

LIMITED DEVELOPMENT CONSERVATION EASEMENT TO
DAMARISCOTTA RIVER ASSOCIATION

THIS INDENTURE made this 29th day of December, 1988, by and between Susan R. Peterson of South Bristol, Maine (hereinafter referred to as the "Grantor") and the Damariscotta River Association, a non-profit corporation organized and existing under the laws of the State of Maine, with offices in Damariscotta, Lincoln County, Maine, (hereinafter referred to as the "Holder").

WITNESSETH:

WHEREAS, the Grantor holds title to approximately nine (9) acres of real property (hereinafter referred to as the Protected Property) situated in South Bristol, Lincoln County, Maine, described in a warranty deed from Romilly F. Humphries, Jr. and Jean Cotton Humphries to Murray G. Peterson and Susan R. Peterson dated 03/25/46 and recorded at Book 465, Page 305 at the Lincoln County Registry of Deeds which description of said premises is incorporated herein by reference to said Book and Page and made a part hereof. Excepting and reserving from the Humphries to Peterson conveyance land conveyed by the following instruments:

- (1) Conveyance to William M. Peterson by deed dated 12/21/79 and recorded in Book 1018, Page 282.
- (2) Undivided half interest conveyed to David S. Howell and Susan P. Howell by deed dated 12/21/79 and recorded in Book 1018, Page 285.
- (3) Undivided half interest conveyed to John C. Peterson and Jean A. Peterson by deed dated 12/21/79 and recorded in Book 1018, Page 288.
- (4) Undivided half interest conveyed to David S. Howell and Susan P. Howell by deed dated 01/29/80 and recorded in Book 1021, Page 259.
- (5) Undivided half interest conveyed to John C. Peterson and Jean A. Peterson by deed dated 01/29/80 and recorded in Book 1021, Page 262.

WHEREAS, the Protected Property consists of approximately 1000 feet of shore frontage on the shore of Jones Cove, which is an integral part of the South Bristol landscape and which is prominently visible from the public waterway of the Damariscotta River; and

WHEREAS, the Protected Property remains in a substantially undisturbed natural state and provides scenic enjoyment to the general public when viewed from the public waters of Jones Cove and the Damariscotta River, and has significant scenic, scientific, and ecological value; and

WHEREAS, a significant shell midden listed with the Maine Historic Preservation Commission as site 16-103 is located along the Protected Property shoreline and has been nominated for inclusion in the National Register of Historic Places; and

WHEREAS, the Protected Property consists of natural shoreland and woodland areas that are important to the maintenance of the ecology of the area, and harbors a diversity of plant and animal life as well as a diversity of natural features and habitat, including spruce and fir forests, open fields, wetlands, and hardwood forest; and

WHEREAS, the Damariscotta River is a primary navigation lane between Boothbay and Johns Bay and is extensively used by fishing boats, yachts, and tourist vessels traveling between the popular Boothbay, South Bristol, and Damariscotta regions; and

WHEREAS, the Protected Property is in the immediate vicinity of a tidal cove of ecological importance as habitat for marine animals, including clams, lobsters and mussels, which are harvested from Jones Cove by local industry; and

WHEREAS, development of the Protected Property beyond that permitted in this Conservation Easement would have an adverse effect on the visual aspect of the Protected Property as seen by the general public, on the purity of the air, water, and the environment in and around the Protected Property, and on the maintenance of Jones Cove as a scenic and natural area and as a suitable habitat for indigenous flora and fauna; and

WHEREAS, the Maine coast is unique in being a relatively intact coastal ecosystem and, as such, is an unusually important habitat for birds, fishes, marine and terrestrial mammals, and flora; and

WHEREAS, any existing and future structures and uses permitted hereunder are or shall be limited and sited so as to be screened or to blend with the traditional landscape so as not to alter materially the natural and scenic appearance of the Protected Property when viewed from offshore; and

WHEREAS, other owners of land in South Bristol on Jones Cove and the Damariscotta River have granted Conservation Easements and gifts of land in fee to governmental agencies and other conservation organizations for the broad purposes and reasons herein set forth; and

