

CONSERVATION EASEMENT  
TO  
FALMOUTH CONSERVATION TRUST

THIS CONSERVATION EASEMENT made on this 16<sup>th</sup> day of May, 2003, by and between ALAN DONALD and DARCY DONALD, of Falmouth, Cumberland County, Maine (the "Grantor") and 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 (the "Holder").

WITNESSETH

WHEREAS, the Grantor holds title to approximately fifty (50) acres, of real property situated at 413 Blackstrap Road in the Town of Falmouth, Cumberland County, Maine (the "Protected Property"), being more particularly described in the legal description attached as Exhibit A.,

WHEREAS, this Conservation Easement is created pursuant to the Uniform Conservation Easement Act, Title 33, Maine Revised Statutes, Section 476 through 479-B, inclusive, as amended; and

WHEREAS, this Conservation Easement is also created pursuant to the Internal Revenue Code of 1986 as amended (hereinafter referred to as the "Code"), Title 26, U.S.C.A., Section 170(h)(1)-(6) and Section 2255(d), as amended; and

WHEREAS, the Holder is qualified to hold conservation easements pursuant to title 33, Maine Revised Statutes Annotated, Section 476(2)B, as amended, and is a "qualified organization" under Title 26 U.S.C.A., Section 170(h)(1)-(6), as amended, of the Code, namely: a publicly funded, non-profit 501(c)(3) organization operated primarily to accept lands, easements and buildings for the purpose of preserving and protecting natural, scenic, educational, recreational and open space values of real property; and

WHEREAS, the Protected Property is secluded and undisturbed by development, possesses natural scenic beauty; and has significant aesthetic and ecological value, in particular, the preservation of open space and provides important habitat for indigenous animal and plant population; and

WHEREAS, the grant of a conservation easement by Grantor and Holder, over and across the Protected Property referred to herein will assist in preserving and maintaining the natural, scenic, rural, agricultural and open space characteristics of this area;

WHEREAS, the State of Maine has recognized the importance of preserving scenic open space, wildlife habitat, and important ecological areas in its Constitution at Article IX, Section 8, and by virtue of the Farm and Open Space Tax law at Title 36 M.R.S.A. Section 1101 et seq.,

which confers preferential property tax treatment for property that owners keep unbuilt and available for agricultural or open space uses; and

WHEREAS, the Holder, at a meeting held on November 18, 1998, by a vote of its Trustees, was authorized to acquire and accept a conservation easement as set forth herein for the purpose of preserving the said Protected Property:

NOW, THEREFORE, in consideration of the facts recited and of the terms, covenants and restrictions contained in this Conservation Easement, the Grantor hereby GRANTS as an unconditional gift to the Holder, its successors and assigns forever, with warranty covenants, and Conservation Easement on, over and across the protected Property, consisting of the following affirmative rights, terms, covenants and restrictions which will run with the bind and Protected Property in perpetuity:

#### AFFIRMATIVE RIGHTS

The affirmative rights of the Holder are as follows:

- a. The right of the Holder to identify, to preserve, and to protect in perpetuity the natural, rural, open space, scenic, and wildlife habitat features and rural character of the Protected Property.
- b. The right of the Holder, after providing Grantor with reasonable notice and an opportunity to cure, to enforce by proceedings at law and in equity the terms of this Conservation Easement, including the right to require the restoration of the Protected Property to its condition as of the date of this grant, subject to any permitted changes made after the date of this grant.
- c. The right of a person(s) designated by the Holder to enter upon the Protected Property at the location indicated on Exhibit B at any reasonable time and in any reasonable matter which does not interfere with the uses permitted hereunder, for inspection and enforcement purposes.
- d. The right of the Holder to require that the rights reserved hereunder by Grantor are exercised in a manner that avoids unnecessary harm to the conservation values to be protected by this Conservation Easement.
- e. The right of the Holder to hold this Conservation Easement in perpetuity and to assign the same, but only to an entity that as a condition of transfer agrees to uphold the conservation purposes of this grant, and satisfied the requirements for a "qualified organization" of Section 170(h)(3) of the Internal Revenue Code of 1986, (or successor provisions thereof) and the requirement of Section 476(2) of Title 33 of the Maine Revised Statutes Annotated (1989), as amended (or successor provisions thereof).

