

SUFFOLK COUNTY CLERK  
RECORDS OFFICE  
RECORDING PAGE

Type of Instrument: EASEMENT  
Number of Pages: 10  
Receipt Number : 09-0111376  
TRANSFER TAX NUMBER: 09-04724

Recorded: 09/28/2009  
At: 01:38:32 PM  
LIBER: D00012601  
PAGE: 285

District: 0200                      Section: 529.00                      Block: 05.00                      Lot: 031.000

EXAMINED AND CHARGED AS FOLLOWS

Deed Amount: \$0.00

Received the Following Fees For Above Instrument

		Exempt			Exempt
Page/Filing	\$50.00	NO	Handling	\$20.00	NO
COE	\$5.00	NO	NYS SRCHG	\$15.00	NO
TP-584	\$5.00	NO	Notation	\$0.00	NO
Cert.Copies	\$12.50	NO	RPT	\$30.00	NO
Transfer tax	\$0.00	NO			
			Fees Paid	\$137.50	

TRANSFER TAX NUMBER: 09-04724

THIS PAGE IS A PART OF THE INSTRUMENT  
THIS IS NOT A BILL

Judith A. Pascale  
County Clerk, Suffolk County

# Conservation Easement

THIS INDENTURE, made this 28<sup>th</sup> day of September, 2009,

## Witnesseth:

WHEREAS, Michael F. McGovern, residing at 259-10 Hillside Avenue, #2D, Floral Park, New York 11004, (the "Grantor") owns certain real property located in the Town of Brookhaven, (the "Property") which has ecological, scientific, groundwater recharge, scenic, educational, recreational and aesthetic value (the "Natural Values") in its present state as a natural area which property is described as follows:

*See Schedule A annexed hereto*

WHEREAS, the Central Pine Barrens Joint Planning and Policy Commission (the "Commission"), with offices at P.O. Box 587, 3525 Sunrise Highway, 2nd Floor, Great River, New York 11739-0587, was created pursuant to the Long Island Pine Barrens Protection Act of 1993 (the "Act") codified in New York Environmental Conservation Law Article 57 ("Article 57"), is hereinafter described as the "Grantee;" and

WHEREAS, the Central Pine Barrens is a 100,000 acre area within the central and eastern portions of New York's Suffolk County which includes parts of the towns of Brookhaven, Riverhead and Southampton, and which is divided into two areas, the Core Preservation Area (the "Core") and the Compatible Growth Area (the "CGA"), as delineated in Article 57; and

WHEREAS, the Commission adopted the Central Pine Barrens Comprehensive Land Use Plan (the "Plan") which is designed to protect, preserve and enhance the functional integrity of the Pine Barrens ecosystem and its significant natural resources, including plant and animal populations and communities, to protect the quality of surface water and groundwater, discourage piecemeal and scattered development, promote recreational and environmental educational uses that are consistent with the Plan, to accommodate development in a manner consistent with the long term integrity of the Pine Barrens ecosystem, and to ensure that the pattern of development is compact, orderly and efficient; and

WHEREAS, the Plan's goals for the Core include protecting and preserving the ecologic and hydrologic functions of the Central Pine Barrens by preserving the Central Pine Barrens area in its natural state, promoting compatible agricultural, horticultural and open space and certain recreational uses within the framework of maintaining a Pine Barrens environment and minimizing the impact of such activities thereon, prohibiting or redirecting new construction or development, accommodating specific Pine Barrens management practices, and protecting and preserving the quality of surface and groundwaters; and

WHEREAS, this grant of Conservation Easement is made pursuant to Environmental Conservation Law ("ECL"), Title 3, Article 49 or its similar successor statute, and this Conservation Easement is intended to comply with said statute; and

WHEREAS, Grantor and Grantee recognize the ecological, scientific, groundwater recharge, scenic, educational, recreational and aesthetic value of the Property and have the common purpose of conserving the Natural Values of the Property by the conveyance to the Grantee of a Conservation Easement on, over and across the Property which shall conserve the Natural Values of the Property and advance the goals of the Commission pursuant to the Act and the Plan;

NOW, THEREFORE, Grantor, for and in consideration of the facts above and hereinafter recited including, but not limited to, entitlement to receipt of the Pine Barrens Credits pursuant to Grantor's Letter of Interpretation issued on August 14, 2009 totaling 0.10 Pine Barrens Credits and of the mutual covenants, terms, conditions and restrictions herein contained, does hereby give, grant, bargain, sell and convey unto the Grantee, its successors and assigns forever a Conservation Easement in perpetuity over the Property consisting of the following:

1. The right of visual access to and view of the Property in its natural, scenic and open condition.
2. The Grantor's forbearance from taking any of those actions constituting development pursuant to ECL Section 57-0107(13), and the Grantor's forbearance from operations or uses pursuant to ECL Section 57-0107(13)(i-xv) unless such operations or uses are otherwise expressly reserved herein.
3.
  - a. The right of the Grantee, its respective agents, employees or other representatives, to enforce this Conservation Easement in an action at law or in equity or both.
  - b. The right of the State of New York, the County of Suffolk, the Township in which the Property is situated or their respective agents, employees or other representatives, exercising a third party enforcement right, to enforce this Conservation Easement in an action at law or in equity or both.

