



OR BK 6196 PGS 201 - 221 03/28/2014 01:20:13 PM
 INSTR # 2014003549 JULIE A CURTIS
 HANCOCK COUNTY, ME REGISTER OF DEEDS

**AMENDED AND RESTATED CONSERVATION EASEMENT
 ON YOUNGS MOUNTAIN LOT 2A
 IN BAR HARBOR, HANCOCK COUNTY, MAINE,
 TO MAINE COAST HERITAGE TRUST**

ASTRI SAND BROOKS, being married, and having a mailing address of 78 Youngs Mountain Road, Bar Harbor, ME 04609 (hereinafter referred to as the "GRANTOR," which word is intended to include, unless the context clearly indicates otherwise, the above-named Grantor, her successors and assigns, any successors in interest to the Protected Property, and their executors, administrators and legal representatives),

GRANTS as a gift, to **MAINE COAST-HERITAGE TRUST**, a non-profit corporation organized and existing under the laws of the State of Maine, with a mailing address of One Bowdoin Mill Island, Suite 201, Topsham, Maine 04086 (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, and in perpetuity, the following described Amended and Restated Conservation Easement on a parcel of approximately 37 acres in the Town of Bar Harbor, Hancock County, Maine, being all and the same premises conveyed to Grantor herein by a deed from Algernon B. Reese, III, dated December 19, 2006 and recorded at Book 4675, Page 187, hereinafter referred to as the PROTECTED PROPERTY, and described on Exhibit A, attached hereto, and on a sketch plan attached hereto at Exhibit B, both made a part hereof by reference, exclusively for conservation purposes as follows:

- PURPOSE -

It is the purpose of this Amended and Restated Conservation Easement to better preserve and protect in perpetuity the ecological character and natural features of an undeveloped corridor along Old Mill Brook than was provided in the Original Conservation Easement affecting the Protected Property and another parcel that is the subject of a companion Amended and Restated Conservation Easement; to better protect the adjacent forest, fields, wetlands and ridges from development that would negatively impact scenic views from public vantage points on roads, trails, and carriage roads; to reduce the size of the Development Area to provide a much larger undeveloped buffer to streams and the public access Trail that traverses the Protected Property and is contiguous with an

extensive trail system on abutting land; and to assure the opportunity for low-impact outdoor recreation, nature observation and study by the general public on the Trail. The following recitals more particularly describe the conservation values of the Protected Property and the significance of this grant.

WHEREAS, the Protected Property comprises approximately thirty-seven (37) acres of predominantly undeveloped land on Youngs Mountain, including more than thirteen hundred (1,300) feet of frontage on both sides of Old Mill Brook, along with extensive woodlands, wetlands, fields, and exposed ledges; and

WHEREAS, the Protected Property is part of a larger parcel that was encumbered and protected by a conservation easement from Lyme Timber Company to Maine Coast Heritage Trust, dated May 7, 1998, and recorded at the Hancock County Registry of Deeds at Book 2747, Page 562 (hereafter the "Original Conservation Easement"); and

WHEREAS, the larger parcel under the Original Conservation Easement has been divided, and this Amended and Restated Conservation Easement addresses only one of the two resulting lots, with the other lot being subject to a separate Amended and Restated Conservation Easement to be executed simultaneously herewith; and

WHEREAS, this Amended and Restated Conservation Easement will enhance the conservation values intended for protection by the Original Conservation Easement by converting approximately 8 acres from Development Area to Natural Area, including all of the stream frontage, the steepest slopes, and the entirety of the recreational trail corridor; and

WHEREAS, Holder has determined and Grantor agrees that this Amended and Restated Conservation Easement, by reducing the size of the available Development Area by half and by clarifying Grantor's development rights, will have a beneficial impact on the conservation values intended for protection by the Original Conservation Easement, and will not materially detract from the conservation values intended for protection, and thus may be amended without a court order pursuant to Title 33 M.R.S. Section 477-A(2); and

WHEREAS, Old Mill Brook is a perennial stream flowing through the Protected Property, and its watershed has been identified as "an important ecologic area" by the National Park Service's *Evaluation of Island Resources*, prepared in December 1988, which identifies land that qualifies for protection under Section 102(h)(1)PL 99-420, Acadia National Park's boundary legislation and conservation easement criteria; and

WHEREAS, Old Mill Brook feeds into Northeast Creek, a wildlife-rich area to the north of the Protected Property where Acadia National Park and Downeast Audubon Society hold land and easements to preserve the ecological values of this vast system of wetlands flowing to the Atlantic Ocean; and

WHEREAS, other land along Old Mill Brook, including two parcels abutting the Protected Property, is protected in its natural state for public enjoyment by conservation easements held by Maine Coast Heritage Trust; and

WHEREAS, the formerly open fields, woods and knolls on the Protected Property are visible from public vantage points along State Route 233, Norway Drive, and carriage roads and hiking trails on Sargent Mountain and Parkman Mountain within Acadia National Park; and

WHEREAS, land on Mount Desert Island, particularly land abutting Acadia National Park, is subject to considerable development pressure, and existing land use regulations are neither permanent nor sufficient to protect the scenic, ecological, and recreational values of the Protected Property;

NOW, THEREFORE, 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 AND SUBDIVISION.

No commercial, industrial, quarrying or mining activities are permitted on the Protected Property except for (a) small-scale home occupations that do not adversely affect the scenic and natural qualities to be preserved by this Conservation Easement; and (b) the rental of the Protected Property and structures permitted hereunder for uses permitted herein; all subject to the terms of this Conservation Easement. Without limiting the generality of the foregoing, campgrounds, condominiums, trailer parks, motels or hotels, billboards, commercial advertising, antennae or apparatus for telecommunications and/or radar visible from public vantage points, and use of aircraft, except in an emergency, are specifically prohibited on the Protected Property.