TERMS, COVENANTS AND RESTRICTIONS

1. PURPOSE

It is the dominant purpose of this Conservation Easement to preserve and protect in perpetuity the natural, scenic, agricultural, open space ecological and wildlife habitat features and rural character of the Protected Property, as identified hereinabove, to foster the continuation of responsible conservation practices, and to prevent any use of the Protected Property that would significantly impair or interfere with the scenic and conservation values of the Protected Property.

2. SUBDIVISION LIMITATION; COMMERCIAL USE PROHIBITION

The Protected Property may not be divided, subdivided, partitioned or otherwise conveyed in separate ownership. Commercial, industrial and quarrying or other surface mining activities are prohibited on the Protected Property. Commercial uses prohibited shall include foresting agriculture, including animal husbandry.

3. PERMITTED STRUCTURES

No structures, temporary or permanent, are permitted on the Protected Property except that Grantor and Holder retain the right to locate, use, remove from or maintain fences and boundary markers on the Protected Property. This prohibition exempts the cistern and well pit which currently exist and any repairs or maintenance the Grantors or their successors deem necessary or appropriate to such cistern and well and the Grantor or their successors may at their discretion fill in or remove such cistern and well pit.

4. SURFACE ALTERATIONS

There shall be no filling, dumping, excavation, or other alteration made to the surface of the Protected Property without prior written consent of the Holder except as provided in paragraph 3 relating to the cistern and well.

5. WASTE DISPOSAL

It is forbidden to dispose of or store rubbish, garbage, debris, abandoned vehicles and equipment, or parts hereof, or other unsightly or offensive waste material on the Protected Property, except that manure and other organic compost materials, may be composted, deposited or used on the Protected Property, and other waste generated by permitted uses on the Protected Property may be stored temporarily in appropriate containment for removal at reasonable intervals, subject to all applicable local, state, and federal laws and regulations.

6. PUBLIC ACCESS

Nothing contained herein should be construed as affording the general public physical access to any portion of the Protected Property for all purposes not inconsistent with this grant.

Grantor must provide at least sixty (60) days advance written notice to Holder, before undertaking any permitted use of the Protected Property that may have a material adverse effect on the conservation purposes of this Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

7. RESERVED RIGHTS OF GRANTOR AND NOTICES

Except as expressly limited herein, Grantor reserves all rights as owner of the Protected Property, including the right to convey and use the Protected Property for all purposes not inconsistent with this grant. Grantor must provide at least sixty (60) days advance written notice to Holder, before undertaking any permitted use of the Protected Property that may have a material adverse effect on the conservation purposes of this Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

- a. The right of the Grantors, their guests, employees and invitees, to use the Protected Property for recreational purposes which may include hiking, walking, cross-country skiing, travel by snow shoes, picnicking, fishing, use of the pond by canoe or bird watching; and any other use that is not expressly prohibited above or destructive to the natural values to be conserved herein; and
- b. The right to advertise the Protected Property for sale or rent and to convey the Protected Property, always subject to the terms of this Conservation Easement.

Notices to Holder: Any notice to Holder required hereunder must be made by first class mail, addressed to: President, Falmouth conservation Trust, P.O. Box 6172, Falmouth, ME 04105 or other authorized person hereafter designated in writing by Holder.

Notices to Holder and requests for approval must include, at a minimum, sufficient information to enable Holder to determine whether proposed plans are consistent with the terms of this Conservation Easement and the conservation purposes hereof. Within thirty (30) days of receipt of Grantor's notice made in compliance herewith, Holder will respond to said notice, stating any specific objections and including suggested changes to guide Grantor in modifying proposed plans to bring them into compliance with the terms of this Conservation Easement.

