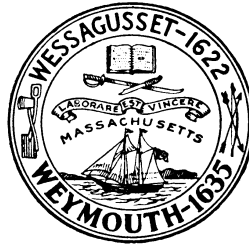


***Town of Weymouth  
Massachusetts***

Robert L. Hedlund  
Mayor  
  
75 Middle Street  
Weymouth, MA 02189



Office: 781.340.5012  
Fax: 781.335.8184  
  
TTY: 781.331.5124

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**MEMORANDUM**

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**TO:** TOWN COUNCIL  
**FROM:** ROBERT L. HEDLUND, MAYOR  
**RE:** APPROVAL OF A CONSERVATION RESTRICTION ON TWO  
PARCELS OF LAND LOCATED AT 0 WOODBINE ROAD AND 0  
ISLAND VIEW ROAD  
**DATE:** JULY 12, 2018

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I hereby submit the following measure to Town Council for its consideration and action:

“That the Town Council, pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts, approve the Conservation Restriction granted from the Town of Weymouth to the Weymouth-Braintree Regional Recreation Conservation District in the public interest on the entirety of two parcels of land, containing 2.17 acres and identified on the Town Atlas as 0 Woodbine Road, Block 391, Lot 29, and 0 Island View Road, Block 390, Lot 1, and with said Conservation Restriction identified by reference number 16533, as assigned by the Executive Office of Energy and Environmental Affairs’ Division of Conservation Services”

I request 2-9(b) same-night action on this measure.

***Town of Weymouth  
Massachusetts***

Robert L. Hedlund  
Mayor  
  
75 Middle Street  
Weymouth, MA 02189



Office: 781.340.5012  
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## **MEMORANDUM**

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**TO:** ROBERT HEDLUND, MAYOR

**CC:**

**FROM:** NICHOLAS BULENS, ADMIN. SERVICES COORDINATOR

**RE:** Measure to approve Conservation Restriction, Reference Number 16533, for 0 Woodbine Road, Block 391, Lot 29, and 0 Island View Road, Block 390, Lot 1.

**DATE:** July 12, 2018

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The proposed measure will approve the granting of a Conservation Restriction<sup>1</sup> from the Town of Weymouth to the Weymouth-Braintree Regional Recreation Conservation District, pursuant to MGL c. 184, §32. This CR is granted for the entirety of two parcels of land, containing 2.17 acres and identified on the Town Atlas as 0 Woodbine Road, Block 391, Lot 29, and 0 Island View Road, Block 390, Lot 1 (hereinafter the "Premises").

The Premises were acquired by the Town in 2007 with local Community Preservation funds. Section 12a of the Community Preservation Act (CPA) requires that a permanent restriction be placed on any real property interest acquired using Community Preservation funds to ensure that the property continues to be used for the applicable CPA purpose. In addition, the Massachusetts Parkland Acquisitions and Renovations for Community (PARC) Grant Program requires that any community benefiting from a PARC grant have all its CPA-required restrictions approved by the EEA prior to final reimbursement of grant funds.<sup>2</sup>

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<sup>1</sup> Restrictions are legal agreements that place limitations on the use of a property. These restrictions apply to all future owners of the property. Conservation Restrictions (CR) are a specific type of restriction that generally used to promote outdoor recreational pursuits, which take place on open land in a relatively natural state.

<sup>2</sup> In FY17, the Town received a \$400,000 PARC grant to renovate the grounds of the Emery Estate and convert the property into passive-recreational public space known as King Oak Hill Park.

To comply with Section 12a of the CPA and the PARC Grant Program, the Town is required to grant a permanent CR for the Premises to a separate governmental organization or qualified third party, such as a nonprofit land trust or a similar organization. This requirement will be satisfied when the CR is approved by the Town Council, signed by the Secretary of the Executive of Energy and Environmental Affairs (EEA), and recorded at the Registry of Deeds.

