

Department of Planning & Urban Development

Marge Schmuckal  
Zoning Administrator

Jeff Levine  
Director Planning & Urban Development



**CITY OF PORTLAND**  
**ZONING BOARD OF APPEALS**  
*Conditional Use Appeal Application*

**Applicant Information:**

Silver Beach, LLC and Elizabeth D. Brown  
NAME

Silver Beach, LLC and Elizabeth D. Brown  
BUSINESS NAME

c/o Barton Mortgage - 130 Middle Street  
ADDRESS  
Portland, Maine 04101

207-831-0700 - Bill Mann, WJM Consulting, LLC  
TELEPHONE #

Owner  
APPLICANT'S RIGHT, TITLE OR INTEREST  
(eg; owner, purchaser, etc)

R-3  
CURRENT ZONING DESIGNATION

**EXISTING USE OF PROPERTY:**

Approved Building Lot

**Subject Property Information**

83 Wellwood Road  
PROPERTY ADDRESS

149-G-38 and 160-F-40  
CHART/BLOCK/LOT (CBL)

PROPERTY OWNER (if different)  
NAME

ADDRESS

CONDITIONAL USE AUTHORIZED BY  
SECTION 14 - 88 (a)2(a thru j)

TYPE OF CONDITIONAL USE  
PROPOSED:  
Single family home with Accessory/  
Auxiliary living unit.

STANDARDS: Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the Board determines that:

1. *There are unique or distinctive characteristics or effects associated with the proposed conditional use;*
2. *There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area; and*
3. *Such impact differs substantially from the impact which would normally occur from such a use in that zone.*

NOTE: If site plan approval is required, attach preliminary or final site plan.

*The undersigned hereby makes application for a conditional use permit as described above, and certifies that the information herein is true and correct to the best of his OR her knowledge and belief.*

*new ben silver LLC, Elizabeth D. Brown*  
SIGNATURE OF APPLICANT by: Deron W. Barton, Mbr. Silver Beach, LLC DATE May 19, 2014

# WJM CONSULTING, LLC

90 Roaring Brook Road • Portland, ME 04103 • 207-831-0700 • 207-797-6001 • billihelp@gmail.com

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Via Hand Delivery: May 19, 2014

Mr. Gordon Smith, Chairman Zoning Board of Appeals  
c/o Ms. Ann Machado, Zoning Specialist and Ms. Marge Schmuckal, Zoning Administrator  
Zoning Administration ~ Planning & Urban Development Department  
City of Portland ~ Portland City Hall Room 315  
389 Congress Street  
Portland, ME 04101

RE: Application for Conditional Use Appeal  
Per City of Portland Code of Ordinances Section 14-88 a, 2: Alteration or construction of a detached single-family dwelling to accommodate one (1) additional dwelling unit for the benefit of the homeowners or tenants, provided that:  
Location: 83 Wellwood Road, Portland, Maine  
Owners: Silver Beach, LLC and Elizabeth D. Brown

Dear Mr. Smith and Fellow Zoning Board Members:

Please see attached the appropriate application along with supporting documentation addressing each specific point of how this request meets the code requirements. These points are referenced in Appendix A, along with the following background of my client's ownership history and their current situation that we feel is helpful for you to know.

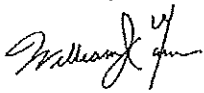
In the spring of 2009 my clients, Silver Beach, LLC (Deron Barton) and Elizabeth Brown purchased a home building lot at the end of Wellwood Road for the purpose of constructing their primary residence. Due to the large size of the lot, the previous owner, Randall Libby had attempted to develop the lot into multiple homes; however the large lot appealed to my clients because it offered excellent privacy in a very convenient city location.

In 2012 as part of the larger effort to preserve the abutting Canco Woods as open space, my clients delayed the construction of their new home and worked with the City of Portland to complete a land swap that provided a trail easement along the edge of their property that would allow the Wellwood neighborhood to have access to the Canco Woods recreation area. As part of the recorded deed agreement with the City of Portland, the City explicitly referenced the allow-ability of an accessory unit within the to-be constructed home. Again, this land swap process & approval delayed my clients' plans to build by over a year and while this intended use has been openly disclosed and known for at least two years – it was never disclosed to my clients that they would need to seek approval of the Zoning Board of Appeals to proceed forward.

