

**Town Council Minutes Excerpt  
June 13, 2011**

Moved by Anne E. Swift-Kayatta and Seconded by James T. Walsh  
Ordered the Cape Elizabeth Town Council does hereby allocate \$150,000 from the Land Acquisition Fund and \$200,000 from the proposed bond anticipated to be authorized in Item # 101-2011, with the funds to be placed in an account committed for a partnership with the Cape Elizabeth Land Trust (CELT) for CELT's planned acquisition of 63 +/- acres of land known as Robinson Woods II. The total municipal donation of \$350,000 may be expended by the Town Manager at the time the property is acquired provided the Town of Cape Elizabeth receives a public access easement in a form acceptable to the Town Attorney and the Town Council and provided that all other funds needed by CELT for the acquisition are obtained. If the property is not acquired in conformance with the May 2011 purchase and sale agreement between CELT and the Robinson Family, LLC, the \$350,000 shall become unassigned within the Town of Cape Elizabeth Land Acquisition Fund. In addition, the Town Council respectfully requests the Cape Elizabeth Land Trust to work with the town to explore alternatives to move the Shore Road path inward into Robinson Woods I.  
(7 yes) (0 no)

**Proposed Motion  
November 14, 2012**

**Item# 132 -2012**

Draft Motion- Ordered: The town council pursuant to its vote of June 13, 2011 hereby authorizes the town manager to provide \$350,000 to the Cape Elizabeth Land Trust at closing for its acquisition of a 63+- acre parcel known as Robinson Woods II, accepts the public access easement in the form deemed acceptable to the town attorney on October 29, 2012 and agrees to authorize the town manager to sign a third party acceptance of a conservation easement over said parcel being granted by the Cape Elizabeth Land Trust to the Maine Coast Heritage Trust.



Google

Michael McGovern &lt;michael.mcgovern@capeelizabeth.org&gt;

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**Robinson Woods II**

1 message

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**Chris Franklin** <chris@capelandtrust.org>

Tue, Nov 6, 2012 at 1:45 PM

To: Michael McGovern &lt;michael.mcgovern@capeelizabeth.org&gt;

Michael,

It is with great pleasure that I am able to confirm with you that the Cape Elizabeth Land Trust has successfully raised, and has in hand, the \$750,000 needed to close on the Robinson Woods II acquisition. When accompanied by the pledged support of the Town of Cape Elizabeth we will be ready to complete this transaction and bring these 63.6 acres onto a growing list of properties protected for public use and enjoyment. We are very thankful to have the town as an active partner in this project and look forward to celebrating this achievement in the near future.

Sincerely,

Chris Franklin

**Christopher Franklin, Executive Director  
Cape Elizabeth Land Trust**

330 Ocean House Rd. Cape Elizabeth 04107

[www.capelandtrust.org](http://www.capelandtrust.org)

207-767-6054 ,

# MONAGHAN LEAHY, LLP

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October 22, 2012

Michael K. McGovern, Town Manager  
Town of Cape Elizabeth  
320 Ocean House Road  
P.O. Box 6260  
Cape Elizabeth, ME 04107

*Via Electronic Mail*

Re: Robinson Woods II/Town of Cape Elizabeth/Cape Elizabeth Land Trust

Dear Mike:

Enclosed please find a draft of a Public Access Easement for the above matter with Exhibits A and B. Exhibit A is the legal description which was provided to me and believed to be final. Exhibit B is the draft of the Conservation Easement from the Cape Elizabeth Land Trust to the Maine Coast Heritage Trust.

Counsel for the Cape Elizabeth Land Trust has agreed that our Public Access Easement can be placed of record after the acquisition of title by the Cape Elizabeth Land Trust but prior to their granting a Conservation Easement to the Maine Coast Heritage Trust. The Public Access Easement is for the general public for "*non-motorized, low impact outdoor recreation without fee.*" The Town reserves the right to undertake certain activities upon the property in regard to structures, surface alterations and vegetation management, that have been reserved to the Cape Elizabeth Land Trust, but only upon written notice and the Cape Elizabeth Land Trust's failure to undertake those improvements that might enhance public access. In addition, the Cape Elizabeth Land Trust reserves the right to approve such activities that may affirmatively alter their premises. This matter has been negotiated and I am prepared to recommend that the Town Council accept the Public Access Easement in the form attached.

