AILT Carlin Eckhart SBF 1996 Easement - Text Version

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**Could contain typos. Compare to 1996 Original Easement Land Records version PDF before quoting.*
Related: 2011 MPB Decision Approval for Eckhart New Farmstand.pdf

CORRECTIVE // CONSERVATION EASEMENT

AGREEMENT, made this 31st day of December A.D. 1996, between the JAMES P. CARLIN of the Town of Wellesley, County of Norfolk, and Commonwealth of Massachusetts (hereinafter "Grantor") and the AQUIDNECK ISLAND LAND TRUST, a nonprofit corporation organized under the laws of the State of Rhode Island and under IRS Section 501 (c) (3) with offices at 45 Valley Road, Middletown, Rhode Island 02842 (hereinafter "Grantee") and JAN PAUL ECKHART, of 19 Third Beach Road, Middletown, Rhode Island 02842, THEODORE H. ECKHART and SHIRLEY J. ECKHART, husband and wife, of the City of Newport, said County and State (hereinafter collectively "Purchaser") ;

WITNESSETH

WHEREAS, Seller is the sole owner in fee simple of that certain tract or parcel of land in the Town of Middletown, County of Newport, State of Rhode Island, being designated as Lot 1 on Middletown Tax Assessor's Plate 125 and being more particularly described in Exhibit "A" attached hereto and depicted on that certain survey plan entitled "Conservation Easement Plan" and attached hereto as Exhibit "B" (hereinafter "Subject Premises")

WHEREAS, Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Section 501 (c) (3) and 170 (h) of the Internal Revenue Code, whose primary purpose is the preservation, protection, or enhancement of land in its natural, scenic, agricultural, forested, and/or open space condition; and

WHEREAS, the Subject Premises possesses natural, open space, agricultural, and scenic values (hereinafter collectively referred to as "Conservation Values") of great importance to all parties as well as the people of Middletown, Aquidneck Island and The State of Rhode Island;

WHEREAS, the specific conservation values of the Subject Premises are documented in an inventory of relevant features of Property, of even date herewith (hereinafter "Baseline Documenta tion"), which consists of reports, maps, photographs, and other documentation that the parties agree collectively provide an accurate representation of the Subject Premises at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, the Grantor on even date herewith, but subsequent to the recording hereof, will convey the subject premises to Purchaser in fee simple, but subject to the terms of this Conservation Easement;

WHEREAS, it is the desire of all parties to keep the Subject Premises in use for land conservation and/or agriculture and to hereby grant onto the Grantee the power and authority to prohibit all development uses and activities which would be in conflict with the Conservation Values, except those uses, developments, and activities permitted by this document NOW THEREFORE, in consideration of the

mutual covenants herein, the simultaneous transfer of the property between Grantor and Purchaser, and pursuant to Chapter 34 of Title 39 of the General Laws of Rhode Island, Grantor hereby voluntarily grants and conveys to Grantee a Conservation Easement in perpetuity on, over and across the entire Subject Premises described in Exhibit "A", and Purchaser agrees, upon acquisition of the fee simple title thereto, to be bound by this Conservation Easement, under the following terms and conditions:

1. Purpose. It is the purpose and intent of the parties in granting and accepting this Conservation Easement that the Subject Premises shall remain forever as undeveloped agricultural land or natural open space, thereby preserving its scenic condition and to prevent any use of the Subject Premises that will materially impair or interfere with its Conservation
Values. Purchaser intends that this Conservation Easement will limit the use of the Subject Premises to such activities,including, without limitation, those involving agriculture and farming, as are consistent with the purpose of this Conservation Easement.

2. Rights of Grantee. To accomplish the purpose of this Conservation Easement the following rights are hereby conveyed to the Grantee:

DATE. 1-27-97
RECORDER Az 10310

(a) To preserve and protect the Conservation Values of the Subject Premises;
(b) To enter onto the Subject Premises at reasonable times, and at least twice a year, in order to monitor Purchaser's compliance with and otherwise 002007 enforce the terms of this Conservation Easement; provided that such entry shall be only after prior reasonable notice to Purchaser in writing, and Grantee shall not unreasonably interfere with Purchaser's use and quiet enjoyment of the Subject Premises: and
(c) To prevent any activity on or use of the Subject Premises that is inconsistent with the purpose of this Conservation Easement and to require the restoration of such areas of the Subject Premises that may be damaged by any inconsistent activity or use.

