

Amended and Restated Conservation Easement

Whippoorwill Homeowners Association

to

York Land Trust, Inc.

on

Property in The Town of York, York County, Maine

WHIPPOORWILL HOMEOWNERS ASSOCIATION, a Maine nonprofit corporation of York, Maine (hereinafter referred to as the “Grantor”), hereby grants to YORK LAND TRUST, INC. a Maine nonprofit corporation with a mailing address of P.O. Box 1241, York Harbor, ME 03911 (hereinafter referred to as the “Holder”), and also a Third Party Right of Enforcement to the STATE OF MAINE, acting by and through the DEPARTMENT OF ENVIRONMENTAL PROTECTION (hereinafter referred to as the “Third Party”), with Warranty Covenants, the following amended and restated conservation easement (hereinafter the “Conservation Easement,” the “Easement,” or the “Amended and Restated Conservation Easement”) over the premises described in Exhibit A and depicted on Exhibit B, both attached hereto and made a part hereof by this reference (hereinafter referred to as the “Protected Property”), which shall run with the land and be binding in perpetuity upon Grantor, pursuant to the Maine Conservation Easement Act, Title 33 M.R.S. §§ 476-479-C, as amended and successor provisions thereof, for the benefit of the general public; all in accordance with the purpose, terms, conditions, restrictions and affirmative rights set forth herein.

This Amended and Restated Conservation Easement amends, restates, supersedes and replaces, the original “Deed of Conservation Easement” (“Original Conservation Easement”) granted over the Protected Property. The Original Conservation Easement was granted by Frederick H. Baldwin, Jr., Trustee of the Bradford Realty Trust, to the Holder and the Third Party, dated November 13, 1997, and recorded in the York County Registry of Deeds (“YCRD”) at Book 8644, Page 238. Grantor is the owner of the Protected Property by virtue of a Deed from Kathleen Baldwin, Trustee of the Bradford Realty Trust, to Grantor herein dated September 24, 2008 and recorded in the YCRD at Book 15505, Page 654.

This Amended and Restated Conservation Easement accomplishes the following general changes to the Original Conservation Easement, although the following enumeration does not supersede or modify any of the more specific provisions herein below: (1) clarification of the boundaries of the Protected Property by adding an Exhibit B showing that certain narrow slivers of land between house lots or along the border of the subdivision are not and were never intended to be part of the Protected Property; (2) addition of a division and subdivision restriction; (3) amendment to the structures provision by allowing certain minor low-impact recreational structures; (4) update and strengthening of the administrative provisions.

WITNESSETH

WHEREAS, this Conservation Easement was created pursuant to 33M.R.S. §§ 476-479-C, inclusive, as amended;

WHEREAS, the Grantor holds title to certain real property situated in York, Maine being all those portions shown as "Open Space Subject to Conservation Easement" ("Protected Property") on a plan entitled "Revised Standard Boundary Survey 'Whippoorwill' Subdivision, US Route One, York, Maine" by Anderson Livingston Engineers, Inc. dated August 1997 and last revised December 30, 1997 and recorded in the York County Registry of Deeds in Plan Book 239, Page 15. For further reference, the Protected Property is depicted on the sketch map attached hereto and incorporated herein as Exhibit B;

For title reference, see deeds to Frederick H. Baldwin, Jr., Trustee of Bradford Realty Trust, being a portion of the land from Joanne C. Clark, recorded in York County Registry of Deeds in Book 8589, Page 257; being a portion of the land from Peter N. Thompson and Rosemary G. Thompson, Trustees of the Peter and Rosie Thompson Loving Trust dated August 9, 1990, recorded in the York County Registry of Deeds in Book 8589, Page 252; being all of the land in a deed from Joseph Clark, recorded in York County Registry of Deeds in Book 8589, Page 255; and being all of the land in a deed from Stephen E Goodwin and Linda A. Goodwin, recorded in York County Registry of Deeds in Book 8589, Page 251;

WHEREAS, the Protected Property remains in a substantially undisturbed natural state and has significant aesthetic and ecological value, in particular, to perpetuate the existing natural state of the open and wooded areas and, most importantly, those areas surrounding an unnamed pond, by prohibiting buildings and other substantial structures on the Protected Property; by designating pathways in a manner consistent with the ecology of the Protected Property; by strictly limiting any cutting to the necessary maintenance of pathways; and by prohibiting the disturbance of any existing stone walls;

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

WHEREAS, Grantor, Holder, and Third Party agree that this Amended and Restated Conservation Easement does not materially detract from the conservation values intended for protection under the Original Conservation Easement, and that no court approval is required under 33 M.R.S. 477-A(2)(B);

WHEREAS, the boundaries of the Protected Property under the Original Conservation Easement were ambiguous with respect to certain strips of land around the perimeter of the Whippoorwill

Subdivision and between house lots. These ambiguous areas were never intended to be part of the Original Conservation Easement, have never been monitored as part of the Protected Property, and have no conservation value. As such, this Amended and Restated Conservation Easement clarifies and confirms that these ambiguous areas are not part of the Protected Property, as depicted on Exhibit B; and

NOW, THEREFORE, in consideration of the foregoing and the covenants, terms, conditions, and restrictions herein contained, the Grantor, Holder, and Third Party hereby agree as follows:

1. Purpose

It is the purpose of the Easement (hereinafter the “Purpose”) to ensure that the Protected Property will be retained forever in its substantially undisturbed natural state and to prevent any use of the Protected Property that will significantly impair or interfere with the significant aesthetic and ecological values of the Protected Property. Grantor and Holder intend that this Easement will confine the use of the Protected Property to such activities as are consistent with the Purpose of this Easement.

2. Rights of Holder

To accomplish the Purpose of this Easement, the following rights are conveyed to Holder by this easement:

2.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. Except in emergency circumstances, Holder will make reasonable efforts to contact Grantor, prior to entry onto any area of the Protected Property.

“Emergency circumstances” means that Holder has a good-faith basis to believe a violation of the Easement is occurring or is imminent, which violation requires prompt action to prevent imminent danger to life or material damage to the Protected Property.

2.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 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.

Prior to initiation of an enforcement action, Holder shall provide Grantor with prior 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 to enforce or defend this Conservation Easement, Grantor shall reimburse Holder for any reasonable costs of enforcement or defense, including court costs, mediation or arbitration costs, reasonable attorney fees, and any other payments ordered by such Court or third-party neutral.

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 any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

2.C Boundaries. 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.

2.D 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.

2.E Fencing. Holder shall have the right to erect and maintain temporary and permanent fencing or other appropriate physical barriers to protect fragile or sensitive natural features from damage or destruction.

3. Use of The Protected Property

The Protected Property shall be used for limited recreational and conservation purposes only. No commercial, industrial, residential, quarrying or mining activities shall be permitted on the Protected Property. Any activity on or use of the Protected Property inconsistent with the Purpose of this Easement is prohibited.

3.A Structures.

- 1) For purposes of this Conservation Easement, "structure" shall mean any combination of materials on, over, in, or under the ground and having a temporary or permanent fixed location. A structure may be primarily two dimensional, such as a road, trail, parking lot or a sign, or it may be three dimensional, such as a building, wall or piping.
- 2) As of the date of this grant, there are no known structures on the Protected Property, except for the existing trail network as generally depicted on the Baseline Documentation.
- 3) No structures of any kind whatsoever shall be constructed on, under or above the Protected Property, except structures required to provide water to the Subdivision, and except as set forth in this Paragraph 3.A.

- 3) There shall be no taking from or disturbance of the stone walls within the Protected Property.
- 4) The Grantor, or its successors, may erect and maintain small unlighted signs at the entrance of recreational trails notifying users that they are entering a conservation area and that certain restrictions apply.
- 5) Grantor reserves the right to establish and maintain minor three-sided or unroofed structures to enhance the opportunity for low-impact outdoor recreation, including but not limited to boundary markers, trail markers, small unlighted informational and interpretive signs, trail improvements such as steps, bog bridges, water bars, and railings, wildlife observation blinds, temporary observation and hunting stands, temporary tents or other similar temporary structures, steel gates, barriers or low fences to prevent access by motor vehicles and protect fragile areas or scientific research areas; provided that they shall be constructed and located to complement the natural and scenic features of the landscape. High-impact outdoor recreational structures are prohibited, including but not limited to buildings, billboards, telecommunications or radar structures, paved trails, docks, piers and floats, tent platforms, lean-tos, tents, yurts or other similar permanent structures, outhouses or portable toilets, gazebos, golf courses, golf ranges, swimming pools, mud runs, tennis and other recreational courts, paintball, zip line, and other adventure courses, stadiums, performance stages, dressage fields, equestrian rings, polo fields, race tracks or courses, towers, playgrounds, athletic courts or fields, airstrips, and aircraft pads.
- 6) Grantor reserves the right to permit third parties to construct, maintain, repair, and replace structures permitted under any utility and access easements that precede the effective date of the Original Conservation Easement. To the extent of Grantor's authority, all additional utility or access structures within these rights of way shall be located underground to the extent economically and topographically practicable.
- 7) Unpaved recreational trails designed in keeping with the natural scenic quality of the Protected Property are permitted.

3.B Surface Alterations. Except as otherwise provided herein, no filling, paving, dumping, excavation, drilling, or other alteration shall be made to the surface or subsurface of the Protected Property (including any surface or subsurface water bodies) other than that caused by the forces of nature or as may be necessary for installation or maintenance of Municipal Water to the Whippoorwill Subdivision or improvements deemed necessary by the York Water District to their existing water system.

3.C Easements and Rights of Way. Grantor may not grant additional easements or rights of way over the Protected Property, nor increase the scope of existing easements or rights of way without the prior written consent of Holder and Third Party, except as necessary for installation or maintenance of Municipal Water to the Whippoorwill Subdivision or improvements deemed necessary by the York Water District to their existing water system.

4. Division

Notwithstanding that the Protected Property is composed of multiple geographic areas, the Protected Property shall not be partitioned, divided or subdivided or otherwise treated as more than one parcel. Notwithstanding the foregoing, any portion of the Protected Property may be conveyed to an entity that meets the qualifications of a holder set forth in 33 M.R.S. § 476(2)(B), including the Holder herein, subject to the prior written consent of Holder and continuation of the terms of this Conservation Easement. Further notwithstanding the foregoing, Grantor may enter into boundary line agreements to resolve bona fide boundary disputes with the prior written consent of Holder and Third Party, which shall not be unreasonably withheld, provided that the total acreage of land protected under this Conservation Easement shall not be materially reduced thereby without a court order. Any condemnation of a portion of the Protected Property shall not constitute a division or subdivision for the purposes of this Easement.

5. Reserved Rights

Grantor reserves to itself all rights accruing from its ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, all uses of the Protected Property that are not expressly prohibited herein and are not inconsistent with the Purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved, provided that Grantor shall notify Holder prior to undertaking any activity or exercising any reserved right that may have a material adverse effect on the conservation purpose of this grant:

5.A Recreational Use. The right to the Grantor to use the Protected Property for low-impact recreational purposes which may include hiking, picnicking, bird watching and any other use that is not expressly prohibited or destructive to the conservation values; and

5.B Conveyance. 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.

6. 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:

6.A Clearing Damage. The right to clear and restore forest cover and other vegetation that is damaged or destroyed by the forces of nature, such as fire or disease, with the prior written approval of the Holder, when necessary to prevent the spread of disease;

6.B Emergency Clearing. The right to clear and restore forest cover and other vegetation, in the event of an emergency, when necessary to prevent the spread of fire;

6.C. Permitted Structures. The right to alter forest cover and other vegetation to the minimum extent necessary for the installation and maintenance of the structures permitted under Paragraph 3.A.

7. Wildlife and Water Quality Protection

In order to assure the preservation of the high quality scenic, natural and ecological character of the Protected Property, the following specific restrictions, subject to any more restrictive local, state and federal laws and regulations, are imposed on the Protected Property:

7.A Waste Material. It is forbidden to dispose of or store rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly or offensive waste material on the Protected Property, except that blowdowns and other vegetative debris may be left to remain 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. Users of the Protected Property will be directed to carry out their trash; and

7.B Chemicals. The use of chemical herbicides, pesticides, fungicides, fertilizers and other agents that may have an adverse effect on wildlife, waters and other important conservation interests to be protected by this Conservation Easement are prohibited, unless their use is recommended by a recognizable land conservation professional when necessary to preserve other important conservation values of the Protected Property, and approved in advance and in writing by Holder.

8. Public Uses and Motorized Vehicles

The Protected Property is primarily for the low-impact outdoor recreational use and enjoyment of the residents of the Whippoorwill Subdivision. Notwithstanding the foregoing, the general public will not be excluded unless such use becomes, in the written opinion of the Grantor, Holder and Third Party, obtrusive or destructive. To the extent use of the Protected Property by residents of the Whippoorwill Subdivision or the general public occurs, access shall be permitted via the Trail Access Area off of Kestrel Circle, as depicted on Exhibit B. Notwithstanding the foregoing, the Trail Access Area shall not be treated as part of the Protected Property.

Grantor has the right to allow, limit or prohibit any of the following public recreational uses: hunting, trapping, fishing, night time use, picnicking, and bicycling. Notwithstanding the foregoing, if Grantor permits bicycling by owners of residences in the Whippoorwill Subdivision on any of its trails, the general public shall also be permitted such use on those trails. However, Grantor shall take measures to limit or prohibit any such uses that result in rutting, erosion or other damage to natural resources. Use of motorized recreational vehicles shall be prohibited on the Protected Property, and Holder may require Grantor to (a) install and maintain gates or other barriers; or (b) post the Protected Property against use by motorized recreational vehicles if such use occurs.

9. Rights of The Third Party

The Grantor hereby grants to the Third Party the same inspection and enforcement rights as are granted to the Holder under this Easement. However, the Parties hereto intend that the Holder shall be primarily responsible for the enforcement of this Easement, and that the Third Party will assume such responsibility only if the Holder shall fail to enforce it. If the Third Party determines that the Holder is failing in such enforcement, the Third Party may give written notice of such failure to the Holder and the Grantor, and if such failure is not corrected within a reasonable time thereafter, the Third Party may exercise, in its own name and for its own account, all the rights of entry, inspection and enforcement granted the Holder pursuant to Paragraphs 2.A, 2.B, and 13.H. The Third Party shall also have reasonable access to any and all records of the Holder relevant to the Protected Property.

10. Notices and Requests for Approval

10.A Notice and Approval Requirements. Whenever prior notice or approval is required, Grantor's notice must include information sufficient to enable Holder and Third Party to determine whether Grantor's plans are consistent with the Easement's Purpose and other terms. Holder's approval shall be conditioned on compliance with the terms of Paragraph 13.F.

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

To Grantor: Whippoorwill Homeowners Association
P. O. Box 325, York ME 03909

To Holder: York Land Trust
P.O. Box 1241, York Harbor, ME 03911

To Third Party: State of Maine, Department of Environmental Protection
17 State House Station, Augusta, ME 0433-0017

In the event that notice mailed to Holder, Third Party, 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 York, Maine, or the State Tax Assessor in the case of land in the unorganized territories; or in the case of Holder or Third Party, or in the case of a corporate owner, 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 Easement.

10.C Time for Notice and Reply. Where Grantor is required to provide notice to Holder and Third Party pursuant to this Easement, such notice shall be given in writing at least forty-

five (45) days prior to the event giving rise to the need to give notice except as otherwise specifically provided herein.

Where Grantor is required to obtain Holder's and Third Party's prior written consent and approval, such request shall be given in writing at least forty-five (45) 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 such review, Holder shall grant, grant with conditions, or withhold its approval. Failure to approve Grantor's request within forty-five (45) days shall be deemed a denial of such request. No proposed activity may proceed without Holder's written consent and approval as provided herein.

11. Costs, Taxes, Liability

11.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 impact Holder's rights hereunder. Grantor shall keep the Protected Property free of any liens or encumbrances that may adversely impact Holder's rights hereunder, 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 14 M.R.S. § 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, Holder shall be entitled to recover its costs and expenses, including, without limitation, reasonable attorney fees.

11.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 other than as set forth in Paragraphs 2,D and 2.E. 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.

12. Standard Provisions

12.A Maine Conservation Easement Act. This Conservation Easement is established pursuant to the Maine Conservation Easement Act at 33M.R.S. § 476-479-C, inclusive, as amended.

12.B Qualified Holder. The Holder is qualified to hold conservation easements pursuant to 33M.R.S. § 476(2)(B), as amended, and is a qualified donee under Internal Revenue Code Section 170(h)(3): a publicly supported, nonprofit 501(c)(3) organization with the authority to

accept lands, easements, and buildings for the purpose of preserving and protecting natural, scenic, educational, recreational or open-space values of real property, and with the commitment to preserve the conservation values of the Protected Property.

12.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 33 M.R.S. § 476(2) , as amended (or successor provisions thereof), and that as a condition of transfer, agrees to uphold the conservation purposes of this grant.

12.D Baseline Documentation. In order to establish the present condition of the Protected Property and its conservation attributes protected by this Conservation Easement so as to be able to monitor properly future uses of the Protected Property and ensure 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.

12.E Liens Subordinated. Grantor represents that as of the date of this amendment there are no liens or mortgages outstanding against the Protected Property. 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.

12.F Value of Conservation Easement, Extinguishment, Proceeds

12.F.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 1.170A-14(g)(6)(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").

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

12.F.3 This Conservation Easement may be extinguished or terminated only by judicial order in a court of competent jurisdiction, including a Taking in accordance with subsection 12.F.2 above. It is the intention of the parties that an extinguishment or termination be approved by a court only if the Purpose of this Conservation Easement is impossible to accomplish, and if Grantor, Holder and Third Party agree.

12.F.4 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 (such reduction shall not include value attributable to permitted improvements made to the Protected Property by Grantor after the effective date hereof.); 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.

12.F.5 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 Purpose 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.

13. General Provisions

13.A 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 Purpose of this Easement and the policy and purpose of the Maine Conservation Easement Act, 33 M.R.S. §§476 through 479-C, inclusive, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement shall govern.

13.B Grantor and Holder Definitions. The term "Grantor" or "Grantors" as used in this 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" and "Third Party" as used in this easement shall, unless the context clearly indicates otherwise, include the Holder's and Third Party's successors and assigns.

13.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 13.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.

13.D 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. Failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

13.E Compliance/Estoppel Certificates. Upon written request by Grantor, Holder will provide Compliance/Estoppel Certificates to Grantor or third parties, stating the extent to which, to Holder's knowledge after due inquiry, the Protected Property is in compliance with the terms of this Easement. 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.

13.F Discretionary Approvals and Amendments.

13.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 to issue such discretionary approvals without prior notice to any other party other than Third Party. Nothing in this paragraph shall require either party to agree to any discretionary approval.

13.F.2 Amendments. Grantor and Holder recognize that rare and extraordinary circumstances could arise which warrant modification of certain of the provisions of this Conservation Easement. To this end, subject to more restrictive laws and regulations, if any, Grantor, Holder, and Third Party have the right to agree to amendments to this Conservation Easement provided that in the sole and exclusive judgment of Holder and Third Party, such amendment enhances or does not materially detract from the conservation values intended for protection under this Conservation Easement. Amendments will become effective upon recording at the York County Registry of Deeds. Nothing in this paragraph shall require the Grantor, Holder, or Third Party to agree to any amendment or to negotiate regarding any amendment.

13.F.3 Further Limitations on Discretionary Approval and Amendments.

Notwithstanding the foregoing, except as provided by 33 M.R.S. §§ 476-479-C, as amended, no party has the right or power to approve any action or agree to any discretionary approval or amendment that would:

- (a) materially detract from the conservation values intended for protection;
- (b) limit the term or result in termination of this Conservation Easement; or
- (c) adversely affect the qualification of this Conservation Easement or the status of the Holder under applicable laws, including the Maine Conservation Easement Act, 33 M.R.S. §§ 476-479-C, and Sections 170(h), 501(c)(3), 2522, and 2031(c) of the

Internal Revenue Code, successor provisions thereof and regulations issued pursuant thereto.

13.G Economic Hardship. In making this grant, Grantors have 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 Grantors 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.

13.H Non-waiver. 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.

13.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.

13.J Standing to Enforce. Only Holder, Grantor and Third Party may bring an action to enforce this Conservation Easement, 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 grant. No owner of a residential lot in the Whipoorwill Subdivision shall have standing to initiate or intervene in an action to enforce this Conservation Easement.

13.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.

13.L Independent Representation. Grantor and Holder acknowledge and agree that they have not received and are not relying upon legal, tax, financial or other advice from each other. Grantor acknowledges that Holder has recommended that it keep independent counsel.

DRAFT

TO HAVE AND TO HOLD the said Conservation Easement unto the said Holder, its successors and assigns forever and the said Third Party Rights unto the said Third Party and its successors and assigns forever.

GRANTOR'S SIGNATURE

IN WITNESS WHEREOF, the said Grantor, WHIPPOORWILL HOMEOWNERS ASSOCIATION, acting by and through Peter R. Smith, its President, hereunto duly authorized, has hereunto set its hand and seal this ____ day of _____, 2017.

Witness

Whippoorwill Homeowners Association

By: Peter R. Smith, President

STATE OF MAINE

County of York

Date: _____, 2017

Then personally appeared the above-named Peter R. Smith, President of the Whippoorwill Homeowners Association, and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of said corporation.

Before me,

Notary Public/Attorney

My Commission Expires:

Type or print name of Notary

HOLDER ACCEPTANCE AND AGREEMENT

The above and foregoing Conservation Easement was authorized to be accepted by the York Land Trust, Inc. and the said Holder does hereby accept the foregoing Conservation Easement, and does hereby agree that such Conservation Easement amends, restates, supersedes and replaces the Original Conservation Easement, by and through Doreen MacGillis, its Executive Director, hereunto duly authorized, this day of _____, 2017.

Witness:

York Land Trust, Inc.

By _____
Doreen MacGillis, Executive Director

STATE OF MAINE

County of York

Dated: _____, 2017

Personally appeared before me the above-named Doreen MacGillis, Executive Director of the above-named Holder, York Land Trust, Inc. and acknowledged the foregoing instrument to be her free act and deed in her said capacity, and the free act and deed of said corporation.

Before me,

Notary Public/Attorney

My Commission Expires:

Type or print name of Notary

THIRD PARTY ACCEPTANCE AND AGREEMENT

The above and foregoing Conservation Easement was authorized to be accepted by the State of Maine, acting by and through the Department of Environmental Protection, and the said Third Party does hereby accept the foregoing Conservation Easement, and does hereby agree that such Conservation Easement amends, restates, supersedes and replaces the Original Conservation Easement, by and through _____, its _____, hereunto duly authorized, this day of _____, 2017.

Witness:

State of Maine
Department of Environmental Protection

By: _____

Title: _____

STATE OF MAINE

County of _____

Dated: _____, 2017

Personally appeared before me the above-named _____, _____ of the above-named State of Maine, Department of Environmental Protection 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 the State of Maine, Department of Environmental Protection.

Before me,

Notary Public/Attorney

My Commission Expires:

Type or print name of Notary

Amended and Restated Conservation Easement

Whippoorwill Homeowners Association

to

York Land Trust, Inc.

on

Property in The Town of York, York County, Maine

EXHIBIT A

The Protected Property is composed of those areas shown and delineated as "Open Space Subject to Conservation Easement" Property on a plan entitled "Revised Standard Boundary Survey 'Whippoorwill' Subdivision, US Route One, York, Maine" by Anderson Livingston Engineers, Inc. dated August 1997 and last revised December 30, 1997 and recorded in the York County Registry of Deeds in Plan Book 239, Page 15. For further reference, the Protected Property is depicted on the sketch map attached hereto and incorporated herein as Exhibit B.

Amended and Restated Conservation Easement

Whippoorwill Homeowners Association

to

York Land Trust, Inc.

on

Property in The Town of York, York County, Maine

EXHIBIT B

YLT's New EXHIBIT B To Be Inserted Here

DRAFT