Notice to Grantor: Any notice to grantor required hereunder must be made by first class mail, addressed to Alan and Darcy Donald, 413 Blackstrap Road, Falmouth, Maine 04105, with a copy to Richard P. Olson, 30 Milk Street, Portland, Maine 04101 or other authorized person hereafter designated in writing by Grantor.

8. CUTTING OF TIMBER AND VEGETATION: The destruction or removal of standing timber, plants, shrubs or other vegetation shall not be permitted, except however, there are retained in the Grantor, the following rights:

- a. The right to clear and restore forest cover and other vegetation that is damaged or disturbed by the forces of nature, such as fire or disease;
- b. The right to clear and restore forest cover and other vegetation, in the event of an emergency, or when necessary to prevent the spread of fire, invasive plants or disease;
- c. The right to gather, use or remove dead wood; and
- d. The right to prune or selectively cut trees or remove any other vegetation as recommended by a registered professional forester in order to maintain a health stand of trees.
- e. The right to remove invasive shrubs and vines as designated by MDCON.
- f. The use of herbicides, insecticides, fungicides, or other potentially harmful substances on the Protected Property must be controlled and limited so as not to have a demonstrable adverse effect on the waters or wildlife habitat associated with the Protected Property.
- g. To maintain existing trails and clearings.

9. MONITORING AND ENFORCEMENT OF RIGHTS OF HOLDER

Holder has the right to assure that the condition of the Protected Property is in compliance with all of the terms, covenants and restrictions herein. In connection with such efforts, a person(s) designated by Holder has the right to enter the Protected Property to make periodic inspections in any reasonable manner and at any reasonable time after providing Grantor with notice by first class mail or telephone. Holder agrees to keep on file and provide to the Grantor, via first class mail, copies of any reports made in connection with inspections of the Protected Property.

In the event Holder determines in its best judgment that a breach by Grantor of his Easement has occurred or is in existence, Holder will notify Grantor via certified mail return receipt requested. Grantor must discontinue the breach and, at Holder's request, restore the Protected Property to its condition at the time of this grant, subject to permitted changes made subsequently.

If Grantor fails within a reasonable time to discontinue the breach or to undertake or complete requested corrective action, Holder is entitled to pursue its remedies at law and in equity, including the right to seek an order requiring restoration at Grantor's cost as aforesaid. Requirement of written notice is waived in matters requiring more immediate action, in which case Holder is entitled immediately to pursue its remedies at law or in equity, ex parte as necessary, after making reasonable efforts to contact the then owners. Grantor and Holder agree that non-compliance with the terms of this Easement constitutes immediate and irreparable injury, loss and damage to the Protected Property and accordingly entitles Holder to such

equitable relief as a Court deems just. If a Court, or other finder of fact chosen by the parties, determines that this conservation Easement has been breached, Grantor must reimburse Holder for any reasonable costs of enforcement, including court costs, reasonable attorneys' fees, and any other payments ordered by such Court.

Grantor is not responsible for injury to or change in the Protected Property resulting from causes beyond Grantor's control, such as, but not limited to, fire, flood, storm, and earth movement, 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. Nothing herein should be construed to preclude Grantor's and Holder's rights to recover damages from any third party for trespass or other violation of their respective rights in this Easement and the Protected Property. The failure or delay in the Holder, for any reason whatsoever, to enforce this Conservation Easement shall not constitute a waiver of its rights. Grantor hereby waives any defense of laches, prescription or estoppel.

10. MORTGAGE FORECLOSURE

The right of Holder to enforce the terms, restrictions and covenants created under this Conservation Easement shall not be extinguished by foreclosure of any mortgage or of any publicly or privately placed lien, and Holder's rights hereunder are paramount to any subsequently placed mortgage or lien except with respect to Holder's right to damages based upon a violation that occurs subsequent to recording of such mortgage or lien.

