

**DRAFT: Please note that all conservation restrictions in Massachusetts must be reviewed and approved by the municipality and the Commonwealth of Massachusetts' Executive Office of Energy and Environmental Affairs. This document has undergone preliminary review, though it is still a draft, and the Commonwealth or municipality may request additional revisions. Also note, a survey plan will be completed prior to closing.**

**GRANTOR:** Westport Land Conservation Trust, Inc.  
**PRIMARY GRANTEE:** Town of Westport  
**SECONDARY GRANTEE:** Westport Land Conservation Trust, Inc.  
**ADDRESS OF PREMISES:** 439 Briggs Road, Westport, MA 02790  
**FOR GRANTOR'S TITLE SEE:** Bristol County Southern District Registry of Deeds,  
Book \_\_\_\_\_ Page \_\_\_\_\_.

### **CONSERVATION RESTRICTION AND RIGHT OF FIRST REFUSAL**

The WESTPORT LAND CONSERVATION TRUST, INC., a Massachusetts non-profit corporation with an address of 830 Drift Road, Westport, MA 02790, being the sole owner of the Premises as defined herein, and for its successors and assigns ("Grantor"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws, GRANTS with quitclaim covenants to the TOWN OF WESTPORT, a municipal corporation in Bristol County, Massachusetts, acting by and through its Conservation Commission by authority of Section 8C of Chapter 40 of the Massachusetts General Laws, with offices at 856 Main Road, Westport, Massachusetts, 02790, its successors and permitted assigns (the "Primary Grantee"), and to the WESTPORT LAND CONSERVATION TRUST, INC., a Massachusetts non-profit corporation with an address of 573 Adamsville Road, Westport, MA 02790, and its successors and permitted assigns (the "Secondary Grantee") (together, the "Grantees"), for Two Hundred and Twenty Five Thousand Dollars (\$225,000.00), in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction and Right of First Refusal (hereinafter, the "Conservation Restriction" or the "Restriction" or the "CR") on a parcel of land of approximately 12 acres located in the Town of Westport, Massachusetts (the "Premises"), said Premises being shown as "439 Briggs Road, Westport MA" on a plan of land entitled "Approval Not Required, Plan of Land, in Westport, MA", prepared for Westport Land Conservation Trust by Southcoast Engineering Inc., and dated \_\_\_\_\_, 2021 (the "Plan"). Said Plan is recorded with the Bristol County Southern District Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_ (hereinafter referred to as "the Plan"), and a reduced copy of the Plan is attached hereto as Exhibit A.

**Summary of History and Statement of Purpose.** For many decades, the Premises have been a cherished farm and community resource for Westport residents, due to its scenic character, excellent soils and importance to Westport's agricultural economy. The Grantees have partnered to ensure the permanent protection of the Premises and its continued use for agriculture. The Westport Land Conservation Trust, Inc., has acquired the fee interest in the Premises with the intent of granting this Conservation Restriction to the Town of Westport (Primary Grantee) and itself and then selling the fee interest to a qualified agricultural buyer subject to the terms of the Restriction. Therefore, it is the intent of the parties hereto that the conveyance of this Conservation Restriction shall not result in a merging of interests and that the Conservation Restriction shall remain in full force and effect in order for the Westport Land Conservation Trust, Inc., and the Town of Westport to meet their shared goal of holding this Restriction as co-Grantees with the fee interest owned by a third party.

## **I. PURPOSES:**

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purposes of this Conservation Restriction are to prohibit development and residential subdivision; to protect and enhance the scenic landscape and open space character of Main Road; to allow for sustainable and sound management of the agricultural resources on the Premises and to promote such use; to ensure resale of the Premises at Fair Market Agricultural Value (as defined in Section III, below), in order to ensure the availability of farmland in Massachusetts and ensure those entering or currently engaged in commercial agricultural operations are able to acquire agricultural land at a price that is tied to the land's agricultural value; to protect the natural resources of the Premises including but not limited to woodlands, wetlands, soils, wildlife, and biological diversity thereon; to ensure that the Premises will be maintained in perpetuity for the said purposes; and to prevent any use of the Premises that will materially impair or interfere with its conservation and agricultural values ("Conservation Values").

The Premises was acquired using Community Preservation Act (see Chapter 44B of the Massachusetts General Laws) funds, and a copy of the Town Meeting Vote authorizing the use of such funds is attached hereto as Exhibit B.

### **The Conservation Values include the following:**

- (1) Protection of Prime Agricultural Soils. The Premises include approximately 3 acres of soils classified as Prime Agricultural Soils and 4.5 acres classified as soils of statewide significant, according to the Bristol County Soil Survey of the Natural Resources Conservation Service. Protection of the Premises will help preserve soil resources for agricultural use.
- (2) Promotion of Local Agriculture. The Town of Westport seeks to preserve its agricultural heritage and support its agricultural economy and has facilitated those goals through (a) the passage of a Right to Farm Bylaw, (b) the establishment of an Agricultural Commission, and (c) the creation of the Agricultural/Open Space Preservation Trust Fund. The Commonwealth of Massachusetts likewise seeks to

support agriculture through a variety of programs and initiatives, including the Agricultural Preservation Restriction Program, Farmer's Market Program, and Farm Improvement Grant Program, all managed by the Massachusetts Department of Agricultural Resources. Preserving the Premises will further the goals of the community and Commonwealth by ensuring the continued use of the agricultural portions of the Premises for farming.