Enforcement pursuant to (a) and (b) hereinabove shall not be defeated because of any subsequent adverse possession, laches, estoppel or waiver. Grantee or any party with a third party enforcement right or their respective agents, employees or other representatives shall be permitted access, if necessary, to cross other lands retained by the Grantor, and to enter upon the Property at all reasonable times but solely for the purpose of inspection in order to enforce and assure compliance with the terms and conditions herein contained. Grantee, its agents, employees or other representatives, agree to give Grantor reasonable advance notice of its

intention to enter and inspect the Property, and further such entrance and inspection shall be in a reasonable manner and at reasonable times. Furthermore, Grantor shall provide any third party with enforcement rights, or its agents, representatives or employees, access to cross other lands retained by Grantor, and permission to enter upon the Property, upon receipt of advance notice of such third party's intention to enter and inspect. Such entrance and inspection shall be in a reasonable manner and at reasonable times.

## **Covenants**

In furtherance of the foregoing affirmative rights, the Grantor makes the following covenants, on behalf of himself, his successors, heirs and assigns, lessees, personal representatives and other successors in interest, which covenants shall run with and bind the Property in perpetuity:

1. There shall be no construction activity, alteration of vegetation or change in topography, no development as defined by ECL Section 57-0107(13) and no operations or uses not constituting development pursuant to ECL Section 57-0107(13)(i-xv), unless otherwise expressly reserved herein.
2. There shall be no storing, dumping, discharging or placing of any substance in or on the Property in contravention of any applicable federal, state or local law or ordinance.

## **Reserved Rights**

NEVERTHELESS, and notwithstanding any of the foregoing provisions to the contrary and as expressly limited herein, the Grantor reserves for himself, his heirs, successors and assigns the following reserved rights in addition to all those rights previously retained, reserved and defined herein, which may be exercised without written notice to the Grantee except as noted below.

1. The right of exclusive possession of the Property.
2. The right to use the Property for passive recreational activities such as, but not limited to, hunting, fishing, camping, hiking and activities associated therewith so long as such activities conform to local zoning regulations and do not constitute development as defined in ECL Section 57-0107(13).
3. The right to use the Property for operations or uses described in ECL Section 57-0107(13) (i, ii and vi) upon approval of applicable Federal, State, and local agencies and upon the approval of the Commission, or environmental restoration

projects commenced by the Grantor or his heirs, successors or assigns upon approval of applicable Federal, State, and local agencies and upon the approval of the Commission.

4. The right to sell, give or otherwise convey the Property or, consistent with the Covenants herein, any portion or portions of the Property, subject to the terms of this Conservation Easement. The Grantor, upon the sale, gift or other conveyance of his fee interest in the Property, shall have no further obligations or liabilities under this Conservation Easement. Grantor shall promptly notify Grantee of any conveyance of any interest in the Property, including the full names and mailing addresses of all Grantees, and the individual principals thereof, under any such conveyance. The instrument of any such conveyance shall specifically set forth that the interest thereby conveyed is subject to this Conservation Easement, without modification or amendment of the terms of this Conservation Easement, and shall incorporate this Conservation Easement by reference, specifically setting forth the date, office, liber and page of the recording thereof. The failure of any such instrument to comply with the provisions hereof shall not affect Grantee's rights hereunder.

## **Rights of the Public**

Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or to use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Conservation Easement except as may be granted by the Grantor herein or their successors.

## **Miscellaneous**

1. The parties hereto understand and agree that all the terms and provisions of ECL, Title 3, Article 49, as the same may be hereafter amended, entitled Conservation Easements, shall apply to this Conservation Easement.
2. This Conservation Easement contains the entire understanding between its parties concerning its subject matter. Any prior agreement between the parties concerning its subject matter shall be merged into this Conservation Easement and superseded by it.
3. Any provision of this Conservation Easement restricting Grantor's activities, which is determined to be invalid or unenforceable by a court, shall not be rendered a nullity. Instead, that provision shall be reduced or limited to whatever extent that the court determines will make it enforceable and effective. Any other provision of this Conservation Easement which is determined to be invalid or unenforceable by a court shall be severed from the other provisions, which shall remain enforceable and effective.

