

TOWN OF FREEPORT CONSENT AGREEMENT

This document constitutes an agreement made as of this ___ day of _____ 2023 by and between the **Town of Freeport**, Maine (the “Town”), **Gregory and Deborah Link** (the “Links”) of 4 Dixon Road, South Freeport, Maine, and **Hardy Farm Investments, Inc.** (“Hardy Farm”), a New Jersey corporation, (the Links and Hardy Farm collectively the “Violators”) for the purpose of enforcing and resolving violations of the Town’s Shoreland Zone Regulations of the Zoning Ordinance.

WHEREAS, both Violators and the Town agree as follows:

1. The Links and their adult daughters Tiffany Marianski and Ashley Link are the shareholders of Hardy Farm. Deborah Link serves as President of Hardy Farm, and Gregory Link is Hardy Farm’s registered agent. Hardy Farm is the record owner of the property at 4 Dixon Road, Freeport, Maine, identified in the Town Assessor’s records as Map 1, Lot 6-1 and being more particularly described in a deed dated June 23, 2010, and recorded in the Cumberland County Registry of Deeds at Book 27875, Page 68 (the “Subject Property”).
2. The Subject Property is located in the Village-II (V-II) District, the Shoreland Area (SA), and Resource Protection-I (RP-I).
3. The Subject Property was once a portion of a larger parcel. Town records show that in 1985, after a house fire, the predecessor in title (Eames) was granted a building permit to build a new residence on the parcel on the condition that one of the three pre-existing residential units located in three frame buildings on piles over the water be eliminated. No residential unit was ever eliminated.
4. In 2001, Jan and Steve Oransky, then owners of the Subject Property, constructed a wharf and dock on the Subject Property, which was approved by Me. DEP Permit-By-Rule No. 28490 dated October 11, 2001; and by the Army Corps of Engineers by Permit No. 200101487 dated December 12, 2001; and by the Freeport Coastal Waters Commission as noted in the minutes of the meeting of the CWC on November 14, 2001.

This wharf/dock has been used and maintained by the Violators and/or their predecessors continuously since its construction.

5. By deed dated September 11, 2007, and recorded in the Cumberland County Registry of Deeds in Book 25484, Page 348, a portion of the Subject Property was conveyed to Janet Newlin (formerly Oransky). In that deed, the grantors reserved an easement to construct and maintain a wharf (a pier, ramp, and floats) on a defined area of the property being conveyed, now part of the Subject Property. Pursuant to that easement, in 2007 or 2008 Mark Winter constructed the wharf that he continues to use currently (the "Winter wharf"). Until recently, the Violators believed that the Winter wharf was on land owned by Winter and did not understand that the land underlying the Winter wharf is part of the Subject Property.
6. In 2006 the Board of Appeals determined that there had been a grandfathered functional division of the property that preceded enactment of the zoning ordinance, resulting in the split of the lots, an upland conforming parcel with one residence (Lot 6), and a non-conforming shorefront parcel containing a boathouse structure and two cottages on wharves (Lot 6-1).
7. The Town's previous code enforcement officer conducted inspections of the Subject Property in 2005 and 2006 and issued building permits and certificates of occupancy for each of the two cottages built over one wharf, and for the boathouse structure built over another wharf, all located within the shoreland zone. On information and belief, the Town never issued a Notice of Violation to the predecessor(s) in title to the Subject Property ordering that one of the three residential units be eliminated or discontinued.
8. During the timeframes referenced above, the predecessors in title to the Subject Property removed vegetation and made additional external improvements to the Subject Property, including specifically the construction of a patio and parking lot area that increased the impervious surface on the lot by ___[square footage amount to be measured]. Notwithstanding these improvements, the Town Codes Enforcement

Officer issued certificates of occupancy for the two cottages and boathouse structure on March 31, 2006 and represented to the Links that no violations existed prior to their purchase of the Subject Property.

