

AGENDA
TOWN COUNCIL WORKSHOP
WEDNESDAY, MAY 17, 2017
DISCUSSION ON AVENUE TWO
6:00 P.M. - CHAMBERS

Item 1. Call to Order.

Item 2. Those Present.

Item 3. Discussion on Avenue Two.

Item 4. Adjournment.

Wayne T. Adams
Christian L. Barner
Milda A. Castner
Laura Shortill Curtis
Susan Bernstein Driscoll
Scott M. Edmunds
William J. Gallitto, III
Jason G. Howe
David C. Johnson
Erin K. Kalakowsky
Benjamin T. McCall



Courtney S. Michalec
Brin M. Moore
Sarah B. Neault
Durward W. Parkinson
Leah B. Rachin
Laura H. White

Of Counsel

Jonathan Bangs
Barbara I. Belik

In Memoriam

C. Wesley Crowell
1955-2015

April 28, 2017

dparkinson@bergenparkinson.com

VIA E-MAIL

Town Council, Town of Scarborough
Attn: Thomas Hall, Town Manager
259 U.S. Route 1
PO Box 360
Scarborough, ME 04070-0360

Re: Charles P. Gendron Property, 37 King Street, Pine Point, Scarborough

Dear Members of the Council:

On February 1, 2017, the Council held a public workshop to discuss the future of Avenue 2. At that workshop, the Council heard from members of the public, as well as attorneys for many of the parties involved. The Council then instructed us to continue negotiations regarding a potential discontinuance of Avenue 2 and prepare the necessary documents for the Council's (and public's) review.

Since then, we have worked with attorneys for both of the Avenue 2 abutters to develop the draft documents that are attached. This memorandum is meant to highlight the importance of each document.

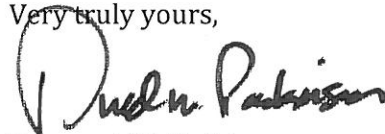
- **Order of Discontinuance:** This legal document officially "discontinues" the Town's interest in Avenue 2, and meets the criteria for doing so under Maine law. It names the parties who will be receiving ownership interest in Avenue 2, but clearly specifies that the Town will be receiving an easement to allow continued access to the beach in exchange. Finally, the Order makes clear that neither abutter will be receiving any form of damages because of the discontinuance.
- **Public Easement Deed from Mr. Gendron:** In exchange for discontinuing Avenue 2, Mr. Gendron is granting the Town an easement for his portion of Avenue 2. The

easement specifies that the public will retain a walking path to the ocean, almost identical to where it has traditionally been. Mr. Gendron is also restricted in his use of the easement area and is required to conform to landscaping plans that are attached. If he does not follow these plans, or if he constructs any structures within the easement area, the Town retains the right to remove them and charge Mr. Gendron for the cost of doing so.

- **Public Easement Deed from the Gables:** The Gables Condominium Association is granting a practically identical easement to the Town. They are also restricted in constructing any sort of structure within the easement area. Additionally, the Town has reserved the right to expand the public path in the future, to include up to five feet of land on the Gables' side of Avenue 2.
- **Abutter Consent Agreement:** Finally, we have drafted an abutter consent agreement that will be signed by Mr. Gendron as well as every unit owner within the Gables. Although not specifically required by law, the agreement specifies and acknowledges that the Town has followed the proper legal steps and that all the abutters are satisfied. The agreement will serve as assurance for the Town that once Avenue 2 has been discontinued, the abutters will not challenge the result.

We are happy to elaborate on any of the above documents and answer any questions that the Council may have.

Very truly yours,

A handwritten signature in black ink, appearing to read "Durward W. Parkinson". The signature is written in a cursive, flowing style.

Durward W. Parkinson

DWP/btm

cc: John C. Bannon, Esq.
Joseph V. Lenkowski, Esq.

ORDER OF DISCONTINUANCE PURSUANT TO 23 M.R.S.A. § 3026-A

WHEREAS, the Town Council of the Town of Scarborough, Maine (hereafter the “Municipal Officers”) have given best practicable notice of the proposed discontinuance of all portions of Avenue 2 located southerly of King Street (hereafter the “Way”) to all owners of property abutting the Way (hereafter the “Abutters”); and

WHEREAS, the Municipal Officers have met to discuss the proposed discontinuance of the Way at public meetings held on May 3, 2017 and May 17, 2017; and

WHEREAS, on _____, 2017 the Municipal Officers filed with the Town Clerk of the Town of Scarborough, Maine (hereafter the “Municipal Clerk”) a copy of this Order; and

WHEREAS, on May 17, 2017, the Municipal Officers held a public hearing on this Order; and

WHEREAS, ten or more business days have elapsed since the above-described public hearing; and

WHEREAS, the Municipal Officers are the “municipal legislative body” within the meaning of 23 M.R.S.A. § 3026-A(4);

NOW, THEREFORE, the Municipal Officers hereby approve the following Order:

A. Discontinuance of the Way.

Pursuant to the provisions of 23 M.R.S.A. § 3026-A, the Town does hereby discontinue and terminate all its interests in the Way, the location of which is described in Exhibit A attached to this Order, excepting and reserving the public easements and public utility easement described in Part D of this Order.

