

**Art. 72.**

To see if the Town will vote to authorize the Board of Selectmen to accept delivery of a public access easement deed, in substantially the same form as shown on Attachment A, as the Board determines to be in the Town's best interests, and agreeing that the Town will be subject to the various affirmative obligations set forth therein, provided that prior to accepting delivery of such public access easement deed, and only after public notice and hearing before the Board, the Board shall have first received:

- (a) pursuant to Article 12 of the March 9, 2013 Annual Town Meeting, a sufficient easement deed, or deeds, allowing public pedestrian access for recreational purposes from all persons, firms or entities who own or control all properties necessary to get from the public terminus of Robinhood Road to the triangular Robinhood Beach parcel (a portion of Lot 161 on Tax Map 25 shown for illustrative purposes only on Attachment B as the shaded area labeled "Aspatores' Property") (hereinafter the "Robinhood Beach Parcel") including, without limitation, sufficient release(s), or partial release(s), from those holding a security interest, such as a mortgage, therein; and
- (b) pursuant to Article 12 of the March 9, 2013 Annual Town Meeting, a sufficient easement deed, or deeds, allowing use of the Robinhood Beach Parcel for public recreational purposes from its owners including, without limitation, a release of the restriction that the Robinhood Beach Parcel may only be used for a private dwelling or residence and a release of the right of the owner of the lot or parcel of land currently owned by Joan Lester (Lot 163 on Tax Map 25) to attach an outhaul on the Robinhood Beach Parcel including, without limitation, sufficient release(s), or partial release(s), from those holding a security interest, such as a mortgage, therein; and
- (c) a sufficient easement deed, or deeds, the acceptance of delivery by the Board of Selectmen of which is authorized without the need for further Town Meeting authority, allowing public access for recreational purposes in Cedar Island for the benefit of the Town, Town residents and their guests and Town non-resident taxpayers and their guests (including bed and breakfast guests and motel guests) on substantially the same terms and conditions as shown on Attachment A from Joan Lester or her successor in interest, as the co-owner of an undivided one-half interest in Cedar Island (Lot 167 on Tax Map 25 and shown for illustrative purposes only as "Cedar Island" on Attachment B), and providing an off-street parking location for the Town's beach monitor on the parcel shown as "(Lester)" on Attachment B.

(Note: Future Town Meeting(s) will need to appropriate the funds necessary to fulfill the Town's affirmative obligations set forth in the public access easement deed, Attachment A.)

*Recommended by Selectmen*

**ATTACHMENT A  
WARRANT ARTICLE 72**

**EASEMENT DEED**

**RACHEL P. ASPATORE, TRUSTEE OF THE RACHEL POLLACK ASPATORE TRUST-2006, and JONATHAN R. ASPATORE, TRUSTEE OF THE JONATHAN REED ASPATORE TRUST-2006**, of Mill Valley, CA 94941 (“Grantors”), for consideration paid, the receipt and sufficiency of which are hereby acknowledged, grant to the **INHABITANTS OF THE TOWN OF HARPSWELL**, with a mailing address of P.O. Box 39, Harpswell, ME 04079, a certain easement, situated in the Town of Harpswell, County of Cumberland and State of Maine, for the benefit of the Inhabitants of the Town of Harpswell (“Town”) for access by foot and not by motor vehicles except as expressly provided below, as to Parcel 1 (described below) and for identical access and use for recreational purposes, as described in Section 2 of the terms and conditions below, as to Parcel 2 and the shore, flats, and interest in Cedar Island (as described below), including the right, but not the obligation, to maintain the existing pathway used for access by foot on and to parts of the Easement Area (as defined below), over the following described property:

Parcel 1

Commencing at the southwesterly corner of land now or formerly of Ralph A. Goodwin, et al. described in a deed recorded in Book 9229, Page 77, which point is on the southeasterly side of the Beach Road as laid out in a plan recorded in Plan Book 51, Page 64 (the “McCarty Plan”) and is shown on the McCarty Plan with an iron pipe;

Then in a northeasterly direction along the southeasterly boundary of the Beach Road as shown on the McCarty Plan a distance of 339 feet more or less, to the end of the Beach Road and the southwesterly boundary of Parcel 2 described below;

Thence in a southeasterly direction, along an easterly extension of the northerly line at the end of the Beach Road as shown on the McCarty Plan and contiguous with Parcel 2, a distance of 1 foot, more or less, to land now or formerly of Joan Lester as described in a deed recorded in Book 9132, Page 176;

Thence in a southwesterly direction, 113.23 feet, more or less, parallel to and 1 foot away from the southeasterly boundary of the Beach Road, along land now or formerly of Lester;

Then in a southeasterly direction by and along land now or formerly of Lester, a distance of 1 foot;

Then in a southwesterly direction a distance of 224.53 feet more or less, along a line parallel to and 2 feet away from the southeasterly boundary of the Beach Road to the southerly line of the above described parcel now or formerly of Ralph A. Goodwin;

Then in a northwesterly direction along said Goodwin property, a distance of 2 feet to the point of beginning.

