

Grantor: DSM MB II LLC

Grantee: Town of Littleton

Property Address: Constitution Avenue, Littleton

Grantor's Title: Book: 1485, Page: 130; Land Court Certificate #: 258507

---

## CONSERVATION RESTRICTION

DSM MB II LLC, with a mailing address of 875 East Street, Tewksbury, MA 01876, being the sole owner, and for its successors and assigns holding any interest in the Premises as hereinafter defined (the "Grantor"), hereby grants to the Town of Littleton, acting by and through its Conservation Commission by authority of Section 8C of Chapter 40 of the Massachusetts General Laws, with an address of 37 Shattuck Street, PO Box 1305, Littleton, MA 01460, and its permitted successors and assigns ("Grantee"), with quitclaim covenants, for nominal consideration, in perpetuity and exclusively for conservation purposes, the following described CONSERVATION RESTRICTION, to protect a 11.65 acre (507,691± SF) portion (the "Premises") of two contiguous parcels of land totaling 27.05-acres, in the Town of Littleton, Middlesex County, Commonwealth of Massachusetts, which Premises is described in Exhibit A and shown as "Conservation Restriction Area 2 (CR-2)" on the "Conservation Restriction" plan dated **October 25, 2023**, prepared by Land Strategies LLC, One Center Plaza, Suite 910, Boston MA 02108, and recorded on \_\_\_\_\_, 2023 in Plan Book \_\_\_\_\_ as Plan \_\_\_\_\_ (the "Plan"), a reduced copy of which is attached hereto as Exhibit B. The Grantor and the Grantee are bound by and subject to the terms and conditions of this Conservation Restriction.

Massachusetts Endangered Species Act: This Conservation Restriction is granted pursuant to and in accordance with the requirements set forth in the determination issued on October 30, 2012 by the Commonwealth of Massachusetts Division of Fisheries and Wildlife acting through its Natural Heritage and Endangered Species Program ("Division"), attached hereto as Exhibit C and incorporated herein by reference, which took into consideration the recording of a Conservation Restriction in determining that constructing the abutting mixed use development complex could proceed without filing for a Permit pursuant to 321 CMR 10.23.

- I. PURPOSES: This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purposes of the Conservation Restriction are to assure that the Premises will be retained in perpetuity for conservation purposes substantially in its natural, scenic, vegetated, and undeveloped condition as set forth herein and to prevent any use of the Premises that will impair or interfere with the Premises' Conservation Values (the "Purposes"). The conservation of the Premises will yield significant public benefits for the following reasons:
  - a. Wildlife & Habitat Protection: Conserving the Premises protects habitat used by a variety of wildlife including, but not limited to Blanding's Turtle (*Emydoidea blandingii*) and the Least Bittern (*Ixobrychus exilis*). The Premises provides upland and wetland habitat for native wildlife and plant species and communities, including many species of native plants, mammals, birds, reptiles, amphibians, and invertebrates.

- b. Nearby Natural Areas: The Premises abuts and enhances the magnitude of conservation properties located in the Town of Westford: (i) Beaver Brook Estates Conservation Area and (ii) Hitchin Post Greens Conservation Restriction Area.
- c. Landscape Blocks. Landscape Blocks are large areas of intact and predominately natural vegetation, consisting of contiguous forests, wetlands, rivers, lakes, and ponds, as well as coastal habitats such as barrier beaches and salt marshes. The Premises and abutting properties in Littleton and Westford protected in perpetuity by Conservation Restrictions form a Landscape Block totaling approximately 360 acres that protect lands along Beaver Brook and provide habitat for wide-ranging native species, support intact ecological processes, maintain connectivity among habitats, and enhance ecological resilience.
- d. Core Habitat. The Premises includes 11.65 acres that are critical for the long-term existence and persistence of two species of Conservation Concern pursuant to the MESA: Blanding's Turtles (*Emydoidea blandingii*, Threatened) and Least Bitterns (*Ixobrychus exilis*, Endangered).
- e. Flood Plain Protection: Beaver Brook and its floodway and 100-year floodplain passes through the Premises. Protecting this floodway and floodplain will minimize flood damage and provide flood storage during major storm events.
- f. Water Quality Protection: Preserving the natural, undisturbed environment will provide for groundwater recharge and protect wetland resource areas.
- g. Furtherance of Government Policy: This Conservation Restriction furthers the Town of Littleton's Open Space and Recreation Plan (December 21, 2018) by adding 11.65 acres of undeveloped land to Littleton's protected open space inventory. According to the Division's BioMap2 map, the Premises include Core Habitat for Species of Conservation Concern and Priority Habitat for Rare Species.
- h. Baseline Documentation Report and Survey (BDRS): These Conservation Values are described in more detail in the Baseline Documentation Report and Survey ("BDRS"), copies of which are to be kept on file at the office of the Grantee and incorporated herein by this reference. Grantor and Grantee agree that the purpose of the BDRS, which consists of maps, narratives, survey plans and aerial and ground photographs that portray the condition of the Premises at the time of the creation of the BDRS and immediately prior to recording of this Conservation Restriction, is to provide a baseline from which future changes to the Premises, whether natural or human-caused, can be measured including to objectively and accurately document natural or other uses, physical features, improvements, and trails and as they relate to the prohibited and permitted uses of the Premises. Notwithstanding, in the event that the BDRS is unavailable, or is determined to be inadequate for resolving any issue that may arise after the granting of this Conservation Restriction, other evidence may be used to show the condition of the Premises at either the time of the grant or some subsequent point in time.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, the Grantor and the Grantee voluntarily agree that the Conservation Restriction described herein is an appropriate means to protect Blanding's Turtles and Least Bitterns and achieve the community's open space goals and objectives, all of which thereby represent significant public benefits.

