Grantor: Town of Westport

Grantee: Westport Land Conservation Trust, Inc.

Property Address: 567 American Legion Highway, Westport, MA

Title Reference: Bristol County (S.D.) Registry of Deeds, Book 7176, Page 303

CONSERVATION RESTRICTION

To the Westport Land Conservation Trust, Inc.

The Town of Westport,a Municipal Corporation so-called, having an address of 816 Main Road, Westport, Massachusetts 02790, acting by and through its Board of Selectmen, successors and assigns (“Grantor”), as the fee owner, with quitclaim covenants, grants to the Westport Land Conservation Trust, Inc., a Massachusetts nonprofit corporation, having an address of 830 Drift Road, Westport, Massachusetts 02790, and to its successors and permitted assigns ("Grantee”), **in perpetuity** and exclusively for conservation and passive and active recreation purposes, the following described **Conservation Restriction** on a parcel of land on the southerly side of Old County Road in the Town of Westport, Bristol County, Massachusetts, totaling approximately seventy-four and 80/100 (74.80) acres, said parcel being more particularly described as set forth in Exhibit A and shown on the recorded plan set forth in Exhibit B, both of which are attached hereto, said parcel hereinafter referred to as the “Premises.”

**Purposes**

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws. The Premises were acquired using Massachusetts Community Preservation Act funds (G.L. Chapter 44B) (see Exhibit C) in whole or in part for “recreation use” and “open space” as those terms are defined in G.L. c. 44B, §12. The purpose of this Conservation Restriction is to assure that, while permitting the uses described in Section B herein, the Premises will be preserved for conservation and passive and active recreation purposes, and be maintained in perpetuity, predominately in open condition and to prevent any use of the Premises that would materially impair or interfere with the conservation values thereof.

The Premises contain outstanding qualities, including various fields for active recreation, open space and wooded wetlands, the protection of which will be to the benefit of the public. These conservation values are further described below

* **Passive Recreation and** **Public Access Trails.** The Premises include open meadows and established trails. General public trail access for the purpose of passive recreation includes, but is not limited to, walking, fishing, and nature observation.
* **Active Recreation.** The Premises provide outdoor recreational opportunities for Westport residents of all ages.

**Protection of Wildlife Habitat and Water Quality.** The Premises contain several acres of forested marshland. An intermittent stream, a tributary to Kirby Brook, flows through the Premises. The location of said stream is shown on USGS Topographic maps. Kirby Brook is a coldwater fishery resource, as identified by the Massachusetts Natural Heritage and Endangered Species Program, and as such supports a population of native brook trout as well as other species dependent on cold water streams. The protection of the tributary and associated wetlands will help ensure the long-term viability of the trout in Kirby Brook, the water quality of the watershed and other species associated with the habitat.

* **Furtherance of Government Policy.** Protection of the Premises furthers the stated goals and objectives of the Town of Westpor’s Master Plan for Open Space and Recreation (2004), as follows:

Natural Resources Goal**:** Ensure Westport has a good and ample amount of publicly accessible, multi-use open space land that provides both passive and active recreational opportunities, as well as aesthetic enjoyment, wildlife protection, and watershed protection. Create and maintain plans to safeguard Westport’s many scenic and recreation lands, undeveloped parcels, fragile water resources, and wildlife habitats. Objectives:

1. Protect water resources.

2. Protect and manage critical natural resources.

3. Preserve significant land for open space and recreation.

Land Use Goal: Maintain and enhance Westport’s rural, small town character and limit

commercial, industrial, and residential growth to what is appropriate to Westport’s character and supportable by the available infrastructure, while being environmentally responsible.

Open Space and Recreation Plan: The Open Space and Recreation Plan includes the following five goals:

Goal One: To improve and sustain land conservation efforts in Westport

Goal Two: To protect Westport’s rural landscape Preserve open space

Goal Three: To protect and restore Westport’s water quality and natural resources

Goal Four: To preserve the Quality of Westport’s Natural Resources, Groundwater, Wetlands, Wildlife, Wildlife Habitats and Coastal Areas

Goal Five: To provide and enhance indoor and outdoor recreational opportunities for Westport residents of all ages

A. **Prohibited Acts and Uses.** Subject to the exceptions set forth herein, the Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