3. Prohibited Uses. EXCEPT AS PROVIDED IN PARAGRAPH THE PARTIES HERETO AGREE THAT THE SUBJECT PROPERTY IS HEREBY RESTRICTED AGAINST ANY FURTHER NON-AGRICULTURAL DEVELOPMENT OF EITHER A COMMERCIAL OR RESIDENTIAL NATURE AND/OR AGAINST THE FURTHER SUBDIVISION OF THE SUBJECT PROPERTY. THE PARTIES HERETO AGREE THAT THE SUBJECT PROPERTY SHALL REMAIN AS UNDEVELOPED AGRICULTURAL LAND AND/OR IN AN OPEN AND NATURAL STATE IN PERPETUITY, REGARDLESS OF WHAT PLANNING AND ZONING REGULATIONS MAY PERMIT FROM TIME TO TIME.

In amplification of the foregoing, and without limiting its effect, for the guidance of parties interested in this agreement, the following rights and restrictions are also hereby granted
and/or imposed:

3.1 Recreational Motor Vehicles The use of recreational motor vehicles of any type, including without limitation, snow mobiles, motorcycles, and other off-road recreational motorized vehicles on the Subject Premises are expressly prohibited in perpetuity.

3.2 Storage. Except as permitted by zoning as accessory uses to the two residential dwelling units to be allowed under Paragraph 4.2, the outside storage of boats, trailers, recreational vehicle campers or other non-farm equipment and vehicles are specifically prohibited on the subject property.

4. Purchaser's Rights of Ownership.

It is the purpose and intent of all of the parties to restrict any uses of the property which are inconsistent with the Conservation Values. However, it is not the purpose or intent to restrict Purchaser's exercise of its rights incident to ownership. Purchaser shall have the unfettered right to sell, mortgage, give, grant, or otherwise convey the Subject Premises, provided that any such conveyances are expressly subject to the terms of this Conservation Easement. Without limiting the generality of the foregoing, the following rights, restrictions and prohibitions on the use of the subject property are hereby granted and/or imposed:

4.1. Agriculture and/or Open Space.
The primary use of the Subject Premises shall be agricultural, including raising animals and growing crops (hereinafter "Agricultural Use"). The Purchaser may make full and complete use of the Subject Premises for said Agricultural Use as allowed by the Middletown Zoning Ordinance (hereinafter "Zoning Ordinance") under the category "Agriculture" and/or as permitted by the "Right to Farm Act" R.I.G.L. $2-23-1 et seq, as either are amended from time to time, but no amendment to the Zoning Ordinance or the General Laws shall have the effect of prohibiting any use, activity or structure, otherwise permitted hereunder, which is already in existence on the Subject Premises.

The Purchaser may also keep the subject property in an open and natural state subject to the minimum maintenance requirements herein. The Purchaser shall also have the right to make certain improvements to the Subject Premises, including the construction of structures accessory to Premises, including the construction of structures accessory to the principal agricultural use, as permitted by the Zoning Ordinance.

The Agricultural Use of the subject property shall be conducted in accordance with sound, prudent farming practices subject only to restrictions as may be imposed from time to time by the R.I. Department of Environmental Management or any successor government department with jurisdiction over the subject and/or under "The Right to Farm Act".

4.2. Purchaser's Reserved Rights.
Notwithstanding anything else set forth in this Conservation Easement, and without limiting the generality of the other rights granted to the Purchaser, the Purchaser reserves and is granted the right to do the following activities on the subject property:

(a) Single Family Dwellings. Notwithstanding anything in this Conservation Easement to the contrary, the Purchaser shall have the right to: (1) renovate, the existing house on the Subject Premises or to demolish it and reconstruct a single family dwelling unit in the same or a different location, with not more than the minimum associated land area required and/or permitted by zoning; and (2) create and develop one single family dwelling unit in addition to the existing house on the Subject Premises in any location allowed by governmental agencies with jurisdiction over the same with the minimum land area permitted by zoning regulation.

Both lots may be subdivided from the Subject Premises and sold or conveyed to third parties subject to the terms hereof. Provided, however, that Purchaser hereby agrees to waive his right to build this second dwelling if Purchaser constructs a single family dwelling on other land to be purchased by him simultaneously herewith, being designated as Lot 36 on Middletown Tax Assessor's Plate 125; The single family dwelling unit (s) shall be constructed of wood or wood like materials and painted or stained in traditional New England colors.

