

Memorandum of Agreement

This Memorandum of Agreement (hereinafter "MOA") is made this _____ day of _____, 2007 by the State of Delaware, acting through the Department of Natural Resources and Environmental Control ("DNREC") and the Salt Pond Homeowners Association, Inc. ("SPHA"), concerning matters related to certain ponds, wetlands and other property, as set forth in the Declaration of Restrictions for property known as the Salt Pond Subdivision Conservation Easement ("Salt Pond CE") that was executed by the Secretary of DNREC and Salt Pond Associates ("SPA") on August 7, 2006 and recorded by the Sussex County Recorder of Deeds at Deed Book 3344, page 253. DNREC is the Grantee of the property subject to the Salt Pond CE and SPHA is the current beneficiary and ultimate legal owner of the property subject to the Salt Pond CE, pursuant to the Declaration of Covenants, Conditions and Restrictions which were established by SPA when it created the Salt Pond Community in 1991. Ownership of the Salt Pond CE property will vest with SPHA when SPA transfers the Salt Pond common areas, including the Salt Pond CE property.

Upon transfer of the Salt Pond CE property to SPHA, DNREC and SPHA hereby agree to abide by the principles set forth in this MOA in order to manage and maintain the wetlands, ponds and other property included within the Salt Pond CE in a manner which is consistent with the recorded Salt Pond CE and State of Delaware laws, regulations and policies concerning conservation easements.

It is anticipated that a Ponds and Wetlands Management Plan (hereinafter "PWMP") will be prepared for SPHA by a qualified natural resource professional and submitted to DNREC. Upon approval by DNREC, the PWMP will be implemented by SPHA after SPHA becomes Grantor of the Salt Pond CE property. The PWMP will address more specific management actions that may be taken at specific pond and wetland locations that are consistent with the more general provisions of this MOA. By mutual agreement, SPHA and DNREC may amend the PWMP from time to time as necessary to incorporate new or improved management practices or for other reasons that are consistent with the Salt Pond CE and this MOA.

This MOA will become effective upon transfer of the Salt Pond CE property from SPA to SPHA. This MOA does not apply to SPA, the current Grantor of the Salt Pond CE property. All amendments to this MOA must be in writing and approved by DNREC and SPHA or their successors.

1. Conservation Values:

Both DNREC and SPHA recognize that the Salt Pond CE possesses scenic, natural, ecological, open space, cultural, and aesthetic values (collectively "Conservation Values") worthy of protection. DNREC and SPHA are committed to preserving and protecting the Conservation Values; to assuring that the Salt Pond CE property, including the ponds and wetlands, will be retained forever in its scenic, open space, and natural character; and to

preventing any use of the Salt Pond CE that will significantly impair or interfere with the Conservation Values of the Salt Pond CE.

2. Permitted Activities in the Salt Pond CE:

(A) Vegetation

- (1) Beneficial native vegetation may be planted to preserve and enhance the ecological integrity of the Salt Pond CE property and to maintain natural habitat for native animal and plant species. Habitat enhancements may be undertaken in event vegetation dies, is eaten, or is lost by human action.
- (2) Woody stemmed tree vegetation that demonstrates a strong possibility of toppling and jeopardizing the structural integrity of a pond embankment may be removed. Resulting vegetatively-void areas shall be replanted with beneficial native plants.
- (3) Nuisance vegetation that jeopardizes biodiversity of the ecosystem or poses a threat to human health, fish and wildlife, infrastructure (i.e., dwellings, roadways, fire hazard, drainage, etc.), or the structural integrity of a pond or wetland may be clear cut, removed and composted.
- (4) Areas subject to erosion due to capillary wave energy or lack of vegetation may be replanted with appropriate emergent growth wetland vegetation.
- (5) A *Phragmites australis* control/eradication program (including the use of herbicides as noted below) may be implemented.
- (6) Mowing and trimming within the Salt Pond CE property by SPHA or its authorized persons is only permitted as a necessary part of vegetation management.
- (7) Woody vegetation in riparian buffers may be pruned once in the fall of the year, and herbaceous vegetation may be pruned or cut no lower than 24 inches from the ground.
- (8) To enhance the views of the ponds and golf course, certain areas have been mowed inside the CE boundary. The SPHA Board and its Wetlands and Ponds Committee, in conjunction with the environmental services company, will work with homeowners to reestablish the mowed areas inside the CE boundaries with environmentally acceptable vegetation.

(B) Wetland Management

- (1) Proven fire management practices may be implemented by SPHA for fire prevention. SPHA may implement prudent actions under emergency conditions to prevent, abate or mitigate injury to the Salt Pond CE property,

adjacent properties or persons resulting from the threat of fire damage.