11. RESPONSIBILITY FOR MAINTENANCE AND TAXES

Grantor agrees to pay and discharge when due any and all real property taxes and assessments levied on the Protected Property, and to bear all costs and responsibility of ownership, possession, control, operating, maintenance, and upkeep of the Protected Property, and does hereby agree to hold harmless, defend, and indemnify the Holder, its officers, directors, agents and employees therefrom, and from any claim or bodily injury, property damage or environmental harm arising from the use of the Protected Property, except where injury or damage is proximately caused by the negligent or intentional act of Holder, its officers, directors, agents or employees, in the course of or arising out of Holder's discharge of its obligations hereunder.

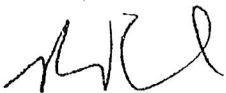
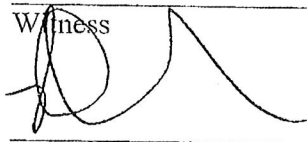
12. BINDING EFFECT; NOTICE OF CONVEYANCE

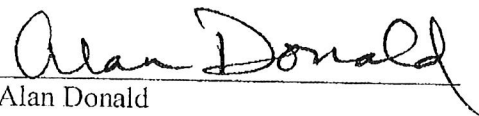
The covenants agreed to the terms, conditions, restrictions and purposes imposed with this Conservation Easement shall be binding upon the grantor, their heirs and assigns, any successor-in-interest to the Protected Property and their executors, administrators and legal representatives, and shall be binding upon Holder and its successors and assigns. The Grantor, their successors and assigns agree that the terms, conditions, restrictions, and purposes of the grant will be inserted in any subsequent conveyance of any interest in the Protected Property, and that the Grantor will notify Holder, its successors and assigns, of any such conveyance in writing by certified mail within fifteen (15) days after closing.


13. MISCELLANEOUS

- (a) If any provision of this Conservation Easement is found to be invalid, the remainder of the provisions of this conservation Easement shall not be affected thereby.
- (b) Any uncertainty in the interpretation of this Conservation Easement is found to be invalid, the remainder of the provisions of this Conservation Easement shall not be affected thereby.
- (c) The fact that any of the uses prohibited herein, or other uses not mentioned, may become more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to such non-permitted uses, has been considered by Grantor in granting this perpetual Easement. It is Grantor's belief that any such changes will increase the benefit to the public of the continuation of this Conservation Easement, and it is the intent of both the Grantor and Holder that any such changes should not be deemed to be changed conditions permitting termination of this Conservation Easement.

IN WITNESS WHEREOF, the Grantor has caused this Conservation Easement to be signed and witnessed this      day of      , 2003.

  
 \_\_\_\_\_  
 Witness  
  
 \_\_\_\_\_

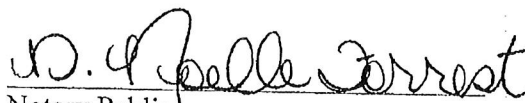
  
 \_\_\_\_\_  
 Alan Donald

  
 \_\_\_\_\_  
 Darcy B. Donald

STATE OF MAINE  
CUMBERLAND, ss.

16<sup>th</sup> May , 2003

Personally appeared before me the above-named Grantor, Alan Donald and Darcy B. Donald, and acknowledged the foregoing instrument to be their free act and deed.

  
 \_\_\_\_\_  
 Notary Public

My commission expires:  
 D. NOELLE FORREST  
 Notary Public, Maine  
 My Commission Expires September 29, 2006

\_\_\_\_\_  
(Type or print name of Notary)

HOLDER ACCEPTANCE

The above and foregoing Conservation Easement was authorized to be accepted by Falmouth Conservation 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 May, 2003.

FALMOUTH CONSERVATION TRUST

Carol Hulbey

By: Sean Mahoney  
Its: President

STATE OF MAINE  
CUMBERLAND, ss.

