

CONSERVATION EASEMENT

on

The Town Farm, Spurwink Road, Cape Elizabeth

The Town of Cape Elizabeth, a municipal corporation organized under the law of the State of MAINE, (the "Grantor") its successors and assigns, any successors, HEREBY GRANTS to the CAPE ELIZABETH LAND TRUST, a non-profit corporation organized and existing under the laws of the State of Maine with a mailing address of Box 265, Cape Cottage, Cape Elizabeth, Maine 04107 (the "Holder") and its successors and/or assigns, With QUITCLAIM COVENANT, for a term of **fifty (50) years**, (the "Term") the following described Conservation Easement on approximately one hundred fifty (150) acres of land on the westerly side of Spurwink Road, in the Town of Cape Elizabeth, Cumberland County, Maine, being a portion of the property devised to the Town of Cape Elizabeth under the 1825 Will of Thomas Jordan "in fee and in trust for the poor of said Town forever." The premises were conveyed by the Town as Trustee pursuant to the Will of Thomas Jordan to the Town free from the imposition of the Trust, as authorized by Cumberland County Superior Court Consent Judgement in the consolidated matter of Carpenter v. Town of Cape Elizabeth and Town of Cape Elizabeth v. Carpenter, Docket Nos. CV-91-1183 and CV-91-1243 (the "PROTECTED PROPERTY") and more particularly described in Exhibit "A", attached hereto, and made a part hereof by reference, exclusively for conservation purposes as follows:

INTRODUCTION

It is the purpose of this Conservation Easement to preserve and protect for a term of **fifty (50) years** (the "Term") the natural character of the Protected Property and its scenic beauty, for (i.) its scenic vistas, (ii.) its open space, (iii.) passive outdoor recreation by the general public as limited herein and (iv.) wildlife values.

The following terms, covenants, restrictions and affirmative rights are hereby granted to Holder, whose rights shall run with the Protected Property for the Term:

I. RESTRICTIONS

Commercial or industrial uses (except for agricultural) are prohibited on the Protected Property. Quarrying, mining, stripping of loam or other soil strata, and landfill activities are also prohibited on the Protected Property. The following uses are also prohibited: placement or use of trailers or campers, placement of antennae or telecommunications apparatus, use of any All Terrain Vehicles or motorcycles, placement of tents, building of fires, possession or use of alcohol or drugs, and placement of seasonal structures.

II. STRUCTURES AND SURFACE ALTERATIONS AND RIGHTS RESERVED TO GRANTOR

- A. As of the date of this grant, the only structures on the Protected Property are certain structures leased to or owned by the Portland Water District (as depicted on Exhibit B) and related improvements. Grantor expressly reserves the following rights:
1. To maintain, improve, enlarge, remove and replace existing structures and any utilities related thereto and to construct structures, outbuildings and facilities including any utilities related thereto to be used for purposes consistent with and allowed pursuant to the Grantor's lease with the Portland Water District dated May 1, 1985 as such Lease may be extended or amended.
 2. To conduct passive agricultural uses on the Protected Property by selective cutting, tilling, planting, growing and harvesting of crops in order to provide a sustainable yield in conformance with sound agricultural practices and which shall be done in such a manner as to preserve the scenic character and vistas and environmental sensitivity of the Protected Property and so as not be detrimental to the conservation purposes of this Easement;
- B. No dumping, storage or burial of waste materials of any nature is permitted on the Protected Property.

III. PUBLIC ACCESS

- A. Grantor may develop written rules and regulations for public use, and control, limit or prohibit, by posting and other means, any other uses.
- B. Grantor may agree in writing to further restrict access to the Protected Property or part thereof, but only to the extent and duration necessary to assure safety, or to preserve important ecological, habitat and conservation values of the Protected Property.
- C. Grantor has the right to post boundaries with appropriate signage to prohibit hunting, trapping and specified motorized vehicles on the protected property.
- D. Grantor has the right to construct, maintain, repair and replace informational or instructional signs.
- E. Grantor and Holder claim all of the rights and immunities against liability for injury to the public to the fullest extent of the law under Title 14 M.R.S.A. Section 159-A, et seq. as amended and successor provision thereof (The Maine Recreational Use Statute), and under any other applicable provisions of law and equity.

