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## Conservation Easement Deed and Indenture

This conservation deed and indenture is made this day between Maximus Associates, a Maine corporation with principal place of business in Portland, Maine ("Grantor"), and the Town of Brunswick, a Maine municipality ("Holder"), and the State of Maine by and through its Department of Environmental Protection ("Third Party").

## WITNESSETH:

WHEREAS, Grantor holds title to approximately ninety four (94) acres of real property situated on Hacker Road in Brunswick, Cumberland County, Maine described on the attached Exhibit A (the "Property"); and

WHEREAS, in connection with Grantor's development of a cohousing community upon a portion of the Property, Grantor wishes to protect in perpetuity the natural, scenic, open space, recreational, agricultural and forest values of approximately 75 acres of the Property described on the attached Exhibit B (the "Protected Premises"), for the benefit of the remainder of the Property and the general public; and

WHEREAS, Holder is qualified and willing to accept the grant of this Conservation Easement Deed and Indenture pursuant the Internal Revenue Code, 26 U.S.C.A. § 170(h)(3), and the Maine Uniform Conservation Easement Act, 33 M.R.S.A. §§ 476 *et seq.*;

NOW, THEREFORE, in consideration of the foregoing and the covenants herein contained, Grantor does hereby GRANT WITH WARRANTY COVENANTS to Holder, its successors and assigns, for the benefit of the general public, a conservation easement over the Protected Premises, subject to the reservation of rights unto Grantor, its successors and assigns, for the benefit of the Protected Premises and the remainder of the Property, and grants to Third Party, its successors and assigns, right of enforcement of such conservation easement in the event of Holder's failure to enforce, all as follows:

1. Purpose. The purpose hereof is to preserve and protect in perpetuity for the benefit of the general public and the remainder of the Property the natural, scenic, open space, recreational, agricultural and forest values of the Protected Premises, through the continuation of responsible conservation practices and agricultural, forest and recreational uses.

2. Affirmative Rights Conveyed to the Holder. Grantor conveys to Holder the following affirmative rights:

- a. The right to identify, to preserve and to protect in perpetuity the natural, scenic, open space, recreational, agricultural and forest values of the Protected Premises.
- b. The right to enter upon the Protected Premises at any time in any manner

that will not unreasonably interfere with the permitted uses being made of the Protected Premises or the remainder of the Property, for the sole purposes of inspection and to take any action as may be necessary, with or without order of Court, to remedy or abate any violation hereof.

c. The right to enforce by proceedings at law or in equity the covenants herein set forth.

d. The right of the Protected Premises to be free of any taint, corruption or pollution of whatever character arising from any use of the Protected Premises in a manner not permitted hereunder.

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

4. Structures. No permanent structures shall be permitted upon the Protected Premises, except that Grantor reserves unto itself, its successors and assigns, the following rights with respect to structures upon the Protected Premises:

a. The right to maintain, repair, and replace the existing structure as of the execution hereof; in addition to the right to store any items within the structure, and the right to improve the structure by fully enclosing it with exterior walls and adding electricity and water; although such improvements will be in keeping with the style of the structure and will not substantially alter its outward appearance.

b. The right to construct, maintain, repair and replace fencing and other unenclosed structures as needed for permitted agricultural, forest and recreational purposes, subject to Holder's approval of the same as avoiding material and permanent adverse impact upon the Protected Premises, such approval not to be unreasonably withheld.

c. The right to construct, maintain, repair and replace wells, lines and pumping facilities, including doghouse-size wooden structures to house such facilities, to provide water for permitted uses of the Protected Premises and for the

remainder of the Property, subject to notification of Holder.

d. The right to construct, maintain, repair and replace boundary monuments and non-commercial directional, cautionary or instructional signage.

5. Surface Alterations. No filling, dumping, excavation or other alterations shall be made to the surface of the Protected Premises other than caused by the forces of nature, except that Grantor reserves unto itself, its successors and assigns, the following rights:

a. The right to graze, cultivate, fertilize, plant and harvest existing open fields for sustainable agricultural purposes.

b. The right to excavate in connection with the construction, maintenance, repair and replacement of permitted structures, provided that previous condition of the adjacent land be thereafter promptly restored.

c. The right to construct, maintain, repair and replace paths to provide pedestrian access for permitted agricultural, forest and recreational purposes.

d. The right to construct, maintain, repair and replace unpaved roadways to provide vehicular access for permitted agricultural and forest purposes, subject to Holder's approval of the same as avoiding or minimizing material and permanent adverse impact upon the Protected Premises, such approval not to be unreasonably withheld.

e. The right to excavate small, select portions of the Protected Premises for ecological studies or archeological purposes, provided that any such excavations shall be done according to generally accepted professional practices and standards, subject to Holder's approval of the same as avoiding or minimizing material and permanent adverse impact upon the Protected Premises, such approval not to be unreasonably withheld.

