

**CONSERVATION RESTRICTION
TO CONSERVATION COMMISSION OF
TOWN OF ACTON**

I. Grantor Clause:

W.R. GRACE & CO. - CONN, having an address at 7500 Grace Drive, Columbia, Maryland (on behalf of itself and as successor to W.R. Grace & Co. and Dewey & Almy Chemical Co.) (hereinafter collectively called the "**Grantor**", which term includes its successors and assigns), pursuant to Sections 31, 32, and 33 of Chapter 184 of the General Laws of Massachusetts, grants, with quitclaim covenants, to the TOWN OF ACTON, Middlesex County, a Municipal Corporation in the Commonwealth of Massachusetts, acting by and through its Conservation Commission, with an address at Town Hall, 472 Main Street, Acton, Massachusetts (hereinafter called the "**Grantee**"), in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction on that certain parcel of land located off Laws Brook Road, Acton, Middlesex County, Massachusetts (herein called the "**Premises**"), and being shown as "15.3 Acres ± Conservation Restriction" as shown on the plan entitled "Plan of Land in Acton, MA, dated May 11, 2009 and prepared by Precision Land Surveying, Inc., recorded herewith with the Middlesex South District Registry of Deeds as Plan ____ of _____, Plan Book _____, Page _____, (the "Plan"). For Grantor's Title, see Certificate of Title No. 61523 filed with the Middlesex South District Registry of the Land Court in Registration Book 411, Page 1 and deed dated December 29, 1955 and recorded with the Middlesex South District Registry of Deeds in Book 8806, Page 421.

II. Purposes:

The purposes of this Conservation Restriction are to assure that the Premises will be retained, in perpetuity, predominantly in their natural, scenic and wooded condition and to prevent any use of the Premises that will significantly impair or interfere with the conservation values of the Premises. The conservation of the Premises will yield a significant public benefit for the following reasons:

The conservation of the Premises will provide 15.3± acres of natural, wooded wildlife habitat and nature preserve, a buffer between any future development of Grantor's remaining land (described in deed(s) to Grantor filed with the Middlesex South District Registry of the Land Court in Registration Book 411, Page 1 (Certificate No. 61523) (the Premises being a part thereof) and Registration Book 382, Page 365 (Certificate No. 57292) and recorded in the Middlesex South District Registry of Deeds in Book 8358, Page 459; Book 7380, Page 182; Book 7848, Page 431; Book 7405, Page 431; Book 7125, Page 507; Book 8072, Page 243; and Book 11280, Page 337 ("Grantor's Remaining Land")) and two existing residential subdivisions located on Lexington Drive and Heritage Road and additional land associated with the Lexington Drive subdivision.

III. Prohibited Acts and Uses, Exceptions Thereto, and Permitted Uses:

A. Prohibited Acts and Uses:

Subject to the exceptions set forth in paragraph B below, the following acts and uses are expressly prohibited on the Premises:

- (1) Constructing, placing or allowing to remain any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, billboard, or other advertising display, antenna, utility pole, conduit line, satellite dish, tower, or other temporary or permanent structure or facility on, above, or under, the Premises;
- (2) Mining, excavating, dredging, or removing from the Premises soil, loam, peat, gravel, sand, rock, or other mineral resource or natural deposit or otherwise making topographical changes to the area;
- (3) Placing, filling, storing, or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other substance or material whatsoever, or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation;
- (6) Storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises;
- (7) The disruption, removal or destruction of any stone walls or granite fence posts on the Premises;
- (8) The use of the Premises for commercial recreation, business, residential or industrial uses inconsistent with the terms hereof; and
- (9) Any other use of the Premises or activity thereon which is inconsistent with the purpose of this Conservation Restriction or which would materially impair other significant conservation interests unless necessary for the protection of the conservation interests that are the subject of this Conservation Restriction.