- (3) Scenic Protection. The Premises include approximately 550 feet of frontage on Briggs Road and provide scenic views of the property's fields from the road. Preservation of the Premises as a farm will encourage the continued scenic character of the property and the Town.
- (4) Water Quality Protection. The Premises includes approximately 2 acres designated as wooded deciduous and mixed swamp by the Massachusetts Department of Environmental Protection. The conservation of the Premises will contribute to the protection of water quality by restricting certain activities that commonly degrade water quality and by prohibiting permitted dwellings and thereby eliminating septic systems, runoff, and water consumption commonly associated with such dwellings.
- (5) Natural Resource Preservation. The Premises include a variety of wildlife habitats, including fields, woodlands, and wooded wetlands, which support a variety of plants and animals. The protection of the Premises will preserve these habitats and benefit the plants and wildlife that rely on them.
- (6) Furtherance of Government Policy
  - a) Town of Westport. Protection of the Premises is consistent with the Town of Westport's most recent Open Space and Recreation Plan which has among its goals (i) to identify and protect forest and woodland areas that are critical to habitat and green infrastructure services (air, water, soil quality; shade; wind break) [Goal 1: Objective D] and (ii) to promote conservation of agricultural land and retention of working farms through the various means available [Goal 1: Objective E.]
  - b) Town of Westport. The Town of Westport assigned its Right of First Refusal to acquire the Premises, pursuant to M.G.L. Chapter 61A, Section 14, to the Grantor for the purpose of ensuring the Premises will be permanently preserved for the benefit of the residents of Westport, and, furthermore, the Town of Westport appropriated \$225,000 from its Agricultural/Open Space Preservation Trust Fund and Community Preservation Act Funds to acquire this Conservation Restriction and in so doing further facilitated the protection of the Premises.

These and other Conservation Values of the Premises, as well as its current uses and state of improvement, are described in more detail in a Baseline Documentation Report (hereafter

“Baseline Report”) prepared by Grantees with the cooperation of the Grantor, consisting of maps, photographs and other documents and on file at the offices of Grantees and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantees to be a complete and accurate representation of the condition and values of the Premises at the date of the granting of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

## **II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES**

### **A. Prohibited Acts and Uses**

Subject to the exceptions set forth herein, the Grantor will not perform nor allow others to perform the following acts and uses, which are prohibited on, above and below the Premises:

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, solar panel, solar array, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;
- (2) Mining, excavating, dredging or removing from the Premises soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area; withdrawal of surface or ground water from the Premises;
- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, 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) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
- (6) Use, parking or storage of vehicles, including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises, except for vehicles necessary for public safety (i.e. fire, police, ambulance, other governmental officials) in carrying out their official duties or as necessary for the mobility impaired;

- (7) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety, which shall be permitted); however, conveyance of a part or portion of the Premises, or division or subdivision of the Premises in order to convey said part or portion of the Premises to a conservation organization for conservation purposes shall be permitted with the prior written approval of the Grantees, or in connection with the Grantees exercising their Right of First Refusal as described below to purchase all or a portion of the Premises. Nothing herein shall prohibit the conveyance of the Premises in their entirety, subject to the terms hereof;
- (8) The use of the Premises for more than *de minimis* commercial recreation, business, residential or industrial use;
- (9) The disruption, removal, or destruction of the stone walls or granite fence posts on the Premises;
- (10) The use of the Premises for:
  - a) Transfer of development rights to any property, whether or not adjacent to the Premises;
  - b) Use in any calculations involving development of any other property, whether or not adjacent to the Premises, in any manner whatsoever;
- (11) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would materially impair its Conservation Values.

**B. Reserved Rights and Exceptions**

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not materially impair the Conservation Values or purposes of this Conservation Restriction:

- (1) Permits, Regulations, Laws. 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 Grantees or the Commonwealth take any position on whether such permit should be issued.
- (2) Passive Outdoor Recreational Activities. Hunting, hiking, horseback riding, cross-country skiing, picnicking and other non-motorized outdoor recreational activities that do not materially alter the landscape, do not degrade environmental quality, and do not involve more than minimal use for commercial recreational activities.

Horseback riding shall be kept on woods roads, farm roads, and trails to the extent possible.

- (3) Trails. The use, maintenance (including mowing) and marking of existing trails for Passive Outdoor Recreational Activities as described above and for other permitted uses of the Premises as described herein. With prior written notice to the Grantees, the construction, maintenance and marking of new unpaved trails or alteration of existing trails for the uses described herein, provided that any such trails are no more than eight (8) feet wide.
- (4) Agricultural Activities. Conducting or permitting others to conduct Agricultural Activities, as defined below, provided such activities (a) maintain or improve soil productivity, soil health, and water retention and do not deplete any natural resources found on the Premises, (b) are in accordance with generally accepted best management practices as established by the Massachusetts Department of Agricultural Resources or the USDA Natural Resources Conservation Service, as applicable, and (c) shall be conducted in a manner consistent with a farm conservation plan acceptable to Grantees such as one prepared by the U.S. Department of Agriculture Natural Resources Conservation Service (or its successor agency) (“Farm Conservation Plan”) that is consistent with the purpose of this Conservation Restriction, which plan shall be reviewed and updated whenever a substantial change in Agricultural Activities is contemplated. The Farm Conservation Plan shall be developed in accordance with generally-accepted Best Agricultural Practices and shall make all reasonable efforts not to materially impair the Conservation Values of this Conservation Restriction, and shall, at a minimum: (1) establish wetland buffers and/or filter strips to prevent adverse impacts to the water quality of existing wetlands and waterways; (2) in the event animal husbandry activities are proposed, establish and govern the type and number of each type of animal unit permitted on the Premises and analyze the pasturage potential of the Premises and establish and govern the cycling of pasturage, and (3) propose any other measures necessary to ensure the carrying capacity of the Premises is not exceeded in order to protect water quality, prevent soil erosion, and otherwise protect the conservation values of the Premises. A copy of any such Farm Conservation Plan and any updates thereto shall be provided to the Grantees. The requirement for a Farm Conservation Plan shall not be in effect during the six months directly following any transfer of the Premises to a new owner.

