

GRANT OF TITLE 5 BEDROOM COUNT DEED RESTRICTION

This Grant of Title 5 Bedroom Count Deed Restriction is made as of _____ by Jonathan Levitt and Marni Levitt of Bourne, Barnstable County, MA, 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 128 Emmons Road, Bourne, MA, that certain parcel of land located in Bourne, Barnstable County, Massachusetts, [with the buildings and improvements thereon], pursuant to a deed from Joan S. Durant, to Grantor, dated 12/09/2020, and recorded with Barnstable County Registry of Deeds in Book 33577, Page 277 [source of title other than by deed] and/or pursuant to Certificate of Title No. _____ issued by the Land Registration Office of the Barnstable 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 Barnstable County Registry of Deeds as Plan No. _____, in Plan Book 327, Page 84 [[[and/or registered as Land Court Plan No. _____, on file with the Land Registration Office of _____ 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") and the Board of Health regulation dated effective April 24, 1992 regarding bedroom definition, through the granting of this Title 5 Bedroom Count Deed Restriction;

NOW, THEREFORE, Grantor does hereby GRANT to the Town of Bourne of Barnstable County, Massachusetts, a municipal corporation located in Barnstable County, having a mailing address of 24 Perry Avenue, Buzzards Bay, Massachusetts, and acting by and through its Board of Health ("Local Approving Authority"), for nominal and nonmonetary 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 6 Bedrooms, such that at no time shall there exist more than 6 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 Bourne Board of Health 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 Bourne Board of Health, 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 Bourne Board of Health 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. 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 Bourne Board of Health 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 Bourne Board of Health. It is expressly agreed that acceptance of this Restriction by the Bourne Board of Health shall not operate to bar, diminish, or in any way affect any legal or equitable right of the Bourne Board of Health 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 Bourne Board of Health 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 Bourne Board of Health.

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.

12. No construction permits shall be issued for the Property until a certified Registry copy is submitted to the office of the Bourne Board of Health unless written approval is otherwise granted by the Board of Health.

WITNESS the execution hereof under seal this _____ day of _____, 2020.

Grantor, Jonathan Levitt

Grantor, Marni Levitt

COMMONWEALTH OF MASSACHUSETTS

_____, ss _____, 2020

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: _____

Agent of the Board of Health
Health Department
Town of Bourne

Town of Bourne

CONSERVATION COMMISSION

Nitrogen Loading Calculation Sheet for Residential Housing

The following calculation sheet is based upon Technical Bulletin 91-001 issued by the Cape Cod Commission and deals with nitrate nitrogen ($\text{NO}_3\text{-N}$). Use the information from your PLAN OF RECORD to provide the following:

Number of bedrooms (Title 5 definition)	=	<u>4</u>	bedrooms
Lot size (in square feet)	=	<u>36,037</u> (upland)	sq. ft.
Impervious surfaces; **Roof area = <u>2549</u> sq. ft. **Paved area = <u>2337.0</u> sq. ft.	=	<u>31,151</u>	sq. ft.
Natural Area = lot area minus all impervious surfaces	=	<u>10,034</u>	sq. ft.
Lawn area in sq. ft.			

TITLE 5 FLOW = 110 GAL. / DAY PER BEDROOM
WASTEWATER FLOWS (NITROGEN LOAD & WATER LOAD)

Nitrogen from Title 5 design = 14,572 mg $\text{NO}_3\text{-N}$ / day / bedroom
Water from Title 5 design = 416.3 L H_2O / day / bedroom

1a) Number of bedrooms = 4 X 14,572 = 58,288 mg. $\text{NO}_3\text{-N}$ / day
1b) Number of bedrooms = 4 X 416 = 1,664 L H_2O / day

Actual Nitrogen load = 6071.5 mg $\text{NO}_3\text{-N}$ / day / bedroom
Actual Water load = 173.5 L H_2O / day / bedroom

*Note: This assumes 2.5 people / unit average occupancy within the Town.

2a) Number of bedrooms = 4 X 6071.5 = 24,286 mg. $\text{NO}_3\text{-N}$ / day
2b) Number of bedrooms = 4 X 173.5 = 694 L H_2O / day

IMPERVIOUS SURFACES (NITROGEN LOAD & WATER LOAD)

$\text{NO}_3\text{-N}$ load number sq. ft. of roof surface X 0.19395 mg $\text{NO}_3\text{-N}$ / sq. ft.
 H_2O load number sq. ft. of roof surface X 0.2586 L / sq. ft.