WHEREAS, the Protected Property is subject to increasing residential development pressure that may be detrimental to existing scenic natural resources and to the public's opportunity to enjoy such resources; and

WHEREAS, the Town of South Bristol has conserved and maintains for public education and recreation land on Jones Cove that overlooks the Protected Property; and

WHEREAS, this Indenture is created pursuant to The Uniform Conservation Easement Act at Title 33, Maine Revised Statutes Annotated, 1964, Sections 476 through 479-B, inclusive, as amended; and

WHEREAS, this Indenture is also created pursuant to the Internal Revenue Code of 1954 as amended (hereinafter referred to as the "Code") at Title 26, U.S.C.A., Section 170(h) (1)-(6); and

WHEREAS, the Holder is qualified to hold conservation easements pursuant to Title 33, Maine Revised Statutes Annotated, 1964, Section 476(2) B, as amended, and is a Qualified Organization under Title 26, U.S.C.A., Section 170(h)(3) to wit: a publicly funded, non-profit 501 (C)(3) organization operated primarily to accept lands, easements, and buildings for the purpose of preserving and protecting natural, scenic, educational, recreational and open space values of real property; and

NOW THEREFORE, in consideration of the facts above recited, and the covenants herein contained, the Grantor does hereby grant to the Holder, as an absolute and unconditional gift, for the benefit of the general public and the Protected Property, a Conservation Easement in gross over the Protected Property.

1. Purpose

It is the dominant purpose of this Easement to preserve and protect in perpetuity the natural, and scenic character of the Protected Property. In so doing, it is the purpose of this Easement to foster the continuation of responsible conservation practices, and limited residential uses.

2. Affirmative Rights Conveyed

The affirmative rights conveyed by this Easement are the following:

- A. The right of the Holder to identify, to preserve, and to protect in perpetuity the natural, ecological, and scenic character of the Protected Property.
- B. The right of the Holder to enter upon the Protected Property at any time and in any manner that will not unreasonably interfere with the permitted uses being made of the Protected Property for the purposes of inspection and to enforce the rights herein granted.
- C. The right of the public to view the Protected Property from the public waters of Jones Cove and the Damariscotta River, and from the public roadways and public vantage points of Tracy Shore Conservancy, in its natural, scenic, open, and wooded condition.
- D. The right of the Protected Property to be free of any taint, corruption, or pollution of whatever character arising from any use not specifically permitted hereunder.
- E. The right of the Holder to enforce the covenants herein set forth by proceedings at law or in equity or as otherwise may be appropriate, including the right to enter and restore the Protected Property, at Grantor's cost, to its condition prior to any breach hereof.

3. Land Use

The Protected Property shall be used for limited residential uses and conservation purposes only. No commercial, industrial, quarrying or mining activities shall be permitted on the Protected Property except for fishing, including shell fishing, and the rental of the Protected Property and structures permitted hereunder for uses herein permitted. No apartment buildings, campgrounds, multi-family units, trailer parks, motels or hotels shall be constructed on the Protected Property. Notwithstanding anything stated to the contrary as noted in the above paragraph, this easement will not prohibit the use of the year round residence, shop and barn for purposes of a professional office or cottage type industry permitted under local ordinances.

4. Subdivision Limitation

The Protected Property may not be subdivided.

5. Permitted Structures

At present there are seven structures with separate usage on the Protected Property, specifically (1) year round residence, with (1) attached shop and (1) attached barn, (1) stone wharf for runway and float, (1) car garage, (1) boat storage shed, on the shore and (1) privy. No additional permanent structures of any kind, shall be located on the Protected Property, except however, there are retained in the Grantor, her heirs and assigns, the following rights:

- A. The right to replace, rebuild, restore, rehabilitate, and alter any or all of the existing structures, however, any such replacement, rebuilding, or alteration shall be such as not materially to alter the natural, traditional, and scenic appearance of the Protected Property. No replacement, rebuilding or alteration shall alter the location of the existing structures except for the garage which could be expanded to hold two vehicles, nor exceed their present size by more than 35% in terms of gross covered ground area and/or height, unless prior written approval is obtained from the Holder.