#### SUMMARY OF CR

This CR has been reviewed and approved for local signatures by the EEA's Division of Conservation Services. It grants a permanent restriction to the Weymouth-Braintree Regional Recreation Conservation District (hereinafter the "Grantee"), who has already accepted the agreement.

The CR encompasses the entirety of the two parcels of land. The conservation values protected by this CR include open space protection, public access, water quality protection, water supply protection, and wetlands. The Town reserves the rights under this CR to conduct or permit the following activities and uses, provided they do not impair the conservation values or purposes of the CR:

- Vegetation Management
- Wildlife Habitat Improvement
- Archaeological Investigations
- Trails
- Signs
- Outdoor Passive Recreational Activities (non-motorized)
- Recreational Improvements for Water Access (fishing platform, boat ramp, and dock – allowed at 0 Woodbine Road only)

This CR was written to form, based on the EEA's Model Restriction.



*The Commonwealth of Massachusetts*  
*Executive Office of Energy and Environmental Affairs*  
*100 Cambridge Street, Suite 900*  
*Boston, MA 02114*

Charles D. Baker  
GOVERNOR

Karyn E. Polito  
LIEUTENANT GOVERNOR

Matthew A. Beaton  
SECRETARY

Tel: (617) 626-1000  
Fax: (617) 626-1181  
<http://www.mass.gov/eea>

June 14, 2018

Nicholas Bulens  
75 Middle Street  
Weymouth, MA 02189-

**Re: Draft Conservation Restriction Approved**  
*CR Reference No.:* 16533  
*CR Number:* WEYMOUTH #007  
*CR Address:* Woodbine Road/ Island View Road  
*Town:* WEYMOUTH

Dear Nicholas:

Please find attached to this email, a copy of the approved draft. DO NOT MAKE ANY SUBSTANTIVE CHANGES TO THIS APPROVED DRAFT WITHOUT INFORMING US. Minor changes such as formatting or to correct typos or misspellings do not require notification.

Please proceed with obtaining local signatures and those of the grantor and grantee. Once obtained, please return one fully executed CR to me (you may keep the original signature pages and provide copies), along with a pre-paid label for return mailing, for final legal review and approval, after which the CR will be left with the Secretary for his final approval and signature. You may want to advise the parties that small changes may need to be made during the final review process (typos, missing words) but no substantive changes will be made without informing the parties and obtaining their assent/adoption of the changes. We cannot guarantee a specific timeline for this final review process.

I look forward to finalizing this. Please remember to use to our internal CR Reference Number and CR Number in all correspondence or inquiries.

Sincerely,  
John Gioia  
*Conservation Restriction Reviewer*  
Executive Office of Energy and Environmental Affairs  
Division of Conservation Services  
100 Cambridge Street, Suite 900  
Boston, MA 02114  
Phone: (617) 626-1138

**GRANTOR:** Town of Weymouth

**GRANTEE:** Weymouth-Braintree Regional Recreation Conservation District

**ADDRESS OF PREMISES:** 0 Woodbine Road / Island View Road, Weymouth, MA 02189

**FOR GRANTOR'S TITLE SEE:** Norfolk County Registry of Deeds

Book 25410, Page 306

### **CONSERVATION RESTRICTION**

TOWN OF WEYMOUTH, a municipal corporation of Norfolk County Massachusetts with an address of 75 Middle Street, Weymouth, Massachusetts, acting by and through its duly elected Mayor, as authorized by its charter and ordinances, being the sole owner, constituting all of the owners, for its successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant with QUITCLAIM COVENANTS to Weymouth-Braintree Regional Recreation Conservation District and its permitted successor and assigns ("Grantee"), having its principal office at 470 Liberty Street, Braintree, Massachusetts, for less than one hundred dollars, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on the entirety of two parcels of land located in the Town of Weymouth containing 2.17 acres ("Premises"), which Premises is more particularly described in Exhibit A and shown in the attached sketch plan in Exhibit B, both of which are incorporated herein and attached hereto.