Mr. Barton and Ms. Brown have: four adult children, two grandchildren as well as elderly parents and it is their intent to utilize the accessory space to allow their family members occupy the space, visit and at the same time maintain their own privacy. My clients have been very patient and cooperative with this entire process and are happy to comply now but given the history of events, ask for the Board's most expeditious processing of this approval as their home is currently under construction and scheduled for delivery in approximately six weeks – by when it has been and remains their thought that the building permit from the City of Portland would have been in place allowing sufficient time to complete the site work and foundation required for delivery of the home. Should there be a delay in the issuance of their building permit it would cause them significant inconvenience and a substantial financial hardship.

I look forward to presenting my clients' request for this conditional use in person at your meeting on June 5, @ 6:30 p.m. at City Hall. In the meantime, please reach out to me with any questions so that they can be appropriately addressed before the June 5<sup>th</sup> meeting. I can be reached at: 207-831-0700 or [billihelp@gmail.com](mailto:billihelp@gmail.com). On behalf of my clients we thank you in advance for your assistance.

Sincerely,



William J. Mann

WJM Consulting, LLC

Consultant to SILVER BEACH, LLC & Elizabeth D. Brown

cc: Silver Beach, LLC - Attn. Mr. Deron Barton  
Ms. Elizabeth Brown

Appendix A

Requirements for Conditional Use and how requested use complies with such requirements; excerpted from:

City of Portland, Maine  
Land Use Code of Ordinances  
Rev. 8-15-13  
Chapter 14 Sec. 14-88 Conditional Uses  
(a) Residential

2. Alteration or construction of a detached single-family dwelling to accommodate one (1) additional dwelling unit for the benefit of homeowners or tenants, provided that:

NOTE: Requirements in normal font and Compliance Response in *bold italics*.

a. The accessory unit shall be no more than thirty (30) percent of the gross floor area of principal building and shall have a minimum floor area four hundred (400) square feet; gross floor area shall exclude any floor area that has less than two-thirds of its floor-to-ceiling height above the average adjoining ground level; gross floor area may include attic space if such space shall be included as habitable space within either dwelling unit;

*The total living space in the proposed dwelling is 2,832 sq. ft. and the accessory unit, all on the first floor of the structure measures 24' x 26' for a total of 624 sq. ft. or 22% of the total square footage of the total structure.*

b. There shall be no open outside stairways or fire escapes above the ground floor;  
*There are none.*

c. Any building additions or exterior alterations such as facade materials, building form, or roof pitch shall be designed to be compatible with the architectural style and to maintain the single-family appearance of the dwelling;  
*The exterior appearance of the structure shall be finished and situated on the lot so as to appear as a single family home.*

d. A minimum lot size of six thousand five hundred (6,500) square feet of land area shall be required; City of Portland Land Use Code of Ordinances Chapter 14 Sec. 14-88 Rev.8-15-13  
14-82  
*The subject lots (#149-G-38 and #160-F-40) measure 32,842 sq. ft.*

NOTE: There are no items listed for letters: e. and f.

g. No dwelling unit shall be reduced in size to less than one thousand (1,000) square feet of floor area, exclusive of common areas and storage in basement or attic;  
*See response to item a, above.*

h. Parking shall be provided as required by division 20 of this article;  
*The property will be serviced by garages - as part of the structure - for three (3) vehicles and additional on-site/off-street surface parking for additional vehicle parking with adequate screening from all neighbors.*

i. The project shall be subject to article V (site plan) of this chapter for site plan review and approval and the following additional standards:

i. Any additions or exterior alterations such as facade materials, building form and roof pitch shall be designed to be compatible with the architectural style of the building;

*The structure including the auxiliary unit are being constructed at a single time and will be of a single architectural style.*

ii. The scale and surface area of parking, driveways and paved areas shall be arranged and landscaped to properly screen vehicles from adjacent properties and streets.