B. The right to perform ordinary maintenance on the existing structures allowed hereunder.

C. The right to erect and maintain fences and boundary markers for the purposes of gardening or controlling animals, controlling unauthorized use, provided such fences and markers shall not materially alter the natural and scenic appearance of the Protected Property when viewed from offshore and points of public vantage.

6. Surface Alterations

At present, there is one septic system, and one paved roadway on the Protected Property. No further filling, dumping, excavation or other alteration shall be made to the surface of the Protected Property other than that caused by the forces of nature, except, however, there are retained by the Grantor, her heirs and assigns, the following rights:

A. The right to cultivate open land in accordance with accepted farming practices.

B. The right to raise animals in small numbers. The number of such animals, however, must not be such as to produce overgrazing or removal of the vegetative cover so that the bare soil is exposed and subject to erosion.

C. The right to excavate in connection with the establishment, maintenance, replacement and rebuilding of: (1) the existing and permitted structures; (2) water, sewerage, electric, telephone and other utility services related to the permitted use of the Protected Property; (3) footpaths, driveways, and fire protection lanes as appropriate or necessary to the protection and permitted use of the Protected Property; and further provided that in the exercise of any of these retained rights, the adjacent land be thereafter restored as soon as possible to a state consistent with the scenic and conservation values to be protected by this Conservation Easement.

D. The right to develop the Protected Property's water resources for any use permitted hereunder, on the Protected Property only, through the creation of wells and ponds and the excavation of springs. This right includes the right to bring drilling and excavating equipment onto the land, to lay water lines, to install pumps, well and/or spring houses or covers, and to repair and maintain such water resource apparatus; provided that the disturbed surrounding area be thereafter restored as soon as possible to a state consistent with the scenic and conservation values to be protected by this Conservation Easement.

E. The right to excavate small, select portions of the Protected Property for ecological studies or archeological purposes, provided that any such excavations shall be done according to generally accepted professional practices and standards, and with the prior written consent of the Holder and the Maine Historic Preservation Commission.

7. Specific Prohibitions

Without limiting the generality of the foregoing, billboards, trailers, mobile homes, towers, exterior mercury, sodium vapor or similar effect lighting, antennae or apparatus for telecommunications or radar, any of which are visible from offshore or from other public vantage points, bridges or causeways; are specifically prohibited on the Protected Property, except however, there are retained by the Grantor, her heirs and assigns, the following rights:

A. The right to post the Protected Property to control unauthorized use.

B. The right to advertise the Protected Property for sale or rent.

C. The right to erect small signs and mailboxes at the roadway entrance identifying the residents and residence.

8. Vegetation Management

The destruction or removal of standing timber, plants, shrubs or other vegetation shall not be permitted, except however, there are retained in the Grantor, her heirs and assigns, the following rights:

A. The right to clear and/or restore forest cover that is damaged or disturbed by the forces of nature, or as necessary to prevent the spread of disease or fire.

B. The right to gather, use or remove dead wood.

C. The right to prune or selectively thin trees to provide firewood for personal use of Grantor or residents of the Protected Property and to create reasonable lawns around permitted structures.

D. The right to mow and cut shrubs, saplings, grasses and other vegetation to maintain the existing open areas and lawns.

E. The right to clear vegetation and forest cover as necessary in the establishment, construction, maintenance, replacement and rebuilding of: (1) the existing structures; (2) the water resources or services, sewerage, electric, telephone and other utility services related to the permitted use of the Protected Property; (3) footpaths, driveways, and fire protection lanes permitted hereunder, as necessary or appropriate to the permitted use and protection of the Protected Property; provided that in every case the adjacent land be thereafter restored as soon as possible to a state consistent with the scenic and conservation values to be protected by this Conservation Easement;

9. Waste Disposal

Any construction, operation, modification, alteration, or reconstruction of any waste disposal system or method shall be conducted in a manner that will prevent discharge of any waste into salt or fresh waters located on or about the Protected Property that will at all adversely affect the purity of said waters. It is forbidden to dispose of rubbish, offal, garbage, debris, vehicles, abandoned equipment, parts thereof, or other unsightly or offensive waste material on the Protected Property, except that waste generated by permitted uses on the Protected Property may be stored temporarily in appropriate containment for removal at reasonable intervals.