## II. DEFINITIONS:

- a. Conservation Values: shall mean, without limiting the generality of the terms, those conservation attributes set forth above in Section I and as further described in the BDRS.
- b. Hazardous Material: shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as a pollutant, dangerous substance, toxic substance, hazardous waste, hazardous material, hazardous substance or contaminant under any environmental law, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is now or hereafter regulated under any environmental law.
- c. Pervious: shall mean built of materials consisting of unconsolidated minerals such as sand, dirt or gravel, or natural materials such as wood chips or grass.
- d. Structure: (whether or not said term is capitalized) shall mean anything constructed or erected which requires permanent or temporary location on, in, over or under the ground or permanent or temporary attachment to something which is erected or placed on the ground and designed, intended or arranged for the housing, shelter, enclosure and/or structural support of persons, animals or property of any kind, including but not limited to houses, mobile homes, tents, barns, sheds, greenhouses, treehouses, and other buildings of any kind; silos and cribs; swimming pools; playing courts; outdoor riding rings; fences; pads; patios and decks; docks; bridges; roads; driveways and parking areas (whether surfaced with macadam, brick, paving stones, gravel, clay or other material); artificially surfaced walkways; solar panels; satellite dishes and antennae; signs and billboards; storage tanks; windmills and wind turbines; and water, sewer, power, fuel, gas and communication lines, other utility systems and related facilities.
- e. Passive Recreation: activities that are non-consumptive uses of resources and do not require prepared facilities like sports fields and pavilions. Passive recreation activities place minimal stress on the site's resources and are compatible with the Conservation Values. Examples include hunting, hiking, wildlife viewing, observing and photographic nature, picnicking, walking, bird watching, running/jogging, star gazing, and fishing. Passive recreation excludes mountain bikes, use of motorized vehicles, and horse-back riding, unless specified herein.

## III. PROHIBITED USES & RESERVED RIGHTS:

- a. Prohibited Uses: Except as to reserved rights set forth in Section III (b.) below, the Grantor shall not perform or permit others to perform the following acts or uses, which are prohibited, in, on, above, or below the Premises:
  - i. Constructing, placing, or allowing to remain any Structure;
  - ii. Mining, excavating, dredging or removing soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise changing the existing topography;
  - iii. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings, waste or Hazardous

Material or other substance or material whatsoever, whether or not generated on the Premises, or the installation of underground storage tanks;

