

License # 1

TRAIL LICENSE AGREEMENT

This Trail License Agreement (the "Agreement") is made effective as of the 2nd day of December, 2016, by and between the **TOWN OF CAPE ELIZABETH, MAINE**, a body corporate and politic, with a mailing address of P.O. Box 6260, 320 Ocean House Road, Cape Elizabeth, Maine 04107 (hereinafter called "Town" or "Licensee") and **CANTERBURY AT THE CAPE CONDOMINIUM ASSOCIATION**, a Maine nonprofit corporation (hereinafter called "Licensor") with a mailing address of c/o Dirigo Management, One City Center, Portland, Maine 04101, being the association of unit owners for the Canterbury on the Cape, a Condominium, the Declaration of which is recorded in the Cumberland County Registry of Deeds in Book 8127, Page 110 (the "Condominium").

In consideration of, and under, the terms and conditions set forth below, Licensor hereby grants to Licensee a revocable license (the "License") for the use of the Licensed Area for the purpose of the Licensed Activities, as both terms are described below.

The terms, conditions, and covenants agreed to are as follows:

1. **LOCATION; TERM:** The specific location of the land licensed herein shall be determined by agreement between the Licensor and Licensee for trails to be located within the Potential License Area shown on Exhibit B which consists of a portion of the undeveloped Condominium Common Element land (the "Licensed Area"). The term of this Agreement shall be for a period of five (5) years, or until such sooner time as the License is revoked by Licensor, in its sole discretion, or surrendered by Licensee.
 - a. The Licensed Area will be designated as part of the Cape Elizabeth Trails System (the "Trail System"), and may appear on maps of the Trail System published by the Town, until such time as this Agreement expires and/or the License is revoked or surrendered.
 - b. Pursuant to Title 14 M.R.S.A. Section 159-A (attached hereto as "Exhibit A), Licensor shall not "[a]ssume responsibility or incur liability for any injury to person or property..." as a result of entering into this Agreement.
2. **ACTIVITIES:** The activities permitted to be engaged in by members of the general public within the Licensed Area (the "Licensed Activities") shall consist of walking, hiking, jogging, cross country skiing, snowshoeing and bicycling. No other activities other than the Licensed Activities shall be permitted within the Licensed Area, except as expressly permitted by

Licensors in writing. Motorized activities, except for those associated with the maintenance of the Licensed Area pursuant to Section 3 of this Agreement, are strictly prohibited. The possession or use of alcoholic beverages and drugs are not permitted, nor are fires or overnight camping permitted.

3. MAINTENANCE; ALTERATIONS; PERSONAL PROPERTY: In addition to the Licensed Activities, employees, agents and volunteers authorized by the Town may carry on reasonable and necessary trail maintenance activities within the Licensed Area at the risk and expense of the Town, including but not limited to clearing of brush, mowing of grass, grading, construction of foot bridges over streams or wet areas, signage, and removal of any trash or rubbish within the Licensed Area. Licensor shall have no duty to maintain the trails and improvements. Licensee shall remove, within thirty (30) days of the termination of this License, any and all equipment and personal property, which may have been placed on or near the Licensed Area, and shall clean and restore the site to the reasonable satisfaction of the Licensor. No trail within the Licensed Area shall be paved, graveled or hard-surfaced without the express prior written consent of the Licensor. Notwithstanding the foregoing, dirt fill, wood chips or crushed stone for drainage may be used to improve the trail surface of the Licensed Area where deemed necessary by the Town.
4. NON-EXCLUSIVITY: This License shall not be exclusive. The Licensor reserves the right to use, or allow others to use, any part of the Licensed Area provided such use does not unreasonably interfere with the privileges hereby authorized to Licensee.
5. ASSIGNMENT: This License is issued to the Licensee herein named, for the benefit of the public, and is not assignable or transferable.
6. LIMITATION OF USE: The following activities are expressly not permitted within the Licensed Area or any other lands of Licensor, under this License. Licensee agrees to take all reasonable measures necessary to prevent any of the following activities by the public (unless Licensor should line through and initial the exceptions):
 - a. Any use of snowmobiles, all-terrain vehicles, motorbikes, or any other motorized means of transportation.
 - b. Hunting or carrying of firearms, other than by on-duty law enforcement officers.
 - c. Parking and use of cars or trucks, other than in designated parking areas, if any.

