

**CONSERVATION EASEMENT
ON LAND OF JOHN R. COON and HELEN A. COON
BRUNSWICK, MAINE**

JOHN R. COON and HELEN A. COON, being married, having a mailing address of 63 Bayview Road, Dover, New Hampshire 03820 (hereinafter referred to collectively, as the "Grantor" or "Landowner," which words are intended to include, unless the context clearly indicates otherwise, the above-named Landowners, any successors in interest to the Protected Property and their heirs, personal representatives, successors and assigns).

GRANT as a gift to **THE INHABITANTS OF THE TOWN OF BRUNSWICK**, a municipality established and existing under the laws of the State of Maine, its successors and/or assigns, with a mailing address of 28 Federal Street, Brunswick, Maine 04011 (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, in perpetuity, the following described conservation easement pursuant to Title 33, Maine Revised Statutes, Sections 476, et seq. (hereinafter, the "Conservation Easement") on real estate in the Town of Brunswick, County of Cumberland, and State of Maine more particularly described in **Exhibit A**, and depicted on **Exhibit B**, both attached hereto and made a part hereof (hereinafter referred to as the "Protected Property"), exclusively for conservation purposes as set forth herein below, together with an easement by foot (the "Access Easement") on and across adjacent real property of the Grantor depicted on Exhibit B and the Plan referenced herein and more particularly described in deeds to the Grantor recorded in Book 15900, Page 345 and Book 14450, Page 143 of the Cumberland County Registry of Deeds, such Access Easement to be over an existing woods road in the general location depicted on **Exhibit B** attached hereto for purposes of ingress and egress to the Protected Property for the purpose of monitoring and enforcement of this Conservation Easement in accordance with the terms and conditions set forth herein.

CONSERVATION PURPOSES

The conservation purposes (the "Conservation Purposes") of this Conservation Easement, consistent with the objectives of the open space plan of the Town of Brunswick, are to protect and preserve in perpetuity important natural and open space resources on the Protected Property, including wildlife corridors and habitat areas deserving of protection from additional development, and to maintain and restrict uses of the Protected Property by the Grantor, and by others using the Protected Property with the permission of the Grantor, to limited, Non-Commercial Recreation or conservation activities.

The following recitals more particularly describe the conservation values (the "Conservation Values") of the Protected Property and the significance of this grant.

WHEREAS, the Grantor is the sole owner of the Protected Property, shown and depicted as "Proposed Conservation Easement" on a plan entitled "Proposed Conservation Easement on Land of John R. and Helen A. Coon" by Brian Smith Surveying, Inc., dated November 28, 2007,

to be recorded in the Cumberland County Registry of Deeds on or near the date of this Easement (the “Plan”); and

WHEREAS, the Protected Property consists of approximately 100.82 acres of substantially natural and undeveloped forested and open land providing wildlife habitat, natural ecological, and aesthetic values in its present state, to the surrounding community and the public at large; and

WHEREAS, the Protected Property consists primarily of wooded and wetland areas which provide relatively undisturbed habitat and travel corridors for a broad range of mammals, birds, amphibians, reptiles, and plants that utilize the land forms and natural communities present on the Protected Property and that exist most successfully in undisturbed conditions; and

WHEREAS, the Protected Property is located in the Midcoast area of Maine which is experiencing rapid commercial and residential growth; and

WHEREAS, development of the Protected Property for its most probable and highest economic use, (to wit: residential development), would have an adverse impact on the conservation values associated with the Protected Property; and

WHEREAS, the Town has determined development of the Protected Property would have an adverse impact on the diversity of wildlife habitat, wildlife corridors, and scenic open space in the Town of Brunswick; and

WHEREAS, the Town has identified rural, large continuous blocks of undeveloped forest (“Wildlife Habitat Blocks”) for the purpose of reducing loss of habitat for native species by the adoption of a “Rural Brunswick Smart Growth Overlay District,” which District includes the Protected Property herein; and

WHEREAS, the Grantor and the Holder agree that the continued and permanent protection of the Protected Property for open space, conservation, and Non-Commercial Recreation will make a lasting contribution to the Town of Brunswick;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Grantor and Holder have established this Conservation Easement on, over and across the Protected Property consisting of the following terms, covenants, restrictions and affirmative rights granted to Holder, which shall run with and bind the Protected Property in perpetuity:

COVENANTS AND RESTRICTIONS

1. Land Use

A. The Protected Property may not be used for commercial recreational activities, as now or hereafter defined under Internal Revenue Code Section 2031(c) and regulations promulgated thereunder. The Protected Property may be used for Non-Commercial Recreation as defined in Paragraph 7, and for those uses specifically reserved in Paragraphs 1.B, 3, 4 and 5

by the Grantor. No commercial, industrial, quarrying or surface mining activities are permitted on the Protected Property.

