC.**, a Massachusetts non-profit corporation located in Leverett, Massachusetts ("the Grantee"), and its successors and permitted assigns, a Conservation Restriction pursuant to the provisions of M.G.L. Chapter 184, sections 31-33 as described below with respect to a certain parcel of land located in Leverett, Massachusetts and further described in a deed recorded at the Franklin County Registry of Deeds at Book 1457, Page 86 attached hereto as Exhibit A (the "Property").

**A. PURPOSES.**

The intent and purposes of this Conservation Restriction are to preserve the Property in its present natural, scenic, and forested condition; to promote the conservation of forests, wetlands, agricultural lands, soils, natural watercourses, and wildlife thereon; to preserve and promote the use of forestry and horticultural resources of the Property; and to protect and enhance the value of abutting and neighboring resources, open spaces, and conservation areas.

**WHEREAS**, the Grantor and the Grantee recognize the natural, scenic, aesthetic, and special character of the Property and have the common purpose of preserving the conservation values of the Property by conveyance to the Grantee of a Conservation Restriction on, over, under, and across the Property which will preserve the natural values of the Property and prevent any use of the Property that would significantly impair or interfere with the conservation values of the Property and the Property's natural resources, and

**WHEREAS**, the Property is adjacent to the Town's Roaring Brook Conservation Area and as such constitutes an extension of public open space devoted to conservation purposes, and

**WHEREAS**, the Property provides habitat to numerous species of birds, mammals, reptiles, and amphibians, including black bears, deer, fishers, coyotes, wild turkeys, owls, and a variety of salamanders, turtles, and snakes, and

**WHEREAS**, the Property forms part of a riparian corridor extending one-quarter mile on either side of Roaring Brook, the principal stream draining the southern slope of Brushy Mountain and the eastern portion of Leverett, and

**WHEREAS**, the Property will be available to the public for hiking, bird watching, and other passive outdoor recreational activities, and

**WHEREAS**, the Property, being located along Shutesbury Road and consisting of scenic and productive woodlands, visible from the public way, provides scenic views to the general public, and

**WHEREAS**, this Conservation Restriction is consistent with the Town's "Conservation and Outdoor Recreation Master Plan."

**NOW, THEREFORE**, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, the Grantor and the Grantee voluntarily agree



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Page 1 of 13 06/30/1999 11:08AM

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that the Restriction described herein is an appropriate means to achieve the state's, county's and the community's open space goals and objectives.

**2. Binding Effect and Prohibited Activities.**

The Grantor covenants for himself, his heirs, devisees, legal representatives, successors, and assigns that the Property will at all times be held, used, and conveyed subject to the following restrictions, which shall run with the Property in perpetuity, except as said restrictions may be limited or affected by the provisions of Section 3 below.

- (a) The Property, (including, without limitation, any body of water thereon) excluding any public way or existing private right of way, shall continue to be used substantially as at present without residential, industrial, or commercial use or development.
- (b) No residential dwelling, mobile home or residential trailer, tennis court, artificial swimming pool, asphalt driveway, improved roads associated with development, utility pole, tower, conduit or line, equipment, fixture, trailer, antenna, or other temporary or permanent structure or improvement shall be placed or permitted to remain on, over, or under the Property except for structures expressly permitted herein. [These prohibitions do not apply to any utility pole, tower, conduit, or line whose installation is mandated by the Town or a utility company.]
- (c) No loam, peat, gravel, soil, sand, rock or other mineral resource or natural deposit shall be excavated, dredged, or removed from the Property, unless related to the uses, activities and purposes expressly permitted herein including, but not limited to the construction of recreation trails, and the conduct of sound forestry or wildlife management practices.
- (d) No trees, shrubs, or other vegetation on the Property shall be cut, removed, or destroyed except that the Grantor, his heirs, devisees, successors, or assigns may perform at their expense or authorize others to perform such cutting, pruning, and removal as shall be dictated by sound horticultural, silvicultural, or wildlife management practices and as otherwise expressly permitted herein.
- (e) Neither the Grantor nor his heirs, successors, or assigns shall authorize refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, low level radioactive or hazardous waste, or other similar substances or material whatsoever to be placed, dumped, or stored on the Property.
- (f) No soil shall be placed, dumped, or stored on the Property unless related to the uses, activities, and purposes expressly permitted herein.
- (g) No use shall be made of the Property and no activity shall be permitted thereon which is or may be inconsistent with the intent of this grant, being the perpetual protection and preservation of the Property and its natural resources. No activity (including, but not limited to, drainage or flood control activities) shall be authorized or carried out which is significantly detrimental to the natural resources of the Property or to water quality, soil conservation, wildlife conservation or sound forestry management practices or which is otherwise wasteful of the natural resources of the Property.

