

## CONSERVATION EASEMENT DEED AND INDENTURE MILLER POINT

THIS CONSERVATION DEED AND INDENTURE is made this 21<sup>st</sup> day of March, 2000, between ROBERT C. KING, JR. and NANCY P. KING of 14 Knollwood Road, Short Hills, New Jersey 07078 (hereinafter referred to as the "Grantor") and the TOWN OF BRUNSWICK, a Maine municipality ("Holder").

WHEREAS, this Conservation Easement is being given to the Holder to satisfy an alternative condition of approval imposed by the Town of Brunswick Planning Board in the approval of the Grantors' application for the construction of a portion of a driveway within the setback from a high to moderate value wetland on an a parcel of land adjacent to the Protected Premises known as Miller Point [see minutes of Brunswick Planning Board dated March 9, 1999]. As voted by the Planning Board, this Conservation Easement is being granted in lieu of the Grantors' unilateral imposition of restrictive covenants on the Protected Premises that meet the other conditions of approval voted by the Planning Board.

WHEREAS, Grantors hold title to approximately one hundred fifteen and 4/10 (115.4) acres of real property situated on Miller Point, so called, on Middle Bay, between John's Point and Mere Point (hereinafter referred to as "Miller Point"), and approximately nine and eight tenths (9.8) acres of land known as Lots C and D on John's Point, on Middle Bay between Simpson's Point and Miller Point (hereinafter referred to as "John's Point"), in Brunswick, Cumberland County, Maine, described on the attached survey entitled "Standard Boundary Survey of Miller Point and John's Point Road & Simpson Point Road Brunswick, Maine", for Robert C. King, Jr. and Nancy P. King, by Owen Haskell, Inc., dated January 6, 2000, to be recorded in the Cumberland County Registry of Deeds, attached hereto and made a part hereof at EXHIBIT A (collectively referred to as the "Property" or the "Protected Premises") acquired by deeds recorded in the Cumberland County Registry of Deeds at: Book 14635, Page 301 [Miller Point]; Book 14635, Page 303; [Miller Point] and Book 14657, Page 47, [Lot D, John's Point]; and, Book 15254, Page 304, [Lot C, John's Point] reference is also made to "Amended Subdivision Plan of John's Point, Simpson Point Road, Brunswick, ME by Owen Haskell, Inc., dated March 4, 1999, to be recorded in the Cumberland

County Registry of Deeds [Lots C and D, John's Point] (hereinafter referred to as the "John's Point Plan"); and,

WHEREAS, in connection with the Grantor's plan to establish up to four (4) new dwellings on Miller Point (for a total of not more than five (5) dwellings on Miller Point, including the so-called Chase Homestead) and one (1) new dwelling on John's Point (sometimes referred to as the "permitted dwellings"), the delivery to the Holder of a conservation easement on the adjacent land heretofore owned by John's Point Association (hereinafter referred to as the "John's Point Common Land") by the Grantors and Gregory A. Kelly, MD and Lynda L. Kelly; the Grantors' development of a common access driveway (hereinafter referred to as "driveway") across the said adjacent John's Point Common Land from Simpson's Point Road to the Protected Premises, the Grantors wish to protect, in perpetuity, the natural, scenic, open space, recreational, wildlife and aesthetic values of the Property, for the benefit of the Protected Premises, the adjacent land owned by the Grantors and others on John's Point, the Town of Brunswick, and the protection of the Protected Premises' conservation values; and,

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, 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. For the purpose of this Conservation Easement the Protected Premises are defined as those areas of the Property not containing accessory and appurtenant structures to the permitted dwellings, septic systems and their components, driveways, turnouts and turnarounds.

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 of this Easement; 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. RESERVED RIGHTS, RESIDENTIAL STRUCTURES and USES. By this Conservation Easement as more particularly set forth in this instrument, the Grantors reserve certain rights to construct, conserve, raze repair and maintain structures within the Development Areas shown on Exhibit A (individually sometimes hereinafter referred to as "Area" followed by the area number appearing on Exhibit A) and to utilize the Development Areas to the fullest non commercial residential potential permitted by the applicable land use ordinances and regulations. The rights reserved by the Grantors with respect to the Development Areas are to utilize the Development Areas for any residential purposes and uses permitted by the Town of Brunswick, State of Maine and federal land use ordinances, statutes and regulations and on three (3) Areas to construct therein not more than five (5) single family dwellings in the aggregate (three (3) within Area 1, one (1) within Area 2 and one (1) west of Miller Creek in Area 3), together with all appurtenant structures permitted in the zone within which the Development Areas are located. As used herein, the words "non commercial" shall not be construed to prevent the owner of any permitted dwelling to rent the dwelling or portions thereof for residential use or to prevent the use of a dwelling for any at-home business or home occupation that is permitted by the Town of Brunswick land use ordinances in the applicable zoning district and, to the extent the use is

conducted on the Protected Premises, the use is substantially conducted within the dwelling.