The Protected Property may not be divided, subdivided, partitioned, subjected to the Maine Time Share Act (33 M.R.S.A. c 10-A) or the Maine Condominium Act (33 M.R.S.A. c 31), or other legal or *de facto* creation of lots or parcels in separate ownership or the creation of separate parcels of real estate, and must remain as one (1) undivided parcel or lot in unified ownership, which may be joint and undivided; provided that any portion thereof may be conveyed to an entity that meets the requirements of a qualified assignee as set forth in Paragraph 8.D. herein. In addition, no portion of the Protected Property may be used to calculate the permitted development density of land not subject to this Conservation Easement.

For the purposes of describing permitted land use under this Conservation Easement, the Protected Property is divided into two areas: a "DEVELOPMENT AREA" of approximately eight (8) acres, depicted in Exhibit B and described more particularly by metes and bounds in Exhibit C, attached hereto and made a part hereof; and the "NATURAL AREA," which is all of the remainder of the Protected Property, as depicted on Exhibit B. The Development Area in the Original Conservation Easement was approximately sixteen acres and extended to the upland edge of a stream with important conservation attributes, such as steep slopes and a recreational trail corridor.

2. LAND USE RESTRICTIONS AND RESERVED RIGHTS.

A. **EXISTING CONDITIONS:** As of the date of this grant, there are no structures or surface alterations on the Natural Area of the Protected Property except stone walls, remains of stone foundations, benches, a network of woods roads located in the former Development Area, now Natural Area, unpaved trails, trail improvements such as foot bridges and signs, boundary markers, and public utility, signage and road structures within the public right-of-way along Norway Drive in Bar Harbor, all of which may be maintained, improved and replaced. The Natural Area of the Protected Property is substantially forested except for survey cut lines, and scrub brush in portions of a formerly open blueberry field of approximately ten (10) acres along Norway Drive, where indicated on Exhibit B. Within the Development Area on the Protected Property, there are no structures or surface alterations except for a residence, a cabin, a garage, a pumphouse and a shed; as well as unpaved drives, stonework supporting drives and parking areas, woods roads, paths with small lights, boundary markers, utility poles, lines and meters, propane tanks, benches, small unlighted signs and a gate, all of which may be maintained and replaced only in accordance with the terms of Paragraph 2.C.(1) and 2.C.(2). The Development Area of the Protected Property is partially open and unforested with areas of forested vegetation.

B. **NATURAL AREA:** (This Conservation Easement prohibits in the Natural Area, without the prior written consent of Holder, placement or construction of additional structures of any kind, temporary or permanent; excavation, filling or other alteration to the surface of the land or the waters; and cutting or removal of live vegetation, except for the following rights specifically reserved by Grantor for the Natural Area only:

(1) **Structures:** Grantor reserves the right in the Natural Area to locate, construct, maintain, improve and replace only minor or small-scale structures associated with permitted agricultural uses and low impact outdoor recreation, including by way of illustration, benches, picnic tables, fences and gates, tent platforms, lean-to's, lawn furniture, temporary tents for occasional non-commercial events, rustic child-scale tree houses, feed and water troughs, fresh water systems, informational signs, boundary markers, mailboxes, rustic trail improvements such as small unlighted signs, stairs, railings, cairns, bird houses, and trail bridges and culverts; provided that stockade fencing and other visual barriers are prohibited; and further provided that all permitted structures must be carefully located and limited in size and height to preserve the traditional scenic and undeveloped character of the Protected Property when viewed from State Route 233 and from Norway Drive.

(2) **Surface Alterations:** Grantor reserves the right in the Natural Area to alter the surface to the extent necessary to install and maintain the structures permitted in Paragraph 2.B.(1) above, and to accomplish the Vegetation Management activities permitted in Paragraph 2.B.(3) below; to maintain the existing unpaved woods roads in the former Development Area; to maintain existing trails and establish additional unpaved trails not to exceed six (6) feet in combined tread width and side clearance, including the right to make trail improvements such as steps, berms and drainage ditches, provided that all such trails shall be located and designed in a manner to prevent soil erosion, preserve wetlands, and discourage the unauthorized use of motor vehicles; and the right to excavate for archeological and ecological study, conducted in accordance with

recognized professional standards. In addition, in that portion of the Natural Area beyond one hundred and fifty (150) feet from the thread of Old Mill Brook, Grantor reserves the right to cultivate for gardening and agriculture, and to graze livestock in sufficiently limited numbers to prevent surface erosion. Grantor also reserves the right to fill and grade the bank of the road at Norway Drive to the extent necessary to permit safe and convenient vehicular access to the field for agricultural purposes, and the right to establish one gravel roadside turnout, at the edge of Norway Drive, of a reasonable size for parking not more than two conventional passenger vehicles.

(3) **Vegetation Management:** Grantor reserves the right in the Natural Area to maintain, restore and cultivate the existing or grown-in blueberry field area depicted on Exhibit B, by mowing, brush hogging, planting, harvesting, and controlled burning. Grantor reserves the further right to manage forested areas in the Natural Area by selective cutting and pruning for aesthetics, forest health, safety, fire prevention, boundary maintenance, and the provision of forest products for personal use of residents of the Protected Property, provided that cutting for any purpose, outside of the existing or grown-in or restored blueberry field area, must be limited to leave a well-distributed stand of naturally occurring uneven aged forest vegetation. The use of herbicides, pesticides, fungicides, fertilizers or other agents that may have an adverse impact on wildlife or waters are prohibited without the prior written approval of Holder upon a determination that the use of such agents are necessary or appropriate to eradicate invasive species and otherwise to prevent or mitigate harm to the inhabitants, natural resources or permitted uses of the Protected Property, and will be limited to on-label uses and will not have a material adverse impact on the conservation values to be protected by this Conservation Easement.

