

**CONSERVATION EASEMENT DEED AND INDENTURE
ARROWHEAD FARMS, A CONDOMINIUM**

THIS CONSERVATION DEED AND INDENTURE is made this 21st day of October 2006, by Arrowhead Farms, LLC, hereinafter referred to as the "Grantor."

WHEREAS, this Conservation Easement is being given to the Holder to satisfy a condition of approval imposed by the Town of Brunswick Planning Board in the approval of the Arrowhead Farms, a Condominium. This Conservation Easement is being granted to meet conditions of approval voted by the Planning Board.

WHEREAS, Grantor holds title to approximately 24 acres of real property situated on River Road, in Brunswick, Cumberland County, Maine, described in the legal description attached hereto and made a part hereof at EXHIBIT A, and as more particularly described as "Conservation Easement A" and "Conservation Easement B" on the attached survey entitled "Subdivision Plan, For Arrowhead Farms, LLC, Brunswick, Maine", for Scott Ainsworth, dated September 26, 2005 recorded in the Cumberland County Registry of Deeds in Plan Book 206 Page 54, attached hereto and made a part hereof at EXHIBIT B (the "Property" or the "Protected Premises").

WHEREAS, in connection with the plan to establish up to fourteen (10) new dwellings and plan to develop private roadways across the property from River Road the Grantors wish to protect, in perpetuity, the natural, scenic, open space, recreational, wildlife and aesthetic values of the Property (the "Protected Premises") depicted as Conservation Easements totaling 13.4 Acres, more or less, as shown on a plan entitled "Subdivision Plan, For Arrowhead Farms, LLC, Brunswick, Maine", for Scott Ainsworth, dated September 26, 2005 and recorded at the Cumberland County in Plan Book 206, Page 54.

WHEREAS, Holder is qualified and willing to accept the grant of this Conservation Easement Deed and Indenture pursuant to Internal Revenue Code, 26 U.S.C.A. §170(h)(3), and the Maine Uniform Conservation Easement Act, 33 M.R.S.A. §476 et seq.;

In consideration of the foregoing and the covenants herein contained, Grantor does hereby GRANT WITH WARRANTY COVENANTS to Holder, its successors and assigns, a conservation easement over the Protected Premises, subject to the reservation of rights unto Grantors for the benefit of the Protected Premises and the remainder of the Property, and grants to Third Party, its successors and assigns, right of enforcement of such conservation easement in the event of Holder's failure to enforce, all as follows:

1. PURPOSE. The purpose hereof is to preserve and protect in perpetuity the natural, scenic, open space, recreational, wildlife and aesthetic values of the Protected Premises, through the continuation of responsible conservation practices and recreational uses.

2. AFFIRMATIVE RIGHTS CONVEYED TO THE HOLDER. Grantors convey to Holder the following affirmative rights:

- a. The right to identify, to preserve and to protect in perpetuity the natural, scenic, open space, recreational, wildlife and aesthetic values of the Protected Premises.
- b. Upon advance written notice to the Grantors, the right to enter upon the Protected Premises not more often than once a quarter in any manner that will not unreasonably interfere with the permitted uses being made of the Protected Premises, for the sole purposes of inspection and to take any action as may be necessary, with or without order of Court, to remedy or abate any violation thereof; provided, however, in the event Holder has a reasonable belief that there has been, or there is ongoing, a violation of this easement, Holder may enter the Protected Premises at reasonable intervals to assess and see to the remediation of such violation. Such written notice shall not be required of the Holder in the exercise of its rights with respect to inspections of the 14 foot easement described in paragraph 16 below.
- c. The right to enforce the covenants herein set forth.
- d. The right of the Protected Premises to be free of any taint, corruption or pollution of whatever character arising from any use of the Protected Premises in a manner not permitted hereunder.

