

Middlesex South Registry of Deeds Electronically Recorded Document

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**Middlesex South Registry of Deeds
Eugene C. Brune, Register
208 Cambridge Street
Cambridge, Massachusetts 02141
617/679-6310**

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
(Grantor owns and restricts both the facility land and the credit land)
310 CMR 15.216

This GRANT OF TITLE 5 Nitrogen Loading Restriction AND EASEMENT made as of this 29 day of April, 2010 by Sage Hill LLC, of Marlborough, Massachusetts, Middlesex County, Massachusetts ("Grantor").

WITNESSETH

WHEREAS, Grantor being the owner in fee simple of those certain parcels of vacant land located in Wayland, Massachusetts, Middlesex County, Massachusetts, with the buildings and improvements thereon, pursuant to a deed from Lingley Lane LLP to Grantor, dated August 25, 2010, and recorded with Middlesex County Registry of Deeds in Book 55279, Page 299, and being shown as Lots 1-7 on a plan entitled, "Definitive Subdivision Plan of Land in Wayland, MA", dated February 26, 2010, prepared by Thomas Land Surveyors and Engineering Consultants, Inc., recorded with Middlesex County Registry of Deeds as Plan No. 379 of 2010 ("Facility Land"); and

WHEREAS, Grantor being the owner in fee simple of those certain parcels of vacant land located in Wayland, Massachusetts, Middlesex County, Massachusetts, with the buildings and improvements thereon, pursuant to a deed from Lingley Lane LLP to Grantor, dated August 25, 2010, and recorded with Middlesex County Registry of Deeds in Book 55279, Page 299, and being shown as "Open Space" on a plan entitled, "Definitive Subdivision Plan of Land in Wayland, MA", dated February 26, 2010, prepared by Thomas Land Surveyors and Engineering Consultants, Inc., recorded with Middlesex County Registry of Deeds as Plan No. 379 of 2010 ("Credit Land"); and

WHEREAS, Grantor desires to restrict the number of bedrooms as defined pursuant to 310 CMR 15.002 and/or the wastewater discharge design flow in any improvements located on the Facility Land through the use of this Nitrogen Loading Restriction and Easement; and

WHEREAS, the Facility Land has the benefit, granted hereby, of the Restriction and Easement on the Credit Land consisting of approximately 3.51 acres as herein provided; and

WHEREAS, the Nitrogen Loading Facility Aggregation Plan has been approved by the Wayland Board of Health 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 Facility Land and maintenance of the 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 municipality acting by and through the Wayland Board of Health a perpetual easement to ensure maintenance of the Facility Land and the 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 Facility Land and the Credit Land for purposes of inspection of the Facility Land and Credit Land to ensure compliance with and fulfillment of the terms of this Restriction/Easement as hereafter set forth;

NOW, THEREFORE, pursuant to the provisions of 310 CMR 15.216, Grantor does hereby GRANT to the Town of Wayland, a Massachusetts municipal corporation situated in Middlesex County, having an address at 41 Cochituate Road, Wayland 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 ("Restriction/Easement") in, on, upon, through, over and under the Facility Land and the Credit Land, the terms and conditions of which are as follows:

Property address: Lots 1-7, Sage Hill, Wayland, Massachusetts

PURPOSE:

The purpose of this restriction 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 of Wayland, 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 Facility Land and the Credit Land for the said water supply.

OBLIGATIONS AND EASEMENT:

1. **Prohibitions.** Grantor agrees to restrict the number of bedrooms, as defined pursuant to 310 CMR 15.002, in any improvements on the Facility Land to six bedrooms on Lot 1, four bedrooms on Lot 2 and five bedrooms on Lots 3-7. Grantor further agrees to maintain the Credit Land as nitrogen credit land by prohibiting activities which have a detrimental effect on nitrogen loading on the Credit Land, 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 Credit Land which results in the Credit Land or a portion thereof being within a Velocity Zone or Regulatory Floodway will render the Credit Land or said portion thereof ineligible for nitrogen credit pursuant to 310 CMR 15.216.