As used herein, “Agricultural Activities” shall mean agricultural, arboricultural, and animal husbandry activities including but not limited to:

- i. The planting, maintenance, pruning, and harvesting of non-invasive crops or fruit- or nut-bearing trees, including the plowing of agricultural fields and the spreading and storage of livestock manure and compost, provided, however, that such activities are done in a manner to avoid impairing water quality and follow generally accepted best management practices;

- ii. The planting of non-invasive common, rare and/or ornamental trees, shrubs, and other plants;
- iii. Except within fifty (50) feet of any wetland, grazing and pasturing of livestock including but not limited to poultry, horses, ponies, mules, sheep, llamas, goats and bees in numbers that are sufficiently limited to prevent overgrazing, soil degradation, erosion, and degradation of surface or subsurface waters;
- iv. Marketing and wholesale or retail sale of agricultural, arboriculture, or horticultural products, originating from on or off the Premises, provided that agricultural products produced or grown in Massachusetts shall always constitute no less than 75% of gross sales from the Premises;
- v. Use and storage of vehicles and other motorized or non-motorized equipment incidental to farming and forestry activities contemplated herein, including, but not limited to, tractors, trucks, wagons, skidders, balers, and spreaders; and including the operation and parking of vehicles on site associated with on-site retail sales of agricultural or horticultural products, provided however, that vehicles and equipment which are no longer in use or have not been used for a period of more than 12 consecutive months, may only be kept within the Building Lot (see Paragraph II(B)(6)) in a location that is not visible from Briggs Road;
- vi. The removal of trees, saplings, shrubs, stumps, and roots preliminary to and including the preparation of surface topography and soils for the purposes of accommodating and instituting Agricultural Activities as described above (hereinafter “Land Conversion”), provided that any such Land Conversion does not convert any land classified as wetlands by the Massachusetts Department of Environmental Protection (MassDEP) or the US Fish and Wildlife Service, nor any land within one hundred (100) feet of any such wetlands, nor any land classified as Priority Habitat of Rare and Endangered Species by the Massachusetts Natural Heritage and Endangered Species Program, and further provided that any such Land Conversion in excess of one (1) acre over any given five (5) year period is described in the Farm Conservation Plan (as described above);
- vii. Mowing to maintain existing fields and removal of field stones to improve field quality;
- viii. The use of fertilizers, pesticides, herbicides, and fungicides, and the storage and application of manure, provided that such use is done in a manner to avoid impairing water quality and follows generally accepted best management practices;

ix. The installation, use and maintenance of irrigation systems to serve only the Premises;

x. Notwithstanding the above, the following activities shall require prior written approval of Grantees, at their sole discretion, as well as the prior approval of the Westport Board of Selectmen as outlined in Paragraph II(C), below:

- a. Growing, processing, consumption or any commercial activity related to marijuana crops or products derived from marijuana, and provided that Grantor complies with the requirements of the Cannabis Control Commission and all other applicable federal, state and local laws, rules, regulations, and permits; and
- b. Any onsite sale or consumption of products containing alcohol.

However, the legal personal consumption of products containing marijuana and alcohol by the owners and/or residents of the residence permitted within the Building Envelope, described below, shall be permitted.

(5) Building Envelope. Exclusively within the portion of the Premises shown as “Building Envelope” on the Plan:

(a) The use, maintenance, repair, removal and replacement of no more than one single-family residence with a footprint of no more than two thousand five hundred (2,500) square feet, along with reasonably necessary accessory structures, utilities and improvements;

(b) The construction, use, maintenance, repair, removal and replacement of agricultural buildings, structures, accessory utilities, and other improvements reasonably necessary to support approved Agricultural Activities, including educational activities and commercial activities related to agricultural use of the Premises, and the use thereof, provided, however, any new buildings or structures with a footprint of more than one thousand (1,000) square feet and/or any significant renovations, alterations or expansions to existing buildings or structures shall require the prior written approval of the Grantees, not to be unreasonably withheld, as described in Paragraph II(C), below;

(c) The construction, use, maintenance, repair, and replacement of renewable energy-generating structures, such as a windmill or solar panels, designed to serve only the demonstrated energy needs for the allowed uses within the Building Envelope as described herein and the allowed Agricultural Activities occurring on the Premises. Utilities necessary in connection with said renewable energy-generating structures shall also be permitted.

(6) Temporary Agricultural Structures. With prior written approval of the Grantees,



which approval shall not be unreasonably withheld, (a) the construction, maintenance, repair and replacement of temporary structures and improvements, including animal run-in shelters, directly related to or in support of the Agricultural Activities described in Paragraph II(B)(4), provided all such structures shall have an aggregate footprint of no more than two thousand five hundred (2,500) square feet, and (b) the installation, maintenance, and repair of utilities, hayracks, watering troughs, and the like, directly related to or in support of the Agricultural Activities described in Paragraph II(B)(4), above. For the purposes of this Conservation Restriction, the term “temporary structure” shall mean any structure without a foundation that can be constructed or removed without any significant disturbance of the soil. Irrigation infrastructure, as permitted in Paragraph II(B)(4)(ix), above, shall not counted towards the aggregate 2,500 square-foot limit above. Notwithstanding the above and with prior approval of Grantees, taking into account, among other factors, the agricultural need and location, up to an additional two thousand five hundred (2,500) square feet of greenhouses may also be permitted.

- (7) Fences. Existing fences may be repaired and replaced and new sight-pervious fences, including electric livestock fences, may be built on the Premises as necessary for Agricultural Activities, including customary management of livestock, and to delineate the boundary of the Premises. Fences which materially obstruct the vista of the Premises from Main Road shall not be permitted.
- (8) Vegetation Management. Selective minimal removing of brush, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including vistas as documented in the Baseline Report, woods roads, fence lines, trails and meadows. This may include prescribed burning, animal grazing, and chemical use but only if said use is designed and applied to affect the target species and not nearby non-target species and is not detrimental to water quality or the Conservation Values and is done, as needed, in accordance with all required approvals and permits. Meadows may be mown for non-agricultural purposes, such as for aesthetic, wildlife or recreational purposes, provided that no meadow is mown more than three times each year. In accordance with generally accepted forestry management practices, the selective non-commercial harvesting of trees to provide firewood for use by the owners of the Premises, not to exceed two (2) cords per year, shall be permitted. With prior approval of Grantees, the selective non-commercial harvesting of trees to provide lumber for use on the Premises shall also be permitted.
- (9) Farm Roads. The use, maintenance, and repair of the existing farm roads, as shown in the Baseline Report, and, with prior written approval of Grantees, the construction of new farms roads, all used in connection with the Agricultural Activities described in Paragraph II(B)(4), above.
- (10) Driveway. The use, maintenance, repair and replacement of the existing driveway, as shown in the Baseline Report, from Briggs Road to the Building Envelope as shown on the Plan, for the purpose of accessing the Building Envelope, including

the widening of same and/or the addition thereto of turnouts or turnarounds for emergency vehicles, all as may be required by the Westport Planning Board or other governing authority; and, with prior written approval of the Grantees, the modification of said driveway's location, provided that any significant modification must result in a net benefit to the Conservation Values of this Conservation Restriction;

- (11) Utilities. The installation, use, maintenance, repair and replacement of utilities, including the granting of utility easements as may be required by utility providers, including but not limited to electricity, phone, and cable lines, to serve the residence and appurtenant structures in the Building Envelope as shown on the Plan, provided that any such utilities are along or under the driveway described in Paragraph II(B)(10) to minimize any impact on the Conservation Values;
- (12) Septic System. With prior written approval of the Grantees, which approval shall not be unreasonably withheld, the construction, use, repair, replacement and maintenance of a septic system to serve the structures within the Building Envelope as shown on the Plan, provided that: a) Grantor shall first demonstrate that it is infeasible, due to the shape, size or topography of the land within the Building Envelope, for such system(s) to be located within the Building Envelope and (b) Grantor uses only so much of the Premises outside the Building Envelope as is necessary to site said system, and (c) the surface of any area of the Premises disturbed for said septic system(s) shall be restored to its condition prior to such disturbance, to the extent reasonably practical;
- (13) Wells. The installation, maintenance, repair, and replacement of wells, pipes and appurtenances thereto on the Premises to provide water for the allowable uses of the Premises as provided in this Section II(B), including agricultural uses and water service to any structures on the Premises;
- (14) Composting/Brush Piles. The stockpiling, composting and occasional burning of stumps, trees 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 impair the Conservation Values (including water quality and scenic values) of this Conservation Restriction. No such activities will take place closer than one hundred (100) feet from any wetland, water body or stream or brook. All exercise of this Reserved Right shall take into account sensitive areas and avoid harm to nesting species during nesting season. Piles shall not be burned during the nesting season of a protected species, as recommended by the Natural Heritage and Endangered Species Program (or its successor agency or another certifying agency with a similar purpose).
- (15) Stone Walls. With prior written notice to Grantees, the right to build, maintain, remove or alter stone walls in order to: (a) gain entrance to portions of the Premises for the purposes related to the reserved rights in this Paragraph II(B), provided that any such removal or alteration is limited to the extent necessary for this purpose, (b)

reconstruct or improve existing stone walls with walls of the same type and in the same location, (c) define property boundaries and (d) keep them free of vegetation in a manner that does not impair water quality. Both new and repaired walls must be in the same style and material as existing walls. Use of field stone, boulders and ledge found on the Premises to repair and construct stone walls shall be permitted.

- (16) Wildlife Habitat Improvement. With prior written approval of the Grantees, measures designed to restore native biotic communities, or to maintain, enhance, or restore wildlife, wildlife habitat, or rare or endangered species, including selective planting of native trees, shrubs and plant species.
- (17) Non-native or Nuisance Species. The removal of non-native or invasive species, the interplanting of native species, and the control of noxious, nuisance, or non-native plant or animal species, in a manner that minimizes damage to surrounding, non-target species and preserves water quality. For the purposes of this Conservation Restriction, the terms “non-native” or “invasive species” shall be defined as a species that is non-native or alien to the ecosystem under consideration, and which is likely to cause economic or environmental harm or harm to human health. For the purpose of this Conservation Restriction, the term “nuisance species” shall be defined as a species that is likely to cause harm to human health, such as poison ivy, poison oak, and poison sumac.
- (18) Safeguarding Historic and Archaeological Resources. New construction, demolition, or rehabilitation activity in support of permitted uses, and any other activity in support of permitted uses that proposes to disturb the surface or subsurface of the ground on the Premises, shall require prior approval of the Massachusetts Historical Commission (or appropriate successor agency) to prepare a protocol and procedures to identify, evaluate, and adopt feasible alternatives to avoid, minimize, or mitigate any adverse effects to historic and archaeological assets.
- (19) Archeological Investigations. The right to conduct archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only (a) after written notification to and approval by Grantees, and (b) in accordance with an archaeological field investigation plan prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the State Archaeologist of the Massachusetts Historical Commission (“MHC”), as required by Massachusetts General Laws. A copy of the results of any scientific investigation on the Premises is to be provided to the Grantees. Plans for restoration of the site of any archaeological activities shall be submitted to the Grantees in advance of the restoration, and such restoration shall be conducted only in accordance with a plan approved by the Grantees.
- (20) 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

Grantees' interest in the Premises, the Reserved Rights, and the protected Conservation Values;

- (21) Motor Vehicles. The use of motor vehicles as reasonably necessary in exercising any of the Reserved Rights, provided that, with the exception of Agricultural Activities, such use shall be limited to existing trails and farm and woods roads so as to not cause erosion or other adverse impacts on the Conservation Values of the Premises, and further provided that non-motorized uses are impractical. This reserved right excludes the use of motor vehicles, including all-terrain vehicles, for recreational purposes.
  
- (22) Renewable Energy Structure. The construction, use, maintenance, repair, and replacement of one (1) renewable energy structure, such as a wind turbine, solar panel array, or other such structure for the generation of renewable electricity to serve the single-family residence and appurtenant structures within the Building Envelope as well as any permitted Agricultural Activities. The generating capacity of any such structure shall not exceed 110% of the energy reasonably anticipated to be consumed by the single-family residence, appurtenant structures, and Agricultural Activities. Installation of any energy-generating structure on the Premises pursuant to this Paragraph II(B)(22) shall occur only upon receipt of the Grantees' prior written approval, said approval not to be unreasonably delayed or denied. When considering whether to issue such approval, Grantees shall weigh and evaluate, among other relevant factors, whether a suitable site exists within the Building Envelope defined above, the overall aesthetic impacts of the proposed renewable energy-generating structure and its location in the context of the surrounding landscape, the environmental impacts (specifically including impacts on the Conservation Values intended to be protected by this Conservation Restriction and including, but not limited to, impacts on birds and bats), the scope of its anticipated energy benefits along with an energy use history and projection of ongoing energy use for the single-family residence within the Building Envelope, and, upon Grantees' request, Grantor shall provide Grantees with written documentation addressing these and other matters deemed relevant by the Grantees. This permitted use and the permitted use described in Paragraph II(B)(5)(c), above, are intended to be mutually exclusive, meaning it is the intent of both parties that only one renewable energy structure shall be permitted on the Premises.
  