1. Construction or placing of any building, landing strip, mobile home, swimming pool, billboard or other advertising display, antenna (including so-called satellite receiving dishes), tower, solar panel, solar array, conduit, or any other temporary or permanent structure or facility on, above, or under the Premises;
2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit, or altering the topography thereof;
3. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, trailers, rubbish, debris, brush, leaves, grass or tree cuttings or junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;
4. Cutting, removing or otherwise destroying trees, grasses or other vegetation;
5. The subdivision of the Premises or use of the same to fulfill any building or zoning requirements of this or any other land;
6. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, wildlife habitat and archeological conservation;
7. The use, parking or storage of motorized vehicles, including trucks, trail bikes and snowmobiles, except as required by the police, fire fighters or other governmental agents in carrying out their lawful duties; and except for motorized wheelchairs;
8. The use of the Premises for commercial recreation, business, residential or industrial use; and
9. Any other use of the Premises which is inconsistent with the purposes of this Conservation Restriction or which would materially impair its intended conservation values.

B. **Exceptions to Otherwise Prohibited Acts and Uses.** Notwithstanding any provisions herein to the contrary, the following uses and activities are permitted by the Grantor, but only if such uses and activities do not materially impair the conservation values or purposes of this Conservation Restriction, including active and passive recreation.

* 1. Active Recreational Uses. The construction, installation, maintenance, renewal and use of the recreational fields as located in the site plan attached hereto as Exhibit D, provided that (a) any such fields, uses, and associated user fees are permitted by the lease agreement between Grantor and the Westport Youth Athletic Association, attached hereto as Exhibit E, or any subsequent lease which has been approved by Grantee, (b) motorized uses shall not be permitted, except as described in B(3), below, (c) no such fields shall be located nor uses permitted westerly of the easterly line of wetlands established by the wetlands delineation plan of the Premises attached hereto as Exhibit F, (d) all such fields shall have natural, not artificial, turf, and (e) the uses do not interfere with the conservation values described above. With prior written approval of Grantee, artificial turf fields may be permitted in place of natural turf fields permitted above, but Grantee shall consider as part of its deliberation what is known and not known about materials being used for any such artificial field in terms of both public safety and potential to have a deleterious impact on the surrounding environment. Also, with prior written approval of Grantee, other recreational infrastructure, including without limitation playgrounds, tennis and basketball courts and outdoor skating rinks may be permitted.
	2. Structures and Infrastructure Related to Active Recreational Uses. The construction, installation, maintenance, use and replacement of structures associated with and reasonably necessary for the active recreational uses permitted in Paragraph B(1), above, provided that any such structures are located easterly of the eastern line of wetlands as shown in Exhibit F. For the purpose of this paragraph, the term “structure” shall include parking lots which may be paved, access roads which may be paved, equipment storage buildings, concession stands, bathrooms and associated septic systems, lighting, bleachers or other seating for spectators, utilities (including without limitation telephone, cable, gas, and electricity), irrigation, wells, solar arrays or other renewable energy production facilities (provided that the projected energy production of any such facility shall not exceed the anticipated on-site energy use), and other structures customarily accessory and incidental to the use, maintenance, and operation of active recreational fields, such as baseball backstops and dugouts, ultimate frisbee “holes,” and football uprights. Any such structures shall be designed to exclusively serve the recreational fields permitted above and the users, spectators, and operators of the same. No such structures shall now or in the future be used for residential, retail, or victualer use, except a small concession stand to serve the users and spectators of the recreational fields permitted above.
	3. Vehicles. The use, parking, and storage of motorized vehicles by the participants and spectators of the recreational activities provided for in Paragraph B(1), above, as well as the use of motorized vehicles reasonably necessary in connection with the construction, installation, maintenance, and renewal of the recreational fields and related structures permitted above.
	4. Excavation. Excavation and removal from the Premises of soil, gravel, or other mineral resource or natural deposit as may be necessary and incidental to the installation, maintenance and use of recreational fields and related structures and infrastructure permitted above, provided however, that no such excavation nor improvements provided for in this Paragraph B(4) shall be permitted west of the eastern line of wetlands as shown in Exhibit F.
	5. Vegetation Management and Timber Harvests. In accordance with generally accepted forest management practices, removing of brush and saplings, elimination of blowdowns, and selective *de minimis* pruning and cutting to prevent, control, or remove hazards, overgrowth, disease, insect, storm, fire damage, or to preserve the present condition of the Premises, including existing athletic fields, support facilities and trails at the Premises. Timber harvests must be conducted under a Forest Stewardship Plan in accordance with a Forest Cutting Plan approved by the Department of Conservation and Recreation acting by and through its State Forester (or any successor agency) and designed to protect and enhance the conservation and water quality values of the land and conform at least to the minimum standards set forth in the Massachusetts Forest Cutting Practices Act (General Laws, Ch. 132, or its successor).

