

1 Maine Coast Heritage Trust staff uses this document in its land conservation
2 efforts. It is designed for internal MCHT use, and is provided here as a
3 reference or guide. Each land trust has its own mission, priorities, and
4 organizational characteristics that should direct how it does its work and
5 what documents it uses. Please feel free to use the ideas, processes, and
6 even specific text contained in this document, but be sure to tailor them for
7 your organization. Land trusts should always use a lawyer knowledgeable in
8 land transactions when working on a conservation easement or preserve
9 acquisition. MCHT does not guarantee or provide advice as to the tax
10 consequences of any project or action.
11
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13 **Maine Coast Heritage Trust's**
14 **CONSERVATION EASEMENT**
15 **Draft Template**
16 **1/1/2011**

17
18 *MCHT's attorney uses this document to assist her in producing the first draft of a conservation*
19 *easement. Land staff provides MCHT's lawyer with a conservation plan (the plain English*
20 *version of the conservation easement) describing the property, the purpose of the easement and*
21 *future land use. The lawyer is provided with additional information such as current deeds,*
22 *surveys and maps. Using this information MCHT's lawyer develops the first draft of a*
23 *conservation easement that is specifically designed to achieve the conservation purpose for the*
24 *particular property. This first draft is carefully reviewed and commented on by land protection*
25 *and stewardship staff with appropriate revisions made and then sent to the landowner and the*
26 *landowner's attorney (when appropriate) for review and comment. It is not unusual to have*
27 *many revisions to the initial easement. The template is revised and updated periodically.*
28

29 ***This document should be used only with the assistance of a qualified attorney.***
30
31

32 WE, _____ and _____ **_[husband and wife or other relationship]**as **[joint**
33 **tenants/tenants in common]** having a mailing address of _____ (hereinafter
34 referred to as the "Grantor(s), **[Check Grantor vs. Grantors throughout along with verb number**
35 **(is or are)]**" which word is intended to include, unless the context clearly indicates otherwise, the
36 above-named Grantor(s), jointly and severally, their personal representatives, heirs and assigns, and any
37 successors in interest to the Protected Property), **[[for consideration paid OR in consideration of**
38 **the gifts of others]]**
39

40 GRANT **[[AS A GIFT [Delete if not Gift]**to **MAINE COAST HERITAGE TRUST**, a non-profit
41 corporation organized and existing under the laws of the State of Maine, with a mailing address of
42 Bowdoin Mill, 1 Bowdoin Mill Island, Suite 201, Topsham, Maine 04086 (hereinafter referred to as the
43 "Holder," which word shall, unless the context clearly indicates otherwise, include the Holder's
44 successors and/or assigns),
45

46 with **WARRANTY COVENANTS[or Quitclaim Covenant]**, in perpetuity, this Conservation
47 Easement **[A Portion of?]** a lot of approximately _____ acres located on _____ Road and
48 _____ Cove in _____, _____ County, Maine, being **[the same/a portion of the]**
49 real estate described in a deed from _____ to _____, Grantor hereunder, dated
50 _____, and recorded at the _____ County Registry of Deeds at Book _____, and
51 Page _____; and being more particularly described in Exhibit A and depicted on Exhibit B, both

1 attached hereto and made a part hereof by reference (hereinafter referred to as the “Protected
2 Property”); as follows:
3

4 This Conservation Easement on the Protected Property is granted exclusively for the following
5 conservation purposes:
6

7 **- PURPOSE -**

8 This Conservation Easement is intended to provide a significant public benefit by protecting
9 and preserving in perpetuity the natural and undeveloped character of the Protected
10 Property, including its **[PM* will provide details, values, and if scenic where it can be
11 viewed from] _____** . **Purpose.** *It is the purpose of
12 this Conservation Easement to assure that the Conservation Property will be retained forever in its
13 substantially undeveloped, open space, scenic, and natural condition, consistent with the terms of this
14 Conservation Easement, including its recitals, and to prevent any use of the Conservation Property that will
15 impair or interfere with this condition. Grantor and Holder intend that this Conservation Easement will
16 confine, in perpetuity, the uses of the Conservation Property to activities which are compatible with these
17 purposes and the protection of wildlife habitat and preservation of its scenic, open space and natural values.*
18

19 The following recitals more particularly describe the conservation values of the
20 Protected Property and the significance of this grant.
21

22 WHEREAS, **[PM* will provide list]**

23 *(PM is the Project Manager, or Holder’s Easement negotiator)
24

25 NOW, THEREFORE, the Grantor and Holder have established this Conservation Easement on, over,
26 and across the Protected Property consisting of the foregoing recitals and purposes, and the following
27 terms, covenants, restrictions and affirmative rights granted Holder, its successors and assigns, which
28 shall run with and bind the Protected Property and Grantor (s), (his/her/their) personal representatives,
29 heirs and assigns, in perpetuity:
30

31
32 **1. LAND USE & DIVISION:**
33

34 **A. Land Use.** The Protected Property may be used only for conservation, low-impact
35 outdoor recreation, and natural resource management activities **[PM could add to or subtract from
36 this list]** that do not adversely affect its important natural, ecological and habitat values, nor detract
37 from its **[PM to list important features etc.]_____** character when viewed from
38 _____ (hereinafter “public vantage points”).
39

40 **B. Specific Prohibitions.** No industrial, quarrying, or surface mining activities,
41 are permitted on the Protected Property. **[Add in “de minimis use” clause if relevant:** In
42 addition, the use of the Protected Property for commercial outdoor recreation is prohibited, other
43 than *de minimis* use in accordance with Internal Revenue Code § 2031(c), and as interpreted by
44 regulations promulgated thereunder.]. Without limiting the generality of the foregoing and
45 notwithstanding the reserved rights of Grantor herein, the following uses are prohibited: , **[PM will
46 list other prohibited uses if relevant** apartment buildings, motels or hotels, towers, antennae or
47 other apparatus for telecommunications outside of the building envelope, bridges or causeways,
48 solid waste disposal or transfer areas, junk yards, and aircraft landing sites, except in emergency.].

1
2 **C. Division.** For the purpose of land uses permitted under this Conservation
3 Easement, the Protected Property must remain in its current configuration as a single lot under unified
4 ownership, which may be joint and undivided. Subdivision, partition or creation of other parcels or
5 lots, whether by lot division,[long term lease of structures (in excess of one year), condominium, time
6 share,] **[keep or remove according to PM instructions]** or other manner of ownership which creates
7 discrete parcels or separate ownership or control of portions of the Protected Property, shall be
8 prohibited. Notwithstanding the foregoing, any portion of the Protected Property may be conveyed to
9 an entity that meets the qualification set forth in Paragraph **10 D** for permanent conservation
10 ownership. Under no circumstances may the Protected Property or any portion therefore be included
11 as part of the gross tract area of other land not subject to this Conservation Easement, for the purposes
12 of determining density, lot coverage, or land area requirements, under otherwise applicable laws,
13 regulations or ordinances controlling land use, building density or transfer for development rights.
14

15 **D. Land Use Areas.** For the purpose of the restrictions and reserved rights
16 hereunder, the Protected Property is treated as two (2) land use areas: the “Natural Area” and
17 a ____-Acre “Building Area”, each hereinafter so called. The Building Area shall be a
18 contiguous land area of not more than ____ (____) acres in total, which must be sited by the
19 prior written agreement of Grantor and Holder in accordance with **Paragraph 1E**
20 hereinbelow, from within the area designated on Exhibit B as “Possible Locations for
21 Building Area,” which is generally depicted thereon based upon a set back of at least ____ ()
22 feet from the normal high watermark of the shore of _____. Until the Building Area is
23 finally established as required in **Paragraph 1E**, hereinbelow, the entire Protected Property
24 shall be treated as the Natural Area, and after the Building Area is established, the Natural
25 Area shall be comprised of all of the Protected Property outside of the final Building Area.
26 **OPTION:** In the event that the land area occupied by the Building Area becomes inundated
27 due to a rise in sea level, or the structures permitted only therein become unbuildable or
28 uninhabitable due to a rise in sea level, Grantor and Holder agree to relocate the Building Area
29 to an alternative site that Holder has determined, in its sole and exclusive discretion, meets the
30 general intent of this Conservation Easement, is not detrimental to the conservation purposes
31 hereof, and permits Grantor the reasonable exercise of its rights reserved under Paragraph 4.
32 In such event, the existing Building Area, or relevant parts thereof, will be reassigned as a part
33 of the Natural Area for the purposes of land uses under this Conservation Easement.
34