(b) Farm Stand. Notwithstanding anything in this Conservation Easement to the contrary, the Purchaser shall have the right to construct 50' x30' Farm Stand Structure at any location within the area depicted on Exhibit "B" as "AREA FOR 30'X50' FARM STAND AS ALLOWED BY ZONING
LOCATION TO BE DETERMINED LATER". Provided however that: (a) such structure shall be constructed in accordance with all zoning regulation; (b) such structure shall be constructed of wooden or wood like exterior materials that are painted or stained in traditional New England Colonial colors; and (b) not less than 70% of the farm products sold from the Farm Stand shall be grown on the Subject Premises or adjacent properties owned by Purchaser.

(c) To install, repair or replace related subsurface or surface drainage lines, ISDS system, sewer line, water line, well and/or other utility lines on the Subject Premises necessary to service said single family dwelling unit (s) and/or Farm Stand.

(d) To install water lines and mains over and across and under the Subject Premises for irrigation and drainage;

(e) To utilize farming equipment of every type and description including tractors, hay bailers, harvesting equipment, manure spreaders and plows;

(f) To grow crops of every type and description subject only to restrictions as may be imposed by the R.I. Department of Environmental Management or any successor agency having jurisdiction over the same and/or "The Right to Farm Act", including without limitation corn and strawberries.

(g) To make breaks in the perimeter stone walls to the Subject Premises as provided on Exhibit "B"

(h) To use chemical and/or organic pesticides, herbicides, weed controls and fertilizers subject only to restrictions as may be imposed by the R.I. Department of Environmental Management or any successor agency having jurisdiction over the same and/or "The Right to Farm Act".

(i) To merge all or a portion of the premises with Lot 36 on Middletown Tax Assessor's Plate 119.

5. Notice of Intention to Undertake Certain Permitted Actions. In order to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Conservation Easement, the Purchaser shall notify the Grantee and submit plans prior to construction of any structure on the subject premises in writing not less than sixty (60) days prior to the date Purchaser intends to undertake construction of any principal structure and thirty (30) days prior to the construction of any accessory structure on the subject premises. The notice shall describe the size, design, location, and types of building materials of the proposed structure in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Conservation Easement, and to consent or object to the construction, accordingly. Grantee shall not unreasonably withhold its consent to any structure and shall either consent or object to the proposal within twenty (20) days of receipt of the proposal.

Failure of the Grantee to object to any proposal within twenty (20) days of receipt shall constitute consent to the same.

An affidavit of the Purchaser with a copy of the notice given to Grantee and an attached certified mailing receipt shall be conclusive evidence of the notice required by this paragraph.

6. Enforcement of Conservation Easement.

6.1. Grantee's Remedies. If Grantee determines that Purchaser is in violation of the terms of this Conservation Easement, or that a violation is threatened, relating to the uses, activities, or construction of any structure or improvement on the subject property, Grantee shall qive written notice to Purchaser of such violation and demand corrective action sufficient to cure the violation. If Purchaser fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, and to continue diligently to cure such violation until it is finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte if necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement or injury to any Conservation Values protected by this Conservation Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Subject Premises to the condition that existed prior to any such injury.

Without limiting Purchaser's liability therefor, if Grantee, in the exercise of reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Subject Premises, Grantee may pursue its remedies under this paragraph without prior notice to Purchaser or without waiting for the period provided for the cure to expire.

Grantee's rights under this paragraph shall apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. With respect to any violation or threatened violation of the terms of this Conservation Easement relating to the construction of structures or improvements on the subject property which the Grantee deems to be inconsistent with the express terms of this Conservation Easement, Purchaser agrees that Grantee's remedies at law for damages are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either the actual damages or the inadequacy of otherwise available legal remedies.

Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

If litigation regarding this Conservation Easement occurs, the prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs, expenses, and reasonable attorneys' fees, as determined by any court of competent jurisdiction.

6.2. Grantee's Discretion.
The enforcement of the terms of this Conservation Easement shall be at the discretion of Grantee, and any forbearance by the Grantee in the exercise of its rights under this Conservation Easement in the event of any breach of the terms of this Conservation Easement by Purchaser shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Purchaser shall impair such right or remedy or be construed as a waiver

6.3. Waiver of Certain Defenses. Purchaser hereby waives any defense of laches, estopple, or prescription, except as to any structure which is built after proper notice to the Grantee and without timely and valid objection by Grantee.

