

**WRAY CONSERVATION EASEMENT  
IN THE TOWN OF HANCOCK, HANCOCK COUNTY, MAINE  
TO BE HELD BY FRENCHMAN BAY CONSERVANCY**

We, **Kurt L. Wray** and **Ruth A. Wray**, of 103 Gull Rock Road, Hancock, Maine 04640, being married (hereinafter referred to as the "Grantors,") for consideration being an absolute and unconditional gift

GRANT with QUITCLAIM COVENANT this Conservation Easement in perpetuity, pursuant to 33 M.R.S.A. §476 *et seq.*, as amended,

to **Frenchman Bay Conservancy**, a nonprofit corporation organized and operating in the State of Maine and whose mailing address is Post Office Box 150, Hancock, Maine (hereinafter referred to as the "Holder");

the following described premises: Over, through, under and across certain parcels of land adjacent to the East Side Road and Frenchman Bay in the Town of Hancock, County of Hancock, and State of Maine, being more particularly described in **Exhibit A and A-1**, and depicted on **Exhibit B**, both attached hereto and made a part hereof, being a portion of that premises acquired by deed to the Grantors from Anne C. Cook, dated October 20, 1980 and recorded in the Hancock County Registry of Deeds, Book 1390, Page 143 as shown on a plan entitled "Standard Boundary Survey for Kurt L. and Ruth A. Wray; Location: Hancock, Maine; November, 1997- Scale 1" = 100'; Revised 12/2/97; 8/30/07" (hereinafter referred to as the "Property" or the "Protected Property"), exclusively for conservation purposes as follows:

**Conservation Purposes**

*It is the purpose of this Conservation Easement to assure that the Protected Property will be retained forever in its essentially undeveloped, open, scenic, and natural condition, consistent with the terms of this Conservation Easement, including its recitals, and to prevent any use of the Protected Property that will impair or interfere with this condition. Grantors and Holder intend that this Conservation Easement will confine, in perpetuity, the uses of the Protected Property to activities which are compatible with these purposes and the protection of wildlife habitat and preservation of its scenic, open space and natural values.*

WHEREAS, the grant of this Conservation Easement will provide public benefit and serve specific conservation purposes, as set out herein and as this term is defined in §170(h)(4)(A) of the Internal Revenue Code, or successor provision; and

WHEREAS, this Conservation Easement will preserve open space pursuant to clearly delineated governmental conservation policies; and

WHEREAS, the Protected Property is currently enrolled in Maine's Tree Growth program, which states that it is the policy of the State of Maine to encourage the operation of all forest lands on a sustained yield basis (36 M.R.S.A. §563 *et seq.*); and

WHEREAS, the Town of Hancock Comprehensive Plan (1992) declares that the harvesting of clams, worms, scallops, urchins, lobsters and kelp are part of the local State and regional economies and that the Town must take steps to ensure that the integrity of such marine resources is preserved; and

WHEREAS, the State of Maine Shoreland Zoning Ordinance requirements, found at Title 38, Maine Revised Statutes Annotated, §435 *et seq.* regulate development within 250 feet of mean high water of the ocean because it is in the State's best interest to protect water quality, including coastal areas; and

WHEREAS, the State of Maine has a policy of protecting important agricultural soils, e.g. the Farmland Protection Policy Act, P.L. 97-98, 7 United States Code, §4201, *et seq.* and Maine Right to Farm Act, Title 17, §2805, which seek to minimize the permanent conversion of agricultural land to nonagricultural uses; and

WHEREAS, the Protected Property consists of approximately twenty-one (21) acres of highly scenic forestland and prime agricultural soils, as well as approximately 570 feet of shorefront on Frenchman Bay in the Town of Hancock, Hancock County, State of Maine; and

WHEREAS, the Protected Property is in a substantially undeveloped state, and includes a diverse mix of natural softwood and hardwood forest; and

WHEREAS, the Protected Property is located near other preserved lands of Frenchman Bay Conservancy that protect the waters of Frenchman Bay, including the Three Pines and Hills Island conservation easement properties in Hancock, the Long Cove conservation easement property in Sullivan and preserves owned by Frenchman Bay Conservancy at Tidal Falls and Salt Pond in Hancock, as well as many other properties and islands in Frenchman Bay owned by other conservation organizations and Acadia National Park; and

WHEREAS, Frenchman Bay Conservancy is qualified to hold conservation easements pursuant to 33 M.R.S.A. §476(2)(B), as amended, and is a qualified organization under the Internal Revenue Code, 26 U.S.C.A. §§170(h)(3) and 501(c)(3), whose purpose it is to preserve and conserve natural areas for aesthetic, scientific, charitable and educational purposes; and

WHEREAS, Grantors and Holder also have the common purpose of conserving in perpetuity the Protected Property as "a relatively natural habitat of fish, wildlife or plants, or similar ecosystem," as that phrase is used in 26 U.S.C.A. §170(h)(4)(ii), and in regulations promulgated thereunder; and

WHEREAS, any significant change or development of the scenic, open space and natural conditions of the Protected Property, except as expressly herein provided, would have an adverse

effect on the scenic and natural resources of the community, its public values and those of the environment; and