B. Names of Abutters.

The names of the Abutters are as follows:

Charles P. Gendron;

The Gables on the Sea Condominium Association; and

The following owners of each unit within The Gables on the Sea, A Condominium:

Unit 1: Craig Garbarini, Doug Garbarini, Jan Garbarini, Karen Leventis, and Lynn Willscher;

Unit 2: Jere L. Dearborn and Sally S. Dearborn;

- Unit 3: Harold F. Hutchinson, III and Jeffrey Hutchinson in their capacity as Trustees of the Harold F. Hutchinson, Jr. Trust;
- Unit 4: Mary Ann D. Scaccia;
- Unit 5: Joan A. Payden in her capacity as the Trustee of the Joan A. Payden Trust;
- Unit 6: Richard Iovino and Cynthia Iovino; and
- Unit 7: James P. Karen and Jayme P. Karen

C. Amount of Damages, if Any to be Paid to Each Abutter.

The Municipal Officers find as a fact, with respect to each and every one of the Abutters named in Part B of this Order, that the fair market value of the Abutter's property immediately after the discontinuance of the Way will be no less than the fair market value of the Abutter's property immediately before the discontinuance of the Way. Therefore, the Municipal Officers award no damages to any Abutter and appropriate no money to pay any such damages.

D. Retention of Public Easement.

In lieu of retaining any other public easement in the Way, the Municipal Officers hereby accept the delivery of:

1. the Public Easement Deed from Charles P. Gendron to the Town of Scarborough dated _____, 2017 attached to this Order as Exhibit B, and
2. the Public Easement Deed from the Gables on the Sea Condominium Association to the Town of Scarborough dated _____, 2017 attached to this Order as Exhibit C.

The areas of the Public Easements attached to this Order as Exhibits A and B are shown on the "Discontinuance Plan of P/O Avenue 2, Lots 37 and 47 King Street, Scarborough," by Northeast Civil Solutions dated _____ 2017 attached to this Order as Exhibit D.

Except for the interests granted to the Town by the Public Easements attached to this Order as Exhibits B and C, all interests of the Town in the discontinued Way hereby pass to the Abutters in fee simple to the center of the Way.

E. Certificate of Discontinuance.

The Municipal Clerk shall promptly:

1. record at the Cumberland County Registry of Deeds an attested certificate of discontinuance describing the Way and the final action by

the Municipal Officers with respect to the discontinuance of the Way,
and

2. provide a photocopy of the certificate to the Department of
Transportation, Bureau of Maintenance and Operations.

Dated: _____

MUNICIPAL OFFICERS OF THE
TOWN OF SCARBOROUGH

PUBLIC EASEMENT DEED

KNOW ALL PERSONS BY THESE PRESENTS THAT **CHARLES P. GENDRON** of Scarborough, County of Cumberland, and State of Maine ("Grantor"), grants to **THE TOWN OF SCARBOROUGH**, a Maine municipal corporation located in the County of Cumberland and State of Maine ("Grantee"), the public easement more particularly described in **Exhibit A** attached hereto and made a part hereof.

IN WITNESS WHEREOF, **CHARLES P. GENDRON** has signed this instrument on this ____ day of _____, 2017.

Witness

Charles P. Gendron

STATE OF MAINE
Cumberland, ss.

_____, 2017

Then personally appeared before me the above named CHARLES P. GENDRON and acknowledged the foregoing instrument to be his free act and deed.

Before me,

Attorney at Law/Notary Public

Printed Name

EXHIBIT A

I. BOUNDARIES OF THE PUBLIC EASEMENT.

Subject to the area-specific use restrictions set forth below in Paragraph III of this Exhibit A, the public easement conveyed by this deed (hereafter the "Public Easement") is bounded and described as follows:

Beginning at a #5 rebar with plastic cap stamped "NCS, INC. PLS 1314" located on the southerly sideline of King Street as shown on the "Discontinuance Plan of P/O Avenue 2, 17 and 47 King Street, Scarborough," by Northeast Civil Solutions dated _____ to be recorded at the Cumberland County Registry of Deeds herewith (hereafter the "Plan");

Thence S18°09'44"E along the easterly boundary of land of Charles P. Gendron described in the deed from Lorraine R. Johnson to Charles P. Gendron dated June 6, 2013 and recorded at the Cumberland County Registry of Deeds in Book 30715, Page 193 (hereafter the "Gendron Parcel") 282.54' to a #5 rebar with plastic cap stamped "NCS, INC. PLS 1314" as shown on the Plan;

Thence S18°09'44"E along the easterly boundary of the Gendron Parcel 600'± to the low water mark of the Atlantic Ocean as shown on the Plan;

Thence southeasterly along the low water mark of the Atlantic Ocean 25'± to the centerline of "Old Avenue 2" as shown on the Plan;

Thence N18°09'44"W along the centerline of "Old Avenue 2" as shown on the Plan 600'± to a point on the centerline of "Old Avenue 2" as shown on the Plan located S77°39'37"W 25'± from a #5 rebar with plastic cap stamped "NCS, INC. PLS 1314" on the easterly boundary of the Gendron Parcel as shown on the Plan;

Thence N18°09'44"W along the centerline of "Old Avenue 2" as shown on the Plan 285.96' to a #5 rebar with plastic cap stamped "NCS, INC. PLS 1314" located on the southerly sideline of King Street as shown on the Plan;

Thence S71°50'16"W along the southerly sideline of King Street 24.75' to the point of beginning.

