

Deed of Easement for Construction Access and Permanent Maintenance

Date: November 7, 2012

Grantors: Wendy Harmon, a married woman and Heidi McTigue, a married woman.

Grantors' Mailing Address: 184 Mountain Rd Falmouth, Maine 04105

Grantee: Walter C. Hornaday II and Emily R. Hornaday, husband and wife

Grantee's Mailing Address: 4 Oaklawn Road, Peaks Island, ME 04108, Cumberland County.

Dominant Estate Property: (CCRD27396, Page338) A certain lot or parcel of land situated at Peaks Island, so-called, in the City of Portland, County of Cumberland and State of Maine, located on both sides of Oaklawn Road, said premises being Lot numbered four (4) as delineated on a Plan of Skillings' Farm, which plan is recorded in Cumberland County Registry of Deeds, Book of Plans 11, Page 99, and to which plan and the record thereof reference is hereby made for further particulars of description; together with the shore and flats adjoining and adjacent thereto and extending from the northwesterly side line of said lot to low water mark; also the stone sea wall on said lot.

Easement Property: (CCRD 8176, Page 17) A parcel as depicted on that attached exhibit A which is a parcel of land adjacent to and along the southwesterly property line of Dominant Estate Property between, and including the Oaklawn Road right of way, and the ocean, being a portion of the following described lot located along Oak Lawn Road: a certain lot or parcel of land situated at Peaks Island, so-called, in the City of Portland, County of Cumberland and State of Maine, located on both sides of Oak Lawn Road, said premises being Lot numbered five (5) as delineated on a Plan of Skillings' Farm, which plan is recorded in Cumberland County Registry of Deeds, Book of Plans 11, Page 99, and to which plan and the record thereof reference is hereby made for further particulars of description; together with the shore and flats adjoining and adjacent thereto and extending from the northeasterly side line of said lot to low water mark.

Easement Purpose: A permanent maintenance easement solely for the purpose of allowing access and space for people, equipment, and tools for the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of a rock embankment wall on the Dominant Estate Property and the easement property to be built for the purpose of reducing the potential for erosion to the Dominant Estate embankment in accordance with the plan attached hereto as Exhibit B, and made a part hereof for all purposes (the "Plan"). A temporary easement for the purpose of the construction allowing access and space for people, equipment, and tools for the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of a rock embankment wall on the Dominant Estate Property to be built for the purpose of reducing the potential for erosion to the Dominant Estate embankment in accordance with the plan attached hereto as Exhibit A, and made a part hereof for all purposes (the "Plan".) For the avoidance of doubt, there shall be no use of Easement Property by Grantee, invitees or guests for any

recreational purpose. Further, Grantees shall use reasonable efforts to minimize the time of use of the Easement Property during any construction or maintenance activity.

Consideration: Good and valuable consideration, the receipt and sufficiency of which are acknowledged by Grantors. Consideration includes Grantee including a stairway to beach in the plans permitted by the City of Portland, Maine that the Grantors may build at Grantors' own cost and discretion.

Any lawn portion of the Easement Property damaged by Grantee construction or maintenance activity shall be returned to a clean lawn condition after any work, including restoring grass to any area where grass was damaged.

Grant of Easement: Grantors, for the Consideration, grants, sells, and conveys to Grantee and Grantee's heirs, successors, and assigns i) a temporary Construction Easement through July 1, 2013 and ii.) a permanent Maintenance Easement over, on, and across the Easement Property for the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's heirs, successors, and assigns forever. Grantors binds Grantors and Grantors' heirs, successors, and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part of the Easement, by, through or under Grantors, but not otherwise.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement is appurtenant to, runs with, and inures to the benefit of all or any portion of the Dominant Estate Property, whether or not the Easement is referenced or described in any conveyance of all or such portion of the Dominant Estate Property. The Easement is nonexclusive and irrevocable. The Easement is for the benefit of Grantee and Grantee's heirs, successors, and assigns who at any time own any interest in the Dominant Estate Property (as applicable, the "Holder").

2. *Duration of Easement.* The duration of the Construction Easement shall expire July 1, 2013. The duration of the Maintenance Easement is perpetual; provided, however, Grantee shall perform no work within the Easement Property during the calendar months of June, July, August, September, and October, unless an emergent erosion issue that endangers the Dominant Estate Property.