- iv. Cutting, removing or otherwise destroying trees, grasses or other vegetation;
  - v. Applying or using fertilizers, fungicides, herbicides or pesticides in any quantity;
  - vi. Planting, releasing, cultivating, maintaining, or engaging in any other activity that would introduce plant or animal species that pose a substantial risk of being invasive or are otherwise detrimental to the native plant and animal community, as determined by the Division. A list of plant species deemed to be invasive, as of the time of this grant, is provided in the Massachusetts Prohibited Plant List, which is updated and maintained by the Massachusetts Department of Agricultural Resources;
  - vii. Activities detrimental to drainage, flood control, erosion control, water or soil conservation, archaeological resources or the quality of ground water and wetlands;
  - viii. Any business or industrial use;
  - ix. Animal penning or grazing; holding horses, pets, livestock, or domestic animals within a paddock; horseback riding, causing or permitting any domestic or livestock to be unattended or to roam or be at large; and storing or dumping manure or other animal wastes; any agricultural use;
  - x. Using, parking or storing motorized vehicles, including, but not limited to, trucks, trail bikes, motorized or non-motorized, all-terrain vehicles, dune buggies, boats, trailers, and snowmobiles;
  - xi. Disrupting, removing, or destroying any stone walls, historical stone monuments, or granite fences or posts;
  - xii. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
  - xiii. Damaging, disturbing, or removing any real property, or any natural, cultural, or historic resource, except through hunting, fishing, or trapping where permitted and carried out in accordance with regulations issued by the Division of Fisheries and Wildlife subject to MGL Ch 130, 101 and 321 CMR, or other written authorization from the Division of Fisheries and Wildlife; and
  - xiv. Any other use or activity which is inconsistent with this Conservation Restriction's Purposes or would materially impair its Conservation Values.
- b. Reserved Rights in the Premises: The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not materially impair the Conservation Values and follow Best Management Practices that are up to date, regionally-applicable, and established or developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the Conservation Values potentially affected by the action(s):

- i. With the Grantee and Division's prior written permission, after consultation with and consistent with a professional biologist's advice to ensure such use will not be detrimental to any state-listed species or other wildlife, to erect and maintain sight-pervious, non-enclosing, wildlife friendly fences, such as wooden split rail or other open-faced fences, or low hedges of native species;
- ii. To install temporary or permanent boundary monuments and small signs that provide information including identifying the Grantor and Grantee provided that such signage is consistent with this Conservation Restriction's Purposes and does not identify any specific state-listed species' location or existence;
- iii. To conduct passive recreational uses, such as nature study, birding, wildlife observation, walking on existing trails, and similar passive recreation activities, provided such uses do not alter the Premises' topography or landscape or environmental qualities;
- iv. With the Grantee and Division's prior written permission, to remove or control hazardous trees, poison ivy, oriental bittersweet, other invasive or exotic species, insect infestations, diseases, and other types of pests by methods, including but not limited to, the use of spot-applied herbicides, fungicides and pesticides in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
- v. With the Grantee and Division's prior written permission, to restore, maintain, enhance or otherwise manage biotic communities or habitats for native or rare species that include, but are not limited to, application of herbicide, selective planting of native species, cutting, prescribed burning or removal of native vegetation, forestry, and modification of soils. All habitat restoration, maintenance or enhancement of rare species habitat shall be done in accordance with the Division's written permission and requirements;
- vi. With the Grantee and Division's prior written permission, to remove, cut, and prune vegetation (native or non-native), including, but not limited to trees or plants, understory, grasses and ground covers, including to remove hazards.
- vii. To mark, clear, mow and maintain footpaths and woods roads existing and shown on the Plan and described in the BDRS;
- viii. Archaeological investigations and activities, including without limitation surveys, excavation, and artifact retrieval conducted under the direction of a qualified organization or person, following submission of an archaeological field investigation plan and written approval thereof by (a) the Commonwealth and (b) the State Archaeologist of the Massachusetts Historical Commission, and in accordance with Massachusetts 950 CMR 70.00 with Grantee's approval in consultation with Division; and (c) the Division in accordance with the requirements of MESA.
- ix. Any work undertaken in conjunction with the reserved rights mentioned above in paragraph III. b. shall seek to minimize disturbance to the Conservation Values. Upon completion of any site work performed in conjunction with paragraph III b., any disturbed areas shall be restored substantially to match the conditions with

respect to soil material, grade, and vegetated ground cover that existed prior to said work.

The exercise of any right reserved by the Grantor under paragraph III.b. shall be in compliance with the then-current Zoning By-Laws of the Town of Littleton, and all other applicable federal, state, county and local laws, bylaws, rules and regulations, including, but not limited to Massachusetts Historic Commission regulations and local wetland conservation commission bylaws and regulations. The inclusion of any reserved right in paragraph III b. requiring a permit from a public agency does not imply that the Grantee or the Division takes any position on whether such permit should be issued.

#### **IV. ADDITIONAL PROVISIONS:**

##### **a. NOTICE AND APPROVAL:**

Whenever notice to or approval by Grantee or Division is required, Grantor shall notify Grantee or Division, as applicable, in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, MESA NHESP File No. 08-24846 and any other material aspect of the proposed activity in sufficient detail to permit the Grantee or Division, as applicable, to make an informed judgment as to its consistency with the Purposes of this Conservation Restriction. Where Grantee's or Division's approval is required, Grantee or Division, as applicable, shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. The Grantee or Division may require the submittal of additional information necessary to evaluate the proposed activity. Grantee's or Division's approval, as applicable, shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the Purposes of this Conservation Restriction.