6.4. Acts Beyond Purchaser's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Purchaser for any injury to or change in the Subject Premises resulting from causes beyond Purchaser's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Purchaser under emergency condition to prevent, abate, or mitigate significant injury to the Subject Premises resulting from such causes.

7. Access. No right of access by the general public to the Subject Premises is conveyed by this Conservation Easement.

8. Upkeep and Maintenance of Subject Premises. Purchaser retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Subject Premises in accordance with the management plan or, if none, the requirements established by the Town of Middletown.

The Purchaser shall perform certain minimum maintenance on the Subject Premises, as applicable, including without limitation the following:

(a) for so long as the Subject Premises is in agricultural use, performance of the sound prudent farming practices shall be employed for the type of crop being grown or harvested;

(b) if the Subject Premises is no longer in Agricultural Use, the minimum maintenance requirements established by the management plan or, if none, the requirements established by the Town of Middletown; and

(c) any and all maintenance work required to keep the stone walls and fences along the boundary lines of the Subject Premises in as good a condition as they are in as of the date of this Conservation Easement. (see Exhibit "C" for present condition)

9. Maintenance of Insurance; Indemnification. Purchaser retains all responsibilities and shall bear all costs of maintenance of adequate comprehensive general liability insurance coverage, in perpetuity, certifying Grantee as an additional insured against all claims and demands for bodily injury, death and property damage occurring on the Subject Premises. Such insurance policies shall afford minimum limits of not less than

One Hundred Thousand ($100,000.00) Dollars for property damage,
Five Hundred Thousand ($500,000.00) Dollars for injury or death
of one person, and One Million ($1,000,000.00) Dollars for injury
or death of more than one person in a single accident.

Such insurance shall be effected under valid enforceable policies with insurers authorized to do business in Rhode Island. Certificates of all such insurance shall be delivered to Grantee upon the recording of this Conservation Easement. Each such policy shall provide against cancellation without at least ten (10) days prior written notice to each insured named therein, pursuant to clauses typically available in the State of Rhode Island, if such clauses are available.

Purchaser shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, contractors and the heirs, personal representatives, successors,
and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or

judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Subject Premises, regardless of cause, unless due solely to the negligence of any
of the Indemnified Parties.

10. Liens. Purchaser shall keep the Subject Premises free of any mechanic's and/or materialman's liens arising out of any work performed for, or materials furnished to, the Subject Premises.

11. Taxes. Purchaser shall pay, before the same shall become delinquent, any and all taxes, assessments, fees, and charges of whatever description levied or assessed against the Subject Premises by competent authorities (collectively "taxes") Grantee is authorized but in no event obligated to make or advance, on Purchaser's behalf, any payment of delinquent taxes and /or assessments in accordance with any bill, or statement procured from appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill or statement, provided it gives three (3) days prior written notice to Purchaser of its intention to do so.
Purchaser hereby agrees to reimburse Grantee for any such payment made on its behalf.
The obligation created thereby shall bear interest until paid by the
Purchaser at the lesser rate of (1) Prime Rate of Interest plus two (28) percentage points as defined by the Wall Street Journalor any successor publisher; or (2) the maximum rate allowed by law, whichever is lower.

12. Extinguishment. If circumstances arise in the future such as to render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, or by written agreement of the Purchaser and the Grantee, or assigns

13. Condemnation. This Conservation Easement shall automatically expire and terminate in the event, and to the extent, that the Subject Premises or any portion thereof is ever taken, or authorized for taking, by and through Condemnation, Eminent Domain, or other similar proceedings, but only to the extent of the portion of the land taken if not the whole. The termination shall relate back to the date that notice is sent to Purchaser of the federal or state agency's intent to commence condemnation proceedings, but shall not become effective unless and until the said condemnation proceedings result in an final decree, finding, resolution or judgment of condemnation. In the event that such condemnation proceedings are commenced and not completed, or during the pendency of said condemnation proceedings, this Conservation Easement shall remain in full force and effect.

In accordance with the provisions hereof, the value of such condemnation award shall be based on the full fair market value of the Subject Premises unencumbered by the Conservation Easement.

If the Conservation Easement is automatically terminated, in whole or in part, upon and as a result of any condemnation proceedings as provided above, Purchaser and Grantee shall be entitled to the the appraised value of their respective interest in the Subject Premises as of the date of the condemnation.