Parcel 2

A lot depicted on a plan entitled "Plan of Property on Bailey Island, Harpswell, Maine for Edith E. Goodwin, dated July, 1986," surveyed by William Coombs, recorded in Plan Book 156, Page 49 (the "Goodwin Plan"), with boundaries described on that plan as follows:

Beginning at the Atlantic Ocean, at the boundary of land formerly of Edith E. Goodwin and land formerly of Haley;

Then N 62° 16' 11" W five (5) feet, more or less, to an iron pin set;

Then continuing in a northerly direction on that same course eighty-five (85) feet, more or less, to an iron pin set;

Then S 59° 16' 26" W, a distance of one hundred and twenty-nine (129) feet, more or less, to an iron pin set;

Then N 38° 10' 17" W, to a monument found as shown on the Goodwin Plan a distance of thirteen (13) feet more or less;

Then N 59° 16' 26" E, a distance of two hundred and eighty six and 95/100 (286.95) feet, more or less, to an eye bolt found;

Then on the same course eight (8) feet, more or less, to the Atlantic Ocean;

Then along the shore to the point of beginning.

The foregoing described premises are shown as the northernmost parcel labeled "Edith E. Goodwin" on the Goodwin Plan.

Together with the same easement rights to all the shore, the flats (meaning the area between the mean high water mark and the mean low water mark) and Grantors' undivided one-half interest in Cedar Island adjacent to the said Parcel 2. The said Parcel 1, Parcel 2, and shore, flats and interest in Cedar Island are referred to collectively as the "Easement Area."

Meaning and intending to convey, and hereby conveying, the easement excepted in a deed from Ralph A. Goodwin, III, John E. Goodwin and Nancy G. Ramage, Trustees, Family Trust u/w Edith Goodwin dated April 21, 1989 to Jonathan Aspatore and Rachel Aspatore, dated February 1, 2006 and recorded in the Cumberland County Registry of Deeds in Book 23642, Page 79 and the same easement rights in the additional areas described above. The rights and duties hereunder shall run with the land and shall be binding on the parties, their heirs, personal representatives, successors, and assigns.

To the extent that the Easement Area is subject to a restriction that the premises not be used for any purposes other than a private dwelling or residence that is enforceable by Grantors, Grantors agree not to enforce that restriction against the Town.

The easement is subject to the following terms and conditions:

1. Easement Area. Parcel 1 of the Easement Area may be marked by Grantors with visual barriers depicting the boundaries of the Easement Area. Leaving the Easement Area to go onto Grantors' remaining property may be considered civil and/or criminal trespass, and the Town shall respond to complaints of trespass on Grantors' remaining property.
2. Use of Easement Area. Use of the Easement Area shall be limited to the Town, Town residents and their guests and Town non-resident taxpayers and their guests (meaning to include bed and breakfast guests and motel guests) for active and passive recreational and recreational related purposes customarily associated with, or conducted upon, beaches, including, without limitation, swimming, sunbathing, walking and typical "beachgoer" uses, subject to the limitations provided herein. The Town shall develop and implement a mechanism to reasonably ensure use of the Easement Area by authorized users only. Grantors do not have the duty of monitoring whether use of the Easement Area is by authorized users or the duty of monitoring compliance with the restrictions governing the use of the Easement Area.
3. Signage. The Town shall erect a sign, at the entrance to Parcel 2 described above (and formerly shown as Tax Map 25, Lot 164 as set forth in the deed recorded in the Cumberland County Registry of Deeds in Book 23642, Page 79) to identify the location of the Easement Area, to identify the within restrictions governing the use of the Easement Area, and to expressly disclaim any liability for accidents, injuries, acts or omissions arising out of the public's use of the Easement Area.
4. Hours. The Easement Area may be used during the daytime one half hour before sunrise until one half hour after sunset. No camping, sleeping or other activity overnight on the Easement Area.
5. No Motor Vehicles. No motor vehicles of any kind shall be allowed on the Easement Area; provided, however, that the Monitor provided for herein may access the Easement Area by motor vehicle for transitory inspection purposes only. Strollers and bicycles are allowed and wheelchairs or similar equipment designed to accommodate disabled individuals are allowed. It is recognized that the Easement Area in Parcel 1 is only one or two feet wide and nothing in this paragraph shall be understood to grant permission to drive upon Grantors' remaining property.
6. No Pets. No dogs or other domestic animals are allowed on the Easement Area except any service dog.
7. Conduct. No rowdy or inappropriate behavior, loud voices, loud music, nude sunbathing or public indecency on the Easement Area. Children under the age of 12 should be under responsible supervision. No mass gathering on the Easement Area. For purposes of this easement deed, mass gathering shall be deemed to mean any gathering with the intent to