Failure of Grantee or Division to respond in writing within 60 days shall be deemed to constitute approval by Grantee or Division, as applicable, of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, is not in violation of any local, state or federal law, including but not limited to MESA, and the activity will not materially impair the conservation values or Purposes of this Conservation Restriction.

##### **b. LEGAL REMEDIES OF THE GRANTEE:**

###### **i. 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 restoring the Premises to its condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving

issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct 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. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

The Conservation Restriction shall also be enforceable by the Commonwealth of Massachusetts acting through the Division; and does not limit in any manner the Division's authorities or duties under Chapters 131 and 131A et. seq. of the Massachusetts General Laws, or the implementing regulations for such statutory provisions.

**ii. Non-Waiver.**

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

**iii. Disclaimer of Liability.**

By accepting 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 or its agents.

**iv. Acts Beyond the Grantor's Control.**

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

**c. ACCESS:**

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, to inspect the Premises to determine compliance with or to enforce this Conservation Restriction. 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

to take any and all actions 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 Grantor reserves the right to prohibit or control all public access on, to, and within the Premises. If Grantor prohibits or limits public access, then upon request from the Grantee, Grantor shall state why Grantor did so and the expected duration of such prohibition or limitation.

**d. EXTINGUISHMENT:**

- i. 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, under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs and the Division. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with paragraph iv.d.ii., subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.
- ii. Proceeds. Grantor and Grantee agree that 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 bears to the value of the unrestricted property. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements.
- iii. 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 accordance with paragraph iv.d.ii., after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

**e. ASSIGNABILITY:**

- i. Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity and shall be enforceable against the Grantor and Grantor's successors and assigns holding any interest in the Premises.



- ii. 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 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 to execute any such instruments upon request.
- iii. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the assignee is not an owner of the fee in the Premises, and the assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

**f. SUBSEQUENT TRANSFERS:**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee within 20 days of such transfer. Failure to do any of the above 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.

The Grantor shall not be liable for violations occurring after their 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.

**g. ESTOPPEL CERTIFICATES:**

Upon request by the Grantor, the Grantee shall, within sixty (60) 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.

**h. NON-MERGER:**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

**i. 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 Grantee under any applicable laws. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net beneficial or neutral effect on Conservation Values. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the Purposes and Conservation Values of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and Division, and if applicable, shall comply with Article 97 of the Amendments to the Massachusetts Constitution. Any amendment shall be recorded.

**j. EFFECTIVE DATE:**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded.

**k. 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 be served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: DSM MB II LLC  
c/o/ Demoulas Super Markets, Inc.  
875 East Street  
Tewksbury, MA 01876

To Grantee: Town of Littleton  
Conservation Commission  
37 Shattuck Street  
PO Box 1305  
Littleton, MA 01460

To Division: Regulatory Review  
Natural Heritage & Endangered Species Program  
Massachusetts Division of Fisheries & Wildlife  
1 Rabbit Hill Road  
Westborough, MA 01581

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

## **I. GENERAL PROVISIONS:**

- i. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- ii. 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 purposes of Sections 31-33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any 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.
- iii. Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.
- iv. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

## **m. MISCELLANEOUS.**

- i. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and 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.
- ii. The Grantor shall record at the appropriate Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.
- iii. Attached hereto and incorporated herein by reference are the following:

### SIGNATURE PAGES:

Grantor

Grantee Town of Littleton Conservation Commission's Acceptance

Approval by Town of Littleton's Select Board

Approval of the Secretary of Energy and Environmental Affairs

Acknowledgement by the MA Division of Fisheries and Wildlife

### EXHIBITS:

Exhibit A: Legal Description of Premises

Exhibit B: Reduced copy of the Plan recorded as Plan \_\_\_\_\_ of 2023.