Before any harvest of forest products occurs on the Premises, Grantor shall submit a Forest Management Plan to the Grantee, the Massachusetts Department of Conservation and Recreation (or appropriate successor agency) and to any other required state agencies for their approval. The Management Plan shall be prepared by a forester licensed through the Massachusetts Department of Conservation and Recreation in conformance with the “Directions for the Preparation of the Chapter 61 Forest Management Plans and Forest Stewardship Plans” and such statutes, regulations and directions in effect at the time of the approval of said Management Plan. The Management Plan shall include provisions designed to minimize soil erosion, conserve surface and groundwater quality, scenic views, wildlife habitat, and to protect the conservation values of this Conservation Restriction. The Management Plan shall be effective for a ten (10) year period and shall be resubmitted once every ten (10) years as necessary if additional timber harvests occur. All cutting plans and designated access routes shall avoid any stone structures or historical and cultural resources and shall be reasonably required to prevent any damage thereto. All cutting operations shall be supervised by the licensed forester that prepared the Forest Management Plan.

* 1. Vegetation planting. Within the area designated in Paragraph B(1) above for recreational activities, the planting of native vegetation, including trees and shrubs, in such a manner that shall minimize damage to surrounding native species and preserve water quality. Planted species shall not include non-native or nuisance species.
	2. Non-native or nuisance species. The removal of non-native nuisance or invasive species, the inter-planting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality.
	3. Composting. The stockpiling and composting of stumps, trees, brush limbs, vegetation, organic matter, 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 of this Conservation Restriction. Such stockpiling and composting shall not be permitted with one hundred feet of any wetland.
	4. Wildlife Habitat Improvement. With the prior written permission of the Grantee, measures designed to restore native biotic communities, or to maintain, enhance, or restore wildlife, or wildlife habitat, including selective planting of native trees, shrubs, and plant species.
	5. Trails. Construction, maintenance, and use of walking trails by Grantor or Grantee, including elevated trails, boardwalks and/or foot bridges where necessary and appropriate. Such trails may not be wider than eight (8) feet, must be unpaved, and the location of such trails must be agreed upon in writing by both Grantor and Grantee prior to construction.
	6. Signs. The erection, maintenance, and replacement of signs with respect to acceptable use of the athletic fields, trespass, trail access, identity and address of the occupants, the Grantee’s interest in the Premises, protected conservation values, and Conservation Restriction use regulations for the Premises.
	7. Fences. With prior approval of Grantee as to location, type, height and clearance above ground level, the installation, repair and removal of sight-pervious fences along select portion of the property lines and surrounding athletic fields which will not interfere with the movement of wildlife or allowed public access.
	8. Stone walls. Restoration of stone walls currently located on the Premises. Erection and maintenance of signs and educational kiosks identifying Grantor and Grantee, the Premises’ boundaries and its status as conservation land, the restrictions on the use of the Premises, the identity or location of trails, areas of interest, natural features or other characteristics, including the historical significance, of the Premises, or for providing other like information. Signage will be subject to any applicable regional or local approvals.
	9. Permits. The exercise of any right reserved by Grantor under this Paragraph B shall be in compliance with zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.
	10. Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph B shall seek to minimize disturbance to the Conservation Values and other natural features within the Premises that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph B, any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Report

C. **Notice and Approval**. Whenever notice to or approval of Grantee is required under the provisions herein, Grantor shall notify Grantee in writing not less than forty-five (45) 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 and performance standards of this Conservation Restriction. Where Grantee’s approval is required, Grantee shall grant or withhold its approval in writing within forty-five days (45) days of receipt of Grantor’s written request therefore. Failure by Grantee to deliver a written response in accordance with the prescribed timeframe shall be deemed to constitute written approval of any request as submitted, provided that any such request sets forth the provisions of this section relating to deemed approval after the passage of time, the requested activity is not prohibited herein, and will not materially impair the purposes or conservation values of the Premises.