35 **E. Establishment of Building Area.** **[Add only if building area will be**
36 **established after CE is finished as opposed to beforehand by survey]**
37 Prior to the commencement of any activities permitted only within the Building Area pursuant to
38 Paragraph 3, 4 and 5, except for test pits necessary for siting the Building Area, a recorded legal
39 description of the final Holder-approved Building Area must be established by an addendum hereto,
40 signed by Grantor and Holder and recorded at the Registry of Deeds. In order to establish the Building
41 Area, Grantor shall provide written notice to Holder of its proposed location by certified mail, return
42 receipt requested. Such notice shall include a proposed revision to Exhibit B showing the Building
43 Area, a survey map showing boundary markers of the proposed Building Area, and a metes and bounds
44 description of the proposed Building Area prepared in accordance with the survey, together with
45 sufficient information to demonstrate compliance with the size, configuration, setbacks and other
46 location requirements for the Building Area established under Paragraph **1.D.** and in accordance with
47 the procedures set forth in Paragraph 7. Grantor must clearly and accurately mark the boundaries of
48 the Building Area, and maintain such boundaries in a clear and accurate condition for Holder’s
49 monitoring and enforcement purposes, as noted in Paragraph _____. **[[insert P# for holder’s**

1 affirmative rights, survey right]].
2
3

4 **2. EXISTING CONDITIONS:**
5

6 At the time of this grant there are no structures on the Protected Property except for__**[PM to**
7 **provide a list of all existing structures, divided by land use area if already established]** , located
8 generally as depicted in Exhibit B. As of the date of this Conservation Easement, there are no surface
9 alterations on the Protected Property other those associated with existing structures listed hereinabove
10 and __**[PM will list surface alts.]**____located as generally depicted on Exhibit B. As of the date of
11 this grant the Protected Property is **[PM will describe vegetation]**. All existing conditions are
12 documented in Baseline Data, a compilation of the conditions of the Protected Property as of the
13 date of this grant, certified as accurate by Grantor and Holder, and on file at the offices of Holder.
14 Grantor reserves the right to maintain and replace all existing structures and surface alterations with
15 substantially similar structures and improvements in substantially the same locations.
16
17

18 **3. NATURAL AREA RESTRICTIONS AND RESERVED RIGHTS:**
19

20 It is the intention of this conservation easement that the Natural Area be used as
21 conservation land for low impact outdoor recreation, nature observation and study, and that uses
22 and improvements within the Natural Area be limited to the extent necessary or appropriate to
23 preserve its natural and undeveloped character including preserving its **[LIST CONSERVATION**
24 **VALUES]** as well as to buffer the shoreline and important conservation attributes of the Protected
25 Property from the impacts of permitted development and uses within the Protected Property's
26 Building Area. No structures, temporary or permanent, may be located or constructed on the
27 Natural Area of the Protected Property, and no alterations may be made to the vegetation or to the
28 surface of the earth or to wetlands or watercourses on the Natural Area of the Protected Property,
29 without the prior written consent of Holder; except that Grantor reserves the following rights:
30

31 **A. Structures in Natural Area**
32

33 **(i). Minor Structures in Natural Area.** Grantor reserves the right to
34 construct and maintain within the Natural Area, only minor structures to
35 accommodate low-impact outdoor recreation, nature observation and
36 study, such as: small unlighted signs; low barriers to discourage
37 unauthorized access or to protect fragile resources; support and erosion
38 control structures necessary for permitted roads and trails; boundary
39 markers; rustic trail improvements, including benches, hand rails, steps, and
40 stream bridges; temporary tents and rustic child-scale tree houses.
41 Notwithstanding the generality of the foregoing, the following structures
42 are not permitted in the Natural Area: buildings, sheds, storage units,
43 gazebos, screen houses, tent platforms, docks, piers, barns, bleachers,
44 stages, paved platforms, major recreational improvements such as
45 swimming pools, tennis courts, athletic or sports or equestrian fields or
46 courts or courses that require grading of the surface or extensive barring of
47 mineral soils.

48 **[PM to add or subtract minor structures as appropriate]**
49

1 (ii). Major (IF ANY; IF NOT REMOVE AND RENUMBER ACCORDINGLY):
2 [list, describe and restrict any if appropriate – consider in particular docks, seawalls or
3 rip rap, etc.]
4

5 **B. Surface Alterations in Natural Area**
6

7 (i). Grantor reserves the right to alter the surface of the land, excavate and/or fill
8 the Natural Area to the minimum extent necessary to exercise the reserved rights at
9 Paragraphs 3.A. and 3.C. [, subject to the rights of others over _____ Road, as
10 documented in Exhibit A] **PM will list utility rights and established easements**
11 **where appropriate]** provided that in every case the disturbed surrounding area must
12 be restored as soon as reasonably possible to a state consistent with the scenic and
13 ecological character of the Natural Area to be protected by this Conservation
14 Easement.
15

16 (ii). [Add if PM says necessary]: Grantor reserves the right to establish and
17 maintain one [[PM decide on this: paved or]]unpaved driveway between the nearest
18 public roadway or private right of way and the Building Area,] which shall not exceed
19 sixteen (16) feet in graded width or any greater minimum width required under then-
20 applicable zoning ordinances. Through roads to abutting land are prohibited.
21

22 (iii). Grantor reserves the right to establish and maintain, anywhere on the Protected
23 Property, unpaved footpaths of not more than four (4) feet in combined tread width
24 and side clearance, designed and located to prevent erosion and protect the other
25 conservation values of the conservation easement.
26

27 (iv). Grantor reserves the right to permit archeological and ecological study of the
28 Protected Property, including excavation of sites, provided that all such work must
29 be conducted in accordance with applicable then-current professional standards, and
30 the disturbed area must be restored to its natural appearance as soon as reasonably
31 possible after completion.
32

33 **OPTION: (v)** Nothing in this paragraph shall prevent Grantor from
34 developing ecosystem functions on the Protected Property including, but not limited to,
35 carbon sinks, stream bank restoration, biodiversity mitigation, carbon
36 sequestration and wetland and stream mitigation (other than creation of wetlands
37 from historically upland property, such as hillsides or sites with no more than one of
38 the following: current or historical evidence of hydric soils, hydrophytic vegetation,
39 or wetland hydrology), provided that such developments are not in conflict or
40 inconsistent with the conservation purpose of or the restrictions set forth in this
41 Easement and that prior written approval for same shall have been obtained from
42 Holder. Holder is not responsible for monitoring any such activities for compliance
43 with permit(s) therefore, and Holder has no obligation to enforce said permits. [Use
44 of this clause may have a significant downward impact on the deductible
45 value of the easement gift, as it is a valuable property right retained.]
46
47

48 **C. Vegetation Management In Natural Area.**
49

1 Within forested areas of the Natural Area, it is the intention of this Conservation
2 Easement to foster an intact, healthy forested area, and to limit the removal of forest
3 products and other vegetation to preserve healthy soils and habitat for wildlife,
4 including current and future threatened, rare or endangered species such as **[PM to add
5 specifics]**and the scenic character of forested areas of the Protected Property, in
6 particular **[PM will describe any special scenic features, add this section only if
7 scenic]** It is the intention of this grant to also protect [and maintain] those wetlands as
8 well as open and unforested areas in the Natural Area that provide habitat for wildlife
9 including current and future threatened, rare or endangered species such as ____ **[PM
10 to add where appropriate]**, agricultural value, or scenic benefit from key public
11 vantage points. **[PM will add specifics or others if appropriate]** . It is the intention
12 of this grant to help preserve the ecological integrity of streams, brooks, rivers or water
13 bodies on or about the Protected Property by encouraging maintenance of vegetated
14 buffers in order to provide shading and prevent erosion and thereby maintaining habitat
15 value and water quality. **[[PM modify if appropriate]]**
16