#### **I. PURPOSES:**

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would impair or interfere with its conservation and preservation values ("conservation values").

The Premises was acquired using M.G.L. c. 44B Community Preservation Act funds, and a copy of the Town Council Vote authorizing the use of such funds for such purpose is attached hereto as Exhibit C.

**The conservation values include the following:**

- Open Space Protection. The Premises provide and significantly contributes to the protection of the scenic, outdoor educational, recreational and natural character of open space thereby increasing the ecological viability and scenic values of the area and the protection of the Premises will enhance the open-space value of these and nearby lands including Whitman's Pond, a source of drinking water and one of the largest herring spawning areas in Massachusetts.
- Public Access. Public access to the Premises will be allowed for passive outdoor recreation, education, and nature study. The premises, totaling 2.61 acres, will permanently conserve trails and provide access for recreational opportunities to residents including water activities between the parcels as Island View Road is an island located within Whitman's Pond in Weymouth.
- Water Quality Protection. Protection of the premises will help maintain water quality for public drinking water as the premises are located on and in Whitman's Pond, such pond afforded Outstanding Resource Water designation and protection under the Massachusetts Surface Water Quality Standards, which pond also serves as an emergency water supply for the Town of Weymouth.
- Water Supply Protection. The Premises abuts and is with Whitman's Pond, which lies in the Town of Weymouth Watershed Zoning Overlay District.
- BioMap2. The Premises consists of approximately 65,714 square feet of Core Habitat (Whitman's Pond) and is entirely located with an area designated as Critical Natural Landscape, as defined by the Massachusetts Natural Heritage and Endangered Species Program. BioMap2, published in 2010, was designed to guide strategic biodiversity conservation in Massachusetts over the next decade by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems. *BioMap2* is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan.
  - Core Components
    - Aquatic Cores
  - Critical Natural Landscape Components
    - Upland Buffer of Aquatic Core

These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report ("Baseline Report") prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date 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 or 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 of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
- (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, such as fire, police, ambulance, other government 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, and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
- (8) The use of the Premises for business, residential, or industrial use, or for more than *de minimis* commercial recreation;

- (9) The disruption, removal, or destruction of the stone walls or granite fence posts on the Premises;
- (10) Hunting on the premises;
- (11) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would 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 impair the conservation values or purposes of this Conservation Restriction.

- (1) Vegetation Management. The 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 Survey, woods roads, fence lines, trails and meadows;
- (2) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting 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, 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 scenic values, of this Conservation Restriction. No such activities will take place closer than one hundred (100) feet from any wetland, waterbody, or stream. All exercise of this reserved right shall take into account sensitive areas and avoid harm to nesting species during nesting season;
- (4) Wildlife Habitat Improvement. With the prior written permission of Grantee, 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;
- (5) Archaeological Investigations. The conduct of archaeological activities, including without limitation survey, excavation, and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official).
- (6) Trails. The marking, clearing, and maintenance of existing footpaths as shown in the Baseline Report. With prior approval of the Grantee, the construction of new trails or the relocation or alteration of existing trails, provided that any construction, relocation, or alteration results in trails that are no wider than eight (8) feet;



- (7) Signs. The erection, maintenance, and replacement of signs with respect to trespass, trail access, identity, and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, any gift, grant, or other applicable source of support for the conservation of the Premises, and the protected conservation values
- (8) Outdoor Passive Recreational Activities. Fishing, boating and launching of non-motorized canoes, kayaks and other non-motorized watercraft, hiking, horseback riding, cross-country skiing 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;
- (9) Recreational Improvements For Water Access. The construction, maintenance, repair, and replacement of the following minor structures on Lot 29 only, is allowed with the Grantee's prior approval:
- a. One (1) Fishing Platform, provided that such structure is no larger than 1,000 square feet;
  - b. One (1) boat ramp, provided that such structure is no larger than 1,000 square feet;
  - c. One (1) dock, provided that such structure is no larger than 1,000 square feet and extends no more than 10 feet from the shoreline;
- (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 and to Whitman's Pond 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.
- (11) 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 Grantee or the Commonwealth takes any position whether such permit should be issued.
- (12) Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph B shall follow, when available and if applicable, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action.