IV. VEGETATION MANAGEMENT

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The use of herbicides, fungicides, fertilizers or other potentially harmful substances must be controlled and limited so as not to have a demonstrably adverse effect on wetland or wildlife habitat associated with the Protected Property and associated wetlands and ponds.

V. NOTICES

Any notice to Holder required hereunder must be made by certified mail, return receipt requested, addressed to: President, Cape Elizabeth Land Trust, Box 265, Cape Cottage, Cape Elizabeth, Maine 04107, or to such other authorized person hereafter designated in writing by Holder. Any notice to Grantor required hereunder must be made by certified mail, return receipt requested, addressed to: Town Manager, Town of Cape Elizabeth, Town Hall, Cape Elizabeth, Maine 04107, or to such other authorized person hereafter designated in writing to Holder.

VI. COSTS AND TAXES, INDEMNIFICATION

Grantor is responsible to pay and discharge when due all property taxes and assessments lawfully imposed and to avoid the imposition of any liens that may effect Holder's rights hereunder. Grantor acknowledges that Holder has no possessory rights in the Protected Property, nor any responsibility or right to control, maintain, or keep up the Protected Property. Grantor is responsible for all costs and responsibility of ownership, control, operation, maintenance, and upkeep of the Protected Property, and will, to the fullest extent permitted by law, defend, release, relieve, hold harmless and indemnify Holder, its agents, and employees therefrom and from any claims for damages which arise therefrom, except for harm proximately caused by the negligent act or misconduct of Holder, its assignees, employees or agents.

VII. HOLDER'S AFFIRMATIVE RIGHTS

- A. Holder has the right to enter the Protected Property for inspection and enforcement purposes, at a reasonable time and in a reasonable manner that is consistent with the conservation purposes hereof.
- B. Holder has the right to require that Grantor's reserved rights be exercised in a manner that avoids unnecessary harm to the conservation values to be protected by this Easement.
- C. Holder has the right to conduct a professional boundary survey and maintain, repair and replace boundary monumentation of the Protected Property or any part thereof.

VIII. ENFORCEMENT

In the event the Holder determines that a breach of this Easement has occurred, Holder will notify Grantor. Grantor and Holder agree that they will discuss the breach and, come to a mutually

agreeable solution within thirty (30) days of such notice. If Grantor fails within a reasonable time, not to exceed sixty (60) days, to discontinue the breach or to continue requested corrective action to completion, Holder is entitled to pursue its remedies at law and in equity, including the right to seek an order requiring restoration of the Protected Property as aforesaid. Grantor and Holder agree that noncompliance with the terms of this Easement may constitute immediate and irreparable injury, loss and damage to the Protected Property and accordingly entitles Holder to such equitable relief as the Court deems just. If a Court, or other finder of fact chosen by the parties, determines that this Conservation Easement has been breached, Grantor must reimburse Holder for any reasonable costs of enforcement, including court costs, reasonable attorneys' fees, and any other payments ordered by such Court.

IX. CONSERVATION EASEMENT REQUIREMENTS UNDER MAINE LAW AND U. S. TREASURY REGULATIONS

- A. This Conservation Easement is created pursuant to The Uniform Conservation Act at Title 33, Maine Revised Statutes, 1989, Sections 476 through 479-B, inclusive as amended, and shall be construed in accordance with the laws of the State of Maine.
- B. This Conservation Easement is established exclusively for conservation purposes pursuant to the Internal Revenue Code of 1986 as amended (hereinafter referred to as the "Code") at Title 26, U.S.C.A., Section 170(h)(1)-(6) and Sections 2055 and 2522, and under Treasury Regulations at Title 26 C.F.R. para 1.170A-14 et seq., as amended; and
- C. The Holder is qualified to hold conservation easements pursuant to Title 33, Maine Revised Statutes Annotated, Section 476(2), as amended, and is a "qualified donee" under Title 26 U.S.C.A. Section 170(h)3 of the Code, to wit: a publicly funded, non-profit 501 (C) (3) organization operated primarily to accept lands, easements, and buildings for the purpose of preserving and protecting natural, scenic, educational, recreational and open space values of real property.
- D. This Conservation Easement is assignable, but only to an entity that satisfies the requirements of Section 170(h)(3) of the Internal Revenue Code of 1986, (or successor provision thereof) and the requirements of Section 476(2) of Title 33 of the Maine Revised Statutes Annotated (1989, as amended (or successor provisions thereof), and as a condition of transfer, agrees to uphold the conservation purposes of this grant.
- E. Grantor agrees to notify Holder prior to undertaking any activity or exercising any reserved right that may have a material adverse effect on the conservation purposes of this grant, as specifically required in the Conservation Easement.
- F. In order to establish the present condition of the Protected Property and its natural and scenic resources so as to be able to monitor properly future uses of the Property and assure compliance with the terms hereof, Holder may prepare an inventory of the Property's relevant