3a) Roof surface = 2549 sq. ft. X 0.19395 = 494.4 mg $\text{NO}_3\text{-N}$
3b) Roof surface = 2549 sq. ft. X 0.2586 = 659.2 L H_2O

$\text{NO}_3\text{-N}$ load number sq. ft. of paved surface X 0.388 mg / sq. ft.
 H_2O load number sq. ft. of paved surface X 0.2586 L / sq. ft.

4a) $\text{NO}_3\text{-N}$ = 2337 sq. ft. paved surface X 0.388 mg / sq. ft. = 907 mg $\text{NO}_3\text{-N}$
4b) H_2O = 2337 sq. ft. paved surface X 0.2586 L / sq. ft. = 604.3 L H_2O

LAWN NITROGEN LOAD = 0.933 mg / sq. ft. lawn surface

5) sq. ft. of lawn = 10,034 X 0.933 = 9362 mg

NATURAL AREA WATER LOADING

Natural area = lot size - impervious surface = 31,151 sq.ft.

6) Natural area = 31,151 X water recharge factor = 4230 L
(0.1358 L / sq. ft. for Bourne)¹

SUMMARY OF NITROGEN LOADING

Estimated Title 5 Nitrogen & Water Loading

7a) ADD the above NO₃N load:

$$\begin{array}{ccccccc} 1a & + & 3a & + & 4a & + & 5 \\ 58288 & + & 494.4 & + & 907 & + & 9362 \\ \hline & + & 2549 & & & & \\ \hline & & & & 69051.4 & & \end{array}$$
 mg NO₃-N / day

7b) ADD the above water (H₂O) load:

$$\begin{array}{ccccccc} 1b & + & 3b & + & 4b & + & 6 \\ 1664 & + & 659 & + & 604.3 & + & 4230 \\ \hline & & & & 7157.3 & & \end{array}$$
 L H₂O / day

7c) DIVIDE 7a by 7b = 9.65 ppm NO₃-N*****

Actual Nitrogen & Water Loading

8a) ADD the above NO₃N load:

$$\begin{array}{ccccccc} 2a & + & 3a & + & 4a & + & 5 \\ 24286 & + & 494.4 & + & 907 & + & 9362 \\ \hline & + & & & & & \\ \hline & & & & 35049 & & \end{array}$$
 mg NO₃-N / day

8b) ADD the above water (H₂O) load:

$$\begin{array}{ccccccc} 2b & + & 3b & + & 4b & + & 6 \\ 694 & + & 659.2 & + & 604.3 & + & 4230 \\ \hline & & & & 6187.5 & & \end{array}$$
 L H₂O / day

8c) DIVIDE 8a by 8b = 5.66 ppm NO₃-N*****

FINAL CALCULATION ADD 7c & 8c (ppm) = 15.31 divide by 2 = 7.65 ppm NO₃-N

This is the actual nitrate nitrogen load for the project as designed. The target for coastal areas is 5 ppm nitrate nitrogen. Certain critical embayments may require a LOWER figure to prevent degradation.

*****If your nitrate nitrogen load exceeds the target limit USE A SECOND CALCULATION SHEET TO SHOW ALTERNATIVES IN TRYING TO ACHIEVE THE 5 PPM NITRATE NITROGEN LEVEL*****

¹ Water recharge factors for data line 6: @21' / yr. use 0.1358 in Bourne and Falmouth; @ 19" / yr. use 0.1228 for Mashpee & Sandwich; @ 18" / yr. 0.1164 for Barnstable, Dennis & Yarmouth; @ 17" / yr. use 0.1101 for Brewster & Harwich; @ 16" / yr. use 0.1031 for Chatham, Eastham, Orleans, Provincetown, Truro & Wellfleet.

Town of Bourne

CONSERVATION COMMISSION

Nitrogen Loading Calculation Sheet for Residential Housing

The following calculation sheet is based upon Technical Bulletin 91-001 issued by the Cape Cod Commission and deals with nitrate nitrogen ($\text{NO}_3\text{-N}$). Use the information from your PLAN OF RECORD to provide the following:

Number of bedrooms (Title 5 definition) = 6 bedrooms
Lot size (in square feet) = 36,037 sq. ft.
Impervious surfaces; **Roof area = 3,638 sq. ft. **Paved area = ~~8~~ sq. ft.
Natural Area = lot area minus all impervious surfaces = 32,399 sq. ft.
Lawn area in sq. ft. = 3,000 sq. ft.

TITLE 5 FLOW = 110 GAL. / DAY PER BEDROOM
WASTEWATER FLOWS (NITROGEN LOAD & WATER LOAD)

Nitrogen from Title 5 design = 14,572 mg $\text{NO}_3\text{-N}$ / day / bedroom
Water from Title 5 design = 416.3 L H_2O / day / bedroom 7,910.5
1a) Number of bedrooms = 6 X 14,572 = 47,463 mg. $\text{NO}_3\text{-N}$ / day
1b) Number of bedrooms = 6 X 416 = 2,496 L H_2O / day
Actual Nitrogen load = 6071.5 mg $\text{NO}_3\text{-N}$ / day / bedroom
Actual Water load = 173.5 L H_2O / day / bedroom

*Note: This assumes 2.5 people / unit average occupancy within the Town.

2a) Number of bedrooms = 6 X 6071.5 = 3,296 19,776 mg. $\text{NO}_3\text{-N}$ / day
2b) Number of bedrooms = 6 X 173.5 = 1,041 L H_2O / day

IMPERVIOUS SURFACES (NITROGEN LOAD & WATER LOAD)

$\text{NO}_3\text{-N}$ load number sq. ft. of roof surface X 0.19395 mg $\text{NO}_3\text{-N}$ / sq. ft.
 H_2O load number sq. ft. of roof surface X 0.2586 L / sq. ft.

3a) Roof surface = 3638 sq. ft. X 0.19395 = 706 mg $\text{NO}_3\text{-N}$
3b) Roof surface = 3638 sq. ft. X 0.2586 = 941 L H_2O

$\text{NO}_3\text{-N}$ load number sq. ft. of paved surface X 0.388 mg / sq. ft.
 H_2O load number sq. ft. of paved surface X 0.2586 L / sq. ft.

4a) $\text{NO}_3\text{-N}$ = \emptyset sq. ft. paved surface X 0.388 mg / sq. ft. = \emptyset mg $\text{NO}_3\text{-N}$
4b) H_2O = \emptyset sq. ft. paved surface X 0.2586 L / sq. ft. = \emptyset L H_2O

LAWN NITROGEN LOAD = 0.933 mg / sq. ft. lawn surface

5) sq. ft. of lawn = 3,000 X 0.933 = 2,799 mg

NATURAL AREA WATER LOADING

Natural area = lot size - impervious surface = 32,399 sq.ft.

6) Natural area = 32,399 X water recharge factor = 4400 L
(0.1358 L / sq. ft. for Bourne)¹

SUMMARY OF NITROGEN LOADING

Estimated Title 5 Nitrogen & Water Loading

7a) ADD the above NO₃N load:

1a + 3a + 4a + 5
47,463 + 706 + Ø + 2,799 = 50,968 mg NO₃-N / day

7b) ADD the above water (H₂O) load:

1b + 3b + 4b + 6
2,496 + 941 + Ø + 4,400 = 7,837 L H₂O / day

7c) DIVIDE 7a by 7b = 6.5 ppm NO₃-N*****

Actual Nitrogen & Water Loading

8a) ADD the above NO₃N load:

2a + 3a + 4a + 5
19,776 + 706 + Ø + 2,799 = 23,281 mg NO₃-N / day

8b) ADD the above water (H₂O) load:

2b + 3b + 4b + 6
1,041 + 941 + Ø + 4,400 = 6,382 L H₂O / day

8c) DIVIDE 8a by 8b = 3.6 ppm NO₃-N*****

FINAL CALCULATION ADD 7c & 8c (ppm) = 10.1 divide by 2 = 5.05 ppm NO₃-N

This is the actual nitrate nitrogen load for the project as designed. The target for coastal areas is 5 ppm nitrate nitrogen. Certain critical embayments may require a LOWER figure to prevent degradation.

*****If your nitrate nitrogen load exceeds the target limit USE A SECOND CALCULATION SHEET TO SHOW ALTERNATIVES IN TRYING TO ACHIEVE THE 5 PPM NITRATE NITROGEN LEVEL*****

¹ Water recharge factors for data line 6: @21' / yr. use 0.1358 in Bourne and Falmouth; @ 19" / yr. use 0.1228 for Mashpee & Sandwich; @ 18" / yr. 0.1164 for Barnstable, Dennis & Yarmouth; @ 17" / yr. use 0.1101 for Brewster & Harwich; @ 16" / yr. use 0.1031 for Chatham, Eastham, Orleans, Provincetown, Truro & Wellfleet.