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RETURN TO:
Ashley Walter, Esq.
Shaevel & Krems, LLP
141 Tremont St. 3rd Fl.
Boston, MA 02111



Bk: 60076 Pg: 400 Doc: REST
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CONSERVATION RESTRICTION

15 Bracebridge Road, Newton Centre, MA 02459

We, Richard D. Wilson and Andree Desirée Wilson, husband and wife, having an address at 15 Bracebridge Road, Newton Centre, MA, 02459, our successors and assigns ("Grantor(s)"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of Massachusetts General Laws grant with quitclaim covenants to Newton Conservators, Inc., a Massachusetts non-profit corporation c/o Jane Sender, 47 Kingswood Road, Newton 02466, and its successors and permitted assigns ("Grantee") in perpetuity, and exclusively for conservation purposes, this Conservation Restriction, having the terms and conditions hereinafter set forth with respect to a portion of certain land known as 15 Bracebridge Road and located in the City of Newton, Middlesex County, Massachusetts, hereinafter referred to as the "Conservation Area." The total land contains approximately 1.979 acres; the "Conservation Area," which is covered by the Conservation Restriction, will contain approximately 1.581 acres, leaving .398 acres of unrestricted area for the Grantor's residence. The Conservation Area is also shown (by hatch marks) on a plan entitled "Conservation Restriction Boundaries, 15 Bracebridge Road, Newton, Massachusetts" drawn by R.E. Cameron & Associates, Inc., Land Surveyor, Norwood, MA., dated June 21, 2011, attached hereto and made a part hereof (See Exhibit A) and also recorded in Middlesex County South Registry of Deeds, Book 2012, Page 680. For our title, see Book 11059, page 154 in the Middlesex (South) Registry of Deeds.

Purpose

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Conservation area will be maintained in its current condition in perpetuity for conservation purposes, predominantly in a natural, scenic and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values.

These values include the following:

1. Open Space Preservation: The protection of the Conservation Area will enhance the open space value of these lands. The City of Newton has a Recreation and Open Space Plan (hereinafter, "Open Space Plan,") which expired in 2007. The Committee is presently drafting a new plan, which will be substantially similar to that which preceded it. On September 11, 1986 and on December 8, 1992 in a Confirmatory Deed by the Grantors (Middlesex Registry of Deeds, Book 24038, page 586), 21,590

square feet were given to the City of Newton for conservation purposes. In the original Open Space Plan, this 21,590 square feet is referred to as the Wilson Conservation Land and is highlighted as part of the Open Space Plan. The Wilson Conservation Land is immediately adjacent to this subject Conservation Area and, jointly, the parcels would work to enhance the open space goals and naturally enlarge the modest conservation area already in place, creating visual buffer and furthering Newton's overall open space goals.

2. Scenic Protection: The Conservation Area, which is immediately adjacent to the Wilson Conservation Area, is a pristine enclave composed of open space, wooded area and a small valley. Restricting use of this area would enhance the natural and scenic features of the area and preserve scenic enjoyment of the general public.
3. Public Access Trail: for passive recreation, education and nature study.

This Conservation Restriction is intended to be a charitable donation.

Terms

A. *Prohibited Uses*. Except as to reserved rights set forth in paragraph B below, Grantor will not perform nor allow others to perform the following acts or uses which are prohibited on, above, and below the Conservation Area:

1. Constructing, placing or allowing to remain any temporary or permanent building, structure, tennis court, landing strip, mobile home, swimming pool, golf facility, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, light or utility pole, satellite dish tower, conduit, line or any other temporary or permanent structure or facility on, above or under the Conservation Area;
2. 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; provided, however, that any underground storage tanks or systems now on the property shall be exempted.
3. Mining, excavating, dredging or removing from the Conservation Area soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit;
4. Activities detrimental to scenic views;
5. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of Premises (as compared to conveyance of the Premises in its entirety which shall be permitted) or use of the premises towards building requirements on any other parcel, but the Premises may be used to conform to zoning for one single family residential building within the unrestricted building envelope on this parcel.