9. Subsequently, the Links and Hardy Farm Investments, Inc., purchased the Subject Property on June 23, 2010.
10. On April 8, 2020 and June 24, 2021, Nicholas L. Adams, the Town's current Codes Enforcement Officer ("CEO") observed site conditions on the Subject Property.
11. On [DATE], the CEO issued to the Violators a Notice of Violation ("NOV") of the Town of Freeport Zoning Ordinance. The NOV provided proper notice to Violators that the Town's Shoreland Zoning Ordinance (the "SZO"), Coastal Waters Ordinance (the "CWO"), Floodplain Management Ordinance (the "FMO"), Short-Term Rental Registration Ordinance (the "STRO") and Zoning Ordinance (the "Zoning Ordinance") were violated by the following:
 - a. Use of three (3) dwelling units on the Subject Property, in violation of SZO Art. II, § 201.A, 306.A, and Zoning Ordinance Art. IV, § 408.C;
 - b. Use of the Subject Property as a commercial wedding venue, which use qualifies as a prohibited "Public Assembly" use in the V-II District per Zoning Ordinance Art. IV, § 408(B).¹
 - c. Construction of a stone patio structure on the Subject Property within the seventy-five (75) foot setback from the normal high water line, in violation of SZO Art. III, § 306.B, and Zoning Ordinance Art. II, § 201.A;
 - d. Construction of a stone walkway structure within the seventy-five (75) foot setback from the highest annual tide line, in violation of SZO Art. III, § 306.B, Zoning Ordinance Art. II, § 201.A, and Zoning Ordinance Art. IV, § 408.C;
 - e. Expansion of the Subject Property's driveway and parking areas to within the seventy-five (75) foot setback from the highest annual tide line, in violation of SZO

¹ Zoning Ordinance Art. I, § 104 defines "Prohibited Use" as "All uses not specifically allowed as Permitted Uses."

Art. III, § 306.B, Zoning Ordinance Art. II, § 201.A, and Zoning Ordinance Art. IV, § 408.C;

- f. Creation of non-vegetated surfaces in excess of 20% of the total lot coverage of the Subject Property, in violation of SZO Art. III, § 306.B;
 - g. Removal of vegetation from the Subject Property as part of construction of illegal structures named above that created a canopy opening of more than two-hundred and fifty (250) square feet within the seventy-five (75) foot setback from the highest annual tide line, in violation of SZO Art. III, § 306.N;
 - h. Removal of trees and saplings within the seventy-five (75) foot setback from the highest annual tide line which reduced the rating of said vegetation to an amount below the minimum sixteen (16) points worth of trees and five (5) points worth of saplings, in violation of SZO Art. III, § 306.N;
 - i. Removal of vegetation under three (3) feet in height within the seventy-five (75) foot setback from the highest annual tide line, in violation of SZO Art. III, § 306.N;
 - j. Construction of a wharf over and within the coastal wetland and the existence of a second wharf on the Subject Property constructed and maintained by a separate party pursuant to a reserved easement, which wharves require evidences of having received the necessary permits and approvals; and
 - k. Use of two (2) dwelling units as short term rentals without receiving a registration number and certificate, in violation of STRO Art. III.a.
12. The violations as stated in the NOV and above subject the Violators to fines of \$100.00 to \$5,000.00 per violation per day and the award of the Town's attorney's fees and costs, as provided in applicable Town ordinances and Title 30-A M.R.S. § 4452.
13. Given the history of use and development of the Subject Property and the issuance by the Town to predecessors in title of building permits and certificates of occupancy with respect to the use of the three residential structures built over wharves on the Subject Property, the Town is willing to enter into this Agreement subject to the terms and conditions thereof, to avoid the time and expense of enforcement litigation.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the parties agree as follows:

1. The Town will assess a civil penalty, payable as described in paragraph 3 below, in the amount of [AMOUNT] dollars, with all but [AMOUNT] dollars suspended if the Violators comply with all of the other requirements of this Consent Agreement by [DATE].
2. The Violators have voluntarily agreed to pay all costs incurred by The Town in the preparation and execution of this Agreement, including the Town's attorneys' fees, the amount of which costs and fees is incorporated into Paragraph 3 below.
3. No later than [DATE], the Violators shall pay to the Town that portion of the Civil Penalty set forth in paragraph 1 above that is not suspended in accordance with paragraph 1 and all costs incurred by the Town in the amount of [AMOUNT] dollars through a bank or certified check payable to the Town of Freeport, ATTN: Caroline Pelletier, Interim Town Manager, 30 Main Street, Freeport, ME 04032.
4. The three existing residential waterfront structures (two cottages on pilings, and the boathouse structure located on pilings), shall be allowed to remain on the Subject Property and continue to be used as residential dwelling units as non-conforming uses and non-conforming structures, provided that a lapse in such use and/or the application of other provisions of the Town's Shoreland zoning ordinance regarding destruction or removal of such structures may preclude either resumed use or reconstruction of such structures, and further subject to any restrictions or prohibitions imposed by State agencies such as the Maine Department of Environmental Protection. Similarly, the impervious surfaces created by construction of the parking, driveway and patio areas on the Subject Property shall be allowed to remain subject to the same terms, conditions, and restrictions described herein. If any portion of the parking, driveway and patio areas on the Subject Property are destroyed or removed by more than fifty percent (50%), then these areas shall be required to be revegetated in accordance with

the Town's Shoreland zoning ordinance pursuant to a revegetation plan approved by the CEO.

5. The Violators or their successors agree not to use and/or advertise the Subject Property for hosting public assemblies or weddings. Private events that may be separately hosted by short term renters during their stay which are in full compliance with the Town's maximum gathering limit provisions under STRO Art. V.a.3 shall be permitted.
6. On February 9, 2023, the Violators applied for registration of the three residential structures located on the Subject Property as short-term rentals pursuant to STRO Art. III. The Violators shall seek to obtain such registration with due diligence.
7. The Violators have provided the Town with evidence that their wharf and the Winter wharf located on the Subject Property have received necessary permits, which evidence the Town is currently reviewing. If additional evidence of the necessary permitting is required, the Violators shall provide such additional evidence promptly at the Town's request. Following Town review of such evidence, the Violators may be required, at Town request, to apply for and diligently pursue any required permit(s)., If the Violators are unable to either (a) provide sufficient evidence that they already have the required permit(s) or (b) obtain new permit(s) in a timely manner, they shall promptly remove their wharf from the Subject Property.
8. If the Violators or their heirs, successors, and assigns fail to comply with any requirements of this Agreement, the Town then may pursue all remedies available to it including, but not limited to, instituting appropriate court proceedings to enforce the requirements of any of the Town's Ordinances or to seek enforcement of the terms of this Agreement, including the payment of the total fine amount of [AMOUNT] dollars plus all costs incurred by The Town in the preparation and execution of this Agreement, including the Town's attorneys' fees.

9. This Agreement represents the entire agreement between the parties as to the matters specifically addressed herein. Any modification of this Agreement shall be made in writing and signed by the parties.

10. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, and their heirs, successors and assigns, and shall run with the Subject Property.

11. Nothing in this Agreement shall be construed to constitute approval by the Maine Department of Environmental Protection or any other applicable state agency of the terms contained herein. The terms of this Agreement shall be subject to the same adoption process (including notice, a public hearing, adoption by the Council) applicable to all amendments to the Town's Shoreland Zoning Ordinance.

12. This Agreement shall be recorded by the Town in the Cumberland County Registry of Deeds, shall run with the land, and shall be binding on the Violators or their heirs, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first written above.

THE LINKS

Gregory C. Link, Individually and on behalf of
Hardy Farm Investments, Inc.

STATE OF MAINE
COUNTY OF CUMBERLAND, ss. _____, 2023

Personally appeared the above-named Gregory C. Link individually and in his capacity as registered agent of Hardy Farm Investments, Inc. and acknowledged the

foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Hardy Farm Investments, Inc.

Notary Public/Attorney at Law

Deborah J. Link, Individually

STATE OF MAINE
COUNTY OF CUMBERLAND, ss. _____, 2023

Personally appeared the above-named Deborah J. Link and acknowledged the foregoing instrument to be her free act and deed.

Notary Public/Attorney at Law

TOWN OF FREEPORT

By: _____
Caroline Pelletier,
its duly authorized interim
Town Manager

STATE OF MAINE
COUNTY OF CUMBERLAND, ss. _____, 2023

Personally appeared the above-named Caroline Pelletier and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said Town of Freeport.

Notary Public/Attorney at Law