

## CONSERVATION EASEMENT

The **TOWN of YARMOUTH**, a duly organized Maine municipal corporation, located and operating in Cumberland County, Maine and having an office at 200 Main St, Yarmouth, ME 04096 (hereinafter "GRANTOR," which word is intended to include, unless the context clearly indicates otherwise, the above-named GRANTOR, its successor and assigns, and any successors in interest to the Protected Property), DOES HEREBY GRANT AND RELEASE as a gift to the **ROYAL RIVER CONSERVATION TRUST, INC.**, a charitable and non-profit corporation organized and existing under the laws of the State of Maine, with a mailing address of PO Box 90, Yarmouth, ME 04096 (hereinafter "HOLDER," which word shall, unless the context clearly indicates otherwise, include HOLDER's successors and/or assigns), in perpetuity, this conservation easement (the "Conservation Easement" or "Easement") pursuant to Title 33 Section 476 et seq., inclusive, as amended, on over and through a parcel of land of approximately 24 acres in the Town of Yarmouth Maine, located {easterly side of the Royal River westerly of SLA...insert description...}; and more particularly described in **Exhibit A** attached hereto and made part hereof (hereinafter referred to as the "Protected Property").

The Protected Property was or will be purchased, in part, with funds from the State of Maine Land for Maine's Future Fund ("LMF"), established under Title 5 M.R.S., Chapter 353, Section 6200 et seq., as amended and augmented by P.L. 2009, c.645, Sec. J. The GRANTOR and HOLDER agree that the Protected Property is and shall remain subject to a Project Agreement by and between Land for Maine's Future, the State of Maine, through its Department of Agriculture, Conservation and Forestry, (the Designated State Agency hereinafter the "DACF" or "DSA") and the GRANTOR and recorded in the Cumberland County Registry of Deeds (the "Project Agreement").

This Conservation Easement provides additional protection to the Protected Property, and further ensures that it shall be managed for conservation purposes and uses. This Conservation Easement is granted exclusively for the following conservation purposes:

### **I. PURPOSE OF THE EASEMENT**

The purpose of this Conservation Easement is to preserve in perpetuity the unique and undeveloped character of the Protected Property and to protect the high-quality habitat of the forest, field, wetlands and associated ecosystems, while also providing a variety of opportunities for outdoor recreation and scenic enjoyment for the general public.

The following recitals more particularly describe the conservation and other values of the Protected Property:

WHEREAS, the Protected Property is a unique, undeveloped 24-acre parcel of land on the bank of the Royal River in the Town of Yarmouth, Maine; and

WHEREAS, the Protected Property provides an ideal site for low-impact outdoor recreation including, but not limited to, nature study and observation, hiking, running,

~~mountain biking~~, ice skating, snowshoeing, cross country skiing, snowmobiling on designated trails, fishing, and picnicking by the general public; and

WHEREAS, the Protected Property abuts other undeveloped lands of the GRANTOR held for similar low-impact recreational and conservation purposes; and

WHEREAS, the Town of Yarmouth is subject to considerable development pressure and sprawl that often closes or restricts access to open space traditionally used and enjoyed by the public; and

WHEREAS the GRANTOR and the HOLDER, recognize the uniqueness of the Protected Property and have the common purpose of conserving the high-quality wildlife habitat and the scenic, natural and recreational values of the Protected Property by conveyance of this Conservation Easement on, over, through, and across the Protected Property that will establish a large natural recreation area, prohibit development of the Protected Property, and prevent any use or change that would conflict with its wildlife habitat values or its predominantly natural and scenic condition.

NOW, THEREFORE, the GRANTOR and HOLDER hereby establish this Conservation Easement on, over, and across the Protected Property consisting of the foregoing recitals and purposes, and the following terms, covenants, restrictions and affirmative rights granted HOLDER, its successors and assigns, which shall run with and bind the Protected Property, in perpetuity:

## II. LAND USE AND DIVISION

**A. Land Use.** The Protected Property may be used only for conservation, low-impact outdoor recreation by the general public, educational activities and natural resource management activities that do not adversely affect its important natural, ecological and habitat values. Low impact recreation includes, but is not limited to, nature observation and study, hiking, running, snowshoeing, cross-country skiing, ice skating, horseback riding, fishing, kayaking, canoeing and snowmobiling on designated trails. In accordance with Title 5, Maine Revised Statutes, Section 6200 et seq., as amended and augmented by P.L. 2009, c.645, Sec. J (the Land for Maine's Future Statute and Bond Statutes), the Protected Property shall be open for use by the general public and GRANTOR shall not prohibit hunting, fishing or trapping on the Protected Property except to the extent of applicable state, local and federal laws and regulations.

**B. Management Plan.** The Protected Property will be managed consistent with the terms of this Easement under a Management Plan to be prepared by GRANTOR. The Management Plan as originally adopted, and as may be subsequently amended from time to time, will be submitted to HOLDER for review and comment to ensure that the Management Plan is and remains consistent with the terms of this Easement. The Protected Property will be managed by GRANTOR to protect the natural resource, scenic and recreational values with oversight by HOLDER. GRANTOR will maintain a copy of the Management Plan at the Town Offices. GRANTOR will also send a copy of the

Management Plan to the Land for Maine's Future Board (hereinafter "LMFB") and the Designated State Agency (hereinafter "DSA") as identified in the Project Agreement, if any.

**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. Subdivision, partition or creation of other parcels or lots, whether by lot division, or other manner of ownership which creates discrete parcels or separate ownership or control of portions of the Protected Property, shall be prohibited, except for boundary adjustments to resolve bona fide boundary disputes, subject to approval by the DSA or as may be allowed by the Project Agreement, if any **in Part II, section H subsection.(i).** In order to grant any such approval, the DSA and LMFB must find that the proposed division of the Protected Property furthers the conservation purpose and objectives of the project as defined in the Project Agreement, if any. Under no circumstances may 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.

Need to check and confirm cross reference cite to LMF Project Agreement Section II.H. i.

Notwithstanding the foregoing, any portion of the Protected Property may be conveyed to an entity that is a federal, state or local government agency or a non-profit conservation organization which is a "qualified organization" set forth in under Section 170(h) of the United States Internal Revenue Code and a "qualified holder" under Title 33, Maine Revised Statutes, Section 476(2), for permanent conservation ownership, however, prior written approval must be obtained by the DSA and LMFB and the qualified organization must expressly agree to assume the rights and obligations of GRANTOR under the Project Agreement, if any.

**D. Existing Conditions.** As of the date of this Easement, there are no structures on the Protected Property except for; boundary markers, stone walls, **{need to describe culvert outlets, railroad and CMP corridor, and CMP rights}**. 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 above. The remainder of the Protected Property is undeveloped and forested, or shoreline and wetland area. All existing conditions are documented in the Baseline Documentation (hereinafter defined) and certified as accurate by GRANTOR and HOLDER as of the date of this Conservation Easement.

We need to develop a "baseline" document jointly- see also Section IV.D

**E. Structures.** It is the intention of this Easement that the Property be used as

conservation land for low impact outdoor recreation, nature observation and study and that uses and improvements be limited to the extent necessary or appropriate to preserve its natural and undeveloped character.

GRANTOR reserves the right to maintain, repair and replace existing structures in their current locations and to maintain, repair and replace existing surface alterations and improvements with substantially similar structures and improvements in substantially similar locations, unless another location is more beneficial to protect the natural resources and is approved by HOLDER.