attract the continued attendance of a group of people for an event or function, including, without limitation, neighborhood parties, weddings, baptisms and memorial or other services/ceremonies.

8. No Improvements. The Town may not construct any improvements to the Easement Area, including but not limited to, buildings, structures, port-a-potties, driftwood shelters, steps, wharfs, docks, floats, boat landings and fireplaces. Temporary sun shelters, sand castles and fairy houses are allowed but only on a temporary use basis over a single day. Grantors shall not construct any improvement to the Easement Area that unreasonably interferes with the Town or its authorized users' use of the Easement Area.
9. No Storage. No storage of equipment for beach recreation/enjoyment or any other use is allowed.
10. Trash. No littering or disposal of trash of any kind shall be allowed. No trash barrels or similar devices shall be allowed.
11. No Fires. No fires or fireworks (consumer or otherwise) at any time on or over the Easement Area.
12. Beach Monitor. From July 1 through Labor Day each year, the Town will employ and/or retain as an independent contractor for financial consideration (in addition to the Cumberland County Sheriff's office), a person or entity to monitor the Easement Area and designated parking area (described below) and to work such hours as determined by the Town; provided, however, that the employee and/or independent contractor ("the Monitor") shall make an on-site inspection of the Easement Area and designated parking area at least daily and also be on call (including nights) and refer such calls to the appropriate authority. The Town may also engage volunteers to assist the Beach Monitor, but any such volunteers shall not fulfill the daily on-site inspection requirement. Notwithstanding anything to the contrary in the foregoing, the Monitor is not required to make an on-site inspection of Cedar Island or the flats that are part of the Easement Area. Such Monitor shall have the authority to enforce the terms and conditions of this easement. In the performance of the Monitor's responsibilities, the Monitor is not permitted to park his/her motor vehicle on Grantors' remaining property.
13. Motor Vehicle Parking. Parking provided by the Town within the Robinhood Road right-of-way to facilitate access to the Easement Area shall only be located in the areas designated as parking and possible parallel parking on the conceptual sketch prepared by Gorrill-Palmer Consulting Engineers, Inc. (showing ± 17 potential spaces) on behalf of the Town in June of 2013, subject to conformity with federal, state and local law. In the event the Monitor or member of the Cumberland County Sheriff's Office encounters a vehicle that violates this condition, the Monitor or Deputy Sheriff shall cause the vehicle to be ticketed, moved to a lawful parking location and/or towed. The Monitor or Deputy Sheriff shall promptly investigate any complaints received about violations of this provision and if a violation is found, shall cause the vehicle to be ticketed, moved to a lawful parking location and/or towed.

14. Beach Access Inquiries. The Town agrees to refrain from advertising or promoting the Easement Area as a public recreational area, but the Town may respond to individual inquiries by reporting the availability of the Easement Area to authorized users and publishing the restrictions governing the use of the Easement Area.
  