B. Reserved Rights and Exceptions to Otherwise Prohibited Acts and Uses:

The Grantor reserves the right, but not the obligation, to conduct or permit the following activities and uses on the Premises, which Grantee hereby

acknowledges do not materially impair the purposes of this Conservation Restriction or other significant conservation interests of the Premises:

- (1) Recreational Activities. Hiking, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape.
- (2) Vegetation Management. In accordance with generally accepted forest management practices, removing brush, selective *de minimis* pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including vistas, woods roads, fence lines and trails and meadows.
- (3) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality.
- (4) Composting. The stockpiling and composting of stumps, trees and brush limbs and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not have a deleterious impact on the purposes (including scenic values) of this Restriction.
- (5) Wildlife Habitat Improvement. With the prior written permission of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species.
- (6) Trails. The marking, clearing and maintenance of footpaths. Trails are to be not wider than five (5) feet.
- (7) Construction and Use of a Road. Construction, installation, maintenance and use, for all purposes for which streets and ways are commonly used in the Town of Acton, including without limitation to pass and repass by foot and vehicle of every type and kind, a road ("Road"), including without limitation within the Road, construction, installation, maintenance and use of underground utilities together with above ground appurtenances and facilities of every name, nature and description, including without limitation, transformers, cable boxes, manholes and every other above ground appurtenance and facility necessary or desirable to construct, maintain and use the Road. The Road shall be within the area shown as "Proposed 50' Access" on the Plan; provided, however, the Grantor may hereafter relocate and widen the Proposed 50' Access area as may be necessary to cause the Road, together with any necessary right of way, to comply with any and all applicable federal, state and local laws and

regulations if and when the Road is constructed. If the Proposed 50' Access is relocated or widened as aforesaid, the Grantor shall record a plan with the Middlesex South District Registry of Deeds and file it with the Land Court Registration Office in the Middlesex South District Registry of Deeds showing the relocated or widened Road.

- (8) Drainage. Construction, installation, maintenance and use of storm water drainage and such above and below ground drainage structures as the Grantor may elect for the use and development of the Road, together with any and all excavation and such other topographic changes as reasonably necessary for such drainage.
- (9) Subdivision. Subdivision of the Premises in which case the Grantor shall make reference to this restriction in any conveyance of all or a portion of the Premises.
- (10) Passive Land Use Requirements. Use of the Premises to meet passive land use requirements of the Town of Acton, such as area, open space, lot coverage, floor area ratio and the like as necessary or appropriate for the use and development of Grantor's Remaining Land.
- (11) Cutting. Selective cutting of trees and vegetation for fire protection, trail and access road maintenance and tick control.
- (12) Signs. Erection of signs by Grantor or Grantee identifying Grantee as holder of the restriction and to educate the public about the conservation values protected and any limitations relating to public access.
- (13) Fences and Gates. Construction, installation, maintenance, repair and replacement of appropriate controls, including fences, gates, walls, boulders and the like, for the purposes of (a) preventing access to and use of the Premises except as permitted by the Limited Non-Exclusive Access License granted hereunder , (b) preventing access between the Premises and the Grantor's Remaining Land, and/or (c) preventing or mitigating any unsafe condition associated with the Premises in relation to its surroundings such as preventing access to or across a nearby active railroad line, steep slopes, and other pre-existing, abutting conditions.
- (14) Environmental Remediation. Investigation, assessment, containment, removal, remedial or other response actions conducted by or on behalf of Grantor consistent with requirements of the United States Environmental Protection Agency ("EPA"), the Massachusetts Department of Environmental Protection ("MADEP"), or any other federal, state or local governmental authority having competent jurisdiction concerning any release or threat of release of oil, hazardous materials or hazardous substances to, beneath, at or from the Premises or any other abutting or nearby land now or formerly owned by the Grantor.

