

105-G-5
Little Diamond Island

CONSERVATION EASEMENT DEED AND INDENTURE

THIS DEED AND INDENTURE, made by and among DOUGLASS P. HOTCHKISS and LINDA C. HOTCHKISS, both of Alpharetta, County of Fulton and State of Georgia, with a mailing address of 235 Crown Vetch Lane, Alpharetta, Georgia 30005, "Grantor", and the CITY OF PORTLAND, a municipal corporation organized and existing under the laws of the State of Maine, and having an address of 389 Congress Street, Portland, Maine 04101 (hereinafter, with its successors and assigns, referred to as the "Holder").

WITNESSETH:

WHEREAS, this Easement Deed and Indenture is created pursuant to Title 33, Maine Revised Statutes, 1964, Sections 476 through 479-B, inclusive, and pursuant to the provisions of Section 14-145.5(1)h of the City of Portland Code of Ordinances, as amended;

WHEREAS, the Grantor seeks development approvals from the Holder for the creation of a residential building lot on property located on the southeasterly side of Anderson Avenue on Little Diamond Island in the City of Portland, Cumberland County, Maine;

WHEREAS, the Grantor has agreed with the Holder to provide permanent protection for other areas in order to meet the minimum lot size requirements under the Ordinance;

WHEREAS, as a condition of such development approvals, the Grantor is to grant an easement over the property as described in APPENDIX A attached hereto and incorporated herein by reference ("the Property") to the Holder;

WHEREAS, the Property is currently undeveloped open space;

WHEREAS, the Property is to remain in a substantially undeveloped open space and it is the purpose of the Grantor and Holder to assure the Property will not be developed; and

WHEREAS, the Grantor and Holder have the common purpose of preserving the Property as open space by the conveyance of a Conservation Easement on, over and across the Property, which Conservation Easement shall benefit, protect and conserve the

open space values of the Property and prevent any use or development which would conflict with its open space condition.

NOW, THEREFORE, in consideration of the foregoing and the covenants herein contained, the Grantor HEREBY GRANTS to the Holder, its successors and assigns, as an absolute and unconditional gift, forever and in perpetuity, a Conservation Easement in gross over the Property on the terms and conditions set forth herein (the "Conservation Easement").

1. Purpose.

It is the dominant purpose of this Conservation Easement to preserve and protect in perpetuity the open space value of the Property. In so doing, it is the purpose of this Conservation Easement to foster responsible conservation practices while permitting passive recreational and conservation uses upon the Property.

2. Conservation Easement.

The affirmative rights conveyed by this Conservation Easement are the following:

- a. The right of the Holder to identify, to preserve and to protect in perpetuity the currently existing open space features and values.
- b. The right of the Holder to enter upon and inspect the Property at any reasonable time in any reasonable manner that will not interfere with the permitted uses being made of the Property at the time of such entry.
- c. The right of the Holder to enforce by proceedings at law or in equity the covenants herein set forth.

2. Use of Property.

- A. Restrictions on Use. The Property shall be used by Grantor for passive recreational and conservation purposes only in connection with the use of the property of Douglass P. Hotchkiss et al described on APPENDIX B attached hereto. Without limiting the generality of the foregoing, the following restrictions shall apply to the Property:

1. No structure shall be permitted on the Property.
2. No parking or storage of vehicles or machinery shall be permitted on the Property at any time.
3. No area of the Property shall be paved.
4. No exterior storage for commercial use shall be permitted on the Property.
5. The benefits of this Conservation Easement deed are solely for the purposes of permitting the development of the premises described on Exhibit B, and the Property shall not be used or encumbered by any similar or duplicative easement for the benefit of any other property.

B. Reserved Uses. Notwithstanding the foregoing, however, and without limiting any of Grantor's rights at common law, the following rights are EXPRESSLY RESERVED AND RETAINED by the Grantor.

1. With respect to the Property, the right of passive recreational and conservation use of the Property.
2. With respect to the Property, the right to do those same things set forth in subparagraphs 2.a, b and c, provided that the same shall be consistent with the Holder's rights.
3. With respect to the Property, the right to erect appropriate signage to indicate the ownership of the Property.

4. Timber Cutting and Vegetation.

Subject to other provisions of this Conservation Easement, the destruction or removal of standing timber and shrubs shall not be permitted on the Property. Grantor may maintain the Property in its current condition, however.

5. Waste Disposal.

The dumping and storage of offal, garbage, debris, abandoned equipment, parts thereof or other waste material on the Property is prohibited.

6. Baseline Data.

Holder acknowledges by acceptance of this easement that Grantor's historical and present use of the Property is compatible with the purposes of this Easement. In order to establish the present condition of the Property so as to be able to properly monitor future uses of the Property and assure compliance with the terms hereof, Grantor shall promptly prepare an inventory of the Property's relevant features and conditions (the "Baseline Data"). The Baseline Data may be photographic or written.