2-A. The Town of Brunswick shall have the right to construct and, once constructed the obligation to maintain a 14 foot wide easement for use by pedestrians and by persons with disabilities at such time as the planned recreational path along the Androscoggin River abuts either side of the property subject to this Conservation Easement. Said path shall be used exclusively for travel by pedestrians and persons with disabilities and shall be constructed only within the Conservation Easement. The Holder may construct within the 14-foot easement signs and benches, and may access the public easement for its construction, maintenance and repairs with motorized equipment. Any other use of said easement shall be prohibited. Said easement shall in no event be constructed closer than fifty (50) feet from the boundary of any condominium in Arrowhead Farms so-called.

3. STRUCTURES. No permanent, temporary or seasonal structures shall be permitted upon the Protected Premises, except that Grantors reserve unto themselves the following rights with respect to structures upon the Protected Premises:

- e. The right to construct, maintain, repair and replace perimeter fencing as needed to protect and preserve wildlife, aesthetic and recreational resources and for the protection and/or preservation of the Protected Premises.
- f. The right to construct, maintain, repair and replace boundary monuments and non-commercial directional, cautionary, informational or instructional signage.
- g. The right to post the boundaries and perimeter of the Protected Premises with appropriate signage to prohibit trespass and trespass for the purposes of hunting, trapping and to prohibit motorized vehicles on the Protected Premises.

4. ACCESS DRIVEWAYS and UTILITIES. There shall be no roads, ways or

driveways constructed or created on the Protected Premises. Except as provided on the approved plans.

5. **SURFACE ALTERATIONS.** No filling, dumping, excavation or other alterations shall be made to the surface of the Protected Premises other than caused by the forces of nature, except that Grantors reserve unto themselves the following rights:

- h. The right to construct, maintain, recover, repair and replace walking paths that provide access for permitted purposes, in a manner intended to minimize material and permanent adverse impact upon the Protected Premises.

6. **TREE CUTTING AND VEGETATION.** The destruction or removal of standing trees, plants, shrubs or other vegetation upon the Protected Premises shall not be permitted, except that Grantors reserve unto themselves the following rights:

The right to cut trees in accordance with the Clearing of Vegetation for Development standards 211.2.D as specified in the December 18, 2002 Town of Brunswick Zoning Ordinance.

The right to cut trees to extend the walking paths to the Androscoggin River, as allowed by law.

7. **PROHIBITED ACTIVITIES.** The Protected Premises shall not be used for the following purposes:

- i. Clear-cutting of forest or the practice of intensive forestry and silviculture.
- j. Agricultural uses including but not limited to animal husbandry and the growing of crops.
- k. Quarrying or mining activities, including but not limited to the stripping of loam or other soil strata.
- l. Placement or use of trailers or campers, provided that such prohibition shall not prevent Grantors, their heirs or assigns, from erecting tents or building not more than one tree house for occasional and temporary non-commercial camping or recreational purposes.
- m. Billboards, antennae or telecommunications apparatus that are visible from any adjacent lot or parcel of land or any public or private road or driveway.
- n. No motor vehicles of any kind, including recreational vehicles, all-terrain vehicles, motorcycles, dirt bikes and snowmobiles shall be permitted on the property, except in emergency and when necessary to accomplish permitted uses of the property.
- o. No horseback riding.

8. **RESERVED RIGHTS.** Grantors reserve unto themselves, as owners of the Protected Premises, the right to use (or to regulate or prohibit use of) the Protected Premises for all purposes not inconsistent with rights of Holder under this grant, including but not limited to:

- o. The right to regulate, control or prohibit hunting or trapping of animals by any