3. *Reservation of Rights.* Holder's right to use the Easement Property is nonexclusive, and Grantors reserves for Grantors and Grantors' heirs, successors, and assigns the right to use all or part of the Easement Property in conjunction with Holder as long as such use by Grantors and Grantors' heirs, successors, and assigns does not interfere with the use of the Easement Property by Holder for the Easement Purpose, and the right to convey to others the right to use all or part of the Easement Property in conjunction with Holder, as long as such further conveyance is subject to the terms of this agreement.

4. *Limitation of Grantor's Responsibility.* Grantors has no duty, obligation, or responsibility to Grantee for any construction or maintenance of the rock embankment wall constructed pursuant to the Plan.

5. *Improvement and Maintenance of Easement Property.* All matters concerning the rock embankment wall and its configuration, construction, installation, maintenance, replacement, and removal are at Holder's sole discretion, subject to performance of Holder's obligations under this agreement. Holder has the right to remove or relocate any fences within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the rock embankment wall, subject to replacement of the fences to their original condition on the completion of the work. Nothing in this Easement Agreement shall restrict the Grantors from performing work on the Grantors' property beyond the Easement area.

6. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.

7. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

8. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

9. *Indemnity.* Holder agrees to indemnify, defend, and hold harmless Grantors from any loss, attorney's fees, expenses, or claims attributable to injuries to any person resulting from Holder's use of the Easement.

10. *Entire Agreement.* This agreement and any exhibits constitute the entire agreement of the parties concerning the grant of the Easement by Grantors to Grantee. There are no representations, agreements, warranties, or promises that are not expressly set forth in this agreement and any exhibits.

11. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

12. *Time.* Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public

holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

13. If Grantors and Grantee determine that any of the surveyor's pins depicted on Exhibit A are incorrectly located, such pins will be moved to the correct locations and Grantors and Grantee will enter into and record an amendment to this instrument with the corrected version of Exhibit A.

14. Grantee shall execute an estoppel certificate containing such information regarding this Easement as may be reasonably requested for the benefit of Grantors' lender within ten (10) days of receipt of same.

Granted:

Heidi McTigue
Heidi McTigue
Heidi

STATE OF MAINE

COUNTY OF CUMBERLAND

This instrument was acknowledged before me on Nov. 12, 2012, by Heidi McTigue.

Melissa Nickerson-Pratt
Notary Public, State of Maine

MELISSA NICKERSON-PRATT
Notary Public, Maine
My Commission Expires May 31, 2014

Wendy Harmon
Wendy Harmon

STATE OF MAINE

SEAL

COUNTY OF CUMBERLAND

This instrument was acknowledged before me on Nov. 12, 2012, by Wendy Harmon.