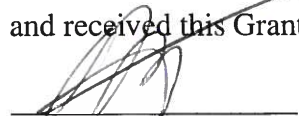
4. Regardless of any contrary rule of construction, no provision or alleged ambiguity of this Conservation Easement shall be construed in favor of one of the parties because it was drafted by the other party's attorney. If any provision of this Conservation Easement is ambiguous or shall be subject to two or more interpretations, one of which would render that provision invalid, then that provision shall be given such interpretation as would render it valid and consistent with the purposes of this Conservation Easement as intended by Grantor. Any rule of strict construction designed to limit the breadth of the restrictions on use of the Property shall not apply in the construction or interpretation of this Conservation Easement, and, this Conservation Easement shall be interpreted broadly to effect the purposes of this Conservation Easement as intended by Grantor. The parties intend that this Conservation Easement, which is by nature and character primarily negative in that Grantor has restricted and limited Grantor's right to use the Property, except as otherwise recited herein, be construed at all times and by all parties to effectuate its purposes.
5. This Conservation Easement can be terminated only in accordance with the law of the State of New York applicable to the termination of easements and covenants running with the land. This Conservation Easement may be modified only upon the written consent of both Grantor and Grantee, or their successors, heirs, representatives or assigns. Grantor and Grantee recognize that circumstances could arise which would justify the modification of certain of the restrictions contained herein. To this end, Grantee and Grantor shall mutually have the right, in their sole discretion, to agree to amendments to this Conservation Easement which are not inconsistent with the basic purpose of this Conservation Easement, provided, however, that the Grantee shall have no right or power to agree to any amendments hereto that would result in this Conservation Easement failing to qualify as a valid conservation easement under ECL, Title 3, Article 49 as the same may be hereafter amended.
6. The Grantor agrees that the terms, conditions, restrictions and purposes of this Conservation Easement shall continue as a servitude running in perpetuity with the Property and will be incorporated by reference in any subsequent deed or other legal instrument by which the Grantor divests himself of either the fee simple title to or his possessory interest in the Property or any portion thereof specifically setting forth the date, and the liber and page of the Suffolk County Clerk's records of the recording hereof.
7. Any notices required in this Conservation Easement shall be written. Notices shall be given either by manual delivery or by mailing in a mail receptacle maintained by the United States Postal Service. Mailed notices must be contained in an accurately addressed, sealed envelope, marked for delivery by first class registered or certified mail, with sufficient prepaid postage affixed and with return receipt requested. Mailed notice to the Grantor shall be addressed to Grantor's address as recited herein or to any such other address as the Grantor may designate by notice in accordance with this section. Mailed notice to the Grantee shall be addressed to Grantee's address as recited herein or

to any such other address as the Grantee may designate by notice in accordance with this section.

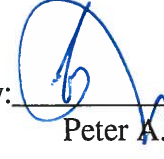
8. It is understood and agreed by the Parties hereto that the Grantor, his successors, heirs and assigns, shall not be liable for any changes to the Property caused by any natural disaster or Act of God.
9. The Grantor and Grantor's lessees, representatives, successors, heirs and assigns, shall not apply to the Commission or the Pine Barrens Credit Clearinghouse for a hardship, other permit or Pine Barrens Credits under the Plan or under ECL Article 57 pertaining to the "Schedule A" premises.
10. The Grantor does further covenant and represent that the Grantor is seized of the Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement, that the Property is free and clear of any and all encumbrances, other than those of record, and that the Grantee shall have the use of, and enjoy all of the benefits derived from and arising out of, the aforesaid Conservation Easement.
11. The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, and the Grantee hereby covenants and agrees that any transferee or assignee will be an organization or public body qualified to hold a Conservation Easement pursuant to ECL, Title 3, Article 49, as the same may be hereafter amended, and the regulations promulgated thereunder.
12. All references to statutory provisions of Article 57 shall be as such provisions were in effect on the date of execution of this Conservation Easement.

13. *SEE Exhibit A-1-1-1 attached*

IN WITNESS WHEREOF, Grantor has executed and delivered and Grantee has accepted and received this Grant of Conservation Easement on the day and year set forth above.

