

DECLARATION OF ENVIRONMENTAL COVENANT

This ENVIRONMENTAL COVENANT is hereby declared and granted as of this _____ day of _____, 2011, by THE INHABITANTS OF THE TOWN OF CASCO, a municipal corporation organized and existing under the laws of Maine and having a place of business at 635 Meadows Road, Casco, Cumberland County, Maine (“Declarant” or “Town”), to the Maine Department of Environmental Protection (“DEP”) on property located in Casco, Maine, which is more fully described below.

RECITALS

WHEREAS, Declarant is the owner of a certain property approximately 3.87 acres in size located in the Town of Casco, Cumberland County, Maine, a legally sufficient description of which property is set forth in **Exhibit A** attached hereto (said property to be referred to as “Protected Parcel”);

WHEREAS, the DEP’s Bureau of Remediation and Waste Management has conducted a removal action of contaminated soil from the Protected Parcel that resulted in remaining residual contamination at concentrations exceeding health based risk guidelines, necessitating that Declarant prepare and record a Declaration of Environmental Covenant consistent with the Maine Uniform Environmental Covenants Act (“UECA”), 38 M.R.S.A. § 3001 et seq.;

WHEREAS, the DEP has determined in accordance with 38 M.R.S.A. § 1301 et seq. and the UECA that the environmental covenants in this Declaration are necessary to prevent extraction of groundwater, and digging of soil and to protect the public health, safety, and the environment, which covenants shall run with the land; and

WHEREAS, Declarant intends to create and grant an Environmental Covenant pursuant to the UECA;

NOW, THEREFORE, the Declarant for and in consideration of the facts above recited and the covenants herein contained, and intending to create and be legally bound by a perpetual covenant running with the land, subject to the terms hereof, hereby declares, covenants and agrees as follows:

- 1) Declaration of Covenant. This instrument is an Environmental Covenant executed pursuant to the UECA.
- 2) Prohibited Activities: Declarant and future owners and users of the Subject Property shall be aware that the potential exists for contaminated soil, groundwater and surface water, if any surface water is to be created, to be encountered on and beneath the Protected Parcel. Therefore, the following acts shall be prohibited throughout the

Protected Parcel, and the Town, its representatives, or any subsequent owner/occupant shall not cause, permit or suffer any such acts to occur therein without prior written permission of the DEP:

- (a) Change in the agreed upon accepted use for the Protected Parcel to any other use.
 - (b) The withdrawal or use of any groundwater from, on, or under the Protected Parcel for any purpose except for groundwater quality monitoring or investigative purposes.
 - (c) Any activity which might disturb the contaminated soil on the Protected Parcel, including:
 - (i) The construction or placement of any buildings or structures, roads, or fill on, in, or under the Protected Parcel; or
 - (ii) The excavation, digging, grading, drilling, mining or any other disturbance of the Protected Parcel;
 - (d) erosion of soil or subsoil; or
 - (e) alteration in the present surface water, groundwater or the water table (other than occurring naturally) including, but not limited to, any discharge to the surface of the Protected Parcel or discharge or injection into the subsurface of the Protected Parcel or withdrawal from the subsurface of the Protected Parcel of liquids of any type; or creation of any surface water bodies.
- 3) Uses: The Protected Parcel shall be used and maintained for...
- 4) Inspection and Reporting: The Declarant (directly or through its tenant) or any subsequent owner of the Protected Parcel shall periodically review the status of compliance with this Environmental Covenant and shall report inspection results to the DEP in writing: (a) at each five (5) year interval after the recording of this Environmental Covenant, and (b) upon the request of DEP.
- 5) Agency and Holder. DEP is the environmental agency with enforcement authority pursuant to the UECA, and is also the only Holder of the Environmental Covenant granted by Declarant in this Declaration.
- 6) Notice to Tenants and Others. The Declarant or future owners of the Property shall provide notice of this Environmental Covenant to any tenants or lessees, or to any person conducting any activities on the Property that could result in disturbance of soil or groundwater, or any activity that would be otherwise prohibited by this Environmental Covenant.
- 7) Perpetuity of Covenant. This Environmental Covenant and each and every covenant herein shall be a covenant running with the land in perpetuity, and shall bind the Protected Parcel, all persons or entities having any right, title, or interest in and to the

Protected Parcel or any portion thereof, and their respective heirs, personal representatives, successors, and assigns, and all those acting by, through or under any of them forever. Any present or future owner of the Protected Parcel or any interest therein, by the acceptance of a deed of conveyance of all or any part of the Protected Parcel or any interest therein, whether or not the deed shall so express, shall be deemed to have accepted the Protected Parcel subject to the restrictions contained herein and shall be deemed bound by, obligated to comply with, and otherwise subject to the restrictions herein and this Environmental Covenant.

