

BREEZY POINT
CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this 3rd day of May, 2004, between Princes Point Partners, LLC, hereinafter referred to as the "Grantors" and the Town of Brunswick, Maine, hereinafter referred to as the "Holder".

WHEREAS, Grantors hold title to real property situated on Princes Point Road in Brunswick, as more particularly described on the survey entitled "Final Subdivision Plan Breezy Point Subdivision, previously known as: Misery Point Subdivision, for Princes Point Partners, LLC, Brunswick, Maine, dated June 20, 2003 and recorded in the Cumberland County Registry of Deeds, in Plan Book 204 at Page 18.

WHEREAS, said Plan portrays thirteen (13) residential lots, eleven of said lots having frontage on "Long Reach", so-called, in Casco Bay, with approval being granted to establish up to three (3) private seasonal docks,

WHEREAS, one of the Town of Brunswick's conditions of approval for said Subdivision was that a Conservation Easement be conveyed by the Grantors to Holder over a strip of land (the "Protected Premises") extending one hundred twenty five feet (125') in land from the high water line of Long Reach over Lots 1 – 11 which said strip of land coincides with the Natural Resources Protection Zone setback as defined by the Town of Brunswick zoning ordinance and which said easement will protect in perpetuity the natural, scenic, recreational, wildlife and aesthetic values of the "Protected Premises"

WHEREAS, Holder is qualified and willing to accept the grant of this Conservation Easement 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 its Property, and further grants to Third Party, its successors and assigns, the 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, recreational, wildlife and aesthetic values of the Protected Premises, through the continuation of responsible conservation practices and recreational uses compatible with the residential use of said lots.

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

a) The right to preserve and to protect in perpetuity the natural, scenic, 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.
- 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.
- d) The right to construct a roadway for pedestrian access a common dock (with horizontal lockers for storage of oars, sails and the like) along the boundary line between lots 5 and 6 and a total of 2 additional docks, one each on any two of Lots 7, 8, 9 or 10, with construction of the docks commencing only after all required permits have been obtained.

4. ACCESS DRIVEWAYS and UTILITIES. There shall be no roads, ways or driveways constructed or created on the Protected Premises other than the roadway to the common dock area along the common line between Lots 5 and 6. Limited lighting of the common dock area is permitted.

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.
- b) The right to construct said roadway to the common dock area, the right to construct the dock itself and to install the above described dock area lighting.
- c) The right to construct the two additional docks and pathways leading to same as described in paragraph 3d) described herein.

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.1 as specified in the December 18, 2002 Town of Brunswick Zoning Ordinance, but as applied to the entire Protected Premises, with the exception of the designated No Cut Zone, and Tree Preservation Area along the existing stone wall and included as a portion of Lot 11 as shown on the on said plan recorded in Plan Book 204 at Page 18.

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 provided that gardening associated with the residential use of said premises is permitted.
- 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 on each of the 11 lots which are subject to this easement provided such tents or tree houses are allowed under the Holder's ordinances, rules and regulations.
- e) Billboards, antennae or telecommunications apparatus which 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 Protected Premises, 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 the exclusive use of (or to regulate or prohibit use of) the Protected Premises for all residential 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. 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 or over 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, 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. Nothing in this section shall be interpreted to imply modification of the

Holder's rights and duties under Maine law to assess and collect taxes from owners or persons in possession.

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 to 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:

Princes Point Partners, LLC
Princes Point Road
Brunswick, ME 04011

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) which consent shall not be unreasonably withheld. 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 such as the individual owners of Lots 1 – 11, whether or not such persons executed this Conservation Easement 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) Because the Protected Premises will be owned by multiple parties and/or their assigns, a change in 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 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.

f) Unless Grantors have conveyed to others the authority to make agreements with or grant approval to the Holder, should it be necessary at any time in the future in connection with any action of the Holder to obtain the agreement or approval of multiple assigns of Princes Point Partners, LLC in connection with any matter relating to this Conservation Easement, the assigns of Princes Point Partners, LLC (who are of full age and competent) holding title to a majority of the interests in the Protected Premises shall have authority to grant such agreement or approval.

g) Grantors and Holder agree that this Conservation Easement 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.

h) Amendment. Grantors and Holder acknowledge that, in view of the perpetual nature of this Conservation Easement, future occurrences could affect the purposes of this Easement. Accordingly, this Easement may be amended in a manner not inconsistent with the purposes of the Easement, with the consent of Grantors and Holder.

i) Termination. If, in accordance with 33 M.R.S.A. § 478 or any successor thereto, a court of competent jurisdiction determines that a change in circumstances has rendered the purposes of this Easement no longer in the public interest, the court may, with prior written consent of Grantors and Holder, terminate or modify this easement in accordance with law.

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 3rd day of May, 2004.

Grantors: Princes Point Partners, LLC

By: 

Irl L. Rosner - Its Manager

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, by and through its Town Manager, thereunto duly authorized, this 7th day of July, 2004.

By: THE TOWN OF BRUNSWICK,
Donald H. Gerst

Print Name: DONALD H. GERST

Title: Town Manager

STATE OF MAINE

County of SACANDANOC, ss

May 3, 2004

Personally appeared, before me, the above-named **IRL L. ROSNER** in his capacity as Manager of the said Princes Point Partners, LLC and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.

Before me,

Elin M. Gould

Notary Public

John W Voorhees

SEAL

Print name

8/18/05

Date commission expires

STATE OF MAINE

County of Cumberland, ss

July
May 7, 2004

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

Elin M. Gould

Notary Public

Print name

My Commission Expires July 25, 2005

SEAL

Date commission expires

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Received
Recorded Register of Deeds
Jul 26, 2004 12:55:56P
Cumberland County
John B OBrien

Conservation Easement
(Map 35, Lots 71-81)

GRAPHIC SCALE