If you have any questions or I can if I can assist further in this matter, please advise.

Best regards,

Monaghan Leahy, LLP

Thomas G. Leahy  
By Thomas G. Leahy, Esq.

TGL/kt

Enclosures

cc: Robert E. Danielson, Esq. (with enclosures)

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October 29, 2012

Michael K. McGovern, Town Manager  
Town of Cape Elizabeth  
320 Ocean House Road  
P.O. Box 6260  
Cape Elizabeth, ME 04107

*Via Electronic Mail*

Re: Robinson Woods II Public Access Easement

Dear Mike:

Bob Danielson has brought to my attention that the final draft of the Conservation Easement restored a paragraph 5 that had been proposed for deletion during the negotiations. As such, the second paragraph of the latest Public Access Easement should make reference thereto. Enclosed is a revised Public Access Easement, and simply to keep this together, I also enclose Exhibit A and Exhibit B, being the legal description and the Conservation Easement to be consented to. The only change is in paragraph 2 of the Public Access Easement where we have added paragraph 5 to the reference paragraphs. I have marked this as "T. Leahy draft 10-29-12." That notation will be removed prior to execution.

If you have any questions, please advise.

Best regards,

Monaghan Leahy, LLP

Thomas G. Leahy  
By Thomas G. Leahy, Esq.

TGL/kt  
Enclosures  
.cc Robert E. Danielson, Esq. (with enclosures)

## PUBLIC ACCESS EASEMENT

**CAPE ELIZABETH LAND TRUST, INC.**, a Maine non-profit corporation with a mailing address of 330 Ocean House Road, Cape Elizabeth, Maine 04107 ("**Grantor**") for consideration paid, including a contribution in the amount of Three Hundred Fifty Thousand Dollars (\$350,000.00) to assist Grantor in the acquisition of the premises described in **Exhibit A** ("**Premises**") of even or recent date, grants to the **TOWN OF CAPE ELIZABETH**, a body corporate and politic, with a mailing address of 320 Ocean House Road, PO Box 6260, Cape Elizabeth, Maine, its successors and assigns ("**Grantee**"), with quitclaim covenant, a perpetual easement on and over the Premises in the Town of Cape Elizabeth, County of Cumberland and State of Maine, more particularly described in Exhibit A attached hereto, for the purpose of providing access thereto by the general public for non-motorized low impact outdoor recreation, without fee.

Grantee consents to the Grantor providing a separate Conservation Easement upon the Premises under 33 M.R.S.A. §476 et. seq. to the **MAINE COAST HERITAGE TRUST**, as holder, and for with the Grantee shall obtain a "Third-Party Right of Enforcement," in the form attached hereto as **Exhibit B**. Further, Grantee acknowledges that the right of public access granted hereby shall be subject to reasonable restrictions for the protection of the Premises as particularly described in Section I, paragraphs 1, 2, 3, 4 and 5 of Exhibit B attached hereto, provided that the exercise of such rights by Grantor shall not unreasonably limit the public access rights granted herein.

In the event that Grantee determines that Grantor has not exercised any of Grantor's reserved rights as described in Section I, paragraph 2 "Structures," paragraph 3 "Surface Alterations" or paragraph 4 "Vegetation Management," then after a written request to Grantor and the reasonable opportunity of Grantor to exercise such rights, and Grantor's failure to do so, then Grantee may exercise such of those rights as may have been specified in its written request to Grantor as may enhance the benefits and enjoyment of the public's access to the Premises from time to time, provided, however, that Grantor approves in writing any such activities that affirmatively alter the Premises prior to Grantee undertaking such activities.

Further, that Grantor reserves the right to protect the conservation values of the Premises and to balance protection of its natural resources with low-impact outdoor recreational access by the general public, such that Grantor, after notice to Grantee, shall have the right to limit public access to the extent reasonably necessary for the safety, erosion control and protection and preservation of important natural resources that may require protection. Grantor and Grantee agree to meet periodically, but not less than once annually, to review implementation of the above condition.

Grantor and Grantee claim the rights and protections against liability for injury to the public to the fullest extent of the law under 14 M.R.S.A. §159-A et. seq., as amended and any successive provisions thereof (the "Maine Recreational Use Statute"), the *Maine Tort Claims Act*, and under any other applicable provisions of law and equity.