2. **Easements.** In creating this Restriction and Easement, Grantor hereby grants 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 Facility Land and Credit Land to do any and all acts deemed necessary to maintain the Facility Land and Credit Land in a manner which ensures protection of the nitrogen loading limitation of 440 gpd/acre discharge standard pursuant to 310 CMR 15.214 together with a right to pass and repass by foot and by vehicle over the Facility Land and Credit Land for said purposes, and for purposes of inspecting the Facility Land and Credit Land to ensure compliance with and fulfillment of the terms of this 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 Facility Land or Credit Land in violation of the terms of this 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 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 Restriction/Easement sets forth the rights, liabilities, agreements and obligations upon and subject to which the Facility Land and Credit Land or any portion thereof, shall be left unimproved or according to which said Facility Land and Credit Land 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 Facility Land and Credit Land, as applicable thereto, and any portion thereof and shall inure to the benefit of and be binding upon Grantor and all parties claiming by, through or under the Local Approving Authority or Grantor. The rights hereby granted to the Local Approving Authority and its successors and assigns constitute their perpetual right to enforce this 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 Facility Land and Credit Land, as applicable thereto, and any portion thereof, subject to this Restriction/Easement, provided, however, that a violation of this Restriction/Easement shall not result in a forfeiture or reversion of Grantor's title to the Facility Land or Credit Land, 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

Facility Land and the Credit Land and the Restriction/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 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 Facility Land or Credit Land, or any portion thereof, is conveyed.

8. Recordation. Grantor shall record and/or register this 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 Restriction/Easement as recorded and/or registered within 30 days of its date of recordation and/or registration.

9. Amendment and Release. This Restriction/Easement may be amended or released only upon approval by the Local Approving Authority. Release of this Restriction/Easement shall be granted by the Local Approving Authority in the event the Facility Land is connected to a municipal sewer system and the septic system serving the Facility Land is abandoned in accordance with 310 CMR 15.354 or the Facility Land 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 Restriction/Easement shall run in perpetuity and is intended to conform to M.G.L. c.184, §26, as amended.

11. Rights Reserved. This Restriction/Easement is granted to 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 Restriction/Easement by the Local Approving Authority or constructive approval of the Nitrogen Loading Facility Aggregation Plan by DEP 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 Facility Land or Credit Land or in any way affect any other claim, action, suit, cause of action, or demand which the Local Approving Authority of DEP may have with respect thereto. Nor shall acceptance of the Restriction/Easement serve to impose any obligations, liabilities, or any other duties upon the Local Approving Authority.

12. Effective Date. This Restriction/Easement shall become effective upon its recordation with the appropriate Registry of Deeds.

WITNESS the execution hereof under seal this 29 day of April, 2011.

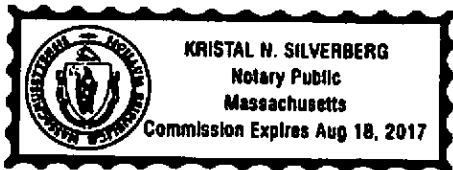
SAGE HILL LLC

By: 
Michael J. Staiti, Manager

By: 
Richard L. Olstem, Manager

Plymouth
Middlesex, ss.

On this 29 day of April, 2011, before me, the undersigned notary public, personally appeared Michael J. Staiti, Manager as aforesaid, and proved to me through satisfactory evidence of identification, which was a driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Kristal N. Silverberg
Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Plymouth
Middlesex, ss.

On this 29 day of April, 2011, before me, the undersigned notary public, personally appeared Richard L. Olstein, Manager as aforesaid, and proved to me through satisfactory evidence of identification, which was a driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Kristal N. Silverberg
Notary Public
My Commission Expires:

The Town of Wayland Board of Health hereby approves and accepts this Grant of Title 5 Nitrogen Loading Restriction and Easement.

Julia Dunham
Local Approving Authority

Date: May 3, 2011