6. Timber Cutting and Vegetation. The destruction or removal of standing timber, plants, shrubs or other vegetation upon the Protected Premises shall not be permitted, except that Grantor reserves unto itself, its successors and assigns, the following rights:

a. The right to mow and cut shrubs, saplings, grasses and other vegetation to maintain the existing open fields.

b. The right to graze, cultivate, fertilize, plant and harvest existing open fields for sustainable agricultural purposes.

c. 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 when

necessary to prevent the spread of disease in accordance with a plan prepared by a licensed forester, subject to Holder's approval of the same as avoiding material and permanent adverse impact upon the Protected Premises, such approval not to be unreasonably withheld.

d. The right to clear and restore forest cover and other vegetation in the event of an emergency, such as when necessary to prevent the spread of fire.

e. The right to gather, use or remove fallen dead wood and the right to harvest timber for firewood or lumber for permitted structures and uses within the cohousing community (or traded for lumber to be used in the community) or for firewood, lumber or seasonal decorations for non-commercial use in accordance with a harvesting plan prepared by a licensed forester, subject to Holder's approval of the same as avoiding material and permanent adverse impact upon the Protected Premises, such approval not to be unreasonably withheld.

7. Activities. The Protected Premises shall not be used for the following prohibited purposes:

a. Clear-cutting of forest or the practice of non-sustainable forestry methods degrading the habitat value of the Protected Premises.

b. Intensive and non-sustainable agricultural uses adversely affecting the habitat value of the Protected Premises, such as intensive animal husbandry beyond the sustainable carrying capacity of the Protected Premises or agricultural practices relying upon intensive use of synthetic fertilizer, herbicides and pesticides.

c. Non-agricultural commercial, industrial, quarrying or mining activities.

d. Except within the existing structure, placement or use of trailers or campers, provided that such prohibition shall not prevent Grantor, its successors or assigns, from erecting tents for occasional and temporary camping or recreational purposes.

e. Billboards, prominent antennae or telecommunications apparatus.

8. Reserved Rights. Grantor reserves unto itself, its successors and assigns, as owner of the Protected Premises and the remainder of the Property, the right to use (or to regulate or prohibit use of) the Protected Premises for all purposes not inconsistent with rights of Holder under this grant. By way of illustration, and not limitation, Grantor may permit, regulate or prohibit the following:

a. Non-motorized recreational purposes such as camping, hiking, bicycling, horseback riding, skiing.

- b. Gardening, grazing, community supported agriculture, non-intensive animal husbandry, grazing, and cultivation of crops and orchards.
- c. Use of water for permitted uses upon the Protected Premises and for the remainder of the Property.
- d. Hunting and trapping of wildlife.
- e. Use of motorized vehicles for recreational purposes such as motorcycles, motorized bikes, All Terrain Vehicles (ATV's), snowmobiles or aircraft.

9. Construction. If uncertainty should arise in the interpretation hereof, judgment should be made in favor of conserving the Protected Premises in its natural, scenic or open state and to preserve the use of the Protected Premises for recreational, agricultural and forest purposes. Nothing herein shall be construed to permit any activity otherwise prohibited by the valid laws and regulations of any federal, state or local government or government agency having competent jurisdiction over the Protected Premises.

10. Public Access. Grantor agrees not to post against trespass nor to take action to prohibit the general public from entering onto the Protected Premises for low impact, non-motorized recreational purposes, such as nature observation, hiking, horseback riding, cross-country skiing, and the like, provided that night use, fires, use or parking of motor vehicles, snowmobile use, hunting or trapping may be controlled, limited or prohibited by Grantor. Grantor reserves the right to control, limit or prohibit other uses which are reasonably found to adversely affect (i) the safety, welfare or reasonable right of privacy and quiet enjoyment of the owners and occupants of the Property and neighboring land, (ii) other uses of the Protected Premises permitted hereunder, or (iii) the conservation value of the Protected Premises. To exercise such reserved rights, Grantor must first obtain the consent of Holder, as reflected in a finding by the Town of Brunswick Conservation Commission, or another body designated by the Town as responsible for monitoring the easement, that Grantor's proposed control, limitation or prohibition is reasonable in scope and consistent with the intent hereof. Such control, limitation, or prohibition shall impose the least restrictive measures necessary to prevent harm and may be imposed by any reasonable means. Nothing herein shall be construed to preclude the right of Grantor, its successors and assigns, to grant public access across the Protected Premises, provided that such access is allowed in a reasonable manner and does not result in permanent and material adverse impacts upon the Protected Premises. All public use of the Protected Premises shall be at the risk of the user. Nothing herein shall be deemed as affording the public access to any portion of the Property other than the Protected Premises. Nothing herein shall be deemed to grant standing for enforcement hereof to any person not a party hereto. Nothing herein nor any exercise of rights hereunder shall be deemed to impose upon Holder, Grantor or their successors or assigns, any liability to users for the condition of the Protected Premises, nor to waive any immunity or other protection from liability granted by the laws of the State of Maine to any municipality or to the owners of recreational lands.

11. Monitoring. Holder, its successors and assigns, shall make reasonable efforts from time to time to assure compliance by Grantor, its successors and assigns, with all of the covenants and restrictions herein. In exercising its access rights for inspection of the Protected Premises, Holder shall prepare, keep on file and make available to Grantor its monitoring reports for each inspection.

12. Enforcement. In the event Holder becomes aware of an event or circumstance of noncompliance with the terms and conditions herein set forth, Holder shall give notice to Grantor, its successors or assigns, of such event or circumstance of noncompliance via certified mail, return receipt requested, and demand corrective action sufficient to abate such event or circumstance of noncompliance and sufficient to restore the Protected Premises to its condition prior to the breach. Failure by Grantor, its successors or assigns, with reasonable speed to cause discontinuance, abatement or such other corrective action as may be demanded by Holder, shall entitle Holder, at its discretion, to enter the Protected Premises to take such action reasonably necessary to effect such correction without court order, to bring action at law or in equity in a court of competent jurisdiction to enforce the terms hereof, to obtain injunctive relief and to recover any damages arising from such noncompliance. If a court determines a breach hereof, Grantor, its successors or assigns, shall reimburse Holder for any reasonable costs of restoration, correction and enforcement, including without limitation court costs and reasonable attorney fees. Nothing contained herein shall be construed to preclude Grantor, its successors and assigns, from exhausting its legal remedies to determine whether the event or circumstance to which Holder objected was in fact not in compliance with the terms hereof.

13. Estoppel Certificates. Holder shall, within thirty (30) days after written request of Grantor, its successor and assigns, execute, acknowledge and deliver a written certificate in a form suitable for recordation stating that the Grantor, its successors and assigns, as then applicable, is in compliance with the terms hereof, or stating what violations hereof may then exist.

14. Cost and Taxes. Grantor agrees to bear all cost and responsibility of operation, upkeep and maintenance of the Protected Premises and does hereby relieve, indemnify and hold harmless Holder therefrom. In addition, Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Protected Premises. However, nothing contained herein shall preclude Grantor from delegating the responsibility for payment of all costs as aforesaid and the responsibility for operation, upkeep and maintenance of the Protected Premises to any other party with an interest in the Protected Premises or in the remainder of the Property benefitting from the reservation of rights hereunder.

15. Grant in Perpetuity. The conservation easement herein granted shall be a burden upon and shall run with the Protected Premises in perpetuity and shall bind Grantor, its successors and assigns forever. A copy of the restrictions contained herein or incorporation by reference hereof shall be included in any subsequent deed or legal instrument by which

Grantor conveys any interest (including a leasehold) in the Protected Premises.

16. Subsequent Transferees. By acceptance hereof, Holder covenants and agrees, as real covenants running with the land in perpetuity, and not as conditions hereto or as restraints on alienability, (1) that it will hold the conservation easement hereunder in perpetuity for conservation purposes; (2) that it will not transfer rights and obligations hereunder, except to an entity which, as a condition precedent to such transfer, gives Holder assurances that it is committed to the conservation purposes hereof and is able to and agrees to enforce the rights granted herein; and (3) that any such transferee shall be a "Qualified Organization" under Section 170(h)(3) of the Internal Revenue Code and a qualified "holder" under the Maine Uniform Conservation Easement Act, 33 M.R.S.A. §§ 476 *et seq.*, as amended. The rights and obligations of Holder hereunder may not be transferred in any event except with the prior consent of Grantor, its successors and assigns, which shall not be unreasonably withheld.

17. Miscellaneous.

- a. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall mean and include, unless repugnant to the context, the above-named Grantor and its successors and assigns and all persons hereafter claiming by, under or through said Grantor whether or not such persons executed this Conservation Easement Deed and Indenture or had an interest in the Protected Premises or the remainder of the Property as of the execution hereof; notwithstanding the foregoing, such a person shall have no obligation by virtue hereof, if and when such person shall cease to have any present, partial, contingent, collateral or future interest in the Protected Premises or any portion thereof by reason of a bona fide transfer for value (or upon transfer by demise or dissolution), provided such entity shall have received an estoppel certificate from Holder as of the date of such transfer indicating compliance with the terms hereof. The term "Holder", whenever used herein, and any pronouns used in place thereof, shall mean and include, unless repugnant to the context, the above-named "Holder" and its successors and assigns.
- b. The fact that any of the uses prohibited herein, or other uses not mentioned, may become greatly more economically valuable than the permitted uses, or that neighboring properties may in the future be put entirely to such non-permitted uses, has been considered by Grantor 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 Conservation Easement Deed and Indenture and the benefit to the remainder of the Property, and it is the intent of Grantor and Holder that any such changes should not be deemed to be changed conditions permitting termination hereof.
- c. If any provisions hereof or the application thereof to any person, partnership or corporation or circumstance is found to be invalid, the remainder

of the provisions hereof and the application of such provisions to persons, partnerships or corporations or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

d. Should it be necessary at any time in the future in connection with any action of the Holder to obtain the agreement or approval of the Grantor, its successors or assigns, in connection with any matter relating to this Conservation Easement Deed and Indenture, the agreement or approval by consensus of the owner or owners, who are of full age and competent, in the Protected Premises so long as it is owned as a unit, or of each and every parcel making up the Protected Premises if it is hereafter subdivided, shall be deemed to be the agreement or approval of all the owners of the Protected Premises, unless Grantor, its successors and assigns, have conveyed the authority to make such agreement or grant such approval to an entity representing the owners of the remainder of the Property.

e. Grantor and Holder agree that this Conservation Easement Deed and Indenture gives rise to a property right which vests immediately in Holder and which, for the purposes of this paragraph, has a fair market value equal to the amount by which the fair market value of the unrestricted Protected Premises, on the date of the execution hereof, is reduced by the restrictions imposed hereby. Should this Conservation Easement Deed and Indenture be extinguished by judicial decree or the powers of eminent domain and Grantor thereafter sells, exchanges or receives payment for any part or whole of the then unrestricted Protected Premises, Holder shall be entitled to a portion of the proceeds of such a sale, exchange, or involuntary conversion, at least equal to the proportion that the value hereof, as calculated above, bore to the value of the unrestricted Protected Premises on the date of the execution hereof. Such proceeds shall be used by Holder for its conservation purposes.

TO HAVE AND TO HOLD the said conservation easement as aforesaid unto the said Holder and its successors and assigns forever, subject to such reservation of rights unto Grantor, its successors and assigns as owners of the remaining Property.

AND GRANTOR DOES COVENANT with Holder and its successors and assigns that it is lawfully seized in fee of the premises, and that the premises are free of all encumbrances; that it has good right to convey the same to the said Holder to hold as aforesaid; and that it and its successors and assigns shall and will WARRANT AND DEFEND the same to the said Holder, its successors and assigns, forever, against the lawful claims and demands of all persons.

GRANTOR SIGNATURE

IN WITNESS WHEREOF, the said Grantor has hereunto set its hand and seal this \_\_\_\_\_ day of November, 1996.

## MAXIMUS ASSOCIATES

By: Richard R. Berman  
 Print Name: RICHARD R. BERMAN  
 Title: President

HOLDER ACCEPTANCE

The above and foregoing Conservation Easement Deed and Indenture was authorized to be accepted by the Town of Brunswick, Holder as aforesaid, and the said Holder does hereby accept the foregoing, by and through its Town Manager, thereunto duly authorized, this 3<sup>rd</sup> day of December, 1996.

## THE TOWN OF BRUNSWICK

By: Donald H. French  
 Print Name: Donald H. French  
 Title: Town Manager

THIRD PARTY ENFORCEMENT ACCEPTANCE

The third party enforcement rights granted under the above and foregoing Conservation Easement Deed and Indenture were authorized to be accepted by the State of Maine Department of Environmental Protection by Martha Kirkpatrick, its Bureau Director, hereunto duly authorized and the said Martha Kirkpatrick does hereby accept the foregoing, this 12<sup>th</sup> day of December, 1996.

STATE OF MAINE  
 DEPARTMENT OF ENVIRONMENTAL  
 PROTECTION

By: Martha Kirkpatrick  
 Print Name: Martha Kirkpatrick  
 Title: Bureau Director