

## DRAINAGE EASEMENT

**KATHRYN L. BARBER**, of Cape Elizabeth, Maine, and **THOMAS E. PECKHAM, ESQ.**, of Marblehead, Massachusetts, both **TRUSTEES** of the **1175 SHORE ROAD NOMINEE TRUST** under Declaration of Trust dated November 6, 2007, with a mailing address c/o Thomas E. Peckham, Esq., Bingham McCutchen LLP, One Federal Street, Boston, Massachusetts, 02110 (“**Grantors**”), owners of the real property and improvements more particularly described in the Deed (as defined herein) (“**Grantors’ Property**”) for consideration paid to its full satisfaction from the **TOWN OF CAPE ELIZABETH**, a municipal body, corporate and politic with a principal office at, and a mailing address of, 325 Ocean House Road, Cape Elizabeth, Maine 04107 (“**Grantee**”), do hereby give, grant, bargain and confirm unto Grantee a non-exclusive, perpetual easement to construct, install, inspect, maintain and replace storm water drainage infrastructure, including, but not limited to, pipes, pumps, culverts and catch basins (collectively, the “**Drainage Infrastructure**”), and to drain stormwater into, on, over, through and across, so much of Grantors’ Property on Shore Road in the Town of Cape Elizabeth, County of Cumberland and State of Maine, as shown on Site Plan, attached hereto as **EXHIBIT A** and also as described in **EXHIBIT B** attached hereto and made apart hereof (the “**Easement Area**”), subject to the terms and conditions set forth herein.

Grantee shall have the right to enter upon and disturb the Easement Area, only to the extent necessary to construct, install, inspect, maintain and replace the Drainage Infrastructure, including the stockpiling of earth and construction materials; provided, however, Grantee agrees to restore the Easement Area and the Grantors’ Property, including any disrupted pavement, lawns, shrubs or trees to their condition prior to installation of the Drainage Infrastructure by Grantee to the extent reasonably possible. Entry upon Easement Area by Grantee, or by its respective employees, agents, contractors and permittees, shall be at their sole risk, and Grantee hereby indemnifies, releases and holds Grantors harmless from and against any and all liability, loss, cost, damage or expense, including, without limitation, court costs and/or reasonable fees related to litigation or alternative dispute resolution and reasonable attorneys’ fees, incurred by Grantors on account of any injury (including death) of any person or any damage to property occurring or alleged to have occurred which arises out of or in connection with (i) Grantee’s or its respective employees’, agents’, contractors’ or permittees’ use of the rights and easements with respect to the Easement Area granted herein or (ii) Grantee’s breach under this Drainage Agreement.

Grantee shall not dispose of or otherwise discharge, and shall not permit any other person or entity to dispose of or otherwise discharge, any “hazardous substance” or “hazardous waste” (as those terms are used or otherwise defined in the Environmental Laws, as herein defined) into the Drainage Infrastructure or the Easement Area. Grantee shall promptly comply, at its sole cost and expense, with all applicable Environmental Laws (as defined herein) (including, without limitation, the reasonable out-of-pocket costs and expenses of the site investigations and of the removal and remediation of such hazardous substance or hazardous wastes). Grantee hereby agrees to defend, indemnify and hold Grantors harmless from and against any and all claims, losses, liability, damages and expenses (including, without limitation, site investigation costs, reasonable removal and remediation costs and reasonable attorneys’ fees and disbursements)

arising out of or in connection with Grantee's failure to comply with the provisions of this section. The term "**Environmental Laws**" shall mean all statutes, regulations, codes and ordinances of any federal, state or local governmental entity, authority, agency and/or department relating to (i) air emissions, (ii) water discharges, (iii) air, water or ground pollution or (iv) any other environmental or health matter, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. and the regulations promulgated thereunder.

Grantee shall promptly pay when due the entire cost of all work done by Grantee, its agents and assigns that affects the Drainage Infrastructure and shall keep the Easement Area free of all liens for labor or materials. Should mechanics', materialmen's or other liens be filed against the Easement Area or any part of Grantors' Property by reason of the actions of or failure to act by Grantee, Grantee shall pay, bond or vacate such liens within ten (10) days of receiving actual notice of such liens. If such a lien or liens are not promptly paid or satisfied, Grantors shall have the right, at their option, to pay such lien, and Grantee shall promptly reimburse Grantors, upon demand, for such payment, together with expenses, charges, interest and attorneys' fees incurred by Grantors in connection with such lien or liens.