- d. Except for entry on the Licensed Area, entry by any person on any other portion of the Condominium lands of Licensor, including but not limited to entry into any buildings, roads, parking areas, and recreational facilities on the other Condominium lands of Licensor. Licensor shall have no obligation to provide restroom, shelter, or any other facilities to any person using the Licensed Area under this License.
- e. Bringing of dogs onto the Licensed Area, unless under control at all times.
- f. Licensee shall make all reasonable efforts and employ whatever means reasonably necessary and within its powers to prohibit entry by persons using the Licensed Area into the Entry Restricted Areas indicated on Exhibits B and C which are restricted for the exclusive use by Licensor including without limitation the installation of signage on the Licensed Area so advising users. All such entry into the Entry Restricted Areas, whether by the Licensee or other users under this License, is prohibited.
7. SUITABILITY OF PREMISES: Acceptance of this License by Licensee shall be prima facia evidence that Licensee accepts the suitability of the Licensed Area for its purposes, and the use thereof by Licensee shall attest to such suitability. Licensor makes no representation regarding the suitability of the Licensed Premises for its intended use, the absence of hazardous conditions, shall have no duty of care to the Licensee or members of the general public, and claims the full benefit of Title 14, Maine Revised Statute Section 159-A.
8. BUILDINGS AND STRUCTURES: No buildings or structures shall be erected upon the Licensed Area by Licensee, other than those specifically authorized by Licensor in writing.
9. HERBICIDES: Licensee shall not use herbicides, other pesticides, growth inhibitors, or other toxic chemicals on the Licensed Area.
10. VEGETATION: No living trees having a diameter of more than six inches (6.0"), measured one foot (1') above the ground, may be cut without the express written consent of Licensor in each instance.
11. PERMITS AND APPROVALS: Licensee shall be solely responsible for obtaining and then complying with any governmental permits and approvals required for the construction and maintenance of trails and other improvements authorized under this Agreement.
12. TERMINATION; REVOCABILITY: The Licensor reserves the right to terminate this License at any time if the Licensee does not perform, to the reasonable satisfaction of Licensor, the conditions and requirements

herein this Agreement. In addition, the Licensor may, without cause, terminate this License, upon thirty (30) days written notice to the Licensee.

13. PREVIOUS AGREEMENTS: This Agreement supersedes and takes precedence over all other agreements, written or oral, regarding the subject matter of this License and it is intended by the parties hereto as the final, complete, and exclusive expression of their agreement.
14. NOTICE: Any notice required or permitted under this Agreement shall be deemed sufficiently given or served if sent by United States certified mail, to the mailing address provided for hereinabove. Licensee and Licensor shall each have the right from time to time to change the place notice is to be given under this Agreement by written notice thereof to the other party. Notice shall be deemed provided three (3) days after mailing.
15. DESCRIPTIVE HEADINGS: The descriptive headings used herein are for convenience of reference only and they are not intended to have any affect whatsoever in determining the rights or obligations of Licensor or Licensee.
16. ENFORCEABILITY; CHOICE OF LAW: Should any term or provision of this Agreement or portion thereof be determined invalid or unenforceable under law, such determination shall not affect the validity or enforceability of the remaining terms and provisions herein. This Agreement does not establish a conservation easement pursuant to Title 33 M.R.S.A Section 476 et seq. This Agreement shall be governed according to the laws of the State of Maine in all respects.
17. IDENTICAL COUNTERPARTS: This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument. Electronic copies of signatures shall be binding.

[SIGNATURE PAGES FOLLOWS]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, effective as of the day and year first above written.

WITNESS:

LICENSOR:

CANTERBURY AT THE CAPE
CONDOMINIUM ASSOCIATION

[Signature]
Name:

By: [Signature]
Name:
Its duly authorized President

STATE OF MAINE
CUMBERLAND, SS.

December 2, 2016

Then personally appeared the above named Fred N Sprague
_____ of Canterbury at the Cape Condominium Association, and
acknowledged the foregoing instrument to be his/her free act and deed as
President and the free act and deed of said Canterbury at the Cape
Condominium Association.

Before me,

[Signature]
Notary Public JANET H. STAPLES at Law
NOTARY PUBLIC
State of Maine
My Commission Expires
November 8, 2018

Printed Name

My commission expires:

LICENSEE:
TOWN OF CAPE ELIZABETH

Name:

By: _____
Name:
Its duly authorized _____

STATE OF MAINE
CUMBERLAND, SS.

_____, 2016

Then personally appeared the above named _____,
_____ of the Town of Cape Elizabeth, and acknowledged the foregoing
instrument to be his/her free act and deed as _____ and the free act and
deed of said Town of Cape Elizabeth.

Before me,

Notary Public/Maine Attorney at Law

Printed Name

My commission expires:

EXHIBIT A

Maine Revised Statutes: Landowner Liability Act

Title 14 §159-A.