D. **Future Use**

If Grantor determines that the use of the Premises as a recreational facility is no longer feasible, viable or desirable and Grantor, in its sole discretion, elects to permanently discontinue such use or does not use the Premises as an active recreational facility for a period of five consecutive years, then the Grantee may presume that the Premises have been abandoned and may send a letter to Grantor confirming the same. Grantor shall have sixty (60) days from receipt of Grantee’s notice to provide written confirmation of such determination or abandonment to Grantee. If Grantor fails to send a notice to Grantee confirming abandonment, the Premises shall be deemed abandoned. If the parties agree on another use of the Premises consistent with this Conservation Restriction, then the Grantor and the Grantee shall seek approval to amend the Conservation Restriction to reflect such agreement. If the parties do not agree on another use of the Premises, then the reserved rights associated with active recreational uses in paragraphs B(1 – 4) and B(12) shall be extinguished and the Conservation Restriction shall otherwise be in full force and effect. If the Premises are abandoned, the Grantee shall be granted to right to allow for and manage public access to the Premises for passive recreational purposes. Grantee shall also have the right but not the obligation to remove or secure or take any other action with respect to the safety or soundness of any permanent or temporary structures or other improvements which may then be located on the Premises in the event any such structures pose a threat to public health or safety.

E. **Extinguishment**.

* 1. Termination. If circumstances arise in the future such as to render the purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction under applicable law, after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs.
	2. Value. Grantor and Grantee agree that the donation of this Conservation Restriction gives rise to a legal interest in the Grantee, for purposes of enforcing the terms of this Conservation Restriction. If any occurrence gives rise to extinguishment or other release of the Conservation Restriction under applicable law, the Grantor and Grantee shall be reimbursed from the proceeds, once recovered, for their respective share of reasonable legal or other expenses, if any, associated with the recovery of said proceeds. The remaining balance of said proceeds shall be distributed to the Grantor, after complying with the terms of any gift, grant or funding requirements, including the provisions of the Community Preservation Act. If the conservation interests protected hereby are unaffected by the taking, the only interest taken by the public authority is the Grantor’s interest, and recovered proceeds are awarded on the basis of the value of the Premises as restricted by the Conservation Restriction, then the proceeds from such taking shall be payable in their entirety to the Grantor.
	3. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or 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 Grantor, and, at Grantor’s request, Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by Grantor and Grantee under this paragraph shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed to Grantor.

F. **Access.** Grantor hereby grants to 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. Grantor also grants to Grantee, after notice of a violation and failure of Grantor to cure said violation, within sixty (60) days of Grantee’s written notice of the same, 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.

Subject to Grantor’s rules and regulations related to use of the Premises, this Conservation Restriction reserves to Grantor, or Lessee with Grantor’s approval, the right to allow the general public to enter upon the Premises for active recreational purposes, including use of the athletic fields and support facilities and motorized access to the parking area, and passive recreational activities including, but not limited to, hiking, wildlife observation, mountain biking, and other non-motorized, passive outdoor recreational and educational activities (motorized wheelchairs or similar equipment reasonably necessary to enable handicapped members of the public to access the Premises or as otherwise outlined in this Conservation Restriction shall be allowed). Grantor may impose rules and regulations from time to time governing the use by the public of the Premises, which rules and regulations shall be consistent with the terms of this Conservation Restriction.

G. **Legal Remedies of Grantee**.

1. 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 restoration of the Premises to their 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 shall have the right to pursue third party violations and the Grantor agrees to reasonably cooperate. Notwithstanding the foregoing, Grantee agrees that, except in the event of an emergency, it shall not take any actions hereunder to remedy or abate any violation hereof or initiate any litigation or enforcement proceedings unless (a) Grantee has given Grantor written notice of the violation, and (b) Grantor has failed to cure the same within sixty (60) calendar days from such notice, or, if the violation is of such a nature that it cannot reasonably be cured within said sixty (60) calendar day period, Grantor has failed to commence the cure within said sixty (60) day period or failed to pursue it to completion within a reasonable time and provided that 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.
2. 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.
3. Disclaimer of Liability. Except as explicitly stated herein, the Grantee shall have no liability or obligation with respect to the Premises, including but not limited to any liability or obligation relating to the condition of the Premises, hazardous materials, compliance with zoning, environmental laws and regulations, use of the Premises or acts not caused by the Grantee or its agents.
4. 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. The parties to this Conservation Restriction agree that, in the event of damage to the Premises from acts beyond the Grantor’s control, if it is desirable and feasible to restore the Premises, the parties will cooperate in attempting to do so.

H. **Duration and Assignability**.

The burdens of this Conservation Restriction shall run with the Premises in PERPETUITY and shall be enforceable against Grantor(s) holding any interest in the Premises. Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; and Grantor appoints Grantee as its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, Grantor agrees to execute any such instrument upon request.

