

CONSERVATION RESTRICTION

This **DEED OF CONSERVATION RESTRICTION** made this _____ day of _____, 20__.

R E C I T A L S:

A. ***NAME OF LANDOWNER***, residing at _____, Connecticut, hereinafter called the Grantor, is the owner in fee simple of certain real property, hereinafter called the "Protected Property," which has ecological, scientific, educational and aesthetic value in its present state as a natural area which has not been subject to development or exploitation, which property is located in Warren, Connecticut, and is more particularly described in Schedule A attached hereto and incorporated by this reference; and

B. THE WARREN LAND TRUST, INC., hereinafter called the Grantee, is a Connecticut non-profit corporation and a tax exempt public charity under Section 501 (c) (3) and 509 (a) (1) of the Internal Revenue Code, qualified under section 170 (h) of the Internal Revenue Code to receive qualified conservation contributions, and having its headquarters in Warren, Connecticut, and its mailing address at 151 Melius Road, Warren, Connecticut 06754, whose purpose is to preserve natural areas for scientific, charitable, educational and aesthetic purposes; and

C. The Protected Property is a significant natural area which qualifies as a "...relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in P.L. 96-541, 26 USC 170 (h) (4) (A) (ii), as amended, and in regulation promulgated thereunder, and

D. Preservation of the Protected Property is for the scenic enjoyment by the general public and will yield a significant public benefit, and

E. Preservation of the Protected Property is pursuant to federal, state and local governmental conservation policy and will yield a significant public benefit, and

F. The specific conservation values of the Property are documented in a Restriction Documentation Report, prepared by Grantee and signed and

acknowledged by the Grantor, establishing the baseline condition of the Protected Property at the time of this grant and including reports, maps, photographs, and other documentation; and

G. The Grantor and the Grantee have the common purpose of conserving the above-described conservation values of the Protected Property in perpetuity; and

H. The State of Connecticut has authorized the creation of Conservation Restrictions pursuant to Connecticut General Statutes Sections 47 - 42a through 47 - 42c and the Grantor and Grantee wish to avail themselves of the provisions of that law.

NOW, THEREFORE, the Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained and as an absolute and unconditional gift, does hereby give, grant and convey to the Grantee a Conservation Restriction in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth.

1. Purpose. It is the purpose of this Restriction to assure the Protected Property will be retained forever predominantly in its natural, scenic, forested, and open space condition; to protect any rare plants, animals, or plant communities on the Protected Property; and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values or interest of the Protected Property described above. Grantor intends that this Restriction will confine the use of the Protected Property to such activities as are consistent with the purpose of this Restriction.

2. Prohibited Uses. Any activity on or use of the Protected Property inconsistent with the purpose of this Restriction is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited except as provided in Paragraph 3 below:

2.1 There shall be no construction or placing of any building, tennis or other recreational court, landing strip, mobile home, swimming pool, fence or sign (other than those required by Grantee for appropriate management), asphalt or

concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, sodium vapor light or any other temporary or permanent structure or facility on or above the premises.

2.2 There shall be no ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, nor any building of roads or change in the topography of the land in any manner, except in accordance with Paragraph 3.

2.3 There shall be no removal, destruction or cutting of trees, shrubs or plants, planting of trees, shrubs or plants, or use of fertilizers, except in accordance with Paragraph 3.3.

2.4 There shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, and no use of devices commonly know as “bug-zappers”.

2.5 There shall be no storage or dumping of ashes, trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks, in, on, or under the Protected Property; there shall be no changing of the topography through the placing of soil or other substance or material such as land fill or soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on the Protected Property which could cause erosion or siltation on the Protected Property.

2.6 There shall be no pollution, alteration, depletion nor extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall there be activities conducted on the Protected Property or on adjacent property if owned by Grantor, which would be detrimental to water purity, or which could alter natural water level and/or flow in or over the Protected Property.