LIMITED LIABILITY FOR RECREATIONAL OR HARVESTING ACTIVITIES

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Premises" means improved and unimproved lands, private ways, roads, any buildings or structures on those lands and waters standing on, flowing through or adjacent to those lands. "Premises" includes railroad property, railroad rights-of-way and utility corridors to which public access is permitted. [2005, c. 375, §1 (AMD).]

B. "Recreational or harvesting activities" means recreational activities conducted out-of-doors, including, but not limited to, hunting, fishing, trapping, camping, environmental education and research, hiking, recreational caving, sight-seeing, operating snow-traveling and all-terrain vehicles, skiing, hang-gliding, noncommercial aviation activities, dog sledding, equine activities, boating, sailing, canoeing, rafting, biking, picnicking, swimming or activities involving the harvesting or gathering of forest, field or marine products. It includes entry of, volunteer maintenance and improvement of, use of and passage over premises in order to pursue these activities. "Recreational or harvesting activities" does not include commercial agricultural or timber harvesting. [2009, c. 156, §1 (AMD).]

C. "Occupant" includes, but is not limited to, an individual, corporation, partnership, association or other legal entity that constructs or maintains trails or other improvements for public recreational use. [2003, c. 509, §1 (NEW).]

[2009, c. 156, §1 (AMD) .]

2. Limited duty. An owner, lessee, manager, holder of an easement or occupant of premises does not have a duty of care to keep the premises safe for entry or use by others for recreational or harvesting activities or to give warning of any hazardous condition, use, structure or activity on these premises to persons entering for those purposes. This subsection applies regardless of whether the owner, lessee, manager, holder of an easement or occupant has given permission to another to pursue recreational or harvesting activities on the premises.

[1995, c. 566, §1 (AMD) .]

3. Permissive use. An owner, lessee, manager, holder of an easement or occupant who gives permission to another to pursue recreational or harvesting activities on the premises does not thereby:

A. Extend any assurance that the premises are safe for those purposes; [1979, c. 253, §2 (NEW) .]

B. Make the person to whom permission is granted an invitee or licensee to whom a duty of care is owed; or [1979, c. 253, §2 (NEW) .]

C. Assume responsibility or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted even if that injury occurs on property of another person. [2007, c. 260, §1 (AMD) .]

[2007, c. 260, §1 (AMD) .]

4. Limitations on section. This section does not limit the liability that would otherwise exist:

A. For a willful or malicious failure to guard or to warn against a dangerous condition, use, structure or activity; [1979, c. 253, §2 (NEW) .]

B. For an injury suffered in any case where permission to pursue any recreational or harvesting activities was granted for a consideration other than the consideration, if any, paid to the following:

(1) The landowner or the landowner's agent by the State; or

(2) The landowner or the landowner's agent for use of the premises on which the injury was suffered, as long as the premises are not used primarily for commercial recreational purposes and as long as the user has not been granted the exclusive right to make use of the premises for recreational activities; or [1995, c. 566, §1 (AMD) .]

C. For an injury caused, by acts of persons to whom permission to pursue any recreational or harvesting activities was granted, to other persons to whom the person granting permission, or the owner, lessee, manager, holder of an easement or occupant of the premises, owed a duty to keep the premises safe or to warn of danger. [1995, c. 566, §1 (AMD) .]

[1995, c. 566, §1 (AMD) .]

5. No duty created. Nothing in this section creates a duty of care or ground of liability for injury to a person or property.

[1993, c. 622, §1 (AMD) .]

6. Costs and fees. The court shall award any direct legal costs, including reasonable attorneys' fees, to an owner, lessee, manager, holder of an easement or occupant who is found not to be liable for injury to a person or property pursuant to this section.

[1995, c. 566, §1 (AMD) .]

SECTION HISTORY

1979, c. 253, §2 (NEW). 1979, c. 514, §1 (AMD). 1979, c. 663, §75 (AMD). 1983, c. 297, §2 (AMD). 1985, c. 762, §25 (AMD). 1993, c. 622, §1 (AMD). 1995, c. 566, §1 (AMD). 2001, c. 113, §2 (AMD). 2003, c. 509, §1 (AMD). 2005, c. 375, §1 (AMD). 2007, c. 260, §1 (AMD). 2009, c. 156, §1 (AMD).

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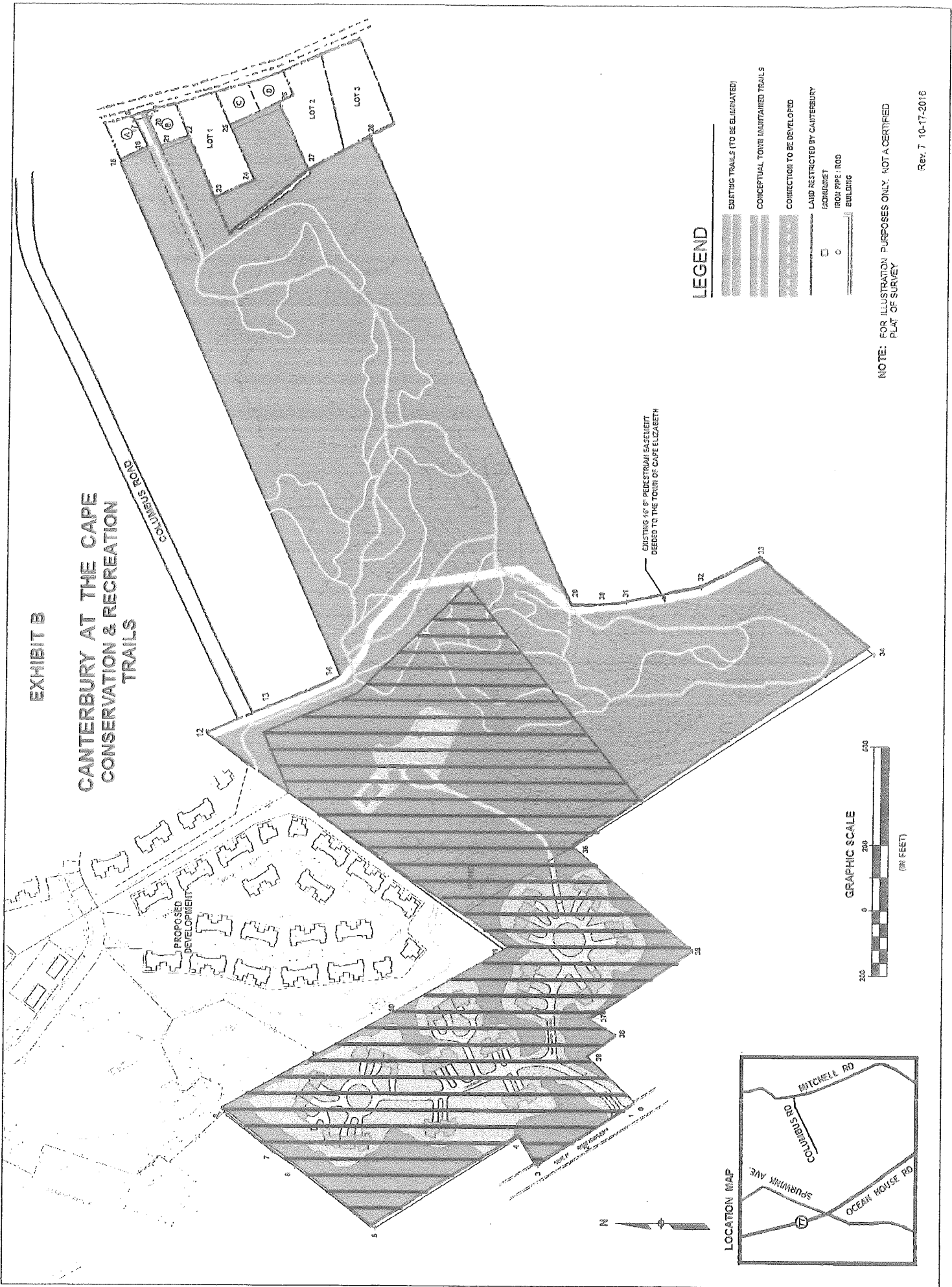
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EXHIBIT B

**CANTERBURY AT THE CAPE
CONSERVATION & RECREATION
TRAILS**



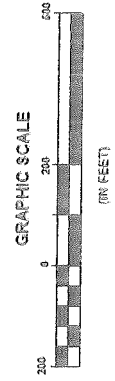
LEGEND

- EXISTING TRAILS (TO BE ELIMINATED)
- CONCEPTUAL TOUR MAINTAINED TRAILS
- CONNECTION TO BE DEVELOPED
- LAND RESTRICTED BY CANTEBURY
- FACILITY
- IRON PIPE: ROD
- BUILDING

NOTE: FOR ILLUSTRATION PURPOSES ONLY. NOT A CERTIFIED
PLAN OF SURVEY

Rev. 7 10-17-2016

PROPOSED
DEVELOPMENT



LOCATION MAP

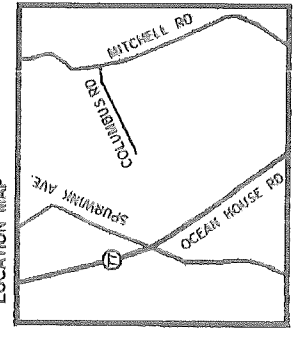


EXHIBIT C
CANTERBURY AT THE CAPE
RESTRICTED AREA