Notwithstanding the foregoing provisions, the expiration and termination of this Grant of Conservation Easement shall only apply to that portion of the Subject Premises that is subject to said condemnation proceeding and, as to all other portions of the Subject Premises, this Conservation Easement shall remain in full force and effect.

14. Amendment. If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, Purchasers and Grantee are free to jointly amend this Conservation Easement; provided that no amendment shall be allowed that will affect the qualification of this Conservation Easement or the status of Grantee under any applicable laws, including Chapter 39 of Title 34 of the Rhode Island General Laws, as amended, or Section 170 (h) of the Internal Revenue Code of 1954, as amended, and any amendment shall be consistent with the purpose of this Conservation Easement, and shall not affect
its perpetual duration.

Any such amendment shall be recorded in the Land Evidence Records of the Town of Middletown, Rhode Island and a copy sent to Grantor at her address as provided herein.

15. Assignment. This Conservation Easement is transferable, but the Grantee may assign its rights and obligations under this Conservation Easement only to an organization that is a qualified organization at the time of the transfer under Section 170 (h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold Conservation Easements under Chapter 39 of Title 34 of the Rhode Island General Laws, as amended (or any successor provision then applicable).

As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.

16. Executory Limitation. If Grantee shall cease to exist or to be a qualified organization under Section 170 (h) of the Internal Revenue Code of 1954, as amended, or to be authorized to acquire and hold Conservation Easements under Chapter 39 of Title 34 of the Rhode Island General Laws, as amended, and a prior assignment is not made pursuant to paragraph 15., then the Grantee's rights and obligations shall become immediately vested in The Nature Conservancy, a non-profit corporation, organized and existing under the Laws of the District of Columbia, and with a business address of 1815 North Lynn Street, Arlington, Virginia.

If The Nature Conservancy is no longer in existence at the time the rights and obligations under this Conservation Easement would otherwise vest in it, or if the Nature Conservancy is not qualified or authorized to hold Conservation Easements at that time, or if it shall refuse such rights and obligations, then the rights and obligations under this Conservation Easement
shall vest in such organization with a similar mission as a court of competent jurisdiction shall direct pursuant to the applicable Rhode Island law and with due regard to the requirements for an assignment pursuant to paragraph 15.

17. Estoppel Certificates.
Upon request by Purchaser, Grantee shall within twenty (20) days execute and deliver to Purchaser any document, including an estoppel certificate, which certifies Purchaser's compliance with any obligation of Purchaser contained in this Conservation Easement and otherwise evidences the status of this Conservation Easement as may be requested by Purchaser.

18. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

If to Grantor:
James F. Carlin

Carlin Consolidated, Inc.
233 West Central Street
Natick, Massachusetts 01760

with copies to:

Rodney P. Bowley, Esq.
Bedlow Associates
36 Bedlow Avenue
Newport, Rhode Island 02840

if to Grantee:
The Aquidneck Island Land Trust
45 Valley Road
Middletown, Rhode Island 02842

with copies to:
Charles B. Allott, Esq.
37 Hilltop Drive
Portsmouth, Rhode Island 02871

if to Purchaser:
Jan Paul Eckhart
19 Third Beach Road
Middletown, Rhode Island 02842

with copies to:
Patrick O'N Hayes, Jr., Esq.
Corcoran, Peckham & Hayes P.C.
P.O. Box 389, 31 America's Cup Avenue
Newport, Rhode Island 02840

or to such other address as any party from time to time shall designate by written notice to each of the other parties.

19. Recordation. Grantee shall record this instrument in timely fashion in the Land Evidence Records of the Town of Middletown, Rhode Island and may re-record it at any time as may be required to preserve its rights in this Conservation Easement

20. Covenants Running With The Land. These covenants shall be deemed to run with the land. The Purchaser agrees to incorporate by reference the terms of this Conservation Easement in any deed or other instrument of conveyance, including leasehold interest. Any subsequent transferee of any interest of the Purchaser to the Subject Premises shall similarly be prohibited from using the Subject Premises for any use or occupation other than as permitted hereunder.

21. General Provisions.

(a) Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Rhode Island.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to the effect the purpose of this Conservation Easement and the policy and purpose of R.I.G.L, $34-39-1 et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Paragraph 14

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Purchaser's title in any respect.

(g) Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon and inure to the benefit of, the parties hereto and their personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Subject Premises.

(h) Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate on the transfer of the party's interest in the Conservation Easement or Property, except that the liability for acts or omissions occurring prior to a transfer shall survive transfer.