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(h) No commercial camping, commercial fishing, or commercial trapping shall be permitted on the Property.

(i) The Property shall not be subdivided without the written approval of the Grantee, which approval shall not be withheld unless such subdivision materially and adversely affects the purposes of this Conservation Restriction.

(j) The Property may not be used for transferring development rights to any property, whether or not adjacent to the Property or for use in calculations involving development of any other property whether or not adjacent to the Property, in any manner whatsoever.

### 3. Reserved Rights.

Notwithstanding any provisions of this instrument to the contrary, the Grantor hereby reserves to and for himself, his heirs, devisees, legal representatives, successors, and assigns all other customary rights and privileges of ownership including the right to privacy and the right to conduct or permit the following activities on the Property. Reserved rights shall be exercised with respect to and in compliance with all applicable state, local, and federal laws.

(a) The maintenance and use of currently existing trails, rights of way, fences, bar ways, bridges, gates, stone walls, farm and woods roads on the Property, substantially in their present condition, or as reasonably improved, if necessary for the uses hereinafter permitted, or necessary and desirable in controlling unauthorized use or facilitating authorized use of the Property. Permanent boundary fences may be erected to control unauthorized use. Temporary ways and one temporary landing may be constructed, maintained, and closed in conformity with sound erosion control practices to facilitate authorized uses for purposes of forest management.

(b) The construction of an access road or trail across the Property to an adjacent parcel owned by Grantor. Detailed information on siting, route, dimensions, composition, and construction of said access road or trail must be provided in writing to Grantee at least one hundred and twenty (120) days prior to any activity associated with the construction of such an access road or trail and Grantor must receive written approval of the Grantee before any activity associated with the construction of such an access road or trail may begin. Approval by the Grantee shall not be withheld unless the siting, route, dimensions, composition, construction, or other aspect of said access road or trail materially and adversely affects the purposes of this Conservation Restriction.

(c) The construction, erection, and maintenance of signs setting forth restrictions on the use of the Property or identifying trails, locations or natural features, or similar items.

(d) The right to conduct or permit others to conduct sound horticultural, or silvicultural uses of the Property, including without limitation, the right to commercially harvest forest products in accordance with a professionally prepared forest management plan, to selectively remove cordwood for personal use, to manage any part of the Property for the benefit of wildlife (including, without limitation, the planting and cultivation of native wildlife cover), the cutting, pruning, or removal of vegetation to enhance and promote varied types of wildlife habitat consistent with sound wildlife management practices, and the right to conduct or permit others to conduct sound horticultural or silvicultural operations and management practices.

(e) The right to construct, maintain, or close trails for hiking, access to adjacent land of the Grantor, or trails designed for increasing knowledge and appreciation of wildlife and the natural world, provided that no trail can be closed without the permission of the Grantee. Approval shall not be unreasonably withheld but shall only be granted upon a showing that continued trail use will not have a significant impact on the purposes of the Conservation Restriction. If public access is granted for use of such trails, continuing access shall not be construed as causing them to become public rights-of-way.

**4. Grantee Disclaimer or Liability.**

By its acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Property.