### **C. Notice and Approval.**

Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than 60 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 Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.

Subject to any applicable law or regulation, failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, and the activity will not impair the conservation values or purposes of this Conservation Restriction.

## **III. 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 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 agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided 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. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

### **B. 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.

### **C. Disclaimer of Liability**

By acceptance of this conservation restriction, the Grantee does 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 Grantee or its agents.

### **D. 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. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

## **IV. ACCESS**

The Grantor hereby grants to the 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. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, 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.

The Grantor agrees to take no action to prohibit or discourage access to and use of the Premises by the general public, but only for daytime use and only as described in Section II(B)(8) provided that such agreement by Grantor is subject to the Grantor's reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the protection of the purposes and conservation values of this Conservation Restriction. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in Section II(B)(8). The Grantor's right to grant public access across the Premises is subject to the restrictions described in this Conservation Restriction. Any public use which is permitted by the terms of this Conservation Restriction constitutes permission to use the Premises for purposes described in the Massachusetts General Laws Chapter 21, Section 17C and the Grantor and Grantee hereto benefit from exculpation from liability to the extent provided in such section. The Grantee may require the Grantor to post the Premises against any use that may result in rutting or erosion or other damage to the natural resources of the Premises.

## **V. EXTINGUISHMENT**

A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, 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 B below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantees shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

B. Proceeds. Grantor and Grantee agree that the donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction bears to the value of the unrestricted property, determined by the assessed value of the Premises at the time of the gift. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements including Community Preservation Act Regulations.

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 Grantee 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 Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with paragraph V. B – above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

## **VI. 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 Grantee is 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 Grantee their 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 Grantee, except in the following instances:

As a condition of any assignment, the Grantee 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 Property, and the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **VII. 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 Grantee 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 will 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 their 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 owners and may be held responsible for any continuing violations.

## **VIII. ESTOPPEL CERTIFICATES**

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

## **IX. 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 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 General Laws 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.

## **X. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee 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 Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in 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 unless mutually agreed. 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, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Norfolk County Registry of Deeds.

## **XI. EFFECTIVE DATE**

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

## **XII. 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, addressed as follows:

To Grantor: Mayor  
Town of Weymouth  
75 Middle Street  
Weymouth, MA 02189

With a copy to: Director of Planning  
Town of Weymouth  
75 Middle Street  
Weymouth, MA 02189

To Grantee: Weymouth Braintree Regional Recreation Conservation District  
470 Liberty Street  
Braintree, MA 02184

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.

### **XIII. GENERAL PROVISIONS**

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 purposes of Chapter 184, Sections 31, 32, and 33 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any 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.

### **XIV. MISCELLANEOUS**

A. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to Chapter 184, Section 32 of 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, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

B. Subordination. The Grantor attests that there is no 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.

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

Signature pages:

Grantor

Grantee Acceptance

Approval of Town Council

Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:

Exhibit A: Legal Description of Premises

Exhibit B: Copy of Recorded Plan of Premises

Exhibit C: Council Vote

Exhibit D: Corporate Authority



I, Robert L. Hedlund, duly elected Mayor of the Town of Weymouth, Massachusetts, on this 21<sup>st</sup> day of June, 2018, as authorized by the Town charter and ordinances, hereby grant the foregoing Conservation Restriction to the Weymouth Braintree Regional Recreation Conservation District.

  
Robert L. Hedlund, Mayor

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss:

On this 21<sup>st</sup> day of June, 2018, before me, the undersigned notary public, personally appeared Robert L. Hedlund, and proved to me through satisfactory evidence of identification which were MA Drivers License, to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

  
\_\_\_\_\_

Notary Public  
My Commission Expires:

Approved as to Form:

  
Joseph Callanan, Town Solicitor



KATHLEEN A. DEREE  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires Jan. 18, 2019

### ACCEPTANCE OF GRANT

This Conservation Restriction from the Town of Weymouth, acting by and through its duly elected Mayor, was accepted by the Weymouth Braintree Regional Recreation Conservation District on this 21 day of June, 2018.