(i) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not part of this instrument and shall have no effect upon construction or interpretation.

(j) Counterparts. The parties may execute this instrument in two or more counterparts, which shall in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it in the event of any disparity between the counterparts produced, the recorded counterpart shall be the controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever. IN WITNESS WHEREOF, the undersigned have set their hands and seals hereon or caused these presents to be executed on the day and year first above written.

SEE SIGNATURE PAGES TO FOLLOW

GRANTOR:
JAMES F. CARLIN

By: Rodney P. Bowley
Rodney P. Bowley, Attorney in Fact

STATE OF RHODE ISLAND
COUNTY OF Newport

In Newport on the 31ST day of December, 1996, before me personally appeared RODNEY P. BOWLEY, in his capacity as Attorney in Fact for JAMES F. CARLIN, to me known and known by me to be the party executing the foregoing instrument, for and on behalf of JAMES F. CARLIN and he acknowledged said instrument by him so executed, to be his free act and deed, his free act and deed as Attorney in Fact and the free act and deed of said JAMES F. CARLIN.

Charles B. Allott
Notary Public
Print Name: CHARLES B ALLOTT
Commission Expires: 8-16-97

GRANTEE:
The Aquidneck Island Land Trust, a Rhode Island non-profit Corporation

By: Peter M. Merritt
Peter M. Merritt, President

STATE OF RHODE ISLAND

COUNTY OF Newport

In Newport, on this 31st day of December, A.D. 1996, then personally appeared before me the above named Peter M. Merritt, to me known and known by me to be the President of The Aquidneck Island Land Trust and by me personally known to be the party who executed the foregoing instrument and he acknowledged the same to be his free act and deed individually and in said capacity and the free act and deed of said Aquidneck Island Land Trust.

Charles B. Allott
Notary Public CHARLES B. ALLOTT
Print Name:
my commission expires: 8-16-97

EXHIBIT "A"

That certain lot or parcel of land located east of Berkeley Avenue in the Town of Middletown, County of Newport, State of Rhode Island, as shown on plan titled, "Conservation Easement Plan" dated 12-20-96, Scale One Inch Equals One Hundred Feet, Prepared by Narragansett Engineering, Inc., bounded and described as follows:

Beginning at a point, marked by a rebar to be set, bounded westerly by Berkeley Avenue, running southeasterly S75°-14'-48"E a distance of 701.02 feet to a point marked by a drill hole set; Thence running northeasterly along a stone wall N13°-20'-55"E a distance of 633.23 feet to a point being the northwesterly corner of said lot, bounded easterly by Plate 119 Lot 36 to an intersection of stone wall;

Thence continuing northeasterly, a distance of 829.00 feet, to point being the northwesterly corner of said lot, bounded westerly by land now or formerly of Peter R. and Ann F. Randall and Ray H. Durfee and Thomas L. Trout;

Thence running southeasterly N 63°-39'-21"W a distance of 1096.48 feet, bounded northerly by land now or formerly of Susan C. Nunes and land now or formerly of Black Point Development Corp.

Thence running southeasterly S62°-46'-00"E a distance of 196.07 feet to a point marked by a drill hole set, said point being the northeast corner of said lot, bounded northerly by land now or formerly of said Black Point Development Corp.;

Thence running southeasterly S 00°-28'-41"E distance of 253.25 feet to a point bounded easterly by land now or formerly of Agnes S. Pimental;

Thence running southeasterly S 03°-24'-36"E a distance of 123.48 feet to a point bounded easterly by land now or formerly of said Pimental;

Thence running southeasterly S 02°-58'-23"E a distance of 126.86 feet to a point, bounded easterly by land now or formerly of Antone D. Rocha;

Thence running southeasterly S 82°-27'-54"E a distance of 106.06 feet to a point bounded northerly by land now or formerly of said Rocha;

Thence running southeasterly S02°-49'-26"E a distance of 99.90 feet to a point, bounded easterly by land now or formerly of Elizabeth G. Angier;

Thence running southeasterly S82°-26'-23"E a distance of 249.55 feet to a point bounded northerly by land now or formerly of said Angier to Mitchell's Lane;

Thence running southeasterly S04°-41'-36"E a distance of 21.89 feet to a point bounded easterly by Mitchell's Lane;

Thence running northwesterly S89°-46'-27"W a distance of 120.20 feet to a point bounded southerly by land now or formerly of Anthony D. and Margaret I. Silviera;