15. Limitation of Liability. Notwithstanding any limited public use of the Easement Area and any insurance coverage therefor, neither Grantors nor the Town assume any obligation to the public to maintain the Easement Area for public use. This Easement or any permission to enter the Easement Area by Grantors or by the Town shall not be construed as an invitation or license, and neither Grantors nor the Town assume any liability to the general public for accidents, injuries, acts or omissions beyond that defined by the standard of care owed by landowners under 14 M.R.S. § 159-A and 14 M.R.S. § 8104-A(2)(A)(3), or successor provisions thereof. Notwithstanding any limited public use of the Easement Area and any insurance coverage thereof, Grantors and the Town do not assume any liability to the general public for accidents, injuries, acts or omissions, and any liability for the same is expressly disclaimed by Grantors and the Town. This Easement does not create in Grantors any duty to keep the Easement Area safe for entry or for use by members of the general public for recreational purposes or to give warning of any hazardous conditions, use, structure or activity on such premises to persons entering for recreational purposes, or to extend any assurance that the premises are safe for any such purposes, or to make any person entering upon the Easement Area an invitee or licensee to whom a duty of care is owed, or to assume responsibility for or incur liability for any injury to person or property caused by any act of any person or any other cause. Grantors and the Town claim all of the rights and immunities against liability for injury to the public to the fullest extent of the law under 14 M.R.S. § 159-A, *et seq.*, as amended and any successor provision thereto and under any similar or other law, and under any other applicable provision of law or equity. Nothing herein is intended, or shall be construed, to constitute a waiver (by insurance or otherwise) of any defense, immunity or limitation of liability that may be available to a governmental entity, or any of its officers, agents or employees, pursuant to the Maine Tort Claims Act (14 M.R.S.A. § 8101 *et seq.*), any state or federal statute, the common law or any privileges or immunities as may be provided by law.
  
16. Dispute Resolution. The Town shall use reasonable efforts to ensure compliance with the terms of the use of the Easement Area. In the event that Grantors believe that the Town is failing to satisfy its obligations hereunder, then, in such event, Grantors will provide the Town with written notice and a reasonable time and opportunity to cure the same, prior to the initiation of any dispute resolution procedure. In the event of any dispute, claim, question, or disagreement arising from or relating to this Easement or the breach thereof, upon written notice by either party to the other, all disputes, claims, questions, or differences shall be submitted to mandatory, non-binding mediation with a neutral agreed upon by the parties within a reasonable time after said written notice. Each party shall bear its own costs and expenses and an equal share of the mediation fee. If the mediation is unsuccessful in resolving the dispute, the dispute shall be assigned to a mutually agreeable arbitrator. Unless the parties agree otherwise, the arbitration shall be held according to the American Arbitration Association Commercial Arbitration Rules, with the goal of providing a simple, speedy and inexpensive dispute resolution procedure. The arbitrator shall have the authority to fashion any injunctive or monetary relief necessary

to resolve the dispute. Such authority shall not include termination of the easement except as expressly set forth below. The arbitrator shall have the authority to determine how the costs and expenses of the arbitration shall be allocated between the parties and the arbitrator shall have the authority to award reasonable attorneys' fees. Should the arbitrator make an affirmative finding of repeated failure of the Town in any one year to enforce the easement terms and conditions, the arbitrator may issue an order imposing liquidated damages of not less than \$10,000. Upon issuance of such a decision, the Town, acting by and through its Board of Selectmen, will have the option of either paying the liquidated damages award or, in lieu thereof, to call and hold a special Town Meeting within thirty (30) days of the arbitrator's decision at which the Town Meeting will vote on whether to terminate the easement in lieu of payment of the liquidated damages award. If the Board of Selectmen should elect to pay the liquidated damages award, such payment shall be made within thirty (30) days of the arbitrator's decision. If the Town Meeting should vote to terminate the easement, then such termination shall be accomplished by a release deed conveyed by the Town, acting by and through its Board of Selectmen, the execution and delivery of which are authorized without the need for further Town Meeting authority, to the then-current owner(s) of the Easement Area, who shall be obligated to accept delivery thereof, and the release deed recorded in the Cumberland County Registry of Deeds within thirty (30) days of the Town Meeting. In the event that Town Meeting does not vote to terminate the easement, then the Town shall make payment of the amount awarded by the arbitrator within thirty (30) days of the Town Meeting.

DATED: \_\_\_\_\_, 2014

RACHEL POLLACK ASPATORE TRUST -  
2006

JONATHAN REED ASPATORE TRUST -  
2006

\_\_\_\_\_  
Rachel P. Aspatore, Trustee

\_\_\_\_\_  
Jonathan R. Aspatore, Trustee

State of California  
County of Marin

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared Rachel P. Aspatore, Trustee of the Rachel Pollack Aspatore Trust -2006, and Jonathan R. Aspatore, Trustee of the Jonathan Reed Aspatore Trust-2006, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

ATTACHMENT B  
WARRANT ARTICLE 72

