

CONSERVATION EASEMENT DEED AND INDENTURE
MOODY ROAD SUBDIVISION

THIS CONSERVATION DEED AND INDENTURE is made this 9th day of September, 2005, Joseph P. Klocek, Jr., Ogunquit, Maine, 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 Moody Road Subdivision. This Conservation Easement is being granted to meet conditions of approval voted by the Planning Board.

WHEREAS, Grantor holds title to approximately 15.71 acres of real property situated on Moody 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 on the attached survey entitled "Subdivision Plan, Section 1, Moody Road Subdivision, Brunswick, Maine", for Harold Sandelin and Joseph Klocek, dated August 9, 2005 to be recorded in the Cumberland County Registry of Deeds, 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 (14) new dwellings and plan to develop both public and private roadways across the property from Moody Road the Grantors wish to protect, in perpetuity, the natural, scenic, open space, recreational, wildlife and aesthetic values of the Property (the "Protected Premises") defined as a "Conservation Easement, 15.71 Acres" as shown on a plan entitled "Subdivision Plan, Section 1, Moody Road Subdivision, Brunswick, Maine", for Harold Sandelin and Joseph Klocek, dated August ~~9~~²⁴, 2005 and recorded at the Cumberland County in Plan Book ~~205~~ Page 606.

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, Grantors do 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.
 - 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.
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:
 - a. 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.
 - b. The right to construct, maintain, repair and replace boundary monuments and non-commercial directional, cautionary, informational or instructional signage.
 - c. 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.
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:
 - a. 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.

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

- a. Clear-cutting of forest or the practice of intensive forestry and silviculture.
- b. Agricultural uses including but not limited to animal husbandry and the growing of crops.
- c. Quarrying or mining activities, including but not limited to the stripping of loam or other soil strata.
- d. 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.
- e. Billboards, antennae or telecommunications apparatus that are visible from any adjacent lot or parcel of land or any public or private road or driveway.
- f. 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.

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:

- a. The right to regulate, control or prohibit hunting or trapping of animals by any means, including the posting of the Protected Premises;
- b. The right to regulate, control and prohibit the taking of flora and fauna specimens from the Protected Premises;
- c. The right to regulate, control or prohibit the use of certain motorized vehicles on the Protected Premises; and,
- d. The right to regulate recreational uses such as camping, walking, hiking, bicycling, horseback riding, 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.
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 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.

- a. 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. Joseph P. Klocek, Jr.
P.O. Box 1408
Ogunquit, ME 03907-1408

- ii. Harold Sandelin
P.O. Box 224
Topsham, ME 04086

- b. 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.

- a. 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.
- b. 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.

- a. 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.
- b. 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.
- c. 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.
- d. 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.
- e. 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.

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 Manager, thereunto duly authorized, this 24th day of ~~September~~ October, 2005.

THE TOWN OF BRUNSWICK

By: Donald H. Gerrish
Print Name: DONALD H. GERRISH
Title: Town Manager

STATE OF MAINE
County of Cumberland, ss.

_____, 2005

Personally appeared, before me, the above-named Joseph Kloczek and acknowledged the foregoing instrument to be ☒ free act and deed.

Before me,

Maureen B. St. John
Notary Public
Maureen B. St. John

Print name

12/31/2006
Date commission expires

MAUREEN B. ST. JOHN
Notary Public, Maine
My Commission Expires December 30, 2006

STATE OF MAINE
County of Cumberland, ss

919, 2005

Personally appeared, before me, the above-named Donald H. Gerrish, 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,

Barbara T. Pecci
Notary Public
Barbara T. Pecci

Print name

BARBARA T. PECCI
Notary Public
Date commission expires
My Commission Expires January 12, 2008

EXHIBIT A

A certain area of private land thereon, situated in the proposed Moody Road Subdivision located of Moody Road Street, in the Town of Brunswick, County of Cumberland and State of Maine, and being more particularly described as follows:

BEGINNING at the northerly most corner of land now or formerly of Joseph Klocek (Deed References: Book 3213, Page 876; Book 4964, Page 143; and Book 12550, Page 24);

THENCE, S 44°46'21" E, along the southwesterly line of land now or formerly of The Lot Two Green Realty Trust (Deed Reference: Book 12550, Page 32), a distance of 25.09' to an iron pin found;

THENCE, continuing S 44°46'21" E, along the southwesterly line of said The Lot Two Green Realty Trust, a distance of 632.18' to an iron pin found;

THENCE, S 56°25'49" W, along the northwesterly line of said The Lot Two Green Realty Trust, a distance of 139.77' to an iron pin found;

THENCE, S 49°59'21" E, along the southwesterly line of said The Lot Two Green Realty Trust, a distance of 670.22' to an iron pin found;

THENCE, S 51°16'49" W, along the northwesterly line of said The Lot Two Green Realty Trust and land now or formerly of the Maine Department of Transportation (Deed Reference: Book 2294, page 107), a distance of 1616.62' to an iron pin found;

THENCE, N 42°27'20" W, along the northeasterly line of land now or formerly of Christine L. Mason (Deed Reference: Book 16305, Page 119), a distance of 98.95' to the southerly most corner of the Lot 8 as shown on a plan entitled "Subdivision Plan, Section I, Moody Road Subdivision, Brunswick, Maine" dated August 9, 2005, to be recorded at the Cumberland County Registry of Deeds;

THENCE, N 51°16'50" E, along the southeasterly line of said Lot 8, a distance of 511.01' to an iron rod to be set;

THENCE, N 68°33'55" W, along the northeasterly line of said Lot 8, a distance of 121.22' to an iron rod to be set at the southerly most corner of Lot 6 as shown on said plan;

THENCE, N 51°16'50" E, along the southeasterly line of said Lot 6, a distance of 309.90' to an iron rod to be set;

THENCE, N 67°43'15" W, along the northeasterly line of said Lot 6, a distance of 348.30' to a monument to be set on the southeasterly sideline of Manwaring Way;

THENCE, in a generally northeasterly and northerly direction along a non-tangent 75.00' radius curve that is concave to the west, a distance of 90.54' feet to an iron rod to be set at the southerly most corner of Lot 5 as shown on said plan;

THENCE, N 52°33'00" E, along the southeasterly line of said Lot 5, a distance of 623.76' to an iron rod to be set;

THENCE, N 37°07'00" W, along the northeasterly line of said Lot 5, a distance of 215.00' to an iron rod to be set;

THENCE, N 52°33'00" E, through other land of said Kloceck, a distance of 218.70' to an angle point;

THENCE, N 37°07'00" E, through other land of said Kloceck, a distance of 546.95' to a point;

THENCE, N 54°43'39" E, , a distance of 39.99' to the point of beginning.

Containing 15.71 acres, more or less.

**USE OF THIS DESCRIPTION ACKNOWLEDGES UNDERSTANDING AND
ACCEPTANCE OF THE FOLLOWING NOTES & CONDITIONS:**

NOTES & CONDITIONS:

1. All bearings refer to Magnetic North, as observed 2004.
2. All Book and Page Numbers refer to the Cumberland County Registry of Deeds (CCRD).
3. Any use of this description shall be done so under the advise of legal counsel in regards to the limitations noted above and to make certain that the grantor of the parcel described above is the record owner with good and marketable title, free and clear of all encumbrances, and that all easements, exceptions, right-of-ways and other encumbrances of record are dully noted and that all parties at interest are identified.