

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 13th day of November, 1997, by FREDERICK H. BALDWIN, JR., TRUSTEE OF BRADFORD REALTY TRUST, doing business at 529 Route 1, Suite 101, York, Maine, 03909, (hereafter referred to as the "Grantor"), in favor of the York Land Trust, Maine (hereafter referred to as the "Holder"), and the State of Maine by and through its Department of Environmental Protection, (hereafter referred to as the "Third Party").

WITNESSETH

WHEREAS, this Indenture is created pursuant to Title 33, Maine revised Statutes, Sections 476 through 479-B, inclusive, as amended;

WHEREAS, the Grantor holds title to certain real property situated in York, Maine described being all those portions shown as "Open Space Subject to Conservation Easement" ("Property") on a Plan entitled "Standard Boundary Survey "Whippoorwill" Subdivision, US Route One, York, Maine ("Subdivision") by Anderson Livingston Engineers, Inc. dated November, 1997 and recorded in the York County Registry of Deeds in Plan Book 239, Page 1, and on an Amended Plan entitled "Revised Standard Boundary Survey "Whippoorwill" Subdivision, US Route One, York, Maine" by Anderson Livingston Engineers, Inc. dated "Revised December 30, 1997 and recorded in the York County Registry of Deeds in Plan Book 239, Page 15.

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 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 any building on the Property; by designating pathways in a manner consistent with the ecology of the Property; by strictly limiting any cutting to the necessary maintenance of pathways; by prohibiting the disturbance of any existing stone walls, and by prohibiting any incursion by or use on the Property of any type of motorized vehicle except vehicles required to service or install water mains, pumps, standpipes and related appurtenances owned or to be owned by the York Water District. The York Land Trust shall have the right to use the easement of the York Water Department as a parking area when parking is required for educational purposes. Parking is not allowed by the general public in this area.

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 Property by the conveyance of a Conservation Easement over the Property, which easement shall benefit, protect and conserve the natural values of the Property, conserve and protect the indigenous animal and plant populations, and prevent the use or development of the Property for any purpose or in any manner that would conflict with its natural, scenic condition; and

WHEREAS, the Third Party will receive Third Party Rights of Enforcement under this Deed; and

NOW, THEREFORE, in consideration of the foregoing and the covenants, terms, conditions, and restrictions herein contained, the Grantor hereby GRANTS to the Holder, its successors and assigns, as an absolute and unconditional gift, forever and in perpetuity, a Conservation Easement in gross over the Property as set forth herein (the "Conservation Easement"); and to the Third Party, its successors and assigns, as an absolute and unconditional gift, forever and in perpetuity, rights of enforcement hereunder.

1. PURPOSE

It is the purpose of the Easement to assure that the Property will be retained forever in its natural undeveloped condition and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values of the Property. Grantors intend that this Easement will confine the use of the 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:

- a. The right to preserve and protect the conservation values of the Property;
- b. The right to enter and inspect the Property at any reasonable time and in any reasonable manner provided that the time and manner of such entry does not unreasonably interfere with the uses of the Property permitted hereunder or the quiet enjoyment of other lands of Grantor, and to enforce by proceedings at law or in equity the covenants hereinafter set forth, including the right to require restoration of the Property to its condition prior to any breach hereof; and
- c. The right to prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to Paragraph 6.
- d. The right to erect and maintain temporary and permanent fencing or other appropriate physical barrier to protect fragile or sensitive natural features from damage or destruction.

3. USE OF THE PROPERTY

The Property shall be used for limited recreational and conservation purposes only. No commercial, industrial, quarrying or mining activities shall be permitted on the Property. No structures of any kind whatsoever shall be constructed on the Property, except buildings or standpipes required to provide water to this Whippoorwill Subdivision. Walking paths designed in keeping with the natural scenic quality of the Property and riding paths for horses are allowed. No motor vehicles of any kind, including recreational vehicles, all-terrain vehicles, motorcycles, dirt bikes or snowmobiles shall be permitted on the Property, except in emergency and when necessary to accomplish the rights reserved by Grantor and Holder, their successors and assigns or as required by the York Water Department to maintain, improve or extend the existing water main. No filling, paving, dumping, excavation or other alteration shall be made to the surface of the Property 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 Department to their existing water system. There shall be no taking from or disturbance of the stone walls marking the boundaries of the Property. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited.

A. Public Access: The protected property is primarily for the use and enjoyment of the residents of the Whippoorwill Subdivision and Grantor. The general public will not be excluded unless such use becomes, in the opinion of the parties to this agreement obtrusive or destructive.

The Grantor, or its successors, shall erect and maintain necessary signs at the entrance of pedestrian pathways notifying users that they are entering a conservation area and that motor vehicle use is prohibited and that fires, dumping of refuse or yard waste and cutting of vegetation are not permitted. The use of bicycles shall be permitted only on pathways designated for such use.