2.7 There shall be no operation of mountain or other bicycles, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, hang gliders, aircraft, helicopters, jet skis, motorized boats or any other types of mechanized vehicles except farm equipment used for purposes permitted pursuant to Paragraph 3.

2.8 The Protected Property and any portion thereof shall not be included as part of the gross area of other property not subject to this Restriction for the purposes of determining density, lot coverage, under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by the Restrictions shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise; provided, however, that with prior written permission of the Grantee, this paragraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Protected Property. Nothing herein contained shall be construed to prevent the Grantors from using any of the Protected Property as Property qualifying for Open Space, Forest or Farmland for tax exemption purposes under applicable statutes and laws.

3. Grantor's Reserved Rights. Notwithstanding any provisions of this restriction to the contrary, the Grantor hereby reserves the following rights:

3.1 The right to undertake or continue any activity or use of the Protected Property not prohibited by this Restriction. Prior to making any change in use of the Protected Property, the Grantor shall notify the Grantee in writing allowing Grantee to determine whether such change would violate the terms of this Restriction.

3.2 The right to sell, give, mortgage, lease, or otherwise convey the Protected Property, provided such conveyance is subject to the terms of this Restriction and written notice is provided to Grantee in accordance with Paragraph 12 below.

3.3 The right to cut and remove diseased trees, shrubs, or plants and to cut firebreaks; and the right to cut and remove trees and other forest vegetation, subject to a forest management plan prepared by a forester certified by the State of Connecticut, and subject to the prior written approval of Grantee pursuant to Paragraph 4.5 below.

3.4 The right to place and construct, after notice to the Grantor, buildings, structures and improvements for agricultural purposes on the Protected Property provided Zoning and Wetland setbacks as required by the land use commission of the Town of Warren.

3.5 The right to create and/or maintain for agricultural or wildlife use any fields, pasture or meadows including, without limitation, the right to: (1) create pasture, fields or open areas from wooded or overgrown areas of the Protected Property that are not on or within 50 feet of any wetland or watercourse; (2) clear forest trees or other growth for such purposes; (3) plow, harrow, or use other sound agricultural practices to prepare land for agricultural, pasture or open meadow use; (4) seed and reseed; (5) rotate crops in accordance with sound agricultural practice; (6) trim and cut brush and trees in order to maintain clear borders around such areas; (7) temporarily store manure on a seasonal basis, but not within 150 feet of any wetland; (8) pasture and graze animals on a rotational basis, pursuant to sound agricultural practices, provided that such use shall be undertaken so as to avoid pollution, erosion, of siltation of any watercourse or wetland; (9) apply fertilizers; provided, however, all applications of fertilizers, pesticides, and herbicides shall be undertaken in accordance with environmentally sound agricultural practices in light of the actual needs of the crops of cover being grown at any time and the slope and run-off characteristics of the site, further provided, cultivation of row crops shall be restricted to areas of soils with “ tolerable erosion rates “ as determined by the U.S.D.A. Natural Resource Conservation Service (a “tolerable erosion rate” is based on a slower

rate of erosion than the rate of replacement by natural processes creating new soil from the raw underlying parent material).

3.6 The right to construct barns, sheds, fencing and other structures on the Protected Property in furtherance of and in support of and as an appurtenance of the farming operations referenced above.

3.7 The right to engage in sound forestry management practices including selective timber harvesting from the Protected Property, provided however, that the Protected Property shall be cleared of debris and top branches and restored as near as possible to its original condition, except for the removed timber, within 120 days following any such harvesting activity, and provide further that the Grantor shall consult with the Grantee prior to engaging in any selective timber harvest and shall cooperate with the Grantee in developing a timber harvesting plan which the Grantor shall follow in conducting any such selective timber harvest.

4. **Grantee's Rights.** To accomplish the purpose of this Restriction, the following rights are conveyed to Grantee by this Restriction.

