

**GRANT OF CONSERVATION RESTRICTION**

I, Paul W. Kuzmeski, of 101 Teawaddle Hill Road, Leverett, Massachusetts 01054 ("the Grantor"), do hereby grant, with quitclaim covenants, in perpetuity and exclusively for conservation purposes, to THE RATTLESNAKE GUTTER TRUST, INC., a Massachusetts non-profit corporation located at 6 Rattlesnake Gutter Road, Leverett, Massachusetts 01054 ("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 1531, Page 6 attached hereto as Exhibit A (the "Property").

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 lies adjacent to the East Leverett Meadow Wildlife Sanctuary owned by Grantee and as such constitutes an extension of open space devoted to conservation purposes which is open to public use, and

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

WHEREAS, the Property forms part of a riparian corridor 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 Cushman 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 (May, 1990)."

**1. Purpose.**

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 and to protect and enhance the value of abutting and neighboring resources, open spaces, and conservation areas.

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**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. [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, agricultural, 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.

(h) No commercial camping, commercial fishing, or commercial trapping, nor any commercial recreational use shall be permitted on the Property.

(f) 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.

(b) The right to drill for, collect, and use subsurface water beneath the Property for the purpose of supporting permitted agricultural, horticultural, or silvicultural uses of the Property and for the personal use of the Grantor.

(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, with the stipulation that no sign may be erected without the express, written consent of the Grantee, and with the further stipulation the Grantee may also construct, erect, and maintain signs for similar purposes.

(d) The right to conduct or permit others to conduct sound agricultural, horticultural or silvicultural uses of the Property according to state of the art best management practices, including, the right to cut and collect hay, create and maintain a garden, 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, 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.

(e) The right to conduct or permit others to conduct educational and wilderness studies in the form of classes, workshops, or seminars to be conducted without charge to the public.

(f) The right to catch fish in that portion of Roaring Brook that runs through the Property.

(g) The right to camp on the Property or to let others camp on the Property with the stipulation that there be no more than three four-person tents on the premises at one time, that no tent remain on the premises for more than two weeks at a time, and that all trash be removed from the Property when each camping activity is concluded.

**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 recreational activities so long as such access is carried out on foot, and is in a manner which does not impair the purposes of this CR, 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. 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 its 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 14 days before exercising any right reserved herein related to well digging, timber cutting, wildlife management, or agricultural or horticultural uses.

**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.

**9. 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.

**10. 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.

**11. 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.

**12. 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.

**13. Recordation.**

The Grantor shall record this instrument in a timely fashion in the Franklin County Registry of Deeds.

14. Severability.

Invalidity 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.

15. Miscellaneous

Approval of this Conservation restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the ~~Property~~, and any such pre-existing rights of the public, if any, in an to the ~~Property~~, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

IN WITNESS WHEREOF, Paul W. Kuzmeski (Grantor) has executed this instrument this

<sup>25<sup>th</sup></sup>  
day of September, 2000

Grantor:

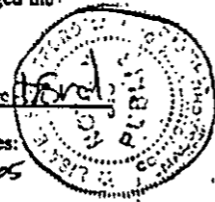
*Paul W. Kuzmeski*  
Paul W. Kuzmeski

STATE OF MASSACHUSETTS

Franklin, ss. Sept. 25, 2000

Then personally appeared the above-named Paul W. Kuzmeski and acknowledged the foregoing instrument to be his free act and deed, before me.

*Tim Stratford*  
Notary Public  
My Commission Expires:  
2/25/05



ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this 25th day of September, 2000.

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: Janeth Whitcomb

Its: Secretary

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 Sept. 25, 2000

James Perkins  
Thomas Strout

COMMONWEALTH OF MASSACHUSETTS

Franklin, ss. Sept. 25, 2000

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

Kevin Stratford  
Notary Public  
My Commission Expires 2/25/05



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 RATTLESNAKE GUTTER TRUST, INC. has been approved in the public interest pursuant to M.G.L. Ch. 184, Section 32.

Date: 10/10, 2000

Bob Deard  
Secretary of Environmental Affairs

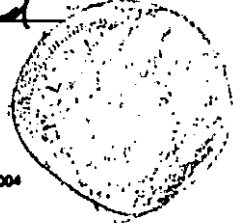
COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Oct 16, 2000

Then personally appeared the above-named Bob Ousand  
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, 2004



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## EXHIBIT "A"

The following described parcel of land in Leverett, Massachusetts owned by Paul W. Kuzmeski is subject to this Conservation Restriction:

the land in Leverett, Franklin County, Massachusetts, on the northerly side of the road to Cushman, now known as the East Leverett Road, bounded and described as follows:

Beginning at a stone bound in the northerly line of East Leverett Road at a point 696 feet, measured in the northerly line of East Leverett Road, easterly from the junction of East Leverett Road and Teewaddle Hill Road; thence north 6° 00' west along land of Dorothy King Stirling a distance of 334.40 feet to an iron pin south of Roaring Brook; thence continuing north 6° 00' west along land of Dorothy King Stirling 20 feet, more or less, to a point in the center of Roaring Brook; thence north 4° 00' east along land of Dorothy King Stirling a distance of 208.74 feet to a stone bound; thence south 86° 00' east along land of Dorothy King Stirling a distance of 257.27 feet to a stone bound; thence south 4° 00' west along land of Dorothy King Stirling to and crossing Roaring Brook and passing through an iron pin south of Roaring Brook to a stone bound in the north line of East Leverett Road a total distance of 556.26 feet; thence north 80° 51' west in the north line of East Leverett Road a distance of 200.00 feet to the stone bound at the point of beginning. Containing an area of three (3) acres of land, more or less.

Being the same as conveyed to the grantors herein by Dorothy King Stirling by her deed dated June 24, 1974 and recorded in the Franklin County Registry of Deeds at Book 1395, Page 45.

For Grantors title, see Franklin County Registry of Deeds at Book 1531, Page 6.

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