Exhibit C: MESA/NHESP October 30, 2012 determination letter

EXECUTED as an instrument under seal this \_\_\_\_ day of September 2023,

**DSM MB II LLC**

---

Arthur T. Demoulas, duly authorized

---

Donald T. Mulligan, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

On this \_\_\_\_\_ day of September 2023, before me, the undersigned notary public, personally appeared Arthur T. Demoulas and Donald T. Mulligan, known to me personally to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

---

Notary Public  
My Commission Expires:

ACCEPTANCE OF GRANT OF CONSERVATION RESTRICTION

We, the undersigned, being a majority of the Conservation Commission of the Town of Littleton, Massachusetts, hereby certify that at a public meeting duly held on October \_\_\_\_, 2023, the Conservation Commission voted to approve and accept the foregoing Conservation Restriction from DSM MB II LLC, pursuant to Section 32 of Chapter 184 and Section 8C of Chapter 40 of the Massachusetts General Laws and do hereby accept the foregoing Conservation Restriction.

By: \_\_\_\_\_

Chase Gerbig, co-chairman

\_\_\_\_\_  
Sarah Seaward, co-chairman

\_\_\_\_\_  
Kyle F. Maxfield

\_\_\_\_\_  
Michael J. Livingston

\_\_\_\_\_  
Edward Fultz

\_\_\_\_\_  
Andrew Sammarco, Clerk

\_\_\_\_\_  
Carl Melberg

\_\_\_\_\_  
Julia Rupp

\_\_\_\_\_  
Russell Mullen

COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss:

On this \_\_\_\_\_ day of October 2023, before me, the undersigned notary public, personally appeared Chase Gerbig, Sarah Seaward, Carl Melberg, Michael J. Livingston, Andrew Sammarco, Kyle F. Maxfield, Julia Rupp, Edward Fultz, and Russell Mullen proved to me through satisfactory evidence of identification which was personal knowledge to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as Conservation Commission members for the Town of Littleton.

\_\_\_\_\_  
Notary Public:

My Commission Expires:

ACCEPTANCE AND APPROVAL OF CONSERVATION RESTRICTION  
BY SELECTMEN OF THE TOWN OF LITTLETON

We, the undersigned, being a majority of the Board of Selectmen of the Town of Littleton, hereby certify that at a meeting duly held on October \_\_\_\_\_, 2023, the Board of Selectmen voted to approve this Conservation Restriction from DSM MB II LLC, to the Town of Littleton, acting by and through its Conservation Commission, in the public interest in accordance with Section 32 of Chapter 184 of the Massachusetts General Laws.

\_\_\_\_\_  
Gary C. Wilson

\_\_\_\_\_  
Charles Decoste

\_\_\_\_\_  
Mark Rambacher

\_\_\_\_\_  
Matthew Nordhaus

\_\_\_\_\_  
Karen Lee Morrison

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this \_\_\_\_\_ day of October 2020 before me, the undersigned notary public, personally appeared Gary C. Wilson, Charles Decoste, Mark Rambacher, Matthew Nordhaus, and Karen Lee Morrison, whose names are signed on the preceding document and known to me personally to be members of the Board of Selectmen of the Town of Littleton and acknowledged to me that they signed it in their stated capacity, duly authorized and voluntarily, on behalf of the Town of Littleton for its stated purpose.

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

SEAL

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from DSM MB II LLC, to the Town of Littleton, acting by and through its Conservation Commission, has been approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: November \_\_\_\_\_, 2023

\_\_\_\_\_  
Rebecca Tepper

Secretary of Energy and Environmental Affairs

**COMMONWEALTH OF MASSACHUSETTS**

MIDDLESEX, ss:

On this \_\_\_\_\_ day of November 2023, before me, the undersigned notary public, personally appeared Rebecca Tepper, and proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public: Denise Pires

My Commission Expires: December 28, 2023

## ACKNOWLEDGEMENT BY THE MA DIVISION OF FISHERIES AND WILDLIFE

This grant of Conservation Restriction set forth above to the Town of Littleton, acting by and through its Conservation Commission, by DSM MB II LLC is acknowledged this \_\_\_\_\_ day of September 2023. The MA Division of Fisheries and Wildlife (Division) acknowledges the reserved rights and obligations of the Division set forth herein.

\_\_\_\_\_  
Mark Tisa, Director

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

## COMMONWEALTH OF MASSACHUSETTS

On this \_\_\_\_\_ day of September 2023, before me, the undersigned notary public, personally appeared Mark Tisa, proved to me through satisfactory evidence of identification, which was one of the following (check applicable box): ☐ a driver's license; ☐ a valid passport; ☐ personally known to be the person whose name is signed on the preceding or attached document; or ☐ other \_\_\_\_\_, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Director of the Commonwealth of Massachusetts Division of Fisheries and Wildlife.