a) Except as reserved by the Grantors herein, no permanent, temporary or seasonal structures shall be permitted upon the Protected Premises. The Grantors reserve to themselves the following rights with respect to development of the Protected Premises:

- i) **Area 1.** In Area 1, Grantors may create not more than three (3) lots, each meeting the standards of the Town of Brunswick and State of Maine land use ordinances, statutes and regulations for a lot within that zoning district without the review or approval of the Holder under this Easement. Within Area 1 the Grantor reserves the right to site, construct, maintain, repair, alter, renovate, remove and replace up to three (3) dwellings together with permitted structures as permitted by the Town of Brunswick land use ordinances. The Grantor reserves the right to construct a total of not more than two (2) docks, including cribbing and piers, on Areas 1 and 2 combined.
- ii) **Area 2.** The Grantors reserve right to site, construct, maintain, repair, alter, renovate, remove and replace one (1) dwelling together with permitted structures on the Protected Premises east of Miller Creek within Area 2 as shown on Exhibit A, as permitted by the Town of Brunswick land use ordinances. The Grantor reserves the right to construct a total of not more than two (2) docks, including cribbing and piers, on Areas 1 and 2 combined.
- iii) **Area 3.** The Grantors reserve the right to create a building lot on the Protected Premises west of Miller Creek (between Miller Creek and Mere Point Road), in Area 3, as depicted on Exhibit A, and to site, construct, maintain, repair, alter, renovate, remove and replace thereon up to one (1) dwelling and permitted structures and the right to construct, maintain, repair and replace a driveway to the dwelling from Mere Point Road or the existing gravel driveway serving the Chase home.
- iv) **Area 4.** Within Area 4, as shown on Exhibit A, the Grantors reserve the right to maintain, repair, alter, remove, restore, replace, and renovate the existing farm house and all ells and outbuildings, including septic systems and wells and to site, construct, maintain, alter, repair, remove and reconstruct permitted structures on the Protected Premises west of

Miller Creek, commonly known as the "Chase home" or the "Homestead," [see Motion of Approval with Conditions, Brunswick Planning Board, March 9, 1999]. This reserved right includes the right to raze all or part of the structure of the Chase home and the outbuildings and to construct and reconstruct replacements and additions to the Chase home and the outbuildings.

b) Grantors reserve the right to apply to the Town of Brunswick Planning Board to expand Area 1 by approximately 2 acres by relocating that portion of the westerly boundary of Area 1 (now 250 feet from Miller Creek Cove) that is south of the medium value wetland, as determined by the Maine Department of Inland Fisheries and Wildlife, in a westerly direction to coincide with the applicable shoreland setback for the siting of "principal and accessory structures" (currently 125 feet from normal high water line); and, if the Planning Board votes to permit such expansion, Area 1 shall, without the need for further Holder approval and upon the recording of the vote of the Planning Board in the Cumberland County Registry of Deeds and the delivery of notice of the Planning Board vote to the Holder, be automatically expanded to the applicable shoreland setback.

c) Examples of structures and uses that are permitted within the Development Areas include but are not be limited to the following: permitted residential structures, attached and detached garages, water wells and associated mains, pumps and well houses, septic systems, tennis courts, paddle tennis courts, swimming pools and associated pool buildings and fencing, skating rinks, basketball courts, shuffle-board courts, volleyball courts, tether-ball courts, horseshoe pits, croquet courts, play equipment (swing sets, trampolines, jungle gyms, slides, teeter totters, play houses and forts, etc.), equestrian rings, lawns, gazebos, greenhouses, composting areas, gardens of all types, fountains, stables, barns, workshops, garden and storage sheds, pet and dog houses and runs, patios, decks, porches, exterior steps and stairs, ladders, walls, fences, paved areas (including walks, driveways and other appurtenant surfaces), storage facilities and structures (boat, automobile, RV, etc.), exterior lighting and light stanchions as necessary to safely enjoy the above; provided, no use or structure shall be for commercial purposes other than an at home business otherwise permitted by local land use ordinances. The foregoing are sometimes referred to in this Easement as "permitted structures."

