

DAMARIN LANE #4

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATIVE EASEMENT is made this 12 day of January, 1994, by NINVEST of Maine, Inc., of the Town of Brunswick, Cumberland County, Maine, (hereinafter referred to as the "Grantor"), in favor of the Town of Brunswick, Maine, (hereinafter referred to as the "Holder") and The State of Maine by and through its Department of Environmental Protection, (hereinafter referred to as the "Third Party").

WITNESSETH

WHEREAS, this Indenture is created pursuant to Title 33, Maine Revised Statutes, Sections 476 through 479-B, inclusive, as amended; and,

WHEREAS, the Grantor holds title to certain real property situated in Brunswick, Maine (hereinafter referred to as the "Property") being a portion of the parcel described in a deed to the Grantor recorded in the Cumberland County Registry of Deeds, at Book 9851, Page 338, and further described on a plan entitled "Standard Boundary Survey & Final Subdivision Plan of Sydney Lane Subdivision, Mere Point Road & Rossmore Road, Brunswick, Maine for Moose Run Company" by Brian Smith Surveying, Inc. which plan is dated January 28, 1989 and recorded in the Cumberland County Registry of Deeds at Plan Book 177, Page 3; and,

WHEREAS, the property remains in a substantially undisturbed natural state and has significant aesthetic and ecological value; and,

WHEREAS, the Grantor and the Holder, recognizing the value of the Property as described above, have the common purpose of conserving the natural values of the property by the conveyance of a Conservation Easement over the Property, which easement shall benefit, protect and conserve the natural values of the Property, conserve and protect the indigenous animal and plant populations, and prevent the use or development of the Property for any purpose or in any manner that would conflict with its natural, scenic condition; and,

WHEREAS the Third Party will receive Third Party Rights of enforcement under this Deed; and,

NOW, THEREFORE, in consideration of the foregoing and the covenants, terms, conditions, and restrictions herein contained, the Grantor hereby GRANTS to the Holder, its successors and assigns, as an absolute and unconditional gift, forever and in perpetuity a Conservation Easement over the Property as set forth herein (the "Conservation Easement"); and to the Third Party, its successors and assigns, as an absolute and unconditional gift, forever and in perpetuity, rights of enforcement hereunder.

1. PURPOSE: It is the purpose of this Easement to assure that the Property will be retained forever in its natural undeveloped condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities as are consistent with the purpose of this Easement.

2. RIGHTS OF HOLDER: To accomplish the purpose of the Easement the following rights are conveyed to Holder by this easement:

a. the right to preserve and protect the conservation values of the property;

b. the right to enter and inspect the Property over other lands of the Grantor at any reasonable time and in any reasonable manner provided that the time and manner of such entry does not unreasonably interfere with the uses of the Property permitted hereunder or the quiet enjoyment of other lands of Grantor, the Holder has the right to enforce the covenants at law or in equity, including the right to require restoration of the property to its condition prior to any breach thereof. If a court determines that the Grantor, its successors and assigns, have failed to comply with the covenants, the Grantor, its successors and assigns, shall reimburse the holder for any reasonable damages and costs of enforcement, including court costs and attorneys fees, in addition to any other payments ordered by such court: and

c. the right to prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the property that may be damaged by any inconsistent activity or use.

3. USE OF THE PROPERTY: The Property shall be used for limited recreational and conservation purposes only. No commercial, industrial, quarrying, mining, or forestry activities shall be permitted on the Property. No structures or facilities of any kind whatsoever shall be constructed on the Property, except walking paths designed in keeping with the natural scenic quality of the Property and approved in advance by the Brunswick Conservation Commission. 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 the rights reserved by Grantor and Holder, its successors and assigns. No filling, paving, dumping, excavation or other alteration shall be made to the surface of the Property other than that caused by the forces of nature. Any activity on or use of the Property inconsistent with the purposes of the Easement is prohibited.

4. RESERVED RIGHTS: Grantor reserve to themselves, and to their successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of the Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

The right of the Grantor, its guests, employees and invitees, to use the Property for recreational purposes which may include hiking, picnicking, bird watching and any other use that is not expressly prohibited above or destructive to the natural values to be conserved herein.

5. CUTTING OF TIMBER AND VEGETATION: The destruction or removal of standing timber, plants, shrubs or other vegetation shall not be permitted, except however, there are retained in the Grantor the following rights:

a. The right to clear and restore forest cover and other vegetation that is damaged or destroyed by the forces of nature, such as fire or disease, and when necessary to prevent the spread of disease, all with the prior approval of the Brunswick Conservation Commission.

b. The right to clear and restore forest cover and other vegetation, in the event of an emergency, when necessary to prevent the spread of fire.

c. The right to gather, use or remove fallen dead wood and the right to harvest timber by uneven-aged selection methods designed to maintain a healthy stand of trees and retain the natural character, bio-diversity and habitat value of the area. All timber harvesting must be done in accordance with a harvesting plan prepared by a licensed forester and approved in advance by the Brunswick Conservation Commission.