(C) Chemical treatment of Invasive Vegetation Growth and Control of Invasive and Nuisance Vegetation

(1) In addition to the three permitted chemicals authorized for use below the ordinary high water mark of ponds under the Salt Pond CE (Cutrine Plus Ultra, Sonar AS, and Baraclear P80), SPHA may use other pesticides, herbicides, insecticides and chemicals, as necessary, for the control of invasive species, pestiferous species and human disease-carrying species throughout the wetlands and ponds in the Salt Pond CE property, consistent with the Conservation Values specified herein. EPA registered products must be used by licensed applicators in accordance with manufacturers label(s).

(2) Nuisance aquatic and/or exotic invasive aquatic vegetation may be controlled with integrated management practices (including herbicide or algaecide) by a licensed applicator.

(3) If the natural balance of the Salt Pond CE property is substantially upset by an event beyond control of SPHA, control measures may be employed that are consistent with the terms of CE and this MOA.

(4) Pesticides, herbicides, insecticides or other chemicals that are not specified in the Salt Pond CE may be used within the Salt Pond CE property with prior approval of the DNREC.

(5) An annual report shall be submitted to DNREC, Division of Parks and Recreation, Office of Land Preservation and the Division of Water Resources. The report will due on or before December 31 of the calendar year.

(D) Pond Water Quality

(1) Assessment of water quality, including chemical tests, rapid bio-assessments, and turbidity observations are permitted in the Salt Pond CE property.

(E) Paths or trails.

(1) In consultation with written approval of DNREC, SPHA may clear, construct and maintain designated trails or walking paths for non-motorized recreational activities within the Salt Pond CE.

(2) Designated trails or walking paths shall not exceed a width of three (3) feet. All materials used for the construction and maintenance of designated trails shall be natural wood or wood products (e.g. wood chips, pine needles and fines), unless otherwise approved by DNREC in writing.

(F) Access to Main Salt Pond Body of Water

(1) Docks and walkways to the main Salt Pond are permitted for launching watercraft for the exclusive use by individual property owners abutting the Salt Pond, provided they have received prior approval from DNREC.

(G) Fish and Wildlife

(1) Fishing in the Salt Pond CE ponds is allowed, provided that all such activity is conducted in accordance with all federal and State of Delaware laws and regulations and any regulations enacted by SPHA, provided that there shall be no damage or destruction of vegetation and no material impairment of any Conservation Value of the Salt Pond CE property.

(2) Hunting, in accordance with State and Delaware and federal laws and regulations, is permitted in the Salt Pond CE property only with the express prior written approval of DNREC and SPHA, and with appropriate licenses and/or permits.

(3) Ponds in the Salt Pond CE property may be maintained and managed with methods to insure open water systems that support overwintering of fish populations, waterfowl and wading birds. Corrective action may include restocking of fish, habitat structure installation and control/eradication of exotic or invasive fish species.

(4) Goose control is permitted, with prior approval of DNREC and subject to appropriate licenses and / or permits.

(5) Only *Gambusia holbrooki* (Eastern mosquito fish) are allowed for the biological control of mosquitoes.

(H) Monuments and Signs

(1) If monuments and signs installed by SPA are insufficient to delineate the CE, SPHA may install additional monuments or signs. A cut line may be established at the monuments and signs indicating a "no mow zone." This may be established inside the buffer zone, indicating no clear cutting, planting, and excavation or turf management practices inside this zone.

(2) Signs may be erected for direction, educational outreach, interpretative guidance, and/or delineation, with prior written approval of DNREC.

(3) Signs identifying SPHA and/or DNREC and signs intended to control the unauthorized entry or use of the Salt Pond CE property are permitted, with prior written approval of DNREC.

(4) It is understood by SPHA and DNREC that, in isolated instances, certain monuments and signs may have been placed by SPA in locations (e.g. within streets or other improved areas) where implementation and enforcement of the Salt Pond CE and/or this MOA will not be practicable. In that event, DNREC and SPHA agree to adjust the CE boundaries to include only areas appropriate for the Salt Pond CE and/or acknowledge that implementation and enforcement of the Salt Pond CE will not be applicable in such improved areas.

(I) Aeration

(1) Aeration (subsurface bubblers) of ponds in the Salt Pond CE property may be permitted, with prior written approval of DNREC.

(J) Utility Lines

(1) Installation and maintenance of underground utility lines and equipment necessary to protect, preserve or enhance Conservation Values may be permitted with prior written approval of DNREC.

(K) Access to CE

(1) Access for motor vehicles in the CE property is permitted only for mowing, emergency or maintenance vehicles within the Salt Pond CE, including the Maintenance Areas specified by the Salt Pond CE.

(L) Pond Forebays and Swales

(1) Maintenance dredging to remove silt and sediment from pond forebays and swales and to allow ponds and ditches to function for storm water management purposes is permitted, provided that the work is conducted by a qualified licensed professional.

(2) Dewatering of ponds and wetlands is permitted, in accordance with the PWMP.