Melissa Nickerson-Pratt
Notary Public, State of Maine

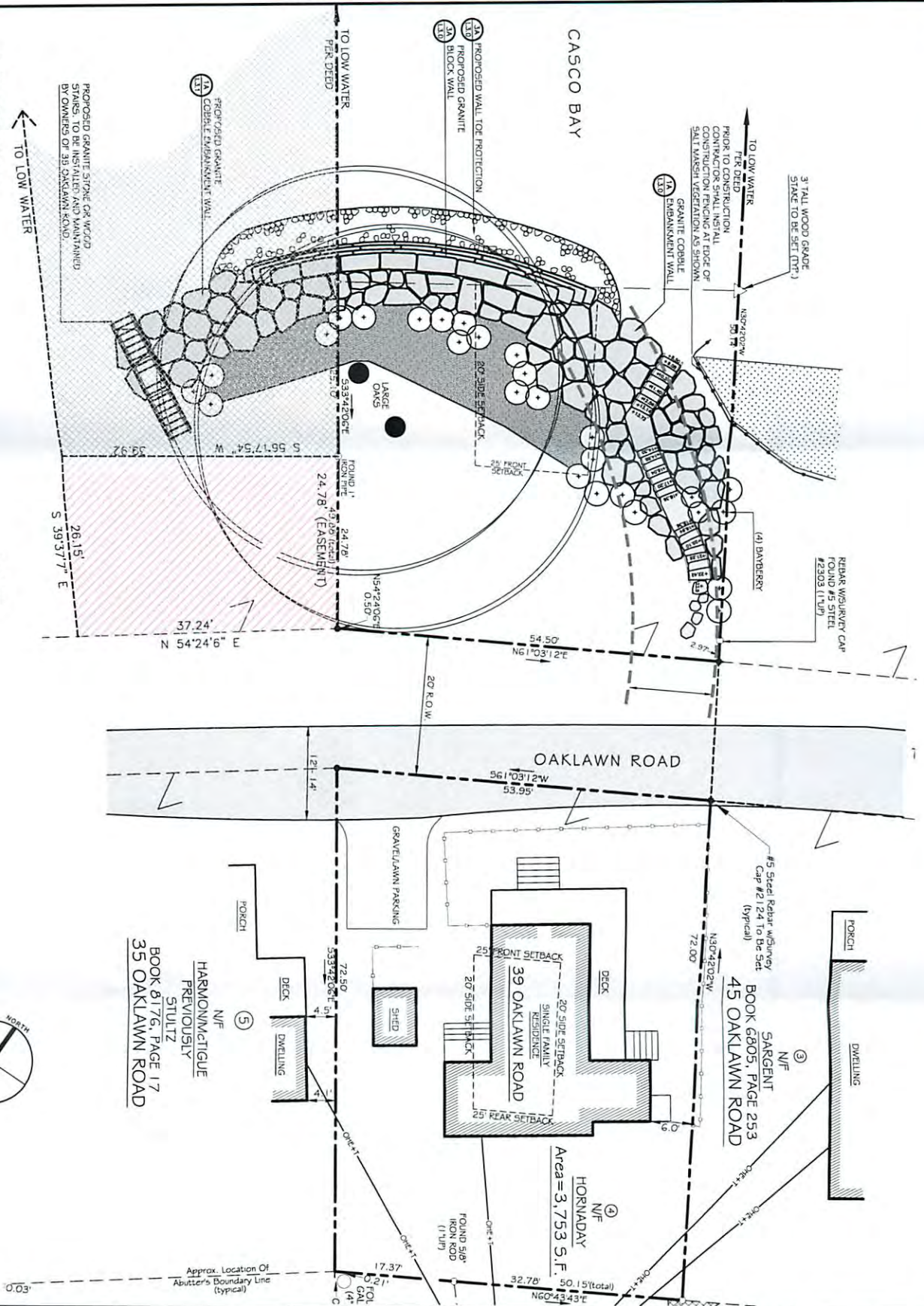
MELISSA NICKERSON-PRATT
Notary Public, Maine
My Commission Expires May 31, 2014

SEAL

PLAN REFERENCES:
 1. BOUNDARY INFORMATION TAKEN FROM PLAN TITLED "PLAN DEPICTING THE RESULTS OF A BOUNDARY SURVEY MADE FOR WALTER HORNADAY, 39 OAKLAWN ROAD, PORTLAND, MAINE, DATED OCTOBER 7, 2009. PLAN PREPARED BY JAMES D. NADEAU, LLC, 918 BRIGHTON AVENUE, PORTLAND, MAINE 04102.

LEGEND:

- PERMANENT ACCESS EASEMENT
- TEMPORARY CONSTRUCTION EASEMENT



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 ENGINEERING ASSOCIATES, INC.
 918 Brighton Ave | Portland, Maine 04102
 ph: 207.553.9898 | www.walsh-eng.com
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**A Plan for the
 Hornaday Property**
 at
39 Oaklawn Road, Peaks Island, Portland, Maine

Sheet Title:	
EXHIBIT A: Harmon/McTigue Construction and Access Easement Areas	
Job No.:	155
Date:	November 7, 2012
Scale:	1" = 20'
Drawn:	MK
Checked:	WW