**5. Access.**

(a) This Conservation Restriction grants to the general public the right to enter upon the Property for the purposes of hiking, bird watching, cross-country skiing, snow shoeing, and other passive outdoor recreational activities so as long as such access is carried out on foot, and is in a manner which does not impair the purposes of this Conservation Restriction, expose people to danger, or confer possessory rights upon users. This grant of access does not extend to camping nor does it include any overnight stay on the property by a member of the public, such overnight stays being expressly prohibited. The Grantor shall have the right to prohibit public entry during timber harvesting operations and to prohibit hunting. The Grantor shall have the right to grant a revocable license for the location of the Metacomet-Monadnock or similar public hiking trail across the Property. M.G.L. Chapter 21, section 17C protects the landowner from any liability resulting from public access so long as no entry fee is charged.

(b) There is granted to the Grantee and his representatives the right to enter the Property at reasonable times and in a reasonable manner for the purpose of inspecting the same to determine compliance herewith.

**6. Enforcement.**

(a) The Grantor hereby grants to Grantee, its successors, and assigns, an easement of access to enter the property for the purposes of inspecting the Property and enforcing the foregoing restrictions and covenants and remedying any violation thereof. The easement granted shall be in addition to any other remedies available for the enforcement of the foregoing restrictions and covenants (which shall include, without limitation, the right to bring proceedings in law or in equity against any party or parties violating or attempting to violate the terms hereof, to enjoin them from so doing, and to cause any such violation to be remedied, after written notice to the then owner of the property). Every act, omission to act or condition which violates the terms of this grant of restrictions shall constitute a nuisance and every remedy available in law or in equity for the abatement of public or private nuisances shall be available to the party having the right to enforce this grant of restrictions.

(b) The Grantor, and thereafter his successors, devisees, and assigns, covenant and agree to reimburse the Grantee for all reasonable costs and expenses (including without limitation counsel fees) incurred in enforcing this Conservation Restriction or in remedying or abating

any violation thereof.

(c) Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

**7. Prior Notice to the Grantee.**

The Grantor, his heirs, devisees, successors, or assigns agrees to notify the Grantee in writing at least 45 days before exercising any right reserved herein, the exercise of which could reasonably be expected to significantly impair any conservation values associated with the Property. The notice shall be mailed postage prepaid or hand delivered to the Grantee, and shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to enable the Grantee to make an informed judgment as to the consistency of such activity with the purposes of this Conservation Restriction. The Grantee shall promptly review the proposed activity and notify the Grantor in writing of its approval or disapproval of such activity. Approval shall not be unreasonably withheld but shall only be granted upon a showing that the proposed activity will not have a significant impact on the purposes of the Conservation Restriction. If the Grantee disapproves of the activity, it shall specify the reasons for such disapproval in writing. Failure of the grantee to act on the notice within 45 days of receipt of the written notice shall be deemed to constitute approval of such activity.

**8. Extinguishment.**

(a) 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 at the time of the gift bears to the value of the Property if unrestricted at that time.

(b) Such proportionate value of the Grantee's property right shall remain constant.

(c) 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 Property, shall be entitled to that portion of the proceeds equal to such proportionate value, subject, however, to any applicable law which expressly provides for a different disposition of proceeds.

(d) Whenever all or part of the Property or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor or his heirs, devisees, successors, and assigns as the case may be and the Grantee shall cooperate in recovering full value of all direct and consequential damages.

(e) All related expenses incurred by the Grantor or his heirs, devisees, successors, and assigns as the case may be and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in shares equal to their proportionate interests.

- (f) The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes of this grant.
- 10. Subsequent Transfers.**  
The Grantor, for himself and his heirs, successors, and assigns agrees to incorporate the terms of this Conservation Restriction in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. The Grantor further agrees to give written notice to the Grantee of the proposed transfer of any such interest at least twenty (20) days prior to the date of such transfer. Failure of the Grantor to do so shall not impair the validity of such deed, transfer, or this Conservation Restriction or limit its enforceability in any way or give rise to any action for damages.