(3) Accumulation of organic debris that poses a threat to water quality, restricts water movement through associated swales, or forms surface layers may be removed, dewatered and composted at an appropriate upland site.

3. Notices:

DNREC and SPHA will notify the other party of any change of address (from that specified in the signature blocks on page 7) within 30 days.

4. Enforcement Rights:

(1) **DNREC s Right to Enter CE Property from Time to Time.** DNREC agrees to give 48 hours notice to SPHA when DNREC wishes to enter the Salt Pond CE property in order to monitor SPHA s compliance with or otherwise enforce the terms of the Salt Pond CE.

(2) **Alleged Violations:** In the event that a possible violation of the terms of the Salt Pond CE by SPHA, its employees, agents or contractors (or any member of the Salt Pond community acting in his/her individual capacity) comes to the attention of DNREC, DNREC shall give written notice to SPHA and any member of the Salt Pond Community acting in his/her individual capacity, of such alleged violation and any recommended corrective action needed to cure the alleged violation and allow SPHA (or any member of the Salt Pond Community acting in his/her individual capacity) at least thirty (30) days to implement corrective action and cure the alleged violation. If any alleged violation is cured within the time specified, DNREC will take no further action.

(3) **Third Party Violations:** It is understood and agreed that SPHA is not responsible in any way under Section 6 of the Salt Pond CE for any violation of the Salt Pond CE by a third party (including owners and visitors of the Salt Pond Community, their contractors or agents) acting in his individual capacity and without authorization from SPHA.

5. Hold Harmless

(1) SPHA's agreement to hold harmless, indemnify, and defend DNREC in Section 8 of the Salt Pond CE does not apply to any liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments or administrative actions, including, without limitation, attorneys fees resulting from any act, omission, condition or other matter, that (a) is caused by a third party (including residents and visitors of the Salt Pond Community, their contractors or agents) acting in his individual capacity and without authorization from SPHA, or (b) does not result from the willful conduct of SPHA, acting in its corporate capacity.

(2) It is understood and agreed that SPHA is not responsible for any damage (including tree toppling) caused to the Salt Pond CE property due to natural events such as hurricanes, flooding or other natural disasters.

6. Transfer of Interests:

(1) **Transfer of Grantor s Interest:** It is agreed that any successor to SPHA s interest in the Salt Pond CE shall have the same rights and obligations that are applicable to SPHA, as specified in the Salt Pond CE and this MOA, and any amendments to either.

(2) **Transfer of Grantee s Interest:** It is agreed that the DNREC shall not transfer this CE to another Grantee unless DNREC, as a condition of the

transfer, requires the transferee to continue to carry out the Conservation Values of the Salt Pond CE and this MOA. The transferee shall have the same rights and obligations applicable to DNREC, as specified in the Salt Pond CE and this MOA, and any amendments to either.

7. Baseline Documentation

DNREC agrees to include SPHA s`environmental consultant s`water quality and bioassay work from 2004 as a part of the Salt Pond CE Baseline Documentation.

8. DNREC Approval

Whenever action by SPHA under this MOA requires approval by DNREC, such approval shall not be unreasonably denied or delayed by DNREC.

IN WITNESS WHEREOF, SPHA and DNREC have hereunto set their Hands and Seals the day and year above first written.

SALT POND HOMEOWNERS
ASSOCIATION, INC.
c/o Legum & Norman
C4 Edgewater Sea Colony East
Bethany Beach, DE 19930
Attention: Donna Hemphill

ATTEST

BY: _____
BEVERLY THIERWECHTER, President

STATE OF DELAWARE
Department of Natural Resources
And Environmental Control
89 Kings Highway
Dover, Delaware 19901

Witness

BY: _____
JOHN A. HUGHES, Secretary

STATE OF DELAWARE

:

COUNTY OF SUSSEX

BE IT REMEMBERED, that on this ____ day of _____, 2007, personally came before me, the Subscriber, a Notary Public in and for the State and County aforesaid Beverly Thierwechter, President of Salt Pond Homeowners Association, Inc., party to this Instrument, known to me personally to be such, and acknowledged this Instrument to be her act and deed and the act and deed of said _____.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

Notary Public
Commission Expires: _____

STATE OF DELAWARE

:

COUNTY OF KENT

BE IT REMEMBERED, that on this ____ day of _____, 2007, personally came before me, the Subscriber, a Notary Public in and for the State and County aforesaid John A. Hughes, Secretary, on behalf of the Department of Natural Resources and Environmental Control, party to this Instrument, known to me personally to be such, and acknowledged this Instrument to be her act and deed and the act and deed of said _____.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

Notary Public
Commission Expires: _____

***** Note the above document was signed by the SPHA President, on behalf of the Salt Pond Homeowners Association and notarized on April 10, 2007. It is now awaiting signature by Secretary John Hughes of DNREC.*****