Notwithstanding the foregoing, in the event the discharge from the Drainage Infrastructure shall exceed the bounds of the Easement Area, Grantee shall, at its sole cost and expense, promptly and without delay, repair any and all damage caused to Grantors' Property and shall take such preventative measures which are required to preclude any future damage to Grantors' Property, including, but not limited to, developing and improving the Easement Area, to Grantors' reasonable satisfaction, to prevent any further discharge from the Drainage Infrastructure outside of the Easement Area.

Grantors hereby reserve to their successors and assigns, as the case may be, the right to use the Easement Area and the lands of the Grantors adjacent to the Easement Area for any use and purpose which does not in any way interfere with the use of said Easement Area by the Grantee in the exercise of the easement rights herein granted.

By acceptance of this grant, the Town of Cape Elizabeth covenants and agrees to the terms set forth herein.


This Drainage Easement may be executed in multiple counterparts, all of which together shall constitute one and the same original instrument.

Reference may be made to deed from Augustus Barber and Marjorie Barber to Kathryn L. Barber and Thomas E. Peckham, Trustees of the 1175 Shore Road Nominee Trust under Declaration of Trust dated November 6, 2007, which deed is recorded in the Cumberland County Registry of Deeds in Book 25611, Page 72 (the "**Deed**").

*[Remainder of Page Intentionally Blank]*

IN WITNESS WHEREOF, Kathryn L. Barber and Thomas E. Peckham, Esq., in their capacity as Trustees of the 1175 Shore Road Nominee Trust, have executed this instrument this 22nd day of March, 2011.

**1175 SHORE ROAD NOMINEE TRUST**

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
By: Kathryn L. Barber, Trustee

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: Thomas E. Peckham, Esq., Trustee



IN WITNESS WHEREOF, Kathryn L. Barber and Thomas E. Peckham, Esq., in their capacity as Trustees of the 1175 Shore Road Nominee Trust, have executed this instrument this 22nd day of March, 2011.

**1175 SHORE ROAD NOMINEE TRUST**

\_\_\_\_\_  
Witness

*Gail Hughes*  
\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: Kathryn L. Barber, Trustee

*Thomas E. Peckham*  
\_\_\_\_\_  
By: Thomas E. Peckham, Esq., Trustee

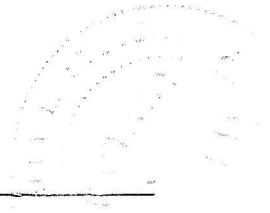
STATE OF MAINE  
CUMBERLAND, SS.

March 23, 2011

Then personally appeared the above-named Kathryn L. Barber, Trustee of the 1175 Shore Road Nominee Trust, and acknowledged the foregoing instrument to be her free act and deed as Trustee and the free act and deed of said Trust.

Before me,

Wesley M Stevens  
Notary Public/~~Maine~~ Attorney at Law



Wesley M Stevens

Printed Name

My commission expires:

**WESLEY M. STEVENS**  
**Notary Public • State of Maine**  
**My Commission Expires 7/25/2017**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

March \_\_\_\_, 2011

Then personally appeared the above-named Thomas E. Peckham, Esq., Trustee of the 1175 Shore Road Nominee Trust, and acknowledged the foregoing instrument to be his free act and deed as Trustee and the free act and deed of said Trust.

Before me,

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

\_\_\_\_\_  
Printed Name

My commission expires:

STATE OF MAINE  
CUMBERLAND, SS.

March \_\_, 2011

Then personally appeared the above-named Kathryn L. Barber, Trustee of the 1175 Shore Road Nominee Trust, and acknowledged the foregoing instrument to be her free act and deed as Trustee and the free act and deed of said Trust.