Exhibit B

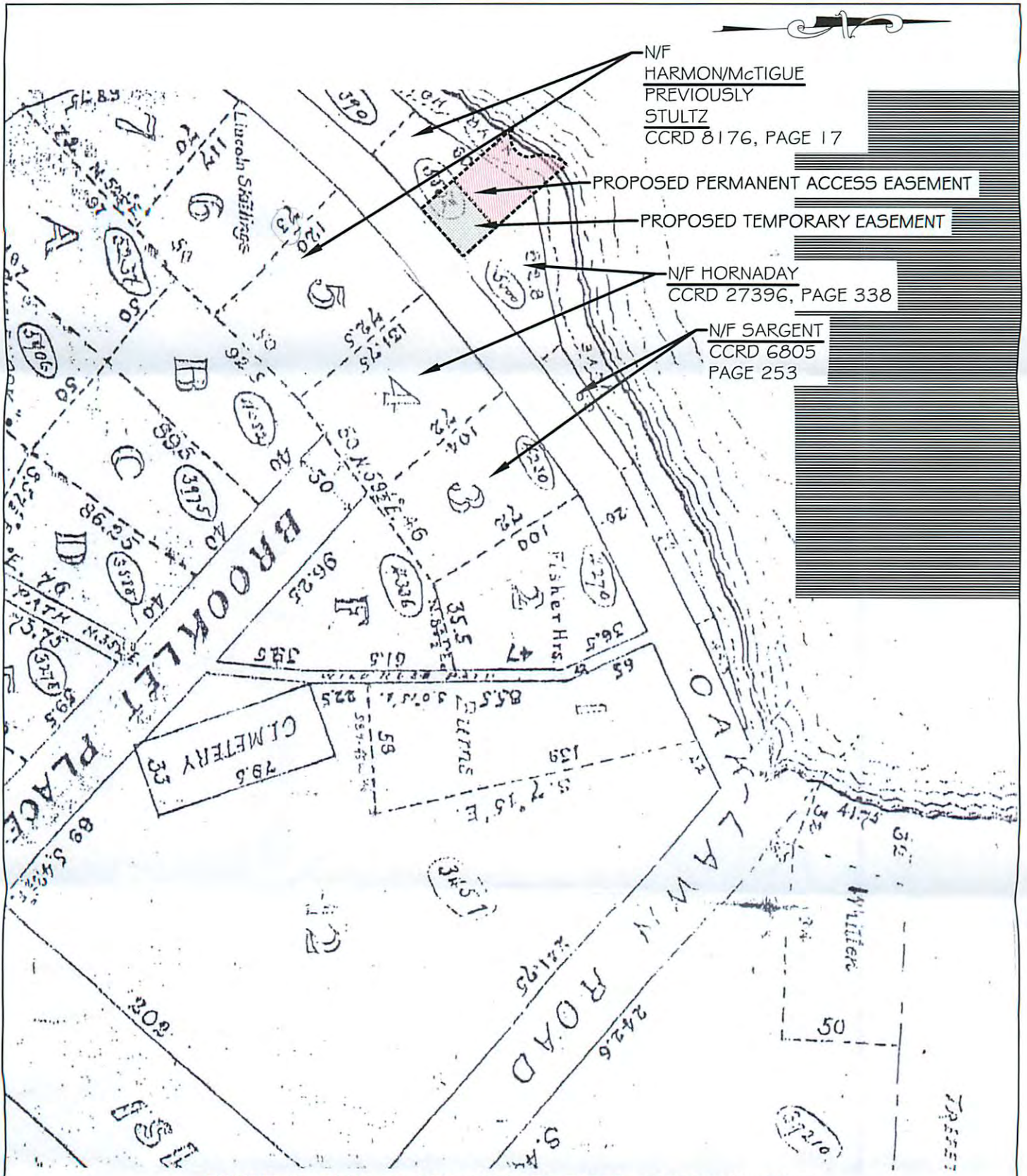


EXHIBIT B: PLAN OF PROPOSED EASEMENT. HARMON/McTIGUE

DATE: NOVEMBER 7, 2012

**PLAN REFERENCE: A PORTION OF A PLAN OF SKILLINGS'S FARM, WHICH IS RECORDED IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS, BOOK 11, PAGE 99.



Received
 Recorded Register of Deeds
 Nov 19, 2012 03:16:24P
 Cumberland County
 Pamela E. Lovley