C. **DEVELOPMENT AREA:** This Conservation Easement prohibits on the Development Area, without the prior written consent of Holder, placement or construction of additional structures of any kind, temporary or permanent; excavation, filling or other alteration to the surface of the land or the waters; and cutting or removal of live vegetation; except that all activities permitted in the Natural Area are permitted in the Development Area, and in addition, Grantor reserves the following rights specifically for the Development Area:

(1) **Structures:** Grantor reserves the right in the Development Area only to construct, maintain, alter, improve, relocate and replace structures, including residences and outbuildings, as well as septic waste disposal structures, wells and pumps for fresh water supply, recreational facilities, and power and communication utilities, subject to the following limitations:

(a) all such structures taken in the aggregate shall be limited to a "footprint" (defined at Paragraph 9.B.) of eight thousand twenty (8,020) square feet; no individual structure may exceed a footprint of three thousand four hundred (3,400) square feet; and no structure may exceed thirty-two (32) feet in height, measured from the original average grade of the low side of the structure to the peak of the roof, excluding chimneys and conventional household antennae or satellite dishes;

(b) all such structures must be of a style, scale and natural or non-reflective exterior treatments that blend with wooded surroundings, and sufficient vegetation must be left to remain to ensure that such structures are "not prominently visible" (defined at Paragraph 9.A.) when viewed from public vantage points along State Route 233 and Norway Drive; and

(c) minor structures, such as those listed in Paragraph 2.B.(1), other than tent platforms, will not be counted when calculating aggregate footprint permitted in the Development Area.

(2) **Surface Alterations:** Grantor reserves the right in the Development Area only to alter the surface to the extent necessary to install and maintain the structures permitted therein; to construct and maintain paved or unpaved parking and turning areas and driveways from abutting land to the south and east, to access the permitted residences, and to alter the terrain for landscaping and paved or unpaved walkways.

(3) **Vegetation Management:** Grantor reserves the right, within the Development Area only, to maintain existing open areas; to clear additional open areas; and to prune, thin, plant and landscape as necessary or convenient for the construction and use of permitted structures and permitted surface alterations including the creation of views, to establish household gardens and landscaping, and to manage forested areas in a manner to assure forest health, provided that sufficient vegetation must be left to remain in the Development Area to permit compliance with the visibility requirements of Paragraph 2.C.(1)(b) hereinabove.

D. **NOTICE REQUIREMENT:** Prior to site preparation or construction of the residence, outbuildings, septic waste disposal facilities, and prior to substantial exterior alteration of any building, Grantor must notify Holder in accordance with the notice provisions of Paragraph 6.

3. TRAIL ACCESS.

This Conservation Easement, at Paragraph 7.C., grants Holder the affirmative right to establish and maintain a trail over the Protected Property (which has been built by Holder and Friends of Acadia), which trail is part of a larger contiguous trail system available to the general public, and traverses the Protected Property near its northern boundary, where indicated on Exhibit B (hereinafter referred to as the "Trail"). Grantor agrees to take no action to prohibit, discourage or charge a fee for daytime non-motorized and non-destructive public access over the Trail. No access to any other part of the Protected Property is granted hereby, provided that Grantor has the right to permit additional public use of the Protected Property that is consistent with the conservation purposes of this grant.

Grantor has the right to limit or prohibit night use, camping, loud activities, open fires, unleashed pets, motor vehicles, snowmobiles, hunting, and trapping. Grantor and Holder, jointly, after consultation with owners of abutting properties with which the Trail is contiguous, have the right to make reasonable rules and regulations for public use of the Trail, including the right to limit or prohibit the aforementioned and any use that may interfere with or be harmful to other members of the public using the Protected Property or to the conservation values of the Protected

Property, and including the right to restrict access, temporarily or permanently, to assure safety or to preserve other important conservation values of the Protected Property. The Trail may be altered or relocated in accordance with the terms of Paragraph 7.C., as necessary and convenient, provided that it shall remain contiguous with the trail system of which it is a part.

Grantor and Holder claim all of the rights and immunities against liability for injury to the public to the fullest extent of the law under Title 14 M.R.S.A. Section 159-A, et seq., as amended, and successor provisions thereof (the Maine Recreational Use Statute), and under any other applicable provision of law and equity.

4. WATER PROTECTION AND WASTE DISPOSAL.

A. Overboard discharge or direct discharge of black or grey water waste into surface waters on or about the Protected Property is strictly prohibited.

B. It is forbidden to dispose of or to store rubbish, garbage, debris, abandoned automobiles or equipment, parts thereof, or other unsightly, offensive, toxic or hazardous substances or waste material on the Protected Property, except that vegetative waste may be composted or used 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, subject to all applicable local, state, and federal laws and regulations.

5. COSTS, TAXES AND INDEMNIFICATION.

Grantor is responsible to pay and discharge when due all property taxes and assessments 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, except for a non-exclusive right to establish and maintain the open fields and the Trail. Grantor is responsible for all costs and responsibility of ownership, control, operation, maintenance, and upkeep of the Protected Property, except for activities actually undertaken by Holder.

6. NOTICES.

Any notices required hereunder must be made by certified mail, return receipt requested, and, if to Holder, addressed to: Director of Stewardship, Maine Coast Heritage Trust, One Bowdoin Mill Island, Suite 201, Topsham, Maine 04086, or to such other authorized person hereafter designated in writing by Holder.

Any notices to Holder or requests 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.

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 the acts of persons other than Grantor, and Grantor's invitees, agents, employees, or contractors, or from "acts of God," so-called, such as, but not limited to, 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.

B. Holder has the non-exclusive right, but not the obligation, to enter the Protected Property to restore and maintain the substantially unobstructed view across the formerly open blueberry field from Norway Drive, including the right to mow and to cut and remove vegetation, including trees, that obstruct the view. This right may be delegated or assigned by the Holder to another entity upon prior written notice to Grantor, its successors and assigns.