10. Access

Notwithstanding the public benefit intended and conveyed hereby, nothing contained herein shall be construed as affording the public physical access to any portion of the Protected Property. Nothing in this Easement shall be construed to preclude Grantor's right to grant limited public access across the Protected Property, provided that such access is allowed in a reasonable manner that does not result in degradation of the Protected Property and/or disturbance of plant or wildlife habitat.

11. Construction

If uncertainty should arise in the interpretation of this Conservation Easement, judgment should be made in favor of conserving the Protected Property in its natural, and scenic state. Nothing in this Conservation Easement shall be construed to permit any activity otherwise prohibited by the valid laws and

regulations of any federal, state, or local government or governmental agency having competent jurisdiction over the Protected Property.

12. Reserved Right of Grantor

Except as expressly limited herein, Grantor reserves all rights as owner of the Protected Property, including the right to use the Protected Property for all purposes not inconsistent with this grant. However, Grantor agrees to notify the Holder in writing before exercising any reserved right the exercise of which may have an adverse impact on the natural and scenic value of the Protected Property.

13. Amendment

Grantor and Holder recognize that circumstances could arise which would justify modification of certain of the restrictions contained in this Conservation Easement. To this end, Grantor and Holder shall have the right to agree to amendments to this easement, without prior notice to any party, provided that in the sole and exclusive discretion of the Holder such amendment furthers or is not inconsistent with the purpose of this easement to protect and preserve the natural, open space and scenic resources of the Protected Property. Such amendment shall become effective upon recording at the Lincoln County Registry of Deeds. Notwithstanding the foregoing, the Holder and Grantor shall have no right or power to agree to any amendments that would result in termination of this Conservation Easement or that would cause it to fail to qualify as a valid easement under Title 33 M.R.S.A. Section 476 et seq., the Uniform Conservation Easement Act of the State of Maine, Section 170(h) of the U.S.C.A. governing "Qualified Conservation Contributions," or any regulations issued pursuant thereto.

14. Baseline Data

Holder acknowledges by acceptance of this Conservation Easement that Grantor's historical and present uses of the Property are compatible with the purposes of this Easement. In order to establish the present condition of the Protected Property's natural and scenic resources, so as to be able properly to monitor its future uses and assure compliance with the terms hereof, Grantor has provided the Holder with an inventory of the Property's relevant features and conditions (the "Baseline Data"). The Baseline Data includes to this Conservation Easement, topographical maps, lists of structures and their dimensions, and aerial and ground photographs. This initial inventory of the Baseline Data has been certified as accurate by Grantor and Holder as of the date of this Easement and is on file at the offices of the Holder. The parties acknowledge and agree that in the event a controversy arises with respect to the nature and extent of Grantor's historical and present use of the Protected Property or the physical condition of the Protected Property as of the date hereof, the parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports and other evidence to assist in the resolution of the controversy.

15. Monitoring and Enforcement Rights of Holder

The Holder, its successors and assigns, shall make reasonable efforts from time to time to assure compliance by Grantor with all of the covenants and restrictions herein. In connection with such efforts, Holder shall make periodic inspections of the Protected Property, and for such inspection and enforcement purposes, the Holder shall have the right of entry to all of the Protected Property at any time and in any manner provided that the time and manner of such entry does not unreasonably interfere with the uses of the Protected Property permitted hereunder. Holder shall prepare and keep on file a Monitoring Report for each such inspection and make such reports available to the Grantor.