IN WITNESS WHEREOF, Grantor, Cape Elizabeth Land Trust, Inc., has caused this instrument to be signed and sealed in its corporate name by \_\_\_\_\_, its President, thereunto duly authorized, this \_\_\_\_ day of \_\_\_\_\_, 2012.

WITNESS:

CAPE ELIZABETH LAND TRUST, INC

\_\_\_\_\_

\_\_\_\_\_  
By  
Its President

STATE OF MAINE  
CUMBERLAND, SS.

\_\_\_\_\_, 2012

Personally appeared before me the above named \_\_\_\_\_, in his capacity as President and duly authorized representative of Cape Elizabeth Land Trust, Inc., and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said corporation.

Before me,

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

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

**EXHIBIT A**  
(legal description)

A certain lot or parcel of land situated on the westerly side of Shore Road in the Town of Cape Elizabeth, County of Cumberland and State of Maine bounded and described as follows:

Beginning at a point on the westerly sideline of Shore Road at the southeasterly corner of land now or formerly of the Cape Elizabeth Land Trust, said point being approximately 260 feet northerly along a curve to the right having a radius of 596.71 feet from a granite monument;

Thence, southerly along the easterly sideline of said Shore Road along a curve to the left having a radius of 596.71 feet 260 feet more or less to a granite monument;

Thence, S 14°53'18" W along the southerly sideline of said Shore Road 232.59 feet to a culvert in the center of Pond Cove Brook;

Thence, N 72°07'45" W a distance of 8.95 feet;

Thence, westerly along the center of Pond Cove Brook 1,351 feet more or less to the northwesterly corner of the Kings Grant Subdivision as surveyed by H. I. & E. C. Jordan;

Thence, S 01°43'45" W along the westerly line of said Kings Grant Subdivision 130 feet more or less to the top of bank;

Thence, westerly and southwesterly along the top of said bank 1,089 feet more or less, said point being found using the following two tie lines from the last mentioned point,  
S 63°14'24" W a distance of 469.07 feet;  
S 72°58'14" W a distance of 565.16 feet;

Thence, southwesterly along the edge of the pond 841 feet more or less, said point being found using the following two tie lines from the last mentioned point,  
S 66°50'23" W a distance of 378.27 feet;  
S 58°57'00" W a distance of 451.31 feet;

Thence, S 09°48'45" W across land of the grantor, maintaining a distance of 25 feet from and parallel to land now or formerly of Canter Lane Realty Trust 997.88';

Thence, S 08°06'45" W across land of the grantor, maintaining a distance of 25 feet from and parallel to land of said Canter Lane Realty Trust 204.67 feet;

Thence, S 08°19'00" W across land of the grantor, maintaining a distance of 25 feet from and parallel to land now or formerly of Morgan Lane Realty Trust 351.48 feet to land now or formerly of Ihoak, LLC;

Thence, N 83°32'45" W along land of said Ihok, LLC 25.01 feet to a granite monument and land of said Morgan Lane Realty Trust;

Thence, N 08°19'00" E along land of said Morgan Lane Realty Trust 352.25 feet to land of said Canter Lane Realty Trust;

Thence, the following courses and distances along said Canter Lane Realty Trust:

N 08°06'45" E a distance of 205.00 feet;

N 09°48'45" E a distance of 306.50 feet;

N 81°35'00" W a distance of 825.08 feet;

N 08°44'00" E a distance of 419.42 feet to land now or formerly of Hunt Club Woods Association;

Thence, N 08°48'45" E along land of said Hunt Club Woods Association and land now or formerly of Carolyn M. Fritz 454.79 feet;

Thence, N 09°38'15" E along land of said Fritz 6.88 feet to land now or formerly of Sara W. Lennon;

Thence, S 80°15'15" E along land of said Lennon 378.87 feet to land now or formerly of Howard L. Glass;

Thence, N 62°00'05" E along land of said Glass and land now or formerly of Peter H. Jacobs 808.73 feet;

Thence, N 33°19'30" W along land of said Jacobs 232.08 feet to land now or formerly of Harold H. and Jessica L. Sullivan;

Thence, N 70°40'40" E along land of said Sullivan and land now or formerly of Sally C. Caras and land now or formerly of Sherman K. and Beverly Altenburg 657.54 feet;

Thence, N 75°26'55" E along land of said Altenburg and land now or formerly of Helen A. Connell 383.57 feet;

Thence, N 61°17'20" E along said Connell 45.12 feet to land now or formerly of Peter F. and Beth C. Richardson;

Thence, the following courses and distances along said Richardson:

N 55°01'40" E a distance of 58.44 feet;

N 65°44'32" E a distance of 178.37 feet;

N 24°10'07" E a distance of 116.61 feet;

N 37°21'30" E a distance of 158.33 feet;

N 11°45'25" E a distance of 86.95 feet;

N 00°40'50" E a distance of 132.36 feet to land now or formerly of Geoffrey M. and Ruth S. Anderson;



Thence, the following courses and distances along said Anderson:

S 66°27'30" E a distance of 70.80 feet;

S 74°31'55" E a distance of 46.77 feet;

N 87°26'20" E a distance of 129.22 feet;

S 84°50'15" E a distance of 48.82 feet;

S 87°39'30" E a distance of 120.21 feet;

S 81°13'45" E a distance of 88.28 feet;

S 67°37'05" E a distance of 54.24 feet;

N 13°53'40" E a distance of 10.5 feet more or less to the northerly sideline of Belfield Road and land of said Cape Elizabeth Land Trust;

Thence easterly along the northerly sideline of said Belfield Road 1,214 feet more or less to the westerly sideline of said Shore Road and the point of beginning containing 63.6 Acres more or less.

For a more particular description of the above described lot see "Boundary Survey on Shore Road, Cape Elizabeth, Maine made for Robinson Family LLC" dated March 8, 2011 by Owen Haskell, Inc.

**CONSERVATION EASEMENT ON ROBINSON WOODS II PRESERVE  
IN CAPE ELIZABETH, CUMBERLAND COUNTY, MAINE,  
TO MAINE COAST HERITAGE TRUST**

**CAPE ELIZABETH LAND TRUST, INC.**, a non-profit corporation organized and existing under the laws of the State of Maine, with a mailing address of 330 Ocean House Road Cape Elizabeth, Maine 04107, (hereinafter referred to as the "Grantor," which word shall, unless the context clearly indicates otherwise, include the above named Grantor, its successors and assigns, and any successors in interest to the Protected Property),

GRANTS as a gift to **MAINE COAST HERITAGE TRUST**, a non-profit corporation organized and existing under the laws of the State of Maine, with a mailing address of One Bowdoin Mill Island, Suite 201, Topsham, Maine 04086 (hereinafter referred to as the "HOLDER," which word shall, unless the context clearly indicates otherwise, include the Holder's successors and assigns),

with **QUITCLAIM COVENANT**, in perpetuity, the following described Conservation Easement pursuant to the Maine Uniform Conservation Easement Act at 33 M.R.S.A. Section 476 et seq., and Section 170(h) of the Internal Revenue Code, on the Robinson Woods II Preserve in Cape Elizabeth, Cumberland County, Maine, more particularly described in **Exhibit A** and depicted in **Exhibit B**, both attached hereto and made a part hereof (hereinafter referred to as the PROTECTED PROPERTY);

And GRANTS Rights of Enforcement of the terms of this Conservation Easement as a gift, to the **TOWN OF CAPE ELIZABETH**, a body corporate and municipal with a mailing address of 320 Ocean House Road, P.O. Box 6260, Cape Elizabeth, ME 04107 (hereinafter jointly referred to as the "Third Party," which word shall, unless the context clearly indicates otherwise, include the Third Party' successors and/or assigns), **EXCLUSIVELY FOR CONSERVATION PURPOSES, AS FOLLOWS:**

**PURPOSE.**

*This Conservation Easement is intended to protect the natural, scenic and undeveloped character of the Protected Property, and to promote the conservation of its forests, shoreland and their associated wildlife habitat values. It is also intended to balance the community need for open land available for quiet daytime non-motorized public outdoor recreation, nature observation and study, with restrictions that will ensure that the experience of the public on the Protected Property will continue to be one, increasingly rare, of unstructured quiet contemplation and reverence for the natural world.*

The following recitals more particularly describe the conservation values of the Protected Property and the significance of this grant:

WHEREAS, the Robinson Woods II Preserve/Protected Property is a beautiful parcel of approximately sixty-four (64) acres of forest and field as depicted in Exhibit B, with a pond and dam, which in its existing undeveloped state and together with its companion property of eighty-two

(82) acres, known as the Robinson Woods Preserve, creates a substantial area of undeveloped fields, woodlands, streams and ponds that will remain in their natural condition, and

WHEREAS, the Protected Property includes a network of foot trails that have periodically been used by the public for low-impact passive outdoor recreation, nature observation and quiet contemplation, such as walking, cross country skiing, and bird watching, and provides highly scenic views of the western Casco Bay shoreline; and

NOW THEREFORE, the Grantor and Holder have established this Conservation Easement on, over and across the Protected Property consisting of the following terms, covenants, restrictions and affirmative rights granted to Holder, which shall run with and bind the Protected Property in perpetuity:

**SECTION I: RESTRICTIONS AND RESERVED RIGHTS.**

**1. GENERAL RESTRICTIONS:** The Protected Property remains in a substantially undisturbed and natural condition as documented in Baseline Data, certified by the Grantor and Holder as accurate as of the date of this grant. The Protected Property shall be maintained by Grantor, its successors and assigns, for the benefit of the general public as a traditional rural forest and open field preserve, without subdivision, and without use or building development for commercial, industrial, or residential purposes. Without limiting the generality of the foregoing, the Protected Property is subject to the following specific prohibitions:

A. Residential, commercial, industrial, quarrying or mining activities are prohibited on the Protected Property, except as specifically permitted herein. The incidental sale of interpretive literature, and use of the Protected Property for charitable fundraising, educational activities, community events, and tours, or the incidental sale of materials removed in the course of Grantor's permitted land management activities under Sections 3 and 4, shall not be deemed commercial uses, provided they are always consistent with the preservation of the Protected Property in its undisturbed and natural condition. The following are strictly prohibited on the Protected Property: paved roads and trails; through-roads to other property other than previously existing roads and ways; recreational courts or playing fields; stages, bleachers, reviewing stands; equestrian facilities; swimming pools; mud runs; and campgrounds.

B. The division, subdivision, partition or other establishment of separate lots on the Protected Property is prohibited, except for bona-fide boundary dispute agreements, and provided that any portion of the Protected Property may be conveyed to a non-profit entity or division of government that meets the requirements for an assignee of this Easement, as set forth in the "Holder's Affirmative Rights" hereinbelow, to be retained for conservation ownership subject to the terms of this Conservation Easement.

C. The disposal or burial of waste materials of any nature is strictly prohibited on the Protected Property; provided that vegetative debris from permitted activities may be left on the Protected Property; and other waste generated by permitted activities may be temporarily stored in appropriate containment for removal at reasonable intervals.

**2. STRUCTURES:** As of the date of this Grant there are no structures on the Protected Property except for boundary markers, stone walls, footpath improvements, a dam at the outlet of a pond, and except for road and utility improvements within the private road, the right of way at Belfield Road and at Shore Road in Cape Elizabeth. No additional structures, temporary or permanent, are permitted on the Protected Property without the prior written consent of Holder, except however, the Grantor reserves for itself, its successors and assigns, the following rights:

A. Grantor reserves the right to locate minor structures to enhance the opportunity for low-impact outdoor recreation, nature observation and study, such as hiking, bird watching, cross-country skiing, picnicking, outdoor education and scientific study, including but not limited to such structures as small unlighted informational and interpretive signs including commemorative plaques and monuments, seats, benches, picnic tables, platforms, and trail improvements such as handicapped access trails, boardwalks, bog bridging, markers, steps, foot bridges, wetland or water crossings, water bars, and railings; wildlife habitat structures such as hacking boxes, observation platforms and blinds; barriers, low fences and rock walls to protect fragile areas, important natural resources, ongoing environmental or archeological research, and to block or discourage access by motorized vehicles; and minor structures necessary for public safety and erosion control.

B. Grantor reserves the right to install and maintain, only at or near the parking areas and roadway access permitted in Paragraph 3.B. of this Section, any necessary or appropriate parking and access structures and facilities for public use of the Protected Property as a nature preserve, such as but not limited to fencing, parking barriers, gates, unlighted signs, registration boxes, informational kiosks, lights, dog sanitation devices, and any structures necessary for safety, erosion control and protection of fragile resources.

C. Grantor reserves the right to maintain, improve and replace the dam at the outlet of the pond on the Protected Property, after notice in writing to Holder.

**3. SURFACE ALTERATIONS:** As of the date of this grant, there are no surface alterations on the Protected Property except for a network of unpaved trails, a man-made pond, a dam at the pond, and surface alterations associated with existing structures. No additional filling, dumping, excavation or other man-made alteration or disturbance to the surface of the Protected Property are permitted without the prior written consent of Holder; except that the Grantor reserves, for itself, its successors and assigns, the following rights:

A. Grantor reserves the right to maintain existing surface alterations and to alter the surface to the extent necessary to install the structures permitted in Paragraph 2 of this Section, and to undertake the vegetation management permitted in Paragraph 4 of this Section.

B. Grantor reserves the right to establish, maintain and improve not more than one (1) parking lot of a size and in a location consistent with the conservation objectives of this easement, as well as road access from the public roadway to the parking area.

C. Grantor reserves the right to reroute existing unpaved trails and to establish and maintain additional "rustic unpaved foot trails," which are defined as paths no wider than eight (8) feet in average tread width, and that are designed to prevent rutting, erosion, and siltation into surface waters, with appropriate signage and barriers to block or discourage use and access by the general public in motorized vehicles, other than Grantor's maintenance vehicles.

D. Grantor reserves the right to undertake or permit alteration of the surface for ecological, scientific, or archeological education, research or investigation, conducted under then current professional standards and without substantial alteration to important natural resources.

E. All of the foregoing permitted surface alteration activities must be conducted and completed in a manner to minimize soil erosion, to prevent damage to fragile plant communities, wetlands and wildlife habitat, to protect and preserve important natural resources.

**4. VEGETATION MANAGEMENT:** The Protected Property is substantially forested, with areas of open field depicted in Exhibit B, ledge outcroppings, and scrub brush vegetation near the roadsides. No vegetation may be cut, disturbed, altered or removed from the Protected Property without the prior written consent of Holder, except that Grantor reserves, for itself and its successors and assigns, the following rights:

A. Grantor reserves the right to alter or remove vegetation only as necessary to install, establish and maintain the structures permitted under Paragraphs 2 and the surface alterations permitted under Paragraph 3 of this Section.

B. Grantor reserves the right to mow, brushhog, cut, prune, alter, remove and otherwise manage forest and field vegetation on the Protected Property to reduce safety hazards for the uses permitted hereunder; to manage and eradicate invasive or non-native species; to maintain the existing open fields depicted in Exhibit B in their unforested and open condition; to enhance the substantially natural and scenic character of the Protected Property, including the establishment and maintenance of views from trails and picnic areas; to improve wildlife habitat; to combat active fire and prevent fire and disease, to manage and eradicate non-native or invasive species; and to create and maintain additional small open areas for picnic areas and vistas.

C. All of the foregoing vegetation management must be conducted and completed in a manner to minimize soil erosion, to prevent damage to fragile plant communities, wetlands and wildlife habitat, and to protect and preserve important natural resources.

## **5. PUBLIC ACCESS**

Grantor agrees to operate and manage the Protected Property for its multiple resource values, and as a nature preserve available for daytime non-motorized low-impact outdoor recreational use by the general public. Grantor reserves the right to use the Protected Property for supervised group use, educational programs, and ecological and archeological study, subject to rules, policies and regulations, that may be established by Grantor from time to time, to

protect the conservation values of the Protected Property and to balance protection of its natural resources with low-impact outdoor recreational use by the general public. This includes the right of Grantor to curtail or limit public use to the extent necessary for safety, erosion control, control of excessive or inappropriate public uses, and protection and preservation of important natural resources that may require protection.

Grantor, Holder and Third Party claim the rights and protections 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), the Maine Tort Claims Act, and under any other applicable provision of law and equity.

## **SECTION II: AFFIRMATIVE RIGHTS GRANTED.**

1. Holder, its successors and assigns, is hereby granted (a) the right to enter the Protected Property for monitoring and enforcement purposes at reasonable times and in a reasonable manner; (b) the right to enforce the terms of this grant by actions at law or in equity, including the right to require restoration of the Protected Property to its condition prior to any violation hereof; (c) the right to assign this Conservation Easement to a qualified donee under Section 170(h)(3) of the Internal Revenue Code, and Section 476(2) of Title 33 of the Maine Revised Statutes Annotated, as amended, after prior written notice to and approval by Grantor and Third Party.

2. Holder and Third Party, in the event of termination of this conservation easement, which may be accomplished only with a court order, are entitled to receive the increase in value of the Protected Property resulting from such extinguishment, as follows: Holder and Third Party shall be entitled to receive the increase in value of the Protected Property under Title 33 MRS Section 477-A)(2)(b), as determined by an independent appraisal, and shall have a right to file a lien for such payment; provided that Third Party shall have the right to receive the first Three Hundred and Fifty Thousand Dollars of such increase in value, as return of its donation for the acquisition of the Protected Property and this easement.

3. Holder and Third Party are granted the right to have their role in protecting the Protected Property by this Conservation Easement and other contributions acknowledged in any signage that identifies Grantor as owner of the Protected Property.

4. Holder is granted the right to enter the Protected Property to manage and eradicate invasive and non-native species, after notice in writing to Grantor.

5. Third Party is granted the same notification, entry, inspection and assignment rights as those granted to Holder hereinabove, except that Holder is primarily responsible for stewardship and enforcement of this Conservation Easement, and Third Party is entitled to copies of all communication between the parties in furtherance of this grant. Third Party may initiate legal proceedings in furtherance of its rights and obligations hereunder only after reasonable prior notice to Grantor, Holder, asserting and documenting Holder's failure to properly enforce this grant.

**SECTION III: MISCELLANEOUS PROVISIONS:**

1. Holder, by acceptance of this Conservation Easement, does not undertake any liability or obligation relating to the condition of the Property, its control, maintenance or upkeep nor any responsibility for payment of taxes or any other charges attributable to the Protected Property, and Grantor agrees to relieve, release, indemnify, defend and hold Holder harmless from any claims therefor, and from any claims for injury to persons or property arising on or about the Protected Property, unless proximately caused by the negligent act or misconduct of Holder, its agents or employees in the exercise on the Protected Property of its Holder's rights hereunder, and except for Holder's workers compensation obligations.

2. This conservation easement shall be interpreted liberally under the laws of the State of Maine to carry out its conservation purposes. Any discretionary consent by Holder, permitted under this Conservation Easement for uses that are conditional or not expressly reserved by Grantor, and any legally permissible amendment hereto, may be granted only if the Holder and Third Party have determined in their reasonable discretion that the proposed use furthers or is not inconsistent with the purposes of this Conservation Easement, substantially conforms to the intent of this grant, and does not materially detract from the conservation values intended to be protected by this grant; provided that Holder and Third Party have no right or power, without court order in an action in which the Attorney General is made a party, to consent to any use or amendment that would result in a substantial adverse impact to important natural resources on the Protected Property, or that would limit the term or terminate this Conservation Easement, or that would impair the qualification of this Conservation Easement or the status of the Holder under any applicable laws, including Title 33 M.R.S.A. Section 476 et seq., or Section 170(h) of the Internal Revenue Code (or successor provisions).

3. Any notices or requests for approval required or contemplated hereunder shall be made by certified mail, return receipt requested, addressed to Stewardship Director, Maine Coast Heritage Trust, One Bowdoin Mill Island, Suite 201, Topsham, Maine 04086; with a copy to Clerk, Town of Cape Elizabeth, 320 Ocean House Road, P.O. Box 6260, Cape Elizabeth, ME 04107; or to such other person or address designated in writing by Holder. Grantor's notices must include sufficient information to enable Holder to determine whether Grantor's plans are consistent with the terms of this Conservation Easement and the conservation purposes hereof. Any notices to Grantor required or contemplated hereunder shall be made by certified mail, return receipt requested or by any commercial carrier that requires a signed receipt, addressed to Cape Elizabeth Land Trust, 330 Ocean House Rd, Cape Elizabeth, Maine 04107, or to such other person or address designated in writing by Grantor.

IN WITNESS WHEREOF, Grantor, CAPE ELIZABETH LAND TRUST, INC., has caused this instrument to be signed and sealed in its corporate name by \_\_\_\_\_, its President, hereunto duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

CAPE ELIZABETH LAND TRUST, INC.

\_\_\_\_\_  
By:  
Its President

STATE OF MAINE

COUNTY OF CUMBERLAND

\_\_\_\_\_, 2012

Then personally appeared the above-named \_\_\_\_\_, President and authorized representative of Cape Elizabeth Land Trust, Inc. and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.