\_\_\_\_\_  
Notary Public

My commission expires:



## EXHIBIT A

### Legal Description of Premises

This Conservation Restriction applies to the 11.65 acre (507,691± SF) portion (the “Premises”) of two contiguous parcels of land totaling 27.05 acres located off Constitution Avenue shown and described as “Conservation Restriction Area 2 (CR-2)” on a plan entitled ““The Point” Constitution Avenue, Littleton, MA, prepared for Littleton Commercial Investments, LLC, 321A School Street, Mansfield, MA 02048,” dated April 15, 2021, scale: 1” = 120’ and recorded as Plan \_\_\_\_\_ of 2023 at the Middlesex South District Registry of Deeds (the “Plan”); a reduced copy of the Plan is attached hereto as Exhibit B, and the Premises is further described as follows:

Beginning on the Littleton/Westford town line at an iron pin at the Premise’s most north-easterly point, thence heading:

S 22° 19’ 25” E Four hundred forty four and 30/100 feet (444.30) along Lot 33 and through a stone wall to an iron pin;

N 72° 00’ 00” W Four hundred fifteen and 37/100 feet (415.37) to a drill hole in a stone bound;

S 17° 36’ 22” W Five hundred fifty two and 42/100 feet (552.42) through Lot 28 and Lot 29 to a drill hole in a stone bound;

S 29° 27’ 26” W Four hundred sixteen and 99/100 feet (416.99) through Lot 23 and Lot 28 to a drill hole in a stone bound;

N 34° 56’ 16” W Five hundred twenty seven and 69/100 feet (527.69) to a drill hole in a stone bound at land n/f of Littleton Four LLC;

N 58° 14’ 40” E Three hundred twenty seven and 57/100 feet (327.57) by a stone wall to a drill hole;

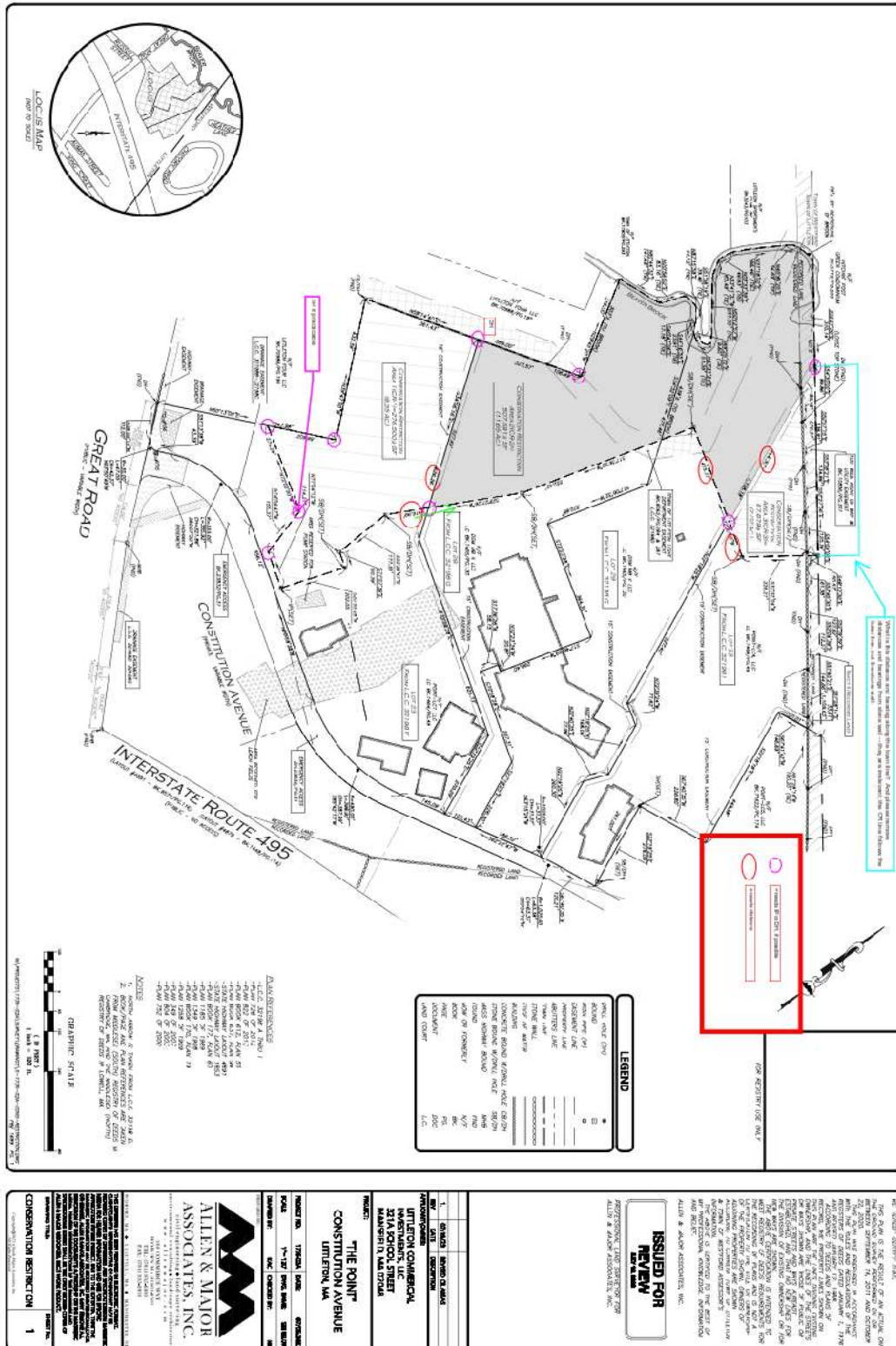
N 58° 14’ 40” E One Hundred six and 49/100 feet (106.49), partially by a stone wall, to an iron pin;

