CONSERVATION EASEMENT

MOOSEHEAD WILDLANDS, INC., a Maine corporation with offices in Rockwood, Maine, 04478, (hereafter referred to as the “GRANTOR”, which word is intended to include unless the context clearly indicates otherwise, the above-named GRANTOR(s), and any future owners and successors in interest to the Protected Property, its successors and assigns,

GRANTS to the WESTERN MOUNTAINS FOUNDATION, a Maine certified non-profit conservation organization, organized and existing under the laws of the State of Maine, with mailing address of Village West #20, Carrabassett Valley, Maine 04947 (hereinafter referred to as the “HOLDER”, which word shall, unless the context clearly indicates otherwise, include the holder’s successors and assigns),

And grants to STATE OF MAINE (hereinafter referred to as “THIRD PARTY”, which shall, unless the context clearly indicates otherwise, include the THIRD PARTY’s successors and assigns), acting by and through its Department of Conservation, Bureau of Parks and Lands, with a mailing address of 22 State House Station, Augusta, Maine, 04333-0022,

With QUITCLAIM COVENANT, in perpetuity, the following described Conservation Easement on land located in Tomhegan Township (T1 R2 NBKP), Somerset County, Maine, hereinafter referred to as the PROTECTED PROPERTY, and described on Exhibits A, attached hereto, and on a plot plan attached hereto at Exhibit B, both Exhibits made a part hereof by reference;

PURPOSE

It is the purpose of this Conservation Easement to preserve and protect in perpetuity the scenic and natural features of the Protected Property in a forever wild condition, subject only to changes appropriate to provide opportunities for low impact outdoor recreation and nature observation and study; to preserve the health of the forest, wetland and shoreline ecosystems; to develop a trail, a public hand-carry boat launch, and six huts for primitive outdoor recreation such as hiking and cross-country skiing; to allow sustainable and environmentally sound growth and harvesting of forest products; and to assure availability to the general public for low impact outdoor recreation use.

The following recitals more particularly describe the conservation values of the Protected Property and significance of this grant.

WHEREAS, the Protected Property consists of approximately 1,185 acres and approximately 57,630 feet of undeveloped shoreline within 500 feet of the normal high water mark of Brassua Lake and Baker Pond, and the inland area on the west side of Brassua Lake and inland area on Poplar Hill as depicted in Exhibit B; and

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WHEREAS, the Protected Property remains in a significantly undeveloped/undisturbed natural wooded state which provides habitat to a variety species; and

WHEREAS, the Protected Property represents shoreland having significant natural and aesthetic values in its present state which contribute to the enjoyment and welfare of the People of the State of Maine; and

WHEREAS, the Protected Property is in active use for the production and harvesting of forest products and development or utilization of the Protected Property in excess of that allowed hereunder would potentially remove the land from production; and

WHEREAS, the Conservation Easement makes portions of the Protected Property available for primitive outdoor recreation by the general public in a manner that is consistent with the preservation of its natural features and with GRANTOR’s reserved rights;

NOW THEREFORE the GRANTOR and HOLDER have established a Conservation Easement affecting the Protected Property consisting of the following terms, covenants, restrictions and affirmative rights, which shall run with and bind the Protected Property in perpetuity:

**TERMS, COVENANTS AND RESTRICTIONS**

1. SUBDIVISION AND LAND USE

The Protected Property may not be divided, subdivided, partitioned, or otherwise separated into more than four lots or parcels, each subject to the terms of this Easement, except that the Protected Property or any part thereof may be sold or leased for its conservation purposes to any entity to which the conservation Easement may be transferred under paragraph 12E. Structural development, commercial, residential, industrial, energy generation, quarrying, mining, landfill, and waste disposal activities are prohibited on the Protected Property unless expressly stated to the contrary herein.

2. STRUCTURES

As of the date of this grant, there are no structures on the Protected Property except for boundary markers. The Protected Property does contain modest trails, land management road improvements (a description of which is provided in the Baseline Documentation), and primitive campsites, none of which involve structures. No additional structures, temporary or permanent, are allowed on the Protected Property except that GRANTOR reserves the right to locate, use, remove from or construct, install, repair, maintain and replace on the Protected Property the following as provided in the Lake Concept Plan.
1) a fourteen (14) foot wide trail system with a six (6) foot wide path;
2) three (3) single story wooden structures whose footprint is 400 square feet or less, whose location is greater than 250 feet from the normal high water mark of Brassua Lake and meeting the developmental standards described in Appendix 1 of the Lake Concept Plan and whose sole purpose is for primitive recreational use may be built within the Protected Property along with privy facilities for each structure;
3) two (2) single story wooden structures located on the Poplar Hill Peninsula and one (1) single story wooden structure located on the Western Peninsula and whose footprint is 400 square feet or less, whose location is greater than 500 feet from the normal high water mark of Brassua Lake and meeting the developmental standards described in Appendix 1 of the Lake Concept Plan and whose sole purpose is primitive recreational use, may be built within the Protected Property along with privy facilities for each structure.
4) fences to protect natural and wildlife resources;
5) boundary markers;
6) benches, walkways, bridges, primitive campsites, nature observation blinds, and small interpretive and directional signs;
7) temporary structures set back 500 feet from the normal high water mark of Brassua Lake and reasonably necessary to accomplish allowed forestry measures that are not inconsistent with the purposes of this grant;
8) temporary tents for non-commercial and non-institutional camping, or scientific study; and
9) a public hand-carry boat launch;
10) a trail or access road to the public hand-carry boat launch;
11) an access road perpendicularly across the Protected Property to a development site on the east shore of Brassua Lake;
12) two snowmobile trails perpendicularly across the Protected Property on the eastern side of Brassua Lake to provide access to Brassua Lake; and
13) an access road on the western Peninsula to the area retained by the GRANTOR.

3. SURFACE ALTERATIONS

As of the date of this grant, there are no surface alterations on the Protected Property except trails (including two snowmobile trails), land management roads, and primitive campsites. No additional filling, drilling, excavation or alteration of the surface of the earth, no removal of soil or minerals, and no changes in the topography, surface or sub-surface water are allowed on the Protected Property, except that GRANTOR reserves the right to the following as provided in the Lake Concept Plan:

1) construct, install, repair, replace and maintain a combination trail and cabin system that would provide a fourteen (14) foot wide trail whose primary use is intended for cross-country skiing in the winter and to provide a six (6) foot wide walking path;
2) construct, install, repair, replace and maintain six (6) small cabins and associated privy facilities;
3) establish and maintain footpaths and trails, in a manner and location that minimizes disturbance to wetlands and siltation of adjacent water bodies;
3) establish and maintain footpaths and trails, in a manner and location that minimizes disturbance to wetlands and siltation of adjacent water bodies;
4) construct and maintain land management roads in accordance with applicable laws and regulations;
5) excavate small select portions of the Protected Property for ecological studies or archaeological purposes, subject to the prior written approval of HOLDER which may be granted only if such activities will be conducted according to generally accepted professional practices and standards and in a manner consistent with the conservation purposes of this grant;
6) construct, install, repair, replace and maintain a public hand-carry boat launch and a trail or access road;
7) construct access roads perpendicularly across the Protected Property to a development site on the east shore of Brassua Lake and to a development site on the Western Peninsula; and
8) two snowmobile trails perpendicularly across the Protected Property to provide access to Brassua Lake.

4. VEGETATION MANAGEMENT

No standing timber may be cut or removed from the Protected Property except as provided by GRANTOR's reserved rights contained herein and is either (i) necessary in the accomplishment of the conservation, habitat management, or non-commercial outdoor recreational uses of the Protected Property or (ii) commercial timber harvesting activities and forest management pursuant to a forest management plan, prepared by a registered professional Maine Forester and designed to preserve the scenic and wildlife habitat quality of the Protected Property and to provide a sustainable yield of forest products in accordance with applicable laws and regulations. Timber management and road building must be accomplished by methods that will maintain the health of the forest, preserve its wildlife habitat qualities, preserve wetlands and minimize sedimentation into surface waters. Prior to commencing timber-harvesting operations in any area GRANTOR must provide HOLDER and THIRD PARTY with information on harvesting plans and methods by which the foregoing requirements will be met. All harvesting will comply with the Lake Concept Plan and other applicable requirements. No clear cuts will be allowed. No commercial harvesting or construction of land management roads or winter haul roads will be allowed within 100 feet of the normal high water mark of Brassua Lake and Baker Pond.

5. WILDLIFE AND WATER QUALITY PROTECTION

In order to assure the preservation of the high quality scenic, natural and ecological character of the Protected Property, the following specific restrictions, subject to any more restrictive local, state, and federal laws and regulations, are imposed on the Protected Property:

A. Overboard discharge or direct discharge of treated or untreated black or gray water waste into fresh surface water on or about the Protected Property is strictly prohibited.

B. It is forbidden to dispose of or store rubbish, garbage, debris, abandoned vehicles or equipment, parts thereof, or other unsightly, offensive, hazardous or toxic waste material on the Protected Property, except that organic compost, blowdowns, and by-products of on-site forest management may be used or disposed of on the Protected Property in a
manner consistent with the conservation purposes of this Easement, and other waste generated by allowed 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. Recreational users of the Protected Property must be instructed to carry out their trash.

C. The use of herbicides, insecticides, fungicides, fertilizers or other potentially harmful substance must be controlled and limited so as not to have an adverse effect on the wetland and wildlife habitat associated with the Protected Property and associated wetlands, streams, and ponds, and must be used in accordance with all applicable laws and regulations.