**11. Assignability.**

- (a) The Conservation Restriction hereby imposed is in gross and is not for the benefit of or appurtenant to any particular land and shall be assignable, after notification to the Grantor, to any other governmental or nongovernmental nonprofit organization whose primary purposes include the conservation of Massachusetts lands, natural areas, and horticultural, silvicultural, and wildlife resources, provided that as a condition of any such assignment, such assignee shall agree to enforce the purposes of this Conservation Restriction. The Grantee and its successors and assigns shall have the right to assign its interest hereunder to a "Qualified Organization" as defined in Section 170(h) of the Internal Revenue Code, as amended, provided that at the time of the assignment such assignee shall also be an eligible donee of a Conservation Restriction as set forth in Chapter 184, Section 32 of the General Laws of Massachusetts, and provided further that, as a condition of such assignment, the assignee agrees to give written notice to the Grantor, and his heirs, devisees, successors, and assigns of any assignment of this Conservation Restriction at least twenty (20) days prior to the date of such transfer. Failure to give such notice shall not impair the validity of such assignment or this Conservation Restriction or limit its enforceability in any way or give rise to any action for damages. If the Rattlesnake Gutter Trust, Inc. fails to be a qualified organization under Section 170(h) of the Internal Revenue Code, as amended, or under Section 32 of Chapter 184 of the General Laws, and a prior assignment is not made pursuant to this paragraph, then the rights and obligations under this Conservation Restriction shall vest in such organization as a court of competent jurisdiction shall direct under the doctrine of *cy pres* and with due regard to the requirements for assignment pursuant to this paragraph.
- (b) The burdens of this Conservation Restriction shall run with the Property in perpetuity, and shall be enforceable against the Grantor, his successors and assigns holding any interest in the Property.
- (c) The Grantee is authorized to record or file any notices or instruments appropriate assuring the perpetual enforceability of this Conservation Restriction. The Grantor on behalf of himself and his successors and assigns hereby appoints the Grantee as his attorney-in-fact to execute, acknowledge, and deliver any such instruments on his behalf. Without limiting the foregoing, the Grantor for himself and his successors and assigns agrees to execute any such instruments upon request of the Grantee.

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**12. Estoppel Certificate.**

Upon request by the Grantor, the Grantee shall within thirty (30) 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.

**13. Effective Date.**

This Conservation Restriction shall become 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 Grantor shall record this instrument in a timely fashion in the Franklin County Registry of Deeds.

**15. Severability.**

Invalidation of any of these covenants and restrictions or any part thereof by judgments of court or court orders shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

IN WITNESS WHEREOF, David M. Smith (Grantor) has executed this instrument this 3rd day of May, 1999.

Grantor:

David M. Smith  
David M. Smith

STATE OF CONNECTICUT

County - New Haven - Hamber, ss. 3 May, 1999

Then personally appeared the above-named David M. Smith and acknowledged the foregoing instrument to be their free act and deed, before me.

Cassandra M. Teachman  
Notary Public  
My Commission Expires

CASSANDRA M. TEACHMAN  
NOTARY PUBLIC

MY COMMISSION EXPIRES AUG. 31, 2000

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ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this 18th day of May 1999.

Rattlesnake Gutter Trust, Inc., by vote of the Trustees, who authorize the following Officer of the Trust to accept this Grant on their behalf.

By: Stephen J. Weiss  
Its: CO-Chairperson

COMMONWEALTH OF MASSACHUSETTS

Hampshire County, ss. May 18, 19 99  
Then personally appeared the above-named Stephen J. Weiss and acknowledged the foregoing instrument to be their free act and deed, before me.

Hilene A. Wojczynski  
Notary Public  
My Commission Expires:

MY COMMISSION EXPIRES  
MAY 13, 2005





**APPROVAL BY SELECTBOARD**

We, the undersigned Selectpersons of the Town of Leverett, Massachusetts, hereby certify that we approve of the foregoing Conservation Restriction to RATTLESNAKE GUTTER TRUST, INC. in the public interest for the preservation of the natural, agricultural, and scenic resources of said Town pursuant to M.G.L. Chapter 184, Section 32.

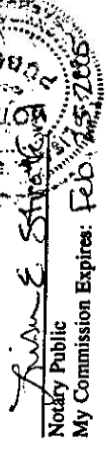
Date 5/10/99



**COMMONWEALTH OF MASSACHUSETTS**

Franklin, ss. May 10, 1999

Then personally appeared the above-named Select Board acknowledged the foregoing instrument to be their free act and deed, before me.