6. Any other use of the Conservation Area or activity thereon which is inconsistent with the purposes of this Conservation Restriction and which would materially and significantly impair this Conservation Restriction.

B. *Reserved Rights.* The Grantor reserves the right for himself and his heirs and successors in interest to conduct or permit the following activities and uses on the Conservation Area, but only if such uses and activities do not materially impair the conservation values or purposes of this Conservation Restriction:

1. Sheds. The Grantor may maintain, repair and replace the existing shed and/or an additional shed with a total footprint area not larger than 400 square feet.
2. Landscaping. Maintaining and adding to the current trees, landscaping, grass, and plants;
3. Public Access. The public will be permitted to walk through a 5' wide corridor running parallel to the southeastern lot line, from Bracebridge road to the property of the City as indicated in the Plan attached hereto as Exhibit A. Grantor reserves the right to relocate this access area with notice to the Grantee;
4. Recreational Activities. Use of the Conservation Area for any passive recreational uses that do not materially alter the landscape;
5. Wildlife Habitat Improvement: Management of the Conservation Area for the benefit of wildlife (including without limitation the planting and cultivation of wildlife cover and food crops), and cutting, mowing, pruning, burning, and removal of vegetation to enhance and promote varied types of wildlife habitat consistent with sound wildlife and forestry management practices;
6. 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;
7. 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 Conservation Restriction;
8. Utilities: Installation of underground utilities including septic systems, provided it is not feasible to put in the unrestricted area so long as the area is restored to its former condition with plantings if necessary;
9. Signs: The erection, maintenance and replacement of signs with respect to hunting, trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Conservation Area, and the protected conservation values; and,

10. Excavation: The excavation and removal from the Conservation Area of soil, gravel or other mineral resource or natural deposit as may be incidental to the installation or maintenance or removal of underground tanks, septic systems, utilities and other underground structures, solely for use within the building envelope or to the maintenance of good drainage, soil conservation practices or to other permissible use of the Conservation Area.
- C. *Notice and Approval*. Any notices sent under this conservation restriction shall be sent to the parties at the addresses listed above. Any party may provide a new *address* by sending a notice containing the new address to the other parties. Whenever notice to or approval by Grantee is required hereunder, Grantor shall notify Grantee in writing not less than sixty days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. The notice shall state that Grantee's failure to respond within sixty days shall constitute constructive approval of the request. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within sixty days of receipt of Grantor's written request therefor. Failure of Grantee to respond in writing within such 60 days shall be deemed to constitute approval by such Grantee of the request as submitted. Grantee's approval shall not be unreasonably withheld, but Grantee may withhold its approval if the proposed activity will materially impair the purposes of this Conservation Restriction. Any written notice required or permitted hereunder shall be deemed delivered if sent by certified mail, return receipt requested, postage prepaid, to the parties at the addresses set forth at the beginning of this instrument or, with respect to assignees, to the address set forth in a recorded instrument transferring title to the Conservation Area or rights hereunder, or to such other addresses as the parties may designate in writing from time to time or that is reasonably ascertainable
- D. *Extinguishment*. 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 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 the paragraph immediately below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.
- E. *Proceeds*. Grantor and 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 property at that time. Such proportionate value of the Grantee's property right shall remain constant.

