

**BUFFER CONSERVATION EASEMENT
ON SEARS ISLAND, SEARSPORT, WALDO COUNTY, MAINE**

THIS GRANT OF CONSERVATION EASEMENT is made this 22 day of January, 2009, by **THE STATE OF MAINE**, by and through its Department of Transportation, having a mailing address of 16 State House Station, Augusta, ME 04333-0016 (hereinafter referred to as "MaineDOT" or the "Grantor"), and in favor of **MAINE COAST HERITAGE TRUST**, a non-profit corporation organized and existing under the laws of the State of Maine, with a mailing address of 1 Bowdoin Mill Island, Suite 201, Topsham, Maine 04086 (hereinafter referred to as the "Holder"), and the **STATE OF MAINE, acting by and through its Department of Environmental Protection** as Third Party Enforcer, having an address of 17 State House Station, Augusta, ME 04333-0017 (hereinafter referred to as the "Third Party Enforcer" or "DEP").

WHEREAS, this Indenture is created pursuant to the provisions of 33 M.R.S.A § 476 through 479-C inclusive, as amended; and

WHEREAS, the Grantor holds title to certain real property situated on Sears Island in Searsport, County of Waldo, State of Maine, being the real estate acquired through the following documents:

- 1) Notice of Taking on June 17, 1985 recorded at the Waldo County Registry of Deeds at Book 854 and Page 283 by MaineDOT; and
- 2) Notice of Layout and Taking on February 6, 1986 recorded in said Registry of Deeds at Book 885 and Page 141 and
- 3) Deed from Bangor Investment Company ("BIC") to Maine DOT, dated February 7, 1994 and recorded at said Registry of Deeds at Book 1435 Page 278 and
- 4) Deed from BIC to Maine DOT dated March 28, 1997 and recorded at said Registry of Deeds at Book 1681, Page 324; and
- 5) Release Deed from BIC to MaineDOT dated November 12, 1997, recorded at said Registry of Deeds at Book 1740 Page 78; and
- 6) Corrective Deed from Fieldcrest Cannon, Inc. to Maine DOT dated November 4, 2002 and recorded at said Registry of Deeds at Book 2357, Page 18; and

WHEREAS, Grantor's ownership in Sears Island as outlined above is subject to a Consent Decree dated March 19, 1997, between Maine DOT and the U.S. Department of Environmental Protection, under U.S. District Court, District of Maine, Civil Action docket # 96-0249-B, (the "Consent Decree"), an abstract of which is recorded at said Registry of Deeds in Book 2542, Page 221 (the "Recorded Abstract"). The remaining obligations of the Consent Decree are outlined in a Notice of Termination of Consent Decree dated September 30, 2004 and

October 4, 2004 (the "Termination") as more specifically set forth in Section 13 of this Conservation Easement; and

WHEREAS, a portion of Sears Island consisting of an approximately 500' by 500' square parcel on the south end of Sears island was retained by BIC and is now or formerly owned in fee by Cell Tower Lease Acquisition, LLC (the "Tower Parcel"). The Tower Parcel is held subject to a Conservation Easement conveyed by BIC to MaineDOT on the Tower Parcel restricting the Tower Parcel to telecommunications purposes, recorded at said Registry of Deeds at Book 2771, Page 296; and,

WHEREAS, the premises described by the deed references above, subject to the restrictions referenced above, represent all of MaineDOT's property interests on Sears Island (the "Island"); and

WHEREAS, the subject of this Conservation Easement includes two parcels of land on the Island, together consisting of approximately six hundred and one (601±) acres more particularly described in Exhibit A based on a surveyed description and depicted on Exhibit B, both attached hereto and made part hereof by reference, subject to revision by any addendum filed in accordance with Section 2.c. herein (the "Protected Property"); and

WHEREAS, the remainder of the Island not included within the limits of the Protected Property and the Tower Parcel consists of approximately three hundred thirty (330±) acres and is identified herein as the "Transportation Parcel"; and

WHEREAS, the Transportation Parcel is being reserved by MaineDOT for future transportation use and 23 CFR § 774.11(i) allows for joint or concurrent development of a transportation facility such that future development of that reserved land does not constitute a use under 23 § 774.17; and

WHEREAS, the existing causeway and access road (collectively the "Stetson Hills Road" and/or "State Highway 252") on the Island are intended to be included within the Transportation Parcel; and

WHEREAS, the Protected Property comprises undeveloped land with significant natural and wildlife values (the "Conservation Values"); and

WHEREAS, the Protected Property includes a stretch of beach that is popular for swimming and walking by the general public and has been used for such for over decades; and

WHEREAS, the Grantor has allowed community nature observation and recreation on the Protected Property for a number of years; and

WHEREAS, the Protected Property includes much of the only area of open, productive clam flats in the entire town of Searsport, which has been seeded and studied for a number of years; and

WHEREAS, Sears Island frames part of Stockton Harbor and lies very centrally on Penobscot Bay, and Penobscot Bay is Maine's largest bay, and which has seaports, manufacturing centers, farms, rocky headlands and well over 100 islands on its waters and shores. The Bay serves as the economic domain of a thousand or more working fishing and lobstering boats, includes a major shipping channel, and is a recreational and ecological location of world class standing with a long history of sailboat cruising and recreational boating; and

WHEREAS, according to the Wildlife Habitat Evaluation of Sears Island, Maine by the US Fish and Wildlife Service in November 1992 and other wildlife inventories as reported in a Draft Supplemental Environmental Impact Statement dated July 1995, surveys of mammals, birds, reptiles and amphibians were done on Sears Island from January to November of 1992 which found a diversity of terrestrial and coastal wildlife species utilizing Sears Island including 28 species of mammals, 9 species of herpetiles, and 168 species of birds. At least seven vernal pools were identified on the Protected Property, as well as a large area of woodcock courtship activity and a wide variety of neotropical migrants were observed; and

WHEREAS, MaineDOT wishes to ensure the ability to pursue compensatory mitigation credits for transportation projects on the Protected Property, and has identified two degraded locations on the Protected Property depicted in Exhibit B as "Enhancement/Restoration Areas," as suitable for wetland and upland creation, enhancement and restoration compensatory mitigation (pursuant to 23 M.R.S.A. § 153B(1)(G),) for the environmental effects of as-yet unidentified Maine DOT transportation projects (the "Transportation Projects"); and

WHEREAS, Grantor has agreed to convey and Holder has agreed to accept a Conservation Easement over the Protected Property, being all that property comprising MaineDOT's ownership in Sears Island except for the Transportation Parcel and the Tower Parcel as described in Exhibit A, together with rights to access the Protected Property; and

WHEREAS, the Grantor and the Holder, recognizing the Conservation Values of the Protected Property as described above, have the common purpose of conserving the values of the Protected Property by this conveyance of a Conservation Easement over the Protected Property, which easement shall benefit, protect and conserve the Conservation Values of the Protected Property, conserve and protect the indigenous plant and animal populations, and prevent the use or development of the Protected Property for any purpose or in any manner that would conflict with this Conservation Easement, for the benefit of Waldo County and the State of Maine; and

WHEREAS, The future of Sears Island is of statewide importance, as demonstrated in Maine Public Law 2005, Chapter 277, H.P. 202 – L.D. 277, titled "An Act Regarding the Management and Use of Sears Island"; and

WHEREAS, the resulting Sears Island Planning Initiative Steering Committee Consensus Agreement of April 12, 2007 as amended April 27, 2007, was supported by the Town of Searsport, the Maine Department of Transportation, and signed by 38 signatories, who determined that "the parties agree that the DOT, with the Town of Searsport and appropriate others will provide for light recreation, education and conservation facilities on a portion of the

island by conveyance of an easement covering that area;" and

WHEREAS, the Joint Use Planning Process for Sears Island formed a 'Sears Island Conservation Area Advisory Council' to provide public input on future land use and management decisions, based on the "Concept Paper for a Sears Island Protected Property Advisory Group" approved and dated October 27, 2008, as documented in the Baseline Data; and

WHEREAS, the Grantor intends through this document to outline limitations on the use and development of the Protected Property; and

WHEREAS, the Holder will ensure that such use restrictions remain in place in cooperation with a designated land management entity or entities (collectively being the "Land Management Entity") selected by Grantor and approved by Holder in writing. The Land Management Entity will advise, oversee and manage the Protected Property in accordance with this Conservation Easement and any uses permitted herein; and

WHEREAS, the Grantor intends as owner of the Protected Property, to convey to the within Third Party Enforcer the Third Party Enforcement Rights contained herein; and

WHEREAS, the Grantee and Third Party Enforcer agree, by accepting this grant, to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Protected Property for the public benefit of this generation and the generations to come; and

WHEREAS, the preservation of the Protected Property is consistent with federal, state and local governmental conservation policy;

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, Grantor does hereby give, grant, bestow, and convey unto the Holder, its successors and assigns forever, a CONSERVATION EASEMENT in perpetuity over the Protected Property as set forth below.

1) PURPOSE

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

To provide a significant public benefit by protecting and preserving in perpetuity the natural and undeveloped character of the Protected Property, including its wetlands and stream corridors, its upland forests and fields, its wildlife habitat, and its scenic character when viewed from Public Vantage Points specifically identified in Section 2.A. herein, and by preserving the opportunity for low impact outdoor recreation, education and nature observation consistent with the purposes of this easement. Accordingly, the Conservation Easement does include opportunities for low impact recreation and education on the Protected Property, including the construction of facilities and structures necessary for these activities.