N 29° 45’ 20” W Three hundred fifteen and 00/100 feet (315.00), to a point in Beaver Brook;

N 69° 44’ 32” E One hundred forty one and 48/100 feet (141.48), (tie line) following Beaver Brook and along land n/f Town of Littleton to a point;

- N 20° 56' 52" E Eighty three and 16/100 feet (83.16), (tie line) following Beaver Brook to a point;
- N 87° 15' 58" E Forty four and 12/100 feet (44.12), (tie line) following Beaver Brook to a point;
- S 51° 08' 19" E Thirty nine and 46/100 feet (39.46), (tie line) following Beaver Brook to a point;
- S 40° 47' 26" E Seventeen and 18/100 feet (17.18), (tie line) following Beaver Brook to a point;
- S 44° 16' 55" E Twenty three and 91/100 feet (23.91), (tie line) following Beaver Brook to a point;
- S 69° 25' 12" E Nineteen and 60/100 feet (19.60), (tie line) following Beaver Brook to a point;
- N 67° 31' 34" E Fifty one and 39/100 feet (51.39), (tie line) following Beaver Brook to a point;
- N 50° 12' 57" W Two hundred one and 65/100 feet (201.65), (tie line) following Beaver Brook to a point;
- N 33° 41' 33" W Sixty and 49/100 feet (60.49), (tie line) following Beaver Brook to a point;
- N 03° 33' 39" E Forty six and 93/100 feet (46.93), (tie line) following Beaver Brook to a point;
- N 31° 18' 02" E One hundred sixty six and 46/100 feet (166.46), (tie line) following Beaver Brook along land n/f of Littleton Sportsmen's Club Inc. to a point;
- N 45° 45' 25" E Thirty four and 69/100 feet (34.69), (tie line) following Beaver Brook to a point;
- Seventy and 00/100± feet (70.00±) by the centerline of Beaver Brook to a point at the Westford/Littleton town line.
- S 52° 27' 56" E Three hundred ten and 14/100 feet (310.14) along the Westford/Littleton town line to an iron pin and being the point of beginning.

For Grantor's title to Lot 28 and Lot 29 as shown on the Plan see deed recorded on January 8, 2015 at Book 1465, Page: 130, Land Court Certificate #258507.



## EXHIBIT C

“No Take” letter issued on October 30, 2012 by the Commonwealth of Massachusetts Division of Fisheries and Wildlife acting through its Natural Heritage and Endangered Species Program.



Commonwealth of Massachusetts

# Division of Fisheries & Wildlife

Wayne F. MacCallum, *Director*

October 30, 2012

Sam Park  
Littleton Commercial Investments, LLC  
Three Center Plaza, Suite 410  
Boston, MA 02108

RE:     Applicant:                     Sam Park, Littleton Commercial Investments, LLC  
         Project Location:             Route 119/1-495  
         Project Description:           Mixed Use Development Complex  
         NHESP File No.:                08-24846 (related to 99-5690)

Documents Referenced:

- AMENDED NOTICE OF INTENT PLANS 495-GREAT ROAD LITTLETON, MA (Sheets c-1.0-C-8.1, inclusive, dated 2/23/2012; prepared by Allen & Major Associates, Inc.; the “Site Plans”)
- LETTER FROM AMY GREEN CONSULTING, LLC (Attachments A - G, inclusive, dated 9/28/2012; revised 10/24/2012; hereinafter, the “Turtle Protection Plan”)

Dear Applicant:

The Natural Heritage & Endangered Species Program (NHESP) of the Massachusetts Division of Fisheries & Wildlife received the MESA Project Review Checklist, plans and other required materials for review pursuant to the Massachusetts Endangered Species Act (MESA) (MGL c.131A) and its implementing regulations (321 CMR 10.00).