Before me,

\_\_\_\_\_  
Notary Public/Maine Attorney at Law

\_\_\_\_\_  
Printed Name  
My commission expires:

STATE OF MASSACHUSETTS  
COUNTY OF SUFFOLK

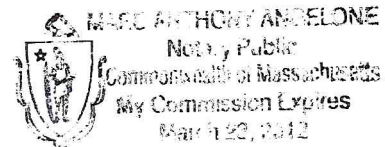
March 23, 2011

Then personally appeared the above-named Thomas E. Peckham, Esq., Trustee of the 1175 Shore Road Nominee Trust, and acknowledged the foregoing instrument to be his free act and deed as Trustee and the free act and deed of said Trust.

Before me,

Marc Anthony Angelone  
\_\_\_\_\_  
Notary Public

MARC ANTHONY ANGELONE  
\_\_\_\_\_  
Printed Name  
My commission expires:

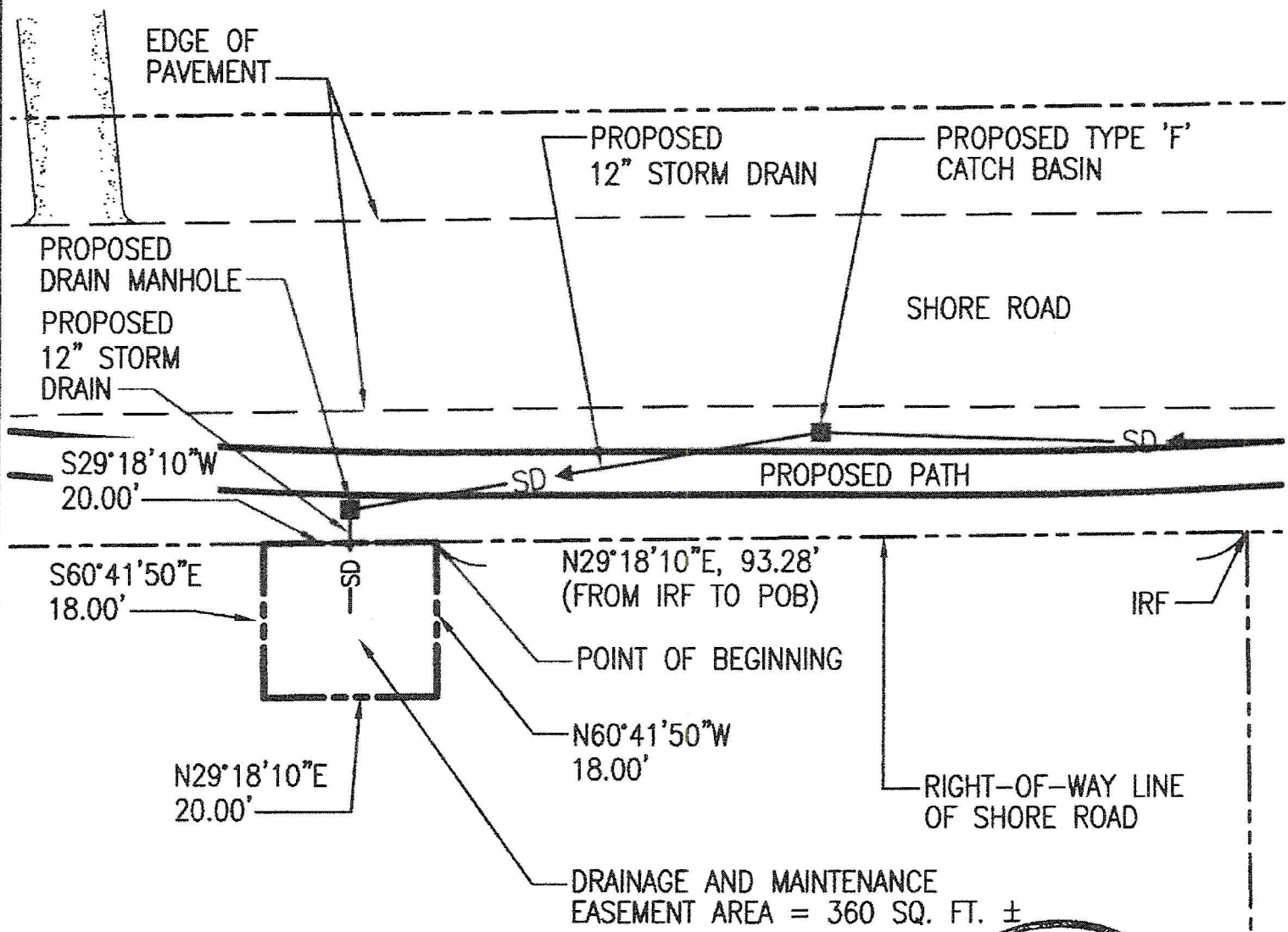
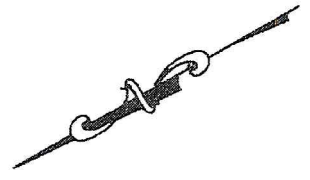