*The layout of the site is designed to maintain as much privacy between the subject and the abutters as is possible.*

j. Either the accessory unit or principal unit shall be occupied by the lot owner, except for bona fide temporary absences.

*As noted above, the subject property is to be the primary residence of the Mr. Barton & Ms. Brown.*

130 Middle Street  
Portland Maine 04101

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Via Hand Delivery

May 19, 2014

Mr. Gordon Smith, Chairman Zoning Board of Appeals  
c/o Ms. Ann Machado, Zoning Specialist and Ms. Marge Schmuckal, Zoning Administrator  
Zoning Administration ~Planning & Urban Development Department  
City of Portland ~ Portland City Hall Room 315  
389 Congress Street  
Portland, ME 04101

RE: Authorization of William J. Mann, Principal of WJM Consulting, LLC to represent us in our  
Application for Conditional Use Appeal  
Location: 83 Wellwood Road, Portland, Maine  
Owners: Silver Beach, LLC and Elizabeth D. Brown

Dear Mr. Smith and Fellow Zoning Board Members:

Please accept this letter as our authorization to allow William J. Mann, Principal of WJM Consulting, LLC to represent us in our Application for Conditional Use Appeal before the City of Portland Zoning Board of Appeals.

Should there be any questions regarding this authorization please call Deron at 207-838-4812.

Sincerely,

  
Silver Beach, LLC

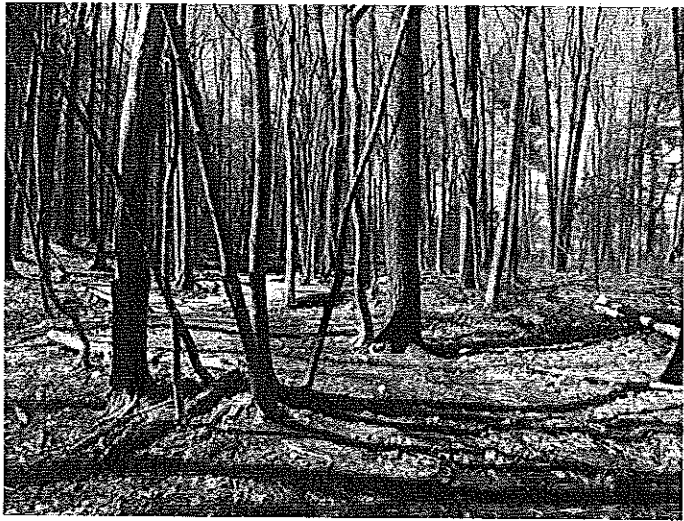
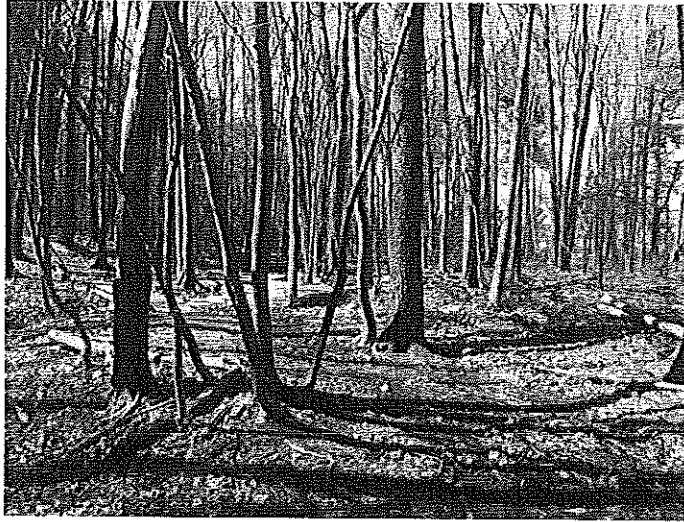
and

  
Elizabeth D. Brown

cc: William J. Mann, Principal - WJM Consulting, LLC

Photos

83 Wellwood Road – Portland, Maine



### WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS, that Randall A. Libby of 302 Pine Point Road Scarborough, ME for consideration paid grants to Silver Beach, LLC, a Maine Limited Liability Company with a mailing address of 208 Fore Street, Portland, Maine with WARRANTY COVENANTS, the premises in the City of Portland, County of Cumberland and State of Maine, being more particularly described in Exhibit A attached hereto and made a part hereof.