- F. *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 such proportionate value. 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.
- G. *Access to Grantee.* 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, for the purpose of inspecting 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 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. However, before exercising this right of entry, 5 days notice must be given to Grantor.
- H. *Access to Public:* The public will be permitted to walk through a 5' wide corridor running parallel to the Southeast lot line, from Bracebridge road to the property of the City as indicated on the Plan attached hereto as Exhibit A. Such access shall be limited to the hours between sunrise and sunset and subject to the reasonable rules and regulations of the Grantee, or the Grantor and Grantee in consultation with each other. In granting this right, Grantor is entitled to the benefits and protections of the "Recreational Use Statute," as outlined in Massachusetts General Laws Chapter 21, Section 17C. Grantor shall not be obligated to create or maintain this pathway in any manner. Grantor reserves the right to relocate this access area at any time, provided it does not result in a loss of connection to Bracebridge Road or the City of Newton property (nor made difficult to use or access). The Grantors are allowing public access, subject to, and as currently constrained or allowed by the Massachusetts Water Resources Authority ("MWRA") easement, and in the event that the easement is ever extinguished, the "dormant" public access easement will "spring" into existence, and coincide with the MWRA easement.
- I. *Legal Remedies of Grantee*
- a. Grantee may enforce this Conservation Restriction by appropriate legal proceedings and obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Conservation Area to its condition prior to such violation, it being agreed that Grantee has no remedy at law. Grantee's rights under this paragraph shall be in addition to, and not in limitation of, any other rights and remedies available to

Grantee. Enforcement of the terms of this Conservation Restriction shall be at the discretion of the Grantee. No forbearance by the Grantee to exercise its rights under this conservation restriction shall be deemed or construed to be a waiver and no waiver on one occasion shall obligate Grantee to grant an additional waiver. No waiver shall be valid unless it is written and signed by Grantee, except, as to constructive approvals provided for in paragraph C above and no waivers or approvals of prohibited uses shall be valid unless and until this Conservation Restriction is amended to reflect the change. If the Grantee needs to resort to legal enforcement of this Conservation Restriction, and prevails in court, the Grantor will indemnify and pay the Grantee its costs and reasonable attorneys fees and expenses incurred as a result of said legal action.

- b. Notwithstanding the foregoing, for any dispute or claim arising out of or relating to the terms of the Conservation Restriction which cannot be resolved in good faith directly between the Grantor and Grantee, no action shall be filed or prosecuted in any court until the claim or dispute has first been submitted to a mediator, mutually selected by the parties hereto, for at least five hours of mediation. The cost and fees associated with the mediation services shall be shared equally by all parties. The mediator's determinations shall not be binding upon any party. If the mediation is not concluded within thirty days from the time that a dispute is presented to the mediator, then the party raising the dispute may file an action despite the failure to complete the mediation.

J. *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 Conservation Area resulting from causes beyond the Grantor's control, including, but not limited to, fire, flood, storm and earth movement, acts of war whether declared or undeclared, acts of criminals or enemies of the United States, or actions taken in response thereto, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Area resulting from such causes.

K. *Duration and Assignability.* The burdens of this Conservation Restriction shall run with the Conservation Area land and shall be enforceable against Grantor and its successors and assigns in perpetuity. Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction, should any such notices or instruments be deemed necessary. Without limiting the foregoing, Grantor agrees to execute any such instruments upon request. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by Grantee, except in the following instances from time to time: (i) as a condition of any assignment, Grantee requires that the terms of this Conservation Restriction continue to be carried out; and (ii) the assignee, at the time of assignment, qualifies under section 170(h) of the Internal Revenue Code of 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. Upon

dissolution of the Grantee or its assigns, the Grantee or its assigns may assign its rights to any other non-profit organization which has as one of its principal purposes the advancement of the interests protected by this instrument. However, if the Grantee or its assigns should fail to assign its rights then by default this Conservation Restriction will go to the Newton Conservation Commission, if they choose to accept it. If the Newton Conservation Commission should fail to accept this restriction, then any eligible person or official may petition the Superior Court to appoint an appropriate non-profit group to hold this Conservation Restriction. Such new holder will have rights of assignment as stated hereinbefore.