By: Robert E. McConnell

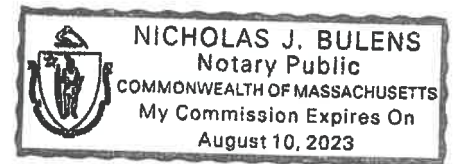
Its: Chairperson, duly authorized  
See Corporate Authority, attached hereto as  
Exhibit D.

### COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss:

On this 21 day of June, 2018, before me, the undersigned notary public, personally appeared Robert E. McConnell, and proved to me through satisfactory evidence of identification which were MA Driver's License to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Nicholas J. Bulens  
Notary Public  
My Commission Expires:



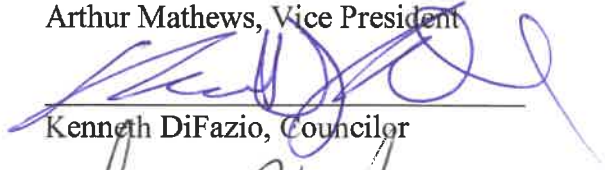
## APPROVAL OF TOWN COUNCIL

We, the undersigned, being a majority of the Town Council of the Town of Weymouth, hereby certify that at a public meeting duly held on July 30th, 2018, the Town Council voted to approve the foregoing Conservation Restriction from the Town of Weymouth to Weymouth Braintree Regional Recreation Conservation District in the public interest pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

### TOWN COUNCIL:

  
Michael Smart, President

  
Arthur Mathews, Vice President

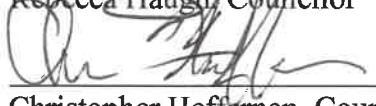
  
Kenneth DiFazio, Councilor

  
Jane Hackett, Councilor

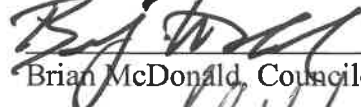
  
Fred Happel, Councilor

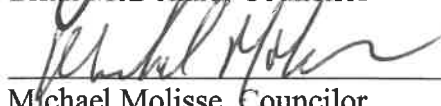
  
Ed Harrington, Councilor

  
Rebecca Haugh, Councilor

  
Christopher Heffernan, Councilor

  
Thomas J. Lacey, Councilor

  
Brian McDonald, Councilor

  
Michael Molisse, Councilor

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss:

On this 30<sup>th</sup> day of July, 2018, before me, the undersigned notary public, personally appeared

Michael Smart

Arthur Mathews

Kenneth DiFazio

Jane Hackett

Fred Happel

Rebecca Haugh

Christopher Hetterman

Brian McDonald

Michael Molisse

N/A

N/A,

being members of the Town Council of the Town of Weymouth, to me personally known to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Kathleen A. Devere  
Notary Public

My Commission Expires:



KATHLEEN A. DEVERE  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires Jan. 18, 2019

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

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from the Town of Weymouth to the Weymouth Braintree Regional Recreation Conservation District has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
MATTHEW A. BEATON  
Secretary of Energy and Environmental Affairs

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned notary public, personally appeared MATTHEW A. BEATON, 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 he signed it voluntarily for its stated purpose.