Thence running southeasterly S03°-16'-38"E a distance of 124.97 feet to a point bounded easterly by land now or formerly of said Silviera;

Thence running southeasterly N89°-43'-33"E a distance of 5.21 feet to a point bounded northerly by land now or formerly owned by said Silviera:

Thence running southeasterlv S00°-25-02"E distance of 112.44 feet to a point bounded easterly by land now or formerly of Manuel A. and Susan Botelho;

Thence running northwesterly S89°-43'-33"W a distance of 11.00 feet to a point bounded southerly by land now or formerly of said Botelho;

Thence running southwesterly S02°-531-49"W a distance of 118.27 feet to a point bounded easterly by land now or formerly of said Botelho:

Thence running southeasterly S88°-56'-20"E a distance of 184.80 feet to a point bounded northerly by land now or formerly of said Botelho:

Thence running southeasterly S13°-52'-12"E a distance of 137.63 feet to a point bounded easterly by Mitchell's Lane;

Thence running southeasterly S45°-08'-14"E a distance of 427.37 feet to a point being the southeasterly corner of said parcel bounded easterly by Mitchell's Lane;

Thence running along a stone wall northwesterly N75°-58'-30"W distance of 173.47 feet to a point, thence continuing northwesterly N 75°-13-04"W a distance of 146.78 feet to point,

Thence continuing northwesterly N76°-01'-14"W a distance of 328.30 feet to a point; thence continuing N75°-40'-00"W a distance of 188.48 feet to a point, bounded by Open Space Land now or formerly of Prospect Farm;

Thence running along a stone wall northwesterly N75°-29'-25"W distance of 440.00 feet to a point, bounded southerly by land now or formerly of Jan Paul Eckhart, Michael T and Diane
I. Perlingieri, and Stephen J. Weiner;

Thence running Northwesterly N 75°-30'-15W a distance of 120 feet to a point;

Thence running along a stone wall northwesterly N75°-31'-05"W distance of 240.00 feet to a point bounded southerly by land now or formerly owned by Joseph F. and Carol A. Stewart, and David W. and Christine F. Kirchner:

Thence running along a stone wall northwesterly N75°-10'-46"W a distance of 352.78 feet to a point bounded southerly by land now or formerly owned by Ionna D. Bairos, Open Space, and David F. and Elizabeth Cunningham;

Thence running along a stone wall northwesterly N75°-06'-02"W, distance of 664.21 feet to a point bounded southerly by land now or formerly owned by Patrick and Patricia Carney, Robert R and Denise E. Johnson, Jens and Marie E. Hookanson, Jerimiah L. Harrington, Graham and Pamela M. Wisdome, and Claire and Alexandra J Smolenski;

Thence running along a stone wall northwesterly N75°-371-17"W distance of 176.35 feet to a point bounded southerly by land now or formerly owned by Claire and Alexandra J. Smolenski,

and Stephen L and Barbara May West;

Thence running along a stone wall northwesterly N75°-37'-18"W distance of 63.83 feet to a point bounded southerly by land now or formerly of Virginia F. Rose;

Thence running along a stone wall northwesterly N74°-56'-38"W distance of 56.26 feet to a point, bounded southerly by land now or formerly of said Rose;