  
Notary Public  
My Commission Expires: Feb. 25, 2006

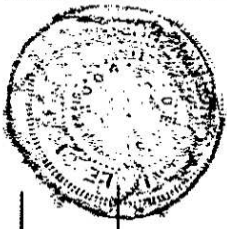
APPROVAL BY SECRETARY OF ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to RATTLESLAKE GUTTER TRUST, INC. has been approved in the public interest pursuant to M.G.L. Ch. 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 Property, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

Date: 5/25, 1999  
  
Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Sullivan, ss. May 25, 1999  
Then personally appeared the above-named Rob D'Amico  
and acknowledged the foregoing instrument to be their free act and deed, before me.



Nicole Sicard  
Notary Public  
My Commission Expires:

NICOLE SICARD  
Notary Public  
My Commission Expires December 31, 2008

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**EXHIBIT "A"**

The following parcel of land in Leverett, Massachusetts owned by David M. Smith is subject to this Conservation Restriction:

All of the land being conveyed to David M. Smith as described in a deed recorded at the Franklin County Registry of Deeds at Book 1457, Page 86.

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1457

MASSACHUSETTS DEEDS INDEX BY CORPORATION (LOCAL FORM) 1968

BOOK 1702  
PAGE 326

SILE

BOOK 1906  
PAGE 274

## Western Massachusetts Electric Company

a corporation duly established under the laws of the Commonwealth of Massachusetts and having its usual place of business at 174 Brush Hill Avenue, West Springfield, Hampden County, Massachusetts,

for consideration paid, and in full consideration of **THREE THOUSAND SIX HUNDRED DOLLARS (\$3,600.00)**

grants to David H. Smith

of 83 Woodlawn Street, Hamden, New Haven County, with quitclaim warrants Connecticut 06517 of the land in Leverett, Franklin County, Massachusetts, lying northerly of "Leverett To Shutesbury Road", bounded and described as follows:

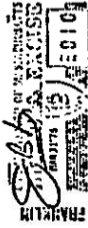
[Description and encumbrances, if any]

BEGINNING at an iron pipe in the northerly sideline of the "Leverett to Shutesbury Road", said pipe marking the line between land of the Western Massachusetts Electric Company and land of Elizabeth K. Germain and Homer E. Germain; thence running North thirteen degrees, twenty-five minutes, forty seconds West (N. 13° 25' 40" W.) along land of said Germain, a distance of four hundred five and sixteen one-hundredths (405.16) feet to an iron pipe; thence running South eighty-five degrees, fifty-five minutes, zero seconds East (S. 85° 55' 00" E.) along land of the Estate of Clara Stetson Clark, a distance of three hundred nine and eleven one-hundredths (309.11) feet to a concrete bound; thence running South ten degrees, seventeen minutes, ten seconds East (S. 10° 17' 10" E.) along other land of said Western Massachusetts Electric Company, a distance of two hundred thirty-one and twenty-one one-hundredths (231.21) feet to a concrete bound; thence running South sixty degrees, thirty-seven minutes, zero seconds West (S. 60° 37' 00" W.) along said "Leverett to Shutesbury Road", a distance of two hundred ninety-three and twenty-five one-hundredths (293.25) feet to the point of beginning. Containing two and one hundred seven one-thousandths (2.107) acres.

BEING a portion of the premises conveyed to the Western Massachusetts Electric Company by deed of Elizabeth K. Germain dated June 1, 1966 and recorded in the Franklin County Registry of Deeds in Book 1186, Page 641.

REFERENCE is hereby made to the above mentioned deed, the record thereof and the reference therein contained for a more particular description of the premises hereby conveyed.

REFERENCE is hereby made to a Plan of Land entitled "Land in LEVERETT, MASS. Surveyed for WESTERN MASSACHUSETTS ELECTRIC COMPANY" dated July 1, 1968 prepared by Gordon T. Ashworth & Associates, Inc. Registered Land Surveyors-Engineers & Landscape Architects Boston, Mass. to be recorded this date in the Franklin County Registry of Deeds.



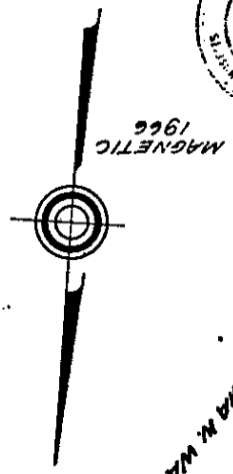
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LAND IN  
LEVERETT, MASS.  
SURVEYED FOR  
WESTERN MASSACHUSETTS  
ELECTRIC COMPANY

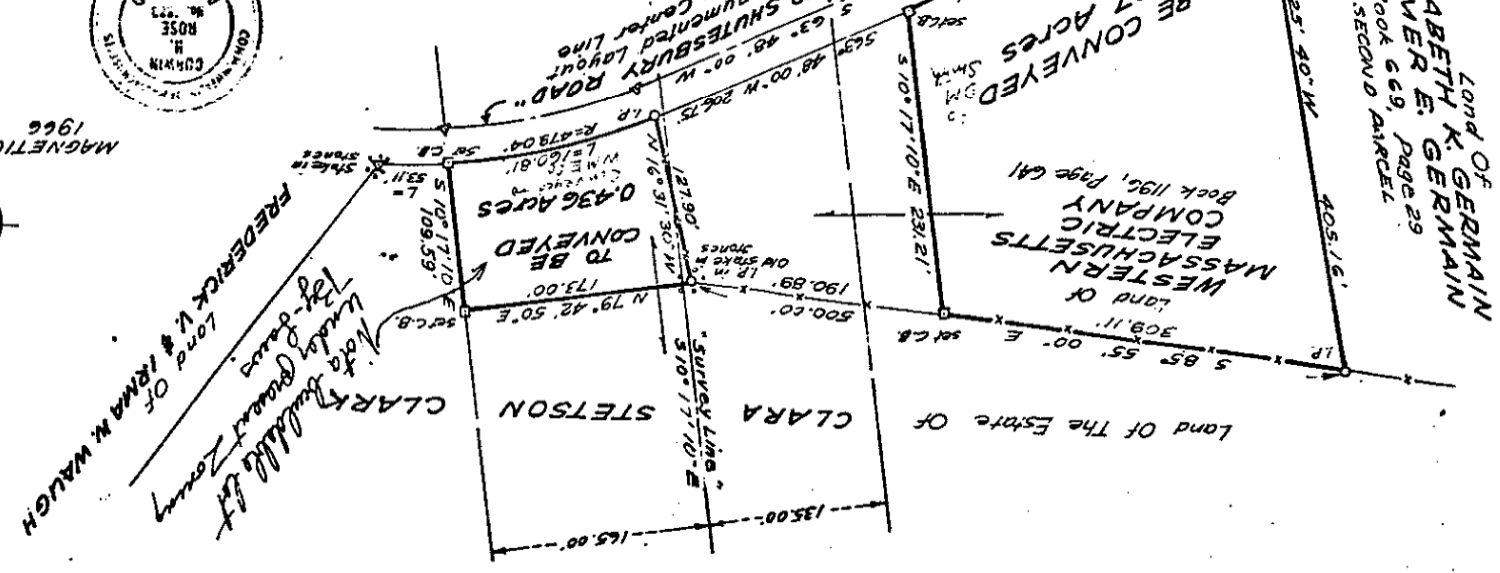
JOB NO. DGB-215	DATE SURVEY 1968	DATE PLAN July 1, 1968	SCALE 1"=100'
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GORDON E. AINSWORTH & ASSOCIATES, INC.  
REGISTERED LAND SURVEYORS-ENGINEERS & LANDSCAPE ARCHITECTS  
DEERFIELD, MASS.

PLANNING BOARD  
LEVERETT, MASS.  
APPROVED  
DATE: June 16, 1975  
SIGNED: William F. Kurland  
Chairman  
Leverett Planning Board



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Land of GERMAIN  
ELIZABETH K. GERMAIN  
& HOMER E. GERMAIN  
See: Book 669, Page 29  
SECOND ANGEL

ATTEST: FRANKLIN COUNTY, MASS. H. Peter Wood, Register