- (23) Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph II(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 II(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 by Grantees is required, Grantor shall notify both Grantees in writing not less than seventy-five (75) 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 the Grantees to make an informed judgment as to its consistency with the purposes of this Conservation Restriction.

Where Grantees' approval is required, the Secondary Grantee, within thirty (30) days of receipt of Grantor's request, shall notify the Primary Grantee of the Secondary Grantee's decision. Within sixty (60) days of the Primary Grantee's receipt of Grantor's request for approval, the Primary Grantee shall either affirm, amend or reverse the decision of the Secondary Grantee, shall notify the Secondary Grantee thereof in writing, and shall issue its decision to the Grantor in writing. The Primary Grantee's decision shall in all cases be the final and controlling decision binding on both Grantees. In the event that no decision is received from the Secondary Grantee within thirty (30) days of receipt of Grantor's request, the Primary Grantee shall proceed to issue its decision within seventy-five (75) days of the request.

Primary Grantee's approval shall not be unreasonably withheld, conditioned or delayed, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction. Subject to any applicable law or regulation, failure of the Primary Grantee to respond in writing within the period set forth above of the request shall be deemed to constitute approval of either the Secondary Grantee's decision, if one has been issued, or, in the absence of a decision by the Secondary Grantee, of the Grantor's request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval, the requested activity is not prohibited herein, and the activity will not materially impair the conservation values or purposes of this Conservation Restriction.

Approval for activities reserved in Paragraph II(B)(4)(x)(a) and Paragraph II(B)(4)(x)(b) may only be granted by Grantees following the written approval for such activities of the Westport Board of Selectmen.

Notwithstanding the above, so long as the Westport Land Conservation Trust, Inc. remains the fee owner of the Premises and the Secondary Grantee, any such notices shall be submitted solely to Primary Grantee, and Primary Grantee shall decide on any approvals without input from Secondary Grantee, aside from the notice or request having been submitted.

**III. RIGHT OF FIRST REFUSAL TO PURCHASE PREMISES AT FAIR MARKET AGRICULTURAL VALUE**

A. The term Fair Market Agricultural Value (or “FMAV”) of the Premises shall mean the total of (i) the fair market value of the land within the Premises based upon its highest and best use for agricultural purposes, including such considerations as location, types of soil, and climate, and, subject to this Restriction, (ii) the fair market value of any agricultural structures and infrastructure on the Premises, and (iii) the then-replacement value of any residence and appurtenant residential structures, if any, within the Building Envelope.

B. The Grantees (which term when used hereafter under Paragraph III shall mean the Primary Grantee if it so elects or otherwise the Secondary Grantee) shall have a Right of First Refusal (“ROFR”) to purchase the Premises at Fair Market Agricultural Value in accordance with the provisions of this section. This ROFR has been granted as an integral part of this Conservation Restriction, the full consideration for which is set forth above and shall also be for the benefit of any adjoining land owned by either Grantee. This ROFR shall run with the land and shall be binding in the event of a foreclosure of said Premises. This ROFR shall not apply to the first conveyance of the fee interest of the entire Premises after this Conservation Restriction is recorded, which first conveyance will be from the Westport Land Conservation Trust, Inc., to a third party, but shall apply to any conveyance thereafter.

C. The intent of this ROFR is to ensure resale of the Premises at FMAV. Accordingly, the parties hereto agree to the following process:

1. Upon executing a bona fide Purchase and Sale Agreement for the sale of the Premises with a third party purchaser, the Grantor shall provide to the Grantees (a) a written notice stating the Grantor’s intent to sell the Premises (“Grantor’s Notice of Intent”), (b) a true, correct, complete and fully executed copy of such bona fide Purchase and Sale Agreement with a third party to purchase the Premises (“P&S Agreement”), and (c) an appraisal of the FMAV of the Premises, as defined above (the “Grantor Appraisal”). Said P&S Agreement and the Grantor Appraisal must relate only to the Premises; any other land transferring simultaneously but not covered by this ROFR shall be subject to a separate purchase and sale agreement.
2. Upon receipt of the Grantor’s Notice of Intent with supporting P&S Agreement and Grantor Appraisal, the Grantees, at their election, shall have the right to exercise their right of first refusal or assign the right of first refusal (see Paragraph III(C)(8), below). In the event the Grantees disagree with the Grantor Appraisal, Grantees shall have the right to obtain their own appraisal (the “Grantee Appraisal”), at the Grantees’ expense. If the Grantor does not agree with the Grantees’ appraisal and informs Grantees of the same within fifteen (15) days from receipt of the Grantee Appraisal, there shall be a third appraisal conducted by an appraiser chosen by the two original appraisers for the Grantor and Grantees, the expense of which shall be equally shared between the Grantor and the Grantees, to determine the FMAV of the Premises. In the event that the sale price as set forth in the P&S Agreement is less than the FMAV determined by the procedures set forth above, the Grantees shall have the right to purchase the Premises from the Grantor or assign their right to purchase the Premises from the Grantor for this lesser amount.

3. Upon receipt of the Grantor's Notice of Intent with supporting P&S Agreement and Grantor Appraisal, Grantees shall have sixty (60) days (the "First Response Period") to notify the Grantor in writing of their election to purchase the Premises at FMAV (or any lesser sale price set forth in the P&S Agreement) or waive their rights under the ROFR. If the Grantees dispute Grantor Appraisal, the Grantees shall deliver a copy of the Grantee Appraisal within said First Response Period. If Grantor disputes the Grantee Appraisal, the parties shall obtain a third appraisal as provided above (the "Final Appraised Amount"). The Grantees shall, within thirty (30) days from the date that the third appraisal is delivered to the parties (the "Second Response Period"), notify Grantor in writing if Grantees elect to exercise its ROFR to purchase the Premises at the Final Appraised Amount or the purchase price set forth in the P&S Agreement, whichever is less. The parties acknowledge and agree that the exercise of the ROFR by the Primary Grantee may be contingent on Town Meeting authorization and an appropriation of said funds by Town Meeting and by Town election (the "Condition").
4. In the event that the Grantees elect to exercise this ROFR to purchase the Premises (and, in the case of the ROFR exercised by the Primary Grantee, provided that the Condition has been satisfied prior to the closing), the deed shall be delivered and the consideration paid at the Southern Bristol County Registry of Deeds before 11 o'clock a.m. on or before the one-hundred-eightieth (180<sup>th</sup>) day after receipt of Grantor's Notice of Intent or, if a third appraisal was obtained, before the one-hundred-twentieth (120<sup>th</sup>) day following the expiration of the Second Response Period. If said closing date falls on a Saturday, Sunday, or holiday, the closing shall occur on the next business day thereafter, and the deed shall convey a good and clear record and marketable title to the Premises or the Remaining Premises free of all encumbrances, except those in existence at the time of the recording of this Conservation Restriction (but with all mortgages and other monetary liens removed), and the Premises shall be in the same condition as at the time of such notice, reasonable wear and tear and use thereof excepted. The date and time of the transfer may be amended by written mutual agreement of the Grantor, Grantees, and any assignee, if applicable.
5. The Grantor may sell the Premises to the third party purchaser pursuant to a bona fide P&S Agreement, as provided in Paragraph III(C)(1), above, only in the event that the Grantees:
  - a. decline in writing to exercise their rights under this ROFR within the specified time period; or
  - b. fail to exercise their rights under this ROFR in writing within the specified time period; or
  - c. having elected to exercise their rights under this ROFR, fail to complete the purchase within the specified time period, provided that the failure to complete the purchase is not based upon a failure or delay by the Grantor.

Said sale of the Premises to the third party purchaser named in the P&S Agreement (or such purchaser's nominee) must take place within one (1) year following the date by which the Grantees were required to notify the Grantor of their election of their right to

exercise its ROFR as provided in Paragraph III(C)(3) above or, if the ROFR is exercised, within one (1) year following the Grantees' failure to close within the specified time as provided in Paragraph III(C)(4) above, and, in either case, be only upon the same price and other terms and conditions contained in said P&S Agreement. The third party purchaser shall purchase the Premises subject to this Conservation Restriction, including the ROFR held by Grantees hereunder.

6. The obligations of the Grantor under this ROFR shall not apply if the transfer of ownership of the Premises is (1) to the Grantor's spouse, parent, child(ren) or grandchild(ren) (whether by blood, marriage or adoption), siblings and/or their child(ren) or grandchild(ren) (whether by blood, marriage or adoption); or (2) through a devise of said Premises by will or intestacy of the Grantor; or (3) a conveyance of an interest in the Premises to a co-owner of the Premises; provided that this ROFR shall continue to encumber the Premises following any such event.
7. Any notices required by this ROFR shall be in writing and shall be deemed delivered if delivered in accordance with Paragraph XIII, below. The Grantee exercising the ROFR shall be entitled to record the notice of exercise of the ROFR, which shall terminate and be released of record if the Grantee exercising said right fails to purchase the Premises within the time set forth herein.
8. The Grantees may assign their right to purchase the Premises under this ROFR after providing the Grantor with their notice to exercise their right to purchase the Premises, provided that the right to purchase the Premises may only be assigned to a party that, in the Grantees' opinion, will use or facilitate the use of the Premises for commercial agriculture. Any assignment shall only be effective when made in writing, signed by the Grantees, and duly recorded with the appropriate registry of deeds.
9. Any waiver of the Grantees' rights under this ROFR shall be in writing and in a form and format suitable for recording in the appropriate registry of deeds. This waiver shall serve to satisfy the Grantor's obligations to the Grantees under this ROFR with regard to the third-party purchaser who entered into the P&S Agreement referred to above.
10. In the event the Grantees elect to exercise their rights under this ROFR to purchase the Premises, the Grantees must comply with the requirements of Paragraph XI prior to accepting the fee interest in the Premises.

D. The rights and obligations of the Grantor hereunder shall inure to and benefit the Grantees and be binding upon the Grantor and all successors in title, subject to the provisions of M.G.L. c. 184A, §5(a) (for the Secondary Grantee) and (d) (for the Primary Grantee), to the extent the rule against perpetuities applies to said ROFR.

#### **IV. LEGAL REMEDIES OF THE GRANTEE**

##### **A. 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 its condition prior to the time of the injury complained of (it being agreed that the Grantees 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 Grantees for the enforcement of this Conservation Restriction. Except in the event of an emergency, Grantees agree to provide Grantor with notice of any violation of this Conservation Restriction and a reasonable opportunity to Cure (as described in Paragraph IV(B) below) any such violation prior to resorting to legal or equitable action provided Grantor immediately ceases the objectionable activity and Grantees determine there is no ongoing diminution of the Conservation Values of the Conservation Restriction.