IN WITNESS WHEREOF, the said Randall A. Libby has caused this instrument to be signed this 5/27/2009

MAINE REAL ESTATE TAX PAID

Randall A Libby  
Randall A. Libby

\_\_\_\_\_  
Witness

State of Maine  
County of Cumberland

Then personally appeared before me this 27th day of May, 2009 the said  
Randall A. Libby  
and acknowledged the foregoing to be his/her/their voluntary act and deed.

[Signature]  
Notary Public/Maine Attorney at Law  
~~Commission Expires~~  
Daniel Rust



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

A certain lot or parcel of land with any improvements located thereon, located in the City of Portland, County of Cumberland and State of Maine, and being Lot B as shown on "Plan of Land on Torrey Street, Portland Maine" made for Beth Barbour, 87 Torrey Street, Portland, Maine, dated 8/21/2003 by Owen Haskell, Inc. and recorded in the Cumberland County Registry of Deeds in Plan Book 203, Page 567.

This lot is subject to the scenic buffer benefiting Lot A as shown on said Plan. Said scenic buffer shall be maintained by the owner of Lot A.

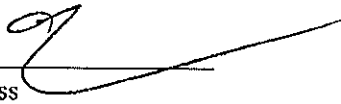
Meaning and intending to describe the same premises conveyed to the grantor herein by deed of John Ham dated November 22, 2006 and recorded in the Cumberland County Registry of Deeds in Book 24633, Page 53.

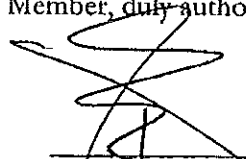
Received  
Recorded Register of Deeds  
May 28, 2009 02:03:36P  
Cumberland County  
Pamela E. Lovley

### QUITCLAIM DEED

KNOW ALL PERSONS BY THESE PRESENTS, that **Silver Beach, LLC**, a Maine limited liability company with a place of business at 130 Middle Street, Portland, Maine 04101, in consideration of \$1.00 and other valuable consideration, Grants to **The City of Portland**, a municipal corporation with a mailing address of 389 Congress Street, Portland, Maine, 04101 with QUITCLAIM COVENANTS, the property located in the City of Portland, County of Cumberland, and State of Maine, being more particularly described in Exhibit A attached hereto and made a part hereof.

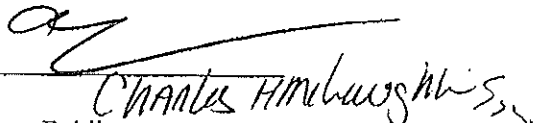
IN WITNESS WHEREOF, the said **Silver Beach, LLC** has caused this instrument to be signed in its name by **Deron W. Barton**, its Sole Member, duly authorized this 6 day of May 2012.

  
Witness

  
By: **Deron W. Barton**  
Its: Sole Member

State of Maine  
County of Cumberland

On May 6, 2012, personally appeared the above-named **Deron W. Barton**, in his capacity as **Sole Member** of the above-named **Silver Beach, LLC** and acknowledged the foregoing instrument to be his/her/their free act and deed and the free act and deed of said **Silver Beach, LLC**.