#### **4. STRUCTURES.**

- a) The right to retain, repair, maintain, alter, remove, restore and replace all structures that exist on the Protected Premises on the date hereof, to wit: the bridge crossing Miller Creek and the Chase Homestead and accessory structures.
- b) The right to construct, maintain, repair, alter, remove, restore and replace perimeter fencing and other similar structures as needed for permitted wildlife, aesthetic and recreational purposes and for the protection and/or preservation of the Protected Premises.
- c) The right to construct, maintain, repair, alter, remove, restore and replace boundary monuments and non-commercial directional, cautionary, informational or instructional signage.
- d) The right to post the boundaries and perimeter of the Protected Premises with appropriate signage to prohibit trespass and trespass for the purpose of hunting, trapping and use of prohibited motorized vehicles on the Protected Premises.

#### **5. ACCESS DRIVEWAYS, DRIVEWAYS and UTILITIES.** Except as specifically reserved by the Grantors herein there shall be no roads or driveways constructed or created on the Protected Premises, meaning and intending that there shall be no roads on the Protected Premises except:

- a) The driveways shown on the plan presented to the Brunswick Planning Board on March 9, 1999, entitled "Right of Way Plan, King Property, Brunswick, Maine" by Mitchell & Associates, dated March 5, 1999, exclusive of the unbuilt extension of Tidal Run Lane (unless the Tidal Run Lane extension is needed for access to Lots C and/or D, John's Point):
- b) The right to retain, repair, maintain, alter, remove, restore and replace all ways that exist on the Protected Premises on the date hereof.
- c) The right to maintain, repair, pave, alter, remove, restore and replace the existing gravel driveway from Mere Point Road to the Chase home.
- d) The right to construct, maintain, repair, pave, alter, remove, restore and replace a driveway to and from Mere Point Road to serve Development Area 3 and the dwelling and structures constructed thereon.

- e) The right to maintain, repair, alter, remove, restore and replace the driveway and bridge crossing Miller Creek immediately east of the Chase home where the old county road, so called, crossed Miller Creek.
- f) The right to construct, maintain, repair, remove, restore and replace a gravel access driveway from the access driveway constructed by the Grantors across the adjacent John's Point land from Simpson's Point Road to the Protected Premises substantially within the easement corridor shown on Exhibit A. for the exclusive purpose of providing ingress and egress to and from said Simpson's Point Road to the dwellings permitted in the Development Areas shown on Exhibit A; provided, however, such driveway may serve a maximum of four (4) dwellings. After the gravel driveway has been fully constructed substantially within the corridor shown on Exhibit A, the Grantors shall have prepared at their expense an "as built" survey showing the location of the gravel driveway, as built, which survey will be recorded in the Cumberland County Registry of Deeds in order to establish the precise location of the driveway corridor on the face of the earth.
- g) The right to construct, maintain, repair, alter, remove, restore and replace a gravel driveway to serve the dwelling permitted to be sited and constructed within Area 2 from said dwelling and its appurtenant structures to the access driveway from Simpson's Point Road to Miller Point, so long as the Grantor has not constructed a driveway over the extension of Tidal Run Lane from the existing terminus of Tidal Run Lane to a dwelling in Area 2. The driveway serving Area 2 may cross Area 1.
- h) The right to construct, maintain, repair, alter, remove, restore and replace above and below ground utility lines, poles and other equipment including but not limited to, electric, telephone and cablevision poles, wires, cables, conduits, pipes, transformers, relay stations and supporting mechanical devices and housings serving not more than the four (4) dwellings and appurtenant structures permitted on the Protected Premises east of Miller Creek in Areas 1 and 2 along, on and under the access driveway corridor area shown on Exhibit A, from Simpson's Point Road across John's Point Common Land, so called, and to the Protected Premises and along, on and under the driveway and within the driveway corridor from the above mentioned access driveway to the structures within Areas 1 and 2.