The NHESP has determined that the proposed project is located within the mapped habitat of the Blanding’s Turtle (*Emydoidea blandingii*). This species is state-listed as “Threatened,” and both individuals and their habitats are protected pursuant to the provisions of the MESA. Blanding’s Turtle use a variety of wetland and terrestrial habitats, overwintering in permanent wetlands and traveling overland to vernal pools and scrub-shrub swamps to feed and breed.

As proposed, the project includes the construction of a mixed use development complex, including office, retail and hotel buildings, access roads, parking, grading, site work, and utilities (hereinafter, the “Work”), as shown on the Site Plans, resulting in ±44.5 acres of disturbance on a ±90.4-acre property (hereinafter the “Property”). The project, as proposed, will be completed in two phases, as shown on Attachment G of the Turtle Protection Plan. Additionally, the NHESP understands that the Applicant intends to permanently protect approximately ±20.0 acres of land through an MA Executive Office of Energy & Environmental Affairs-Division of Conservation Services (EEA-DCS) approved Conservation Restriction, as shown on Attachment G of the Turtle Protection Plan, to be used for wildlife habitat conservation and other compatible uses and to be granted to the Littleton Conservation Trust or another qualified land trust, nonprofit organization or government entity.

Based on the information provided and the information contained in our database, the NHESP has determined that this project, as currently proposed, must be conditioned in order to avoid a prohibited “take” of state-listed species (321 CMR 10.18(2)(a)). The project must adhere to the following conditions:

1. All Work shall be subject to the *Construction Protective Measures* outlined within the Turtle Protection Plan, including but not limited to the installation and maintenance of temporary turtle exclusion barriers, unless otherwise approved in writing by the NHESP.

[www.masswildlife.org](http://www.masswildlife.org)

Division of Fisheries and Wildlife

*Temporary Correspondence:* 100 Hartwell Street, Suite 230, West Boylston, MA 01583

*Permanent:* Field Headquarters, North Drive, Westborough, MA 01581 (508) 389-6300 Fax (508) 389-7890

*An Agency of the Department of Fish and Game*

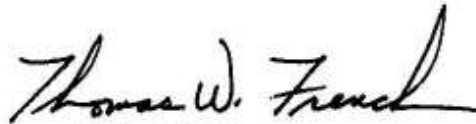
2. Prior to the removal of temporary turtle exclusion barriers, the Applicant shall install permanent turtle exclusion barriers along the western limit of permanent disturbance, as described within and as shown on Attachment B of the Turtle Protection Plan. Said barriers shall be maintained in good condition and repaired or replaced, as necessary.
3. Long-term operation and maintenance of Existing Stormwater Basin 1, as shown on Attachment B of the Turtle Protection Plan, shall be subject to the *Operational Measures* outlined within the Turtle Protection Plan unless otherwise approved in writing by the NHESP.

The NHESP understands that the Applicant will provide proof of recording an NHESP-approved Conservation Restriction, as shown on Attachment G of the Turtle Protection Plan, to the NHESP within six (6) months of the issuance of building occupancy permits for the Phase 2 development area. The Restriction is to be recorded in the Middlesex South Registry of Deeds so as to become a record part of the chain of title for the Property, and shall be granted to the Littleton Conservation Trust or another qualified land trust, nonprofit organization or government entity. To assist the Applicant, the NHESP has provided a template Conservation Restriction and looks forward to providing written feedback on the draft Restriction prior to submission to EEA-DCS.

Provided the above-noted conditions are implemented and there are no changes to the project plans not otherwise approved in writing by the NHESP, this project will not result in a "take" of state-listed species. This determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.18. This project may be subject to further review if no physical work is commenced within five years from the date of issuance of this determination, or if there is a change to the project.

Please note that this determination addresses only the matter of state-listed species and their habitats. If you have any questions regarding this letter please contact Jesse Leddick, Endangered Species Review Biologist, at (508) 389-6386.

Sincerely,



Thomas W. French, Ph.D.  
Assistant Director

cc: Amy Green, Amy Green Environmental Consulting, LLC  
Irene Del-Bono, EOEEA