

EASEMENT DEED
(Maine Statutory Short Form)

FITZPATRICK ASSOCIATES, INC., a Maine corporation (“Grantor”), with a place of business in Harpswell, Maine, GRANTS to **TOWN OF CAPE ELIZABETH**, a municipal corporation organized and existing under the laws of the State of Maine (“Grantee”), whose mailing address is 320 Ocean House Road, P. O. Box 6260, Cape Elizabeth, Maine 04107, with **QUITCLAIM COVENANTS**, the right and easement in certain land in Cape Elizabeth, County of Cumberland and State of Maine:

A. **Pedestrian Easements**. The following two easements for pedestrian ingress and egress across portions of the land shown on the plan entitled “Eastman Meadows Condominium” as shown on a plan recorded in the Cumberland County Registry of Deeds in Plan Book 209, Page 127 (the “Plan”), as follows:

1. **Open Space Access Trail**. The right and easement to use the footpath identified or labeled as “Open Space Access Trail”, as shown crossing a portion of the Open Space on the Plan, and located within Plan Phase I as shown on the Plan, being a 5’ wide footpath located within a 15 foot wide strip of land (the “footpath easement area”) having a centerline located along the centerline of such footpath, as constructed.
2. **Sidewalks**. The right and easement to use the 5 foot wide pedestrian sidewalks (“sidewalk easement area”) shown on the recorded Plans along the easterly side of Tanager Lane and Phoebe’s Way and the westerly side of Dipper Road, together with the extension of such sidewalks to the open space property at the southerly end of the Plan labeled “N/F Sprague Corp.”, as such sidewalks and extension are actually constructed or installed.

Collectively, the two easements described above are hereinafter called the “Pedestrian Easements”. Notwithstanding any other provision hereof or shown on the Plan, this deed shall not grant or create in the public any rights of access or use of the Open Space other than in the footpath easement area and the sidewalk easement area. The Open Space shall remain the private property of the Grantor, its successors and assigns.

The within rights and easements are solely for pedestrian ingress and egress for the limited purpose of enjoyment of the scenic beauty of the Open Space, for access to other property of the Town of Cape Elizabeth and for the general passive appreciation of the natural environment within such Open Space areas. Grantee may enter upon such areas with low-impact motorized vehicles for purposes of maintenance and repair of the Pedestrian Easements.

This conveyance is subject to the following covenants and restrictions which shall run with the property in perpetuity and shall be for the benefit of the remaining land of the Grantor known as Eastman Meadows Condominium as shown on the Plan.

1. Passive use of the Pedestrian Easements. The Pedestrian Easements shall be used for passive recreational activities only, to wit, walking, jogging, hiking, sightseeing, and bird watching, as well as to provide access for general education activities. No buildings, utilities or other significant improvements shall be erected, used, maintained or allowed to stand on the easement property, except boardwalks, steps and signs approved for marking by the Cape Elizabeth Greenbelt Committee, or any other municipal board which has been delegated such authority by the Grantee. Any and all such passive activities which occur on the Pedestrian Easements shall be of a character harmonious with the natural beauty of the Open Space Property's environment and shall not unreasonably interfere with the residential character of the Eastman Meadow Condominium.
2. Restrictions on Vehicular Traffic. No bicycles, snowmobiles, all-terrain vehicles, motorcycles, trail bikes or any other similar on or off-road motorized vehicles shall be operated on the Pedestrian Easements; provided that Grantee may enter with low-impact motorized vehicles for purposes of maintenance and repair of the Pedestrian Easements.
3. Preservation of Existing Natural Vegetative Growth. The natural tree and shrub growth, if the same exists, on the Pedestrian Easements shall be preserved in its existing condition, except as may be necessary for the construction and maintenance of paths/walkways or the removal of dead or diseased trees and vegetation. It is expressly allowed that the land within the footpath easement area may be graded, altered and maintained in such a manner to allow the proper functioning and use of the Open Space Access Trail, including the removal of vegetation, provided any areas disturbed are re-planted with appropriate vegetative cover.
4. No Third-Party Enforcement. Grantor, and its successors and assigns in title to the Eastman Meadow Condominium property (and including specifically, but not limited to, the Eastman Meadows Condominium Association), is the only person having the right to enforce these restrictions. There shall be no person having a third-party right of enforcement of the terms and conditions hereof unless such right is expressly granted by an instrument duly recorded at the Cumberland County Registry of Deeds.
5. Limitation of Liability. This easement is given for recreational use and the Grantee shall be protected from liability in accordance with Title 14 MRS §159-A. As set forth therein, neither Grantor nor Grantee shall assume or have a duty of care to keep the Pedestrian Easement safe for entry or use by others for the recreational activities permitted hereunder, or to give warning to persons entering for such purposes of any hazardous condition, use, structure or activity on the property of Grantor, or to assume or incur liability for any injury or harm to person or property caused by any act of other persons. To the maximum extent possible, it is the intent of this term and condition to provide to Grantor and Grantee the protections of said statute.
6. DEP Order. The within rights and easements are conveyed subject to the terms and conditions of a Department Order issued by the Maine Department of Environmental Protection