C. Holder has the non-exclusive right, but not the obligation, to enter the Protected Property to establish, restore and maintain the Trail depicted in Exhibit B, in accordance with the limitations on trail improvements in Paragraph 2. Grantor and Holder will cooperate to establish signage for the area of the trail as it enters the Protected Property, informing the public of permitted uses and that the Protected Property is privately owned. The rights and obligations of Holder hereunder may be delegated or assigned to another entity upon prior written consent of Grantor, or Grantor's successors and assigns, which will not be unreasonably withheld or delayed. Grantor's predecessor in title has previously consented, in July of 1998, to an assignment of these rights to Friends of Acadia, which maintains the Trail.

Prior to the commencement of restoration or substantial maintenance of the Trail, Holder will deliver to Grantor a notice including a trail plan with restoration or maintenance specifications. Holder will also notify Grantor if, after establishment of the Trail to footpath specifications, Holder decides to improve the Trail to multi-use standards, including use by bicycle, designed in accordance with then recognized standards for grade, width, and safety. Within thirty (30) days of receipt of such notice, at Grantor's option, Grantor must notify Holder in writing that it is exercising its right, hereby established, to require Holder to relocate the Trail off the Protected Property and entirely on the abutting Acadian Ridge property now or formerly of Lyme Timber Company. Such notice to Holder shall include a legally-binding commitment by Grantor, her successors and assigns, to pay for all costs of site location, design, and governmental permitting for the trail relocation, and to pay fifty (50) percent of the cost of its construction. If the required permits are granted, Holder will locate the multi-use trail off the Protected Property as aforesaid, provided however, that if any required permits are denied, Holder shall have the right to proceed with the improvement of the Trail on the Protected Property to multi-use standards. In addition, if Grantor fails to provide Holder with such timely written notice of election to require relocation of the Trail, or fails to provide the required cost-sharing agreement, Grantor shall have waived its right to require relocation, and Holder thereafter shall have the right to improve the Trail on the Protected Property without further

notice.

D. Holder has the right to enter the Protected Property for inspection and enforcement purposes, at a reasonable time and in a reasonable manner that is consistent with the conservation purposes hereof.

E. Holder has the right to require that Grantor's reserved rights be exercised in a manner that avoids unnecessary harm to the conservation values to be protected by this Conservation Easement.

F. The Protected Property has been surveyed and Grantor has the obligation to maintain boundaries in a clearly marked condition for Holder's monitoring and enforcement purposes. If the boundaries are not so maintained, and the location of the boundary is necessary to determine whether a prohibited land use is located on the Protected Property or any part thereof where it is prohibited, Holder has the right to require Grantor to restore such boundaries or to conduct a survey at Grantor's cost, to the extent necessary to resolve such question.

8. 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, Sections 476 through 479-C, inclusive, 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 of 1986 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. §1.170A-14 *et seq.*, as amended.

C. The Holder is qualified to hold conservation easements pursuant to Title 33, Maine Revised Statutes Annotated, 1988, Section 476(2)(B), as amended, and is a Qualified Organization under Section 170(h)3 of the Code, to wit: a publicly funded, non-profit 501(C)(3) organization operated primarily to accept lands, easements, and buildings for the purpose of preserving and protecting natural, scenic, educational, recreational and open space values of real property, in particular the islands and coastal mainland of Maine, and having a commitment to protect the conservation purposes of the donation, and the resources to enforce the restrictions hereof.

D. This Conservation Easement is assignable, but only to an entity that satisfies the requirements of Section 170(h)(3) of the Code (or successor provisions thereof) and the requirements of Section 476(2) of Title 33 of the Maine Revised Statutes, as amended (or successor provisions thereof), and that as a condition of transfer, agrees to uphold the conservation purposes of this grant.

E. Grantor agrees to notify 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,

as specifically required in Paragraph 2.

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

G. Grantor represents that as of the date of this grant there are no liens or mortgages outstanding against the Protected Property. The rights of the Holder to enforce the terms, restrictions and covenants created under this easement shall not be extinguished by foreclosure of any mortgage or any publicly or privately placed lien, regardless of date. Holder's rights hereunder shall be paramount to any subsequently placed mortgage or lien.

H. 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, 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 by Treasury Regulations 1.170-A-14 (g)(6)(ii). 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. Holder will use such proceeds for its conservation purposes.

I. This Conservation Easement grant is made by Grantor with the understanding that the conservation purposes for which it is given may be protected or furthered under circumstances that may justify modification of certain specific terms of this easement. To this end, Grantor and Holder may agree in writing to modify the terms of this Conservation Easement to the extent that such modification furthers the purposes of this Conservation Easement or does not materially detract from the conservation values to be protected by this grant, as required under Title 33 M.R.S. Section 477-A.

9. DEFINITIONS.

A. By requiring that certain structures be and remain "not prominently visible" from certain named public vantage points, Grantor and Holder do not intend to require that such structures be absolutely invisible from such public vantage points, but that reasonable measures be taken to assure that the presence of such structures is not readily noticeable to passersby during daylight hours.

B. The "footprint" of a structure shall mean the surface area of the earth occupied or overhung by such structure, calculated on the basis of the outermost perimeter of the structure, including eaves and overhanging roofs, associated or attached decks, porches, balconies, and steps, but not including the ground area affected by grade-level patios constructed with pavers or sand laid stone or the like, boardwalks, walkways, driveways, wells, underground utilities, barbeque pits, and subsurface septic waste disposal systems or structures.

10. GENERAL PROVISIONS.

A. The failure or delay of the Holder, for any reason whatsoever, to enforce this Conservation Easement shall not constitute a waiver of its rights and Grantor hereby waives any defense of laches, prescription or estoppel.

B. A person's obligation hereunder as Grantor will cease, with respect to the Protected Property, if and when such person ceases to have any present, partial, contingent, collateral or future interest in the Protected Property, but only to the extent that it is in compliance herewith. Responsibility of owners for breaches of this Conservation Easement that occur prior to transfer of title will survive such transfer.

C. If this Conservation Easement, or any part hereof, or the application hereof to any particular person or circumstance, is found to be invalid, the remainder of this Conservation Easement, and the application of this Conservation Easement to other persons or circumstances, shall not be affected thereby.

D. In making this grant, Grantor has considered the fact that uses prohibited hereby may become greatly 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 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.

E. This Conservation Easement may be executed in any number of counterparts, each of which shall be considered an original for all purposes, and all of which when taken together shall constitute a single counterpart instrument. Executed signature pages to any counterpart instrument may be detached and affixed to a single counterpart, with such single counterpart with multiple executed signature pages affixed thereto constituting the original counterpart instrument. All of those counterpart pages shall be read as though one, and they shall have the same force and effect as if all the signers had executed a single signature page.

TO HAVE AND TO HOLD the said Conservation Easement unto the said Holder and its successors and assigns forever.

SIGNATURES FOLLOW:

UNITED

IN WITNESS WHEREOF, **ASTRI SAND BROOKS**, and her spouse, **PHILIP L. BROOKS**, joining herein to release all rights by descent or otherwise, have hereunto set their hands and seals this 24th day of March, 2014.

Signed, sealed and delivered in the presence of:

[Signature]
Witness

Astri S. Brooks
Astri Sand Brooks

William D. Helpin
Witness

Philip Brooks
Philip L. Brooks

STATE OF MAINE
COUNTY OF Hancock

March 24, 2014.

Then personally appeared the above-named Astri Sand Brooks and Philip L. Brooks and acknowledged the foregoing instrument to be their free act and deed.

Before me,

[Signature]
Notary Public

HEIDI K. SMALLIDGE
Notary Public, State of Maine
My Commission Expires 6/15/2019

Printed name of notary

My commission expires: _____

UNLAWFUL TO REPRODUCE
SEAL

IN WITNESS WHEREOF, **RICHARD J. BORDEN** and **PATRICIA HONEA-FLEMING**, owners of a portion of the original Protected Property, now known as Lot 3 of the Youngs Mountain Subdivision, who this day have executed an Amended and Restated Conservation Easement for their real estate, and who hereby consent to this Amended and Restated Conservation Easement on Lot 2-A of the Youngs Mountain Subdivision, owned by Astri Sand Brooks, have hereunto set their hands and seals this 17 day of March, 2014.

Signed, sealed and delivered in the presence of:

Miska Nystar
Witness

Richard J. Borden
RICHARD J. BORDEN

Witness

PATRICIA HONEA-FLEMING

STATE OF MAINE
COUNTY OF Hancock

March 17, 2014.

Then personally appeared the above-named **RICHARD J. BORDEN** and acknowledged the foregoing instrument to be his free act and deed.

SEAL

Before me,

Ciona S. Ulbrich
Notary Public

Ciona S. Ulbrich
Printed name of notary
My commission expires: _____

CIONA S. ULBRICH
Notary Public, Maine
My Commission Expires February 7, 2017

STATE OF MAINE
COUNTY OF _____,

_____, 2014.

Then personally appeared the above-named **PATRICIA HONEA-FLEMING** and acknowledged the foregoing instrument to be her free act and deed.

Before me,

Notary Public

Printed name of notary
My commission expires: _____

IN WITNESS WHEREOF, **RICHARD J. BORDEN** and **PATRICIA HONEA-FLEMING**, owners of a portion of the original Protected Property, now known as Lot 3 of the Youngs Mountain Subdivision, who this day have executed an Amended and Restated Conservation Easement for their real estate, and who hereby consent to this Amended and Restated Conservation Easement on Lot 2-A of the Youngs Mountain Subdivision, owned by Astri Sand Brooks, have hereunto set their hands and seals this 20 day of March, 2014.

Signed, sealed and delivered in the presence of:

Witness

Mary Beth Walker
Witness

RICHARD J. BORDEN

Patricia Honea Fleming
PATRICIA HONEA-FLEMING

STATE OF MAINE
COUNTY OF _____

_____, 2014.

Then personally appeared the above-named **RICHARD J. BORDEN** and acknowledged the foregoing instrument to be his free act and deed.

Before me,

Notary Public

Printed name of notary

My commission expires:

STATE OF ~~MAINE~~ Alabama
COUNTY OF Jefferson

March 20th, 2014.

Then personally appeared the above-named **PATRICIA HONEA-FLEMING** and acknowledged the foregoing instrument to be her free act and deed.

Before me,

Angela E. Nolan
Notary Public

SEAL

Angela E. Nolan
Printed name of notary

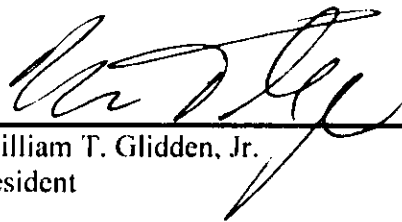
My commission expires: _____

MY COMMISSION EXPIRES NOVEMBER 23, 2015

HOLDER ACCEPTANCE.

The above and foregoing Amended and Restated Conservation Easement was authorized to be accepted by MAINE COAST HERITAGE TRUST, Holder as aforesaid, and the said Holder does hereby accept the foregoing Amended and Restated Conservation Easement, by and through William T. Glidden, Jr., its President, hereunto duly authorized, this 6th day of MARCH, 2014.

MAINE COAST HERITAGE TRUST


by: William T. Glidden, Jr.
its President

STATE OF MAINE
COUNTY OF SAGadahoc, ss.

MARCH 6, 2014

Personally appeared William T. Glidden, Jr., President, and authorized representative of the above-named Holder, MAINE COAST HERITAGE TRUST, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of Maine Coast Heritage Trust.

Before me,


Notary Public

SEAL

KRIG CAMPDELL
Notary Public, Maine
My Commission Expires January 30, 2020

Please type or print name of notary
My commission expires:

EXHIBIT A

Legal Description of the Protected Property.

A certain lot or parcel of land, together with the buildings and improvements thereon, situated on Norway Drive in Bar Harbor, Hancock County, Maine, and being Lot #2A of Young's Mountain Subdivision as shown on approved "Final Plat Showing Division of Lot 2, Young's Mountain Subdivision," recorded in File 29, No. 57 in the Hancock County Registry of Deeds, amending plans recorded in the Hancock County Registry of Deeds in File 27, No. 43 and File 27, No. 186, more particularly bounded and described as follows:

Beginning at an iron rod set in the ground in the northerly sideline of Norway Drive marking the southernmost point of Lot #2 shown on the survey plan recorded in File 27, No. 186 in the Hancock County Registry of Deeds; thence North thirty-three degrees thirty-three minutes thirty seconds West (N. $33^{\circ} 33' 30''$ W.), but always following the northeasterly sideline of Norway Drive, four hundred sixty-two and seven tenths (462.7) feet to an angle point; thence North thirty-nine degrees fifty minutes thirty seconds West (N. $39^{\circ} 50' 30''$ W.), but always following the northeasterly sideline of Norway Drive, one hundred forty-seven and two tenths (147.2) feet to a point at the southerly corner of land now or formerly of Roy W. McFarland et al.; thence North thirty-one degrees nineteen minutes zero seconds East (N. $31^{\circ} 19' 00''$ E.) two hundred ninety-five (295) feet to an iron rod set in the ground; thence North thirty-nine degrees twenty-one minutes fifteen seconds East (N. $39^{\circ} 21' 15''$ E.) one thousand five hundred two (1,502) feet to an iron rod driven into the ground; thence South eighty-nine degrees thirty minutes fifteen seconds East (S. $89^{\circ} 30' 15''$ E.) four hundred fifty-four and three tenths (454.3) feet to an iron rod set in the ground; thence South thirty-eight degrees fifty-three minutes fifteen seconds East (S. $38^{\circ} 53' 15''$ E.) three hundred three and five tenths (303.5) feet to an iron rod driven into the ground; thence South sixty-one degrees thirty-eight minutes forty-five seconds East (S. $61^{\circ} 38' 45''$ E.) four hundred eighty-nine and one-tenth (489.1) feet to a point at the northernmost corner of Lot 3 depicted on the said survey recorded in File 29, No. 57; thence South forty-three degrees thirty-one minutes fifteen seconds West (S. $43^{\circ} 31' 15''$ W.), but always following the northwesterly sideline of said Lot 3, four hundred thirty-one and three tenths (431.3) feet to a point at the easterly corner of a fifty (50) feet wide right of way depicted on the survey recorded in File 29, No. 57; thence South twenty-three degrees forty-nine minutes zero seconds West (S. $23^{\circ} 49' 00''$ W.), but always following the westerly sideline of said Lot 3 and the easterly sideline of said fifty (50) feet wide right of way, two hundred (200) feet to a point in the northeasterly sideline of Lot 1 and the westernmost corner said Lot 3; thence North fifty-four degrees thirty-one minutes forty-five seconds West (N. $54^{\circ} 31' 45''$ W.), but always following the northeasterly sideline of said Lot 1, four hundred seventy (470) feet, more or less, to an iron rod driven into the ground at the northernmost corner of said Lot 1; thence South forty-one degrees thirty-six minutes zero seconds West (S. $41^{\circ} 36' 00''$ W.), but always following the northwesterly sideline of said Lot 1, sixteen hundred thirty-two and one tenth (1632.1) feet to the iron rod set in the ground at the point of beginning.

TOGETHER WITH the right, within the Development Area described in the Conservation Easement recorded in Book 2747, Page 562, to construct, maintain, alter, improve and replace one "residence" (defined in Paragraph 9.B of the Conservation Easement recorded in Book 2747, Page 562), together with additional accessory outbuildings and facilities "not for

human habitation" (also defined in said Paragraph 9.B), (including septic waste disposal, fresh water supply, recreational facilities, and power and communication utilities), subject to the limitations set forth in said Conservation Easement. (Note that this right has been modified in this Amended and Restated Conservation Easement, to be recorded, which controls from the date of execution forward.)

TOGETHER WITH, as appurtenant to Lot 2A, to be used in common by the Grantees herein and by others who may now or hereafter acquire similar rights therein, their heirs and assigns, an open and unobstructed right of way easement for all purposes of a way including the installation, maintenance, repair and replacement of "utility services" as defined by Maine law in common with others which easement is appurtenant to and providing access to Lot 2 of Young's Mountain Subdivision from Eagle Lake Road over the 40' wide access right of way crossing Acadian Farm Condominium property as shown, in part, on Condominium Plan, dated as received by the Registry on April 25, 1989, recorded at the Hancock County Registry of Deeds in File 22, Nos. 141 and 141A, and over the northerly portion of the Condominium property as well as over the full width of the right of way crossing Lot 1 of Young's Mountain Subdivision to Lot 2 of the Subdivision as the corrected right of way as shown and described in the amended Plan for Young's Mountain Subdivision recorded November 26, 1996, in File 27, No. 186, the 'Final Plat amending first record of Young's Mountain Subdivision, Eagle Lake Road, Bar Harbor, Maine' (hereinafter referred to as 'Amended Plan'). The specific changes to the previously described right of way crossing both the Condominium property and Lot 1 are set out in Amended Plan as 'Right of Way Curve Data' beginning at station 11+33.13 on the centerline of the right of way for Acadian Farm Condominium.

TOGETHER WITH, as appurtenant to Lot 2A, to be used in common with others, the full extent of all access and utility easement rights as reserved for the benefit of the above conveyed Lot 2 in Declaration of Acadian Farm Condominium recorded at the Hancock County Registry of Deeds in Book 1747, Page 534, and as reserved for the benefit of the above conveyed Lot 2 in deed from The Lyme Timber Company to Sharifah Deborah Sophia Johnston recorded at the Hancock County Registry of Deeds in Book 2501, Page 317.

The above-described Lot 2A is conveyed **SUBJECT TO** the fifty (50) feet wide right of way described as conveyed in the deed from Algernon B. Reese III to Patricia Jean Buccello et al. dated December 7, 1999 and recorded in Book 2896, Page 71 in said Registry of Deeds as follows:

"TOGETHER WITH, and as appurtenant to said Lot 3, to be used in common by the Grantor herein, the Grantee herein, and others who may now have or hereafter acquire similar rights, their respective heirs and assigns, a right of way for all purposes of a way, including 'utility services' as defined by Maine law, in, under, over and upon a fifty (50) feet wide right of way depicted as '50-FOOT WIDE RIGHT OF WAY APPURTENANT TO LOT #3, on the survey entitled "FINAL PLAT SHOWING DIVISION OF LOT 2, YOUNG'S MOUNTAIN SUBDIVISION"' prepared by Plisga & Day, dated March 15, 1999 and recorded in File 29, No. 57; the easterly sideline of said right of way runs North twenty-three degrees forty-nine minutes East (N. 23° 49' E.) two hundred (200) feet from the southwesterly corner of Lot 3."

The above-described Lot 2A is conveyed **SUBJECT TO** the following:

1. Conservation Easement from Lyme Timber Company to Maine Coast Heritage Trust dated May 7, 1998 and recorded in Book 2747, Page 562 (as amended and superseded by this Amended and Restated Conservation Easement, to be recorded);
2. Restrictions, covenants and conditions set forth in deed from National Park Foundation to Acadian Farm Corporation dated April 30, 1986 and recorded in Book 1578, Page 114;
3. Rights and easements granted to Bangor Hydro-Electric Company and New England Telephone and Telegraph Company in an instrument dated October 20, 1988 and recorded in Book 1722, Page 303;
4. Restrictions, covenants and conditions set forth in Declaration of Acadian Farm Condominium dated April 20, 1989 and recorded in Book 1747, Page 534 as they may relate to Young's Mountain Subdivision;
5. Rights and easements granted to New England Telephone and Telegraph Company in an instrument dated June 22, 1988 and recorded in Book 1804, Page 464;
6. Rights and easements granted to Bangor Hydro-Electric Company in an instrument dated April 6, 1990 and recorded in Book 1808, Page 401;
7. Site Location Order dated May 17, 1990 and recorded in Book 1810, Page 620 as amended by Order dated January 9, 1991 and recorded in Book 1846, Page 128;
8. Rights of upper and lower riparian owners in and to the waters of Old Mill Brook and the natural flow thereof;
9. Restrictions, covenants and conditions set forth in deed from Peoples Heritage Savings Bank dated July 9, 1992 and recorded with Hancock County Registry of Deeds in Book 1975, Page 2, including the following:

[G]rantee...will not permit the use of the premises hereby conveyed, or any part thereof, for... "lodging house" or "tourist home" as those terms are defined by the [Bar Harbor] zoning ordinance in effect as of [April 30, 1986], which covenant shall run with the land and shall inure to the benefit of all property owners in the Town of Bar Harbor owning property within one-half mile of the premises...

10. "Conditions of Approval" notes on said plan recorded in File 29, No. 57, to wit:
 - i. "All streets in this subdivision shall remain private streets to be maintained by the developer or the lot owners and shall not be accepted or maintained by the Town."

11. Rights, privileges, easements and covenants described as conveyed in the Easement Deed from Algernon B. Reese III to Bangor Hydro-Electric Company, dated March 12, 1999 and recorded in Book 2829, Page 246 in said Registry of Deeds;

12. Rights, privileges and easements described as conveyed in the Easement Deed from Algernon Reese to New England Telephone and Telegraph Company dated May 10, 1999 and recorded in Book 2862, Page 638.

Lot 2A is further conveyed **TOGETHER WITH** the benefit of the terms and provisions of the Land Use Agreement among Lyme Timber Company, Algernon Reese and Maine Coast Heritage Trust dated June 29, 1998 and recorded in Book 2770, Page 79 in said Registry of Deeds, and the benefit of the rights granted to Algernon Reese therein.

Reference is hereby made to the following:

1. Corrective Conservation Easement for Lot 1, Young's Mountain Subdivision dated June 17, 1998 and recorded in Book 2747, Page 586 in said Registry of Deeds;
2. Boundary Line Agreement dated June 17, 1998 and recorded in Book 2747, Page 577 in said Registry of Deeds;
3. Quitclaim Deed with Covenant from The Lyme Timber Company to Algernon B. Reese, III dated June 26, 1998 and recorded in Book 2747, Page 595 in said Registry of Deeds; and
4. Quitclaim Deed with Covenant from Algernon B. Reese, III to Patricia Jean Buccello and David Anthony Buccello dated December 7, 1999 and recorded in Book 2896, Page 71 in said Registry of Deeds.
5. Quitclaim Deed with Covenant from Patricia Jean Buccello and David Anthony Buccello to Richard L. Borden and Patricia Honea-Fleming, dated October 17, 2000 and recorded at Book 2989, Page 92;
6. Quitclaim Deed with Covenant from Algernon B. Reese, III to Astri Sand Brooks, dated December 19, 2006, and recorded at said Registry at Book 4675, Page 187.

EXHIBIT B

Sketch Plan of the Protected Property Showing Land Use Areas

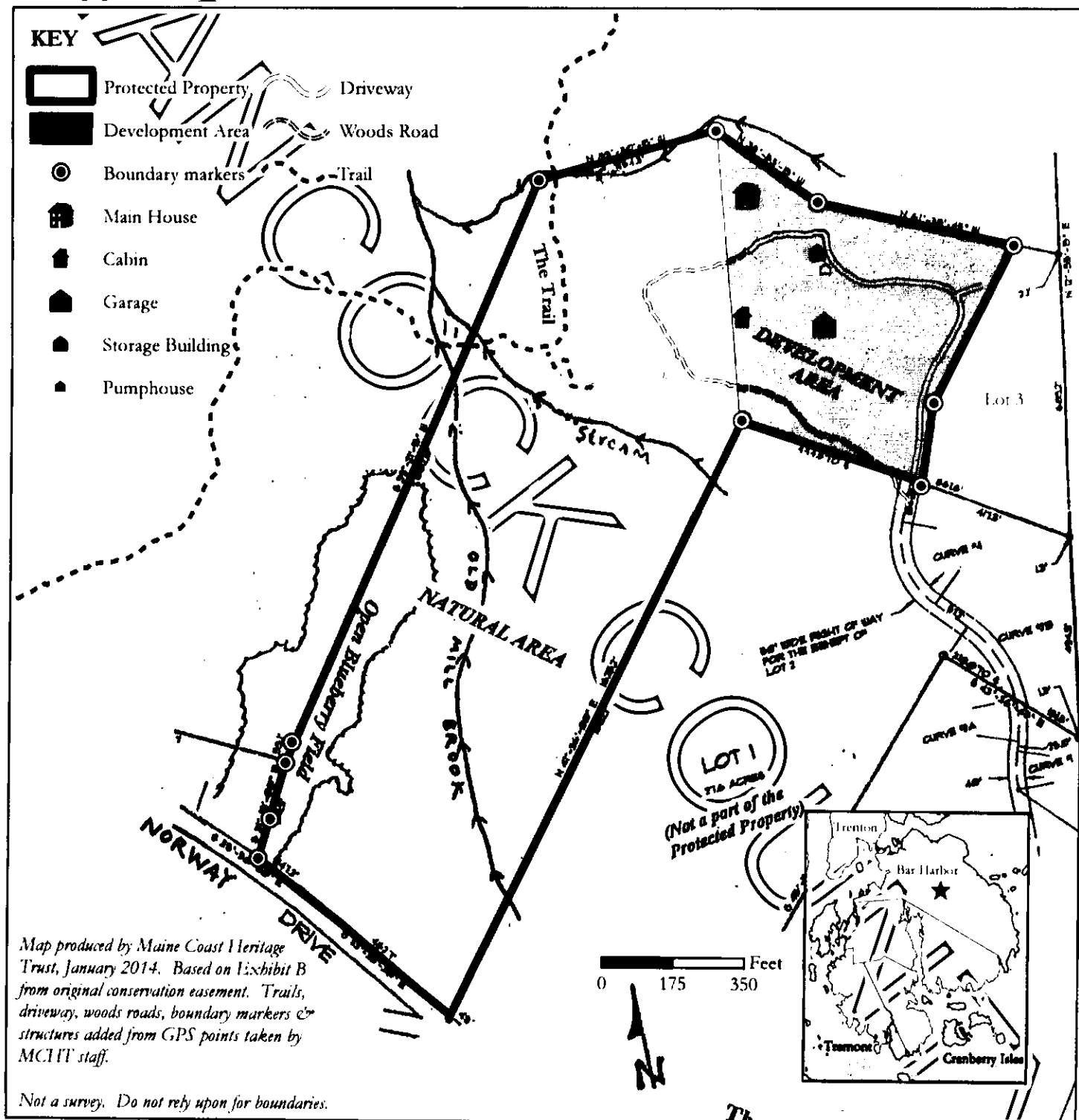


EXHIBIT C

Legal Description of the Development Area

The Development Area of the Protected Property, located in Bar Harbor, Hancock County, State of Maine, is a portion of the Protected Property described in Exhibit A hereinabove, and more particularly described by metes and bounds as follows:

Beginning at an iron rod set in the ground at the northernmost point on Lot #2A shown on the survey plan recorded at File #29, No. 57, at the Hancock County Registry of Deeds;

thence, South thirty-eight degrees fifty-three minutes fifteen seconds East (S. 38° 53' 15" E.) three hundred three and five tenths (303.5) feet to an iron rod driven into the ground;

thence South sixty-one degrees thirty-eight minutes forty-five seconds East (S. 61° 38' 45" E.) four hundred eighty-nine and one-tenth (489.1) feet to a point at the northernmost corner of Lot 3 depicted on the said survey recorded in File 29, No. 57;

thence South forty-three degrees thirty-one minutes fifteen seconds West (S. 43° 31. 15" W.), but always following the northwesterly sideline of said Lot 3, four hundred thirty-one and three tenths (431.3) feet to a point at the easterly corner of a fifty (50) feet wide right of way depicted on the survey recorded in File 29, No. 57;

thence South twenty-three degrees forty-nine minutes zero seconds West (S. 23° 49' 00" W.), but always following the westerly sideline of said Lot 3 and the easterly sideline of said fifty (50) feet wide right of way, two hundred (200) feet to a point in the northeasterly sideline of Lot 1 and the westernmost corner said Lot 3;

thence North fifty-four degrees thirty-one minutes forty-five seconds West (N. 54° 31' 45" W.), but always following the northeasterly sideline of said Lot 1, four hundred seventy (470) feet, more or less, to an iron rod driven into the ground at the northernmost corner of said Lot 1;

thence due North-northeast approximately seven hundred fifty (750) feet to the point of beginning; having approximately 8 acres.

P. 203
#3 (21)
Ref/ Maine Coast Heritage Trust
PO Box 6669
Mount Desert, Me
04660