B. The Grantor is prohibited from granting permission to any party for activities that adversely impact natural resources or cause soil erosion, such as the use of motorized vehicles, including, but not limited to, motorized all-terrain vehicles (ATV's), as defined by 12 M.R.S.A. § 13001, or successor regulatory definition mutually agreed-upon by the Grantor and Holder, except as may be reasonably necessary to conduct permitted vegetation management activities on the Protected Property. Notwithstanding the foregoing, the Grantor may grant permission to any party to ride, use or operate snowmobiles, as defined by 12 M.R.S.A. § 13001, on designated trails on the Protected Property. The Grantor may take reasonable actions to discourage use of the Protected Property by motorized vehicles.

C. Utility corridors and through roads are not permitted except for existing easements. In addition, antennae or apparatus for telecommunications and/or radar are not permitted on the Protected Property, nor is the landing or use of aircraft or helicopters permitted on the Protected Property.

D. Subject to any more restrictive local, state, and federal laws and regulations, it is forbidden to dispose of or store rubbish, garbage, building debris, unserviceable vehicles and equipment, parts thereof, hazardous waste, hazardous or toxic substance, or other unsightly or offensive waste material on the Protected Property, except that organic matter, compost and logging debris may be used, stored or disposed of in a manner not detrimental to the Conservation Values of 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.

2. Subdivision.

No division, subdivision, partition or establishment of separate parcels or lots on the Protected Property is permitted, nor may the Protected Property be included as part of the gross tract area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or land area requirements, under otherwise applicable laws, regulations or ordinances controlling land use and building density.

3. Structures.

As of the date of this grant, there are no structures on the Protected Property.

No new structures of any kind, temporary or permanent, may be located on the Protected Property, except however, the Grantor reserves the right, and grants to Holder the right to construct, install, maintain, replace and relocate on the Protected Property minor structures to enhance the opportunity for Non-Commercial Recreation including but not limited to boundary markers; trail markers; horse jumps; trail improvements such as steps, bog bridges, water bars, footbridges, platforms, and railings; gates, barriers or low fences to prevent access by motorized vehicles or to protect fragile areas and areas under active management or study; provided that all

such structures must be designed and located to blend with the natural surroundings and complement the natural and scenic features of the landscape, and to prevent erosion. No new fences may be established on the Protected Property, except within the existing open field area. Fences lower than 4-½ feet and that have at least 16 inches of clearance between the lowest horizontal part of the fence and the ground may be installed and maintained in a manner that their presence does not interfere with wildlife passage.

The Holder must notify the Grantor, and the Grantor must notify the Holder, by certified mail, return receipt requested, in accordance with the provisions of Paragraph 8, prior to the commencement of site preparation, or construction, of any permitted minor structure described herein. Notice must include, at the minimum, sufficient information to enable the Grantor or the Holder to determine whether proposed plans are consistent with the terms of this Conservation Easement and the Conservation Purposes hereof.

4. Surface Alterations.

As of the date of this grant, there are no surface alterations other than a woods trail roughly around the perimeter and a trail through the center of the Protected Property in the approximate locations depicted on Exhibit B attached hereto.

No new filling, dumping, excavation or other alteration may be made to the surface of the Protected Property; except, however, the Grantor reserves the following rights, provided that the disturbed surrounding area must be restored as soon as reasonably possible to a state consistent with the Conservation Values to be protected by this Conservation Easement:

- A. The right to alter the surface to the extent necessary to exercise the rights reserved in Paragraph 3 and Paragraph 5.
- B. The right to maintain unpaved trails for purposes of Non-Commercial Recreation. Construction of any new trail requires prior permission of the Conservation Commission of the Town of Brunswick and must be located and designed in a manner to prevent soil erosion and prevent damage to fragile plant communities and wildlife habitat.

5. Vegetation Management.

As of the date of this grant, the Protected Property is in a predominantly forested condition, with some open field.

No vegetation may be cut, disturbed, altered or removed from the Protected Property, except that the Grantor reserves, for itself and its successors and assigns, the following rights and accepts the following obligation:

- A. The right to alter or remove vegetation as necessary to install, establish and maintain the minor structures permitted under Section 3 and the surface alterations permitted under Section 4.

B. The right to cut, prune, alter, remove and otherwise manage forest vegetation (i) for sustainably-harvested cord wood for non-commercial, personal use by the Grantor, (ii) in order to reduce safety hazards for the uses permitted hereunder, (iii) to improve or enhance wildlife habitat, and (iv) to combat active fire, and to prevent fire, disease or removal of non-native invasive species.

C. The perpetual right to maintain and restore the existing open field on the Protected Property, including through grazing of animals provided that such activity does not cause soil erosion.

D. All of the foregoing vegetation management must be conducted and completed in accordance with all federal, State, and local laws and regulations and in a manner to minimize soil erosion and damage to plant communities, wetlands, water bodies and wildlife habitat and to ensure that the primary Conservation Purposes will continue to be met.

6. Public Use and Access.

Nothing contained herein should be construed as affording the general public physical access to any portion of the Protected Property. Notwithstanding the foregoing, nothing in this Easement should be construed to preclude the Grantor's right to permit Non-Commercial Recreation on the Protected Property by the general public or private groups or individuals, at the Grantor's sole discretion, provided that such use does not conflict with the Conservation Purposes of this Easement. Such uses shall include, but not be limited to, the right, in the Grantor's sole discretion, to permit the Holder to construct an unpaved pedestrian footpath, if the construction of such a footpath would provide a connection to other trails on adjacent properties that could not otherwise be connected, enhance the opportunity for low-impact pedestrian uses, nature observation and environmental study, and be compatible with other permitted uses on the Protected Property.

If permitted by the Grantor, the specific location of said footpath, as well as the time and manner of entry and construction of said footpath, shall be mutually agreed-upon between the Grantor and the Holder. Any request by the Holder to construct said footpath must be approved in writing by the Grantor. Any such footpath shall be established and maintained at the Holder's expense and in a manner agreeable to the Grantor.

The Grantor and the Holder claim the rights and protections 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), the Maine Tort Claims Act, and under any other applicable provision of law and equity.

7. Definition of Non-Commercial Recreation.

The phrase "Non-Commercial Recreation" as used herein shall be defined as dispersed, traditional low-impact, non-commercial, outdoor recreational activities, nature observation and study that does not generally rely on buildings or spectator facilities and do not adversely impact

the Conservation Values associated with the Protected Property. Examples of such activities may include (by permission of the Grantor only), hunting, fishing, hiking, nature observation, bird watching, picnicking, cross country skiing, snowmobiling, snowshoeing, bicycling, horseback riding, and outdoor education, including scientific and archaeological research and observation, and enjoyment of open space. The use of the Protected Property by professional researchers shall not be construed as a commercial use.

8. Notices.

Any notice to Holder required hereunder must be made by certified mail return receipt requested, addressed to:

Town of Brunswick
28 Federal Street
Brunswick, Maine 04011

or to such other authorized person or address hereafter designated in writing by Holder.

Notices to Grantor required hereunder shall be made in writing addressed to:

John R. Coon and Helen A. Coon
63 Bayview Road
Dover, NH 03820

with a copy to:

Sandra L. Guay, Esquire
Woodman Edmands Danylik & Austin, P.A.
P.O. Box 468
Biddeford, Maine 04005

Other communication shall be by reasonable means under the circumstances.

Any notices to Holder or Grantor, or requests for Holder or Grantor's consent, required or contemplated hereunder, must include at a minimum sufficient information to enable Holder or Grantor to determine whether proposed plans are consistent with the terms of this Conservation Easement and the Conservation Purposes hereof.

9. Costs and Taxes, Indemnification.

Grantor is responsible to pay and discharge when due all property taxes and assessments lawfully imposed and to avoid the imposition of any liens that may impact Holder's rights hereunder. Grantor acknowledges that Holder has no possessory rights in the Protected Property, nor any responsibility or right to control, maintain, or keep up the Protected Property. Grantor is

responsible for all costs and responsibility of ownership, control, operation, maintenance, and upkeep of the Protected Property, except Holder shall be responsible for any costs associated with Holder exercising its rights pursuant to the terms of this Conservation Easement.

10. Holder's Affirmative Rights.

- A. Holder has the right to enforce this Conservation Easement by proceedings at law and in equity, including the right to require the restoration of the Protected Property to a condition in compliance herewith, after providing Grantor with prior notice and reasonable opportunity to cure any breach, except where emergency circumstances require more immediate enforcement action. Holder may not bring an enforcement action against Grantor for injury to or change in the Protected Property resulting from natural causes or environmental catastrophe beyond their 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. If a Court (or other decision maker chosen by mutual consent of the parties) determines that this Conservation Easement has been breached, Grantor will reimburse Holder for any reasonable costs of enforcement, including court costs, reasonable attorney's fees, and any other payments ordered by such Court or decision maker.
- B. The Holder has the right to: (a) 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; and, (b) to install markers to identify the Conservation Easement boundaries at such locations agreeable to the Grantor. The Holder will make reasonable efforts to notify the Grantor, or such other person the Grantor may so designate, prior to entry onto any area of the Protected Property.
- C. The Holder has the right to require that the Grantor's reserved rights be exercised in a manner that avoids unnecessary harm to the Conservation Values to be protected by this Conservation Easement.
- D. In the event boundaries are not, as of the date of delivery of this instrument, adequately clear or marked and the Grantor fails to restore or mark them within a reasonable time after notice by the Holder, the Holder has the right to engage a professional surveyor to reestablish and remark boundaries of the Protected Property or any part thereof which work will be at the Grantor's cost only if and to the extent necessary to determine if a breach of this Conservation Easement has occurred.
- E. The Grantor, its successors and assigns, agrees to hold the Holder harmless, and to indemnify it, from and against all claims, losses and liabilities based upon or arising as a result of the Holder's exercise or enforcement of its rights hereunder.

11. Conservation Easement Requirements Under Maine Law and U.S. Treasury Regulations.

- A. This Conservation Easement is created pursuant to The Uniform Conservation Easement Act at Title 33. Maine Revised Statutes Annotated, Sections 476, et seq., 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 §.110A-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)(A), and to wit: a governmental entity with the commitment to preserve the Conservation Values of the Protected Property.
- D. 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 Section 476(2) of Title 33 of the Maine Revised Statutes Annotated, as amended (or successor provisions thereof), and that as a condition of transfer, such entity agrees to uphold the Conservation Purposes of this grant.
- E. The Grantor agrees to notify the 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. The Grantor represents 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, which are subordinated to the Holder's right to enforce the restrictions of this grant. The Grantor has the right to use the Protected Property as collateral to secure the repayment of debt, provided that the right of the Holder to enforce the terms, restrictions and covenants created under this Conservation Easement shall not be extinguished by foreclosure of any mortgage or any publicly or privately placed lien, regardless of date, provided that the Holder has the right to subordinate its right to collect monetary damages based upon a violation that occurs or is discovered subsequent to recording of a mortgage or lien to the rights of said mortgage holders.
- G. 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, the 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 and required under Treasury Regulations 1.170-A-14(g) (6)(ii), as may be amended. The 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. The Holder will use such proceeds for its conservation purposes.

- H. 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 Protected Property and assure compliance with the terms hereof, the Grantor and Holder have prepared an inventory of the Protected Property's relevant features and conditions (the "Baseline Data"), and has certified the same as an accurate representation of the condition of the Protected Property as of the date of the grant of this Conservation Easement.

12. General Provisions.

- A. The failure or delay of the Holder, for any reason whatsoever, to discover a violation or initiate legal action to enforce this Conservation Easement shall not constitute a waiver or estoppel of its rights to do so at a later time.
- B. A person's obligation hereunder as Grantor, or successor owner of the Protected Property, will cease, if and when such person or entity cease to have any present, partial contingent, collateral or future interest in the Protected Property, but only to the extent that the Protected Property is then in compliance herewith. Responsibility of owners for breaches of this Conservation Easement that occur prior to transfer of title will survive such transfer. The Holder will provide certificates, indicating compliance of the Protected Property with the terms of this grant, at the Grantor's cost, after an inspection made upon reasonable prior notice.
- C. In making this grant, the Grantor has considered the fact that uses prohibited hereby may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both the Grantor and Holder that any such changes shall not be deemed to be changed conditions permitting termination of this Conservation Easement. Any uncertainty in the interpretation of this Conservation Easement shall be resolved in favor of carrying out the conservation purposes of this grant.
- D. This Conservation Easement shall be construed in accordance with the laws of the State of Maine, and interpreted liberally to accomplish its conservation purposes. 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.
- E. Any discretionary consent by Holder, permitted by this Conservation Easement for uses that are conditional or not expressly reserved by the Grantor, and any legally permissible amendment hereto, may be granted only if the Holder has determined in its reasonable discretion, that the proposed use is consistent with the Conservation Purposes of this Conservation Easement, substantially conforms to the intent of this grant, meets any applicable conditions expressly stated herein, and does not

materially increase the adverse impact of expressly permitted actions under this Conservation Easement, provided that Holder has no right or power to consent to any use that would impair the Conservation Purposes of this Conservation Easement; materially detract from the Conservation Values to be protected; limit the term or terminate this Conservation Easement, or that would impair the qualification of this Conservation Easement or the status of the Holder under any applicable laws, including Title 33 M.R.S.A. Section 476 *et seq.*, or Section 170(h) or 501(c)(3) of the Internal Revenue Code, and successor provisions of such applicable laws and regulations issued pursuant thereto; or not comply with the provisions of the Maine Conservation Easement Act and successor provisions thereof.

- F. Every provision of this Conservation Easement that applies to Landowner or Holder shall also apply to their respective successors and assigns. When a right is reserved to Landowner under this Conservation Easement, Landowner may permit such right to be exercised by Landowner's authorized agents, guests, contractors, employees, and lessees. When a right is granted under this Conservation Easement to Holder, the Holder may permit such right to be exercised by Holder's employees, staff, supervised volunteers, and contractors.
- G. Landowner agrees to notify the Holder in writing at least thirty (30) days before any transfer of title to the entire Protected Property.

WITNESS our hands and seal this ____ day of _____, 2007.

WITNESS:

John R. Coon

WITNESS:

Helen A. Coon

STATE OF MAINE

_____, ss.

_____, 2007

Then personally appeared the above named John R. Coon and Helen A. Coon and acknowledged the foregoing instrument to be their free act and deed.

Before me,

Attorney at Law/Notary Public

HOLDER ACCEPTANCE

The above and foregoing Conservation Easement was authorized to be accepted by the Town of Brunswick, Holder as aforesaid, and the said Holder does hereby accept the foregoing Conservation Easement, by and through Donald H. Gerrish, its Town Manager duly authorized, this ____ day of _____, 2007.

Signed, sealed and delivered
in the presence of

Witness

Donald H. Gerrish
Title: Town Manager

EXHIBIT A
Description of Protected Property

All that certain parcel of land situated northwesterly of Raymond Road, in the Town of Brunswick, County of Cumberland and State of Maine, bounded and described as follows:

BEGINNING at a rebar set at a point which marks the most northerly corner of those premises conveyed to Gerald L. Bernier by deed dated October 22, 1993 and recorded in the Cumberland County Registry of Deeds in Book 11045, Page 51;

THENCE N 67° 10' 59" E along land now or formerly of Theodore A. Kaknes and Ruth Kaknes, a distance of 1399.45 feet to rebar set;

THENCE S 38° 56' 07" E along land now or formerly of Barbara M. and Martin A. Leonard, a distance of 1215.77 feet to a 3 inch by 7 inch monument found;

THENCE N 51° 25' 21" E along land now or formerly of said Leonard, a distance of 851.77 feet to a 6 inch by 6 inch monument found;

THENCE S 37° 47' 46" E along land now or formerly of Quarry Road Neighborhood Association, a distance of 994.95 feet to a point;

THENCE S 40° 30' 43" W, a distance of 0.38 feet to a pin in stone found;

THENCE continuing S 40° 30' 43" W, a distance of 1298.86 feet to a point;

THENCE S 56° 37' 16" W, a distance of 892.54 feet to a point at the land of Gerald Bernier;

THENCE approximately N 39° 09' 36" W along land now or formerly of said Gerald Bernier, a distance of 2755.91 feet to the Point of Beginning of the parcel herein described.

Meaning and intending to convey and hereby conveying a Conservation Easement of 100.82 acres of land, be it the same more or less.

The above described parcel is a portion of those premises conveyed to John R. Coon and Helen A. Coon by deed dated December 30, 1998 and recorded in the Cumberland County Registry of Deeds in Book 14450, Page 143, and a portion of those premises conveyed to John R. Coon and Helen Norton Coon by deed dated December 12, 1996 and recorded in said Registry of Deeds in Book 12867, Page 91, and a portion of those premises conveyed to John R. Coon and Helen N. Coon by deed dated November 17, 2000 and recorded in said Registry of Deeds in Book 15879, Page 328.

Reference is hereby made to a plan entitled "Standard Boundary Survey of John R. and Helen Coon Property, Raymond Road, Brunswick, Maine" dated October 23, 2000 by Brian

Smith Surveying, Inc. and a plan entitled "Proposed Conservation Easement on Land of John R. and Helen A. Coon" by Brian Smith Surveying, Inc., dated November 28, 2007, to be recorded herewith in the Cumberland County Registry of Deeds.

All rebars set are 5/8 inch (or 1/2 inch if set in ledge or stone) and are capped and marked B. Smith – Smith #1175. Bearings used in this description are based on observed magnetic 2000.