In the event the Holder determines in its best judgment, that an event or circumstance of non-compliance with the terms and conditions herein set forth has occurred or is in existence, Holder shall give notice to Grantor of such event or circumstance of non-compliance via certified mail, return receipt requested, and demand corrective action sufficient to abate such event or circumstance of non-compliance and at its discretion, sufficient to restore the Protected Property to its condition prior to such breach. Failure by the Grantor 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 Property to take such action reasonably necessary to effect such correction, to bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to obtain injunctive relief, and to recover any damages arising from such non-compliance. If such court determines that Grantor has failed to comply with this Conservation Easement, Grantor shall reimburse Holder for any reasonable costs of restoration, correction, and enforcement, including court costs, reasonable attorneys fees, and any other payments ordered by such court. The failure of the Holder, for any reason whatsoever, to enforce any of the terms, covenants, or other provisions of this Conservation Easement shall not constitute a waiver of its right to enforce the same or any other provision hereof.

16. Restoration

Should any prohibited activity be undertaken on the Protected Property, the Holder, except in case of emergency requiring immediate action, shall after thirty (30) days prior written notification to Grantor, have the right to enter and restore that portion of the Protected Property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity. In such case, the cost of such restoration shall be born by Grantor. Nothing contained herein shall be construed to preclude Grantor from exhausting their legal remedies in determining whether the proposed activity to which the Holder has objected is consistent with this Conservation Easement.

17. Estoppel Certificates

Holder shall at any time and at Grantor's cost, within thirty (30) days after Grantor's written request, execute, acknowledge and deliver to Grantor a written certificate in a form suitable for recordation stating that Grantor is in compliance with the terms and conditions of this Easement, or if Grantor is not in compliance with this Easement, stating what violations of this Easement exist. Grantor agrees to make such request only for reasonable cause.

18. Costs and Taxes

Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Protected Property. In addition, Grantor agrees to bear all costs and responsibility of operation, maintenance and upkeep of the Protected Property and do hereby release and relieve Holder, its officers, directors, agents and employees therefrom and will defend and hold Holder, its officers, directors, agents and employees, harmless against any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses which may be imposed upon or incurred by Holder by reason of loss of life, personal injury and/or damages to property occurring in or around the Protected Property, except such acts or omissions as may arise from the gross negligence or willful malice of the Holder, its officers, directors, agents and employees, in the discharge of its obligations hereunder, and except for actions or claims brought against Holder by or on behalf of its agents, employees, successors or assigns.

19. Grant in Perpetuity

The Conservation Easement herein granted and any amendment or assignment hereof shall be recorded at the Lincoln County Registry of Deeds and shall be a burden upon and shall run with the Protected Property in perpetuity and shall bind the Grantor, her heirs and assigns forever. A copy of the restrictions contained in this Conservation Easement and incorporation by reference of this deed shall be included in any subsequent deed, probate decree or legal instrument which conveys any interest (including a leasehold) in the Protected Property.

20. Subsequent Transferees

By acceptance of this Conservation Easement, the Holder covenants and agrees, as real covenants running with the land in perpetuity, and not as conditions to this Conservation Easement or as restraints on alienability, (1) that it will hold this Conservation Easement in perpetuity for conservation purposes; (2) that it will not transfer said Conservation Easement, except to an entity which, as a condition of such transfer, gives the Holder assurances that it is committed to the conservation purposes of this Easement, and is able to and agrees to enforce the rights granted in this Easement; and (3) that any such transferee shall satisfy the requirements of Section 170(h)(3) of the U.S.C.A. of 1954, as amended (or successor provisions thereof) and the requirements of Section 476(2) of Title 33 of the Maine Revised Statutes Annotated of 1964, as amended (or successor provisions thereof).

21. Miscellaneous

A. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall mean and include, unless repugnant to the context, the above-named Grantor and her heirs, personal representatives, executors, successors, assigns and all persons hereafter claiming by, under or through said Grantor whether or not such persons signed this Conservation Easement or had an interest in the Protected Property on the execution date of this Conservation Easement. Notwithstanding the foregoing, a person shall have no obligation by virtue of this Conservation Easement as to any portion or the whole of the Protected Property for which such person has ever held an interest if and when such person shall cease to have any present, partial, contingent, collateral or future interest in the Protected Property or any portion thereof, provided such person shall have received a Certificate of Compliance as described in Covenant 17, Estoppel Certificate, as of the date of such transfer. The term "Holder", wherever used herein, and any pronouns used in place thereof, shall mean and include respectively, unless repugnant to the context, the above-named "Holder" and its representatives, successors and assigns.