- L. *Subsequent Transfers.* 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 all or a portion of the Conservation Area including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least forty-five (45) days prior to the date of such transfer. Failure of Grantor to do so shall not impair the validity of such transfer or of this Conservation Restriction, and shall not limit the enforceability of this Conservation Restriction in any way.
- M. *Termination of Rights and Obligations.* Notwithstanding anything to the contrary contained herein, the rights and obligations under this Conservation Restriction of any party holding any interest in the Conservation Area shall terminate upon transfer of that party's interest, except that liability for acts or omissions occurring prior to transfer, and liability for the transfer itself, if the transfer is in violation of this Conservation Restriction, shall survive the transfer.
- N. *Estoppel Certificates.* Upon request by Grantor, Grantee shall, within fifteen (15) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Conservation Restriction, and which otherwise evidences the status of this Conservation Restriction as may be requested by Grantor. If Grantee fails to respond within 15 days, this shall waive any right to assert any violation of the restriction prior to the date the estoppel certificate was requested.
- O. *Representations of the Grantee.* Grantee represents that it is a private, charitable, non-profit conservation land trust or corporation, that it is a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 and M.G.L. ch. 184 Section 32, that it is organized and operated for the purpose of serving and conserving natural resources, natural habitats and environmentally sensitive areas and for other charitable, scientific and educational purposes, and that it has both the necessary funds and the commitment to monitor, enforce and hold this Conservation Restriction exclusively for conservation purposes in perpetuity and to enforce its terms.

P. *Miscellaneous:*

1. Grant Subject to Rights of Commonwealth and MWRA: The conservation Restriction shall be subject to the rights of the Commonwealth of Massachusetts and the Massachusetts Water Resources Authority, their successors and assigns, to enter upon the property to permanently construct, inspect, repair, renew, replace, operate and forever maintain aqueducts existing on the property
2. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts
3. Severability. If any provision of this Conservation Restriction shall, to any extent, be held invalid, the remainder shall not be affected.
4. 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.
5. 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.
6. Effective Date. Grantor and Grantee intend that the restrictions arising hereunder shall take effect when all requisite signatures pursuant to section 32 of chapter 184 of the General Laws have been obtained and this document has been timely recorded in the Middlesex South Registry of Deeds.
7. Pre-Existing Public Right. Approval of this Conservation Restriction pursuant to M.G.L. ch. 184, Section 32, 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 Conservation Area.

WITNESS my hand and seal this 4th day of Sept, 2012.

Richard Wilson

RICHARD D. WILSON

Andree Desiree Wilson

ANDREE DESIREE WILSON

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

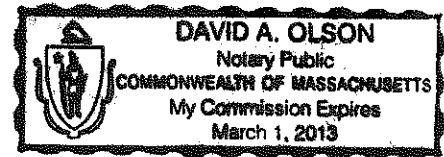
September 4, 2012

On this 4th day of September 2012, before me, the undersigned notary public, personally appeared Richard Wilson and Andree Desiree Wilson, who proved to me through satisfactory evidence of identification which was Valid MA License, to be the individuals whose names are signed on the preceding or attached document and acknowledged to me that each signed it voluntarily for its stated purpose.

[Signature]

Notary Public

My commission expires: March 01, 2013



ACCEPTANCE OF GRANT

The above Conservation Restriction was accepted by Jane E. Sender, this 29th day of August, 2012.

By: Newton Conservators, Inc.

By: Jane E. Sender

Title: President

Its: President, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

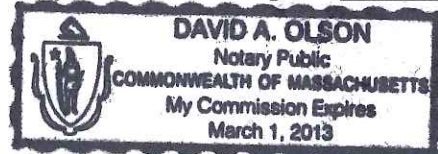
August 29, 2012

On this 29th day of August 2012, before me, the undersigned notary public, personally appeared Jane Sender, who proved to me through satisfactory evidence of identification which was Valid MA license, to be the individual 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 President of the Corporation.