6. **SURFACE ALTERATIONS.** No filling, dumping, excavations 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 and the rights to make surface alterations as necessary to make improvements of the type and nature set forth at paragraph 4 of this easement:

- a) The right, within the Development Areas shown on Exhibit A, to fill, excavate and alter the surface of the Protected Premises, including but not limited to the laying of impervious surfaces such as walkways, sidewalks, paved aprons and driveways and excavating for wells, foundations, footings and basements.
- b) If, in the opinion of a licensed site evaluator, an insufficient number of suitable septic waste disposal areas exist within the Development Areas shown at Exhibit A, the Grantor reserves the right to construct, install, repair, maintain and replace suitable septic waste disposal areas, together with associated pipes, pumps and mains, outside the Development Area shown on Exhibit A, provided not more than one septic waste disposal field is created for each of the dwellings and appurtenant structures that are permitted within the Development Areas.
- c) The right to excavate and fill in connection with the construction, maintenance, repair and replacement of the permitted gravel driveways on the Protected Premises, including the driveway to Area 2, , and all appurtenant and adjacent ditches and associated culverts; and, to excavate and fill in connection with the maintenance, repair and replacement of above ground utility lines and poles and underground, utility lines and associated mechanical installations, provided that previous condition of the adjacent land be thereafter promptly substantially restored.
- d) The right to construct, maintain, repair, alter, remove, restore and replace (but not relocate) the paths and trails shown on Exhibit A to provide pedestrian access to, across and through the Protected Premises and its natural features and access for permitted purposes.
- e) The right to construct, maintain, repair , alter, remove, restore and replace temporary unpaved ways, such as skidder trails, to provide vehicular access for permitted purposes in a manner intended to minimize material and permanent adverse impact to the Protected Premises.
- f) With notice to the Holder, the right to excavate and alter small, select portions of the Protected Premises outside of the Development Areas for ecological or archeological purposes, provided that any such excavations shall be done according to generally accepted professional practices and standards in a manner

intended to minimize material and permanent adverse impact to the Protected Premises.

g) The right to maintain, repair, rehabilitate, restore and support the pond within the Protected Premises as necessary to preserve the same.

7. **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:

a) The right to cut, trim and remove trees and other vegetation within the Development Areas shown on Exhibit A as deemed necessary by the Grantors for the siting and construction of permitted dwellings and appurtenant out buildings and permitted structures.

b) The right to mow and cut shrubs, saplings, grasses and other vegetation to maintain, restore and rehabilitate existing open fields, if any and to keep the ditches, culverts and sightlines along the permitted driveways clear.

c) The right to graze, cultivate, fertilize, plant and harvest existing open fields west of Miller creek, for non-commercial purposes, employing the best management practices and nutrient loading management plan(s) as established and defined by the Maine Department of Agriculture Food, and Rural Resources, or its successor ; provided, however the prohibition against commercial agricultural purposes shall not be deemed to prohibit a community garden, truck garden, the harvest from which is sold by the Grantor, or the raising and sale of a small number of farm animals or products thereof.

d) The right to clear, manage and restore vegetation and forest cover and other vegetation on and within the Protected Premises and the Development Areas, by selective cutting and/or planting so as to promote and maintain the health and aesthetic qualities of the forest and the forest eco-system, as well as the right to clear and restore forest cover and other vegetation that is damaged or destroyed by the forces of nature, such as ice storms, fire or disease, and when necessary to prevent the spread of disease and the elimination or reduction of potential forest fire fuel, in accordance with a plan prepared by a licensed forester in a manner intended to minimize material and permanent adverse impact to the Protected Premises that is not consistent with this right, which plan has been approved by Holder, the approval of which will not be unreasonably withheld. This right

permits the Grantors to manage the forest for their personal, non-commercial, use to preserve the scenic and natural character of the Protected Premises to enhance wildlife values, and, to the extent possible, considering these goals, to provide a sustained yield of forest products to the Grantors for non-commercial purposes. Clear cutting is strictly prohibited for these purposes unless required to mitigate greater harm to the conservation values of the Protected Premises. Under no circumstances shall this paragraph be deemed to be the reservation of any right to manage and/or harvest the forest cover for commercial purposes, provided, however, the material cut and harvested pursuant to this paragraph may be used by the Grantors and put into the stream of commerce, sold or used as compensation for the forester and/or operator.

e) The right to clear, cut and restore forest cover and other vegetation in the event of an emergency, such as when necessary to prevent the spread of fire.

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

a) Commercial, industrial, quarrying or mining activities, including but not limited to the stripping of loam or other soil strata.

b) Placement or use of trailers or campers on the Protected Premises outside of the Development Areas, provided that such prohibition shall not prevent Grantors, their heirs or assigns, from erecting tents or building not more than four tree houses for occasional and temporary camping or recreational purposes outside of the Development Areas.

c) Billboards, antennae or telecommunications apparatus that are visible from any lot, parcel of land, public or private road or driveway outside of the Protected Premises, provided, however, this provision shall not prohibit the erection and use of television, radio and similar antennae within the Development Areas used for the sending and reception of signals to be used by and disseminated by and to the dwellings permitted on and within the Protected Premises (hereinafter referred to as "private antennae") provided, reasonable effort is made to screen any free standing private antennae from view from any public way and residences sited off of the Protected Premises.