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

## **EXHIBIT A**

### Description of the Premises

The Premises subject to this Conservation Restriction is the entirety of the land shown as Lot 1 and Lot 29, located in the Town of Weymouth, Norfolk County, Commonwealth of Massachusetts, containing a total of 2.61 acres, as shown on a certain plan “Plan of Land, Off of Woodbine Road in Weymouth, Massachusetts, prepared for: Ryder Properties Company, LLC, Scale 1”=30’, dated December 17, 2007, C.F. Arnold Associates, Inc., Registered Land Surveyors and Civil Engineers, 404 Libbey Parkway, Weymouth, Mass.,” recorded with the Norfolk County Registry of Deeds, January 3, 2008, Page 27 of Plan Book 577. Said Lot 1 (Parcel ID 30-390-1) being an island in Whitman’s Pond and containing approximately 23,414 square feet of land. Said Lot 29 (Parcel ID 30-391-29) contains 71,099 square feet of land, according to said plan, a reduced copy of which is attached hereto as Exhibit B.

## **EXHIBIT B**

### Recorded Plan of Premises

For official full size plan see Norfolk Registry of Deeds Plan Book 577, Page 27.





**EXHIBIT C**

Council Vote

**TOWN OF WEYMOUTH**

**IN COUNCIL**

ORDER NO. 07 134

OCTOBER 15, 2007

INTRODUCED: MAYOR

**CPC – PURCHASE OF LAND**

Upon request of his Honor, Mayor Madden, the Town of Weymouth through the Weymouth Town Council approved to raise and appropriate the sum of \$300,000.00 to be allocated in the following manner: \$141,185.66 from FB Reserved for Open Spaces. (4906.321004) and \$158,814.34 from FB Unreserved Fund Balance (4906.321001), for the purpose of purchasing parcels on Woodbine Road known as Sheet 30, Block 390, Lot 1 and Sheet 30,, Block 391, Lot 29, for the purpose of the acquisition of open space as defined and in accordance with the provisions of the Community Preservation Act, M.G.L. Chapter 44B.

Passed in Council – - October 29, 2007

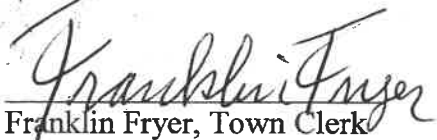
Presented to Mayor – October 30, 2007

A True Copy. Attest:

Approved

Date

10/30/07

  
Franklin Fryer, Town Clerk

  
Mayor

YEAS: Carey, DiFazio, Kay, Lacey, Mathews  
Molisse, O'Connor, Shanahan, Smart, Whitaker

NAYS: Carey, DiFazio, Kay, Lacey, Mathews  
Molisse, O'Connor, Shanahan, Smart, Whitaker

ABSENT: Kay, Shanahan

One seat vacant

## **EXHIBIT D**

### Corporate Authority

CERTIFICATE OF AUTHORITY

I, James Lockhead, Clerk of the  
(Name of Clerk)

Weymouth-Braintree Regional Recreation Conservation District, hereby certify that, at a meeting of the Board of Directors of said Corporation, duly held on

June 20<sup>th</sup>, 2018, at which a quorum was present and voting throughout, the following vote was duly passed and is now in full force and effect:

"VOTED: That Robert E. McConnell be and is  
(Name of Chairperson)

hereby is authorized, directed, and empowered, in the name and on behalf of the Weymouth-Braintree Regional Recreation Conservation District, to sign, seal with the corporate seal, execute, acknowledge, and accept Conservation Restrictions granted by the Town of Weymouth, Massachusetts; the acceptance of any such Conservation Restrictions by

Robert E. McConnell to be valid and binding upon this  
(Name of Chairperson)

Corporation for all purposes, and that a certificate of the Clerk of this Corporation setting forth this vote shall be delivered to the Town of Weymouth; and that this vote shall remain in full force and effect unless and until the same has been altered, amended, or revoked by a subsequent vote of such directors and a certificate of such later vote attested by the Clerk of this Corporation is delivered to the Town of Weymouth."

I further certify that Robert E. McConnell  
(Name of Chairperson)

is the duly elected Chairperson of said Corporation.

Signed

[Signature]  
(Signature of Clerk)

Affix Corporate Seal

470 LIBERTY ST, BRAINTREE, MA  
Place of Business

6/20/18  
Date of Contract