7. Monitoring and Enforcement Rights of Holder.

The Holder shall make reasonable efforts as required from time to time to assure compliance by Grantor with all of the covenants and restrictions herein and shall make periodic inspections of the Property. For such inspection and enforcement purposes, the Holder shall have the right of access to the Property at a reasonable time and in a reasonable manner provided that the time and manner of such inspection does not unreasonably interfere with the uses of the Property permitted hereunder. Holder shall prepare and keep on file a monitoring report for each such inspection and made such reports available to the Grantor.

8. Grant in Perpetuity.

The terms of this Easement Deed and Indenture shall bind the Holder and the Grantor and shall be a burden on the Property running with the land in perpetuity, and this instrument shall be promptly recorded in the Cumberland County Registry of Deeds.

9. Subsequent Transferees.

By acceptance of this Conservation Easement, Holder covenants and agrees, as real covenants running with the land in perpetuity, not as conditions to this Conservation Easement or as restraints or alienability:

- a. That it will hold this Conservation Easement in perpetuity for the purposes set forth herein;
- b. That it will not transfer this Conservation Easement except to another entity able to enforce the rights granted in this Conservation Easement, which entity shall also have purposes similar to that of Holder and which encompass the purposes set forth in this Conservation Easement;

- c. That it is familiar with the generally existing conditions on the Property and will document the conditions on and monitor the Property as provided above. Wherever the term "Holder" appears in the Conservation Easement, including the foregoing covenants, it shall also refer, as appropriate, to any transfer assignee or successor in interest of the Holder to this Conservation Easement.

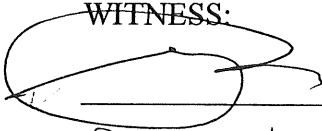
10. Severability.

If any provision of this Conservation Easement 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

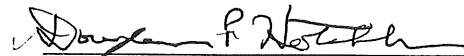
TO HAVE AND TO HOLD the said Conservation Easement unto the said Holder and to its successors and assigns forever.

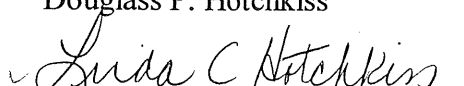
✓ IN WITNESS WHEREOF, the said DOUGLASS P. HOTCHKISS and LINDA C. HOTCHKISS have hereunto set their hands this 7th day of November, 2001.

WITNESS:



Donna H. Owen



Douglass P. Hotchkiss


Linda C. Hotchkiss

STATE OF GEORGIA
COUNTY OF FULTON

✓
November 7, 2001

Then personally appeared the above named Douglass P. Hotchkiss and Linda C.

Hotchkiss, and acknowledged the foregoing instrument to be their free act and deed,

Before me,

Vickie D. Hercher
Notary Public
Printed Name Vickie D. Hercher
My commission expires: _____

Notary Public, Cherokee County, Georgia
My Commission Expires July 12, 2002

ACCEPTANCE BY HOLDER

The above and foregoing Conservation Easement was authorized to be accepted by the CITY OF PORTLAND, Holder as aforesaid, and the said Holder does hereby accept the foregoing Conservation Easement by and through _____ Its _____, hereunto duly authorized, on November ____, 2001.

WITNESS:

CITY OF PORTLAND

Sonia Bean

By Joseph E. Gray, Jr.
Its _____

STATE OF MAINE
CUMBERLAND, ss.

November ____, 2001.

Personally appeared the above named Joseph E. Gray, Jr. in his said capacity, and acknowledged the foregoing instrument to be his free act and deed, and the free act and deed of said City of Portland,

Before me,

Sonia T. Bean
Notary Public/Attorney at Law

SONIA T. BEAN
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES JULY 12, 2002

A certain lot or parcel of land, situated on the northwesterly side of Anderson Avenue, on Little Diamond Island, in the City of Portland, County of Cumberland and State of Maine, and being lot numbered 105-G-5 on Assessor's Plan for the year 1952 on file in the Assessor's Office, City Hall, Portland, Maine. Said lot has fifty (50) feet frontage on said Anderson Avenue and being located on the corner of Elmwood Road and Anderson Avenue. Said lot of land is the southeasterly half of Lot No. 94 as shown on a Plan of West End of Little Diamond Island, made by E. C. Jordan & Co., Civil Engineers, and recorded in the Cumberland County Registry of Deeds in Plan Book 11, Page 71. Said lot is also subject to restrictions of record.

Reference is made to deed of Mary C. Thurston to Douglass P. Hotchkiss et al, dated June 30, 2000, and recorded in said Registry of Deeds in Book 15575, Page 316.

APPENDIX A

A certain lot or parcel of land, with any buildings thereon, situated on Little Diamond Island in the City of Portland, County of Cumberland and State of Maine, and being part of Lots number 81, 81a and 82 as shown on Plan of the West End of Little Diamond Island, made by E. C. Jordan & Co., Civil Engineers, and recorded in the Cumberland County Registry of Deeds in Plan Book 12, Page 71. Said lot is subject to restrictions of record.

Reference is made to deed of Mary C. Thurston to Douglass P. Hotchkiss et al, dated June 30, 2000, and recorded in said Registry of Deeds in Book 15575, Page 316.

APPENDIX B