- means, including the posting of the Protected Premises;
- p. The right to regulate, control and prohibit the taking of flora and fauna specimens from the Protected Premises;
 - q. The right to regulate, control or prohibit the use of certain motorized vehicles on the Protected Premises; and,
 - r. The right to regulate recreational uses such as camping, walking, hiking, bicycling, skiing; gardening and the use of the Protected Premises by pets and domesticated animals; provided, however, all signs prohibiting non-motorized access to the Protected Premises shall be approved by the Holder which approval will not be unreasonably withheld. The failure of the Holder to grant or deny approval of Grantor's request for approval of signage prohibiting non-motorized access within thirty (30) days of the Holder's receipt of Grantor's request shall be deemed to be approval of the request. If the Grantors erect such signs to prevent or control the imminent threat of damage or injury to the Protected Premises or themselves and/or their families and their guests and invitees, no such advance approval shall be necessary, however notice of the same shall be given to Holder as soon thereafter as reasonably possible.
9. CONSTRUCTION. If uncertainty should arise in the interpretation of this easement, judgment should be made in favor of (a) conserving the Protected Premises in its natural, scenic or open state and (b) preserving the use of the Protected Premises for recreational, wildlife and aesthetic purposes while permitting full use of the driveway and utility rights reserved to the Grantors. Nothing herein shall be construed to permit any activity otherwise prohibited by the valid laws and regulations of any federal, state or local government or government agency having competent jurisdiction over the Protected Premises.
10. PUBLIC ACCESS. This easement does not confer upon the public a right of access to the Protected Premises. It is for the sole use of the Homeowners Association.
11. MONITORING. Holder, its successors and assigns, shall make reasonable efforts from time-to-time to assure compliance by Grantors with all of the covenants and restrictions herein. In exercising its access rights for inspection of the Protected Premises, Holder shall prepare, keep on file and make available to Grantor their monitoring reports for each inspection.
12. ENFORCEMENT. In the event Holder becomes aware of an event or circumstance of noncompliance with the terms and conditions herein set forth, Holder shall give notice to Grantors of such event or circumstance of noncompliance via certified mail, return receipt requested, and demand corrective action sufficient to abate such event or circumstance of noncompliance and sufficient to restore the Protected Premises to its condition prior to the breach. Failure by Grantors, their heirs or assigns, with reasonable speed to cause discontinuance, abatement or such other corrective action as may be demanded by Holder, shall entitle Holder, at its discretion, to enter the Protected Premises to take such action reasonably necessary to effect such correction without court order, to bring action at law or in equity in a court of competent

jurisdiction to enforce the terms hereof, to obtain injunctive relief and to recover any damages arising from such noncompliance. If a court determines a breach thereof, Grantors, shall reimburse Holder for any reasonable costs of restoration, correction and enforcement, including without limitation court costs and reasonable attorney fees. Nothing contained herein shall be construed to preclude Grantors from exhausting their legal remedies to determine whether the event or circumstance to which Holder objected was in fact not in compliance with the terms hereof. Language herein to the contrary notwithstanding, the Grantors shall not be liable, accountable or subject to damages to the Holder or any other party with standing as a Holder for any failure to remediate, abate or stop any activity on, or use of, the Protected Premises by third parties unless the Holder and its successors and assigns establish by a preponderance of the evidence that the Grantors had knowledge of the event or activity and, having such knowledge, failed to make any reasonable effort to prevent further or recurrent events or activity.

13. ESTOPPEL CERTIFICATES. Holder shall, within thirty (30) days after written request of Grantors, their heirs, successors and assigns, to execute, acknowledge and deliver a written certificate in a form suitable for recordation stating that the Grantors are in compliance with the terms hereof, or stating what violations hereof may then exist.
14. COST AND TAXES. Grantors agree to bear all cost and responsibility of operation, upkeep and maintenance of the Protected Premises and do hereby relieve, indemnify and hold harmless Holder and its officials, in their official and individual capacities therefrom. In addition, Grantors agree to pay any and all real property taxes and assessments levied by competent authority on the Protected Premises. However, nothing contained herein shall preclude Grantors from delegating the responsibility for payment of all costs as aforesaid and the responsibility for operation, upkeep and maintenance of the Protected Premises to any other party with an interest in the Protected Premises or in the remainder of the Property benefiting from the reservation of rights hereunder.
15. GRANT IN PERPETUITY. The conservation easement herein granted shall be a burden upon and shall run with the Protected Premises in perpetuity and shall bind Grantors and their heirs and assigns forever. A copy of the restrictions contained herein or incorporation by reference hereof shall be included in any subsequent deed or legal instrument by which Grantors convey any interest (including a leasehold) in the Protected Premises.
16. SUBSEQUENT TRANSFEREES. By acceptance hereof, Holder covenants and agrees, as real covenants running with the land in perpetuity, and not as conditions hereof or as restraints on alienability: (a) that it will hold the conservation easement hereunder in perpetuity for conservation purposes; (b) that it will not transfer rights and obligations hereunder, except to an entity which, as a condition precedent to such transfer, gives Holder and the Grantors assurances that it is committed to the conservation purposes hereof and is able to and agrees to enforce the rights granted