[Handwritten Signature]

Notary Public

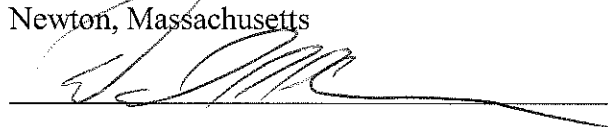
My commission expires: March 01, 2013



APPROVAL OF NEWTON BOARD OF ALDERMEN

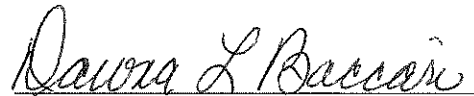
I, the undersigned Clerk of the Board of Aldermen of the City of Newton, Massachusetts, hereby attest and certify that at a meeting duly held on November 31, 2011, the Board of Aldermen voted to approve a Deed of Conservation Restriction substantially identical to the foregoing Deed of Conservation Restriction pursuant to M.G.L. Ch. 184 s. 32.

Attest: Clerk of the Board of Aldermen, City of
Newton, Massachusetts

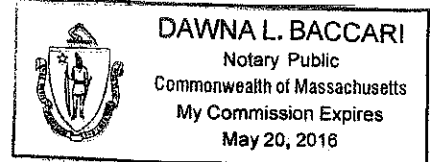


COMMONWEALTH OF MASSACHUSETTS

On this 27th day of AUGUST 2012, before me, the undersigned notary public, personally appeared DAVID OLSON, Clerk of the Board of Aldermen of the City of Newton, who proved to me through satisfactory evidence of identification, which was personally known, to be the individual whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose as Clerk of the Board of Aldermen of the City of Newton.

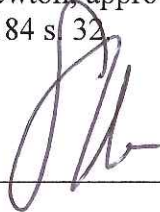

Notary Public

My commission expires:



APPROVAL OF THE MAYOR OF THE CITY OF NEWTON

I, the undersigned, Mayor of the City of Newton, approve the foregoing Deed of Conservation Restriction pursuant to M.G.L. Ch. 184 s. 32.



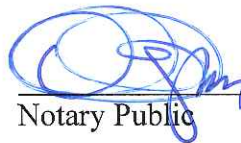
Setti D. Warren, Mayor of the City of Newton

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

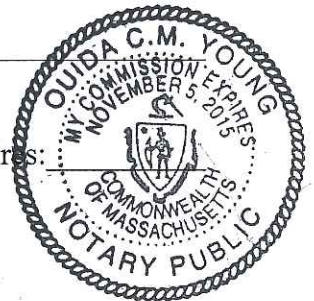
Aug. 31, 2012

On this 31st day of August 2012, before me, the undersigned notary public, personally appeared Setti D. Warren, Mayor of the City of Newton, who proved to me through satisfactory evidence of identification which was personal knowledge to be the individual whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose as Mayor of the City of Newton.



Notary Public

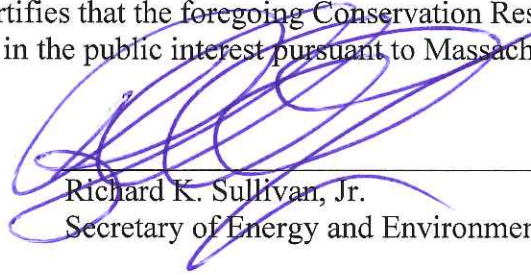
My commission expires:



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

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the Newton Conservators has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: Sept 18, 2012

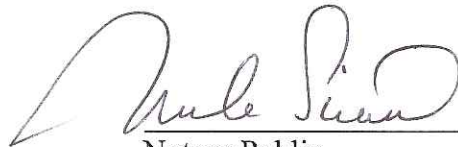

Richard K. Sullivan, Jr.
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk
Middlesex, ss

Sept 18, 2012

On this 18th day of September 2012, before me, the undersigned notary public, personally appeared Richard K. Sullivan, who proved to me through satisfactory evidence of identification which was personally known to me, to be the individual whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose as Secretary of Energy and Environmental Affairs.


Notary Public

My commission expires: 12/7/2018

EXHIBIT A

