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21065

CONSERVATION RESTRICTION -- EASEMENT

The Grantor: OYSTER HARBORS INCORPORATED, a Massachusetts corporation with an address at Oyster Harbors, Osterville, MA 02655

The Grantee: CONSERVATION COMMISSION OF THE TOWN OF BARNSTABLE
CONSIDERATION: \$1,000

The premises known as Dead Neck situated southerly of Oyster Harbors in the Village of Osterville in the Town and County of Barnstable, Massachusetts and consisting of approximately 83.75 acres of land, being made up of five (5) parcels of registered and unregistered land and being more particularly bounded and described as follows:

PARCEL 1:

A certain parcel of registered land shown as Lot 3 on Land Court Plan 15354-A, Sheet 1, drawn by T. H. Stegmaier, C.E. dated January 10, 1933, as modified and approved by the Land Court in Boston and being more particularly bounded and described as follows:

- NORTHWESTERLY by the Old Cotuit Inlet and Cotuit Bay;
- NORTHERLY by Seapuit River;
- EASTERLY by land now or formerly of Katherine A. N. Bissell (being the 3rd parcel herein described), measuring on the upland about one hundred sixteen (116±) feet;
- SOUTHERLY by Nantucket Sound; and
- WESTERLY by land now or formerly of William J. Connell (being the 4th parcel herein described), measuring on the upland about four hundred fifteen (415±) feet.

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DEB & SCHILLING
ATTORNEYS AT LAW
408 MAIN STREET
P. O. BOX 448
OSTERVILLE, MASS 02655

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For title to said Parcel 1 see Certificate of Title No. 4330 issued by the Barnstable Registry District of the Land Court.

PARCEL 2:

A certain parcel of registered land shown as Lot 4 on Land Court Plan 15354-A, Sheet 1, drawn by T. H. Stegmaier, C.E. dated January 10, 1933, as modified and approved by the Land Court in Boston and being more particularly bounded and described as follows:

- NORTHERLY by said Seapuit River;
- EASTERLY by land now or formerly of the Commonwealth of Massachusetts measuring on the upland about three hundred (300±) feet;
- SOUTHERLY by Nantucket Sound; and
- WESTERLY by land now or formerly of Katherine A. H. Bissell (being the 3rd parcel herein described), measuring on the upland about one hundred twenty-three (123±) feet.

For title see Certificate of Title No. 4330 issued by the Barnstable Registry District of the Land Court.

PARCEL 3:

A certain parcel of unregistered land bounded and described as follows:

- NORTHERLY by the waters of Seapuit River;
- EASTERLY by land of Oyster Harbors Incorporated (being the 2nd parcel above described);
- SOUTHERLY by the waters of Nantucket Sound; and

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WESTERLY by other land of Oyster Harbors (being the 1st parcel above described).

The same being a strip of land 111.86 feet wide and shown as a parcel consisting of 6,440 square feet and shown on a plan entitled "Plan of Land on Oyster Harbors Beach, Osterville, Mass." dated August 16, 1926, recorded in Barnstable Deeds in Plan Book 18, Page 83. Being all the same premises conveyed to Oyster Harbors Incorporated as Parcel 2 in the deed from Katherine A. H. Bissell dated August 17, 1948 and recorded in Barnstable Deeds Book 700, Page 518, however the same may be otherwise bounded and described.

PARCEL 4:

A certain parcel of unregistered land bounded and described as follows:

Beginning at a point in mean high water line in Nantucket Sound in the westerly corner of the parcel herein described, thence running

NORTHEASTERLY by land formerly of Oyster Harbor, Inc., and now of Oyster Harbors Incorporated (being the 5th parcel herein described) by a line one (1) foot southeasterly from and parallel to the southeasterly boundary line of land formerly of the Estate of Horace Sears and now of Massachusetts Audubon Society, Inc., three hundred (300) feet more or less to a point in mean high water line in an inlet of Cotuit Bay; thence turning and running

EASTERLY by said mean high water line, three hundred (300) feet to a point; thence turning and running

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SOUTHERLY by land formerly of Oyster Harbor, Inc. and now of Oyster Harbors Incorporated (being the 1st parcel herein described), one hundred eighty (180) feet, more or less to a point; thence turning and running

SOUTHWESTERLY by the same by a line parallel with the first described line, two hundred (200) feet more or less to a point in mean high water line in Nantucket Sound; thence turning and running

NORTHWESTERLY by said mean high water line, three hundred (300) feet to the point of beginning.

Containing by estimation two (2) acres, more or less.

All as shown on "Plan of Land on Oyster Harbors Beach, Osterville, in the Town of Barnstable", dated September 11, 1929, by T. H. Stegmaier, C.E., recorded with Barnstable County Deeds, Plan Book 39, Page 87, to which reference is made for a more particular description.

There is also included all of the beach, marsh and flats adjoining said premises between the easterly and westerly boundary lines extended as far as private ownership can lawfully extend.

For title to said Parcel 4 see deed of Charles J. Fay and Helen K. Fay dated December 14, 1949 and recorded in Barnstable Deeds Book 736, Page 585.

PARCEL 5:

A parcel of unregistered land one (1) foot in width

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lying northwesterly of and adjoining Parcel 4 above described and being more particularly bounded and described as follows:

SOUTHEASTERLY by Parcel 4 above described, about three hundred (300±) feet;

SOUTHWESTERLY by Nantucket Sound;

NORTHWESTERLY by land formerly of the Estate of Horace Sears and now of the Massachusetts Audubon Society, Inc., about three hundred (300±) feet.