May 23 2003

Personally appeared before me the above-named Sean Mahoney President of the above-named Holder, Falmouth Conservation Trust, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity, and the free act and deed of Falmouth Conservation Trust.

Paula A. Leighton

Notary Public

My commission expires: 9-5-03

Paula A. Leighton  
(Type or print name of Notary)



CONSERVATION EASEMENT  
TO  
FALMOUTH CONSERVATION TRUST

Exhibit A

Legal Description of Protected Property

Beginning at a point on the northerly sideline of land now or formerly of Patricia H. DiMatteo as described in a deed recorded in the Cumberland County Registry of Deeds in Book 3178, Page 693, said point being located N 80° 45' 19" E by said land of DiMatteo a distance of Four Hundred Fifty-Nine and 00/100 (459.00) feet from a point on the easterly sideline of Blackstrap Road. Thence:

- (1) N 17° 25' 35" W a distance of Eight Hundred Eighty and 21/100 (880.21) feet to a point and the southeasterly sideline of land now or formerly of Central Securities Corporation as described in a deed recorded in said Registry in Book 1337, Page 298.
- (2) N 33° 44' 16" E by said land of Central Securities Corporation a distance of Five Hundred Twenty-Seven and 65/100 (527.65) feet to a point and the southwesterly corner of land now or formerly of Mary K. Stimson and Kenneth A. Stimson as described in a deed recorded in said Registry in Book 6278, Page 127.
- (3) N 80° 34' 32" E by said land of Stimson a distance of One Thousand Four Hundred Sixty-Five and 71/100 (1465.71) feet to a point and land now or formerly of S.D. Warren Co. as described in a deed recorded in said Registry in Book 2304, Page 69 and Book 7313, Page 132, and a line of agreement as described in a deed recorded in said Registry in Book 9756, Pages 214 and 216.
- (4) S 08° 56' 55" E by said land of S.D. Warren Co. a distance of One Thousand Two Hundred Eighty-Eight and 19/100 (1288.19) feet to a point.
- (5) S 81° 54' 03" W by said land of S. D. Warren Co. a distance of Seven Hundred Twenty-One and 64/100 (721.64) feet to a point.
- (6) S 81° 35' 55" W by said land of S.D. Warren Co. and said land of DiMatteo a distance of Eight Hundred Seven and 10/100 (807.10) feet to a point.
- (7) S 80° 45' 19" W by said land of DiMatteo a distance of One Hundred Sixty-Five and 01/100 (165.01) feet to the point of beginning.

Excepting, however, a one-quarter-acre burial ground reserved by Jedediah Leighton as described in a deed to Josiah Leighton dated January 20, 1823, recorded in said Registry in Book 122, Page 94.

The above described conservation easement contains 50.0 acres of land and is a portion of the parcel of land conveyed to Alanson J. Donald and Darcy Donald as described in a deed recorded in said Registry in Book 9513, Page 335. Bearings are referenced to the True North, as determined by astronomic observation. Reference is made to a "Standard Boundary Survey made for Alan and Darcy Donald" by Titcomb Associates Inc. dated July 22, 1991.

FACLIENTS\FALCON\CONSERVATION EASEMENT.doc

Received  
Recorded Register of Deeds  
Jun 17, 2003 12:33:37P  
Cumberland County  
John B. D Brien

### DETAILS REPORT

\*\*Note: Report is Sorted in Ascending Order by Office, Recorded Date, Document Number

Doc#	Document Type	Town	Book/Vlm/Pag e	File Date
56796	MISCELLANEOUS	FALMOUTH	19571/39	06/17/2003
Street	Street Name	Description		
Grantors	Grantees	Street	Property Description	
FALMOUTH CONSERVATION TRUST , DONALD ALAN, DONALD DARCY B				
References Book/Vlm/Page	Description	Recorded year		
19571/39	MISCELLANEOUS			