The exercise of any rights reserved or permitted under this paragraph B shall be in compliance with the then-current Zoning By-Law of the Town of Acton, the Acton Wetlands Protection Bylaw, the Wetlands Protection Act (Section 40 of Chapter 131 of the General Laws of Massachusetts), and all other applicable federal, state and local laws and regulations. The inclusion of any reserved or permitted right in this paragraph B requiring a permit from a public agency does not imply that the Grantee takes any position on whether such permit should be issued.

C. Permitted Acts and Uses

All acts and uses not prohibited or circumscribed by paragraphs A and B are permissible.

IV. Legal Remedies of the Grantee:

A. Legal and Injunctive Relief.

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to such violation complained of (it being agreed that 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 Grantee.

B. Reimbursement of Costs of Enforcement

Grantor covenants and agrees to reimburse Grantee all reasonable costs and expenses (such as reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy or abate any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.

C. Severability Clause

If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.

D. Non-Waiver

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by 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.

E. Disclaimer of Liability

By its acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee, its agents or assigns. Without limiting the generality of the foregoing, the grant of this Conservation Restriction and the rights set forth herein shall not transfer to Grantee, and Grantee's acceptance of this Conservation Restriction and the rights set forth herein shall not impose upon Grantee, any duty, responsibility, liability or obligation whatsoever arising out of or relating to (i) any release or threat of release of oil, hazardous materials or hazardous substances to, beneath, at or from the Premises or any other land now or formerly owned by the Grantor in the Town of Acton, (ii) the environmental condition of the Premises including without limitation any surface waters and ground waters on, beneath at or from the Premises, and/or (iii) any non-compliance of the Premises with environmental laws, bylaws, rules and regulations, not caused by Grantee or its employees, agents or representatives after the recording hereof. All such matters shall remain unto the Grantor as if this Conservation Restriction and the rights set forth herein had not been granted.

F. Acts Beyond Grantor's Control

Nothing contained in this Conservation Restriction shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Premises resulting from causes beyond Grantor's control, including, but not limited to, fire, flood, storm and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises from such causes.

V. Limited Non-Exclusive Access License:

The Grantor hereby grants to the Grantee, or its employees, agents or representatives, the right to enter the Premises by foot upon reasonable notice and at reasonable times, between one-half hour after sunrise and one-half hour before sunset, only for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction, and for no other purposes. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

The Premises shall NOT be open to the public.

The Grantor reserves the right to construct, install, maintain, repair and replace appropriate controls, including fences, gates, walls, boulders and the like on the Premises for the purpose of preventing access to and use of the Premises and otherwise enforcing the provisions hereof.

VI. Extinguishment:

A. Grantee's Receipt of Property Right

The Grantor and the Grantee agree that the donation of this Conservation Restriction gives rise 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 determined at the time of the gift bears to the value of the unrestricted Premises at that time.

B. Value of Grantee's Property Right

Such proportionate value of the Grantee's property shall remain constant.

C. Right of Grantee to Recover Proportional Value at Disposition

If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law. If any occurrence ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then the Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds equal to the proportionate value identified above, subject, however, to any applicable law which expressly provides for a different disposition of proceeds.

D. Grantor/Grantee Cooperation Regarding Public Action

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor 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 the proportionate value identified above. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken.

E. Allocation of Expenses upon Disposition

All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and the Grantee in shares equal to such proportionate value.

VII. Assignability:

A. Running of the Burden with the Premises

The burdens of this Conservation Restriction shall run with the Premises and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Execution of Instruments

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee its attorney-in-fact to execute, acknowledge, and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor agrees itself to execute any such instruments upon request.

C. Running of the Benefit

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by Grantee, except in the following instances and from time to time:

- (1) As a condition of any assignment, Grantee shall require that the purpose of this Conservation Restriction continues to be carried out,
- (2) The assignee, at the time of the assignment, qualifies under Section 170 (b) of the Internal Revenue Code 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the General Laws as an eligible donee to receive this Conservation Restriction directly, and
- (3) Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, as applicable.