17 **(i). Natural Area - Generally:** Grantor reserves the right to alter vegetation
18 anywhere in the Natural Area to the extent necessary to exercise the rights reserved
19 in Paragraph 3.A. and 3.B., provided that in every case the disturbed surrounding
20 area must be restored as soon as reasonably possible to a state consistent with the
21 scenic and ecological character of the Natural Area to be protected by this
22 Conservation Easement.
23

24 **(ii). [Add if appropriate, see drafting guidelines]: Natural Area – Unforested
25 Areas:** Grantor reserves the right to maintain the existing unforested areas,
26 not including wetlands, in the Natural Area, depicted in Exhibit B, including the right
27 to mow and bush hog and otherwise remove woody regeneration or standing timber
28 thereon. No such mowing or bush hogging shall be permitted within 50 feet of the
29 normal high water line of any perennial river, stream, brook, pond lake or wetland.
30 **[consider other specifics depending on property features:** Mowing of vegetation
31 or harvesting of peat is not permitted on the existing heath and wetlands depicted in
32 Exhibit B. **[Add language about grazing of livestock of appropriate:** and to
33 permit grazing of livestock sufficiently limited to avoid erosion of the soils..]
34

35 **(iii). [Add if appropriate see drafting guidelines]: Natural Area - Forested Areas
36 Forested Areas** Grantor reserves the right to manage forested areas on the Protected
37 Property [Natural Area] including the right to remove exotic or invasive species and the right to
38 practice pre-commercial thinning, weeding, cleaning, sanitation, pruning and other such
39 measures to achieve silvicultural objectives, provided that all such forest management, cutting
40 or harvesting shall be conducted in accordance with state certified best forest management
41 and husbandry practices then current and by using uneven age selection silviculture methods
42 designed to retain the natural character of the area **[PM should be aware of current
43 landowner practices and modify if appropriate]**; and shall be conducted in a manner to
44 (a) maintain and/or foster vertical diversity (b) minimize disturbance to naturally occurring
45 seedlings and saplings as necessary to assure adequate regeneration of native species (c)
46 preserve intact riparian areas and wetlands; (d) foster species native to the area and soils; (e)
47 protect the hydrological systems of the Protected Property; (f) avoid disturbance to known
48 threatened, rare or endangered plant or animal species and their habitat and (g) minimize
49 disturbance to organic and mineral soils on the Protected Property. “Selection silviculture”

1 methods shall mean a method of harvesting in which individual trees or small groups of trees
2 are removed to regenerate new seedlings, and to foster and/or maintain an uneven aged-forest
3 composed of at least three distinct age classes of trees. Other methods of harvesting are
4 permissible following a natural disaster, only with the prior written consent of Holder. These
5 restrictions are not intended to take the place of more restrictive cutting requirements of
6 shoreland zoning or any other federal, state or local laws and regulations governing vegetation
7 management that may be applicable to the Protected Property or parts thereof. It is Grantor's
8 sole responsibility to be knowledgeable about and to abide by these laws and regulations.
9

10 In the event of failure to comply with the above standards of Paragraph 3.C.(iii) or the
11 standards set out in an approved forest management plan, Holder shall have the right to require, in its
12 sole discretion and in addition to any other remedies at law and in equity, replanting of indigenous tree
13 species, or fostering of natural regeneration to maturity, the requirement of marking all trees at least 30
14 days prior to harvest and provision of a notice of harvest, and/or, Holder's prior written approval of a
15 forest management plan designed and written by a licensed professional forester, (which may be
16 presented to Holder for approval in any event, at the Grantor's request) prior to additional harvesting.
17

18 **(iv). Forest Management Plan.** ((applicable on properties with a natural area of
19 over 20 acres in size)) **[Add only if the property is forested and cutting is allowed
20 see drafting guidelines]**
21

22 If a Forest Management Plan is required by Holder, it must include the following
23 information: the location of boundary lines and their marking status, existing
24 conditions including maps and documentation depicting stands, soils and stand history;
25 location of planned harvests; plans and locations for access ways and access
26 improvements needed; and clear demonstration of methods designed to assure
27 compliance with the standards for vegetation management and conservation protection
28 set forth in Paragraph 3.C.(iii) above. Holder may also require marking of all trees to be
29 cut thirty (30) days before harvest is to begin.
30

31 **(v) Notice and Approval of Required Plans.**

32 If a Forest Management Plan is required as described in 3.C.(iv), Grantor agrees to
33 notify Holder and provide a Forest Management Plan at least thirty (30) days before
34 commencing any cutting that requires a Forest Management Plan. Holder must within
35 thirty (30) days of receipt of Grantor's notice and proposed Forest Management Plan,
36 either request a meeting to provide specific input on said plan, or issue written approval
37 of said plan. In determining whether to approve the plan, the Holder must consider
38 whether the plan clearly demonstrates compliance with the standards for vegetation
39 management and conservation protection set forth in Paragraph 3(C) (iii) and whether
40 Grantor has provide Holder with a sufficient written data as required in Paragraph
41 3.C.(iv).
42

43 **(vi) Land management roads:** Existing land management roads depicted on
44 Exhibit B may be maintained and improved in accordance with the current Best
45 Management Practices published by the Maine Department of Conservation's Maine
46 Forest Service or a future equivalent approved by Holder. Creation of any land
47 management roads on the Protected Property is permitted only with prior written
48 approval by Holder, upon review of the roads as part of a request by notice to Holder,
49 or as part of a required Forest Management Plan, described in Paragraph 3 C (iv) above.

1 New skid trails are allowed without prior approval so long as they are promptly re-
2 graded and stabilized to prevent or minimize erosion. All such land management roads
3 or skid trails shall be constructed in accordance with current Best Management
4 Practices published by the Maine Department of Conservation's Maine Forest Service
5 or a future equivalent approved by Holder. Holder shall base its review of
6 management roads on the following criteria: prevention of exposure of mineral soils on
7 the Protected Property, prevention of damage to nearby productive forest soils,
8 preservation of intact hydrology and hydrological systems, preservation of intact
9 wetlands and riparian areas, preservation of intact habitat for known threatened,
10 endangered or rare species.

11
12
13 **4. RESTRICTIONS AND RESERVED RIGHTS IN THE BUILDING AREA.**

14
15 No [[additional]] structures, temporary or permanent, may be located or constructed in the Building
16 Area of the Protected Property, and no alterations may be made to the vegetation or to the surface
17 of the earth or wetlands or watercourses in Building Area of the Protected Property, without the
18 prior written consent of Holder; except that Grantor(s) reserve (s) the right to undertake within the
19 Building Area any activity permitted in the Natural Area as set forth in Paragraph 3, hereinabove,
20 and Grantor(s) reserve the following additional rights with respect to the Building Area only, and
21 only after the Building Area is established as required under Section 1E:

22
23 **A. Structures – Building Area.** Grantor(s) reserve the right, in the Building Area only, to
24 construct, maintain and replace structures, including buildings such as residences and
25 outbuildings, septic systems and domestic fresh water facilities (see also Paragraph ____),
26 and power and communication facilities, OPTION: (including wind and solar collection and
27 transmission devices,) to serve permitted uses of the Protected Property only; provided that
28 no structure may exceed ____ (____) feet in height, excluding chimneys, measured from the
29 original average grade of the lowest side of the building(s) to the highest point of the roof
30 _[PM may add further restrictions]_

31
32 **OPTIONS** Sustainable Energy Generation. The construction, use, maintenance, repair and
33 replacement of not more than one (1) turbine for the generation of wind energy may be permitted
34 upon receipt of the Holder's prior written approval (to be granted in its sole discretion). When
35 considering whether to issue such approval, Holder shall weigh and evaluate, among other relevant
36 factors, the overall aesthetic impacts of the proposed turbine in the context of the surrounding
37 landscape, the environmental impacts, and the scope of its anticipated energy benefits, and, upon
38 Holder's request, Grantor shall be required to provide Holder with written documentation
39 addressing these and other matters deemed relevant by the Holder.

40
41 **OPTION:** No use shall be made of the Protected Property, and no activity thereon shall be
42 permitted which is or is likely to become inconsistent with the Purposes of this Grant. Grantors
43 and Holder acknowledge that, in view of the perpetual nature of this Grant, they are unable to
44 foresee all potential future land uses, future technologies, and future evolution of the land and other
45 natural resources, and other future occurrences affecting the Purposes of this Grant. Holder
46 therefore, in its sole discretion, may determine whether (a) proposed uses or proposed
47 improvements not contemplated by or addressed in this Grant or (b) alterations in existing uses or
48 structures, are consistent with the Purposes of this Grant, subject to the terms of Paragraph 15.F.

1 **B. Surface Alterations – Building Area.** Grantor(s) reserve the right, within in the
2 Building Area only, to alter the surface as necessary or convenient to accomplish the rights
3 reserved by Grantor at Paragraphs 4.A. and 4.C, and to excavate, grade and fill to establish
4 lawns, gardens and ponds and to establish paved or unpaved driveways and parking areas and
5 platforms, trails and woods roads, septic systems and fresh water supplies to serve only the
6 Protected Property. [[Grantor reserves the right to install septic waste disposal systems and
7 fresh water wells and pumping and piping outside of the Building Area to the minimum
8 extent necessary, with the prior written consent of Holder after notice in writing
9 demonstrating necessity in accordance with the provisions of Paragraph 7.

10
11 **C. Vegetation Management – Building Area.** Grantor reserves the right, within the Building
12 Area only, to alter vegetation to create and maintain open areas around permitted structures,
13 to cultivate, plant, harvest vegetation for lawns, gardens and woodlands, and to accomplish
14 the rights reserved by Grantor at Paragraph 4A and 4.B.

15
16 **D. Notices and Approvals for the Building Area.** Grantor(s) agree to notify Holder by certified
17 mail, return receipt requested, as set forth in Paragraph 1.E., at least thirty (30) days prior to the
18 commencement of site preparation, construction, substantial alteration to the surface other than
19 test pits, or replacement, relocation, or removal of any structures permitted only in the Building
20 Area, in order to establish the final approved Building Area as set forth in Paragraph 1.D. and
21 1.E.. Holder will reply within thirty (30) days of receipt of any notice from Grantor, either
22 approving Grantor’s proposed Building Area, or suggesting reasonable modifications that may
23 be necessary to comply with the terms of this grant. With respect to the establishment of the
24 Building Area described in **Paragraph 1 E** the parties shall work in good faith to complete and
25 record the description of the approved Building Area as an addendum to this Conservation
26 Easement, within thirty (30) days of such reply by Holder.

27
28
29 **5. WATER PROTECTION, POLLUTION CONTROL AND WASTE DISPOSAL.**

30
31 **A.** The direct discharge of treated or untreated sewage into surface waters on or about the
32 Protected Property is strictly prohibited, and any such waste shall be disposed of in accordance with
33 applicable laws and regulations.

34
35 **B.** It is forbidden to dispose of or store unserviceable or abandoned equipment, such as
36 appliances, vehicles and parts thereof, or any other waste material in the Natural Area on the Protected
37 Property, except that vegetative slash and debris may be allowed to remain on the Protected Property,
38 manure, compost and vegetative waste may be stored and/or used on the Protected Property in
39 accordance with applicable laws and regulations, and other waste generated by permitted uses on the
40 Protected Property may be stored temporarily in appropriate receptacles for removal at reasonable
41 intervals.

42
43 **C.** The use, storage, discharge or runoff of chemical herbicides, pesticides, fungicides, soaps,
44 detergents or highly acidic or alkaline agents, fertilizers and other toxic agents, including discharge of
45 potentially toxic waste water or other toxic by products of permitted uses, must be limited to prevent
46 any demonstrable adverse impact on wildlife, waters and other important conservation values to be
47 protected by this grant, unless more intensive use is approved in advance and in writing by Holder as
48 appropriate, in its sole and exclusive discretion, to prevent or mitigate harm to the inhabitants, natural
49 resources or permitted uses of the Protected Property.

1
2
3 **6. PUBLIC ACCESS.**
4

5 **(Sample for when no public access is granted)**

6 Grantor has no obligation to grant public access across the Protected Property. Grantor retains
7 the right to grant such access to the Protected Property for low impact outdoor recreation, nature
8 observation and study exercised in accordance with the terms of this grant, [**add the following only if**
9 **necessary:**] provided that more than a *de minimis* use of the Protected Property for commercial outdoor
10 recreation is prohibited as aforesaid.
11

12 **(Sample for when public access is granted)**

13 Grantor(s) agree to permit, and will refrain from prohibiting or discouraging, use of the
14 Natural Area of the [[**PM will identify other land use site**]] Protected Property by the general
15 public for daytime low-impact outdoor recreational uses, such as walking, hiking, nature observation,
16 and for pedestrian access to the intertidal area of the shore, exercised in a manner that is consistent
17 with the protection and preservation of the natural and ecological character of the Protected
18 Property and the terms hereof. Grantor has the right to prohibit or limit camping, night use, fires,
19 vehicular uses, and the right, after approval in advance and in writing by Holder in accordance with
20 **Paragraph 7**, to temporarily or permanently limit or restrict, such public recreational use of the
21 Natural Area of the Protected Property, or any part thereof, that is detrimental to the conservation
22 values of the Protected Property to the extent necessary for [**PMs will add list of reasons such as**
23 **to protect wildlife habitat etc.**]
24

25 Grantor(s) and Holder claim all of the rights and protections against liability for injury to the
26 public to the fullest extent of the law under Title 14 M.R.S.A. Section 159-A, *et seq.* as amended and
27 successor provision thereof (The Maine Recreational Use Statute), and under any other applicable
28 provision of law and equity.
29

30 **7. DEFINITIONS**

31
32 8. Intentionally left blank

33
34 9. Intentionally left blank
35
36

37 **10. HOLDER'S AFFIRMATIVE RIGHTS**
38

39 **10.A. Entry and Inspection.** Holder shall have the right to enter the Protected Property for
40 inspection and monitoring purposes and for enforcement, at a reasonable time and in a reasonable
41 manner that is consistent with the conservation purposes hereof. Except in emergency circumstances,
42 Holder will make reasonable efforts to contact Grantor [*option:* and/or persons in residence on the
43 Protected Property and/or Grantor's adjacent property], prior to entry onto any area of the Protected
44 Property that is not then open to the public. "Emergency circumstances" shall mean that the Holder
45 has a good-faith basis to believe a violation of the easement is occurring or is imminent.
46

47 **10.B. Enforcement.** Holder shall have the right to enforce this Conservation Easement by
48 proceedings at law and in equity, including the right to enjoin the violation, *ex parte* as necessary, by
49 temporary or permanent injunction, to recover any damages to which it may be entitled for violation

1 of the terms of this Easement and to require the restoration of the Property to the condition that
2 existed prior to any such injury.

3
4 Prior to initiation of an enforcement action, Holder shall provide Grantor with prior notice and
5 reasonable opportunity to cure any breach, except where emergency circumstances require more
6 immediate enforcement action.

7
8 If Holder is the prevailing party in any action against Grantor, or against Grantor's agents,
9 employees, lessees, guests, or others for whose actions on the Protected Property Grantor is
10 responsible, Grantor shall reimburse Holder for any reasonable costs of enforcement or defense,
11 including court costs, mediation and, if applicable, arbitration costs, reasonable attorneys' fees, and
12 any other payments ordered by such Court or arbitrator.

13
14 Grantor is not responsible for injury to or change in the Protected Property resulting from
15 natural causes or environmental catastrophe beyond Grantor's control, such as fire, flood, storm, and
16 earth movement, or from any prudent action taken by Grantor under emergency conditions to
17 prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

18
19 The terms of this conservation easement do not supersede or waive more restrictive
20 applicable laws and regulations, such as shoreline zoning or any other federal, state or local laws and
21 regulations governing current use tax classifications, waste disposal, subdivision, structures, surface
22 alterations, vegetation management, or other activities on the Protected Property. It is grantor's sole
23 responsibility to be knowledgeable about and to abide by these laws and regulations.

24 **10.C. Boundaries.**

25
26 *[option: The Protected Property and its land use areas have been professionally surveyed.]* It shall be
27 Grantor's obligation to keep the boundaries of the Protected Property, **[[IF APPLICABLE: and any**
28 **land use areas therein,]]** clearly marked. In the event boundaries are not adequately clear or marked
29 and Grantor fails to accurately mark within a reasonable time after notice by Holder, Holder shall have
30 the right to engage a professional surveyor to re-establish and re-mark boundaries of the Protected
31 Property or any part thereof. The costs associated with such survey work shall be paid by the Grantor
32 only if and to the extent necessary to determine if a breach of this Conservation Easement has
33 occurred on the Protected Property or a land use area thereof.

34
35 **10.D. Holder Acknowledgement Signs.** Holder shall have the right to install and maintain small
36 unlighted signs visible from public vantage points and along boundary lines, to identify Holder and
37 inform the public and abutting property owners that the Protected Property is under the protection of
38 this grant.

39
40 10.E. Holder has the right to require that Grantor's reserved rights be exercised in a manner that
41 avoids adverse impact to the conservation values to be protected by this Easement. Grantor agrees
42 to notify Holder prior to undertaking any activity or exercising any reserved right that may impair
43 the conservation interests associated with this Conservation Easement, as required under Treasury
44 Regulation 1.170A-14(g)(5)(ii), and as specifically required in Paragraph **[[INSERT paragraphs that**
45 **impose a prior notice provision]]**.

46
47 **10.F. [Optional. Affirmative Management Rights. Example, the right to mow, the**
48 **right to manage public access, the right to build a trail]]**

1
2 **11. NOTICES AND REQUESTS FOR APPROVAL**
3

4 **11.A. Notice and Approval Requirements.** Grantor agrees to notify Holder prior to undertaking
5 any activity or exercising any reserved right that may have an adverse impact on the conservation
6 interests associated with this grant as required under Treasury Regulation 1.170A-14(g)(5)(ii), and
7 where prior notice or approval is specifically required in this Conservation Easement.] Grantor's
8 notices must include sufficient information to enable Holder to determine whether Grantor's plans
9 are consistent with the terms of this Easement and the conservation purposes hereof. Holder
10 approval shall be conditioned on compliance with the terms of Paragraph 15.F.
11

12 **11.B. Method for Notice.** Any notices or requests for approval required by this Easement shall
13 be in writing and shall be personally delivered or sent certified mail, return receipt requested, or by
14 such commercial delivery service as provides proof of delivery, to Grantor and Holder, at the
15 following addresses, unless one has been notified by the other of a change of address or change of
16 ownership:
17

18 To Grantor: At the address of the owner(s) of record as noted hereinabove or as provided
19 by Grantor in writing, or if not provided, as set forth below.
20

21 To Holder:
22

23 In the event that notice mailed to Grantor at the last address on file with Holder is returned as
24 undeliverable, the sending party shall provide notice by regular mail to Grantor's last known address
25 on file with the municipality of [*municipality in which property is located*], Maine, or the State Tax
26 Assessor in the case of land in the unorganized territories; or in the case of Holder or in the case of
27 a corporate owner, to the address on file with the Secretary of State, State of Maine, and the mailing
28 of such notice shall be deemed compliance with the notice provisions of this Easement.
29

30 **11.C. Time for Notice and Reply**
31

32 (i) Where Grantor is required to provide notice to Holder pursuant to this Easement, such notice
33 as described hereinabove shall be given in writing at least thirty (30) days prior to the event
34 giving rise to the need to give notice except as otherwise specifically provided herein.
35

36 (ii) Where Grantor is required to obtain Holder's prior written consent and approval, such request
37 as described hereinabove shall be given in writing thirty (30) days prior to undertaking the
38 proposed activity except as otherwise specifically provided herein. Holder, upon receipt
39 of Grantor's request, shall acknowledge receipt of the same. Following such review, Holder,
40 shall grant, grant with conditions, or withhold its approval. Failure to approve Grantor's request
41 within thirty (30) days shall be deemed a denial of any element of such request that is not
42 expressly permitted under the terms of this easement. No proposed activity may proceed
43 without Holder's written consent and approval as provided herein.
44

45 **11.D. Notice to Grantor.** Should it be necessary for Holder to provide notice to Grantor in
46 connection with any matter relating to this Conservation Easement, notice to the record owner or
47 owners, who are of full age and competent, of a majority interest in the Protected Property, shall be
48 deemed notice to all the owners of the Protected Property. In the event that the Protected Property
49 is owned by more than one person, the owners shall designate one representative to act on behalf of

1 all such owners, for the purposes of sending and receiving any notice or other communication required
2 or authorized under this Easement. If the Protected Property is owned by a partnership, trust, limited
3 liability company, association, or corporate entity, notice to one general partner, one trustee, one
4 manager, or the registered agent, shall be deemed notice to all owners. Any consent, agreement or
5 approval made in writing by the person or persons to whom notice is required as aforesaid shall be
6 deemed the consent, agreement or approval of Grantor and be binding on all owners of the
7 Protected Property.

8 9 **12. COSTS, TAXES, LIABILITY**

10
11 **12.A. Taxes and Liens.** Grantor shall pay and discharge when due all property taxes and
12 assessments imposed upon the Protected Property and any uses thereof, and shall avoid the
13 imposition of any liens that may impact Holder's rights hereunder. Grantor shall also promptly
14 notify Holder of the filing or recording of any such lien or encumbrance against the Protected
15 Property. Holder may, at its discretion, pay any such outstanding taxes, assessments, liens or
16 encumbrances, and shall then be entitled to reimbursement by Grantor, together with interest at the
17 then-prevailing statutory post-judgment interest rate in Maine under Title 14 MRSA Section 1602-C
18 or successor provisions thereof, calculated from the date of Holder's payment. Grantor and Holder
19 agree that Holder shall have a lien on the Protected Property to secure Holder's right to
20 reimbursement and that Holder may record such lien at any time. In any collection process or court
21 action brought by Holder for reimbursement, Holder shall be entitled to recover its costs and
22 expenses, including, without limitation, reasonable attorneys fees.

23
24 **12.B. Responsibility of Owners.** Grantor acknowledges that Holder has neither possessory
25 rights in the Protected Property, nor any responsibility or right to control, maintain, or keep up the
26 Protected Property [*option if holder acquires affirmative management rights: other than as set forth in*
27 *Paragraph 10.____*]. Grantor shall retain all responsibilities and shall bear all costs and liabilities of
28 any nature related to the ownership, operation, upkeep, improvement and maintenance of the
29 Protected Property.

30 31 **13. OPTIONAL DISPUTE RESOLUTION.**

32
33 This Easement is in accordance with Maine's established public policy that encourages the use of
34 non-litigative methods of dispute resolution. When a dispute arises between the Grantor and the
35 Holder concerning uses or activities on the Protected Property, which they cannot resolve by
36 informal means, the following dispute resolution procedures may be followed:

37
38 **13.A. Conditions for Required Alternative Dispute Resolution ("ADR").** Prior to
39 bringing an action at law or in equity in a court of competent jurisdiction to enforce the terms of
40 this Conservation Easement, the parties may seek to resolve the dispute through mediation if the
41 Holder determines that the following conditions (the "ADR Conditions") are met:

- 42 i. The Grantor agrees not to proceed with the disputed use or activity pending resolution
43 of the dispute, and
- 44 ii. No injury to the Protected Property has occurred or will occur while the parties are
45 engaging in the ADR process.

46
47 **13.B. Conditional Waiver of Right to Litigate.** In submitting the dispute to mediation, the
48 parties acknowledge they are temporarily, voluntarily waiving their rights to litigate the dispute in a
49 court of law, so long as the ADR Conditions are being met. In the event either of the ADR

1 Conditions is violated, the Holder shall have the immediate right to bring an action at law or in
2 equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, as is
3 more fully set forth in Section 10.B. above.
4

5 **13.C. Conditions for ADR By Mutual Agreement of the Holder and Grantor.** Regardless
6 of whether the ADR Conditions are met, the parties by mutual agreement may, in addition to
7 mediation, submit the dispute to other forms of ADR such as binding or non-binding arbitration.
8 By mutual agreement, other conditions may be set under which the process of ADR would proceed.
9 The violation of these additional conditions by one of the parties, would give the other party the
10 right to immediately proceed with an action in law or equity.
11

12 **13.D. Dispute Resolution.** The procedure the parties shall use for mediation is as follows:

13 i. Either party may serve the other with a written request for mediation. A mediation
14 session shall be scheduled no later than sixty (60) days after the date of the request if the Holder
15 determines that the ADR Conditions are met or unless the parties agree otherwise.

16 ii. Mediation shall be conducted by a mediator mutually agreeable to Holder and Grantor
17 who is on the Superior Court roster maintained by the Maine Court Alternative Dispute Resolution
18 Service (CADRES) (or successor or alternative entity that meets mediation standards recognized
19 under state law.)

20 iii. If the parties cannot agree on a mediator, they shall each pick a mediator, and those two
21 mediators shall select a third mediator who alone shall actually conduct the mediation.

22 iv. The costs of mediation shall be shared equally by the parties unless otherwise agreed or
23 unless reimbursement to Holder is applicable under Paragraph 10.B. herein.
24
25

26 **14. STANDARD PROVISIONS**

27

28 **14.A. Maine Conservation Easement Act.** This Conservation Easement is established pursuant to
29 the Maine Conservation Easement Act at Title 33, Maine Revised Statutes, Sections 476 through 479-
30 C, inclusive, as amended, and shall be construed in accordance with the laws of the State of Maine.
31 *OPTIONAL:* The recreational trail easement established hereunder is further authorized under Title
32 33 Maine Revised Statutes, Section 1581, et seq.
33

34 **14.B. Conservation Purposes.** This Conservation Easement is established exclusively for
35 conservation purposes pursuant to the Internal Revenue Code, as amended (hereinafter referred to as
36 the “Code”) at Title 26, USCA, Section 170(h)(1)–(6) and Sections 2031(c), 2055, and 2522, and under
37 Treasury Regulations at Title 26 CFR §1.170A-14 *et seq.*, as amended.
38

39 **14.C. Qualified Holder.** The Holder is qualified to hold conservation easements pursuant to Title
40 33, Maine Revised Statutes, Section 476(2)(B), as amended, and is a qualified donee under Internal
41 Revenue Code Section 170(h)(3): a publicly supported, nonprofit 501(c)(3) organization with the
42 authority to accept lands, easements, and buildings for the purpose of preserving and protecting
43 natural, scenic, educational, recreational or open-space values of real property, and with the
44 commitment to preserve the conservation values of the Protected Property.
45

46 **14.D. Assignment Limitation.** This Conservation Easement is assignable, but only to an entity
47 that satisfies the requirements of Section 170(h)(3) of the Internal Revenue Code (or successor
48 provisions thereof) and the requirements of Section 476(2) of Title 33 of the Maine Revised Statutes,
49 as amended (or successor provisions thereof), and that as a condition of transfer, agrees to uphold the

1 conservation purposes of this grant.

2
3 **14.E. Baseline Documentation.** In order to establish the present condition of the Protected
4 Property and its conservation attributes protected by this conservation easement, and its natural and
5 scenic resources, so as to be able to monitor properly future uses of the Protected Property and assure
6 compliance with the terms hereof, Holder and Grantor have prepared an inventory of the Protected
7 Property's relevant features and conditions (the "Baseline Documentation") and have certified the
8 same as an accurate representation, to the extent known, of the condition of the Protected Property as
9 of the date of this grant, as required under Treasury Regulations §1.170A-14, for tax deductible
10 conservation easement gifts.

11
12 **14.F. Liens Subordinated.** Grantor represents that as of the date of this grant there are no liens
13 or mortgages or future interests outstanding against the Protected Property [CONFIRM:, except any
14 listed in Exhibit A, which are subordinated to Holder's rights under this Conservation Easement, as
15 required under Treasury Regulations §1.170A-14]. Grantor has the right to use the Protected
16 Property as collateral to secure the repayment of debt, provided that any lien or other rights granted
17 for such purpose, regardless of date, are subordinate to Holder's rights under this Conservation
18 Easement. Under no circumstances may Holder's rights be extinguished or otherwise affected by the
19 recording, foreclosure or any other action taken concerning any lien or other interest in the
20 Protected Property.

21
22 **14G. Value of Conservation Easement, Takings, Extinguishment, Proceeds**

23
24 **14.G.1.** The parties agree that the grant of this Conservation Easement creates a property
25 right that vests immediately in Holder. The parties further agree that this property right as of the
26 date of its creation has a fair market value that is equal to the percentage by which the fair market
27 value of the unrestricted Property as a whole as valued in accordance with IRS Regulations at
28 1.170-A 14(h)(3)(ii), is reduced by the terms and conditions imposed by this Conservation
29 Easement, as of the date of the execution of this Conservation Easement (hereinafter the "Original
30 Percentage Reduction").

31
32 **14.G.2.** (a) If either Holder or Grantor receives notice of the actual or threatened exercise of
33 the power of eminent domain (hereinafter a "Taking") with respect to any interest in or any part of
34 the Protected Property, the party who receives the notice shall promptly notify the other and the
35 parties may proceed jointly or either party may at its discretion take such legal action as it deems
36 necessary to: (i) challenge the Taking; (ii) challenge the amount of allocation of any award tendered
37 by the Taking authority; or (iii) otherwise participate in, challenge or appeal such proceedings,
38 findings or awards. Any third party counsel and consultants (including appraisers) hired by either
39 party shall be reasonably acceptable to the other party. Each party shall be responsible for its own
40 costs and legal fees, absent written agreement of the parties.

41
42 (b) In the event of a Taking of all or a portion of the Protected Property the following
43 allocation provisions shall apply:

44 (i) the parties agree that notwithstanding any other valuation process proposed to
45 calculate compensation due to the parties by the entity accomplishing the Taking, Holder
46 shall be entitled to a portion ("Holder's Portion") of the proceeds of any compensation
47 award resulting from such Taking and Grantor shall be entitled to the balance of the
48 proceeds of such compensation award;

49 (ii) Holder shall use such proceeds for its conservation purposes;

1 (iii) Holder's Portion of the proceeds of any compensation award shall be the
2 proceeds multiplied by a fraction, the numerator of which is the amount by which the fair
3 market value of the interest taken at the time of such Taking unrestricted by this
4 Conservation Easement, is reduced by the terms and conditions of this Conservation
5 Easement, and the denominator of which is the fair market value of the interest taken at the
6 time of such Taking unrestricted by this Conservation Easement; and

7 (iv) notwithstanding the foregoing, Holder's Portion of the proceeds resulting from
8 such Taking shall not include value of the Protected Property prior to such Taking
9 attributable to authorized improvements made and paid for by Grantor after the date of this
10 grant, but shall include improvements made by or at the expense of Holder.
11

12 **14.G.3.** Except for a Taking in accordance with subsection 14.G.2 above, this
13 Conservation Easement may only be extinguished or terminated by judicial order in a court of
14 competent jurisdiction. It is the intention of the parties that an extinguishment or termination be
15 approved by a court only if all of the conservation purposes of this Conservation Easement are
16 impossible to accomplish, and if both Grantor and Holder (and any Third Party Enforcer, if
17 existing) agree. Should this Conservation Easement be terminated or extinguished as provided in
18 this paragraph, in whole or in part, Holder shall be entitled to be paid no less than a portion of any
19 proceeds of sale, exchange or lease computed as to the greater of: (i) the Original Percentage
20 Reduction; (ii) the proportion that the value of this Conservation Easement bears to the unrestricted
21 Protected Property at the time of the extinguishment, as determined by the agreement of the parties
22 or, in the absence of such agreement, by an independent appraiser mutually selected by Grantor and
23 Holder (Such proportion shall not include value attributable to permitted improvements made to the
24 Protected Property by Grantor after the effective date hereof.); or (iii) the increase in value of the
25 Grantor's estate resulting from such extinguishment, as determined by the court, or in the absence
26 of such court determination, by the agreement of the parties or, in the absence of such agreement,
27 by an independent appraiser mutually selected by Grantor and Holder. Holder shall use its share of
28 the proceeds or other moneys received under this paragraph in a manner consistent, as nearly as
29 possible, with the stated, publicly beneficial purposes of this Conservation Easement. Grantor
30 agrees and authorizes Holder to record a notice of a lien on the Protected Property which lien will
31 be effective as of the date of such extinguishment, to secure its rights under this Paragraph.

32 **14.H. Contemporaneous Written Acknowledgment.** In compliance with I.R.C. Section
33 170(f)(8), Holder acknowledges receipt of this conservation easement on the date hereof, and states
34 that it has not provided Grantor(s) with any goods or services in consideration, in whole or in part,
35 for Grantor(s)' [bargain sale] contribution of this easement. [*CAUTION: must add an exception if
36 Holder paid any amount as compensation, including paying for Grantor's appraisal or other transaction costs usually
37 paid by Grantor or the bargain sale purchase price.*]
38
39

40 **15. GENERAL PROVISIONS**

41
42 **15.A. Controlling Law and Interpretation.** The interpretation and performance of this
43 Easement shall be governed by the laws of the State of Maine . Any general rule of construction to
44 the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to
45 effect the conservation purposes of this Easement and the policy and purpose of the Maine
46 Conservation Easement Act at Title 33, Maine Revised Statutes Annotated, Sections 476 through
47 479-C, inclusive, as amended . If any provision in this instrument is found to be ambiguous, an
48 interpretation consistent with the conservation purposes of this Easement shall govern.
49

1 **15.B. Grantor and Holder Definitions.** The term “Grantor” or “Grantors” as used in this
2 easement shall include, unless the context clearly indicates otherwise, the within-named Grantor(s),
3 jointly and severally, their personal representatives, heirs, successors and assigns and any successors
4 in interest to the Protected Property. The term “Holder” as used in this easement shall, unless the
5 context clearly indicates otherwise, include the Holder’s successors and assigns.
6

7 **15.C. Owner’s Rights and Obligations, Joint Obligation.** A person’s or entity’s obligation
8 hereunder as Grantor, or successor owner of the Protected Property, shall be joint and several, and
9 will cease, only if and when such person or entity ceases to have any ownership interest in the
10 Protected Property, (or relevant portion thereof) but only to the extent that the Protected Property
11 (or relevant portion thereof), is then in compliance herewith, and provided such person or entity
12 shall have fulfilled the requirements of Paragraph 15.D. below. Responsibility of owners for
13 breaches of this Conservation Easement that occur prior to transfer of title will survive such
14 transfer; provided that the new owner shall also be responsible for bringing the Protected Property
15 into compliance.
16

17 **15.D. Subsequent Deeds and Transfers.** This Easement must be incorporated by reference in
18 any deed or other legal instrument by which Grantor conveys any interest in the Protected
19 Property, including, without limitation, a leasehold or mortgage interest. Grantor further agrees to
20 give written notice to Holder within thirty (30) days of the transfer or conveyance of any interest in
21 the Protected Property. The failure of Grantor to perform any act required by this paragraph shall
22 not impair the validity of this Easement or limit its enforceability in any way.
23

24 **15.E. Compliance/Estoppel Certificates.** Upon written request by Grantor, Holder will
25 provide Compliance/Estoppel Certificates to Grantor or third parties, indicating the extent to
26 which, to Holder’s knowledge after due inquiry, the Protected Property is in compliance with the
27 terms of this grant. The inspection of the Protected Property for this purpose will be made by
28 Holder at Grantor’s cost within a reasonable time after Grantor’s written request.
29

30 **15.F. Discretionary Approvals and Amendments.**
31

32 **15.F.1. Discretionary Approvals.** Grantor and Holder recognize that certain activities by
33 the Grantor may warrant the prior discretionary approval of Holder, and that Holder has the right to
34 issue such discretionary approvals without prior notice to any other party. Nothing in this
35 paragraph shall require the Holder to agree to any discretionary approval.
36

37 **15.F.2. Amendments.** Grantor and Holder recognize that rare and extraordinary
38 circumstances could arise which warrant modification of certain of the provisions of this
39 Conservation Easement. To this end, subject to more restrictive laws and regulations, if any,
40 Grantor and Holder have the right to agree to amendments to this Conservation Easement without
41 prior notice to any other party, provided that in the reasonable judgment of Holder, such
42 amendment enhances or does not materially detract from the conservation values intended to be
43 protected by this Conservation Easement. Amendments will become effective upon recording at
44 the _____ County Registry of Deeds. Nothing in this paragraph shall require the
45 Grantor or the Holder to agree to any amendment or to consult or negotiate regarding any
46 amendment.
47

48 **15.F.3. Further Limitations on Discretionary Approval and Amendments.**
49 Notwithstanding the foregoing, Holder and Grantor have no right or power to approve any action

1 or agree to any amendment or discretionary approval, without a court order, if such approval or
2 amendment would:

- 3 (a) increase the number of residences, if any, permitted by the express terms of this
4 Conservation Easement,
- 5 (b) impair the conservation purposes of this Conservation Easement;
- 6 (c) materially detract from the conservation values intended to be protected by this
7 Conservation Easement;
- 8 (d) limit the term or result in termination of this Conservation Easement; or
- 9 (e) adversely affect the qualification of this Conservation Easement or the status of the
10 Holder under applicable laws, including the Maine Conservation Easement Act at Title 33,
11 M.R.S.A. §476 *et seq.*, and Sections 170(h), 501(c)(3), 2522, and 2031(c) of the Internal
12 Revenue Code, successor provisions thereof and regulations issued pursuant thereto.

13
14 **15.G. Economic Hardship.** In making this grant, Grantor has considered the possibility that
15 uses prohibited by the terms of this Easement may become more economically valuable than
16 permitted uses, and that neighboring properties may in the future be put entirely to such prohibited
17 uses. In addition, the unprofitability of conducting or implementing any or all of the uses permitted
18 under the terms of this Conservation Easement shall not impair the validity of this Conservation
19 Easement or be considered grounds for its termination or extinguishment. It is the intent of both
20 Grantor and Holder that any such economic changes shall not be deemed to be changed conditions
21 or a change of circumstances justifying the judicial termination, extinguishment or amendment of
22 this Conservation Easement.

23
24 **15.H. Nonwaiver.** The failure or delay of the Holder, for any reason whatsoever, to do any action
25 required or contemplated hereunder, or to discover a violation or initiate an action to enforce this
26 Conservation Easement shall not constitute a waiver, laches, or estoppel of its rights to do so at a
27 later time.

28
29 **15.I. Severability, Entire Agreement, No Forfeiture.** If any provision of this Conservation
30 Easement or the application of any provision to a particular person or circumstance is found to be
31 invalid, the remainder of this Conservation Easement and the application of such provision to any
32 other person or in any other circumstance, shall remain valid. This instrument and the Baseline
33 Documentation set forth the entire agreement of the parties with respect to the Conservation
34 Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating
35 to the Conservation Easement, all of which are merged herein. Nothing contained herein will result
36 in a forfeiture of this Conservation Easement or reversion to Grantor of any rights extinguished or
37 conveyed hereby.

38
39 **15.J. Standing to Enforce.** Only Holder and Grantor, {OPTIONAL: and third party enforcer}
40 may bring an action to enforce this grant, except as provided in Title 33 M.R.S.A. Section 478, and
41 nothing herein should be construed to grant any other individual or entity standing to bring an
42 action hereunder, unless otherwise provided by law; nor to grant any rights in the Protected
43 Property by adverse possession or otherwise, provided that nothing in this Easement shall affect any
44 public rights in or to the Protected Property acquired by common law, adverse possession,
45 prescription, or other law, independently of this grant.

46
47 **15.K. Captions.** The captions in this instrument have been inserted solely for convenience of
48 reference and are not a part of this instrument and shall have no effect upon construction or
49 interpretation.

1
2 **15.L. Independent Representation.** Grantor has retained legal counsel *[[Optional: Insert name and*
3 *address of attorney]]* to represent only his/her/their interest in this transaction. Grantor and Holder
4 acknowledge and agree that they have not received and are not relying upon legal, tax, financial or
5 other advice from each other. Grantor acknowledges that Holder has recommended that
6 it/she/he/they keep independent counsel.
7

8 **OPTION: 16. HOLDER'S RIGHT OF FIRST REFUSAL.**
9

10 In the event that Grantor wishes to sell the Conservation Property or, if permitted by the
11 terms of this Conservation Easement any portion thereof, Grantor shall first offer the premises to
12 Holder by written notice containing an offer to sell in accordance with the same terms as set forth in
13 a binding purchase and sale contract with a third party (proposed transferee) that is contingent on
14 Holder's release of this Right of First Refusal, a copy of which shall be included in such notice, and
15 specifically including the name of the proposed transferee, the proposed selling price and the
16 relevant terms of sale. Holder may elect to purchase the Protected Property at the offered price and
17 upon such other terms and conditions not less favorable to Grantor than those contained in the
18 conditionally accepted offer by giving to Grantors notice in writing of such election within thirty
19 (30) days after delivery of the offer to Holder.
20

21 In the event said offer includes personal property or land and premises other than the
22 Protected Property, then, in addition to the copy of the conditionally accepted offer, Grantors shall
23 deliver to Holder an allocation (the "Allocation") of the offered purchase price broken down
24 between the Protected Property and any structures thereon ("the Price") and the balance of the
25 property subject to the offer. Holder may elect to purchase only the Protected Property and any
26 structures thereon for the Price, or may elect to purchase the entire package, by giving notice to
27 Grantors within thirty (30) days after delivery of the offer and the Allocation to Holder. In lieu of
28 said election, Grantees may give notice within the same time of their intent to obtain an independent
29 appraisal of the Allocation. In the event that that Holder gives such notice to Grantors, then
30 Grantors and Holder shall retain a mutually acceptable qualified appraiser whose fee shall be shared
31 equally by Grantors and Holder, who shall then determine the Allocation. The Holder may elect to
32 purchase only the Protected Property and any structures thereon for the price determined by the
33 appraiser by giving notice to Grantors within thirty (30) days after deliver of the allocation by said
34 appraiser to the Holder. . If accepted, an additional 30 days shall be permitted for closing with
35 Holder; if rejected by Holder, Grantor may convey only to the same person and only on the same
36 terms as offered to Holder. Upon such conveyance this right of first refusal *[[OPTION 1: shall*
37 *continue and be binding on the transferee.]]* *[[OPTION 2: shall terminate.]]*
38

39 This right of first refusal shall not apply to the following transactions:
40

- 41 A. A gift or sale of the Protected Property or any part thereof to a relative by blood or
42 marriage in which case this right of first refusal shall continue and be binding upon
43 the donee and upon the donee's heirs and assigns.
44 B. Descent or devise of the property or any part thereof upon death in which case this
45 right of first refusal shall continue and be binding upon the heirs and/or devisees
46 and their heirs and assigns.
47 C. A bonafide mortgage to a financial institution. A transfer of the Protected Property
48 or, if permitted by the terms of this Conservation Easement any portion thereof,
49 pursuant to foreclosure of a bonafide mortgage to a financial institution shall free the

1 interest so transferred from this right of first refusal, provided that this right of first
2 refusal shall continue and be binding upon the successors and assigns of said
3 financial institution.
4

5 This Right of First Refusal shall apply to all other sales and conveyances of the Protected
6 Property, or any part thereof, including any conveyance by, or conveyance of any interest in
7 a family corporation, partnership or other holding entity.
8

9 The recording of an affidavit by Grantor stating that notice has been given to Holder, that
10 Grantor has not received written notice of election to purchase in accordance with the time frame
11 herein provided, and that the conveyance will be made to the proposed transferee and on the terms
12 provided to Holder, shall be prima facie evidence of compliance with the provisions hereof.
13

14 **TO HAVE AND TO HOLD** the said Conservation Easement unto the said Holder, its successors
15 and assigns forever.
16
17
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19

20 *Signatures Follow*
21

1
2 IN WITNESS WHEREOF, I, _____, being unmarried, have hereunto set my hand and seal this
3 (____) day of _____, (____) [year].
4

5 Signed, sealed and delivered
6 in the presence of:
7

8 _____
9 Witness [Grantor's name]

10
11 **For use by married grantors, both of whom are record owners:**

12 IN WITNESS WHEREOF, We, _____, husband and wife, have hereunto set our hands and seals this (____)
13 day of _____, (____) [year].
14

15 **For use when easement is a gift or partial gift being granted by married person. Non-owner spouse
16 should join in gift.**

17 IN WITNESS WHEREOF, _____, Grantor herein, and _____, his/her spouse, joining in this deed and
18 relinquishing all rights herein by descent or otherwise, have hereunto set their hands and seals, this (____) day of
19 _____, (____) [year].
20

21 **For use by Trust:**

22 IN WITNESS WHEREOF, I, _____, Trustee of [insert name of trust], hereunto duly authorized, have hereunto
23 set my hand and seal this (____) day of _____, (____) [year].
24

25 **For use by corporation:**

26 [Note: if other corporate entity such as a partnership or LLC is the Grantor, consult Grantor's counsel as to format]

27 IN WITNESS WHEREOF, Grantor, _____ [insert corporate name] _____ has caused these presents to be
28 signed and sealed in its corporate name and behalf by _____ [insert person's name] _____, its [insert title] _____,
29 hereunto duly authorized, this (____) day of _____, (____) [year].
30

31 Signed, sealed and delivered
32 in the presence of:
33
34

35 _____
36 Witness [corporation name]
37 By: _____
38 Its: _____
39

40 STATE OF MAINE
41 COUNTY OF _____, _____, 20____.

42
43 Then personally appeared the above-named _____ and acknowledged the foregoing
44 instrument to be his/her/their free act and deed.
45

46 Before me,
47
48 _____
49 Notary Public
50
51 Printed name of notary
52 My commission expires: _____

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HOLDER ACCEPTANCE.

The above and foregoing Conservation Easement was authorized to be accepted by **MAINE COAST HERITAGE TRUST**, Holder as aforesaid, and the said Holder does hereby accept the foregoing Conservation Easement, by and through _____, its President, hereunto duly authorized, this ____ day of _____, 20__ .

MAINE COAST HERITAGE TRUST

by: .
its President

STATE OF MAINE
COUNTY OF SAGadahoc, ss.

Date:

Personally appeared _____, President, and authorized representative of the above-named Holder, **MAINE COAST HERITAGE TRUST**, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said corporation.

Before me, _____
Notary Public

Please type or print name
My commission expires:

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EXHIBIT A

Legal Description of the Protected Property

[Include relevant surveys, reference to prior recorded deeds, and existing easements and rights of way that burden or benefit the Protected Property.]

EXHIBIT B

Sketch Plan

[Include perimeter of Protected Property, land use areas, and location of items noted in the easement.]

EXHIBIT C

Description or Map of Land Use Areas

[Can be combined with Exhibit B, but separate descriptions may require additional exhibits.]