WHEREAS, the Protected Property, with its reasonably level terrain, good soils, shorefront, ocean views and proximity to the fast-growing City of Ellsworth and Acadia National Park on Mount Desert Island, is subject to considerable development pressure for uses more intensive than those permitted in this Conservation Easement, and that would have an adverse impact on the conservation values intended to be protected by this Conservation Easement;

NOW, THEREFORE, in consideration of the above recited purposes and recitals and of the covenants, terms, conditions and restrictions herein contained, and pursuant to the laws of the State of Maine, Grantors and Holder have established, forever and in perpetuity, a Conservation Easement in gross over the Protected Property, as follows:

**1. LAND USES**

**1.A. Generally:** The Protected Property may be used for agriculture, commercial and non-commercial forestry, for low-impact outdoor recreation and for residential, residential accessory, and other uses specifically reserved herein by the Grantors. No industrial, quarrying or surface mining activities are permitted anywhere on the Protected Property.

The Protected Property may not be used for more than a *de minimus* level of commercial recreational activity, as now or hereafter defined under Internal Revenue Code §2031(c) and regulations promulgated thereunder.

**1.B. Specific prohibitions:** Without limiting the generality of the foregoing, but subject to Grantors retained rights for existing utility poles and lines and rights-of-way, the following are strictly prohibited on the Protected Property: multiple-unit housing, docks, piers, causeways, utility corridors, additional through-roads or rights-of-way, racetracks, motocross courses, golf courses, alpine ski areas, time-share units, mobile homes, high-intensity lighting, 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 or helicopters, except in an emergency.

**2. SUBDIVISION**

The Protected Property must remain in its current configuration as an entity, and may not be subdivided, partitioned or otherwise divided into parcels or lots, provided however, that any portion thereof may be conveyed to an entity that meets the requirements of a qualified assignee as set forth in Paragraph 13.D. herein. The Protected Property may not be used to calculate or increase the permitted development density of land not subject to this Conservation Easement

**3. STRUCTURES AND EXISTING CONDITIONS**

**3.A. Existing Conditions:** As of the date of this grant, there are no structures on the Protected Property except the following: small cottage west of the old railroad bed with associated well and subsurface wastewater disposal system; and utility poles and lines serving residential lots abutting the Protected Property or to serve new structures permitted herein as reserved by Grantors or to serve the existing structures within the Building Envelop. The Protected Property is substantially forested. The existing conditions are generally indicated on Exhibit B and in the Baseline Documentation.

No additional structures of any kind, temporary or permanent, may be constructed, located, placed or installed on the Protected Property, except that Grantors reserve the right to place within the Building Envelope including Structures which Grantors reserve in Paragraph 3.B. below, minor structures as defined further in 3.C. below which Grantors reserve, and Grantors reserve the right to use, upgrade, maintain and replace the existing utility poles and lines in substantially the same location, or place utilities underground in substantially the same location.

**3.B. Reserved Rights within Building Envelope including Structures:** Grantors reserve the following rights within the Building Envelope as described in Exhibit A-1 and shown on Exhibit B, for themselves, their personal representatives, heirs, and assigns:

**3.B.1. Structures:** Grantors reserve the right to install, construct, locate, maintain, and repair or replace on the Protected Property within the defined Building Envelop the following structures: One residential dwelling structure and needed accessory structures such as and including but not limited to barn, studio, guest house ("residential structures") providing the total combined footprint of all such residential structures shall not exceed 6,000 square feet.

**3.B.2. Lot Improvements:** Related residential lot improvements needed to support and function with one or more residential structures such as a driveway; landscaping; over-ground or underground power and communication poles, lines, and related equipment; not more than two functioning wells or similar means of water supply with any necessary pumps and piping to provide potable water; and subsurface wastewater disposal system(s).

**3.B.3. Limitations on Reserved Rights:** Notice shall be given in writing to Holder prior to exercise of Grantors' reserved rights as set out in this Paragraph 3B, and all residential structures and residential lot improvements shall blend with the natural surroundings to a reasonable extent and shall comply with applicable requirements of Maine statute and local land use ordinances.

**3.C. Minor Structures:** Grantors reserve the right to install additional boundary markers and minor, small-scale structures to enhance the opportunity for traditional low impact pedestrian outdoor recreation, nature observation and study consistent with the conservation values of the Protected Property, and as necessary for the management of such recreation, including but not limited to: trail markers, small, unlighted informational and interpretive signs, trail improvements such as steps, bog bridges, footbridges, platforms, and railings, fire rings, pit toilets, picnic tables, temporary tents for camping, registration boxes; wildlife observation stations; study markers and grids; fences, gates, barriers, or low fences, to control unauthorized use, prevent access by motor vehicles, or protect fragile areas and areas under active management or study. Any and all structures to be constructed must be consistent with the conservation values of this easement.

**4. SURFACE ALTERATIONS**

**4.A. Existing Conditions:** As of the date of this grant, there is an access road running the length and width of the Protected Property as shown on Exhibit B, serving abutting residential lots. There is also a woods road and an old railroad bed, both crossing the Protected Property.