Grantor acknowledges that at a distance of 360'± from the southerly sideline of King Street, the Public Path described in Paragraph III(A)(1) below exits the bounds of the Public

Easement as described above and enters the Gendron Parcel. This Public Easement shall also include any and all portions of the Public Path located within the Gendron Parcel, subject to all limitations and restrictions set forth below.

II. GRANTEE'S RELEASE OF EXISTING INTERESTS.

By acceptance of this Public Easement, Grantee releases to Grantor all right, title, or interest, if any, of the Grantee in any and all land within the boundaries of this Public Easement that Grantee may previously have acquired, as of the date of this deed, by dedication and acceptance, layout and taking, grant, prescription, custom, or any other means.

III. USE AREAS WITHIN PUBLIC EASEMENT.

Notwithstanding the general description of the boundaries of this Public Easement set forth above in Paragraph 1 of this Exhibit A, this Public Easement is further physically divided into the following areas that are each subject to specific limitations on the rights of the Grantor and the Grantee as set forth below:

A. "Public Path."

1. Location.

Grantee and/or the public may enter upon and/or use this Public Easement only within the bounds of a pathway having a uniform width of 5' throughout its entire length (hereafter the "Public Path"), the centerline of which is more particularly described as follows:

Beginning at a point on the southerly sideline of King Street located $S71^{\circ}50'16''W$ 2.5' from the centerline of "Old Avenue 2" as shown on the Plan,

Thence $S18^{\circ}09'44''E$ 286'± to a point located $S77^{\circ}39'37''E$ 22.47' from a #5 rebar with plastic cap stamped "NCS, INC. PLS 1314" on the easterly boundary of the Gendron Parcel as shown on the Plan;

Thence in a generally southeasterly direction 25'± to the point on the centerline of the "Sand Path to Beach" as shown on the Plan (hereafter the "Southerly Sand Path") where the centerline of the Southerly Sand Path intersects the boundary between the "Frontal Dune (D1)" and the "Back Dune (D2)" as shown on the Plan (hereafter the "Junction");

Thence in a generally southerly direction along the centerline of the Southerly Sand Path 575'± to the low water mark of the Atlantic Ocean.

2. Grantor's responsibilities concerning the Public Path.

Grantor shall neither place structures of any kind on, nor alter in any way, the existing surface of any portion of the Public Path located southerly of the Junction (hereafter the "Southerly Public Path"). Grantor shall place no structures of any kind within any portion of the Public Path located northerly of the Junction (hereafter the "Northerly Public Path").

Grantor shall construct a travelled way over the entire length and width of the Northerly Public Path; provided, that Grantor shall construct all portions of that travelled way of natural earth materials and shall not apply bituminous or similar manufactured paving materials to any portion of that traveled way. That travelled way shall not constitute a "structure" for the purposed of this Public Easement. After completing construction of that travelled way, Grantor shall have the right but not the obligation, to maintain and repair that travelled way.

Grantor shall be solely responsible for (a) obtaining all federal, state, or municipal governmental permits, licenses, or other approvals necessary to construct or otherwise establish the Northerly Public Path; (b) all costs of obtaining those permits, licenses, or other approvals, and (c) all costs of initially constructing the travelled way of the Northerly Public Path.

Grantor grants to Grantee and the public a temporary license to continue using the existing sandy path located outside the bounds of the Northerly Public Path until Grantor completes construction of the travelled way within the bounds of the Northerly Public Path, at which time all public use of the existing sandy path located outside the bounds of the Northerly Public Path shall cease.

3. Grantee's Additional Rights of Access to Public Path.

Should Grantor place any structures of any kind on either the Northerly Public Path or Southerly Public Path; alter in any way, the existing surface of any portion of the Southerly Public Path; and/or fail to construct a travelled way over the Northerly Public Path in compliance with all conditions set forth Paragraph III(A)(2) of this Public Easement, as determined by the duly-elected officers of the Town of Scarborough, Grantee may, upon giving adequate notice to Grantor, enter upon the Public Path for the purposes of (1) removing any such structures from the Northerly Public Path and/or the Southerly Public Path; (2) restoring to its original condition any portion of the surface of the Southerly Public Path that Grantor has altered; and (3) constructing a travelled way over the Northerly Public

Path in compliance with all conditions set forth in Paragraph III(A)(2) of this Public Easement; and may charge Grantor the reasonable costs of such activities, including but not limited to the cost of labor and all needed materials, as well as reasonable attorney's fees incurred by Grantee while exercising the aforementioned rights.

4. Use of the Public Path.

Use of the Public Path by the Grantee and the public shall be limited to: (a) foot traffic by pedestrians, in common with Grantor, his heirs and assigns, directly between the southerly sideline of King Street and the low water mark of the Atlantic Ocean; and (b) travel by emergency vehicles owned and operated by Grantee, while the emergency vehicles are being operated for the purpose of providing emergency services authorized by Grantee, directly between the southerly sideline of King Street and the low water mark of the Atlantic Ocean, which emergency vehicles shall be limited to vehicles in the nature of ATV's or other similarly small vehicles that are capable of travelling on sand and/or other unpaved surfaces.