**B. Cure; Grantees' Remedies.**

1. Notice to the Grantor. In the event that a Grantee becomes aware of a violation of the terms of this Conservation Restriction, said Grantee shall first promptly notify the other Grantee; the Grantees agree to consult in good faith with each other. Except in the event of an emergency (as set forth in Paragraph IV(B)(4)), the Primary Grantee, if it so elects, or otherwise the Secondary Grantee, shall give notice in writing in accordance with Paragraph XIV to Grantor, which notice shall identify the violation and specify the corrective action to be taken to abate such violation and restore the Premises to a condition substantially similar to that which existed prior to such violation (a "Cure").
2. Corrective Action. Grantor shall have thirty (30) days from the date of such notice to Cure the violation (the "Cure Period"), which period may be extended by the Primary Grantee (or the Secondary Grantee, as the case may be) if Grantor has ceased the objectionable activity and is using good faith and diligent efforts to pursue a Cure, which extension shall not last more than an additional thirty (30) day period (the "Extended Cure Period"). Failure by Grantor to Cure a violation within the Cure Period or the Extended Cure Period, as the case may be, shall entitle Grantees to:
  - a. bring an action at law in a court of competent jurisdiction to enforce this Conservation Restriction, including, without limitation, seeking to enjoin any violation by temporary or permanent injunction, and/or
  - b. take such action as may be necessary or appropriate to Cure the violation.
3. Primary Grantee and Secondary Grantee Consultation. Except in the event of an emergency, in the event that a Grantee become aware of a violation of the terms of this Conservation Restriction, said Grantee shall promptly notify the co-Grantee. The Primary Grantee and the Secondary Grantee agree to consult in good faith with each other, but the Primary Grantee's decision shall in all cases be the final and controlling decision binding on both Grantees, except as provided in the following paragraph..
4. Exception for Emergency Circumstances. If either Grantee, in its sole discretion, reasonably determines that immediate action is required to prevent or mitigate significant

damage to the Premises and/or the Conservation Values of the Premises, said Grantee may pursue any of its remedies under subsection 2 with concurrent oral and written notice to the other Grantee and to Grantor and without waiting for the concurrence of the other Grantee or the Cure Period to expire.

**C. Non-Waiver.**

Enforcement of the terms of this Conservation Restriction shall be at the discretion of the Grantees. Any election by the Grantees 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.

**D. Disclaimer of Liability.**

By acceptance of this Conservation Restriction, the Grantees do not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantees or their agents. Any liability of the Grantees shall not be joint and several; each Grantee shall be responsible for its own actions. This Paragraph IV(D) shall not apply to the Westport Land Conservation Trust, Inc., while it remains the fee owner of the Premises.

**E. Hazardous Material.**

Grantor and its successors and assigns shall hold harmless, indemnify, and defend Grantees and their members, directors, officers, employees, agents and contractors and the heirs, personal representatives, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with the presence or release of any hazardous material or substance of any kind on the Premises. This paragraph shall not apply in the case of any hazardous material or substance in any manner placed on the Premises by Grantees or their representatives or agents. The indemnity protections of this section shall not apply to the Westport Land Conservation Trust, Inc. as a Grantee while it remains the fee owner of the Premises.

**F. Acts Beyond the Grantor's Control.**

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantees to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's reasonable control, including, but not limited to, fire, flood, storm and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantees will cooperate in the restoration of the Premises, if desirable and feasible.

**V. ACCESS**

The Grantor hereby grants to the Grantees and their agents or representatives the right to enter the Premises upon giving Grantor at least forty-eight (48) hours prior notice thereof (which may be oral 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 Grantees 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, as set forth more particularly in Paragraph IV.

## **VI. CONTINUATION IN AGRICULTURE**

Grantor must make all appropriate and commercially reasonable efforts to keep the Premises actively used for Agricultural Activities set forth in Paragraph II(B)(4). The Premises shall be deemed to be actively used for Agricultural Activities if more than 70% of the fields identified in the Baseline Report are being actively used in accordance with a current and approved Farm Conservation Plan. If at any time Grantor (including any successor or assign of the Grantor) has discontinued Agricultural Activities on the Premises for a consecutive period of twelve (12) months, Grantees may elect to utilize the fields not being used for Agricultural Activities and/or elect to lease those fields to a third party for Agricultural Activities for a period of twelve (12) months commencing thirty days from Grantees' notice to Grantor as described herein, which term may be extended by mutual agreement of Grantor and Grantees. Grantor agrees to execute a lease or other agreement granting Grantees or third parties the right to use the Premises for Agricultural Activities on terms reasonably acceptable to Grantees and Grantor.

## **VII. EXTINGUISHMENT**

**A. Extinguishment.** If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction can be terminated or extinguished, whether in whole or in part, only by a court of competent jurisdiction under applicable law, after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantees, on a subsequent sale, exchange or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph VII(B). Grantees shall use their share of proceeds in a manner consistent with the conservation purpose set forth herein.

**B. Proceeds.** Grantor and Grantees agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantees, with a fair market value that equal to the proportionate value that this Conservation Restriction bears to the value of the unrestricted property, which proportionate value was determined at the time of the conveyance to be xx% of the unrestricted value of the Premises. Such proportionate value of the Grantees' property right shall remain constant. Grantees further stipulate that their respective interests in the Conservation Restriction value are 75% for the Primary Grantee and 25% for the Secondary Grantee, but any proceeds contemplated herein due to Grantees shall be distributed as

follows: the first \$225,000 shall be distributed to the Primary Grantee, the next \$75,000 shall be distributed to the Secondary Grantee, and any additional proceeds shall be split in accordance with their respective percentage interests stipulated above between the two Grantees.

**C. 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 Grantees 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 Grantees shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and the Grantees in accordance with Paragraph VII(B). If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantees shall use their share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

## **VIII. DURATION & ASSIGNABILITY**

**A. Running of the Burden.** The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

**B. Execution of Instruments.** The Grantees are authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. The Grantor, on behalf of itself and its successors and assigns, appoints the Grantees its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

**C. Running of the Benefit.** The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantees, except in the following instances:

As a condition of any assignment, the Grantees shall require that the purpose of this Conservation Restriction continues to be carried out; that the assignee is not an owner of the fee in the Premises, and 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 is a 20one eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **IX. SUBSEQUENT TRANSFERS**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest, and to notify the Grantees not less than twenty (20) days prior to

the execution of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer shall comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after its ownership. Liability for any acts or omissions occurring prior to any transfer, and liability for any transfer if in violation of this Conservation Restriction, shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

## **X. ESTOPPEL CERTIFICATES**

Upon request by the Grantor, the Grantees shall, within thirty (30) days, execute and deliver to the Grantor any document, including an estoppel certificate, that certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

## **XI. NON-MERGER**

At the time of this grant, the Westport Land Conservation Trust, Inc., as the Secondary Grantee of this Conservation Restriction, is also a fee owner of the Premises. The parties agree upon a process of decision making described in Paragraph II(C) and in Paragraph IV that ensures that this Conservation Restriction will be enforceable by a non-fee owner of the Premises. The parties intend that the Westport Land Conservation Trust, Inc.'s role as Secondary Grantee shall not constitute or result in merger of the Conservation Restriction into the fee.