**4.B. Reserved Rights.** No additional surface alterations may be made to the Protected Property, except that Grantors reserve the right to maintain existing surface alterations and allow maintenance of them by others who now have or may in the future be granted a right of way with respect to the access road or the old railroad bed. Whatever prior rights are held by others as to the access road or the old railroad bed shall continue and nothing in this Conservation Easement may be interpreted to prevent or reduce any such prior rights held by others. Grantors reserve the right to minimize roadway erosion by regrading or resurfacing any right-of-way or access road to include the right to cover or pave the main access roadway with an impermeable surface. Grantors also reserve the right to alter the surface to the extent necessary to install and maintain the structures and other improvements permitted in Paragraph 3, and to undertake vegetation management permitted in Paragraph 5 below; to maintain/replace existing and to establish additional unpaved trails, woods roads, timber landing areas, and skid trails, including improvements such as stream crossings, erosion control devices, berms and drainage ditches; and for archeological study, conducted by an archeologist licensed by the State of Maine, and ecological study; provided that all such surface alterations are designed and maintained in such a way as to prevent erosion.

**5. VEGETATION MANAGEMENT**

**5.A. Existing Conditions:** The Protected Property is currently substantially forested with the exception of the cleared areas around and near existing structures and lot improvements within the Building Envelope designated in Exhibit B.

**5.B. Reserved Rights.** The destruction or removal of standing timber, plants, shrubs or other live vegetation is prohibited, except that Grantors reserve the following rights:

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**5.B.1. Non-commercial Vegetation Management:** Grantors reserve the right to manage the vegetation and forested land of the Protected Property to enhance wildlife habitat and low-impact outdoor recreation; to remove safety hazards; to prevent the spread of fire, disease, and invasive, non-native plant or animal species, and to mark boundaries.

**5.B.2. As Necessary for Other Reserved Rights:** Grantors reserve the right to alter vegetation to the extent reasonably necessary to install and maintain structures, lot improvements, and surface alterations permitted under Paragraphs 3 and 4, and to maintain reasonable clearings around permitted existing and minor structures, provided that all such clearing is designed and maintained in such a way as to prevent erosion.

**5.B.3. Commercial Forestry:** Grantors reserve the right to conduct commercial forestry on a sustained yield basis, conducted in accordance with a Forest Management Plan. (The Forest Management Plan must be prepared by a licensed Maine forester and updated at least every ten (10) years.

**5.B.3.a. Forester Certification:** Prior to the commencement of harvesting operations, Grantors will provide Holder with a copy of a current Forest Management Plan.

**5.B.3.b. Periodic Certification:** After initial certification, Grantors must provide Holder, at least every ten years, with an updated Forest Management Plan and an updated certification by a licensed Maine forester that forestry operations on the Protected Property since the previous forester certification have been consistent with the Forest Management Plan in effect at the time such operations were conducted or, if such operations were not in all respects consistent with the applicable Forest Management Plan, detail the variance between what was called for in the applicable plan and what actually happened on the Protected Property.

**5.B.3.c. Determination of Compliance:** Nothing in this Paragraph 5.B.3. shall be interpreted to mean that any Forest Management Plan shall supercede this Conservation Easement. Forest management operations must comply with the terms of this Conservation Easement.

**5.B.4 Clearing for Agriculture**

At the date of this grant, the Protected Property is enrolled in the State of Maine's Tree Growth Tax program [citation]. Nothing in this Conservation Easement requires that the Protected Property remain in that or any successor program; and

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nothing in this Conservation Easement requires that the Protected Property be removed from that or any successor program.

The Protected Property may be cleared for agricultural purposes, but only pursuant to a written Agricultural Management Plan, prepared in consultation with the appropriate state or federal agencies and approved in advance by Holder. Any such Plan shall provide for preservation of the important agricultural soils on the Protected Property and shall be consistent with the preservation of the conservation values intended to be protected by this Conservation Easement to the extent compatible with agricultural use of the Protected Property.

**6. WATER PROTECTION AND WASTE DISPOSAL**

**6.A.** The overboard discharge of septic or gray water waste is prohibited. 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 compost may be used and stored on the Protected Property, and slash, logging debris, and vegetative waste from permitted activities may be left to remain, 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.

**6.B.** The use of herbicides, pesticides, fungicides, fertilizers and other chemical or biological agents on the Protected Property must be limited to prevent any demonstrable adverse impact on wildlife or waters.

**7. ACCESS.**

Although this Conservation Easement benefits the general public through the protection of land resources and natural beauty, nothing contained herein shall be construed as granting the general public a right of physical access to any portion of the Protected Property, but nothing in this Conservation Easement should be construed to preclude Grantors' right to permit non-destructive public use of the Protected Property, provided that such use does not conflict with protection of its Conservation values, and provided that more than a *de minimus* use of the Protected Property for commercial outdoor recreation is prohibited.

Notwithstanding any public use of the Protected Property and any insurance coverage thereof, neither the Grantors nor the Holder assume any greater obligation to the public to maintain the Protected Property for public use than due under Maine law, and Grantors and Holder claim immunity or limitation of liability to the fullest extent of the law under Title 14 M.R.S.A. §159-A, or successor provisions thereof, or of any other applicable protections of law or equity.

**8. HOLDER'S AFFIRMATIVE RIGHTS**

**8.A. Entry and Inspection.** Holder shall have the right to 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. Except in emergency circumstances, Holder will make reasonable efforts to contact Grantors and/or persons in residence on Grantors' adjacent property, as shown on Exhibit B, prior to entry onto any area of the Protected Property. "Emergency circumstances" shall mean that the Holder has a good-faith basis to believe a violation of the easement is occurring or is imminent.

**8.B. Enforcement.** Holder shall have the right to enforce this Conservation Easement by proceedings at law and in equity, including the right to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement and to require the restoration of the Protected Property to the condition that existed prior to any such injury.

Prior to initiation of an enforcement action, Holder shall provide Grantors with prior notice and reasonable opportunity to cure any breach, except where emergency circumstances require more immediate enforcement action.

If a Court, or other decision maker agreed to by the parties, determines that this Conservation Easement has been breached by Grantors, Grantors shall reimburse Holder for any reasonable costs of enforcement, including costs of court or other decision-making process, reasonable attorneys' fees, and any other payments ordered by such Court or other decision-maker.

Grantors are not responsible for injury to or change in the Protected Property resulting from natural causes or environmental catastrophe beyond Grantors' control, such as fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

**8.C. Boundaries.** The Protected Property has been professionally surveyed. It shall be Grantors' obligation to keep the boundaries of the Protected Property clearly marked. In the event boundaries are not adequately clear or marked and Grantors fail to accurately mark within a reasonable time after notice by Holder, Holder shall have the right to engage a professional surveyor to re-establish and re-mark boundaries of the Protected Property or any part thereof. The costs associated with such survey work shall be paid by the Grantors if and to the extent necessary to determine if a breach of this Conservation Easement has occurred.

**8.D. Holder Acknowledgement Signs.** Holder shall have the right, after consultation with Grantors, to install and maintain small unlighted signs visible from public vantage

points and along boundary lines, to identify Holder and inform the public and abutting property owners that the Protected Property is under the protection of this grant.

**9. NOTICES AND REQUESTS FOR APPROVAL**

**9.A. Notice and Approval Requirements.** Grantors agree 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 if the reserved right were not to be installed or constructed in accord with the restrictions and other limiting terms specified herein for proper exercise of such reserved right. Grantors' notices must include sufficient information to show Holder that Grantors' plans are consistent with the restrictions and other limiting terms of this Conservation Easement and, thereby, consistent with the conservation purposes hereof.

**9.B. Method for Notice.** Any notices or requests for approval required by this Conservation Easement shall be in writing and shall be personally delivered or sent certified mail, return receipt requested, or by such commercial delivery service as provides proof of delivery, to Grantors and Holder, at the addresses set out at the beginning of this Conservation Easement, unless one has been notified by the other of a change of address or change of ownership.

In the event that notice mailed to Grantors or Holder at the last address given as set out in this Conservation Easement is returned as undeliverable, the sending party shall provide notice by regular mail to Grantors' last known address on file with the Town of Hancock, Maine, or, in the case of Holder or in the case of a corporate owner, to the address on file with the Secretary of State, State of Maine, and the mailing of such notice shall be deemed compliance with the notice provisions of this Conservation Easement.

**9.C. Time for Notice and Reply**

**9.C.1.** Where Grantors are required to provide notice to Holder pursuant to this Conservation Easement, such notice as described hereinabove shall be given in writing thirty (30) days prior to the event giving rise to the need to give notice except as otherwise specifically provided herein.

**9.C.2.** Where Grantors are required to obtain Holder's prior written consent and approval, such request as described hereinabove shall be given in writing sixty (60) days prior to undertaking the proposed activity except as otherwise specifically provided herein. Holder, upon receipt of Grantors' request, shall acknowledge receipt of the same. Following review of the materials provided by Grantors, Holder, shall grant, grant with conditions, or withhold its approval. Failure to approve Grantors' request within forty-five (45) days shall be deemed a denial of such request. No proposed activity may proceed without Holder's written consent and approval as provided herein.

**10. COSTS, TAXES, LIABILITY**

**10.A. Taxes and Liens.** Grantors shall pay and discharge when due all property taxes and assessments imposed upon the Protected Property and any uses thereof, and shall avoid the imposition of any liens that may impact Holder's rights hereunder. Grantors shall keep the Protected Property free of any such liens or encumbrances, including without limitation those arising out of any work performed for, materials furnished to, or obligations incurred by Grantors; and Grantors shall promptly notify Holder of the filing or recording of any such lien or encumbrance. Holder may, at its discretion, pay any outstanding taxes, assessments, liens or encumbrances, and shall then be entitled to reimbursement by Grantors, together with interest at the then-prevailing statutory post-judgment interest rate in Maine under Title 14 MRSA §1602-C or successor provisions thereof, calculated from the date of Holder's payment. Grantors and Holder agree that Holder shall have a lien on the Protected Property to secure Holder's right to reimbursement and that Holder may record such lien at any time. In any collection process or court action brought by Holder for reimbursement, Holder shall be entitled to recover its costs and expenses, including, without limitation, reasonable attorneys fees.

**10.B Responsibility of Owners.** Grantors acknowledges that Holder has neither possessory rights in the Protected Property, nor any responsibility or right to control, maintain, or keep up the Protected Property. Grantors shall retain all responsibilities and shall bear all costs and liabilities of any nature related to the ownership, operation, upkeep, improvement and maintenance of the Protected Property. Grantors shall indemnify, defend and hold Holder harmless from and against any and all liabilities, costs, damages, or expenses of any kind (including, without limitation, reasonable attorneys fees, that Holder may suffer or incur as a result of or arising out of the activities of Grantors or any other person on the Protected Property, other than those caused by the negligent acts or acts of misconduct of Holder, and except those arising out of Holder's workers' compensation obligations. Holder's right to be defended, held harmless and indemnified by Grantors shall extend without limitation to any action based upon the presence of toxic and/or hazardous substances upon or emanating from the Protected Property.

**11. STANDARD PROVISIONS, RELATING TO REQUIREMENTS UNDER MAINE LAW AND U. S. TREASURY REGULATIONS**

**11.A. Maine Conservation Easement Act.** This Conservation Easement is established pursuant to the Maine Conservation Easement Act at Title 33, Maine Revised Statutes Annotated, §§476 through 479-C, inclusive, as amended, and shall be construed in accordance with the laws of the State of Maine.

**11.B. Conservation Purposes.** 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, USCA, §170(h)(1)–(6) and under Treasury Regulations at Title 26 CFR §1.170A-14 *et seq.*, as amended.

**11.C. Qualified Holder.** The Holder is qualified to hold conservation easements pursuant to Title 33, Maine Revised Statutes Annotated, §476(2)(B), as amended, and is a qualified donee under Internal Revenue Code §170(h)(3): a publicly supported, nonprofit 501(c)(3) organization with the authority to accept lands, easements, and buildings for the purpose of preserving and protecting natural, scenic, educational, recreational or open-space values of real property, and with the commitment to preserve the conservation values of the Protected Property.

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

**11.E. Baseline Documentation.** 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, Holder and Grantors have prepared an inventory of the Protected Property's relevant features and conditions (the "Baseline Documentation") and have certified the same as an accurate representation, to the extent known, of the condition of the Protected Property as of the date of this grant, as required under Treasury Regulations §1.170A-14, for tax deductible conservation easement gifts.

**11.F. Liens Subordinated.** Grantors represent that as of the date of this grant there are no liens or mortgages outstanding against the Protected Property. Grantors have the right to use the Protected Property as collateral to secure the repayment of debt, provided that any lien or other rights granted for such purpose, regardless of date, are subordinate to Holder's rights under this Conservation Easement. Under no circumstances may Holder's rights be extinguished or otherwise affected by the recording, foreclosure or any other action taken concerning any subsequent lien or other interest in the Protected Property.

**11.G. Termination and Proceeds.** This Conservation Easement may only be extinguished or terminated by judicial order in a court of competent jurisdiction in an action in which the Attorney General of the State of Maine is made a party. It is the intention of the parties that an extinguishment or termination be approved by a court only if all of the conservation purposes of this Conservation Easement are impossible to accomplish. Notwithstanding the foregoing, but subject to more restrictive laws and regulations, if any, if an interest in this Conservation Easement is subject to the exercise of the power of eminent domain or Holder receives a formal notice of the intention to exercise such powers by an agency of government entitled to do so, Holder, in its sole discretion, may issue prior written consent, without a judicial order, to a partial or complete extinguishment or termination of this Conservation Easement.

Grantors and Holder agree that the donation of this Conservation Easement gives rise to a property right which vests immediately in Holder and which has a fair market value equal to the amount by which the fair market value of the unrestricted Protected Property is reduced by the restrictions imposed by this Conservation Easement, as provided herein. Should this Conservation Easement be extinguished or diminished in land area by judicial decree, the power of eminent domain or other legal authority and Grantors sells, exchanges, receives payment, or if there is an increase in value of any part or the whole of the then-unrestricted Protected Property, Holder shall be entitled to be paid a portion of the proceeds of such sale, exchange or conversion, or increase in such value, computed as to the greater of: (i) the proportion that the value of this Conservation Easement bore to the value of the unrestricted Protected Property on the date of execution of this Conservation Easement; or (ii) the proportion that the value of this Conservation Easement bears to the unrestricted Protected Property at the time of the Conservation Easement's extinguishment or diminishment. In any such case, the diminished value of the Protected Property due to the existence of this Conservation Easement shall not affect the full valuation of the Protected Property as if this Conservation Easement did not exist. Holder shall use its share of the proceeds, or other moneys received under this paragraph in a manner consistent with the purposes of this Conservation Easement. Holder has the right to record a lien on the Protected Property to secure its rights under this Paragraph 11G.

## 12. GENERAL PROVISIONS

**12.A. Controlling Law and Interpretation.** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Maine. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the conservation purposes set out herein and the policy and purpose of the Maine Conservation Easement Act at Title 33, Maine Revised Statutes Annotated, §§476 through 479-B, inclusive, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the conservation purposes of this Conservation Easement shall govern.

**12.B. "Grantors" and "Holder" Definitions.** The term "Grantor" or "Grantors" as used in this easement shall include, unless the context clearly indicates otherwise, the within-named Grantor(s), jointly and severally, their personal representatives, heirs, successors and assigns and any successors in interest to the Protected Property. The term "Holder" as used in this easement shall, unless the context clearly indicates otherwise, include the Holder's successors and assigns.

**12.C. Owner's Rights and Obligations, Joint Obligation.** A person's or entity's obligation hereunder as Grantor, or successor owner of the Protected Property, shall be joint and several, and will cease, only if and when such person or entity ceases to have any ownership interest in the Protected Property, (or relevant portion thereof) but only to the extent that the Protected Property (or relevant portion thereof), is then in compliance

herewith, and provided such person or entity shall have fulfilled the requirements of Paragraph 14.D. below. Responsibility of owners for breaches of this Conservation Easement that occur prior to transfer of title will survive such transfer; provided that the new owner shall also be responsible for bringing the Protected Property into compliance.

**12.D. Subsequent Deeds and Transfers.** This Conservation Easement must be incorporated by reference in any deed or other legal instrument by which Grantors convey any interest in the Protected Property, including, without limitation, a leasehold or mortgage interest. Grantors further agree to give written notice to Holder within thirty (30) days of the transfer or conveyance of any interest in the Protected Property. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

**12.E. Compliance/Estoppel Certificates.** Upon written request by Grantors, Holder will provide Compliance/Estoppel-Certificates to Grantors or third parties, indicating the extent to which, to Holder's knowledge after due inquiry, the Protected Property is in compliance with the terms of this grant. The inspection of the Protected Property for this purpose will be made by Holder at Grantors' cost within a reasonable time after Grantors' written request.

**12.F. Discretionary Approvals and Amendments.**

**12.F.1. Discretionary Approvals.** Grantors and Holder recognize that certain activities by the Grantors (i.e. Grantor activities not contemplated by this Conservation Easement but nonetheless consistent with its conservation purposes) may warrant the prior discretionary approval of Holder, and that Holder has the right to issue such discretionary approvals without prior notice to any other party. Nothing in this paragraph shall require the Holder to agree to any discretionary approval or to consult or negotiate regarding any discretionary approval.

**12.F.2. Amendments.** Amendment and Discretionary Consents. Grantors and Holder recognize that rare and extraordinary circumstances could arise which warrant modification of certain of the provisions of this Conservation Easement. To this end, subject to more restrictive laws and regulations, if any, Grantors and Holder have the right to agree to amendments to this Conservation Easement without prior notice to any other party, provided that in the sole and exclusive judgment of Holder, any such amendments enhance or do not materially detract from the conservation values intended for protection under this Conservation Easement. Amendments will become effective upon recording in the Hancock County Registry of Deeds. Nothing in this paragraph shall require the Grantors or the Holder to agree to any amendment or to consult or negotiate regarding any amendment. Notwithstanding the foregoing, Holder and Grantors have no right or power to approve any action or agree to any amendment that would:

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- (1) enlarge the area for residential or other building development, or the number of residences, if any, permitted by the express terms of this Conservation Easement;
- (2) materially detract from the conservation values intended for protection, without the prior approval of a court of competent jurisdiction in an action in which the Attorney General of the State of Maine has been made a party;
- (3) limit the term or result in termination of this Conservation Easement without the prior approval of a court of competent jurisdiction in an action in which the Attorney General of the State of Maine has been made a party; or
- (4) adversely affect the qualification of this Conservation Easement or the status of the Holder under applicable laws, including the Maine Conservation Easement Act at Title 33, §§476 *et seq.*, and §§170(h), 501(c)(3), 2522, and 2031(c) of the Internal Revenue Code, successor provisions thereof and regulations issued pursuant thereto.

**12.G. Economic Hardship.** In making this grant, Grantors have considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. In addition, the unprofitability of conducting or implementing any or all of the uses permitted under the terms of this Conservation Easement shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. It is the intent of both Grantors and Holder that any such economic changes shall not be deemed to be changed conditions or a change of circumstances justifying the judicial termination, extinguishment or amendment of this Conservation Easement.

**12.H. Nonwaiver.** The failure or delay of the Holder, for any reason whatsoever, to do any action required or contemplated hereunder, or to discover a violation or initiate an action to enforce this Conservation Easement shall not constitute a waiver, laches, or estoppel of its rights to do so at a later time.

**12.I. Severability, Entire Agreement, No Forfeiture.** 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. This instrument and the Baseline Documentation set forth the entire agreement of the parties with respect to the Conservation Easement and supercedes all prior discussions, negotiations, understandings, or agreements relating to this Conservation Easement, all of which are merged herein. Nothing contained herein will result in a forfeiture of this Conservation Easement or reversion to Grantors of any rights extinguished or conveyed hereby.

**12.J. Standing to Enforce.** Only Holder and Grantors may bring an action to enforce this grant, and nothing herein should be construed to grant any other individual or entity standing to bring an action hereunder, unless otherwise provided by law; nor to grant any rights in the Protected Property by adverse possession or otherwise, provided that nothing

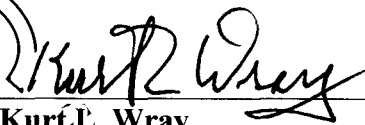
in this Easement shall affect any public rights in or to the Protected Property acquired by common law, adverse possession, prescription, or other law, independently of this grant.

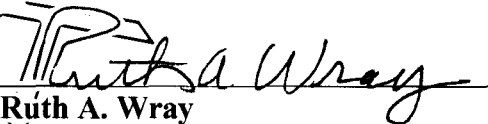
**12.K. Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

**12.L Grantors' Attorney.** Grantors have retained legal counsel Dale L. Worthen, Esq. to represent only their interest in this transaction

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

IN WITNESS WHEREOF, We, **Kurt L. Wray** and **Ruth A. Wray**, husband and wife, have signed this Conservation Easement this 28th day of December, 2007.

  
Kurt L. Wray

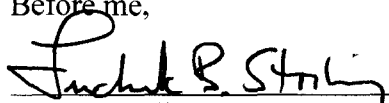
  
Ruth A. Wray

**Acknowledgement**

STATE OF MAINE  
COUNTY OF HANCOCK

December 28, 2007

Then personally appeared the above-named **Kurt L. Wray** and **Ruth A. Wray** and acknowledged the foregoing instrument to be their free act and deed.


Before me,  
  
Notary Public/Attorney at Law

Printed name of notary or attorney: Frederick B. Stocking  
My commission expires: \_\_\_\_\_

HANCOCK

### Holder Acceptance

The above and foregoing Conservation Easement was authorized to be accepted by the ~~Frenchman Bay Conservancy~~ and **Frenchman Bay Conservancy** does hereby accept the foregoing Conservation Easement, by and through Linda King, its Vice President, this 28<sup>th</sup> day of December, 2007.

  
\_\_\_\_\_  
**FRENCHMAN BAY CONSERVANCY**  
Printed Name: Linda King  
Title: Vice President

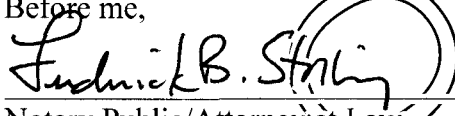
ACK

### Acknowledgement

STATE OF MAINE  
COUNTY OF HANCOCK

December 28, 2007

Personally appeared Linda King, duly authorized Vice President of the above-named Frenchman Bay Conservancy and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity, and the free act and deed of Frenchman Bay Conservancy.

Before me,  
  
\_\_\_\_\_  
~~Notary Public~~/Attorney at Law

Printed name of notary or attorney: Frederick B. Stocking  
My commission expires: \_\_\_\_\_

HANCOCK

**EXHIBIT A**

**Description of the Conservation Easement Area of  
Property of Kurt L. & Ruth Wray  
Sullivan Harbor, Town of Hancock  
Hancock County, Maine  
Frenchman Bay Conservancy, Holder**

A lot of land located on the easterly side of the East Side Road and on the westerly shore of Sullivan Harbor in the town of Hancock, county of Hancock, state of Maine, said lot being a portion of the premises described in a deed of Kurt & Ruth Wray recorded in Bk. 1390, Pg. 143, said lot shown on a survey map by Eastern Surveying Co., Inc., said map titled "Boundary Survey For Record Owners **KURT L. & RUTH A. WRAY**", said map dated November, 1997, last revised 12/27/07, said map to be recorded, said lot more particularly bounded and described as follows:

Beginning at a capped, #5, iron re-bar set in 1997 on the easterly side of said East Side Road on the northerly bound of a lot of land of Ward & King described in a deed recorded in Bk. 2702, Pg. 546;

Thence N 83° 57' 19" W, 30'±, along the northerly bound of said Ward/King lot, to a point in the centerline of the traveled way of said East Side Road;

Thence northerly, 454'±, along said centerline, to a point;

Thence S 83° 50' 09" E, 30'±, along the southerly bound of a lot of land now or formerly of Wilbur described in a deed recorded in Bk. 1851, Pg. 466, to a corner fence post found, said post bearing N 03° 46' 35" W, 453.67' from the re-bar referenced at the point of beginning;

Thence S 83° 50' 09" E, 253.56', along the southerly bound of said Wilbur lot, along a line generally defined by old wire fence remnants, to a granite monument found;

Thence N 03° 14' 50" W, 34.40', along the easterly bound of said Wilbur lot, to a capped, #5, iron re-bar set in 1997;

Thence S 83° 15' 10" E, 504.09', along the southerly bound of a lot of land now or formerly of Estey described in a deed recorded in Bk. 1568, Pg. 306, to a capped, #5, iron re-bar set in 1997;

Thence S 83° 15' 10" E, 702.55', continuing along the southerly bound of said Estey lot, to a capped, #5, iron re-bar set in 1997;

Thence N 08° 27' 50" E, 90.60', along an easterly bound of said Estey lot, to a capped, #5, iron re-bar set in 1997;

Thence S 81° 32' 10" E, 211.64', along the southerly bound of said Estey lot, to a capped, #5, iron re-bar set in 1997;

Thence S 81° 32' 10" E, 35.36', continuing along said southerly bound, to a point on the easterly side of a gravel driveway;

Thence S 62° 40' 10" E, 4.12', continuing along said southerly bound, to a #4 re-bar found disturbed and reset;

Thence S 62° 40' 10" E, 100.68', continuing along said southerly bound, to a #4 re-bar found;

Thence S 74° 20' 09" E, 260.38', continuing along said southerly bound, to a #4 re-bar found;

Thence S 74° 20' 09" E, 50'±, continuing along said southerly bound, to a point in the high water line of said Sullivan Harbor;

Thence generally southerly, 570'±, along said high water line, to a point;

Thence by a line of division through said Wray premises, N 89° 29' 10" W, 75'±, to a point in the middle of a utility pole, said utility pole bearing S 08° 54' 08" W, 429.63' from the last referenced re-bar;

Thence N 89° 29' 10" W, 363.83', continuing by said line of division, to a capped, #5, iron re-bar set in 1997;

Thence N 83° 57' 19" W, 622.84', along the northerly bound of said Ward/King lot, to a capped, #5, iron re-bar set in 1997;

Thence N 83° 57' 19" W, 975.75', along the northerly bound of said Ward/King lot, to the re-bar referenced at the point of beginning;

Containing 23.14± acres;

Subject to a 20 foot wide right of way from said East Side Road (easterly, along an existing gravel access road, through the above described lot, to a point on the southerly bound of said lot near the southeasterly corner thereof, the centerline of said right of way being coincident with the centerline of the traveled way of said access road, said access road shown on said map, said right of way to be for the benefit of the remaining Wray property and for the benefit of the below described building envelope;

Also subject to a 20 foot wide right of way from the northerly bound of said Ward/King lot, northeasterly, along the old railroad bed, to the above referenced gravel access road, and then westerly, along said gravel access road to said East Side Road, the centerline of said right of way is coincident with the centerline of said railroad bed and the centerline of said access road, said railroad bed and access road shown on said map;

Also subject to a 20 foot wide right of way from the southerly bound of said Estey lot southwesterly, along a gravel driveway, to the above referenced access road, the centerline of said right of way being coincident with the centerline of the traveled ways of said driveway and said access road, said driveway and access road shown on said map, said right of way to be for the benefit of said Estey lot and others.

Orientation referenced to Magnetic North as observed in 1996.

**EXHIBIT A-1**

**Description of the Building Envelope of the  
Conservation Easement Area of  
Property of Kurt L. & Ruth Wray  
Sullivan Harbor, Town of Hancock  
Hancock County, Maine  
Frenchman Bay Conservancy, Holder**

Within the lot described in Exhibit A above is located a building envelope within which limited activities will be allowed relating to the creation of a residence and associated activities under the terms of a Conservation Easement, the perimeter of said building envelope bounded and described as follows:

Beginning at the re-bar set in 1997 described in Exhibit A above as on the southerly bound of said Estey lot, said re-bar being at the easterly end of the above referenced "S 83° 15' 10" E, 504.09'" bound;

Thence S 83° 15' 10" E, 702.55', continuing along the southerly bound of said Estey lot, to a capped, #5, iron re-bar set in 1997;

Thence N 08° 27' 50" E, 90.60', along an easterly bound of said Estey lot, to a capped, #5, iron re-bar set in 1997;

Thence S 81° 32' 10" E, 211.64', along the southerly bound of said Estey lot, to a capped, #5, iron re-bar set in 1997;

Thence S 81° 32' 10" E, 35.36', continuing along said southerly bound, to a point on the easterly side of a gravel driveway;

Thence S 62° 40' 10" E, 4.12', continuing along said southerly bound, to a #4 re-bar found disturbed and reset;

Thence S 62° 40' 10" E, 100.68', continuing along said southerly bound, to a #4 re-bar found;

Thence by lines of division through the above described lot, the following 4 courses:

- 1) S 00° 13' 38" W, 192.05' to a point in the middle of a utility pole;
- 2) S 00° 13' 38" W, 5'± to a point;
- 3) Generally westerly, 1088'±, along a line located 10 feet northerly of and parallel with the centerline of said gravel access road, to a point, said point bearing N 76° 57' 19" W, 1078.33' from the last referenced point in the utility pole;
- 4) N 06° 12' 49" E, 26.22' to the re-bar referenced at the point of beginning;

Containing 1.98 acres;

Orientation referenced to Magnetic North as observed in 1996.

HENNECOCK COUNTY