After Grantor completes construction of the travelled way within the bounds of the Northerly Public Path, Grantee shall neither place structures of any kind within the travelled way of the Northerly Public Path nor alter that travelled way except for the purpose of maintaining and/or repairing that travelled way.

5. Protection of Grantor from liability arising from public use of the Public Path.

By acceptance of this deed, Grantee agrees on behalf of itself, its agents, employees, invitees, and the public that all public use of the Public Path (including, but not limited to, use of the Public Path by emergency vehicles as authorized above) shall be deemed a "recreational activity" within the meaning of 14 M.R.S.A. § 159-A as now and hereafter amended; that Grantor, his heirs and assigns shall be deemed "an owner, lessee, manager, holder of an easement or occupant of premises" within the meaning of 14 M.R.S.A. § 159-A as now and hereafter amended; and that Grantor, his heirs and assigns are entitled to all protections extended to such an "owner, lessee, manager, holder of an easement or occupant of premises" under 14 M.R.S.A. § 159-A as now and hereafter amended.

Without limiting the generality of the foregoing, by acceptance of this Deed, Grantee further agrees on behalf of itself, its agents, employees, invitees, and the public (hereafter the "Indemnifying Parties") to save, indemnify, protect, and hold Grantor, his heirs and assigns, harmless from any and all claims, demands, causes of action, and/or defense costs arising, directly or indirectly or in whole or in part, from the condition or the use of the Public Path, although such indemnification shall be limited to injuries arising out of uses expressly allowed on the public path as defined in Paragraph III(A)(3) of this Public Easement; that

the Indemnifying Parties expressly assume all risks associated with their use of the Public Path; that Grantor, his heirs and assigns make no representations or warranties whatsoever, express or implied, as to the use or suitability of the Public Path for pedestrian or vehicular travel and hereby disclaim any and all such warranties; and that Grantor, his heirs and assigns shall have no duty to maintain the Public Path either in a reasonably safe condition or in any other condition.

B. “Structure-Free Area.”

1. Location.

The area of this Public Easement hereafter referenced as the “Structure-Free Area” is more particularly described as follows:

Beginning at a #5 rebar with plastic cap stamped “NCS, INC. PLS 1314” located at the intersection of the southerly sideline of King Street and the easterly sideline of the Gendron Parcel as shown on the Plan;

Thence S18°09’44”E along the easterly boundary of the Gendron Parcel 308’± to a point on the boundary between the “Frontal Dune (D1)” and the “Back Dune (D2)” as shown on the Plan;

Thence N77°39’37”E 24.97’ along the boundary between the “Frontal Dune (D1)” and the “Back Dune (D2)” as shown on the Plan to the centerline of “Old Avenue 2” as shown on the Plan;

Thence N18°09’44”W along the centerline of “Old Avenue 2” as shown on the Plan 311’± to a #5 rebar with plastic cap stamped “NCS, INC. PLS 1314” located on southerly sideline of King Street as shown on the Plan;

THENCE S71°50’16”W along the southerly sideline of King Street 24.75’ to the point of beginning.

2. Limitations on Grantor’s use of Structure-Free Area.

Within the Structure-Free Area, Grantor shall place no permanent man-made structures of any kind either on or in the ground..

Notwithstanding the foregoing, Grantor reserves within the Structure-Free Area(a) the right to remove, replace, and plant trees, shrubs, grasses, and other vegetation, provided that no such vegetation is be planted as to construct a natural hedge, and to install other

forms of landscaping and vegetative buffers (none of which vegetation, landscaping, or buffers shall be deemed a “permanent man-made structure” within the meaning of this paragraph) so long as such work is substantially consistent with the (i) “Conceptual Planting Plan, Charlie Gendron, King Street, Scarborough Maine” by Terrence J. DeWan & Associates dated June 29, 2016, (ii) the photosimulation entitled “Relocated Trail Entrance, Proposed Conditions” by Terrence J. DeWan & Associates, and (iii) the photosimulation entitled “House Buffer and Relocated Trail, Proposed Conditions” by Terrence J. DeWan & Associates, copies of which are attached to this Public Easement as Exhibits B, C, and D respectively and incorporated by reference herein; (b) the right, but not the obligation, to replace any of that vegetation that dies or becomes diseased or damaged after initial planting; (c) the right to engage in customary residential uses of the land, provided that such uses shall not include the placement of permanent man-made structures of any kind either on or in the ground or landscaping that is not substantially consistent with Exhibits B, C, and D attached to this Public Easement; and (d) all other rights as the fee owner of the Structure-Free Area that are not specifically prohibited by this Public Easement.

Within all portions of the Structure-Free Area that are occupied by the Public Path described in Paragraph III(A) of this Public Easement, the parties’ rights and obligations shall be governed exclusively by Paragraph III(A) of this Public Easement. Neither the Grantee nor the public may enter upon, occupy, or use any portion of the Structure-Free Area located outside the bounds of the Public Path.

3. Grantee’s Limited Right of Access to the Structure-Free Area.

Should Grantor place any permanent man-made structures of any kind either on or in the ground within the Structure-Free Area, Grantee may, upon giving adequate notice to Grantor: (1) enter into said Structure-Free area; (2) remove any such permanent man-made structures; and (3) may charge Grantor the reasonable costs of such activities, including but not limited to the cost of labor and all needed materials, as well as reasonable attorney’s fees incurred by Grantee while exercising the aforementioned rights.