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features and conditions (the "Baseline Data"), and certify the same as an accurate representation of the conditions of the Protected Property as of the date of this grant.

- G. Grantor represents that as of the date of this grant there are no liens or mortgages outstanding against the Protected Property.
- H. This Conservation easement constitutes a property right owned by the Holder. Notwithstanding that this Conservation Easement is an obligation, and not a financial asset, should it be extinguished, which may be accomplished only by a court order, Holder is entitled to a share of the proceeds of any sale, exchange or involuntary conversion of the unrestricted property, according to Holder's proportional interest in the Protected Property as determined by Treasury Regulations I.170-A-14(g)(6)(ii). Holder's proportional interest is determined as of the date of this grant and will not include value attributable to improvements to the Protected Property made after the date of this grant. Holder will use such proceeds for conservation purposes.

X. GENERAL PROVISIONS

- A. The failure or delay of the Holder, for any reason whatsoever, to enforce this Conservation easement shall not constitute a waiver of its rights and Grantor hereby waives any defense of laches, prescription or estoppel.
- B. In making this grant, Grantor has considered the fact that the uses prohibited hereby may become more economically valuable than permitted uses. If any provision of this Conservation easement or the application of any particular provision or circumstance is found to be invalid, the remainder of this Conservation Easement and the application of such provision to any other person or in any other circumstance, shall remain valid.

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Dated this 22 day of May, 2000 at Cape Elizabeth, Maine.

WITNESS: [Signature]

TOWN OF CAPE ELIZABETH
By: [Signature]
MICHAEL MCGOVERN, Town Manager

The above Conservation Easement is authorized to be accepted by The Cape Elizabeth Land Trust And the Holder does hereby accept the foregoing Conservatjon Easement, by and through Robert Danielson, its President hereunto duly Authorized, this 22 day of May, 2000

WITNESS: [Signature]

THE CAPE ELIZABETH LAND TRUST
By: [Signature]
ROBERT E. DANIELSON, President

STATE OF MAINE
COUNTY OF Cumberland, SS. May 22, 2000

Then personally appeared the above-named, MICHAEL MCGOVERN, Town Manger of the Town of Cape Elizabeth, acknowledged the foregoing instrument to be his free act and deed in such capacity.

Before me,
[Signature]
Notary Public
TERESA D. OLSEN
Print Name TERESA D. OLSEN
My commission expires OCTOBER 11, 2004

STATE OF MAINE
COUNTY OF Cumberland, SS. May 30, 2000

Then personally appeared the above-named ROBERT E. DANIELSON, the President of the Cape Elizabeth Land Trust, acknowledged the foregoing instrument to be his free act and deed in such capacity.

Before me,
[Signature]
Notary Public Attorney at Law
Print Name Adam Gonzalez
My commission expires _____

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EXHIBIT A

A certain lot or parcel of land located on the westerly side of Spurwink Avenue; southerly and southeasterly by land now or formerly of Dorie S. Barber as conveyed by deed recorded in the Cumberland County Registry of Deeds in Book 10805, page 142; westerly by the west branch of the Spurwink River and Sawyer Road; northerly by the real line of several parcels of land which have frontage on Wells Road to the westerly sideline of land now or formerly of Ralph E. Leighton and Alice C. Leighton as conveyed by deed recorded in said Registry in Book 3519, Page 66; easterly by the westerly sideline of said Leighton land; northerly by the east branch of the Spurwink River.

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RECEIVED
RECORDED REGISTRY OF DEEDS

2000 JUN 29 PM 3: 25

CUMBERLAND COUNTY

John B. O'Brien