The benefits of this Conservation Restriction shall run to the Grantee and shall be in gross and shall not be assignable by Grantee, except in the following instances from time to time when all of the following conditions are satisfied:

 (i) as a condition of any assignment, Grantee requires that the purpose of this Conservation Restriction continue to be carried out,

(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 Massachusetts General Laws as a donee eligible to receive this Conservation Restriction directly.

I. **Subsequent Transfers**. Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other recordable legal instrument by which Grantor conveys any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. Failure of Grantor to do either shall not impair the validity of this Conservation Restriction or limit its enforceability in any way.

J. **Termination of Rights and Obligations**. Notwithstanding anything to the contrary contained herein, the rights and obligations under this Conservation Restriction of any party holding an interest in the Premises terminate upon transfer of that party’s interest, except that liability for acts or omissions occurring prior to the transfer, and liability for the transfer itself if the transfer is a violation of this Conservation Restriction, shall survive the transfer.

K. **Estoppel Certificates**. Upon request by Grantor, Grantee shall, upon thirty (30) days notice, 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.

L. **Amendment**. If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may by mutual consent amend in writing the applicable term or provision hereof provided that the amendment complies with the then-applicable requirements of Massachusetts General Laws, Chapter 184, Sections 31-33, or any successors thereto, and provided that any such amendment, together with any approvals necessary, including that of the Massachusetts Secretary of Energy and Environmental Affairs, shall be recorded with the Bristol County (S.D.) Registry of Deeds. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not diminish the conservation values of the Premises, shall not affect its perpetual duration, and shall comply with any gifts, grants or funding requirements.

M. **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 first having 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 hereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of the Commonwealth of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

N. **Pre-existing rights**. Approval of this Conservation Restriction pursuant to Massachusetts General Laws Chapter 184, Section 32 by any municipal officials, the Secretary of the Executive Office 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.

O. **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 sent by overnight courier, served personally or sent by first class mail, postage pre-paid, addressed as follows:

 To Grantor: Town Administrator

Town of Westport

 Town Hall, 138 Main Street

 Westport MA 01984

 To Grantee: Westport Land Conservation Trust, Inc.

 830 Drift Road

Westport, MA 02790

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

P. **Miscellaneous Provisions**.

1. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
2. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of its purposes and the purposes of Massachusetts General Laws Chapter 184, Sections 31 through 33. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
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 obligation 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. Subordination. 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.

Q. **Effective Date**. Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this Conservation Restriction is recorded in the official records of the Bristol County (S.D.) Registry of Deeds, after all signatures required by Section 32, Chapter 184 of the Massachusetts General Laws have been affixed hereto. This document shall be recorded in a timely manner upon execution by all parties.

Attached hereto and incorporated herein are the following:

Signature Pages:

Town of Westport Board of Selectmen

Westport Land Conservation Trust, Inc.

Secretary, Energy and Environmental Affairs

Exhibit A: Legal Description

Exhibit B: Legal Reference to Recorded Plan of Premises

Exhibit C: Attested Copy of Annual Town Meeting Vote

Exhibit D: Site Plan

Exhibit E: Lease Agreement

Exhibit F: Wetland Delineation

No documentary stamps are required as a municipality is a party to this instrument.

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575222/WPOR/0001IN WITNESS WHEREOF, the Grantor has signed this instrument under seal as of this \_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 2018.

 TOWN OF WESTPORT,

By its Board of Selectmen

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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COMMONWEALTH OF MASSACHUSETTS

Bristol, ss:

On this day of , 2018, before me, the undersigned notary public, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, member of the Town of Westport Board of Selectmen, who proved to me through satisfactory evidence of identification, which was \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose as Selectmen for the Town of Westport.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public

 My Commission Expires:

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2018.

 WESTPORT LAND CONSERVATION TRUST, INC.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Ross Moran, duly authorized

 Executive Director

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ss. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2018

On this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 201, before me, the undersigned notary public, personally appeared Ross Moran, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public

 My commission expires:

575222/WPOR/0001

APROVAL BY

SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS

COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the Town of Westport has been approved in the public interest pursuant to M.G.L. Chapter 184, Section 32.

Date: , 2018

 Matthew A. Beaton, Secretary

 Executive Office of Energy

and Environmental Affairs

#### COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2018, personally appeared the above-named Matthew A. Beaton, and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the document and acknowledged to me that he signed it voluntarily for its stated purpose as Secretary of Energy and Environmental Affairs for the Commonwealth of Massachusetts.