6. RIGHTS OF THE THIRD PARTY: The Grantor hereby grants to the Third Party the same inspection and enforcement rights as are granted to the Holder under this easement. However the Parties hereto intend that the Holder shall be primarily responsible for the enforcement of the Easement, and that the Third Party will assume such responsibility only if the holder shall fail to enforce it. If the Third Party shall determine that the Holder is failing in such enforcement, the Third Party may give notice of such failure to the holder and the Grantor, and if such failure is not corrected within a reasonable time thereafter, the Third Party may exercise, in its own name and for its own account, all the rights of enforcement granted the Holder under this Easement.

The Third Party shall also have reasonable access to any and all records of the Holder relevant to the Property.

7. CONSTRUCTION: If uncertainty should arise in the interpretation of these restrictions, judgment should be made in favor of conserving the Property in its natural, open, and scenic condition.

8. COSTS AND INDEMNIFICATION: The Grantor agrees to bear all costs and responsibility of ownership, control, operation, upkeep, and maintenance of the Property, and to pay any and all real property taxes and assessments levied by competent authority on the Property, and does hereby agree to defend, indemnify and hold harmless Holder therefrom, and from any claim or costs for personal or bodily injury, property damage or environmental damage incurred on the Property, unless proximately caused by Holder, its officers, directors, agents, or employees in the course of or arising out of Holder's discharge of its obligations hereunder.

9. BASELINE DATA, BOUNDARY MARKERS: The Grantor has provided the Holder with sufficient information to determine the condition of the Property as of the effective date hereof and has certified that such information is an accurate representation of the same. The Property boundaries have been or will be marked with boundary markers and sitelines which shall be maintained as necessary by the Grantor.

10. SUCCESSORS: The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and its successors and assigns and shall continue as a servitude running in perpetuity with the Property.

11. TERMINATION OF RIGHTS AND OBLIGATIONS: The Grantor's affirmative obligations under this easement terminate upon transfer of the Grantor's property, provided the property is in compliance with this easement at the time of transfer, and provided further that the new Grantor expressly agrees to assume the obligations of the Grantor under this easement. The Holder shall have the right to transfer its rights and obligations under this easement to a "Holder" as defined by Title 33, §476 (2), as that section may be amended. The Brunswick Conservation Commission shall be notified of any transfer of title to the Property within thirty days of the transfer.

TO HAVE AND TO HOLD the said Conservation Easement unto the said Holder and its successors and assigns forever and the said Third Party Rights unto the said Third Party and its successors and assigns forever.

IN WITNESS WHEREOF, the said grantor, NINVEST OF MAINE, INC., has hereunto set its hand and seal this 27 day of February, 1994, by                   , thereunto duly authorized

Ninvest of Maine, Inc.

By:                   

Its:                   

STATE OF MAINE  
Cumberland, ss.

2/24, 1994

Personally appeared the above named L. D. Smith, of Ninvest of Maine, Inc. and acknowledged the foregoing instrument to be      free act and deed and the free act and deed of Ninvest of Maine, Inc. in      said capacity.

HOLDER'S ACCEPTANCE

The above and foregoing Conservation Easement was authorized to be accepted by the Town of Brunswick, Holder as aforesaid, and the said holder does hereby accept the foregoing Conservation Easement, by and through

CITY OF BRUNSWICK, its Town Manager,  
hereunto duly authorized, this 14 day of February, 1994.

Town of Brunswick

Eliza M. Smith

By: Eliza M. Smith  
Its: Town Manager

STATE OF MAINE  
Cumberland, ss.

2/24, 1994

Personally appeared the above named Donald H. Gerish, of the Town of Brunswick and acknowledged the foregoing instrument to be      free act and deed and the free act and deed of the Town of Brunswick in      said capacity.

Melissa L. Smith

THIRD PARTY ENFORCER ACCEPTANCE

The third party rights of enforcement granted under the above and foregoing Conservation Easement, pursuant to Title 33 M.R.S.A. Section 476 et seq., were authorized to be accepted by the State of Maine Department of Environmental Protection by

Debrah J. Richard, its Acting Commissioner,

hereunto duly authorized and the said Debrah J. Richard  
does hereby accept the foregoing Conservation Easement this 20th  
day of May, 1994.

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: Martha Kirkpatrick  
Its Martha Kirkpatrick for Debrah J. Richard  
Acting Commissioner  
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