**EXHIBIT A**

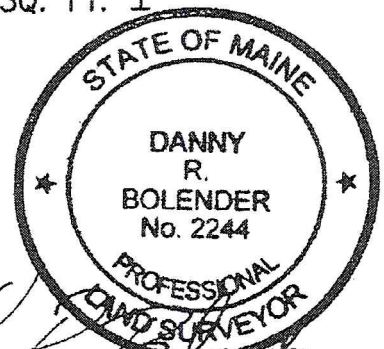
Easement Area (Site Plan)


*[See Pages Attached Hereto]*

N/F  
 ZEB COVE REALTY TRUST  
 SUZANNE MCGINN TRUSTEE  
 1180 SHORE ROAD  
 CAPE ELIZABETH, ME 04107  
 TAX MAP, R-02/LOT 4D-2



N/F  
 1175 SHORE ROAD NOMINEE TRUST  
 KATHRYN L. BARBER TRUSTEE  
 PECKHAM THOMAS E TRUSTEE  
 150 FEDERAL STREET  
 BOSTON, MA 02110  
 BOOK 25611, PAGE 72  
 TAX MAP, U-11  
 LOT 5-1



PROJECT:	TOWN OF CAPE ELIZABETH SHORE ROAD PATH CAPE ELIZABETH, MAINE	PROJECT NUMBER:	3607103
		PROJECT MANAGER:	PB
	TITLE: EXHIBIT - A DRAINAGE & MAINTENANCE EASEMENT ON LAND OF 1175 SHORE RD. NOMINEE TRUST	A/E OF RECORD:	
		CAD FILE:	3607103_EXA
		DRAWN BY/WTR	SKETCH NO:
		DATE: 01/06/2011	EX-A
<small>343 Gorham Road, South Portland ME 04106        P: (207) 781-1770 F: (207) 774-1248 www.amec.com</small>		SCALE: 1" = 20'	



## EXHIBIT B

### Easement Area (Legal Description)

A certain parcel of land situated on the westerly side of Shore Road in the town of Cape Elizabeth, County of Cumberland and State of Maine, as shown on a sketch entitled "Exhibit A, Drainage & Maintenance Easement on Land of 1175 Shore Rd. Nominee Trust" by Danny R. Bolender, Land Surveyor, dated January 6, 2011, bounded and described as follows:

Beginning at a point on the westerly sideline of Shore Road, said point of beginning being located N 29° 18' 10" E, along the westerly sideline of said Shore Road ninety-three and 28/100 (93.28) feet from an iron rod found marking the northeasterly corner of land, now or formerly of Lisa J. Bowman as described in Deed recorded in the Cumberland County Registry of Deeds in Book 11763, Page 60.

Thence N 60° 41' 50" W, through land of the Grantors, eighteen and 00/100 (18.00) feet to a point;

Thence N 29° 18' 10" E, through land of the Grantors, twenty and 00/100 (20.00) feet to a point;

Thence S 60° 41' 50" E, through land of the Grantors, eighteen and 00/100 (18.00) feet to a point on the westerly sideline of Shore Road;

Thence S 29° 18' 10" W, along the westerly sideline of Shore Road, twenty and 00/100 (20.00) feet to the point of beginning.

The above-described parcel contains 360 square feet, more or less.

The above-described parcel is a portion of "Parcel Three" as described in deed to Kathryn L. Barber and Thomas E. Beckham, Trustees of the 1175 Shore Road Nominee Trust dated November 8, 2007, recorded in the Cumberland County Registry of Deeds in Book 25611, Page 72.