Said strip of land is shown as Oyster Harbors, Inc. on a plan entitled "Plan of Land on Oyster Harbors Beach, Osterville, in the Town and County of Barnstable" dated September 11, 1929 drawn by T. H. Stegmaier, Civil Engineer, Osterville, Mass. and recorded in Plan Book 39, Page 87.

For title to Parcel 5 see deed of Albert W. Rockwood, Trustee of the Estate of Oyster Harbors, Inc. to Oyster Harbors Incorporated, dated July 9, 1936 and recorded in Book 517, Page 535, and see deed of Oyster Harbors, Inc. to Oyster Harbors Incorporated dated July 10, 1936, recorded in Barnstable Deeds Book 517, Page 539.

In order to assure that the premises will never be developed for residential, commercial, industrial or similar purposes, but to permit its continued use as a bird sanctuary and recreational area similar to its present use, the Grantor agrees that:

A. Except as set forth in Paragraph B, neither the

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Grantor nor the successors or assigns of the Grantor will perform or give permission to others to perform, the following acts or uses on the premises:

- (1) No building, road, sign, billboard or other advertising display, mobile home or other temporary or permanent structure will be constructed, placed or permitted to be placed or to remain on, above or under the premises;
- (2) No soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit shall be excavated, dredged or removed from the premises; and no soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever shall be placed, filled, stored or dumped thereon;
- (3) No trees, grasses or other vegetation on the premises shall be cut, removed or otherwise destroyed, except for (a) the harvesting of marsh hay and (b) clearing of shrubbery, trees and other vegetation for the purposes of wildlife propagation and beautification and maintenance of vistas; and
- (4) No use shall be made of the premises, and no activity thereon shall be permitted which is or may become inconsistent with the intent of this grant, being the preservation of the premises predominantly in their present condition, the protection of environmental systems and scenic enjoyment.

B. The provisions of Paragraph A notwithstanding, the following uses and activities shall be permitted:

- (1) Maintenance of the area as a barrier beach or buffer between Wantucket Sound and the Seapuit River for the protection of the River and the foreshores of Oyster Harbors.
- (2) Customary drainage ditching activities, landscaping, excavation, filling, depositing of sand and dredged materials, removal, cutting or planting of vegetation, installation and maintenance of bulkheads, groins, dikes, revetments and fencing relating to mosquito and other insect control, the protection and stability of the shorefront, beach nourishment and dune protection, the protection of environmental systems and preservation of scenic enjoyment.

The foregoing Conservation Restriction - Easement is

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intended to ensure that the premises will be retained in their natural, scenic and open condition for conservation purposes and for the protection of natural environmental systems.

Nothing herein shall impose upon the Grantee any duty to maintain or require that the premises be maintained in any particular state or condition.

The Conservation Restriction - Easement hereby conveyed does not grant to the Grantee, to the public, or to any other person any right to enter upon the premises, except as follows: There is hereby granted to the Grantee the right to enter the premises for the purpose of inspecting the same to determine compliance herewith, of enforcing this Conservation Restriction - Easement, or of taking any and all actions with respect to the premises as may be necessary or appropriate with or without order of court, to remedy or abate any violation hereof.

The Grantor intends that this grant be an easement in gross in perpetuity.

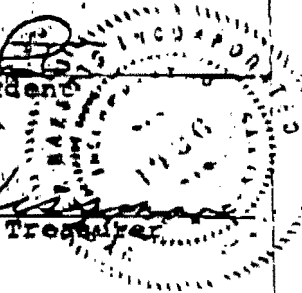
IN WITNESS WHEREOF, the said OYSTER HARBORS INCORPORATED has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by John W. White, its President, and William W. Wissman, its Treasurer, hereto duly authorized this *20th* day of *July* in the year one thousand nine hundred eighty-two.

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OYSTER HARBORS INCORPORATED

BY *John W. White*
 John W. White, President

BY *William W. Wissman*
 William W. Wissman, Treasurer



COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

July 20, 1982

Then personally appeared the above-named JOHN W. WHITE,
 President, and acknowledged the foregoing instrument to be the
 free act and deed of OYSTER HARBORS INCORPORATED, before me

[Signature]
 Notary Public

My commission expires: *March 8, 1985*

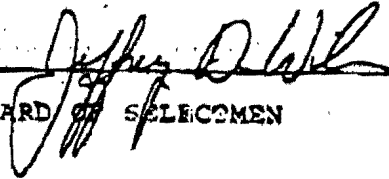
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APPROVAL BY SELECTMEN

The undersigned Board of Selectmen of the Town of Barnstable, acting pursuant to Chapter 184, Section 32 of the General Laws of Massachusetts, hereby approve the above Conservation Restriction - Easement.







BOARD OF SELECTMEN

APPROVAL BY THE SECRETARY OF ENVIRONMENTAL AFFAIRS

The undersigned Secretary of Environmental Affairs of the Commonwealth of Massachusetts, acting pursuant to Chapter 184, Section 32 of the General Laws of Massachusetts, hereby approves the above Conservation Restriction - Easement.


Secretary of Environmental Affairs

8/6/82