In the event that Grantee exercises any or all of the above rights, Grantee shall keep an accurate accounting of the expenses incurred in performing the above-described actions and shall send to Grantor an invoice for the payment of said expenses.

If Grantor fails to make adequate payment of said expenses within sixty (60) days of receiving notice of the same, then Grantee shall retain the right to place and record a lien on Grantor’s real property equal to the amount of said expenses, consistent with the requirements laid out in 36 M.R.S.A. § 942, *et seq.*

C. “Low-Impact Area.”

1. Location.

The area of this Public Easement hereafter referenced as the “Low-Impact Area” is more particularly described as follows:

Beginning at the intersection of the easterly boundary of the Gendron Parcel with the boundary between the “Frontal Dune (D1)” and the “Back Dune (D2)” as shown on the Plan;

Thence S18°09’44”E along the easterly boundary of the Gendron Parcel 575’± to the low water mark of the Atlantic Ocean as shown on the Plan;

THENCE southeasterly along the low water mark of the Atlantic Ocean 25’± to the centerline of “Old Avenue 2” as shown on the Plan;

THENCE N18°09’44”W along the centerline of “Old Avenue 2” 575’± to the intersection of the centerline of “Old Avenue 2” with the boundary between the “Frontal Dune (D1)” and the “Back Dune (D2)” as shown on the Plan;

THENCE S77°39’37”W 24.97’ to the point of beginning.

2. Limitations on Grantor’s use of the Low-Impact Area.

Within the Low-Impact Area, Grantor shall neither place any permanent man-made structures of any kind nor alter the existing natural topography and/or vegetation in any manner except as may be necessary either to (a) prevent or repair damage, to areas within the boundaries of this Public Easement and/or the Gendron Parcel, caused by storms, flooding, sea-level rise, or other natural forces; and/or (b) vegetate or revegetate with dune grass any portion of this Public Easement located outside the boundaries of the Public Path.

3. Grantee’s Limited Right of Access to the Low-Impact Area.

Should Grantor fail to abide by the restrictions set forth in Paragraph III(C)(2) of this Public Easement, as determined by the duly-elected officers of the Town of Scarborough, Grantee may, upon giving adequate notice to Grantor: (1) enter into said Low-Impact Area; (2) remove any such permanent man-made structures and/or prevent or repair any alterations to the existing natural topography and/or vegetation within the Low-Impact Area not authorized by Paragraph III(C)(2) of this Public Easement. Should Grantee resort to its

limited right of access in this regard, Grantee shall abide by the procedure and be entitled to reimbursement according to the terms set forth in Paragraph III(B)(3) of this Public Easement.

Notwithstanding the foregoing, Grantor reserves within the Low-Impact Area the rights (a) to engage in customary residential uses of the Low-Impact Area provided that such uses shall include neither the placement of permanent man-made structures nor alterations to the existing topography or vegetation except to the extent permitted by the preceding paragraph of this Public Easement; and (b) all other rights as the fee owner of the Low-Impact Area that are not specifically prohibited by this Public Easement.

Within all portions of the Low-Impact Area that are occupied by the Public Path described in Paragraph III(A) of this Public Easement, the parties' rights and obligations shall be governed exclusively by Paragraph III(A) of this Public Easement. Neither the Grantee nor the public may enter upon, occupy, or use any portion of the Structure-Free Area located outside the bounds of the Public Path.

IV. GENERAL

This Public Easement shall be binding in perpetuity on the parties, their heirs, assigns, and successors in interest.