  
~~Notary Public/Attorney~~

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

A certain lot or parcel of land located on the northeasterly side of Torrey Street in Portland, County of Cumberland and State of Maine, and being more particularly described as follows:

BEGINNING at the intersection of the northeasterly sideline of the unaccepted portion of Torrey Street and the southerly corner of land formerly of Central Maine Power Company as described in an instrument recorded at the Cumberland County Registry in Deed Book 3595, Page 312 (the CMP Land");

THENCE S 25° 08' 30" E along the northeasterly line of the said unaccepted portion of Torrey Street and along the accepted portion of Torrey Street a distance of 65.00 feet to a westerly corner of land shown as "Lot A" on the plan entitled "Plan of Land on Torrey Street, Portland, Maine, Made For Beth Barbour, Record Owner," by Owen Haskell, Inc., stamped by Joe M. Walker, and dated August 21, 2003, last revised October 14, 2003, and recorded at said Registry in Plan Book 203, Page 567 (the "Barbour Plan");

THENCE N 01 ° 16' 08" E along the westerly line of land shown as "Lot A", a distance of 67.27 feet to a point;

THENCE N 44° 12' 00" E along the northwesterly line of land shown as "Lot A" on the Barbour Plan a distance of 144.29 feet to a point;

THENCE N 38° 37' 45" W through land shown as "Lot B" on the Barbour Plan a distance of 15.12 feet, to the said CMP Land;

THENCE S 44° 12' 00" W along said CMP Land, a distance of 172.50 feet, to the northeasterly sideline of the unaccepted portion of Torrey Street and the POINT OF BEGINNING.

Bearings are Magnetic 1992 as shown on Barbour Plan, which was used in the preparation of this description.

Together with all right, title and interest of the grantor herein in and to Torrey Street, in common with the rights of others in said Street.

Subject to the scenic buffer benefiting Lot A as shown on Plan of Land of Torrey Street, Portland, Maine, made for Beth Barbour, record owner by Owen Haskell, inc dated August 21, 2003, last revised October 14, 2003, recorded in Plan Book 203, Page 567. Said scenic buffer shall be maintained by the owner of Lot A.

Reference is also made to Map 149/G/Lot 38, using the Map/Block/Lot designation of the Assessor of the City of Portland, of which the herein described parcel is a portion.

Reference is also made to a plan entitled "Cross Country Sewer R.O.W.'s from Wellwood Road to Carlyle Road and Ocean Avenue to Canco Road, dated January 20, 2011 and recorded in the Cumberland County Registry of Deeds in Plan Book 211, Page 31.

Also conveying a ten (10) foot wide easement over a portion of the land being retained by Silver Beach,

LLC, in the location and on the terms and for the purposes, as follows:

The location of this easement is over a certain lot or parcel of land located northeasterly of but not adjacent to Torrey Street, and northwesterly of the northerly terminus of Wellwood Road, in Portland, County of Cumberland and State of Maine, and being more particularly described as follows: BEGINNING at a point which is the easterly corner of Lot A on the Barbour Plan, and which point is also the northwesterly corner of a certain strip or parcel of land (the "Five Foot Strip"), five (5) feet in width and fifty (50) feet in length more or less, located at the northerly end of Wellwood Road in Portland, County of Cumberland and State of Maine, and being depicted on the plan entitled "Wellwood, The Otis Perry Land Company, Owners - 1924", recorded in said Registry in Plan Book 16, Page 12;

THENCE N 38° 37' 45" W along the land shown as "Lot A" on the Barbour Plan, a distance of 151.34 feet, to the northerly corner of said Lot A, and to the easterly corner of the parcel of land described above, and passing over a capped iron rod set approximately 10.08 feet before arriving at said corner of Lot A;

THENCE continuing N 38° 37' 45" W through the land shown as "Lot B" on the Barbour Plan, and along the northeasterly boundary of the parcel of land described above, a distance of 15.12 feet, more or less, to the CMP Land;

THENCE N 44° 12' 00" E along said CMP Land a distance of 10.08 feet, to a point;

THENCE S 38° 37' 45" E through the land shown as "Lot B" on the Barbour Plan, a distance of 167.73 feet, and passing and maintaining a distance of 10 feet (normal) from the northeasterly boundary of said Lot A, to the northwesterly boundary of the Five Foot Strip;

THENCE S 51° 22' 15" W along said Five Foot Strip a distance of 10.00 feet, to the POINT OF BEGINNING, for the description of the area of this easement.