B. The fact that any of the uses prohibited herein, or other uses not mentioned, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to such non-permitted uses, has been considered by Grantor in granting this perpetual easement. It is Grantor's belief that any such changes will increase the benefit to the public of the continuation of this Easement, and it is the intent of both the Grantor and Holder that any such changes should not be deemed to be changed conditions permitting termination of this Easement.

C. The inability to carry on any or all of the above uses, or the unprofitability of doing so, shall not impair the validity of this easement or be considered grounds to terminate it or alter its terms.

D. If any provisions of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other

than those as to which it is found to be invalid, shall not be affected thereby.

E. 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 the Grantor in connection with any matter relating to this Conservation Easement, the agreement or approval of the owner or owners, who are of full age and competent, of a majority interest in the Protected Property.

F. The Grantor and Holder agree that the donation of this Conservation Easement gives rise to a property right which vests immediately in the 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 Property, on the date of the execution of this Conservation Easement, is reduced by the restrictions imposed by this Conservation Easement. Should this Conservation Easement be extinguished by judicial decree or the powers of eminent domain and Grantor thereafter does sell, exchange, or receive payment for any part or whole of the then unrestricted Protected Property, the Holder shall be entitled to a portion of the proceeds of such sale, exchange, or involuntary conversion, at least equal to the proportion that the value of this Conservation Easement, as calculated above, bore to the value of the unrestricted Protected Property on the date of the execution of this Conservation Easement. Such proceeds shall be used by the Holder for its conservation purposes.

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

AND THE GRANTOR DOES COVENANT with the Holder and its successors and assigns that she is lawfully seized in fee of the premises; that the premises are free of all encumbrances; that she has good right to convey the same to the said Holder to hold as aforesaid; and that she and her heirs shall and will WARRANT AND DEFEND the same to the said Holder and its successors and assigns, forever, against the lawful claims and demands of all persons.

GRANTOR'S SIGNATURE

IN WITNESS WHEREOF, the said Grantor, Susan R. Peterson has caused this Conservation Easement to be executed as of the 29th day of December, 1988.

Julie R. Ivey
Witness

Susan R. Peterson
Susan R. Peterson, Grantor

HOLDER ACCEPTANCE

The above and foregoing Conservation Easement was authorized to be accepted by the Damariscotta River Association Land Conservation Trust, Holder as aforesaid, and the said Holder does hereby accept the foregoing Conservation Easement, by and through Mary G. Parmley, its vice-president hereunto duly authorized, this 29th day of December, 1988.

Holder

DAMARISCOTTA RIVER ASSOCIATION

By: Mary G. Parmley
Its Vice-President

NOTARIZATIONS

LIBER 1523 PAGE 263

Grantor

STATE OF MAINE
County of Lincoln, ss.

December 29, 1988

Then personally appeared the above-named Grantor Susan R. Peterson and acknowledged the foregoing instrument to be her free act and deed, before me,

Julie L. Geyer
Notary Public

JULIE L. GEYER
(Please Print or Type Name)

My Commission expires: 11-17-93

JULIE L. GEYER
NOTARY PUBLIC
MY COMMISSION EXPIRES NOVEMBER 17, 1993

Holder

STATE OF MAINE
County of Lincoln, ss.

December 29, 1988

Personally appeared Mary G. Parmley the authorized representative of above-named Holder, Damariscotta River Association, and acknowledged the foregoing instrument to be her free act and deed, and the free act and deed of the Damariscotta River Association, before me,

Julie L. Geyer
Notary Public

JULIE L. GEYER
(Please Print or Type Name)

My Commission expires: 11-17-93

JULIE L. GEYER
NOTARY PUBLIC
MY COMMISSION EXPIRES NOVEMBER 17, 1993

LINCOLN SS.
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AND RECORDED FROM THE ORIGINAL