EXHIBIT B

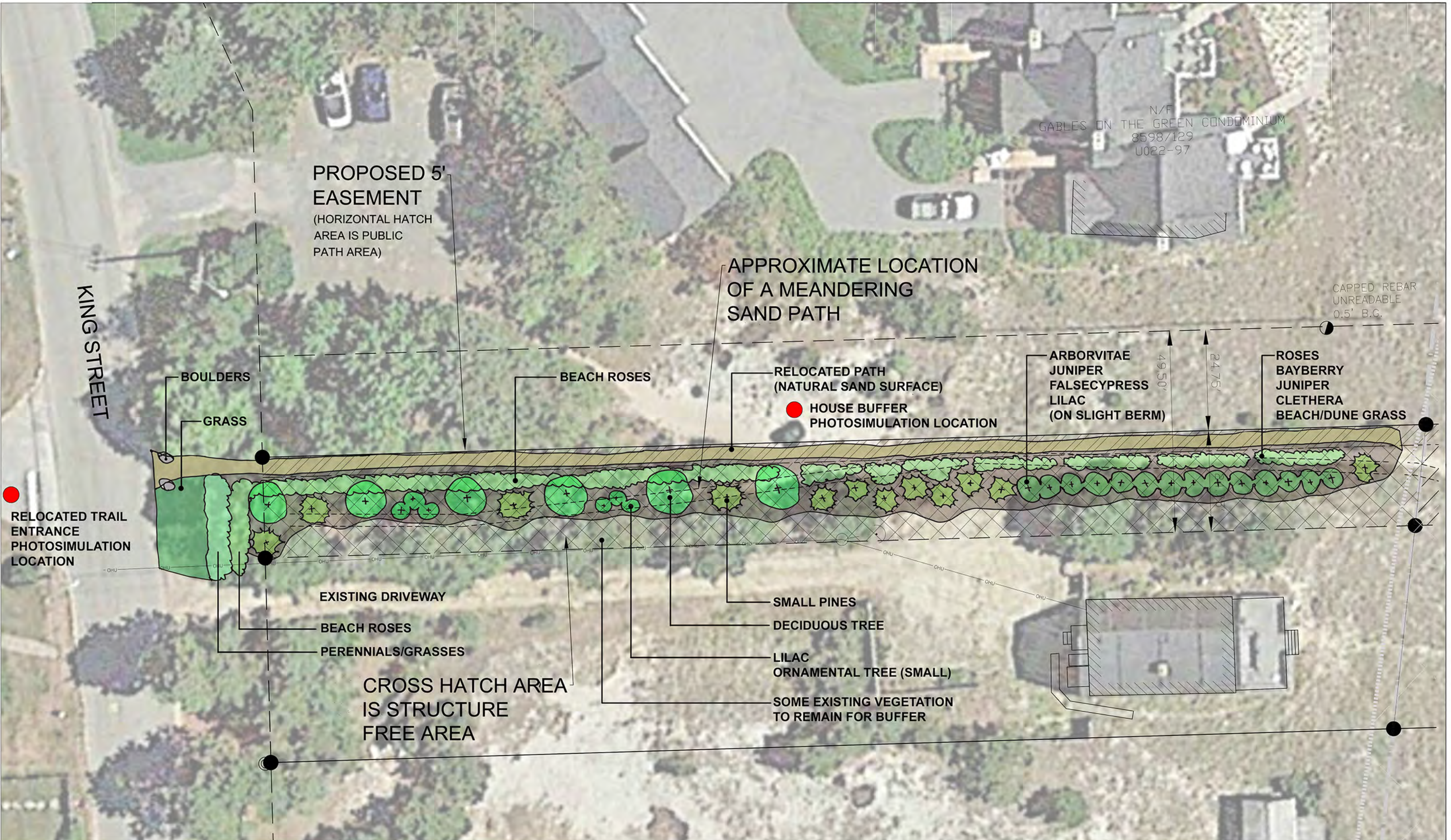


EXHIBIT C



RELOCATED TRAIL ENTRANCE
PROPOSED CONDITIONS

EXHIBIT D



HOUSE BUFFER AND RELOCATED TRAIL
PROPOSED CONDITIONS

PUBLIC EASEMENT DEED

KNOW ALL PERSONS BY THESE PRESENTS THAT **GABLES ON THE SEA CONDOMINIUM ASSOCIATION**, a Maine nonprofit corporation with an office at Scarborough, County of Cumberland, and State of Maine ("Grantor"), grants to **THE TOWN OF SCARBOROUGH**, a Maine municipal corporation located in the County of Cumberland and State of Maine ("Grantee"), a public easement more particularly described in **Exhibit A** attached hereto and made a part hereof.

IN WITNESS WHEREOF, **GABLES ON THE SEA CONDOMINIUM ASSOCIATION** has signed this instrument on this ____ day of _____, 2017.

GABLES ON THE SEA CONDOMINIUM ASSOCIATION

Witness

By: Nicholas C. Scaccia
Its President, hereunto duly authorized

STATE OF MAINE
Cumberland, ss.

_____, 2017

Then personally appeared before me the above named Nicholas C. Scaccia, President of the Gables on the Sea Condominium Association and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of the corporation.

Before me,

Attorney at Law/Notary Public

Printed Name

EXHIBIT A

I. BOUNDARIES OF THE PUBLIC EASEMENT.

Subject to the area-specific use restrictions set forth below in Paragraph III of this Exhibit A, the public easement conveyed by this deed (hereafter the "Public Easement") is bounded and described as follows:

Beginning at a point on the southerly sideline of King Street in Scarborough, County of Cumberland, and State of Maine, which point is located N71°50'16"E a distance of 24.75' from a #5 rebar with plastic cap stamped "NCS, INC. PLS 1314" located at the intersection of the southerly sideline of King Street with the easterly boundary of land of Charles P. Gendron described in the deed from Lorraine R. Johnson to Charles P. Gendron dated June 6, 2013 and recorded at the Cumberland County Registry of Deeds in Book 30715, Page 193 (hereafter the "Gendron Parcel"), which point also marks the intersection of the southerly sideline of King Street with the centerline of "Old Avenue 2" as shown on the "Discontinuance Plan of P/O Avenue 2, Lots 37 and 47 King Street, Scarborough," by Northeast Civil Solutions dated _____ 2017 to be recorded at the Cumberland County Registry of Deeds herewith (hereafter the "Plan");

THENCE S18°09'44"E along the centerline of "Old Avenue 2" 285.96' to a point on said centerline of "Old Avenue 2" located S77°39'37"W a distance of 24.97' from a #5 rebar with plastic cap stamped "NCS, INC. PLS 1314" set on the easterly boundary of the Gendron Parcel as shown on the Plan;

THENCE S18°09'44"E along the centerline of "Old Avenue 2" 600'± to the low water mark of the Atlantic Ocean as shown on the Plan;

THENCE southeasterly along said low water mark of the Atlantic Ocean 25'± to the westerly boundary of the land described in the deed from Nicholas C. Scaccia and Clinton I. Strout to Gables on the Sea, Inc. dated December 20, 1988 and recorded at the Cumberland County Registry of Deeds in Book 8598, Page 129 (hereafter the "Condominium Parcel") as shown on the Plan;