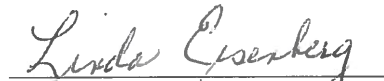
  
Michael F. McGovern

Central Pine Barrens Joint Planning and Policy Commission

By:   
Peter A. Scully, Chairman

STATE OF NEW YORK )  
COUNTY OF Suffolk ss.:

On the 25<sup>th</sup> day of August in the year 2009 before me, the undersigned, a notary public in and for said state, personally appeared Michael F. McGovern, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

STATE OF NEW YORK )  
COUNTY OF SUFFOLK ) ss.:

On the 28<sup>th</sup> day of Sept. in the year 2009 before me, the undersigned, a notary public in and for said state, personally appeared Peter A. Scully, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

**Carol A. Sholl**  
Notary Public, State of New York  
No. 01SH6180927  
Qualified in Suffolk County  
Commission Expires January 22, 20 12



*Linda Eisenberg*  
*ID 01SH6180927*  
*Qualified in Suffolk County*  
*State of New York*  
*Comm Exp. 6/25/11*



## Schedule A

### Parcel I:

All that certain plot, piece or parcel of land situate, lying and being in the Town of Brookhaven, County of Suffolk, State of New York, known and described as lots numbered thirty-five (35) and thirty-six (36), Block 2, Second B, as indicated on a map known as "Flower City Park," a Carraway Realty Development, which said map was filed with the Clerk of the County of Suffolk on January 31, 1927, and known as Map No. 58.

Together with all right, title and interest, if any, of the Grantor in and to any streets and road abutting the above described to the center lines thereof.

Said being and intended to be the same as described in a deed January 25, 1967 between Rubye Rigney and Michael F. McGovern, and recorded on February 3, 1967 at Liber 6110 Page 501 in the Office of the Suffolk County Clerk. Michael F. McGovern is certified as Grantor in this conservation easement.

*SCTM #200-529-5-31*

EXHIBIT A

**AFFIDAVIT**

STATE OF NEW YORK )  
COUNTY OF SUFFOLK ) ss.:

Michael F. McGovern, residing at 259-10 Hillside Avenue, #2D, Floral Park, New York 11004, being duly sworn, deposes and says:

I own Suffolk County Tax Map Parcel #200-529-5-31 (the "Parcel") for which I have applied to the Central Pine Barrens Joint Planning and Policy Commission (the "Commission") for Pine Barrens Credits. I understand that I must grant the Commission a conservation easement on the Parcel before I may receive Pine Barrens Credits for the Parcel.

I am the only person that has the authority to grant a conservation easement on the Parcel. No other person has possession or tenancy of the Parcel. There are no known hindrances to my ability to convey a conservation easement to the Commission on the Parcel.

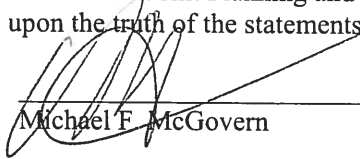
I have not been known by any other name in the previous ten years. I know of no facts by reason of which my possession of or title to the Parcel might be called in question, or by reason of which any claim to any part of said Parcel or any interest therein adverse to me might be set up. There are no Federal tax claims or liens assessed or filed against me. There are no judgments against me unpaid or unsatisfied of record entered in any court of any state, or of the United States, and said Parcel is, as far as I know, free from all leases, mortgages, taxes, assessments, water charges, sewer rents and other liens and encumbrances. There are no actions pending affecting said Parcel. There are no facts known to me relating to the title to the Parcel which has not been set forth in this Affidavit.

I have never filed for bankruptcy. I have never lived at 456 Maitland Street, East Meadow, New York 11554. The bankruptcy petition filed in the U.S. Bankruptcy Court, Eastern District of New York with the number 8-99-85399-sb, by Michael McGovern and Lisa McGovern was not filed by me, but was filed by a different person with the same name.


I am aware that signing the conservation easement prepared for the Parcel affects the future use of the Parcel. I am also aware that I will still own the Parcel after the recording of the conservation easement with the Suffolk County Clerk's Office.

Upon my delivery of an executed conservation easement for the Parcel acceptable to the Commission, I agree not to apply to the Commission or the Pine Barrens Credit Clearinghouse for a hardship, appeal determination, other permit, or Pine Barrens Credits under the Plan or under New York State Environmental Conservation Law Article 57 pertaining to the Parcel.

I make this Affidavit knowing that the Central Pine Barrens Joint Planning and Policy Commission and the Pine Barrens Credit Clearinghouse will rely upon the truth of the statements made herein.

  
\_\_\_\_\_  
Michael F. McGovern

Sworn to before me this  
24<sup>th</sup> day of Sept., 2009

  
\_\_\_\_\_  
Notary Public

**Carol A Sholl**  
**Notary Public, State of New York**  
**No. 01SH6180927**  
**Qualified in Suffolk County**  
**Commission Expires January 22, 20** 12