4.1 The right to preserve and protect the conservation values of the Protected Property.

4.2 **Right of Entry.** The right to enter the Protected Property at all reasonable times and with prior notice and, if necessary, across other lands retained by the Grantor, for the purposes of: (a) inspecting the Protected Property to determine if the Grantor is complying with the covenants and purposes of this Restriction; (b) enforcing the terms of this Restriction; (c) taking any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof; (d) making scientific and educational observations and studies and taking samples in such a manner as

will not disturb the quiet enjoyment of the Protected Property by the Grantor; and (e) monitoring and management as described below.

4.3 Monitoring and Management. The right, but not the obligation, to monitor the condition of the rare plant and animal populations, plant communities, and natural habitats on the Protected Property, and to manage them, if necessary, to ensure their continued presence and viability on the Protected Property. Such activities shall be in accordance with management practices of Grantee which may include but not be limited to mowing, fencing, trapping, prescribed burning, etc. Any such management activities shall be set forth in a written management plan to be approved by the Grantor, which approval shall not be unreasonably withheld or delayed.

4.4 Enforcement. The right to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Restriction and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, pursuant to Paragraph 10.

4.5 Discretionary Consent. Grantee's consent for activities otherwise prohibited under Paragraph 2 above, or for any activities requiring Grantee's consent under Paragraph 3 above, may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the activities listed in Paragraph 2 are deemed desirable by Grantor and Grantee, Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission, and permission for activities requiring Grantee's consent under Paragraph 3, shall be in writing and shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of the Restriction. Grantee may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate the purpose of the Restriction and (2) either enhance or do not impair any significant conservation interest associated with the

Protected Property. Notwithstanding the foregoing, the Grantee and Grantor have no right or power to agree to any activities that would result in the termination of this Restriction or to allow any residential, commercial or industrial structures or any commercial industrial activities not provided for above.

5. **Access.** Nothing contained in this Restriction shall give or grant to the public a right to enter upon or to use the Protected Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Restriction.

6. **Costs and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Grantee's interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor.

Grantor shall hold harmless, defend and indemnify Grantee and its members, directors, officers, employees, agents, and contractors, and the heirs, successors and assigns of each of them (collectively "Indemnified Parties") from any and 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: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified herein and in Paragraphs 7; and (3) the existence or administration of this Restriction.

7. **Taxes.** The Grantor agrees to pay any real estate taxes or other assessments levied on the Protected Property.

8. Titles. The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Protected Property in fee simple and has good right to grant and convey the aforesaid Restriction; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Restriction, and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Restriction. NOTE: If any mortgages exist, they must be subordinated.

9. Hazardous Waste. The Grantor covenants and represents that no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that there are not now any underground storage tanks located on the Protected Property.

10. Grantee's Remedies. In the event that the Grantee becomes aware of a violation of the terms of this Restriction, the Grantee shall give notice to the Grantor, at Grantor's last known post office address, of such violation via certified mail, return receipt requested, and request corrective action sufficient to abate such violations and restore the Protected Property to its previous condition at the time of this grant. Grantor agrees that the Restriction Documentation Report shall be deemed to provide objective information concerning The Protected Property's conditions at the time of this grant. Failure by the Grantor to cause discontinuance, abatement of such other corrective action as may be requested by Grantee within thirty (30) days after receipt of such notice shall entitle Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Restriction; to require the restoration for the property to its previous condition; to enjoin such non-compliance by ex parte temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any damages arising from such noncompliance. Such damages when recovered, may be applied by the Grantee, in its sole discretion, to corrective action on the Protected Property. If such court determines that The Grantor has failed to comply with this Restriction, Grantor shall reimburse Grantee for any reasonable

costs of enforcement, including costs of restoration, court costs and reasonable attorney's fees, in addition to any other payments ordered by such court.

10.1 Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period for cure to expire.

10.2 Failure to Act or Delay. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this Restriction by any prior failure to act and Grantor hereby waives any defense of laches with respect to any delay by the Grantee, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Restriction.