THENCE N18°09'44"W along the westerly boundary of the Condominium Parcel 600'± to a point on the westerly boundary of the Condominium Parcel located S77°39'37"W a distance of 49.94' from a #5 rebar with plastic cap stamped "NCS, INC. PLS 1314" set on the easterly boundary of the Gendron Parcel as shown on the Plan;

THENCE N18°09'44"W along the westerly boundary of the Condominium Parcel a distance of 287'± to a point on the southerly sideline of King Street which is located N71°50'16"E a distance of 49.50' from a #5 rebar with plastic cap stamped "NCS, INC. PLS 1314" set at the intersection of the southerly sideline of King Street with the easterly boundary of the Gendron Parcel as shown on said Plan;

THENCE S71°50'16"W along said southerly sideline of King Street 24.75' to the point of beginning.

II. GRANTEE'S RELEASE OF EXISTING INTERESTS.

By acceptance of this Public Easement, Grantee releases to Grantor all right, title, or interest, if any, of the Grantee in any and all land within the boundaries of this Public Easement that Grantee may previously have acquired, as of the date of this deed, by dedication and acceptance, layout and taking, grant, prescription, custom, or any other means.

III. USE AREAS WITHIN PUBLIC EASEMENT.

Notwithstanding the general description of the boundaries of this Public Easement set forth above in Paragraph 1 of this Exhibit A, this Public Easement is further physically divided into the following areas that are each subject to specific limitations on the rights of the Grantor and the Grantee as set forth below:

A. "Structure-Free Area."

1. Location.

The area of this Public Easement hereafter referenced as the "Structure-Free Area" is more particularly described as follows:

Beginning at a point on the southerly sideline of King Street in Scarborough, County of Cumberland, and State of Maine, which point is located N71°50'16"E a distance of 24.75 from a #5 rebar with plastic cap stamped "NCS, INC. PLS 1314" located at the intersection of the southerly sideline of King Street with the easterly boundary of the Gendron Parcel as shown on the Plan, which point also marks the intersection of the southerly sideline of King Street with the centerline of "Old Avenue 2" as shown on the Plan;

Thence S18°09'44"E along the centerline of "Old Avenue 2" 301'± to a point on the boundary between the "Frontal Dune (D1)" and the "Back Dune (D2)" as shown on the Plan;

Thence N77°39'37"E along the boundary between the "Frontal Dune (D1)" and the "Back Dune (D2)" as shown on the Plan to a point on the westerly boundary of the Condominium Parcel as shown on the Plan;

Thence N18°09'44"W along the westerly boundary of the Condominium Parcel as shown on the Plan 302'± to a point on the southerly sideline of King Street, which point is located N71°50'16"E a distance of 49.50' from a #5 rebar with plastic cap stamped "NCS, INC. PLS 1314" set on the easterly boundary of the Gendron Parcel as shown on the Plan;

THENCE S71°50'16"W along the southerly sideline of King Street 24.75' to the point of beginning.

2. Limitations on Grantor's use of Structure-Free Area.

Within the Structure-Free Area, Grantor and his heirs and assigns, shall keep all land in its natural state, and shall place no permanent man-made structures of any kind either on or in the ground.

Notwithstanding the foregoing, Grantor has within the Structure-Free Area the right (a) to remove, replace, and plant trees, shrubs, grasses, and other vegetation, provided that no such vegetation is planted so as to construct a natural hedge, or otherwise materially alter the existing natural vegetation (b) to engage in customary residential uses of the land,, provided that such uses shall not include the placement of permanent man-made structures of any kind either on or in the ground, and (c) all other rights as the fee owner of the Structure-Free Area that are not specifically prohibited or by this Public Easement.

3. Grantee's Limited Right of Access to the Structure-Free Area.

Should Grantor fail to fulfill the obligations outlined in Paragraph III(B)(2) above, as determined by the duly-elected officers of the Town of Scarborough, Grantee may, upon giving adequate notice to Grantor: (1) enter into said Structure-Free area; (2) remove any such man-made structures; and (3) may charge Grantor the reasonable costs of such activities, including but not limited to the cost of labor and all needed materials, as well as reasonable attorney's fees incurred by Grantee while exercising the aforementioned rights.

In the event that Grantee exercises any or all of the above rights, Grantee shall keep an accurate accounting of the expenses occurred in performing the above-described actions and shall send to Grantor an invoice for the payment of said expenses.

If Grantor fails to make adequate payment of said expenses within sixty (60) days of receiving notice of the same, then Grantee shall retain the right to place and record a lien on Grantor's real property equal to the amount of said expenses, consistent with the requirements laid out in 36 M.R.S.A. § 942, *et seq.*

B.. "Low-Impact Area."