 Notary Public

 My commission expires:

575222/WPOR/0001

**EXHIBIT A**

**Description of the Premises**

A certain tract or parcel situate on the southerly side of Old County Road, so-called, now called Route #177 in Westport, Massachusetts, and bounded and described as follows:

**BEGINNING** at the northeasterly corner of the lot to be conveyed, which point of beginning is two hundred sixty (260) feet west of the northwest corner of the land now or formerly of John B. Hicks, now owned by Louisa Norman; running thence by land now or formerly of Ludres C. Santos three hundred ninety-one (391) feet for a corner; thence running easterly two hundred eleven (211) feet to land now or formerly of John B. Hicks and now owned by Louisa Nelson for a corner; thence southerly by last named land to land formerly of George F. Wood and now or formerly of Ludres C. Santos et al; thence westerly by last named land to land formerly of one Bean, now presumed to be owned by Antone Silvia; thence northerly by last named land to the southwest corner of the land owned by George Frederick Kent, which point is one hundred ninety-two (192) feet south from the southerly line of said Old County Road; thence running easterly three hundred seventeen and 10/100 (317.10) feet to other land now or formerly of said Ludres C. Santos forming an angle of 86° 45’; thence running northerly by a stone wall and to an angle in the wall forming an angle of 172°; thence continuing in a general northerly course by said stone wall ninety and 60/100 (90.60) feet to a corner of the wall on the south side of Old County road forming an angle in said wall of 88° 30’; thence running easterly by said Old County Road to the point of beginning.

Together with and subject to the rights of way, easements and appurtenances thereto to said land, however the same may be described referred to in a deed from Perry G. Lawton to George F. Wood, and containing approximately forty-five (45) acres of land, more or less.

Being all measurements more or less and being the same premises however otherwise same may be bounded or described.

Meaning and intending to convey to the grantee all of grantors right title and interest in and to 74.8 acres of land, more or less, shown on plan of land hereinbelow mentioned, said premises also known as Town of Westport Assessor’s Map 66 Lot 21 and such portions of Town of Westport Assessor’s Map 66 Lot 17 as are not part of Lot 1 and Lot 2 shown on plan of land hereinbelow mentioned.

**EXCEPTING HOWEVER** from the parcel[s] of land hereinabove described: (1.) The premises shown as Lot 1 containing 1.84 acres and Lot 2 containing 11.5 acres more or less, which said lots are shown on “Approval Not Required Plan of Land in Westport, MA prepared for Westport, MA prepared for Westport CPC Scale 1” = 60’ May 25, 2004 Prepared by Sitec, Inc.” which said plan is to be recorded at the Bristol County (S.D.) Registry of Deeds herewith. (2.) Any and all rights of way to pass and repass over and upon said lots 1 and 2 (except as below set out). (3.) The premises conveyed by Ludres C. Santos to Albert A. Grundy and Elizabeth B. Grundy by deed dated September 10, 1985 and recorded at said registry in Book 1934 Page 1035.

Granting also unto the grantee an easement fifty (50) feet in width, running southerly from a point approximately three hundred (300) feet south of the double stone wall (or not closer than 150 feet to said double stone wall if necessary) shown on lot 2 on plan of land hereinabove referred to, thence running southerly by and along and parallel to the western boundary of said lot 2 to the southwest corner thereof.

The grant of said easement is herby expressly made contingent upon the Town of Westport Conservation Commission prohibiting the grantee or its assigns from locating any proposed road leading to the southerly portions of the land hereinabove conveyed, for reasons of proximity to wetlands, thereby necessitating the relocation of any such proposed road easterly into the easement area hereinabove described. No such easement shall exist in the event the Westport Conservation Commission permits road construction on the land hereinabove conveyed to the grantee.

See deed of Leonard Santos to the Town of Westport recorded with the Bristol South Registry of Deeds in Book 7176, Page 303.

**EXHIBIT B**

**Plan Reference**

### That land shown as “Remaining Land 74.8 ± acres, Plat 66, Lots 17 & 21” on that plan entitled: “Approval Not Required Plan of Land in Westport, MA prepared for Westport,” dated May 25, 2004, prepared by Sitec, Inc., and recorded with the Bristol South Registry of Deeds in Plan Book 154, as Plan 85. **EXHIBIT C**

**Attested Copy of Town Meeting Vote**

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