

**CONSERVATION EASEMENT
TOWN OF FALMOUTH - OLD ROUTE 202 ASSOCIATES PROPERTY
GRANTED TO THE FALMOUTH LAND TRUST**

TOWN OF FALMOUTH, a Maine municipal corporation organized and operating under the laws of the State of Maine, with a mailing address of 271 Falmouth Road, Falmouth, Maine 04105 (hereinafter referred to as the “**Grantor**”),

GRANTS, as a gift and for other consideration, to the **FALMOUTH LAND TRUST** (the assumed name of the **FALMOUTH CONSERVATION TRUST**), a nonprofit corporation organized and existing under the laws of the State of Maine, with a mailing address of P.O. Box 6172, Falmouth, Maine 04105 (hereinafter referred to as the “**Holder**”),

with **QUITCLAIM COVENANT** and in perpetuity, the following described Conservation Easement, pursuant to Title 33 M.R.S.A. Section 476 *et seq.* as amended, on real estate located off of the Winn Road in the **TOWN OF FALMOUTH**, County of Cumberland, and State of Maine, (hereinafter referred to as the "**Protected Property**,"), which is more particularly described in Exhibit A, and depicted on Exhibit B, attached hereto and made a part hereof by reference. The Protected Property is the premises conveyed to the Town of Falmouth by Old Route 202 Associates by deed dated and recorded in the Cumberland County Registry of Deeds at Book, Page.

SUBJECT TO a Project Agreement between Grantor and the State of Maine Land for Maine’s Future Project and the Department of Conservation, dated _____, 2009 and recorded in said Registry in Book ____, Page ____ (hereinafter the “**Project Agreement**”).

TO HAVE AND TO HOLD forever exclusively for conservation purposes as follows:

CONSERVATION PURPOSES

*It is the purpose of this Conservation Easement (hereinafter the “**Conservation Purposes**”) to provide significant public benefit by conserving forever the scenic, natural, recreational and wildlife habitat values of the Protected Property and to protect and foster its ecological health through sound forest management practices.*

RECITALS

The following recitals more particularly describe the conservation values of the Protected Property and the public benefit of this grant:

WHEREAS, Grantor is the sole owner in fee of the Protected Property, which consists of approximately 3.8 acres; and

WHEREAS, the Protected Property is entirely forested; and

WHEREAS, this Conservation Easement, including the development and land use rights conveyed, and the land use rights hereby extinguished, has been purchased with funds from the Land for Maine's Future Fund ("LMF"), established under Title 5 M.R.S., Chapter 353, Section 6200, and pursuant to the terms of P.L. 2005 c. 462, Sec B-5, to acquire lands or conservation easements and other interests in natural areas important for non-intensive outdoor recreation, conservation wildlife habitat and scenic beauty; and

WHEREAS, as a recipient of funds from LMF, Grantor has agreed to assure permanent preservation of the protected property and its availability for non-intensive outdoor recreation, including hunting, fishing, trapping and pedestrian public access in accordance with the applicable LMF Project Agreement, cited above, for which the Department of Conservation is the Designated State Agency; and

WHEREAS the covenants, conditions and restrictions set forth in the LMF Project Agreement noted hereinabove are prior to and superior in title and interest to any covenants, conditions and restrictions in this Conservation Easement; and

WHEREAS, as required by the LMF Project Agreement, this Conservation Easement has been consented to by the LMF Board and the State of Maine Department of Conservation;

NOW, THEREFORE, the Grantor and Holder, recognizing the outstanding and unique conservation importance of the protected property, have the common purpose of preserving its scenic, ecological, historic, and recreational value by the conveyance of this Conservation Easement, consisting of the foregoing recitals and the following terms, covenants, restrictions and affirmative rights granted to Holder, which shall run with and bind the Protected Property in perpetuity:

TERMS

1 *Land Uses.*

The Protected Property may be used only for conservation, non-intensive outdoor recreation, and forest management activities, all as permitted under the terms of this Conservation Easement.

No industrial, residential, quarrying, mining, large-scale commercial groundwater extraction, or building development activities are permitted on the Protected Property.

Grantor and Holder acknowledge that, in view of the perpetual nature of this Conservation Easement, they are unable to foresee all potential future land uses, future technologies and future evolution of the land and other natural resources, and other future occurrences affecting the Conservation Purposes of this Conservation Easement. Therefore, Holder, in good faith and in its sole discretion, may determine whether proposed uses or proposed improvements not contemplated by or addressed in this Conservation Easement are consistent with the Conservation Purposes set forth above.

2 *Division and Subdivision.*

The Protected Property shall remain in its current configuration as an entirety under single ownership, which may be joint or undivided, but without division, partition, subdivision, subjection to the Maine Time Share Act (33 M.R.S. c. 10-A) or Maine Condominium Act (33 M.R.S. c. 31), or other legal or *de facto* creation of lots or parcels in separate ownership or the creation of separate parcels of real estate. Notwithstanding the foregoing, any portion of the Protected Property may be conveyed to an entity that meets the assignee qualifications set forth in Paragraph 11.C, for permanent conservation ownership by such a qualified entity, subject to compliance with the Project Agreement, including the approval of the State of Maine Department of Conservation, and the prior written consent of Holder and continuation of the terms of this Conservation Easement; and Grantor may enter into boundary line agreements to resolve bona fide boundary disputes with the prior written consent of Holder which shall not be unreasonably withheld, provided that the total acreage of land protected under this Conservation Easement shall not materially be reduced thereby without court order. Furthermore, the Protected Property may not be included as part of the gross tract area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage or land area requirements, under otherwise applicable laws, regulations or ordinances controlling land use, building density, or transfer of development rights.

3. *Structures.*

A. Existing Structures. As of the date of this grant, the Protected Property contains no structures, except for boundary markers

B. Minor Recreational Structures. Grantor reserves the right to install and maintain, anywhere on the Protected Property, minor, unenclosed structures designed to enhance the opportunity for low-impact outdoor recreation, nature observation and study, such as but not limited to boundary markers; small unlighted informational, directional and interpretive signs; commemorative plaques and monuments; registration boxes; unlighted kiosks for displaying signs, notices, and educational information; tents for noncommercial camping and events; seats, benches, and picnic tables; trail improvements such as handicapped access trails, markers, steps, foot bridges, wetland crossings, water bars, and railings; wildlife habitat structures such as hacking boxes, bird houses, observation platforms and blinds; sight-pervious low fences and rock walls, gates, and other minor barriers to block or discourage unauthorized access by motorized vehicles; and other minor structures necessary for safety, erosion control or protection of fragile resources. Such structures shall be constructed of dark-colored or natural-appearing materials that blend with the natural surroundings and complement the natural and scenic features of the landscape, as documented in the Baseline Data. Substantial or high-impact outdoor recreational structures are prohibited, including but not limited to paved trails, docks, piers, tent platforms, lean-tos, outhouses, gazebos, golf courses, golf ranges, swimming pools, campgrounds, mud runs, tennis and other recreational courts, paintball and other adventure courses, stadiums, performance stages, dressage fields, equestrian rings, polo fields, ATV or race tracks or courses, towers, playgrounds, athletic courts or fields, airstrips, and permanent aircraft pads.

4 *Surface Alterations.*

As of the date of this grant there are no surface alterations on the Protected Property.

No further alteration to the surface of the earth is permitted on the Protected Property, except that Grantor reserves the following rights, which are not obligations:

- A. Grantor reserves the right to maintain existing surface alterations.
- B. Grantor reserves the right to alter the surface to the extent necessary to accomplish the uses and activities permitted in Paragraphs 3 (Structures) and 5 (Vegetation Management), including the right to excavate and fill, subject to the general prohibitions of Paragraph 1 (Land Uses).
- C. Grantor reserves the right to permit third parties to establish, maintain, repair, and replace surface alterations pursuant to any easements that precede the effective date of this Conservation Easement. However, Grantor may not expand the scope of such easements, or the rights of third parties thereunder, or grant new easements, without the express written consent of Holder. Holder and Grantor shall obtain the written consent of the LMF Board and the State of Maine Department of Conservation before the execution of any such grants to third parties that affect the LMF Project Agreement.
- D. With the prior written consent of the Holder, the Grantor reserves the right to establish and maintain additional recreational trails (paved or unpaved).
- E. Grantor reserves the right to permit select portions of the Protected Property to be excavated for ecological studies or archeological purposes, provided that such activities will be conducted according to generally accepted professional practices and standards and the area will be restored as soon as practicable to a condition consistent with the Conservation Purposes of this easement.
- F. Grantor reserves the right to use motorized vehicles for public safety and property maintenance.

5 *Vegetation Management.*

A. As of the date of this grant the Protected Property is in a substantially natural state with mixed deciduous and coniferous woodlands, a stream, and the remains of an apple orchard.

B. Vegetation may not be cut, disturbed, altered or removed from the Protected Property, except that Grantor reserves the following rights

- 1. To alter vegetation to:
 - (a) accomplish the activities and uses reserved to Grantor as rights pursuant to Paragraphs 3 and 4 above,
 - (b) combat active fire,
 - (c) remove dead wood and blowdowns, provided, however, that sufficient dead vegetation is left on the Protected Property in a dispersed manner to prevent the depletion of soils and to provide wildlife habitat,
 - (d) mark boundaries; and

(e) engage in commercial forest management activities in accordance with Paragraph 5.C.

2. With prior written consent of Holder, based on a determination that such vegetation management shall be limited and conducted in a manner to preserve the recreational, wildlife habitat, and scenic values of the protected Property, to alter vegetation to:
- (a) eliminate or reduce the spread of disease;
 - (b) reduce the threat of fire;
 - (c) remove hazards to human safety; and
 - (d) enhance wildlife habitat and encourage native vegetation and limit or remove invasive vegetation.

None of the vegetation management activities conducted pursuant to this Paragraph 5.B.2 shall require a Forest Management Plan in accordance with Paragraph 5.C., provided that the total amount of wood cut shall not exceed more than five (5) cords in any calendar year.

C. Commercial Forest Management.

(1) Commercial forest management activities shall be conducted pursuant to a Forest Management Plan prepared and updated at least every ten (10) years by a licensed professional forester. Said Forest Management Plan shall be provided to Holder within Thirty (30) days of completion or of any subsequent modification. All commercial forest management activities shall be certified by the American Tree Farm System, or a successor certification program approved in writing by Holder. Said certification program is designed to require that commercial forest management activities on the Protected Property be conducted in a silviculturally and ecologically sound manner and in accordance with best forest management and husbandry practices then current. Holder shall have the right to review all documents prepared by any third-party responsible for the certification. Nothing in this Paragraph 5.C.1 shall be deemed to require Holder's approval of a Forest Management Plan or the certification thereof by the American Tree Farm System.

(2) Prior to the exercise of any vegetation cutting or harvesting pursuant to the Forest Management Plan, Grantor must provide Holder with thirty (30) days written notice of the intended forest management activities. Such notice will include the basis for the cutting of trees, an estimate of the total harvest volume by commercial type and species, and the expected timing of major activities. Notwithstanding the adequacy of a Forest Management Plan, or the review thereof by Holder, the outcome of actual cutting and other vegetation management on the Protected Property may be evaluated by Holder to determine actual compliance with the standards set forth in Paragraph 5.C.1 above. Nothing in this Paragraph 5.C.2 shall be deemed to require prior approval of Holder for Grantor to implement a Forest Management Plan and harvest trees pursuant thereto.

6 *Waste Disposal and Chemical Use.*

A. No rubbish, garbage, building debris, unserviceable vehicles and equipment, parts thereof, hazardous waste, hazardous or toxic substance, or any waste materials of any nature may be dumped, buried, or stored on the Protected Property, except that vegetative waste resulting from uses of the Protected Property permitted pursuant to this Conservation Easement may be left to remain thereon and other waste generated by permitted uses on the Protected Property may be stored temporarily in appropriate containment for removal at reasonable intervals.

B. The use of chemical herbicides, pesticides, fungicides, fertilizers and other potentially toxic agents that may have an adverse effect on wildlife, waters, and other important conservation interests to be protected by this Conservation Easement, shall be limited to prevent any material adverse impact on the conservation values of the Protected Property.

7 *Public Access*

A. Grantor agrees to take no action to prohibit, discourage or charge a fee for access to and use of the Protected Property, but only for non-intensive outdoor recreational uses by the general public, such as walking, jogging, picnicking, cross-country skiing, snowshoeing, snowmobiling, horseback riding, nature observation and study, nature-based education, hunting, fishing, and trapping and other such activities that, in Grantor's and Holder's mutual consent, subject to the Project Agreement, have minimal impact on the ecological and scenic values of the Protected Property. Grantor shall have the right, in consultation with Holder, to establish rules and guidelines for public use designed to protect the ecological and scenic values of the Protected Property and to defend public safety. Said rules and guidelines may include, without limitation, the right to limit use to particular trails or portions of the Protected Property, to limit or prohibit ATV's and other motorized or mechanized vehicles (except that snowmobiles shall be permitted). Further, Grantor and Holder reserve the right to use motorized vehicles in connection with enforcement and maintenance purposes. Notwithstanding the foregoing, Grantor has the unilateral right to control, limit or prohibit by posting and other reasonable means any of the following: night use, camping, loud activities, open fires, access by domesticated animals or pets or bicycles. Further notwithstanding the foregoing, Holder may require Grantor to post the Protected Property against use by motorized or mechanized recreational vehicles if such use results in rutting or erosion or other damage to natural resources.

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

8 *Holder's Affirmative Rights*

A *Entry and Inspection.* Holder shall have the right to enter the Protected Property for inspection and monitoring purposes and for enforcement, at a reasonable time and in a reasonable manner that is consistent with the Conservation Purposes hereof.

B. *Enforcement.*

1. Holder's Right to Enforce. Holder shall have the right to enforce this Conservation Easement by proceedings at law and in equity, including the right to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement and to require the restoration of the Protected Property to the condition that existed prior to any such injury.

2. Notice; Opportunity to Cure. Prior to initiation of an enforcement action, except where emergency circumstances require more immediate enforcement action, Holder shall provide Grantor with prior written notice and reasonable period of time thereafter, not to exceed sixty (60) days, to cure any breach (or such longer period if the breach reasonably is not able to be cured within such sixty days and Grantor is diligently pursuing a cure of such breach). "Emergency circumstances" shall be defined for the purposes of this Conservation Easement as a breach, or condition resulting therefrom, that is occurring or is imminent, and that Holder has a good faith basis for believing will materially harm the Protected Property if not cured immediately.

3. Acts Beyond Grantor's Control. Grantor is not responsible for injury to or change in the Protected Property resulting from natural causes or environmental catastrophe beyond Grantor's control, such as fire, flood, storm, changes in climatic condition, catastrophic insect infestation, disease, acid rain or other airborne pollutants introduced into the atmosphere by third parties, and earth movement, from action by State or Federal government, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. In the event of breach of this Conservation Easement by a third party (other than an agent, employee, guest, invitee, family member, or representative of the Grantor), Grantor shall be liable for the foregoing costs of enforcement only in the event that Grantor shall have failed to exercise reasonable good faith efforts and diligence in monitoring the Protected Property, marking the boundaries as set forth herein, and generally safeguarding the Protected Property against such breach by third parties. Nothing herein shall be construed to limit the right of Holder and/or Grantor to seek damages or other compensation from such third parties. Nothing contained in this Conservation Easement shall be construed to entitle Holder to bring any action against Grantor for any injury to or change in the Protected Property or any injury to any person or property resulting from the actions of Holder or resulting from the actions of any person whose presence on the Protected Property arises out of the exercise of Holder's rights hereunder.

4. Dispute Resolution. Holder and Grantor agree to consider resolution of all controversies or disputes that may arise under this Conservation Easement by negotiation, mediation or other accepted dispute resolution process. If the parties cannot agree to a specific dispute resolution process or otherwise fail to resolve the dispute, then, if mutually agreed to by the parties, the parties may request arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association, or such other arbitration procedure as to which the parties may agree in writing, provided however that (i) any arbitration shall involve a single arbitrator,

(ii) the arbitrator shall be bound by and follow the substantive law of Maine as if the dispute were tried in a court of law and (iii) all issues that may in any manner relate to the controversy or dispute shall be resolved in the arbitration. Costs shall be borne by the parties in accordance with Paragraph 8.B.5.

5. *Costs of Enforcement.* If a Court or, if applicable, an arbitrator in a binding arbitration, determines that this Conservation Easement has been breached by Grantor, Grantor shall reimburse Holder for any reasonable costs of enforcement, including court costs, mediation and/or if applicable, arbitration costs, reasonable attorneys' fees, and any other payments ordered by such Court or arbitrator. In the event Holder brings an action against Grantor and a Court, or if applicable, an arbitrator in a binding arbitration, determines that this Conservation Easement has not been breached and that Holder has initiated arbitration or litigation without reasonable cause, or in bad faith, then Holder shall reimburse Grantor for any reasonable costs of defending such action, including court costs, mediation and/or if applicable, arbitration costs, reasonable attorneys' fees and any other payments ordered by such Court or arbitrator. In all other circumstances, each party shall bear its own costs of dispute resolution.

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

D. *Boundaries.* The Protected Property has been professionally surveyed. It shall be Grantor's obligation to keep the boundaries of the Protected Property clearly marked. In the event boundaries are not adequately clear or marked and Grantor fails to accurately mark within a reasonable time after notice by Holder, Holder shall have the right to engage a professional surveyor to re-establish and re-mark boundaries of the Protected Property or any part thereof. The costs associated with such survey work shall be paid by the Grantor if and to the extent necessary to determine if a breach of this Conservation Easement has occurred.

E. *Trail Maintenance.* Holder is granted the non-exclusive right, but not the obligation, to maintain the existing unpaved trail, as depicted on Exhibit B, or any new trails, or other public access improvements including the right to construct, install, and maintain without limitation, the minor recreational structures allowed under Paragraph 3.B. Holder's construction and maintenance rights may be delegated or assigned to another entity.

9. Notices and Requests for Approval

A. *Notice and Approval Requirements.* Except as may be otherwise set forth in this Conservation Easement, Grantor agrees to notify Holder prior to undertaking any activity or exercising any reserved right that may have a material adverse effect on the Conservation Purposes of this grant. Grantor's notices must include sufficient information to enable Holder to determine whether Grantor's plans are consistent with the terms of this Conservation Easement and the Conservation Purposes hereof. Holder shall not give its written consent and approval

unless Grantor demonstrates that the proposed use or facilities are consistent with the terms, conditions, and purposes of this Conservation Easement and will not diminish or impair the conservation values/agricultural productivity or other natural resource or scenic values of the Protected Property.

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

To Grantor: At the address of the owner(s) of record as noted hereinabove or as provided by Grantor in writing.

To Holder: At the address of the holder(s) of record as noted hereinabove or as provided by Holder in writing.

In the event that notice mailed to Holder or to Grantor at the last address on file with Holder is returned as undeliverable, the sending party shall provide notice by regular mail to Grantor's last known address on file with the Town of Falmouth, Maine; or in the case of Holder, or in the case of a corporate Grantor, to the address on file with the Secretary of State, State of Maine, and the mailing of such notice shall be deemed compliance with the notice provisions of this Conservation Easement.

C. *Time for Notice and Reply*

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

(ii) Where Grantor is required to obtain Holder's prior written consent and approval, such request as described hereinabove shall be given in writing at least thirty (30) days prior to undertaking the proposed activity except as otherwise specifically provided herein. Holder, upon receipt of Grantor's request, shall acknowledge receipt of the same. Holder, shall grant, grant with conditions, or deny its approval within thirty (30) days of receipt by Holder of Grantor's written request. Notwithstanding the foregoing, failure to deny Grantor's request within sixty (60) days (unless mutually extended by the parties) of receipt by Holder of Grantor's written request shall be deemed Holder's written consent to and approval of such request. No proposed activity may proceed without Holder's written consent and approval as provided herein.

10. *COSTS, TAXES, LIABILITY*

A. *Taxes and Liens.* Grantor shall pay and discharge when due all property taxes and assessments imposed upon the Protected Property and any uses thereof, and shall avoid the imposition of any liens that may adversely impact Holder's rights hereunder. Grantor shall keep

the Protected Property free of any liens or encumbrances, including without limitation those arising out of any work performed for, materials furnished to, or obligations incurred by Grantor; and Grantor shall promptly notify Holder of the filing or recording of any such lien or encumbrance. Holder may, at its discretion, pay any outstanding taxes, assessments, liens or encumbrances, and shall then be entitled to reimbursement by Grantor, together with interest at the then-prevailing statutory post-judgment interest rate in Maine under Title 14 MRS Section 1602-C or successor provisions thereof, calculated from the date of Holder's payment. Grantor and Holder agree that Holder shall have a lien on the Protected Property to secure Holder's right to reimbursement and that Holder may record such lien at any time. In any collection process or court action brought by Holder for reimbursement, in the event Holder prevails in such action, Holder shall be entitled to recover its costs and expenses, including, without limitation, reasonable attorneys fees.

B. *Responsibility of Owners.* Grantor acknowledges that Holder has neither possessory rights in the Protected Property, nor any responsibility or right to control, maintain, or keep up the Protected Property, except Holder's trail maintenance rights as noted in Paragraph 8.E above. Grantor shall retain all responsibilities and shall bear all costs and liabilities of any nature related to the ownership, operation, upkeep, improvement and maintenance of the Protected Property, except as actually undertaken by Holder pursuant to such rights.

11. *Standard Provisions*

A. *Maine Conservation Easement Act.* This Conservation Easement is established pursuant to the Maine Conservation Easement Act at Title 33, Maine Revised Statutes Annotated, Sections 476 through 479-C, inclusive, as amended, and shall be construed in accordance with the laws of the State of Maine.

B. *Qualified Holder.* The Holder is qualified to hold conservation easements pursuant to Title 33, Maine Revised Statutes Annotated, Section 476(2)(B), as amended.

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

D. *Baseline Documentation.* In order to establish the present condition of the Protected Property and its conservation values protected by this conservation easement, and its natural and scenic resources, so as to be able to monitor properly future uses of the Protected Property and assure compliance with the terms hereof, Holder and Grantor have prepared an inventory of the Protected Property's relevant features and conditions (the "**Baseline Documentation**") and have certified the same as an accurate representation, to the extent known, of the condition of the Protected Property as of the date of this grant.

E. *Liens Subordinated.* Grantor represents that as of the date of this grant there are no liens or mortgages outstanding against the Protected Property, except for a Project Agreement between the Town of Falmouth and the State of Maine, dated _____, 2009 and recorded in the Cumberland County Registry of Deeds at Book ____, Page. Grantor has the right to use the Protected Property as collateral to secure the repayment of debt, provided that any lien or other rights granted for such purpose, regardless of date, are subordinate to Holder's rights under this Conservation Easement. Under no circumstances may Holder's rights be extinguished or otherwise affected by the recording, foreclosure or any other action taken concerning any subsequent lien or other interest in the Protected Property, except that Holder may, upon request, subordinate its right to monetary damages based upon a violation that occurs subsequent to recording of such mortgage or lien, to the rights of a mortgagee. Holder may execute a limited subordination to this effect upon request by Grantor.

F. *Termination and Proceeds.* This Conservation Easement may only be extinguished or terminated by judicial order in a court of competent jurisdiction. It is the intention of the parties that an extinguishment or termination be approved by a court only if all of the Conservation Purposes of this Conservation Easement are impossible to accomplish and if both Holder and Grantor consent to such termination. Notwithstanding the foregoing, but subject to more restrictive laws and regulations, if any, if an interest in this Conservation Easement is subject to the exercise of the power of eminent domain or Holder receives a formal notice of the intention to exercise such powers by an agency of government entitled to do so, Holder, in its sole discretion, may issue prior written consent, without a judicial order, to a partial or complete extinguishment or termination of the conservation easement.

Grantor and Holder agree that the donation of this Conservation Easement gives rise to a property right that vests immediately in Holder. Grantor and Holder further agree that this property right has a fair market value that is equal to the amount by which the fair market value of the unrestricted Protected Property is reduced by the restrictions imposed by this Conservation Easement, as of the date of the execution of this Conservation Easement (hereinafter the "Original Proportionate Value"). In accordance with Treasury Regulation 1.170A-14(g)(6)(ii) and with 33 M.R.S. Section 477-A(2)(B), should this Conservation Easement be terminated, in whole or in part, Grantor must pay Holder (or another qualified donee entity selected by a court) the greater of: (i) the Original Proportionate Value of any proceeds received by Grantor as a result of the termination, if known at the time of termination, or (ii) the increase in value of the Grantor's estate resulting from the termination, as determined by the agreement of the parties or, in the absence of such agreement, by an independent appraiser mutually selected by Grantor and Holder. Holder shall use any proceeds or other moneys received under this paragraph first to satisfy Holder's obligations under the Project Agreement with any balance used in a manner consistent, as nearly as possible, with the stated, Conservation Purposes of this Conservation Easement. Holder has the right to record a lien on the Protected Property to secure its rights under this section.