1. Location.

The area of this Public Easement hereafter referenced as the "Low-Impact Area" is more particularly described as follows:

Beginning at the intersection of the centerline of "Old Avenue 2" with the boundary between the "Frontal Dune (D1)" and the "Back Dune (D2)" as shown on the Plan;

Thence S18°09'44"E along the centerline of "Old Avenue 2" 575'± to the low water mark of the Atlantic Ocean as shown on the Plan;

THENCE southeasterly along the low water mark of the Atlantic Ocean 25'± to the westerly boundary of the Condominium Parcel as shown on the Plan;

THENCE N18°09'44"W along the westerly boundary of the Condominium Parcel 575'± to the intersection of the westerly boundary of the Condominium Parcel with the boundary between the "Frontal Dune (D1)" and the "Back Dune (D2)" as shown on the Plan;

THENCE S77°39'37"W 24.97' to the point of beginning.

2. Limitations on Grantor's use of the Low-Impact Area.

Within the Low-Impact Area, Grantor shall neither place any permanent man-made structures of any kind nor alter the existing natural topography and/or vegetation in any manner except as may be necessary either to prevent or repair damage, to areas within the boundaries of this Public Easement and/or the Condominium Parcel, caused by storms, flooding, sea-level rise, or other natural forces. Failure of the Grantor to abide by these restrictions shall entitle the Grantee to perform the above-required actions, including but not limited to removing any improperly erected structures. Should Grantee resort to its limited

right of access in this regard, Grantee shall abide by the procedure and be entitled to reimbursement as laid out in Paragraph III(A)(3) above.

Notwithstanding the foregoing, Grantor reserves within the Low-Impact Area the rights (a) to engage in customary residential uses of the Low-Impact Area provided that such uses shall include neither the placement of permanent man-made structures nor alterations to the existing topography or vegetation except to the extent permitted by the preceding paragraph of this Public Easement; and (b) all other rights as the fee owner of the Low-Impact Area that are not specifically prohibited by this Public Easement.

IV. GRANTEE'S RIGHT OF FUTURE EXPANSION OF PUBLIC PATH

Notwithstanding the foregoing, Grantor understands and accepts that Grantee may, expand the Public Path, as further described and laid out in a Public Easement Deed granted by Charles P. Gendron to the Town of Scarborough, dated June 7, 2017, and recorded in the Cumberland County Registry of Deeds in Book ___, Page ___. Such expansion shall be completed at Grantee's expense and shall not exceed a uniform width of 5' measured from the westerly sideline of said Public Path, the centerline of which is more particularly described as follows:

Beginning at a point on the southerly sideline of King Street located $S71^{\circ}50'16''W$ 2.5' from the centerline of "Old Avenue 2" as shown on the Plan,

Thence $S18^{\circ}09'44''E$ 286'± to a point located $S77^{\circ}39'37''E$ 22.47' from a #5 rebar with plastic cap stamped "NCS, INC. PLS 1314" on the easterly boundary of the Charles P. Gendron, described in a deed from Lorraine R. Johnson to Charles P. Gendron dated June 6, 2013 and recorded at the Cumberland County Registry of Deeds in Book 30715, Page 193;

Thence in a generally southeasterly direction 25'± to the point on the centerline of the "Sand Path to Beach" as shown on the Plan (hereafter the "Southerly Sand Path") where the centerline of the Southerly Sand Path intersects the boundary between the "Frontal Dune (D1)" and the "Back Dune (D2)" as shown on the Plan (hereafter the "Junction");

Thence in a generally southerly direction along the centerline of the Southerly Sand Path 575'± to the low water mark of the Atlantic Ocean.

Should Grantee choose to exercise this limited right of expansion of the Public Path, Grantee shall give appropriate notice to Grantor.

IV. GENERAL

This Public Easement shall be binding in perpetuity on the parties, their heirs, assigns, and successors in interest.

DRAFT

ACKNOWLEDGEMENT, CONSENT, AND WAIVER

We the undersigned, being Charles P. Gendron and the unit owners with the Gables by the Sea Condominium, and also being abutting property owners to a portion of Avenue 2 located within the Town of Scarborough, County of Cumberland, and State of Maine (hereinafter the “Way”), whose individual names are completely set forth in the Order of Discontinuance, adopted by the Town of Scarborough on _____, 2017, a copy of which is recorded in the Cumberland County Registry of Deeds in Book ____, Page ____, do hereby state as follows:

1. We acknowledge receipt of sufficient notice of the proposed discontinuance of the Way, as required by 23 M.R.S.A. § 3026-A;
2. We consent to the discontinuance of the Way and further affirm that we will not receive any damages from the Town of Scarborough (the “Town”), as the effect of said discontinuance is *de minimis* on the value of any and all property interests that we may hold, collectively or individually;
3. We waive any and all rights of appeal, including but not limited to the right to appeal the Town’s decision to not award any damages to abutting landowners, pursuant to 23 M.R.S.A. § 3029, and the right to appeal any other act or omission of the Town in connection with said discontinuance, pursuant to Rule 80B of the Maine Rules of Civil Procedure; and
4. We affirm and acknowledge that we were provided the opportunity to review and discuss the contents of this document with qualified legal counsel, and do hereby sign this document freely, with full knowledge of the rights and consequences provided herein.

IN WITNESS WHEREOF, the undersigned parties have caused this agreement to be signed as of this ____ day of _____, 2017.

[Signatures on Next Page]

CHARLES P. GENDRON

Witness

UNIT 1

Witness

Name:

UNIT 2

Witness

Name:

UNIT 3

Witness

Name:

UNIT 4

Witness

Name:

UNIT 5

Witness

Name:

UNIT 6

Witness

Name:

UNIT 7

Witness

Name: