

## GRANT OF CONSERVATION EASEMENT

**JAMES HINDS AND PATRICIA HINDS**, husband and wife, both of Orono, County of Penobscot, State of Maine, (hereinafter referred to jointly and severally as the "GRANTORS," which word is intended to include, unless the context clearly indicates otherwise, the above-named Grantors, their heirs and assigns, any successors in interest to the Protected Property, and their executors, administrators and legal representatives),

GRANT as a gift to **ORONO LAND TRUST**, a non-profit corporation organized and existing under the laws of the State of Maine, with a mailing address of 100 Bennoch Road, Orono, Maine 04473 (hereinafter referred to as the "HOLDER," which word shall, unless the context clearly indicates otherwise, include the Holder's successors and assigns),

with QUITCLAIM COVENANT, and in perpetuity, the following described Conservation Easement, pursuant to Title 33 M.R.S.A. Section 476 et seq., on land in the Town of Orono, Penobscot County, Maine, hereinafter referred to as the **PROTECTED PROPERTY**, and described on Exhibit A, attached hereto, made a part hereof by reference, and as reflected on a plan entitled "PLAN OF LAND of James and Patricia Hinds SHOWING AREA OF PROPOSED CONSERVATION EASEMENT" dated November 10, 2001 to be recorded, exclusively for conservation purposes as follows:

### - PURPOSE -

*It is the purpose of this easement to provide significant public benefit by protecting and preserving forever the natural and undeveloped state of the Protected Property, its scenic, open and wooded landscape, its availability for low-impact outdoor recreational use, nature observation, and education of the general public; and its viability as high quality wildlife habitat; as more particularly set forth hereinbelow:*

WHEREAS, the Protected Property consists of forty-eight (48) acres, more or less, of natural woodlands, wetlands and grassland that is important to the maintenance of the ecology of the area, and harbors a diversity of plant and animal life as well as a diversity of natural features and habitat, including an upland forest, stand of cathedral pines, freshwater wetlands, marsh and perennial stream, and together comprise an unusual expanse of substantially natural and undeveloped parcel of land that provides important wildlife habitat, scenic enjoyment when viewed from Taylor Road, and opportunities for low-impact outdoor recreation for the general public; and

WHEREAS, the Protected Property is in close proximity to, and shares both scenic and ecological values with "Boulder Pond".

WHEREAS, the Protected Property consists of a hardwood and softwood forest, and wetlands that are important to the maintenance of the integrated ecosystem of the area and harbor a diversity of plant and animal wildlife; and

WHEREAS, the Protected Property also lies in proximity to several other permanently conserved lands, managed by the HOLDER; and

WHEREAS, the Protected Property, is subject to considerable development pressure for uses more intensive than those permitted in this Conservation Easement and that would have an adverse impact on the current diversity of sensitive wildlife habitat; and

WHEREAS, under this Conservation Easement, the Protected Property will be forever preserved in its substantially undeveloped state as prime wildlife habitat and scenic open space, and its riparian resources will continue to support high quality wildlife habitat.

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

### ***TERMS, COVENANTS AND RESTRICTIONS -***

#### **1. General Land Use.**

The Protected Property may be used only for conservation, low-impact outdoor recreation, nature observation and study. No residential, industrial, quarrying, or mining activities are permitted on the Protected Property. No commercial activities are permitted on the Protected Property, except for low-impact outdoor educational and recreational activities consistent with the restrictions of this Conservation Easement. No logging or commercial forestry except for *de minimus* activity for trail and parking facility construction and maintenance for safety reasons are permitted.

The Protected Property may not be divided, subdivided, partitioned or otherwise conveyed in parcels, except that any part thereof may be transferred to and owned by a non-profit conservation organization or public agency for conservation purposes. Under no circumstances may the Protected Property be used to determine the gross lot size or in any way to increase the permitted density of development on land not subject to this Conservation Easement.

No dumping or burial of waste materials of any nature is permitted on the Protected Property, except that compost and other vegetative waste resulting from permitted uses of the Protected Property may be left to remain thereon, and other waste from permitted uses shall be contained in appropriate receptacles for removal at reasonable intervals.

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 approved in advance and in writing by Holder, pursuant to a recommendation in writing by a recognized forestry or conservation professional that such use will mitigate greater harm to the conservation values of the Protected Property.

## **2. Restrictions and Reserved Rights.**

As of the date of this grant, the Protected Property is in a substantially unaltered natural state, with wetlands, marsh, natural grasslands, shrub/scrub open areas, and mixed woodlands.

There are no surface alterations on the Protected Property except for trails. There are no structures on the Protected Property except for boundary markers, old cellar holes, and old fences.

No additional structures, temporary or permanent, no cutting or removal of vegetation, and no additional alterations to the surface of the earth are permitted on the Protected Property except to accomplish the following rights, reserved by Grantors, for themselves, their heirs and assigns:

A. **General Land Use:** Except as expressly limited herein, Grantors reserve all rights as owners of the protected Property, including the right to use the Protected Property for all purposes not inconsistent with this grant.

B. **Structures:** Grantors reserve the right to locate on the Protected Property, only boundary markers and other minor structures that complement the natural features of the landscape and are designed and used to enhance opportunities for low-impact outdoor recreation, nature observation and study, such as small unlighted signs, benches, boardwalks, railings, steps, gates, waste receptacles, barriers or gates to discourage use by motor vehicles, protect fragile areas and public safety. Grantors also reserve the right to establish a flowed area for wildlife habitat enhancement, but only with the prior written approval of Holder as to design, means of construction, location, and absence of material harm to existing habitat types and other conservation values of the Protected Property.

C. **Surface Alterations:** Grantors reserve the right to alter the surface as necessary to accomplish the activities permitted herein, and the right to maintain the existing trails and to establish additional footpaths, and, with the prior written consent of Holder, to establish and maintain a small unpaved parking area to accommodate public use of the Protected Property, provided that the disturbed surrounding area must be restored to a condition consistent with the scenic character and conservation values of the Protected Property.

**D. Vegetation Management:** Grantors reserve the right, after consultation with Holder, except in emergency circumstances, to selectively cut and prune shrubs and forest vegetation for the following non-commercial purposes:

- 1) to accomplish the rights reserved in Section 2B. and 2C.;
- 2) to enhance the scenic character of the Protected Property, including the establishment of views from trails;

Grantors reserve the right, subject to the prior written approval of Holder, to selectively cut and prune shrubs and other vegetation for the following additional non-commercial purposes:

- 3) to create and maintain open areas to enhance wildlife habitat;
- 4) to combat active fire and to reduce the threat of fire;
- 5) to control or prevent the spread of disease.

### **3. Public Use.**

Notwithstanding the other provisions of this grant of easement, the Grantors reserve specifically and exclusively to James Hinds and Patricia Hinds the right to control public access to the Protected Property except for that portion of the Protected Property as depicted on a "Sketch Map of Proposed Hinds Easement" prepared as part of Baseline Data, as areas E-1, E-2, and E-3 lying easterly of "Meadow Brook" and a 25 foot strip of land adjacent to another 25 foot strip of land around Boulder Pond. This exception consists of approximately 16 acres more or less. This right to control access shall be retained by James and Patricia Hinds only so long as they continue to occupy the premises located at 254 Forest Avenue, Orono, Maine. After said occupation the right to control access shall be automatically extinguished.

Grantors and Holder agree to refrain from taking any action to prohibit or discourage use of and access to the Protected Property by the general public for low-impact daytime non-motorized outdoor recreation uses, such as fishing, walking, picnicking, nature observation, and other such activities that have minimal impact on the natural and scenic character of the Protected Property, except to the extent that such activities are determined by Holder, in writing, to be detrimental to the conservation values and responsible stewardship of the Protected Property. Grantors and Holder agree that motorized vehicles are permitted solely for the purpose of maintaining the Protected Property for the uses set forth herein. Grantors and Holder have the right to jointly establish rules and guidelines for public use designed to encourage respectful public use that does not unreasonably disturb plant or wildlife habitat, permitted use by

other members of the public, or the quiet use and enjoyment of nearby private land. Such rules may be posted on the Protected Property.

Although the Protected Property is available for low-impact pedestrian use by the general public, neither Grantors nor Holder are under any obligation to establish or maintain the structures, roadways, footpaths, or a parking area. In the event that Holder or Grantors undertakes to establish trails, woodroads or minor structures designed to enhance opportunities for low-impact outdoor recreation, they shall do so pursuant to a jointly-established written management plan, as provided in Paragraph 4.A.

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

#### 4. Holder's Rights.

- A. Holder shall have the right, but not the obligation, to co-manage the Protected Property with Grantors, for public use and all other conservation activities permitted under this Conservation Easement, pursuant to a jointly-established written management plan.
- B. Holder has the right to enter the Protected Property, at a reasonable time and in a reasonable manner that is consistent with the conservation purposes hereof, to survey the Protected Property, to inventory its ecological resources, to plan for and manage public recreational uses, to inspect for compliance with the terms of this Conservation Easement.
- C. Holder has the right to enforce the terms of this grant by actions at law or in equity, including the right to require restoration to its condition prior to any breach hereof.
- D. Holder has the right to require that Grantors' reserved rights be exercised in a manner that avoids unnecessary harm to the conservation values to be protected by this Easement.
- E. Holder has the right to assign this Conservation Easement, but only after consultation with Grantors, and only to an entity that as a condition of transfer agrees to uphold the conservation purposes of this grant, and satisfies the requirements of Section 170(h)(3) of the Internal Revenue Code of 1986, (or successor provisions thereof) and the requirements of Section 476(2) of Title 33

of the Maine Revised Statutes Annotated, as amended (or successor provisions thereof). This conservation easement shall not be extinguished by the doctrine of merger.

**5. Conservation Easement Requirement Under Maine Law And U.S. Treasury Regulation.**

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

B. This Conservation Easement is established exclusively for conservation purposes pursuant to the Internal Revenue Code, as amended (hereinafter referred to as the "Code") at Title 26, U.S.C.A., Section 170(h)(1)-(6) and Sections 2031(c), 2055 and 2522, and under Treasury Regulations at Title 26 C.F.R. §1.170A-14 *et seq.*, as amended.

C. The Holder is qualified to hold conservation easements pursuant to Title 33, Maine Revised Statutes Annotated, Section 476(2)(B), as amended, and is a Qualified Organization under Code Section 170(h)(3), to wit: A publicly-funded, non-profit 501(c)(3) organization operated primarily to accept lands, easements, and buildings for the purpose of preserving and protecting natural, scenic, educational, recreational and open space values of real property, having a commitment to protect the conservation purposes of the donation, and the resources to enforce the restrictions hereof.

D. This Conservation Easement is assignable, but only to a non-governmental entity that satisfies the requirements of Code Section 170(h)(3) (or successor provisions thereof), and the requirements of Section 476(2)(B) of Title 33 of the Maine Revised Statutes Annotated, as amended (or successor provisions thereof), and that as a condition of transfer, agrees to uphold the conservation purposes of this grant. In the event that such a qualified non-governmental transferee is not available, Holder has the right to transfer this Conservation Easement to a qualified governmental entity, after prior consultation with Grantors.

E. In accordance with Federal Regulations affecting qualified conservation contributions, this Conservation Easement, in Paragraphs 2 and 6, requires Grantors to notify Holder prior to undertaking any activity or exercising any reserved right that may have a material adverse effect on the conservation purposes of this grant.

F. In order to establish the present condition of the Protected Property and its natural and scenic resources so as to be able to monitor properly future uses of the Property and assure compliance with the terms hereof, Holder and

Grantors have prepared an inventory of the Property's relevant features and conditions (the "Baseline Data"), and will certify the same as an accurate representation of the condition of the Protected Property as of the date of this grant.

G. Grantors represent that as of the date of this grant there are no liens or mortgages outstanding against the Protected Property, except any listed in Exhibit A, and subordinated to this grant. The rights of the Holder to enforce the terms, restrictions and covenants created under this easement shall not be extinguished by foreclosure of any mortgage or any publicly or privately placed lien, regardless of date. Holder's rights hereunder shall be paramount to any subsequently placed mortgage or lien, except with respect to Holder's right to monetary damages based upon a violation that occurs subsequent to recording of such mortgage or lien. Holder may execute limited subordination to this effect upon request by Grantors.

H. This Conservation Easement constitutes a property right owned by the Holder. Notwithstanding that this Conservation Easement is an obligation, and not a financial asset, should it be extinguished, which may be accomplished only by court order, Holder is entitled to a share of the proceeds of any sale, exchange or involuntary conversion of the unrestricted property, according to Holder's proportional interest in the Protected Property as determined by Treasury Regulations 1.170-A-14 (g)(6)(ii). Holder's proportional interest is determined as of the date of this grant and will not include value attributable to improvements to the Protected Property made after the date of this grant. Holder will use such proceeds for its conservation purposes.

## 6. General Provisions.

A. **Notices:** Any notices or requests for approval required or contemplated hereunder shall be made by certified mail, return receipt requested, addressed to Orono Land Trust, 100 Bennoch Road Orono, ME 04473, or to such other person or address designated in writing by Holder. Grantors' notices must include sufficient information to enable Holder to determine whether Grantors' plans are consistent with the terms of this Conservation Easement and the conservation purposes hereof.

B. **Taxes:** Grantors are responsible to pay and discharge when due all property taxes and assessments and to avoid the imposition of any liens that may impact Holder's rights hereunder.

C. **Maintenance and Insurance:** Grantors are responsible for ownership, control, management, operation, maintenance, and upkeep of the Protected Property, and all costs thereof, except for those activities undertaken and costs incurred by Holder pursuant to Paragraphs 3, 4.A., and 4.B., and

will, to the fullest extent permitted by law, defend, release, relieve, hold harmless and indemnify Holder, its officers, directors, agents, and employees therefrom, and from any claims for damages which arise therefrom, except for harm proximately caused by the negligent act or misconduct of Holder, its assignees, employees or agents, or as may arise out of its workers' compensation obligations. Grantors shall secure and keep in force a general public liability insurance policy covering the Protected Property with a combined single liability limit of not less than \$300,000.

**D. Owners' Obligation:** A person's obligation hereunder as a Grantor or successor owner will cease, with respect to the Protected Property, if and when such person or entity ceases to have any present, partial, contingent, collateral or future interest in the Protected Property, but only to the extent that it is in compliance herewith. Responsibility of owners for breaches of this Conservation Easement that occur prior to transfer of title will survive such transfer.

**E. Boundary Maintenance:** The boundaries of the Protected Property must be adequately marked and maintained to permit Holder to carry out its responsibilities hereunder. At Holder's request in writing, the location or condition of a boundary shall be re-established by survey and/or marked by brushing out or other means consistent with the purposes of this grant. The cost of such work shall be borne by Holder.

**F. Baseline Data:** In order to establish the present condition of the Protected Property and its natural and scenic resources and its traditional landscape qualities, so as to be able to monitor properly future uses of the Property and assure compliance with the terms hereof, Holder and Grantors are preparing an inventory of the Property's relevant features and conditions (the "Baseline Data"), and will certify the same as an accurate representation of the condition of the Protected Property as of the date of this grant.

**G. Proceeds:** This Conservation Easement constitutes a property right owned by the Holder. Notwithstanding that it is an obligation and not a financial asset, should it be extinguished, which may be accomplished only by court order, Holder is entitled to a share of the proceeds of any sale, exchange or involuntary conversion of the unrestricted property, according to Holder's proportional interest in the Protected Property as determined under Treasury Regulations 1.170-A-14 (g)(6)(ii).

**H. Counterparts:** The parties may execute this instrument in counterparts, which shall in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument against any party who has signed it, and the text of one with the signature pages of each counterpart may be recorded, and shall be controlling in the event of any disparity.

IN WITNESS WHEREOF, the said Grantors, James Hinds and Patricia Hinds, have hereunto set their hands and seals this 28<sup>th</sup> day of December, 2001.

[Signature]  
Witness:

[Signature]  
Witness:

[Signature]  
James Hinds

[Signature]  
Patricia Hinds

STATE OF MAINE  
COUNTY OF PENOBSCOT, ss.

December 28, 2001

Personally appeared the above-named James Hinds and Patricia Hinds, acknowledged the foregoing instrument to be his free act and deed.

Before me, [Signature]  
Notary Public/Attorney

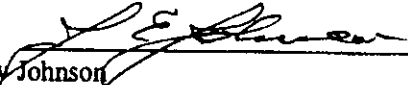
David A. Chase  
(Please type or print name of notary)

My commission expires:

**HOLDER'S ACCEPTANCE.**

The above and foregoing Conservation Easement was authorized to be accepted by ORONO LAND TRUST, Holder as aforesaid, and the said Holder does hereby accept the foregoing Conservation Easement, by and through Jay Johnson its President, hereunto duly authorized, this            day of December, 2001.

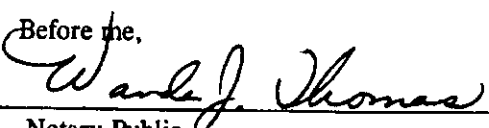
**ORONO LAND TRUST**

  
By: Jay Johnson  
its: President

STATE OF MAINE  
COUNTY OF Penobscot, ss.

December 31, 2001

Personally appeared Jay Johnson the President and authorized representative of the above-named Holder, Orono Land Trust, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said corporation.

Before me,  
  
Notary Public



\_\_\_\_\_  
(Please type or print name of notary) WANDA J. THOMAS  
MY COMMISSION EXPIRES  
My commission expires: APRIL 13, 2007

No Transfer Tax Paid

PENOBSCOT COUNTY, MAINE  
  
Register of Deeds