Further, the parties intend that any future acquisition of the Premises, including any acquisition resulting from the ROFR described in Paragraph III, shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantees agree that they will not take title, including through exercising the ROFR, to any part of the Premises without having first 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 thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner. Said assignment shall only be required in the event that both Grantees acquire title together and shall not be required if only one of the Grantees owns or acquires title without the other Grantee.

## **XII. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantees may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendments to this Conservation Restriction shall

occur only in exceptional circumstances. The Grantees will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and, if applicable, and shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution. Any amendment shall be recorded in the Bristol County Southern District Registry of Deeds.

### **XIII. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantees have executed it, the administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded in a timely manner in the Bristol County Southern District Registry of Deeds.

### **XIV. 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 served personally or sent by first class mail, postage pre-paid, overnight courier, personal delivery, or certified or registered mail, addressed to the party to be notified as follows:

To GRANTOR:

Westport Land Conservation Trust, Inc.  
P.O. Box 3975  
Westport, MA 02790

To PRIMARY GRANTEE:

Town of Westport  
Westport Conservation Commission  
856 Main Road  
Westport, MA 02790

To SECONDARY GRANTEE:

Westport Land Conservation Trust, Inc.  
P.O. Box 3975  
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 if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

## XV. MISCELLANEOUS

A. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purpose of Sections 31-33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

E. Captions. The captions in this instrument have been inserted solely for convenience of reference. They are not a part of this instrument and shall have no effect upon construction or interpretation.

F. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to Section 32 of Chapter 184 the Massachusetts General Laws 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 Premises. Any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

G. 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.

H. Attached hereto and incorporated herein by reference are the following:

Signature pages:

Grantor

Acceptance by Primary Grantee

Acceptance by Secondary Grantee

Approval by Town of Westport Board of Selectmen  
Approval of the Secretary of Energy and Environmental Affairs

Exhibits:

Exhibit A: Reduced Copy of Plan

Exhibit B: Copy of Town Meeting Vote

GRANTOR:  
WESTPORT LAND CONSERVATION  
TRUST, INC.

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Ross Moran, duly authorized  
Executive Director



COMMONWEALTH OF MASSACHUSETTS

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

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared Ross Moran, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

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

**ACCEPTANCE BY TOWN OF WESTPORT CONSERVATION COMMISSION AS  
PRIMARY GRANTEE**

The undersigned, Chairman of the Westport Conservation Commission, hereby certifies that at a public meeting duly held on \_\_\_\_\_, 2021, the Westport Conservation Commission voted to approve and accept the foregoing Conservation Restriction from the Westport Land Conservation Trust, Inc. pursuant to Section 32 of Chapter 184 and Section 8C of Chapter 40 of the Massachusetts General Laws, and authorized the Chair of the Conservation Commission to execute the foregoing Conservation Restriction, which is hereby approved and accepted by the Conservation Commission.

\_\_\_\_\_  
Paul Joncas, Chairman of the Westport Conservation Commission, Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

On this \_\_ day of \_\_\_\_\_, 2021, before me, the undersigned Notary Public, personally appeared Paul Joncas, Chair of the Town of Westport Conservation Commission, who proved to me through satisfactory evidence, which was \_\_\_\_\_, to be the person whose names are signed on the preceding document and acknowledged that he voluntarily signed it for its stated purpose on behalf of the Town of Westport.

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

**ACCEPTANCE BY WESTPORT LAND CONSERVATION TRUST, INC. AS  
SECONDARY GRANTEE**

The undersigned, Executive Director of the Westport Land Conservation Trust, Inc., hereby certifies that at a meeting held on \_\_\_\_\_, 2021, the Westport Land Conservation Trust, Inc. voted to authorize the acceptance of the above Conservation Restriction from the Westport Land Conservation Trust, Inc., which is accepted this \_\_\_ day of \_\_\_\_\_, 2021.

WESTPORT LAND CONSERVATION TRUST, INC.

By: \_\_\_\_\_  
Ross Moran, Executive Director  
Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

On this \_\_ day of \_\_\_\_\_, 2021, before me, the undersigned Notary Public, personally appeared Ross Moran, Executive Director of the Westport Land Conservation Trust, Inc., who proved to me through satisfactory evidence, which was \_\_\_\_\_, to be the person whose names are signed on the preceding document and acknowledged that he voluntarily signed it for its stated purpose on behalf of the Westport Land Conservation Trust, Inc.

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

**APPROVAL OF TOWN OF WESTPORT BOARD OF SELECTMEN**

The undersigned, Chair of the Westport Board of Selectmen, hereby certifies that at a public meeting duly held on \_\_\_\_\_, 2021, the Westport Board of Selectmen voted to approve the foregoing Conservation Restriction from the Westport Land Conservation Trust, Inc. to the Town of Westport, acting by and through its Conservation Commission, and to the Westport Land Conservation Trust, Inc., pursuant to Section 32 of Chapter 184 and Section 8C of Chapter 40 of the Massachusetts General Laws.

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Richard Brewer, Chair of the Town of Westport Board of Selectmen, Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

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

On this \_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared Richard Brewer, Chair of the Westport Board of Selectmen, as aforesaid, and 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 on behalf of the Town of Westport.

\_\_\_\_\_  
Notary Public

My commission expires:

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

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from the Westport Land Conservation Trust, Inc. to the Town of Westport, acting by and through its Conservation Commission, and the Westport Land Conservation Trust, Inc. has been approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Kathleen A. Theoharides  
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared Kathleen A. Theoharides, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**Exhibit A – Reduced Copy of Plan**

**Exhibit B –Copy of Town Meeting Vote**

[certified copy of Article xx of 2021 Annual Meeting to be attached]