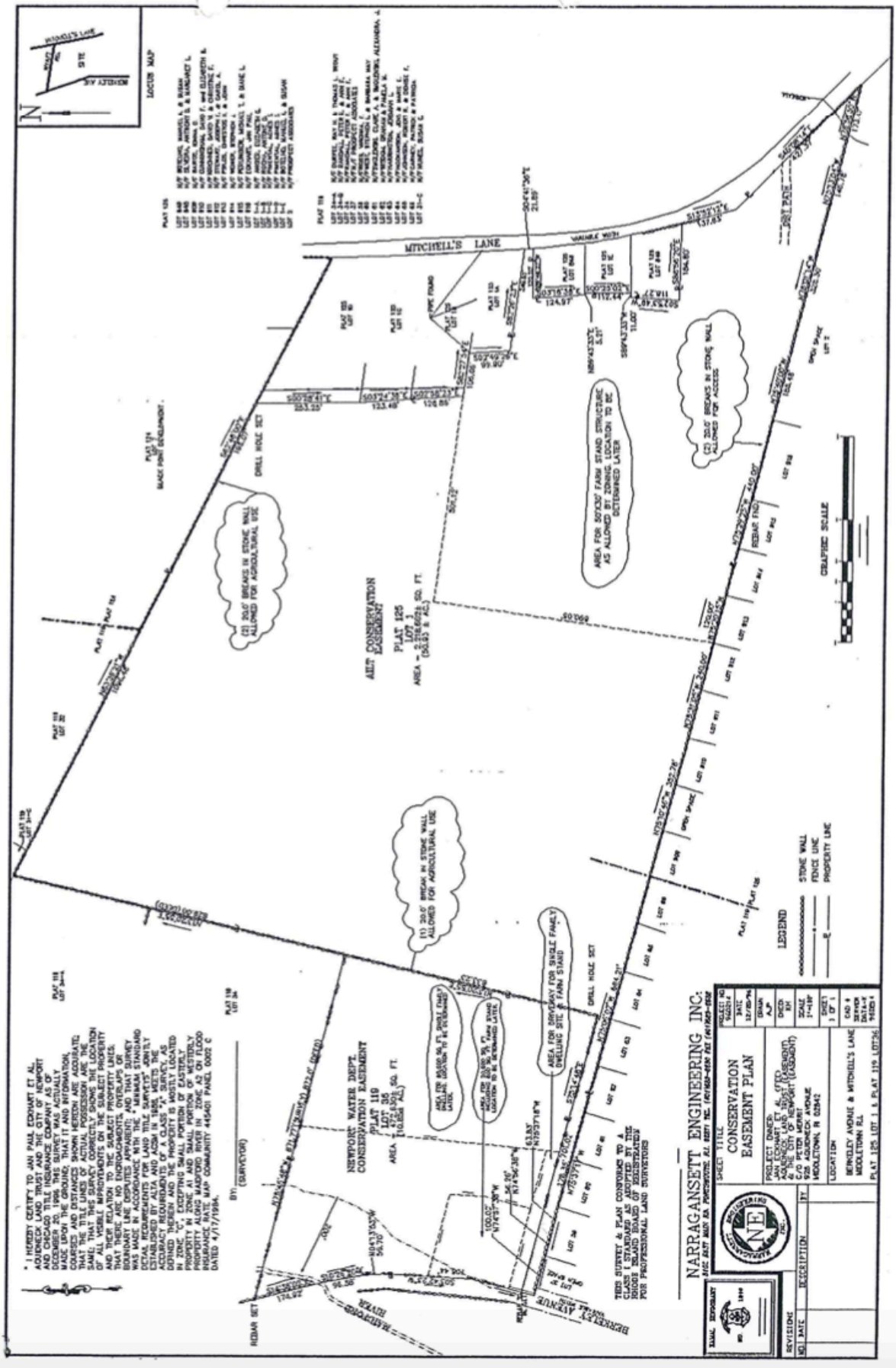
Thence running along a stone wall northwesterly N74°-571-38"W distance of 100.02 feet to a point, bounded southerly by Open Space Land now or formerly owned by Prospect Farm, and by Berkeley Avenue;

Thence running along northeasterly S14°-33'-56"W, distance of 32.00 feet to the point of beginning, bounded westerly by Berkeley Avenue.

Said parcel contains 2,218,662, more or less, square feet or 50.93, more or less, acres.

BEING referred to for identification purposes only as Lot 1 on Plate 125 of the Middletown Tax Assessor's Plates, as presently constituted.

EXHIBIT B



NARRAGANSETT ENGINEERING INC.
CONSERVATION EASEMENT PLAN
MITCHELL'S LANE
NEWPORT WATER DEPT. CONSERVATION EASEMENT
PLAT 119
LOT 36
AILT CONSERVATION EASEMENT
PLAT 125
LOT 1
(1) 20.0' BREAK IN STONE WALL ALLOWED FOR AGRICULTURAL USE
(2) 20.0' BREAKS IN STONE WALL ALLOWED FOR AGRICULTURAL USE
(2) 20.0' BREAKS IN STONE WALL ALLOWED FOR ACCESS
AREA FOR 50'X30' FARM STAND STRUCTURE AS ALLOWED BY ZONING. LOCATION TO BE DETERMINED LATER
AREA FOR DRIVEWAY FOR SINGLE FAMILY DWELLING SITE & FARM STAND
BERKELEY AVENUE
MAIDFORD RIVER
REBAR SET
DRILL HOLE SET
GRAPHIC SCALE
LEGEND
STONE WALL
FENCE LINE
PROPERTY LINE
LOCUS MAP