(the “DEP”) to Declarant for “Eastman Meadow,” permit #L-24201-MX-A-N and L-24201-TC-B-N, Site Location of Development Act, Natural Resources Protection Act Tier One Wetland Alteration, Water Quality Certification Findings of Fact and Order” dated October 27, 2008, recorded in the Cumberland County Registry of Deeds in Book 26453, Page 216, as affected by a Condition Compliance letter recorded in Book 27861, Page 304 (the “DEP Order”).

B. Parking Easement. Also, the following rights and easements within the area described on **Exhibit A**, attached hereto (the “Parking Area”), such rights being the right and easement to use, maintain, repair and preserve the Parking Area in substantially the condition as such area exists as of the date hereof for the purposes of parking of passenger cars and bicycles by users of the Pedestrian Easements (as defined above). In addition, the rights herein include the right for pedestrian access from the parking locations in such Parking Area onto that portion of the Pedestrian Easements (as defined above) which extends from or through such Parking Area. In addition to the limitation on the parties having the right to park vehicles or bicycles as set forth above, the rights herein are subject to the following conditions and limitations:

1. No parking of vehicles or bicycles shall be allowed or permitted other than on a temporary basis during the time the person or persons using such vehicles or bicycles are actually using the Pedestrian Easement, or the contiguous Open Space areas owned or controlled by the Town of Cape Elizabeth (but only for so long as such areas are owned or controlled by such Town).
2. No vehicle or bicycle shall be permitted to be on such Parking Area for any time except during the period from one-half hour before sunrise to one-half hour after sunset, the purpose of this restriction being material to the safety, security and peaceful environment of Grantor’s adjacent development currently known as “Eastman Meadows”, a residential community.
3. The Grantee herein shall be responsible for the cleanup of any wastes, spills, debris or contamination of any sort arising as a result of the parking of motorized vehicles on the Parking Area.
4. This Parking Easement is given for recreational use, and the Grantee shall be protected from liability in accordance with Title 14 MRS §159-A, and as more fully set forth above in section A, 5.
5. All rights herein are subject to the terms and conditions of the DEP Order.

IN WITNESS WHEREOF, **FITZPATRICK ASSOCIATES, INC.** has caused this deed to be executed by its duly authorized officer on October ____, 2011.

WITNESS:

FITZPATRICK ASSOCIATES, INC.

By: _____
Joel S. FitzPatrick, Its President

STATE OF MAINE
COUNTY OF _____

October ____, 2011

Personally appeared the above-named Joel FitzPatrick, President of **FITZPATRICK ASSOCIATES, INC.**, and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said corporation.

Notary Public/Attorney-at-Law
Print Name: _____

**Exhibit A
Parking Area
Eastman Meadows**

A certain easement area situated on the southwesterly side of Eastman Road in the Town of Cape Elizabeth, County of Cumberland, and State of Maine, as shown on a plan entitled "Subdivision Plan of Eastman Meadows for Wyley Enterprises, LLC., by Sebago Technics, Inc., last revised on March 17, 2009, and being more particularly bounded and described as follows:

Beginning at a 5/8-inch capped rebar to be set on the southwesterly sideline of Eastman Road, being S 29°-47'-18" E, a distance of 322.04 feet from a 6 inch by 6 inch granite monument 15 inches high with drill hole, at the easterly corner of land now or formerly of Clinton W. Hatt Jr. and Margaret M. Hatt, as described in Deed Book 6570, Page 47;

Thence S 50°-43'-55" E, along the southwesterly sideline of Eastman Road, a distance of 55.63 feet;

Thence S 14°-30'-11" W, through Open Space Area 1, a distance of 58.00 feet;

Thence N 81°-03'-38" W, continuing through Open Space Area 1, a distance of 133.07 feet;

Thence N 49°-31'-34" E continuing through Open Space Area 1, a distance of 126.63 feet to the southwesterly sideline of Eastman Road;

Thence S 29°-47'-18" E along the southwesterly sideline of Eastman Road, a distance of 13.27 feet to the Point of Beginning.

Meaning and intending to describe an easement containing approximately 8,000 square feet over land of the Open Space Area 1 of the Eastman Meadows Subdivision currently owned by Wyley Enterprises, LLC as described in Deed Book 24519, Page 241. The Plan referenced above is to be recorded in the Cumberland County Registry of Deeds.

Bearings herein are based on Grid North.

P:\LEL\FITZPATRICK ASSOCIATES\EASTMAN MEADOWS\Deed easement Ped Ease FINAL (2011-10-11).doc