

## **Instructions**

### **Background:**

Applicants that seek a building permit for an addition will also be reviewed by the Board of Health Office. If the existing facility is served by a septic system, the Board of Health office will review the proposed addition to ensure that the septic system meets the regulatory requirements for the proposed construction, and that the proposed construction does not adversely affect the septic system.

Occasionally, the Board of Health finds that the current septic system was not designed and constructed to accommodate the proposed addition. The design criteria of a septic system is referenced in Title 5, 310 CMR 15.000; for residential houses design flows are based on the number of bedrooms the septic system serves. Definition of a bedroom for total number of bedrooms count is specified in section 15.002 of the code.

### **Section 15.002 Summary**

Essentially, every house is presumed to have at least 3-bedrooms. A bedroom must be a room providing privacy primarily used for sleeping purposes, have at least one electrical outlet, ventilation, at least one window, and have the minimum dimensional criteria as listed in 15.002. (kitchens, bathrooms, living rooms, dining rooms, halls, unfinished cellars, and unheated storage areas are not considered bedrooms).

When the number of TOTAL rooms in the house exceed eight (8), (not including bathrooms, hallways, unfinished cellars, and unheated storage areas), the number of bedrooms presumed shall be calculated taking the total number of rooms divide by two and rounding down to the next whole number.

### **How to use this deed restriction:**

At times, a proposed construction addition may cause the total number of rooms in a house to increase thus increasing the number of presumed bedrooms higher than the approved septic system design. For example, a proposed sunroom addition to a nine room, 4-bedroom house will create the tenth room of a house. Per Title 5, the number of bedrooms is: 10 rooms divide by 2 equals 5-bedrooms.

This deed restriction can be used so that a building permit may be issued for houses that exceed the approved design flow based on total number of room count. The intention is to resolve the possible conflicting Title 5 definition of bedroom to the actual bedroom count. This deed restriction is not intended for construction that will actually increase the bedroom count beyond the approved design. If in the future the septic system is upgraded to meet additional bedroom flow criteria, or the house becomes connected to municipal sewer, the owner may request Board of Health for a release of the deed restriction. Such release will also have to be recorded at the Registry of Deeds.

This deed restriction is also not obligatory. One alternative to a deed restriction may be to seek approval from the Board of Health to upgrade the septic system in order to meet the proposed design flow.

**Attached Form**

The attached form consists of a deed restriction template marked up in underlines and or in brackets [ ] with information that needs to be completed. A copy of a clean form is also attached for your use. Since this is a deed restriction that will be recorded at the Registry of Deeds, you may want to have your attorney review it and advice you.

-Your Deed information may be available at the Cambridge Registry of Deeds, or you may go to [www.cambridgedeeds.com](http://www.cambridgedeeds.com) and conduct a property search for your records.

-When you complete the attached form bring it to the Board of Health office for review and signature.

-Prior to issuing approval for building permit construction, the Board of Health will need from you:

1. A copy of the executed restriction recorded at the Registry of Deeds

-The following is a checklist for recording documents at the Registry of Deeds. The current fee payable to the “Commonwealth of Massachusetts” for the document is \$75.

- Documents must be signed with an original signature and notarized if required. Signers and notaries name must be printed under the signature. The expiration date for the notary must be noted on the jurat.
  
- Note proper tenancy (if applicable) and mailing address for grantees.
  
- Property address must be noted on the first page of all other documents.
  
- The total number of pages of a document must be noted in the upper left corner on the first page.
  
- The return address must be noted on the first page of each document (RETURN CODES ARE NO LONGER APPLICABLE)
  
- If the document refers to attached exhibits, the exhibits must be attached and included at the end of the document. If the description is by exhibit, it should be attached as the last page.
  
- Multi-page documents must be stapled.
  
- Addresses and telephone numbers must be noted on all checks.
  
- Checks for recording fees must be in the exact amount. If the check amount is

incorrect, the documents will not be accepted for recording. Only \$10.00 in change will be given. (It is recommended that the amount of the check be left blank until the documents are processed). Checks should be payable to "Commonwealth of Massachusetts"

**Form Template**

**GRANT OF TITLE 5 BEDROOM COUNT DEED RESTRICTION**

This Grant of Title 5 Bedroom Count Deed Restriction is made as of this [Day] \_\_\_ day of [Month] \_\_\_, 20[Year] \_\_\_, by \_\_\_ [Grantor's (Current Owners) Name] \_\_\_ ("Grantor"), of \_\_\_ [Town/City] \_\_\_, \_\_\_\_\_ County, \_\_\_ [State] \_\_\_, 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 Hopkinton, Middlesex County, Massachusetts, [with the buildings and improvements thereon], pursuant to a deed from [Previous owner] \_\_\_\_\_ to Grantor, dated [Deed recorded date] \_\_\_\_\_, and recorded with Middlesex 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 \_\_\_\_\_ 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, "[Name of plan for original subdivision]", dated [Plan Date], prepared by \_\_\_\_\_, recorded with Middlesex 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 Middlesex 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 Hopkinton of Middlesex County, Massachusetts, a municipal corporation located in Middlesex County, having a mailing address of 18 Main Street, 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 [insert number of bedrooms] Bedrooms,

such that at no time shall there exist more than [insert number of bedrooms] 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 (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) A septic system in full compliance of State and Hopkinton Regulations for the proposed use of the property is installed and a certificate of compliance is issued by the approving authority. 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 \_\_\_\_[Grantor's Name]\_\_\_\_\_ and acknowledged the foregoing instrument to be [his/her] free act and deed before me.

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

Approved and Accepted By:

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

\_\_\_\_\_  
Local Approving Authority

{ Clean Form Attached next pages }

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 \_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_, 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 Hopkinton, Middlesex County, Massachusetts, [with the buildings and improvements thereon], pursuant to a deed from \_\_\_\_\_ to Grantor, dated \_\_\_\_\_, and recorded with Middlesex 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 Middlesex 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 Middlesex 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 Middlesex 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 Hopkinton of Middlesex County, Massachusetts, a municipal corporation located in Middlesex County, having a mailing address of 18 Main Street, 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:

- (iii) 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
- (iv) 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:

- (v) Grantor and all parties claiming by, through, or under Grantor agree to and shall be subject to the provisions of this Restriction; and
- (vi) 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 (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) A septic system in full compliance of State and Hopkinton Regulations for the proposed use of the property is installed and a certificate of compliance is issued by the approving authority. 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

\_\_\_\_\_  
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