herein; and (c) that any such transferee shall be a "Qualified Organization" under Section 170(h)(3) of the Internal Revenue Code and a qualified "holder" under the Maine Uniform Conservation Easement Act, 33 M.R.S.A. §476 et seq., as amended. The rights and obligations of Holder hereunder may not be transferred in any event except with the prior consent of Grantors, which consent shall not be unreasonably withheld.

17. NOTICE. All notices and other communications authorized or required hereunder shall be in writing and shall be effective only if sent by certified United States mail, return receipt requested. Notice shall be effective when received.

s. All notices to the Grantors and their respective heirs, assigns and agent shall be sent to them at the following addresses or such different address as the Grantors, their heirs and assigns, or their agent shall provide to the Holder using the procedures for giving notice to the Holder:

i. Arrowhead Farms Homeowners Association
c/o Paul M. Benard
68 Carriage Lane
Brunswick, ME 04011

t. Notice to Holder shall be sent to the Town Manager or other chief executive officer, at the Town, office at the following address or such different address as the Holder and its successors and assigns shall provide to the Grantors, using the procedures for giving notice to the Grantors:

TOWN OF BRUNSWICK
Municipal Office Building
28 Federal Street
Brunswick, Maine 04011

18. CONSENT OR APPROVAL OF HOLDER.

u. To the extent the word "Holder" as used herein shall mean and refer to the Holder as a municipality, and in all events where the consent or approval of the Holder is required and no municipal permit is also required, the approval or consent of the Holder shall be sought by an application to the chief executive officer of the municipality or its successor (e.g., Town Manager). Except as may otherwise be specified herein, when the approval or consent of the Holder is required for an action or activity that does not otherwise require a municipal permit, the Holder shall have sixty (60) days from the date a request for approval or consent is made by the Grantors to consider the request, and Holder's failure to deny such request within said sixty (60) day period and any permitted extension period shall be deemed to evidence Holder's consent to the request. If Holder denies any such request, to be effective as a denial, the denial shall be in writing and shall contain the reasons for denial and findings of fact upon which the denial is based. To be

effective, the denial of a request for approval or consent shall be signed by the Town Manager or other chief executive officer of the Holder.

- v. Permits. To the extent the word "Holder" as used herein shall mean and refer to the Holder as a municipality, and to the extent an activity or use requires a permit from the Codes Enforcement Office, the Planning Board or other municipal office for any permitted use, the seeking of the permit shall not be interpreted to expand the rights of the Holder.

Conversely, to the extent Grantors are issued a permit from the Codes Enforcement Office, the Planning Board or other municipal office for an activity or use which is not permitted under this Easement, the issuance shall not be interpreted to expand the rights of the Grantors under this Easement, and shall not be interpreted to prevent the Holder from pursuing available remedies for the wrongful issuance.