Bearings are Magnetic 1992 as shown on Barbour Plan, which was used in the preparation of this description.

The terms and purposes are:

1. that this 10 foot easement area shall be used for a public pedestrian trail or walkway;
2. that the City of Portland may clear brush or small trees, deed trees and other dead vegetation from the easement area;
3. that the grantee may not pave any portion of the easement area with bituminous, concrete or crushed stone, but may place in the easement area a natural material such as wood chips or dirt or seed for low vegetation such as grass;
4. that the City of Portland may erect signage on the post described in the deed of near date and recorded herewith, from Grantee herein to Grantor Herein, to be erected in the Five Foot Strip, and at other locations in the easement area;
5. that the City of Portland may grade and re-surface the trail or walkway in the easement area; and
6. that the grantee shall also have the right to temporarily and occasionally use within another 10 feet of the easement area, on the land retained by the grantor, to the extent reasonably necessary or convenient for such grading and re-surfacing, provided that the grantee must restore any disturbed off-easement areas to substantially their prior condition.

Being a portion of the premises conveyed to Silver Beach, LLC by a deed from Randall A. Libby dated May 27, 2009 and recorded in the Cumberland County Registry of Deeds in Book 26932, Page 226.

DEED WITH COVENANT

KNOW ALL PERSONS BY THESE PRESENTS, that the CITY OF PORTLAND, a municipal corporation with a mailing address of 389 Congress Street, Portland, Maine 04101, for good and valuable consideration, receipt whereof is hereby acknowledged, hereby bargains, conveys, grants and quitclaims with covenant to SILVER BEACH, LLC a Maine limited liability company, with a mailing address of Silver Beach, LLC, c/o William Mann, Principal, WJM Consulting, 90 Roaring Brook Road, Portland, ME 04103, the real property in the City of Portland, County of Cumberland, State of Maine, particularly described in "EXHIBIT A" attached hereto and hereby made a part hereof.

IN WITNESS WHEREOF, Ellen L. Sanborn, Finance Director of the City of Portland, has hereunto executed this easement deed on this 11th day of May, 2012.

WITNESS

*Cathy A. Rubin*

CITY OF PORTLAND

*Ellen L. Sanborn*  
Ellen L. Sanborn, Finance Director

STATE OF MAINE  
CUMBERLAND, ss.

Dated: May 11, 2012

Personally appeared the above-named Ellen L. Sanborn, Director of Finance of the City of Portland, Maine, 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,

*Margaret M. Axelsen*

Notary Public/Attorney at Law, Bar #

*Margaret M. Axelsen*

Print Name

Margaret M. Axelsen  
Notary Public, Maine  
Commission Expires: August 8, 2016

SEAL

Approved as to form:

*PCW*

Corporation Counsel's Office

MAINE REAL ESTATE TAX PAID

## EXHIBIT A

A certain strip or parcel of land, five (5) feet in width and fifty (50) feet more or less in length, abutting the northerly end of the accepted portion of Wellwood Road in Portland, County of Cumberland and State of Maine, and being depicted on the plan entitled "Wellwood, The Otis Perry Land Company, Owners – 1924", recorded in said Registry in Plan Book 16, Page 12.

Title reference is made to the Tax Lien Certificate recorded on July 2, 1984 in the Cumberland County Registry of Deeds in Book 6496, Page 81, from Harry M. Verrill, as Conservator of the Casco Mercantile Trust Company, and to a tax lien deed recorded at Book 1778, Page 11 in said Registry.

Reference is also made to Map 160, Block F, Lot 40, using the Map/Block/Lot designation of the Assessor of the City of Portland.