G. *Backup Holder.* If the Holder shall cease to exist as a nonprofit corporation qualified to hold conservation easements, and a prior assignment is has not been made pursuant Section 11.C, then the rights and obligations under this Conservation Easement shall vest in such

qualified organization under Section 170(h) of the Code and that is authorized to hold conservation easements under Title 33, Maine Revised Statutes Annotated, Section 476(2)(B), as amended, as a court of competent jurisdiction shall direct pursuant to the applicable state law and with due regard to the requirements for an assignment under Section 11.C hereunder.

12. *General Provisions*

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

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

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

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

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

F. *Discretionary Approvals and Amendments.*

F.1. *Discretionary Approvals.* Grantor and Holder recognize that certain activities by the Grantor may warrant the prior discretionary approval of Holder, and that Holder has the right, subject to the provisions of the Project Agreement, to issue such discretionary approvals without prior notice to any other party. Nothing in this paragraph shall require either party to agree to any discretionary approval.

F.2. *Amendments.* Grantor and Holder recognize that rare and extraordinary circumstances could arise that would warrant modification of certain of the provisions of this Conservation Easement. To this end, subject to more restrictive laws and regulations, if any, Grantor and Holder have the right, subject to the provisions of the Project Agreement, to agree to amendments to this Conservation Easement without prior notice to any other party, provided that in the reasonable judgment of Holder and, where applicable under the Project Agreement, the State of Maine Department of Conservation, such amendment enhances or does not materially detract from the conservation values intended to be protected by this Conservation Easement. Amendments will become effective upon recording at the Cumberland County Registry of Deeds. Nothing in this paragraph shall require the Grantor or the Holder to agree to any amendment or to negotiate regarding any amendment. Holder and Grantor shall obtain the written consent of the LMF Board and the State of Maine Department of Conservation before the execution of any amendment hereto that affects the LMF Project Agreement.

F.3. *Further Limitations on Discretionary Approval and Amendments.* Notwithstanding the foregoing, except as provided by 33 M.R.S.A. §§ 476 *et seq.*, as amended, Holder and Grantor have no right or power to approve any action or agree to any amendment if such approval or amendment would

- (a) materially detract from the conservation values intended to be protected by this Conservation Easement;
- (b) limit the term or result in termination of this Conservation Easement; or
- (c) place this Conservation Easement in conflict with the LMF Project Agreement;
- (d) adversely affect the qualification of this Conservation Easement or the status of the Holder under applicable laws, including the Maine Conservation Easement Act at Title 33, M.R.S.A. §476 *et seq.*, or successor provisions thereof; or
- (e) result in substantial alteration to the natural resources on the Protected Property.

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

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

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

J. *Standing to Enforce.* Only Holder and Grantor may bring an action to enforce this grant, and nothing herein should be construed to grant any other individual or entity standing to bring an action hereunder, unless otherwise provided by law; nor to grant any rights in the Protected Property by adverse possession or otherwise, provided that nothing in this Conservation Easement shall affect any public rights in or to the Protected Property acquired by common law, adverse possession, prescription, or other law, independently of this grant.

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

IN WITNESS WHEREOF, Grantor, Town of Falmouth, acting by and through Nathan A. Poore, its duly authorized Town Manager, have caused this instrument to be signed and sealed this _____ day of _____, 2009.

TOWN OF FALMOUTH

WITNESS

NATHAN A. POORE
TOWN MANAGER

STATE OF MAINE
COUNTY OF CUMBERLAND

_____, 2009

Then personally appeared the above-named Nathan A. Poore, Town Manager of the Town of Falmouth, and severally acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the Town of Falmouth.

Before me,

Notary Public

Printed or typed name of Notary Public

My commission expires _____.

HOLDER ACCEPTANCE.

The above and foregoing Conservation Easement was authorized to be accepted by the FALMOUTH LAND TRUST, Holder as aforesaid, and the said Holder does hereby accept the foregoing Conservation Easement, by and through John Adelman, Holder's duly authorized representative, this _____ day of _____, 2009.

FALMOUTH LAND TRUST

By: John Adelman
Its: President

STATE OF MAINE
COUNTY OF CUMBERLAND

_____, 2009

Then personally appeared the above named John Adelman, the duly authorized President of Falmouth Land Trust and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of Falmouth Land Trust.

Before me,

Notary Public

Printed or typed name of Notary Public
My commission expires _____.