19. MISCELLANEOUS.

- w. The term "Grantors", wherever used herein, and any pronouns used in place thereof, shall mean and include, unless repugnant to the context, the above-named Grantors and their heirs and assigns and all persons hereafter claiming by, under or through said Grantors whether or not such persons executed this Conservation Easement Deed and Indenture or had an interest in the Protected Premises or the remainder of the Property as of the execution hereof; notwithstanding the foregoing, such a person shall have no obligation by virtue hereof, if and when such person shall cease to have any present, partial, contingent, collateral or future interest in the Protected Premises or any portion thereof by reason of a bona fide transfer for value (or upon transfer by demise or dissolution), provided such entity shall have received an estoppel certificate from Holder as of the date of such transfer indicating compliance with the terms hereof.
- x. The word "Holder" shall mean and refer to the Town of Brunswick or its designee, such as the Conservation Commission, and the assigns of the Town of Brunswick.
- y. In the event that the Protected Premises or portions thereof are owned by multiple parties and their assigns or they are multiple tenants in common or they otherwise own the Protected premises or any portion thereof in fractional interests, the exercise of a permitted or reserved right or use under this Easement shall require the consent of those persons collectively owning at least a majority interest in the Protected Premises based upon the record ownership in the Cumberland County Registry of Deeds.
- z. The fact that any of the uses prohibited herein, or other uses not mentioned, may become greatly more economically valuable than the permitted uses, or that neighboring properties may in the future be put entirely to such non-permitted uses, has been considered by Grantors in granting this perpetual easement. It is Grantors' belief that any such changes will increase the benefit to the public of the continuation of this Conservation Easement Deed and Indenture and it is the intent of Grantors and Holder that any such changes

should not be deemed to be changed conditions permitting termination hereof.

- aa. If any provisions hereof or the application thereof to any person, partnership or corporation or circumstance is found to be invalid, the remainder of the provisions hereof and the application of such provisions to persons, partnerships or corporations or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.
- bb. Grantors and Holder agree that this Conservation Easement Deed and Indenture gives rise to a property right which vests immediately in Holder and which, for the purposes of this paragraph, has a fair market value equal to the amount by which the fair market value of the unrestricted Protected Premises, on the date of the execution hereof, is reduced by the restrictions imposed hereby. Should this Conservation Easement Deed and Indenture be extinguished by judicial decree or the powers of eminent domain and Grantor thereafter sells, exchanges or receives payment for any part or whole of the then unrestricted Protected Premises, Holder shall be entitled to a portion of the proceeds of such a sale, exchange, or involuntary conversion, at least equal to the proportion that the value hereof, as calculated above, bore to the value of the unrestricted Protected Premises on the date of the execution hereof. Such proceeds shall be used by Holder for its conservation purposes.

TO HAVE AND TO HOLD the said conservation easement as aforesaid unto the said Holder, and its successors and assigns forever, subject to such reservation of rights unto Grantors, their heirs and assigns.

AND GRANTORS DO COVENANT with Holder, and its successors and assigns, that they are lawfully seized in fee of the premises, and that the premises are free of all encumbrances; that they have good right to convey the same to the said Holder to hold as aforesaid; and that they and their heirs and assigns shall and will WARRANT AND DEFEND the same to the said Holder, its successors and assigns, forever, against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 21st day of October, 2006.

Arrowhead Farms, LLC

By: 

~~Paul M. Benard~~, Member
Grantor

Anthony P. Bettencourt

HOLDER'S ACCEPTANCE.

The above and foregoing Conservation Easement Deed and Indenture was authorized to be accepted by the Town of Brunswick, Holder as aforesaid, and the said Holder does hereby accept the foregoing, by and through its Town Council, thereunto duly authorized, this 20th day of November 2006.

THE TOWN OF BRUNSWICK

By:

Donald H. Gernick

Print Name:

DONALD H. GERNICK

Title:

TOWN MANAGER

STATE OF MAINE

County of Cumberland, ss.

_____, 2006

Personally appeared, before me, the above-named Paul M. Bernard and Anthony P. Bettenkort acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Arrowhead Farms, LLC.

CARRIE J. MURPHY

Notary Public, Maine

My Commission Expires March 19, 2011

Before me,

Carrie J. Murphy
Notary Public

Print name

Date commission expires

STATE OF MAINE

County of Cumberland, ss

Oct. 31, 2006

Personally appeared, before me, the above-named Donald H. Gernick, as Town Manager of the TOWN OF BRUNSWICK, and acknowledged the foregoing instrument to be his or her free act and deed and the free act and deed of the TOWN OF BRUNSWICK.

Before me,

Frances M. Smith
Notary Public

Print name

11/23/2008
Date commission expires