9. **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 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.

10. **CONSTRUCTION.** If uncertainty should arise in the interpretation of this easement, judgment should be made in favor of (a) conserving the Protected Premises outside of the Development Areas in its natural, scenic or open state and (b) preserving the use of the Protected Premises for recreational, wildlife and aesthetic purposes outside of the Development Areas while permitting full use of the driveway and utility rights reserved to the Grantors and allowing the Grantors full residential use and enjoyment of the Development Areas. 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.

11. **PUBLIC ACCESS.** This easement does not confer upon the public a right of access to the Protected Premises.

12. **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.

13. **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, their heirs or assigns, 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, their heirs or assigns, 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.

14. **ESTOPPEL CERTIFICATES.** Holder shall, within thirty (30) days after written request of Grantors, their successors and assigns, 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.

15. **COSTS AND TAXES.** Grantors agree to bear all costs 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 benefiting from the reservation of rights hereunder.

16. **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 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.

17. **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 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.

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

i) ROBERT C. KING, JR. and NANCY P. KING  
14 Knollwood Road  
Short Hills, New Jersey 07078

and

JOHN F. LOYD, JR., ESQ.  
13 Pleasant Street  
P. O. Box 40  
Brunswick, Maine 04011-0040

ii) The heirs and assigns of ROBERT C. KING, JR. and NANCY P. KING at their address(es) of record served on the Holder by a notice mailed as hereinabove set forth or the records of the Town of Brunswick, Maine Tax Assessor.

iii) The foregoing to the contrary notwithstanding, notice to either of the Kings at the address for notice to the Kings shall be deemed to be notice to both Kings.

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  
28 Federal Street  
Brunswick, Maine 04011

#### 19. 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.

## 20. MISCELLANEOUS.

a) The word "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) Language herein to the contrary notwithstanding, all rights reserved herein by the Grantor shall be exercised only in a manner consistent with the land use ordinances and statutes of the Town of Brunswick and the State of Maine. Nothing herein shall be construed to give or reserve a right to act other than pursuant to and in conformance with all applicable laws and regulations.

d) 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.

e) 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.

f) 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.

g) Should it be necessary at any time in connection with any action of the Holder, to obtain the agreement or approval of multiple assigns of the Grantors (i.e., multiple owners of the interest of the Grantors in and to the Protected Premises), in connection with any matter relating to this Conservation Easement Deed and Indenture, the agreement or approval of the assigns of the Grantors (who are of full age and competent) holding title to a majority of the interests in the Protected Premises, including lots created therefrom shall be deemed to be the agreement or approval of all of the assigns of the Grantors, unless the Grantors and/or their respective heirs and assigns, have conveyed the authority to make such agreements with the Holder or to grant approval to the Holder, to a person, persons

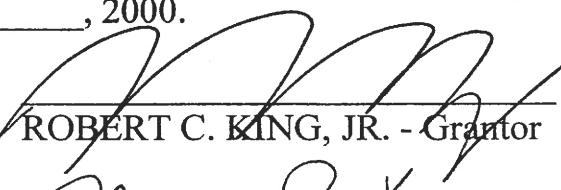
or an entity representing the Grantors and their assigns of their interest in the Protected Premises.

h) 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 \_\_\_\_\_ day of \_\_\_\_\_, 2000.

  
ROBERT C. KING, JR. - Grantor

  
NANCY P. KING - Grantor

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 21<sup>st</sup> day of March, 2000.

THE TOWN OF BRUNSWICK

By: Donald H. Gerrish

Print Name: DONALD H. GERRISH

Title: TOWN MANAGER

STATE OF MAINE

County of Cumberland, ss.

February 24, 2000

Personally appeared, before me, the above-named ROBERT C. KING, JR. and acknowledged the foregoing instrument to be his free act and deed.

Before me,

Ann Hartzler  
Notary Public

Print name

ANN HARTZLER

NOTARY PUBLIC, MAINE

MY COMMISSION EXPIRES: 2/11/2007

Date commission expires

STATE OF MAINE  
County of Cumberland, ss.

3/21/, 2000

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,

Elin M. Gould

Notary Public

Print name

Elin M. Gould

Notary Public

My Commission Expires July 25, 2005

Date commission expires

## EXHIBIT A