10.3 Violations Due to Causes Beyond Grantor's Control. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons. In the event of violations of this Restriction caused by unauthorized wrongful acts of third persons, at Grantee's option, Grantor agrees to assign its right of action to Grantee, to join in any suit, and/or to appoint Grantee its attorney-in-fact for the purposes of pursuing enforcement action.

11. Parties Subject to Restriction. The covenants agreed to and the terms, conditions, and restrictions imposed by this grant shall not only be binding upon the Grantor but also its lessees, agents, personal representatives, successors and assigns, and all other successors to Grantor in interest and shall continue as a servitude running in perpetuity with the Protected Property.

12. **Subsequent Transfers.** The Grantor agrees that the terms, conditions, restrictions and purposes of this grant or reference thereto will be inserted by Grantor in any subsequent deed or other legal instrument by which the Grantor divests either the fee simple title or possessory interest in the Protected Property; and Grantor further agrees to notify Grantee of any pending transfer at least thirty (30) days in advance.

13. **Merger.** The Grantor and Grantee agree that the terms of this Restriction shall survive any merger of the fee and Restriction interest in the Protected Property.

14. **Assignment.** The parties hereto recognize and agree that the benefits of this Restriction are in gross and assignable, and the Grantee hereby covenants and agrees that in the event it transfers or assigns the Restriction it holds under this indenture, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, which is organized and operates primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue code, and Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the contribution was originally intended to advance.

15. **Extinguishment.** The Grantor hereby agrees that at the time of the conveyance of this Restriction to the Grantee, this Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value of said Restriction as of the date of the conveyance that is at least equal to the proportionate value that this Restriction at the time of the conveyance bears the fair market value of the Property as a whole at the time.

That proportionate value of the Grantee's property rights shall remain constant. When a change in conditions takes place which makes impossible or impractical any continued protection of the Protected Property for conservation purposes, and the restrictions contained herein are extinguished by judicial proceeding, the Grantee, upon a subsequent sale, exchange or involuntary conversion of the Protected Property, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Restriction. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in and defined under P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended and in regulations promulgated thereunder.

16. General and Miscellaneous Provisions.

16.1 General. The interpretation and performance of this Restriction shall be governed by the laws of the State of Connecticut. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect. The obligations imposed by this Restriction upon Grantor, if more than one, shall be joint and several. Any uncertainty in the interpretation of this Restriction shall be resolved in favor of conserving and protecting the Conservation values.

16.2 Severability. If any provision of this Restriction or the application thereof to any personal or circumstance is found to be invalid, the remainder of the provisions for this Restriction and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

16.3 Successors and Assigns. The term "Grantor" shall include the Grantor and the Grantor's heirs, executors, administrators, successors and assigns and shall also mean the masculine, feminine, corporate, singular or plural form of the word as needed in the context of its use. The term "Grantee" shall include Weantinoge Heritage, Inc., and its successors and assigns.

16.4 Re-recording. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Restriction; for such purpose, the Grantor appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any necessary instrument on its behalf. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.

16.5 Captions. The captions herein have been inserted solely for convenience of reference and are not a part of this Restriction and shall have no effect upon construction or interpretation.

16.6 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

16.7 Notices. Any notices required in this Restriction shall be sent by registered or certified mail to the following address or such address as may be hereafter specified by notice in writing:

Grantor:

Grantee: **THE WARREN LAND TRUST, INC.**

151 Melius Road

Warren, CT 06754

TO HAVE AND TO HOLD the said Restriction unto the said Grantee forever.

IN WITNESS WHEREOF, the Grantor has executed and sealed this document the day and year first above written.

Witness: NAME OF LANDOWNER

Witness:

STATE OF CONNECTICUT

ss:

(COUNTY OF LITCHFIELD)

On this the _____ day of _____, 2004, before me the undersigned officer, personally appeared NAME OF LANDOWNER, known to me to be the person(s) whose name is (names are) subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained, as their free act and deed.

IN WITNESS WHEREOF, I hereunto set my hand.

Commissioner of the Superior Court

Notary Public

My Commission Expires: