

7/6 Final

**DECLARATION OF COVENANTS AND RESTRICTIONS
GREAT POND PRESERVE II
CAPE ELIZABETH, CUMBERLAND COUNTY, MAINE,**

WHEREAS 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 "**Declarant**," which word shall, unless the context clearly indicates otherwise, include the above named Declarant, its successors and assigns, and any successors in interest to the Protected Property; and

WHEREAS the Cape Elizabeth Land Trust, Inc. desires to restrict the use of the property more particularly described in Exhibit A attached hereto (the "Protected Property") as set forth below in order to preserve its perpetual availability as a scenic and natural preserve property for low impact outdoor recreation, nature observation and study, and protection of its conservation values; and

WHEREAS, the Protected Property contains approximately Twenty-Two and 8/10 (22.8) acres of forest, field and wetlands near Great Pond, which in its existing undeveloped state creates a substantial area of undeveloped woodlands, fields and wetlands that will remain in their natural condition subject only to the construction and maintenance of improved trails, 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

NOW THEREFORE, the Declarant has agreed to and does hereby restrict the Protected Property on the following terms, covenants, and restrictions, which shall run with and bind the Protected Property in perpetuity:

PURPOSE.

The Protected Property shall be owned and operated exclusively for charitable and benevolent purposes for the benefit of the general public, permitting only those minor structures and improvements designed to accommodate access to and use and enjoyment of the Protected Property, by the general public, and for natural resource management, conservation education and low-impact non-motorized outdoor recreation, nature observation and study; and all recreational, education, and conservation management related improvements shall be designed and sited in a manner to preserve the conservation values of the Protected Property, including significant wildlife habitat and other important natural resources, and to preserve the scenic beauty of this undeveloped Protected Property . The Declarant shall have the right to establish reasonable rules and regulations for public uses of the Protected Property and to prohibit by posting or otherwise uses it deems inconsistent with or adverse to its conservation values.

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

SECTION I: RESTRICTIONS AND RESERVED RIGHTS.

1. GENERAL RESTRICTIONS: The Protected Property will remain in a substantially undisturbed and natural condition. The Protected Property shall be maintained by Declarant, its successors and assigns, for the benefit of the general public as a traditional rural forest, 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 hereby 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 Declarant'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; through-roads to other property; and recreational fields, facilities or structures.

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 necessary to receive such property.

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.

D. Declarant may allow permissive use of the existing farm track by motorized farm vehicles for agricultural purposes.

2. STRUCTURES: As of the date of this declaration there are no structures on the Protected Property except for boundary markers, stone walls, and footpath improvements. No additional structures, temporary or permanent, are permitted on the Protected Property without the prior written consent of Declarant, except however, the Declarant reserves for itself, its successors and assigns, the following rights:

A. Declarant reserves the right to locate minor structures to enhance the opportunity for low-impact outdoor recreation, nature observation and study, such as hiking, accessibility, bird watching, cross-country skiing, outdoor education and scientific study, including but not limited to such structures as small unlighted informational and interpretive signs including platforms, and trail improvements such as handicapped access trails, boardwalks, bog bridging, markers, steps, 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. Declarant reserves the right to install and maintain 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.

3. SURFACE ALTERATIONS: As of the date of this declaration, there are no surface alterations on the Protected Property except for a network of unpaved trails and drainage ditches associated with existing drainage easement held by the Town of Cape Elizabeth. No additional filling, dumping, excavation or other man-made alteration or disturbance to the surface of the Protected Property are permitted, except that the Declarant reserves, for itself, its successors and assigns, the following rights:

A. Declarant 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. Declarant 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 Declaration, as well as road access from the public roadway to the parking area.

C. Declarant reserves the right to reroute existing unpaved trails and to establish and maintain additional "rustic 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 maintenance vehicles authorized by Declarant.

D. Declarant 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. Declarant reserves the right to undertake or permit alteration of the surface for the purpose of restoration and improvement of disturbance caused by the creation of drainage ditches and removal of soils for other purposes in the past.

F. 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, scrub brush vegetation and wetlands. No vegetation may be cut, disturbed, altered or removed from the Protected Property except that Declarant reserves, for itself and its successors and assigns, the following rights:

A. Declarant 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. Declarant reserves the right to mow, brush hog, 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 any existing open fields 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 viewing 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 habitat viewing 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. PROHIBITED USES

In no event shall the Protected Property be used for hunting, trapping (other than in connection with scientific study), camping, fires, harvesting of vegetation, motorized vehicles, commercial uses or other activities that interfere with the conservation values of the Protected Property or the quiet use and enjoyment of the Protected Property or the quiet use and enjoyment of neighboring residential properties. Motorized vehicles shall be temporarily permitted upon the Protected Property only in emergencies to the extent necessary to protect life, property and public safety, or with the prior written consent of Declarant to carry out construction or maintenance of structures, surface alteration or vegetation management as otherwise permitted hereunder.

Declarant claims 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.

IN WITNESS WHEREOF, Declarant, CAPE ELIZABETH LAND TRUST, INC., has caused this instrument to be signed and sealed in its corporate name by Anne Carney, its President, hereunto duly authorized, this _____ day of August 2016.

CAPE ELIZABETH LAND TRUST, INC.

By: Anne Carney
Its President

STATE OF MAINE
COUNTY OF CUMBERLAND

August __, 2016

Then personally appeared the above-named Anne Carney, Its President and authorized representative of Cape Elizabeth Land Trust, Inc. and acknowledged the foregoing instrument to be her free act and deed in her 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: _____

**RESTRICTION ON GREAT POND PRESERVE II
IN CAPE ELIZABETH, CUMBERLAND COUNTY, MAINE,
BY CAPE ELIZABETH LAND TRUST**

EXHIBIT A – Legal Description of the Protected Property

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 HERE

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.

Meaning and Intending to encumber all and the same premises conveyed by _____ to Cape Elizabeth Land Trust, Inc. in a Warranty Deed dated August __, 2016, and recorded at said Cumberland County Registry of Deeds at Book _____, Page _____.