Before Me,

\_\_\_\_\_  
Notary Public /Attorney at Law  
Print or Type Name \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



**HOLDER ACCEPTANCE.**

The above and foregoing Conservation Easement was authorized to be accepted by MAINE COAST HERITAGE TRUST, Holder as aforesaid, and the said Holder does hereby accept the foregoing Conservation Easement, by and through William T. Glidden, Jr., its President, hereunto duly authorized, this \_\_\_\_ day of \_\_\_\_\_, 2012

**MAINE COAST HERITAGE TRUST**

\_\_\_\_\_  
By: William T. Glidden, Jr.  
Its: President

STATE OF MAINE  
COUNTY OF SAGADAHOC, SS. \_\_\_\_\_, 2012

Personally appeared William T. Glidden, Jr. the President and authorized representative of the above-named Holder, MAINE COAST HERITAGE TRUST, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said corporation.

Before me, \_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Please type or print name of notary)  
My commission expires:

THIRD PARTY ACCEPTANCE BY TOWN OF CAPE ELIZABETH

The TOWN OF CAPE ELIZABETH, Third Party with rights of enforcement, does hereby accept its rights and obligations under this Conservation Easement by and through \_\_\_\_\_, its Town Manager, hereunto duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**TOWN OF CAPE ELIZABETH**

\_\_\_\_\_  
By:  
Its: Town Manager

STATE OF MAINE  
COUNTY OF CUMBERLAND \_\_\_\_\_, 2012

Personally appeared \_\_\_\_\_, the Town Manager of the Town of Cape Elizabeth and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of the Town of Cape Elizabeth.

Before me,

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

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

My commission expires: \_\_\_\_\_

**CONSERVATION EASEMENT ON ROBINSON'S WOODS II PRESERVE  
IN CAPE ELIZABETH, CUMBERLAND COUNTY, MAINE,  
TO MAINE COAST HERITAGE TRUST**

**EXHIBIT A – Legal Description of the Protected Property      Page 1**

The Protected Property is the real estate, together with all the privileges and appurtenances thereunto pertaining, situated in Cape Elizabeth, Cumberland County, Maine, described more particularly as follows:

INSERT LEGAL DESCRIPTION

Containing 64 acres, more or less.

The above-described premises being subject to any and all existing rights of way and other easements of record, if any, in or over said premises.

This conservation easement is made subject to any matter that a standard boundary or land title survey would reveal and rights, if any, acquired by use of the property by the general public.

Meaning and Intending to encumber all and the same premises conveyed by \_\_\_\_\_ to Cape Elizabeth Land Trust in a Quitclaim Deed dated \_\_\_\_\_, and recorded at said Cumberland County Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_.

**CONSERVATION EASEMENT ON ROBINSON'S WOODS II PRESERVE  
IN CAPE ELIZABETH, CUMBERLAND COUNTY, MAINE,  
TO MAINE COAST HERITAGE TRUST  
EXHIBIT B – Sketch Plan of the Protected Property**

**THIS IS NOT A PART OF THE EASEMENT  
AND SHOULD NOT BE ATTACHED NOR RECORDED**

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**BASELINE DATA CERTIFICATION.**

Document format to be provided by MCHT; baseline data to be compiled by CELT.

**NOTE:** *If there are any deeded rights of way, mortgages or other outstanding deeded interests in the protected property, state law requires the owners of these interests to consent to this easement or be unaffected by it. IRS tax law requires in addition the subordination of mortgages to the right of the holder to enforce the restrictions of the easement.*

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This document is for the purpose of negotiation and has been prepared for review by Grantor's and Third Party' legal counsel by counsel for Holder, Maine Coast Heritage Trust. Maine Coast Heritage Trust does not provide legal representation to parties and does not provide any warranties or assurances as to the legal sufficiency of this document nor the federal income and estate tax or property tax consequences of this transaction. The parties to this transaction must rely on the advice of their own legal, accounting and appraisal advisors.

**Keith Fletcher, Project Manager**  
**Jane Arbuckle, Director of Stewardship**  
Karin F. Marchetti, General Counsel

**Maine Coast Heritage Trust**  
One Main Street, Bowdoin Mill  
Topsham, Maine 04086  
(207) 729-7366