Subject to these terms reservations and conditions, which shall be permanent and shall run with the land:

1. That this strip of land, and the adjacent land now owned by Silver Beach, LLC (see deed from Randall A. Libby, dated May 27, 2009, recorded in the Cumberland County Registry of Deeds in Book 26932, Page 226) can only be used to provide access and road frontage for one single family dwelling, with related structures, and with an accessory dwelling unit as allowed in Portland's Ordinances or Codes.
2. The City of Portland reserves a permanent easement in, over and on said strip, for public access and for utilities of all types, now existing or placed in said strip in the future, including the rights to maintain, place, repair and re-place said utility pipes, lines, cables, etc., and their related facilities and appurtenances.
3. That Silver Beach, LLC, its successors and assigns, shall erect (but not be responsible to maintain) on or within approximately 15 feet back from said strip onto the lands of Silver Beach, LLC, a post, for the purpose of signage related to the trail and easement for which is being granted to the City of Portland by Silver Beach, LLC. The post design, construction and location shall be subject to review and written approval by the Corporation Counsel for the City of Portland; however, it is hereby agreed and stipulated that a granite post, 6 inches by 6 inches, and 6 feet in length, and placed partially into the ground to a depth of at least 24 inches (but to a lesser depth if ledge is present), and, as a footing for said post, with a sonotube-type tube (at least 12 inches in diameter) with concrete therein, will be acceptable.

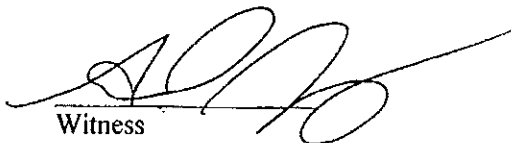
Received  
Recorded Register of Deeds  
Jun 11, 2012 11:43:44A  
Cumberland County  
Pamela E. Lovley

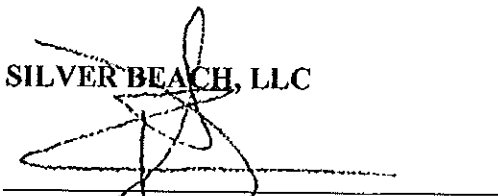
# QUITCLAIM DEED WITH COVENANT

KNOW ALL PERSONS BY THESE PRESENTS, that **SILVER BEACH, LLC**, a Maine Limited Liability Company with a place of business in Portland, Maine, grants WITH QUITCLAIM COVENANTS a one half interest each to **SILVER BEACH, LLC** and **ELIZABETH D. BROWN**, in a certain lot or parcel of land with any improvements located thereon, located in the City of Portland, County of Cumberland and State of Maine, and being Lot B as shown on "Plan of Land on Torrey Street, Portland Maine" made for Beth Barbour, 87 Torrey Street, Portland, Maine, dated 8/21/2003 by Owen Haskell, Inc. and recorded in the Cumberland County Registry of Deeds in Plan Book 203, Page 567.

This lot is subject to the scenic buffer benefiting Lot A as shown on said Plan. Said scenic buffer shall be maintained by the owner of Lot A.

IN WITNESS WHEREOF, the said Deron W. Barton, Member of Silver Beach, LLC has caused this instrument to be signed in his name this 4<sup>th</sup> day of ~~February~~ MARCH, 2011.

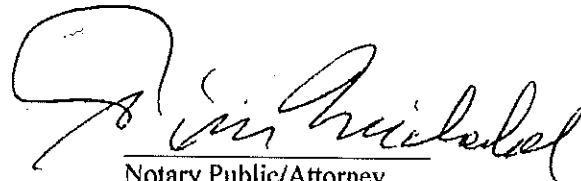
  
Witness

  
**SILVER BEACH, LLC**  
Deron W. Barton  
Its Member

State of MAINE  
County of CUMBERLAND

On ~~February~~ March 4<sup>th</sup>, 2011, personally appeared the above-named Deron W. Barton and acknowledged the foregoing to be his free act and deed and the free act and deed of said Silver Beach, LLC.

Timothy Michalak  
Notary Public State of Maine  
My Commission Expires  
September 5, 2013

  
Notary Public/Attorney  
Name:

Received  
Recorded Register of Deeds  
May 29, 2013 12:55:17P  
Cumberland County  
Pamela E. Lovley

