

Town of Hamilton



BOARD OF HEALTH
577 Bay Road, P.O. Box 429
Hamilton, MA 01936

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GRANT OF TITLE 5 BEDROOM COUNT DEED RESTRICTION

This Grant of Title 5 Bedroom Count Deed Restriction is made as of this _____ day of _____, 20_____, by _____ (“Grantor”), of _____, Hamilton, Essex County, Massachusetts pursuant to M.G.L. c. 21A, §13 and 310 CMR 15.000 (collectively, "Title 5").

WITNESSETH

WHEREAS, Grantor, being the owner(s) in fee simple of that [those] certain parcel[s] of [vacant] land located in Hamilton, Essex County, Massachusetts, [with the buildings and improvements thereon], pursuant to a deed from _____ to Grantor, dated _____, and recorded with Essex County Registry of Deeds in Book _____, Page _____ [source of title other than by deed] and/or pursuant to Certificate of Title No. _____ issued by the Land Registration Office of the Essex County Registry District, said parcel(s) of land being more particularly bounded and described in Exhibit A, attached hereto and made a part hereof, and being shown on a plan entitled, “_____”, dated _____, prepared by _____, recorded with Essex County Registry of Deeds as Plan No. _____, in Plan Book _____ and/or registered as Land Court Plan No. _____, on file with the Land Registration Office of Essex County Registry District (“Property”); and

WHEREAS, Grantor desires to restrict the number of bedrooms, as the term bedroom is defined at 310 CMR 15.002 ("Bedroom"), through the granting of this Title 5 Bedroom Count Deed Restriction;

NOW, THEREFORE, Grantor does hereby GRANT to the Town of Hamilton of Essex County, Massachusetts, a municipal corporation located in Essex County, having a mailing address of 577 Bay Road, Hamilton, Massachusetts, and acting by and through its Board of Health (“Local Approving Authority”), for nominal and non-monetary consideration, the sufficiency and receipt of which are hereby acknowledged, with QUITCLAIM COVENANTS, a TITLE 5 BEDROOM COUNT DEED RESTRICTION (“Restriction”) in, on, upon, through, over and under the Property.

Said Restriction operates to restrict the Property as follows:

1. Restriction. Grantor hereby restricts the total number of Bedrooms in, on, upon, through, over and under the Property to _____ Bedrooms, such that at no time shall there exist more than _____ Bedrooms in, on, upon, through, over and under said Property.

2. Severability. Grantor hereby agrees that, in the event that a court or other tribunal determines that any provision of this instrument is invalid or unenforceable:
 - (i) That such provision shall be deemed automatically modified to conform to the requirements for validity and enforceability as determined by such court or tribunal; or

 - (ii) That any such provision, by its nature, cannot be so modified, 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.

3. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Restriction 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 Property in violation of the terms of this Restriction; and

 - (ii) in the initiation of an enforcement action and/or assessment of penalties by the Local Approving Authority and/or the Massachusetts Department of Environmental Protection, a duly constituted agency with a principal office located at One Winter Street, Boston, MA 02108 (DEP), to enforce the terms of this Restriction pursuant to Title 5; M.G.L. c.111, §§ 2C, 17, 31, 122, 123, 125, 127A-O, inclusive, and 129; and M.G.L c. 83, §11.

4. Provisions to Run with the Land. The rights, liabilities, agreements and obligations created under this Restriction shall run with the Property and any portion thereof for the term of this Restriction. Grantor hereby covenants for [himself/herself/itself] and [his/her/its] executors, administrators, heirs, successors and assigns, to stand seized and to hold title to the Property and any portion thereof subject to this Restriction.

The rights granted to the Local Approving Authority, its successors and assigns, do not provide, however, that a violation of this Restriction shall result in a forfeiture or reversion of Grantor's title to the Property.

5. Concurrence Presumed. It is agreed that:
 - (i) Grantor and all parties claiming by, through, or under Grantor agree to and shall be subject to the provisions of this Restriction; and
 - (ii) Grantor and all parties claiming by, through, or under Grantor, and their respective agents, contractors, sub-contractors and employees, agree that the Restriction herein established shall be adhered to and shall not be violated, and that their respective interests in the Property shall be subject to the provisions herein set forth.
6. Incorporation into Deeds, Mortgages, Leases, and Instruments of Transfer. Grantor hereby agrees to incorporate this Restriction, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest and/or a right to use the Property, or any portion thereof, is conveyed.
7. Recordation. Grantor shall record and/or register this Restriction with the appropriate Registry of Deeds and/or Land Registration Office within 30 days of receiving the approved Restriction from the Local Approving Authority. Grantor shall file with the Local Approving Authority and the DEP a certified Registry copy of this Restriction as recorded and/or registered within 30 days of its date of recordation and/or registration.
8. Amendment and Release. This Restriction may be amended only upon the approval and acceptance of such amendment by the Local Approving Authority. Release of this Restriction shall be granted by the Local Approving Authority upon (i) Grantor's request of such release; and either (ii) or (iii) following: (ii) the Property being connected to a municipal sewer system and the septic system serving the Property being abandoned in accordance with 310 CMR 15.354; or (iii) the Property being connected to a new septic system designed and approved for an increase in design flow and the current septic system serving the Property being abandoned in accordance with 310 CMR 15.354. 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.
9. Term. This Restriction shall run in perpetuity and is intended to conform to M.G.L. c.184, §26, as amended.

10. Rights Reserved. This Restriction is granted to the Local Approving Authority. It is expressly agreed that acceptance of this Restriction by the Local Approving Authority shall not operate to bar, diminish, or in any way affect any legal or equitable right of the Local Approving Authority or of DEP to issue any future order with respect to the Property or in any way affect any other claim, action, suit, cause of action, or demand which the Local Approving Authority or DEP may have with respect thereto. Nor shall acceptance of the Restriction serve to impose any obligations, liabilities, or any other duties upon the Local Approving Authority.

11. Effective Date. This Restriction shall become effective upon its recordation and/or registration with the appropriate Registry of Deeds and/or Land Registration Office.

WITNESS the execution hereof under seal this _____ day of _____, 20_____

(Grantor)

[STATE]

_____,ss _____, 20_____

Then personally appeared the above-named _____ and
acknowledged the foregoing instrument to be _____ free act and deed before
me.

Notary Public:
My commission expires:

Approved and Accepted By:

Date: _____

Local Approving Authority
Town of Hamilton