No additional structures, temporary or permanent, are permitted on the Protected Property without prior written consent of HOLDER, except however, the GRANTOR reserves for itself, its successors and assigns, the following rights:

1. **Minor Structures.** GRANTOR reserves the right to locate, construct and maintain minor structures to accommodate low impact outdoor recreation and nature observation and study. Such minor structures may include, but are not necessarily limited to the following: small unlighted informational and interpretive signs including commemorative plaques and memorials; informational kiosks and registration boxes; low barriers to discourage unauthorized access; fencing to protect natural resources or for safety purposes; support and erosion control structures necessary for permitted trails and maintenance access routes, trail and boundary markers; rustic trail improvements, including, hand rails, steps, stream or trail bridges, culverts and water bars; benches and picnic tables; temporary tents; pet sanitation boxes; and temporary structures associated with wildlife, plant, archeological or other scientific study under professional supervision under professionally accepted standards.

Notwithstanding the foregoing; the following structures are not permitted, except as expressly set forth above or elsewhere in this Conservation Easement: buildings, barns, bleachers, permanent lighting, and major recreational improvements such as athletic or sports facilities and fields.

**F. Surface Alterations.** No alterations may be made to the surface of the earth or to the wetlands and watercourses of the Protected Property except as reserved below by GRANTOR.

1. **Mining.** No mining, quarrying and surface mining activities are permitted on the Protected Property.
2. **Excavation, filling, dredging and grading.** No excavation, filling, dredging or grading or other alteration may be made to the surface of the Protected Property except as necessary to install, maintain or replace permitted structures, to support a pedestrian bridge and or hand-carry boat

launch and haul-out features described under subsection 6, below. Any such activity shall secure and meet all applicable permitting requirements under local, state and federal law and regulations.

3. **Exercise of Reserved Rights.** GRANTOR reserves the right to alter the surface of the land to the minimum extent necessary to exercise rights at Part II, Paragraph E, and the GRANTOR's other rights and reservations expressly set forth in this Conservation Easement.

4. **Canoe and Kayak Landing and Access:**

GRANTOR reserves the right to install and maintain a small dock or float to provide canoe and kayak access and landing to/from the Royal River while protecting the fragile and steep river banks from improper or damaging landing and access. Such access and landing shall be designed, installed, and maintained in a manner to minimize erosion, unnecessary vegetation removal, and compaction of soil or disruption of habitat while providing safe access that complies with all applicable state and federal standards.

Maybe this should be moved to Section II.E.2? It will need discussion wherever we put it.

5. **Trails.** A number of improved and unimproved trails may be built and maintained with consultation with HOLDER. GRANTOR may improve existing trails and may develop additional trails to create an interconnected network of unpaved trails within the Protected Property and to connect to adjacent or abutting properties. The trails shall be constructed and maintained in a manner consistent with the goals and purposes set forth in Part II Paragraph A herein, and designed and located to prevent erosion and protect the other conservation values of this Easement. The Management Plan may include or refer to trail development standards recommended by state or federal agencies or by private organizations dedicated to conservation or natural resource protection purposes.

6. **FUTURE Pedestrian Scale Bridge over the Royal River.**

GRANTOR specifically reserves the right to design, build and maintain a pedestrian scale bridge over the Royal River including any reasonably necessary abutments, approach work, drainage and temporary construction access routes. All designs and construction shall be constructed and maintained in a manner consistent with the goals and purposes set forth in Part II Paragraph A herein, and designed and located to prevent erosion and protect the other conservation values of this Easement. Any temporary construction access way must be restored to its natural appearance as soon as reasonable possible after completion.

Maybe this should be moved to Section II.E.2? It will need discussion wherever we put it.

7. **Archeological and Ecological Study.** GRANTOR reserves the right to permit archeological and ecological study of the Protected Property, including excavation of sites, provided that all such work must be

conducted in accordance with applicable then-current professional standards, and the disturbed area must be restored to its natural appearance as soon as reasonably possible after completion.

**G. Vegetation Management.** It is the intention of this Conservation Easement to foster an intact, healthy forested area to preserve healthy soils and habitat for wildlife, preserve the ecological integrity of stream, brooks, vernal pools and wetlands, and protect the scenic character of the Protected Property.