4. **RESERVED RIGHTS**

Grantor reserves to itself and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the 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:

- a. The right to the Grantors, their assigns, guests, employees and invitees, to use the Property for recreational purposes which may include hiking, picnicking, bird watching and any other use that is not expressly prohibited above or destructive to the natural values to be conserved herein; and
- b. The right to advertise the Property for sale or rent and to convey the Property, always subject to the terms of this Conservation Easement.

5. **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:

- a. 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 and with the prior written approval of the Holder and the Third Party, when necessary to prevent the spread of disease;
- b. 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; and

6. **WILDLIFE AND WATER QUALITY PROTECTION**

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

- a. 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 blow-downs 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
- b. The use of chemical herbicides, pesticides, fungicides, fertilizers and other agent 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 Property, and approved in advance and in writing by Holder, in accordance with the terms of Paragraph 7 hereof.

7. **NOTICES**

Any notice to Holder required hereunder must be made by certified mail, return receipt requested, addressed to: York Land Trust, P.O. Box 1241, York Harbor, ME 03911; or to such other authorized person hereafter designated in writing by Holder. Any notices to Holder for Holder consent, required or contemplated hereunder, must include, at a minimum, sufficient information to enable Holder to determine whether proposed plans are consistent with the terms of this Conservation Easement and the conservation purposes hereof.

8. MISCELLANEOUS

- a. The terms "Grantors" and "Holders", wherever used herein, and any pronouns used in place thereof, shall mean and include, respectively, the above-named, as well as their heirs, personal representatives, successors and assigns;
- b. The fact that any of these prohibited uses, or other uses not mentioned, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to such non-permitted uses, has been considered by Grantor's in granting this perpetual easement. It is Grantor's belief that any such changes will increase the benefit to the public of the continuation of this easement, and it is the intent of both Grantor and Holder that any such changes should not be deemed to be changed conditions permitting termination of this easement;
- c. The inability to carry on any or all of the above uses, or the unprofitability of doing so, shall not impair the validity of this easement or be considered grounds to terminate it or alter its terms;
- d. If any provisions of this Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby;
- e. The Grantor agrees that reference to and incorporation of this Easement will be made in any subsequent deed, or other legal instrument, by means of which they convey any interest in the Property (including a leasehold interest);
- f. Should this Easement be extinguished by judicial decree and Grantor thereafter sells, exchanges or involuntary converts the Property, Holder Shall be entitled to a portion of the proceeds of such sale, exchange or conversion equal to the proportionate value that this Conservation Easement bears to the value of the otherwise unrestricted Property as of the date of this grant. Any such proceeds received by Holder shall be used for its conservation purposes; and
- g. Should it be necessary at anytime in the future in connection with any actions of the Holder to obtain the agreement or approval of the Grantor, or assigns, in connection with any matter relating to this Conservation Easement, the agreement or approval of the owner or owners of a majority interest in the Property, at that time, shall be deemed to be the agreement or approval of all the owners of the Property.

RIGHTS TO 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 shall determine that the Holder is failing in such enforcement, the Third Party may give 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 enforcement granted the Holder under this Easement.

The Third Party shall also have reasonable access to any and all records of the Holder relevant to the Protected Property.

CONSTRUCTION

If uncertainty should arise in the interpretation of these restrictions, judgment should be made in favor of conserving the Property in its natural, open and scenic condition.

The Grantor, its successor and assigns, agree to bear all costs and responsibility of operation, upkeep, and maintenance of the Property and to pay any and all real property taxes and assessments levied by competent authority on the Property and does hereby relieve, indemnify and hold harmless the Holder therefrom.

The Grantor has provided the Holder with sufficient information to determine the conditions of the Property as of the effective date hereof and has certified that such information is an accurate representation of the same.

SUCCESSORS

The covenants, terms, conditions and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property.

TERMINATION OF RIGHTS AND OBLIGATION

A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement of Property, except that liability for acts or omissions occurring prior to transfer shall survive the transfer.

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, FREDERICK H. BALDWIN, JR., TRUSTEE OF BRADFORD REALTY TRUST, has hereunto set his hand and seal this _____ day of _____, 1997.

BRADFORD REALTY TRUST

Frederick H. Baldwin, Jr.
Trustee

STATE OF MAINE
YORK, ss.

_____, 1997

Then personally appeared the above named Frederick H. Baldwin, Jr., Trustee of BRADFORD REALTY TRUST and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said corporation.

Before me,

Notary Public
My commission expires:

HOLDER'S ACCEPTANCE

The above and foregoing Conservation Easement was authorized to be accepted by York Land Trust, Holder as aforesaid, and the said Holder does hereby accept the foregoing Conservation Easement, by and through Helen Winebaum, its President, hereunto duly authorize, this _____ day of _____, 1997.

THIRD PARTY ENFORCER ACCEPTANCE

The Third Party rights of enforcement granted under the above and foregoing Conservation Easement, pursuant to Title 33 M.R.S.A. Section 476 et seq., were authorized to be accepted by the State of Maine Department of Environmental Protection by _____, its _____, hereunto duly authorize, and the said _____, does hereby accept the above and foregoing Conservation Easement this _____ day of _____, 1997.

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL
PROTECTION