

Conservation Easement Deed and Indenture

This conservation deed and indenture is made this 21st day of February, 2018 between Douglas Ridge, LLC, a Maine Limited Liability Corporations with principal place of business in Brunswick, 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 twenty two and sixty three hundreds (22.63) acres of real property situated on Hacker Road in Brunswick, Cumberland County, Maine described on the attached Exhibit A – Douglas Ridge Estates Subdivision Plan – 22.63 acre Conservation Space (the "Property"); and

WHEREAS, in connection with Grantor's development of a sustainable neighborhood community upon a portion of the Property, Grantor wishes to protect in perpetuity the natural, scenic and general landscape designated "**Conservation Easement Space**" (**The Space**), for recreational hunting, fishing, trapping, use, picnicking, gardening, sporting and forest values of the approximately 22.63 acres of Property described on the Exhibit A – Subdivision Plan the "**Space**", for the benefit of the Property Owners 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 Property Owners and general public, a "**Space**" (~22.63 acres) for the benefit of the Property Owners and the general public, subject to the reservation of rights unto Grantor, its successors and assigns, for the benefit of the "**Space**" and the remainder of the Property, and grants to Third Party, it 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 Property Owners, the public and the remainder of the Property the natural, scenic, open space, recreational, hunting, fishing, trapping, use, picnicking, gardening, sporting and forest values of the "**Space**", through the continuation of responsible practices of such uses.
- 2) Affirmative Rights Conveyed to the Holder. Grantor conveys to Holder the following affirmative rights:
 - a. The right to identify, to use, preserve and to protect in perpetuity the natural, scenic, open space, recreational, picnicking, sporting, hunting, fishing, trapping and forest values of the "**SPACE**."
 - b. The right to enter upon the "**SPACE**." at any time in any manner that will not unreasonably interfere with the permitted uses being made of the "**SPACE**." 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 **"SPACE."** to be free of any taint, corruption or pollution of whatever character arising from any use of the **"SPACE."** in a manner not permitted hereunder.
- 3) Rights of Third Party. The Grantor hereby grants to Maine Department of Environmental Protection (**"hereinafter the 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 except as those described in Sections. 4.a. and as shown in Attached Exhibit A, the Plan.
- a. Space Structure Exception
 - i. **Space** 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 **"Space"** and for the remainder of the Property, subject to notification of Holder.
 - ii. The right to construct, maintain, repair and replace boundary monuments and non-commercial directional, cautionary or instructional signage.
 - iii. The right to construct tree forts, tree stands, ground forts, and small observation structures and/or platforms.
 - iv. The right to construct, maintain and improve ways/paths.
- 5) Surface Alterations. No filling, dumping, excavation or other alterations shall be made to the surface of the **"Space"** 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 fill, excavate and perform other alterations for the construction, use and maintenance of the **"Space"**.
 - 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, hunting, fishing, trapping, forest, use, picnicking, gardening, sporting and recreational purposes.
 - d. The right to construct, maintain, repair and replace unpaved roadways to provide vehicular access for permitted and forest purposes, subject to Holder's approval of the same as avoiding or minimizing material and permanent adverse impact upon the **"Space"**, such approval not to be unreasonably withheld.
 - e. The right to excavate small, select portions of the **"Space"** for ecological studies or archeological purposes, provided that any such excavations shall be done according to generally accepted professional practices and standards, avoiding or minimizing material and permanent adverse impact upon the Open Space, such approval not to be unreasonably withheld.
- 6) Timber Cutting and Vegetation. The commercial removal of standing timber, plants, shrubs or other vegetation upon the **"Space"** shall not be permitted, except that Grantor reserves

unto itself, its successors and assigns, the following rights:

- a. The right to destroy, remove, shred, cut, chemical removal treatment and all activities which may or could be associated with invasive species.
- b. The right to mow and cut shrubs, saplings, grasses and other vegetation to maintain existing open areas and fields.
- 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 **"Space"**, 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 sustainable neighborhood 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 **"Space"**, such approval not to be unreasonably withheld.

7) Activities. The **"Space"** shall not be used for the following prohibited purposes:

- a. Commercial harvesting or clear-cutting of forest or the practice of non-sustainable forestry methods degrading the habitat value of the **"Space"**.
- b. Commercial agriculture and intensive and non-sustainable agricultural uses adversely affecting the habitat value of the **"Space"**, such as intensive animal husbandry beyond the sustainable carrying capacity of the **"Space"** or agricultural practices relying upon intensive use of synthetic fertilizer, herbicides and pesticides.
- c. Non-agricultural commercial, industrial, quarrying or mining activities,
- d. Placement or use of trailers or campers. .
- e. Signs, postings advertising and billboards are prohibited except for identification of Space and other postings such as safety notification, hunters may be present, temporary limited use notices and other similar postings

8) Reserved Rights. Grantor reserves unto itself, its successors and assigns, as owner of the **"Space"** and the remainder of the Property, the right to use (or to regulate or prohibit use of) the **"Space"** 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, subject to holder agreement:

- a. Recreational purposes such as hiking, bicycling, horseback riding, skiing and all other similar low impact activities.
- b. Use of water for permitted uses upon the **"Space"** and for the remainder of the Property.
- c. Hunting, fishing and trapping of wildlife.
- d. Use of motorized vehicles such as motorcycles, motorized bikes, all-terrain Vehicles (ATV's), snowmobiles or drones/aircraft for casual and/or recreational purposes is prohibited. But, upon written agreement with a requesting individual(s), these prohibited mechanized activities maybe allowed for items including, but not limited to, woods management, wildlife management, hunting retrieval events and other similar access requests on a "one-off" and limited time required to complete the activity.

- 9) Construction. If uncertainty should arise in the interpretation hereof, judgment should be made in favor of conserving the **"Space"** in its natural, scenic or open state and to preserve the use of the **"Space"** for recreational, 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 **"Space"**.
- 10) Public Access. Public parking and access currently exists from the Town of Brunswick Cox Pinnacle parking area.

Access and egress to the **Space** is granted along the private roads of Rose Douglas Lane into the terminus of Little Bird Lane and Little Fawn Lane and into the **Space** by walking only. Prohibited access and/or egress includes walking on private lots and/or by any vehicles including, but not limited to, automobiles, motor bikes, motor cycles, bicycles, ATVs, drones, or any other similar vehicles or mechanized travel.

Grantor agrees not to post against trespass nor to take action to prohibit the general public from entering onto the **"Space"** for low impact, recreational purposes, such, as nature observation, hiking, horseback riding, cross-country skiing, hunting, trapping, fishing 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:

- a. the safety, welfare or reasonable right of privacy and quiet enjoyment of the owners and occupants of the Property and neighboring land,
 - b. other uses of the **"Space"** permitted hereunder, or
 - c. the conservation value of the **"Space"**.
 - d. 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 **"Space"**, provided that such access is allowed in a reasonable manner and does not result in permanent and material adverse impacts upon the **"Space"**. All public use of the **"Space"** 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 **"Space"**. 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 **"Space"**, 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 **"Space"**, 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 **"Space"** 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 **"Space"** 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 **"Space"** 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 **"Space"**. 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 **"Space"** to any other party with an interest in the **"Space"** 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 **"Space"** 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 **"Space"**.
- 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,
- that it will hold the conservation easement hereunder in perpetuity for conservation purposes;
 - 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,
 - 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 or Maine Department of Environmental Protection, 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 "**Space**" 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 interests in the "**Space**" 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 terra, "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. 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.
- c. 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 "**Space**" so long as it is owned as a unit, or of each and every parcel making up the "**Space**" if it is hereafter subdivided, shall be deemed to be the agreement or approval of all the owners of the, 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.
- d. 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 "**Space**", 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 "**Space**", 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 "**Space**" 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 21st of February, 2018.

Date: February 21, 2018

By: 

Printed Name: Robert Muller

Title: Managing Member

Douglas Ridge, LLC

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, hereunto duly authorized, this 21st day of February, 2018.

The Town of Brunswick

Date: February 21, 2018

By: 

Printed Name: John Eldridge

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 _____, its Bureau Director, hereunto duly authorized and the said _____ does hereby accept the foregoing, this _____ day of _____, 20____

STATE OF MAINE

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: _____

By: _____

Printed Name: _____

Title: _____

STATE OF MAINE

CUMBERLAND COUNTY, ss. 2/21/, 2018

Personally appeared before me the above-named Robert Muller, as Co-Manager of Douglas Ridge LLC and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Douglas Ridge LLC.





Elin M. Gould
Notary Public Maine
My Commission Expires July 25, 2019

STATE OF MAINE

CUMBERLAND COUNTY, ss. 2/21/2018

Personally appeared before me the above-named John Eldridge as Town Manager of the Town of Brunswick, and acknowledged the foregoing instrument to be his or her free act and deed and the free act and deed of the Town of Brunswick.


Notary Public / Attorney at Law

Elin M. Gould
Notary Public Maine
My Commission Expires July 25, 2019

Print Name: _____

My Commission Expires on _____ day, of _____, 20__

STATE OF MAINE

CUMBERLAND COUNTY, ss.

Personally appeared before me the above-named _____ Bureau Director of the Maine Department of Environmental Protection, and acknowledged the foregoing, instrument to be his or her free act and deed and the free act and deed of the Maine Department of Environmental Protection.

Print Name _____, Notary Public

EXHIBIT A

Grantor: Douglas Ridge, LLC

A certain lot or parcel of land located southerly of, but not adjacent to, the apparent southerly sideline of Hacker Road, so-called, in the Town of Brunswick, County of Cumberland and State of Maine as shown on the plan entitled "Douglas Ridge Subdivision Plan, Hacker Road, Brunswick Maine" for Cumberland County Douglas Ridge LLC dated _____ 20__ by Sitelines, PA and recorded in the Cumberland County Registry of Deeds in Plan Book _____, Page _____.

Meaning and intending to convey an easement on a single parcel designated and labeled as "Conservation Space" consisting of approximately 22.63 acres shown on said plan, with appurtenant access easement to Two Echo and Wood Pond existing easements held by Holder.

[illegible]