- 1. Tree and Vegetation Cutting.** GRANTOR reserves the right to alter or remove vegetation as necessary to install, establish and maintain the structures permitted under Section II Paragraph E and surface alterations permitted under Section II Paragraph F of this Easement; to reduce safety hazards for the uses permitted herein; and, to remove invasive plant species; to prevent fire and spread of disease or non-native insects. All of the foregoing shall be conducted in a manner to minimize soil erosion, prevent damage to fragile plant communities, water quality, wetlands and wildlife habitat, and to protect other important natural resources.
- 2. Forest Management Plan.** Except as provided in Section II.G.1. above, any harvesting of trees shall be consistent with a forest management plan developed by a professional forester with input from professional wildlife biologists and adopted by GRANTOR. The forest management plan shall include provisions for protecting soils, water quality, wetlands and high value plant and animal habitat and generally be consistent with current Best Forestry Management Practices as defined by "Best Management Practices for Forestry: Protecting Maine's Water Quality," prepared by the Maine Department of Agriculture, Conservation and Forestry, Maine Forest Service, in such publication's most current version at the time of this Conservation Easement, and as the same may be further amended, supplemented or replaced after the date of this Conservation Easement. GRANTOR shall provide HOLDER with a copy of any forest management plan for HOLDER's review and comment. All forestry activities shall be in compliance with applicable federal, state and local laws and regulations. GRANTOR shall *give* notice to HOLDER sixty (60) days prior to any proposed harvesting activities in accordance with the forest management plan and provide HOLDER with sufficient information concerning the nature, extent and timing of the proposed activity.

**H. Water Protection, Pollution Control and Waste Disposal.** No dumping, storage or burial of refuse or waste materials is permitted on the Protected Property. No vehicles may be stored on the Protected Property except that temporary storage of vehicles as may be required for permitted maintenance, construction, conservation or forest management activities shall be permitted. The direct discharge of treated or untreated sewage into the surface waters on or about the Protected Property is prohibited. The use, storage, discharge or runoff of chemical herbicides, pesticides, fungicides, fertilizers or other toxic agent shall be controlled as required by State or federal law to prevent adverse impacts on wildlife, waters and other important conservation values protected by this

## Conservation Easement.

- I. Public Use and Access.** GRANTOR agrees to permit, and will refrain from prohibiting or discouraging, use of the Protected Property by the general public for daytime low impact outdoor recreational uses, such as: nature observation and study, hiking, running, biking, snowshoeing, cross-country skiing, ice skating, fishing, kayaking, canoeing and snowmobiling on designated trails. GRANTOR shall not prohibit hunting, fishing or trapping on the Protected Property except to the extent of applicable state, local and federal laws and regulations. GRANTOR has the right to prohibit or make reasonable rules and regulations for any of the following uses for public recreation: night use, camping, loud activities, open fires use of motor vehicles except as provided in this Conservation Easement, access by domesticated animals or pets, any use that may interfere with or be harmful to members of the public using the Protected Property. GRANTOR also has the right to temporarily restrict public access on limited areas of the Protected Property to protect fragile areas under study, or for safety purposes during active timber harvesting or other permitted management or construction activities that may pose a hazard to recreational users. Such right of GRANTOR may be exercised only following a 30-day prior notice to HOLDER and an opportunity to comment, except in an emergency in which notice to HOLDER shall be as soon thereafter as possible. GRANTOR also has the right to temporarily restrict public access on roads or trails during periods of water-saturated soils to prevent road or trail damage. HOLDER and GRANTOR may agree in writing to restrict access and use of the Protected Property by the general public for other purposes, but only to the extent and for the duration necessary to assure safety, to permit necessary maintenance, or to preserve important scenic, ecological, or other conservation values of the Protected Property.

GRANTOR agrees that any fees or charges imposed for public access shall be reasonable and comparable to those charged in Maine for similar facilities and any such fees must be approved in advance and in writing by the DSA as stated in the Project Agreement, if any.

GRANTOR AND HOLDER each claim all of the rights and protections against liability for injury to the public to the fullest extent of the law under the Recreational and Harvesting Use Liability Limitations set forth in 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 and all other applicable provisions of law or equity.

### **III. HOLDER'S AFFIRMATIVE RIGHTS**

- A. Entry and Inspection.** HOLDER is granted the right to enter the Protected Property at any time for the purposes of inspection, monitoring and enforcement to undertake ecological or other studies of the Protected Property, and to exercise any other affirmative right hereunder.
- B. Enforcement.** 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 might be entitled for violation of the terms of this Easement and to require restoration of the Property to the condition that existed prior to such injury, provided however that naturally occurring changes shall not give rise to any right in HOLDER to require restoration. Prior to initiation of an enforcement action, HOLDER shall provide GRANTOR with prior written notice and reasonable opportunity to cure any breach except where emergency circumstances require more immediate enforcement action.

If HOLDER is the prevailing party in any action against GRANTOR, or any others for whose actions on the Protected Property GRANTOR is responsible, GRANTOR shall reimburse HOLDER for any reasonable costs of enforcement or defense, including court costs, mediation and if applicable, arbitration costs, reasonable attorney fees and any other payments ordered by such court or arbitrator subject to the limitations of the Maine Tort Claims Act (Title 14 MRSA Section 8101 et seq.) or any other privileges or immunities as may be provided by law.

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 and earth movement or from prudent action taken by GRANTOR under emergency conditions to prevent, abate or mitigate significant injury to Protected Property resulting from such causes.

The terms of the Conservation Easement do not supersede or waive more restrictive applicable law and regulations.

C. **Signage.** HOLDER is authorized to install small, unlighted informational signs that identify HOLDER's contributions to and interests in the Protected Property, in addition, signs that acknowledge contributions from the Land For Maine's Future Program, which mark the boundary of the Protected Property, which enhance the public safety and use of and appreciation of the Property, and which promote appreciation of plant and animal life; such minor signage to be completed in a manner consistent with the goals of this Easement and the Management Plan.

D. **Trails.** HOLDER has the right, but not the obligation, to help build and maintain the trail network on the Protected Property in accordance with the provisions of this Conservation Easement.

Is it important to recognize/memorialize the initial \$20,000 RRCT contribution here? IDK

E. **Boundaries.** It is GRANTOR's obligation to maintain boundary locations and monuments. In the event such iron pins or monuments are not clearly marked within a reasonable amount of time after notice by HOLDER, HOLDER shall have the right to engage a professional surveyor to locate or reset the iron pins. The costs associated with the survey work necessary to locate or reset such pins or markers shall be paid by the GRANTOR only if



and to the extent necessary to determine if a breach of this Conservation Easement has occurred on the Protected Property.

- F. **Notice.** HOLDER has the right to require that GRANTOR's reserved rights be exercised in a manner that avoid adverse impact to the conservation values to be protected by this Easement. GRANTOR agrees to notify HOLDER prior to undertaking any activity or exercising any reserved right that may impair the conservation interests associated with the Easement.
- G. **Right to Assign.** In the event that HOLDER fails to continue operations or is dissolved, either voluntarily or involuntarily, or is not able to fulfill its obligations under this Conservation Easement, it shall assign the Easement to another qualified entity (not the then current GRANTOR of the Conservation Easement) chosen by the GRANTOR and with the approval of the DSA. A qualified entity for such purposes shall be one that meets the definition of "HOLDER" at Title 33 Maine Revised Statutes Annotated Section 476(2), as amended or re-codified, and that meets the requirements of Section 170(h)(3) of the Internal Revenue Code, or successor provisions thereof, and that as a condition of transfer, agrees to carry out the conservation purposes of this grant.

#### IV. GENERAL TERMS AND STANDARD PROVISIONS

- A. **Notice and Approval Requirements.** GRANTOR agrees to notify HOLDER prior to undertaking any activity or exercising any reserved right that may have an adverse impact on the conservation values protected by this Conservation Easement, and where prior notice or approval is specifically required in this Conservation Easement. GRANTOR's notices must include sufficient information to enable HOLDER to determine whether GRANTOR's plans are consistent with the terms of this Easement and the conservation purposes hereof:

- 1. Any notices or requests for approval required by this 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 party has been notified in writing by the other party of a change of address or change of ownership:

To GRANTOR: Town of Yarmouth, Attention: Town Manager, 200 Main Street, Yarmouth, ME 04096

To HOLDER: Stewardship Director, Royal River Conservation Trust, P.O. Box 90, Yarmouth, ME 04096

- 2. When GRANTOR is required to provide notice to HOLDER pursuant to this Easement, such notice as described hereinabove shall be given in writing at least sixty (60) days prior to the event giving rise to the need to give notice except as otherwise specifically provided herein.

3. When GRANTOR is required to obtain HOLDER's prior written consent and approval, such request as described hereinabove shall be given in writing sixty (60) 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. Following receipt of such notice, HOLDER shall, in writing, grant approval, grant approval with conditions, or withhold its approval. No proposed activity may proceed without HOLDER's written consent and approval as provided herein, except as may be expressly permitted under the terms of this Conservation Easement.
- B. Responsibility of Owners.** GRANTOR acknowledges that HOLDER has neither possessory rights in the Protected Property, nor any responsibility nor right to control, maintain, or keep up the Protected Property. GRANTOR shall retain all responsibilities and shall bear costs and liabilities of any nature related to the ownership, operation, upkeep, improvement and maintenance of the Protected Property.
- C. Maine Conservation Easement Act.** This Conservation Easement is established pursuant to the Maine Conservation Easement Act at Title 33, Maine Revised Statutes, Sections 476 through 479-C, inclusive, as amended, and shall be construed in accordance with the laws of the State of Maine.
- D. Baseline Documentation.** In order to establish the present condition of the Protected Property and its conservation attributes 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 Conservation Easement. A certified copy of the Baseline Documentation, and any amendments or supplements thereto, shall be maintained, in perpetuity, at the offices of HOLDER.
- E. Extinguishment.**
1. The parties agree that the grant of this Conservation Easement creates a property right that vests immediately in HOLDER. The parties further agree that this property right as of the date of its creation has a fair market value that is equal to the percentage by which the fair market value of the unrestricted Property as a whole as valued in accordance with IRS Regulations at 1.170-A 14(h)(3)(ii), is reduced by the terms and conditions imposed by this Conservation Easement, as of the date of the execution of this Conservation Easement (hereinafter the "Original Percentage Reduction").
  2. 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 GRANTOR and HOLDER (and any third party who has a bona fide right of enforcement, if any) agree. Should this Conservation Easement be terminated or extinguished as provided in this Paragraph, **in whole or in part, HOLDER shall be entitled to be paid no less than a portion of any proceeds of sale, exchange or lease computed as to the greater of: (i) the Original Percentage Reduction; or (ii) the increase in value of the GRANTOR's estate resulting from such extinguishment, as determined** by the court, or in the absence of such court determination, 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 its share of the proceeds or other moneys received under this Paragraph in a manner consistent, as nearly as possible, with the stated, publicly beneficial purposes of this Conservation Easement. GRANTOR agrees and authorizes HOLDER to record a notice of a lien on the Protected Property which lien will be effective as of the date of such extinguishment, to secure its rights under this Paragraph.

- F. **Controlling Law and Interpretation.** The interpretation and performance of this Easement shall be governed by the laws of the State of Maine. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the conservation purposes of this Easement and the policy and purpose of the Maine Conservation Easement Act at Title 33, Maine Revised Statutes Annotated, Sections 476 et seq., inclusive, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the conservation purposes of this Easement shall govern.
- G. **Subsequent Deeds and Transfers.** This Easement must be incorporated by reference in any deed or other legal instrument by which GRANTOR conveys 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 Easement or limit its enforceability in any way.
- H. **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 to issue such discretionary approvals without prior notice to any other party. Nothing in this Paragraph shall require the HOLDER to agree to any discretionary approval.
- I. **Amendment.** GRANTOR and HOLDER recognize that rare and extraordinary circumstances could arise that warrant modification of certain provisions of this Conservation Easement. To this end, subject to more restrictive laws and regulations, if any, GRANTOR and HOLDER have the right to agree to amendments to this Conservation Easement with prior notice to the DSA, provided that in the reasonable judgment of HOLDER, such amendment enhances or does not

materially detract from the conservation values intended to be protected by this Conservation Easement, in accordance with Maine law, and provided that any amendment is consistent with the terms and conditions of the Project Agreement, if any, as determined by the DSA as applicable. Amendments shall become effective upon the 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 consult or negotiate regarding any amendment.

- J. **Economic Hardship.** In making this grant, GRANTOR has considered the possibility that uses prohibited by the terms of this 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.
- K. **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.
- L. **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 Conservation Easement and the Baseline Documentation set forth the entire agreement of the parties with respect to this 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.
- M. **Standing to Enforce.** Only HOLDER and GRANTOR may bring an action to enforce this grant, except as provided in Title 33 M.R.S.A. Section 478, 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 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 Conservation Easement.
- N. **Provisions Regarding LMFB, DSA and Project Agreement.** Any reference herein to the Land for Maine's Future Program, LMFB or DSA, and any obligations required under grant conditions for LMF monies, shall only be effective to **the extent that there is a Project Agreement executed by and between GRANTOR, LMFB and**

DSA on or before the fifth (5<sup>th</sup>) anniversary of the date of this Conservation Easement, and subsequent recording of the same in the Cumberland County Registry of Deeds. GRANTOR and HOLDER agree that if there has been no grant of acquisition funds under LMF Project #\_\_\_\_ within five (5) years from the date of this CE that GRANTOR may record an affidavit, or other instrument, in the Cumberland County Registry of Deeds, which upon recording shall be conclusive evidence that the GRANTOR owns the Protected Property free and clear of any Project Agreement referred to herein.

*Signatures Follow*

DRAFT

**IN WITNESS WHEREOF, the** Town of Yarmouth has caused its acknowledgement and seal to be hereto affixed and these presents to be signed by Nathaniel J. Tupper, its Town Manager in its name and on its behalf, this \_\_\_day of \_\_\_, 2017.

**TOWN OF YARMOUTH**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Nathaniel J. Tupper,  
Town Manager

**STATE OF MAINE**  
**COUNTY OF CUMBERLAND, ss**

\_\_\_\_\_, 20\_\_

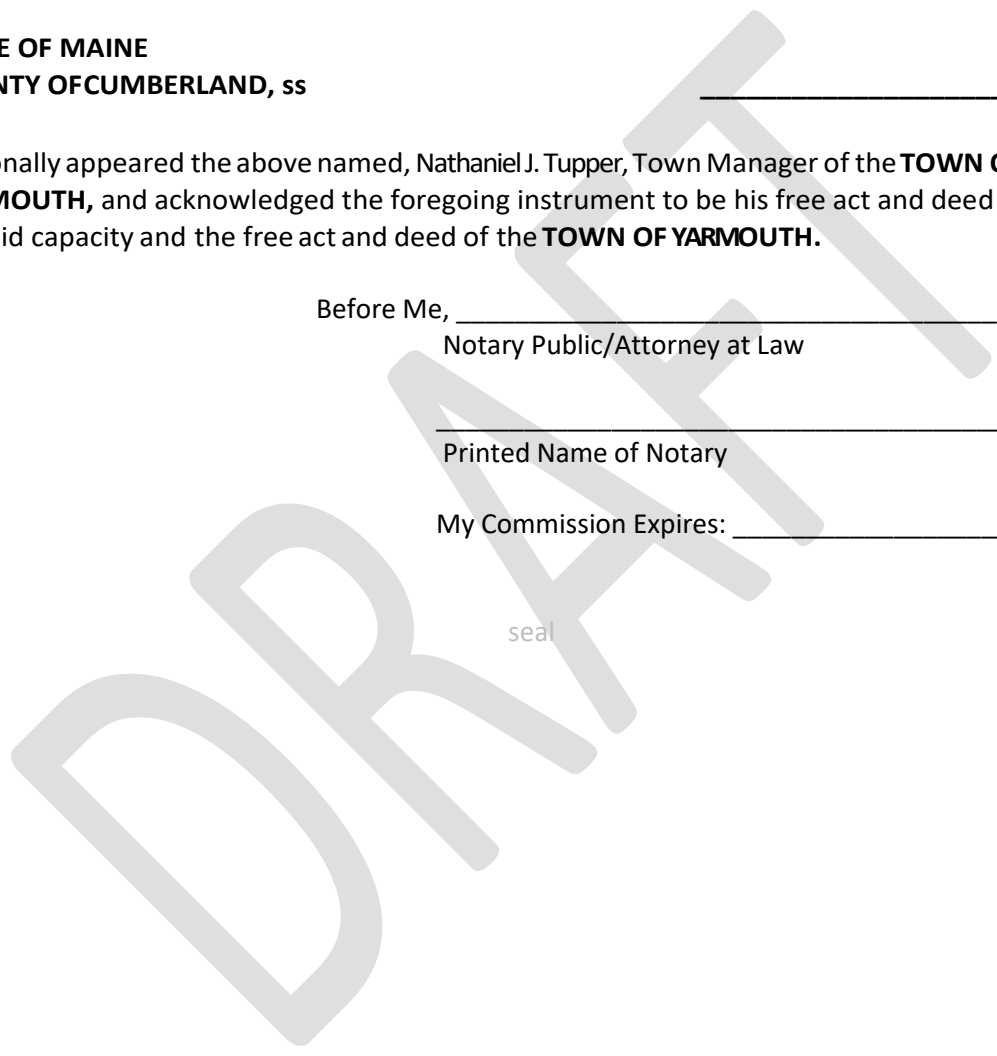
Personally appeared the above named, Nathaniel J. Tupper, Town Manager of the **TOWN OF YARMOUTH**, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the **TOWN OF YARMOUTH**.

Before Me, \_\_\_\_\_  
Notary Public/Attorney at Law

\_\_\_\_\_  
Printed Name of Notary

My Commission Expires: \_\_\_\_\_

seal



**HOLDER ACCEPTANCE**

The above foregoing Conservation Easement being duly authorized to be accepted by the **Royal River Conservation Trust, HOLDER**, hereby accepts this Conservation Easement by and through Alan Stearns, its Executive Director, hereunto duly authorized by resolve of the board of directors on \_\_\_\_\_, 2017, signed this \_\_\_\_ day of \_\_\_\_\_, 2017

Royal River Conservation Trust.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Alan Stearns, Executive Director

Personally appeared Alan Stearns, Executive Director, authorized representative of the **ROYAL RIVER CONSERVATION TRUST**, and acknowledged the acceptance of the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of the **ROYAL RIVER CONSERVATION TRUST** a Maine Non Profit Corporation.

Before Me, \_\_\_\_\_  
Notary Public/Attorney at Law

\_\_\_\_\_  
Printed Name of Notary

My Commission Expires: \_\_\_\_\_