It is the general intent of this Conservation Easement to assure that the Protected Property will be retained forever in its substantially undeveloped, open and natural condition, consistent with the terms of this Conservation Easement, including its recitals, and to prevent any use of the Protected Property that will impair or interfere with these conditions. Grantor and Holder intend that this Conservation Easement will limit, in perpetuity, the uses of the Protected Property to activities which are compatible with these purposes and the protection of wildlife habitat and preservation of its open space, natural values and its scenic character when viewed from the Public Vantage Points.

2) EXISTING CONDITIONS

At the time of this grant there are no structures on the Protected Property except for boundary markers, the remains of old foundations, unimproved gravel roads and foot paths. As of the date of this Conservation Easement, there are no surface alterations on the Protected Property other than those associated with existing structures listed herein, the Stetson Hills Road that traverses the Protected Property, a network of rustic footpaths, two sites of altered wetlands from prior construction activity, and an existing unpaved woods roadway with an average tread width and side clearance of 10 feet over a right of way leading to the Tower Lot, located as generally depicted on Exhibit B. As of the date of this grant the Protected Property is substantially forested with small areas of open fields and meadows, and some areas of blowdowns. All existing conditions are documented in Baseline Data, a compilation of the conditions of the Protected Property as of the date of this grant, certified as accurate by the Grantor and the Holder, and on file at the offices of Holder. Grantor reserves the right and hereby authorizes an approved Land Management Entity to maintain and replace all existing structures and surface alterations with substantially similar structures and improvements in substantially the same locations.

- A) **Land Use.** The Protected Property may be used for conservation, low impact recreation, and natural resource management and educational activities, together with limited commercial activities related thereto that do not adversely affect its Conservation Values. The Protected Property itself shall not be used in any manner that will detract from its substantially natural and undeveloped character when viewed from areas on the public waters of Stockton Harbor and those areas of Penobscot Bay from which the Protected Property is visible, or from public roadways and land areas on the mainland lying easterly and northerly of the Island (hereinafter Public Vantage Points). Notwithstanding the foregoing, any restrictions in this Conservation Easement intending to safeguard the scenic character of the Protected Property shall apply only to activities occurring on the Protected Property and shall in no way be construed to prohibit or limit any type of activity or infrastructure on the Transportation Parcel.
- B) **Specific Prohibitions.** No industrial or residential development, and no quarrying or surface mining activities, or exploration for or development and extraction of water resources for consumption offsite, or extraction of minerals, hydrocarbon substances, soils or other substances, except for

geothermal resources for use on the Protected Property, are permitted on the Protected Property. Without limiting the generality of the foregoing and notwithstanding the reserved rights of Grantor and/or any authorized Land Management Entity, the following uses are prohibited on the Protected Property: residential structures, industrial development, towers and high aspect apparatus for telecommunications (provided that not more than one wind power tower is permitted as described hereinafter), junk yards, and aircraft landing sites, except in emergency.

- C) **Division.** For the purpose of land uses permitted under this Conservation Easement, the Protected Property must remain in its current configuration as a single lot under unified ownership, which may be joint and undivided, subject to minor boundary line adjustments along the perimeter of the Transportation Parcel which may be made by the parties with the prior written consent of the Third Party Enforcer, provided that the Protected Property shall not be reduced by more than ½ acre due to all such boundary line adjustments. Grantor will make a reasonable effort to provide replacement acreage of equal conservation value if practicable. Any such boundary line adjustment shall be documented through an addendum to be filed in the Waldo County Registry of Deeds (the “Addendum”), which Addendum shall identify a new metes and bounds description of the Protected Property, a new survey plan (together representing the “Revised Description”). The Addendum shall be signed by the Grantor, Holder and Third Party Enforcer, acknowledging acceptance of the Revised Description as (i) not materially detracting from the conservation purposes identified in Section 1 herein, and (ii) not increasing the value of the Grantor’s estate. Such acknowledgment and acceptance by the parties hereto shall not be unreasonably denied, conditioned or delayed. The Revised Description shall supersede the Protected Property described in Exhibit A and depicted on Exhibit B, both attached to this Conservation Easement. The Addendum shall cross reference the registry recording citation of this Conservation Easement.