- 8) Representation of the Town. By its execution hereof, Declarant warrants that it is the sole owner of the Protected Parcel and that there are no mortgages, easements, or other encumbrances on the Protected Parcel that would materially adversely affect the effectiveness or enforceability of this Environmental Covenant; provided, however, that it is understood and agreed that the Protected Parcel is tax acquired property and that the Town has not obtained a release deed from the prior owner or a court order quieting the Town's title to the Protected Parcel with reference to any record or non-record claims to title or interests therein.
- 9) Access. The Declarant, its successors and assigns, and all future owners and land users shall provide, without cost, access to the Protected Parcel to the DEP, including its authorized employees, agents, representatives, and independent contractors, upon presentation of credentials, for purposes of monitoring and enforcing this Environmental Covenant.
- 10) Notice of Noncompliance. The Declarant and all future owners shall provide written notice to the DEP within ten working days of discovery of any noncompliance with the terms of this Environmental Covenant.
- 11) Enforcement. This Environmental Covenant shall be enforceable as authorized by the UECA. Any forbearance as to the enforcement of any of the terms hereof shall not be deemed a waiver of the right to seek and obtain enforcement at any time thereafter as to the same violation or as to any other violations.
- 12) Amendment or Termination by Consent. The terms and conditions herein may not be amended or terminated except by a written instrument duly executed by the Declarant, the current owner of the Protected Parcel at the time of the amendment or termination, and DEP, or its successor in legal function, which instrument is duly recorded in the *Cumberland* County Registry of Deeds, pursuant to the UECA.
- 13) Notice Pursuant to Covenant. Any notice or other communication required pursuant to this Environmental Covenant shall be in writing and shall be sent by certified mail, return receipt requested and shall be sent to the following addresses, or such other addresses as the Declarant and the DEP may designate from time to time in a written notice to other entities: (a) if to Town of Casco, P.O. Box 60, Casco, Maine 04015, to

the attention of the Casco Town Manager; if to DEP, 17 State House Station, Augusta, Maine 04333-0017, to the attention of Director, Bureau of Remediation & Waste Management (or successor in position).

- 14) Recording. Declarant shall cause this Declaration to be duly recorded in the Cumberland County Registry of Deeds within ten (10) days of the execution of this Declaration by the last signatory, and shall, within thirty (30) days of the recording of the Declaration, notify the DEP of the book and page at which it is recorded, and submit to DEP a copy of the signed Declaration date-stamped by the Register of Deeds.
- 15) Administrative Record. The administrative record relating to the Protected Parcel is located at the main office of DEP, whose mailing address is 17 State House Station, Augusta, ME 04333-0017, with a street address of Ray Building, 28 Tyson Drive, Augusta, Maine.
- 16) Governing Law. This Environmental Covenant shall be governed and interpreted in accordance with the laws of the State of Maine.
- 17) Liberal Construction. It is intended that this Environmental Covenant be construed liberally to protect the health and welfare of the public and the quality of the environment from the risk of adverse effects of exposure to hazardous substances.
- 18) Invalidity. If any part of this Environmental Covenant shall be decreed to be invalid by any court of competent jurisdiction, all of the other provisions hereof shall not be affected thereby and shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be signed by its duly authorized officer as of the day and year first above written.

INHABITANTS OF THE TOWN OF
CASCO, MAINE

By: _____

Name: _____

Title: _____

STATE OF MAINE
CUMBERLAND COUNTY, ss.

The above-named *{insert name}* personally appeared before me this ___ day of *{insert month and year}*, in his/her capacity as *Town Manager* and acknowledged the

foregoing to be his/her free act and deed in his/her said capacity and the free act and deed of *the Inhabitants of the Town of Casco*.

Notary Public/Attorney at Law

Printed Name

ACKNOWLEDGED AND AGREED TO BY:

MAINE DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: _____

Name: _____

Title: _____

STATE OF MAINE
CUMBERLAND COUNTY, ss.

The above-named *{insert name}* personally appeared before me this ____ day of *{insert month and year}* in his capacity as *{insert position title}* of DEP, and acknowledged the foregoing to be his free act and deed in his said capacity and the free act and deed of DEP.

Notary Public/Attorney at Law

Printed Name

EXHIBIT A

[PROPERTY DESCRIPTION]