VIII. Subsequent Transfers:

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which Grantor conveys any interest in the Premises, including, without limitation, a leasehold interest and to notify the Grantee within twenty (20) days of such transfer. Failure to do so shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

IX. Termination of Rights and Obligations:

Grantor shall not be liable for violations of the terms of this Conservation restriction occurring after his or her ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the

Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

X. Estoppel Certificates:

Upon request by Grantor, Grantee shall within twenty (20) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with of any obligation of Grantor contained in this Conservation Restriction.

XI. Effective Date:

This Conservation Restriction shall be effective when it has been executed by the Grantor, accepted by the Grantee, approved by the Selectmen of the Town of Acton the Secretary of Environmental Affairs of the Commonwealth of Massachusetts, and recorded in the Middlesex South District Registry of Deeds.

XII. Miscellaneous:

A. Controlling Law

The interpretation and performance of this Conservation Restriction shall be governed by the law of the Commonwealth of Massachusetts.

B. Liberal Construction

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purpose of Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Pre-Existing Rights

Approval of this Conservation Restriction pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts 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 Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

D. Captions

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

E. Entire Agreement

This instrument sets forth the entire agreement of the parties with respect to the Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

F. Notices

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: W.R. GRACE & CO. – CONN.
Attention: Director of Real Estate
7500 Grace Drive
Columbia, Maryland 21044

With a copy to: Louis N. Levine, Esq.
D'Agostine, Levine, Parra & Netburn, P.C.
268 Main Street
P. O. Box 2223
Acton, Massachusetts 01720

To Grantee: Acton Conservation Commission
Town Hall
472 Main Street
Acton, Massachusetts 01720

With a copy to: Town of Acton
Town Hall
472 Main Street
Acton, Massachusetts 01720

or to such other address as any of the above parties shall designate from time to time by written notice to the other or that is reasonably ascertainable by the parties.

XIII. Recordation:

The Grantor shall record this instrument in a timely fashion in the Middlesex South District Registry of Deeds and file it with the Land Court Registration Office in the Middlesex South District Registry of Deeds.

XIV. Amendment:

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of the Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts, and any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and, if applicable, shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Middlesex South District Registry of Deeds.

IN WITNESS WHEREOF, the said W.R. Grace & Co. – Conn, has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by _____ its _____, duly authorized this _____ day of _____, 2009.

W.R. Grace & Co. – Conn.

By: _____

STATE OF MARYLAND

_____, ss.

On this ____ day of _____, 2009, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as _____ of and on behalf of W.R. Grace & Co. - Conn.

Notary Public:
My Commission expires:

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this ____ day of _____ 2009.

CONSERVATION COMMISSION OF
THE TOWN OF ACTON

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this ____ day of _____, 2009, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose, as members of and on behalf of the Conservation Commission of the Town of Acton.

Notary Public:
My Commission expires:

APPROVAL OF SELECTMEN

We, the undersigned, being a majority of the Selectmen of the Town of Acton, Massachusetts, hereby certify that at a meeting duly held on _____, 2009, the Selectmen voted to approve the foregoing Conservation Restriction to the Town of Acton acting by and through its Conservation Commission pursuant to Section 32 of Chapter 184 and Section 8C of Chapter 40 of the General Laws of Massachusetts.

BOARD OF SELECTMEN

Paulina Knibbe, Chair

Peter Berry, Vice Chair

Lauren Rosenzweig, Clerk

Terra Friedrichs

Michael Gowing

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this ___ day of _____, 2009, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose, as members of and on behalf of the Board of Selectmen of the Town of Acton.

Notary Public:
My Commission expires:

APPROVAL BY SECRETARY OF ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the Town of _____ has been approved in the public interest pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

Date: _____, 2009.

Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this ___ day of _____, 2009, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, 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 the Secretary of Environmental Affairs of the Commonwealth of Massachusetts.

Notary Public:
My Commission expires: