

## CONSERVATION EASEMENT

### RECITALS

BY THIS INDENTURE, made this 28th day of November 2006, by Bryan and Aphrodite Pearce (hereinafter referred to as the "Grantor" which word, where the context requires, includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors, assigns, lessees, tenants and other occupiers and users) with address of 117 Forest Avenue, is the owner in fee simple of certain real property located in Orono, Maine, County of Penobscot, (hereinafter "Property") and meaning and intending to convey a portion of land now or formerly of Bryan R. Pearce and Aphrodite M. Pearce, as described in deed recorded in the Penobscot County Registry of Deeds, Volume 3251, Page 149.

WHEREAS the Grantor intends to grant a Conservation Easement situated in the Town of Orono, County of Penobscot, State of Maine bounded and described as follows:

SEE EXHIBIT A APPENDED

(hereinafter "Easement Area"); and

WHEREAS, The Orono Land Trust, having a principal place of business at 8 Bennoch Road, Orono, Maine (hereinafter referred to "Grantee" which word shall include all successors, assigns, agents and designees) has determined that it would be in the public interest to retain, maintain, and preserve that portion of the Property designated as the Easement Area as open space, in its natural state; and

WHEREAS, Grantor is willing, in consideration of the need to preserve the natural, scenic, aesthetic and special character of the property, and desires to conserve and protect the property as a natural habitat for amphibians, birds, wildlife, plants and similar ecosystems, the Grantor hereby grants in perpetuity to the Grantee, a *conservation easement* (hereinafter "Easement") on the Property; and

WHEREAS, the Grantee agrees, by accepting this grant, to honor the intention of the Grantor as stated herein, and to preserve and protect in perpetuity the conservation values of the Property;

NOW THEREFORE, be it known that Bryan and Aphrodite Pearce do hereby grant, release and dedicate to The Orono Land Trust a *conservation easement* in perpetuity over the Easement Area.

1. PURPOSE

The Easement is hereby granted exclusively for the following conservation purposes:

To have the Property remain in its present natural and open condition in order for it to fulfill its present historic, scenic, vegetative, wildlife and/or hydrological functions, and to provide public access and public benefit by its availability for nature observation and education.

2. USE LIMITATIONS

Grantor intends that this Easement will confine the use of the Easement Area in perpetuity to such activities as are consistent with the purposes of this Easement. Any activity on or use of the Easement Area inconsistent with the purposes of this Easement is prohibited. The following limitations shall apply:

- a. The Easement Area shall not be subdivided and none of the individual tracts, which together comprise the Easement Area, shall be conveyed separately from one another.
- b. The Easement Area shall be maintained in perpetuity as open space without there being conducted thereon any industrial, commercial, agricultural or forestry activities. Agricultural and forestry shall include animal husbandry, floricultural, horticultural activities, the production of plant and animal products for domestic or commercial purposes, the growing, stocking, cutting and sale of forest trees of any size capable of producing timber or other forest products and the processing and sale of products produced on the property (e.g., maple syrup).
- c. No structures, improvements or alterations, including but not limited to, a dwelling, any portion of a subsurface wastewater treatment and disposal system, mobile home, utility tower, or wireless communication facility shall be constructed, placed or introduced onto the Easement Area.
- d. No removal, filling, or other disturbances of soil nor any changes in the topography, surface or subsurface water systems, wetlands or natural habitats shall be allowed other than the maintenance of existing rough trails.
- e. No mining, quarrying, excavation or removal of rocks, minerals, gravel, sand, topsoil or other similar materials shall be allowed on the Easement Area.
- f. The placement of signs, billboards or other advertising materials or structures of any kind is prohibited except for any signage of the Orono Land Trust that conveys information about the property or marks the boundary of the area.
- g. There shall be no use of pesticides, poisons, biocides or fertilizers. draining of wetlands, burning of marshland or disturbances or changes in the natural habitat of the premises except for pesticides or herbicides determined necessary for the control of invasive species by the Orono Land Trust and approved for use by the appropriate regulatory agencies.

- h. There shall be no manipulation or alteration of the natural watercourses, lakeshores, marshes or other water bodies, nor shall any uses of or activities upon the property be permitted which could be detrimental to water purity or to any vegetative, wildlife or hydrological function.
- i. There shall be no operation of vehicles, snowmobiles, dune buggies, motorcycles, mini-bikes, go-cars, all-terrain vehicles, or any other type of motorized vehicle upon the property except motorized wheelchairs.
- j. There shall be no storage or placement of equipment, natural or man-made materials or substances upon the premises. Non-intrusive research equipment is not included as a prohibited activity.
- k. There shall be no dumping, burning, release, burial, injection, or disposal of any type of material on the Easement Area.
- l. Any other disturbances of the property except for those activities explicitly authorized by the Department of the Army, New England District Corps of Engineers Compensatory Plan for Permit No. NAE-2005-2020 and referenced under Section 4. Reserved Rights.

3. EXCEPTIONS

The Grantor may enter upon the Property to conduct the following activities after written application and approval from the Grantee and any other local or state agencies for which approval is required:

- a. Removal of debris, dead trees, or brush for the purpose of promoting safety and aesthetic quality.
- b. Pruning and thinning live trees and brush for the purpose of promoting safety and aesthetic quality.
- c. Planting of trees, shrubs, or other vegetation for the purpose of promoting wildlife or aesthetic quality.
- d. Grading and landscaping at the direction and approval of the Town Engineer and/or any other local or state boards/agencies.
- e. Maintain, repair and replace existing utilities.

4. RESERVED RIGHTS

This Easement is created solely for the protection of the Property and Grantor reserves the ownership of the fee simple estate and all rights appertaining thereto, including without limitation to use the Property for all purposes consistent with this Easement. Grantor will pay all property taxes and assessments that may impact the Grantees

interests. The Grantee will monitor use of the site to ensure the goals of this Conservation Easement are not violated.

The Grantor reserves to itself the right to create, restore, remediate, monitor and maintain those areas within the easement as required by the Compensatory Mitigation Plan Permit No. NAE-2005-2020 issued by the Department of the Army, New England District Corps of Engineers, dated June 7, 2006.

5. COMPLIANCE INSPECTION

The Grantor expressly authorizes the Grantee, its duly authorized designee or agent and to enter upon the lands subject to this Easement for the purpose of determining compliance with the terms and conditions contained within this document.

6. MARKING OF PROPERTY

Boundaries of easement area must be adequately marked and maintained to permit Grantee to carry out its responsibilities. At Grantees request Grantor shall reestablish the boundaries by means consistent with this conservation easement. Cost of such work will be borne by the Grantor.

7. PROPERTY TRANSFERS

Grantor shall include the following notice on all deeds, mortgages, plats, or any other legal instrument used to convey any interest in the Property. Failure to comply with this paragraph does not impair the validity or enforceability of this Easement:

NOTICE: This Property is Subject To a Conservation Easement recorded at *[insert book and page references, Penobscot) and date of recording.]*

Grantor agrees to notify Grantee, in writing, twenty-one (21) days before transfer of title to the subject property.

Grantee shall be under no obligation to maintain the Easement Area or pay any taxes or assessment thereon.

8. FUNDING

Grantor will contribute \$2000.00 to Orono Land Trust as a fund for defense and stewardship of easement area when the conservation easement is recorded in the registry of deeds.

9. BENEFITS AND BURDENS

The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity. The benefits of said Easement shall not be appurtenant to any particular parcel of land but shall be in gross

and assignable or transferable to another qualified organization, which organization has among its purposes the conservation and preservation of the land and water areas and agrees to and is capable of enforcing the conservation purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

10. NOTICES

All notices, requests and other communication required or permitted to be given under this Easement shall be in writing and shall be delivered in hand or via Certified Mail, return receipt requested, to the appropriate address set forth in this Easement or at such other address as the Grantor or Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or mailed.

Said Grantor further covenants and agrees to provide a copy of the Conservation Easement by means of a notice by Certified Mail, return receipt requested, to the last known address of any person or entity who hereafter shall have any possessory interest in the subject property, including but not limited to any tenants, successors, or assigns. Failure of said Grantor to provide such notice shall not constitute any waiver of the Grantee's rights herein.

11. BREACH OF EASEMENT

a. If a breach of this Easement, or conduct by anyone inconsistent with this easement, comes to the attention of the Grantee, it shall notify the Grantor, in writing, of such breach of conduct, delivered in hand or by Certified Mail, return receipt requested.

b. Grantee has the right to enforce the terms of this grant by actions as law or in equity, including the right to require restoration to its condition prior to any breach hereof.

c. The Grantee may not bring an action against the Grantor for modifications to the property resulting from causes beyond the owners' control, including, but not limited to unauthorized actions by third parties, natural disasters such as unintentional fires, floods, storms, natural earth movement, or even the owners' well-intentioned action in response to an emergency resulting to changes in the property. The owner will work with Grantee to mitigate damages as much as possible under this Conservation Easement for such unintended modifications. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the conservation purposes of this Easement.

d. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damages to the property, or to prevent action or potential action which is determined to be inconsistent with the stated purposes of this Easement, the Grantee may pursue any remedy it deems appropriate to correct such breach, without prior notice to the Grantor or without waiting for the period provided to cure to expire.

e. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair Grantee's rights or remedies or be construed as waiver.

12. PROTECTION FROM LIABILITY

Grantor and Grantee 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. § 159-A, et seq., as it may be amended from time to time (the Maine Recreations Use Statue), and any successor provision thereof, and any other applicable provision of law or equity.

13. SEVERABILITY

If any provision of this Easement, or the application thereof to any person or circumstances, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement or the application of such provisions to persons of circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

14. MERGER

The Grantor and Grantee agree that it is their express intent that the provisions of the Easement set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to the Grantee or any successor or assignee shall be deemed to eliminate the Easement, or any portion thereof, granted under the doctrine of "merger" or any other legal doctrine.

15. CONDEMNATION

a. Whenever all or any part of the Easement Area is taken in exercise of eminent domain by a public, corporate, or other authority so as to abrogate in whole or in part the Easement conveyed hereby, the Grantor and the Grantee shall thereupon act jointly to recover the full damages from such taking, with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.

b. The balance of the land damages recovered (including, for the purposes of this subsection, proceeds from any lawful sale, in lieu of condemnation, of the Property unencumbered by the restrictions hereunder) shall be divided between the Grantor and Grantee in proportion to the fair market value of their respective interests in that part of the Property condemned on the date of execution of this Easement. For this purpose, the Grantee's interest shall be the amount by which the fair market value of the Property immediately prior to the execution of this Easement is reduced by the use limitations imposed hereby. The values of the Grantor's and Grantee's interest shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation.

c. The Grantee shall use its share of the proceeds in a manner consistent with the conservation of land and natural resources.

16. ASSIGNMENT

In the event that the Grantee intends to dissolve or otherwise discontinue exercise of the rights granted under this easement, the Grantees interests are assignable upon written notice to Grantor to a like agency. (e.g. Bangor Land Trust).

Grantor hereby affirms that it is the sole owner of the property in fee simple and has the right to enter into this Conservation Easement and to grant and convey the Easement. The property is free and clear of all liens and encumbrances, including but not limited to any mortgage not subordinated to this Easement.

The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

IN WITNESS WHEREOF, the Grantors duly executed this Conservation Easement under seal this 28th day of November, 2006.

IN THE PRESENCE OF:

GRANTORS:

[type name of witness under signature line] Bryan R Pearce  
Bryan R. Pearce

Aimee Smith  
[type name of witness under signature line] Aphrodite M. Pearce  
Aimee Smith Aphrodite M. Pearce

STATE OF MAINE  
COUNTY OF PENOBSCOT

On this the 28th day of November 2006, personally appeared the above named ~~Bryan R. Pearce~~ and Aphrodite M. Pearce and acknowledged the foregoing instrument to be there free act and deed.

Kimberly S. McBurnie

My Commission Expires: Kimberly S. McBurnie  
**NOTARY PUBLIC**  
State of Maine  
My Commission Expires 7/6/2012

IN WITNESS WHEREOF, the Grantee duly executed this Conservation Easement under seal this 28th day of November, 2006.

IN THE PRESENCE OF:

GRANTEE:

Aimee Smith  
[type name of witness under signature line] Orono Land Trust  
Aimee Smith By: Gail P. White, President

STATE OF MAINE  
COUNTY OF PENOBSCOT

On this the 28th day of November 2006, personally appeared the above named, Gail P. White, President of the Orono Land Trust, and acknowledged the foregoing to be her free act and deed in her capacity and the free act and deed of the Orono Land Trust.

Kimberly S. McBurnie

My Commission Expires: Kimberly S. McBurnie  
**NOTARY PUBLIC**  
State of Maine  
My Commission Expires 7/6/2012

EXHIBIT A

*Subject: Written Description for Conservation Easement*

*Date: November 3, 2006*

*A certain easement situated in the Town of Orono, County of Penobscot, State of Maine, bounded and described as follows:*

*Beginning at a point on the southwesterly line of land now or formerly of Bryan R. Pearce and Aphrodite M. Pearce, said point being N 54° 16' 50" W, 140.0 feet, from the southeasterly corner of land of said Pearce, as described in deed recorded in the Penobscot County Registry of Deeds, Volume 2880, Page 230;*

*THENCE: N 47° 08' 14" E, a distance of 295.2 feet, to a point;*

*THENCE: N 00° 21' 03" W, a distance of 117.4 feet, more or less, to a point on the northeasterly line of said Pearce;*

*THENCE: N 45° 19' 21" W, by and along the northeasterly line of said Pearce, a distance of 202.9 feet, more or less, to an iron pipe;*

*THENCE: N 43° 57' 59" W, by and along the northeasterly line of said Pearce, a distance of 90.6 feet, to a point;*

*THENCE: S 46° 24' 10" W, a distance of 439.7 feet, more or less, to a point on the southwesterly line of said Pearce;*

*THENCE: S 54° 16' 50" E, by and along the southwesterly line of said Pearce, a distance of 381.8 feet, more or less, to the point of beginning.*

*The above-described parcel contains 3.41 acres, more or less.*

*EXCEPTING AND RESERVING FROM THE ABOVE DESCRIBED PARCEL: Any and all easements and rights of way, now or formerly of the Orono-Veazie Water District, as it pertains to an existing waterline located on the above-described easement.*

*Meaning and intending to convey an easement on land now or formerly of Bryan R. Pearce and Aphrodite M. Pearce, as described in deeds recorded in the Penobscot County Registry of Deeds, Volume 3257, Page 149 and Volume 2880, Page 230.*

*The above description based on plan entitled "Standard Boundary Survey of 117 Forest Avenue, Orono, Maine, Penobscot County, as drawn for Bryan R. Pearce & Aphrodite M. Pearce", dated July 22, 2000, as prepared by Down to Earth Professional Land Services.*

*The above description also based on plan entitled "Final Subdivision Plan of Shadbush Lane Subdivision, Forest Avenue, Orono, Maine, Penobscot County, as drawn for Boathouse Associates", dated September, 2006, as prepared by Down to Earth Professional Land Services.*

## EXHIBIT A

A certain easement situated in the Town of Orono, County of Penobscot, State of Maine, bounded and described as follows:

Beginning at a point on the southwesterly sideline of Forest Avenue, said point also being the northwesterly corner of land now or formerly of Bryan R. Pearce and Aphrodite M. Pearce, as described in deed recorded in the Penobscot County Registry of Deeds, Volume 8083, Page 243;

THENCE: S 44° 48' 31" W, by and along the northwesterly line of said Pearce, a distance of 189.8 feet, to an iron pipe;

THENCE: N 46° 55' 28" W, by and along the northeasterly line of said Pearce, as described in deed recorded in the Penobscot County Registry of Deeds, Volume 3257, Page 149, a distance of 95.2 feet, more or less, to the northwesterly line of said Pearce;

THENCE: S 37° 12' 13" W, by and along the northwesterly line of said Pearce, a distance of 20.2 feet, to a point;

THENCE: S 46° 55' 28" E, through the land of said Pearce, a distance of 112.6 feet, to a point;

THENCE: N 44° 48' 31" E, through the land of said Pearce, a distance of 207.2 feet, more or less, to the southwesterly sideline of said Forest Avenue;

THENCE: N 45° 48' 31" W, by and along the southwesterly sideline of said Forest Avenue, a distance of 20.0 feet, to the point of beginning.

This description INCLUDES the Trail Easement granted to Orono Land Trust by the Town of Orono, dated September 21, 2001 and recorded in Volume 7886, Page 317 of the Penobscot County Registry of Deeds. The purpose of including this deed is to clarify the new description is continuous to the description in Volume 7886, Page 317 of said registry and together forms an L shaped trail.