Notwithstanding the foregoing, any portion of the Protected Property may be conveyed to an entity that meets the qualifications set forth in Paragraph 15 for permanent conservation ownership. Under no circumstances may the Protected Property or any portion thereof be included as part of the gross tract area of other land 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 for development rights. This condition should not be construed to prohibit the use of the aforementioned “Enhancement/Restoration Areas” on the Protected Property as mitigation, by creation, enhancement and restoration of previously degraded wetlands and related upland buffers, to compensate for unavoidable wetland impacts to offset the environmental impact of transportation activities on or near Sears Island or other areas of the State of Maine in accordance with Section 5.B.e herein.

D) Land Use Areas. For the purpose of the restrictions and reserved rights hereunder, the Protected Property will be treated as two (2) land use areas: an "Education and Maintenance Center Area" to be established in accordance herewith, and the "Natural Area" as further described below. Until the Education and Maintenance Center Area is established, the entire Protected Property shall be treated as the Natural Area, and after the Education and Maintenance Center Area is established, the Natural Area shall be comprised of all of the Protected Property outside of the Education and Maintenance Center Area.

3) EDUCATION AND MAINTENANCE CENTER AREA

- A)** The Education and Maintenance Center Area shall be a single contiguous land area sited by the prior written agreement of Grantor and Holder as outlined herein, from within the area designated on Exhibit B as the "Education and Maintenance Center Parcel" generally depicted thereon based upon a location entirely east of the current paved Stetson Hills Road, and within 1.1 miles south of where State Highway 252 crosses the Montreal, Maine and Atlantic Railway tracks on the mainland.
- B)** To establish the Education and Maintenance Center Area, an approved Land Management Entity shall provide written notice to Holder and Grantor of the proposed location of the Education and Maintenance Center Area by certified mail, return receipt requested. Such notice shall include a proposed sketch plan showing the Education and Maintenance Center Area, a survey map showing boundary markers of the proposed Education and Maintenance Center Area, and a metes and bounds description of the proposed Education and Maintenance Center Area prepared in accordance with the survey, together with sufficient information to demonstrate compliance with the contiguous configuration, distance from the rail line and other location requirements for the Education and Maintenance Center Area established herein and in accordance with the procedures set forth in herein.
- C)** The Land Management Entity shall clearly and accurately mark the boundaries of the Education and Maintenance Center Area, and maintain such boundaries in a clear and accurate condition for Holder's monitoring and enforcement purposes, as noted in herein.
- D)** Prior to the commencement of any activities permitted only within the Education and Maintenance Center Area, except for test pits necessary for siting the Education and Maintenance Center Area, a recorded legal description of the final Education and Maintenance Center Area as approved by the Grantor and the Holder must be established by an addendum hereto, signed by Grantor and Holder and recorded at the Registry of Deeds. The addendum shall incorporate the details specified in Section 3.B. above.

4) **EDUCATION AND MAINTENANCE CENTER AREA USES, RESTRICTIONS AND RESERVED RIGHTS**

- A) Currently, within the "Education and Maintenance Center Parcel" as described in Section 3.A., there are only minor existing structures such as boundary markers, remains of foundations, unimproved gravel roads and foot paths.

Once the Education and Maintenance Center Area is established as set forth in Sections 3.A. and 3.B., no additional structures, temporary or permanent, may be located or constructed in the Education and Maintenance Center Area of the Protected Property, and no alterations may be made to the vegetation or to the surface of the earth or wetlands or watercourses in the Education and Maintenance Center Area of the Protected Property, without the prior written consent of Holder; except that any activity permitted in the Natural Area is permitted in the Education and Maintenance Center Area, and the following additional rights are reserved by the Grantor and hereby authorized by the Grantor to be implemented by an approved Land Management Entity in the event the Education and Maintenance Center Area is established as outlined herein:

- a) **Structures in Education and Maintenance Center Area:** the right to construct, maintain and replace structures, including buildings such as interpretive centers, barns, solar arrays, utility and storage boxes and outbuildings, recreational facilities or facilities for educational games and activities, temporary recreation structures, educational and maintenance facilities, parking areas and lighting, septic systems and domestic fresh water facilities for use on the Protected Property, and power and communication facilities, including solar collection and transmission devices, and not more than one wind power turbine tower and energy storage facility used primarily to serve permitted uses of the Protected Property only. No structure permitted by this section may exceed thirty (30) feet in height, excluding chimneys, measured from the original average grade of the lowest side of the building(s) to the highest point of the roof, except for the single wind power turbine tower, which may exceed that limitation after notice in writing by an approved Land Management Entity to the Holder. All buildings combined within the Education and Maintenance Center Area shall be limited to not more than ten thousand (10,000) square feet in aggregate gross covered ground area, defined as the exterior footprint at ground level. Buildings to be measured shall include only structures designed with both roof and walls.
- b) **Dock and Pier:** The right, after notice in writing to the Holder by an approved Land Management Entity, and after Holder approval, to establish and maintain at the shore of the Education and Maintenance