6. RECREATIONAL EASEMENT

GRANTOR agrees to take no action to prohibit or discourage daytime non-motorized and non-destructive public use of the Protected Property except that access to and use of the Protected Property located on the Poplar Hill Peninsula is by GRANTOR's permission only. GRANTOR reserves the right to make reasonable rules and regulations for different types of public use, and to control, limit or prohibit, by posting and any other means, activities which would be inconsistent with the purposes of this easement, including but not limited to the following: night use, camping, loud activities, open fires, use of motorized vehicles and equipment, access by domesticated animals or pets, use of bicycles, and hunting or trapping.

GRANTOR agrees to provide permanent public access to the Protected Property over the existing gravel road off Rockwood-Pittston Road either by vehicle or pedestrian travel. GRANTOR agrees to provide permanent public access to a new road or trail connecting the existing road with the hand-carry boat launch. However, GRANTOR reserves the right to substitute an alternate permanent access to the Protected Property that is consistent with the conservation and forest management purposes of this easement.

GRANTOR agrees to retain the two existing snowmobile crossings on the east side of Brasua Lake which provide access to the Lake, unless an alternative location for each crossing is agreed upon by the GRANTOR, the HOLDER and the THIRD PARTY.

In addition to the foregoing, GRANTOR and HOLDER may jointly agree in writing to restrict other uses or access to the Protected Property or parts thereof, if that use unreasonably interferes with the exercise of GRANTOR's reserved rights or with other users of the Protected Property as allowed under this Conservation Easement, or is harmful to the conservation values of the Protected Property but only to the extent and for the duration necessary to assure safety, or to preserve important ecological, habitat and conservation values of the Protected Property.

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 provision thereof (Maine Recreational Use Statute), and under any other applicable provision of law and equity.
7. DEFINITIONS

A. Footprint: The term "footprint" means the surface area of the earth occupied or covered by such structure, calculated on the basis of the exterior dimensions of the perimetric walls or bounds of such structure, and includes, in addition, the surface area of the earth occupied or covered by any attached porches, or decks whether enclosed or open-air, but does not include the ground area affected by subsurface waste disposal systems, roadways, or completely underground facilities.

B. Normal High Water Mark: The term "normal high water mark" means that line which is evident from visible markings, changes in the character of soils due to the prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In places where the shore or bank is of such character that the high water mark cannot be easily determined (rock slides, ledges, rapidly eroding or slumping banks), the normal high water mark will be estimated from places where it can be determined by the above method. Setbacks from the normal high water mark will be determined by horizontal measurement to the nearest point of the structure or activity.

8. NOTICES

Any notices or requests for the consent of the HOLDER or THIRD PARTY, required or contemplated hereunder, must include at a minimum, sufficient information to enable HOLDER or THIRD PARTY to determine whether proposed plans are consistent with the terms of this Conservation Easement and the conservation purposes hereof. Notices to any party must be in writing and will be sufficient if served personally or sent by certified mail, return receipt requested, addressed as follows:

To GRANTOR:
Moosehead Wildlands, Inc.
P.O. Box 81
Rockwood, Maine 04478

To HOLDER:
Western Mountains Foundation
Village West #20
Carrabassett Valley, Maine 04947

With a copy to THIRD PARTY:

Director
Maine Bureau of Parks and Lands
Department of Conservation
22 State House Station
Augusta, Maine 04333-0022
or to such other authorized person as any party may from time to time designate by written notice to the others.
9. COSTS AND TAXES, RESPONSIBILITY

GRANTOR is responsible to pay and discharge when due all property taxes and assessments lawfully imposed and to avoid the imposition of any liens that may affect HOLDER's rights hereunder.

GRANTOR acknowledges that HOLDER has no possessory rights in the Protected Property, nor any responsibility to control, maintain, or keep up the Protected Property. GRANTOR is responsible for all costs and responsibility of ownership, control, operation, maintenance, and upkeep of the Protected Property, and will hold harmless the HOLDER and THIRD PARTY from any claims for damages that arise there from, except for harm proximately caused by their negligent act or misconduct, or as may arise out of their workers' compensation obligations.

10. RESERVED RIGHTS

GRANTOR reserves to itself, and to its personal representatives, successors, and assigns, all rights accruing from ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, all uses of the Protected Property that are not expressly prohibited herein and are consistent with the purpose of this Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

A. The right of the GRANTOR, its guests, employees and invitees, to use the Protected Property for primitive recreational purposes which may include hiking, skiing, snowshoeing, picnicking, bird watching, camping, tenting, hunting, fishing, and trapping;

B. The right to advertise the Protected Property for sale and to convey the Property, always subject to the terms of the Conservation Easement; and

C. The right to manage timber and conduct commercial timber harvesting operations pursuant to a forest management plan prepared by a registered professional Maine forester and designed to preserve the scenic and wildlife habitat quality of the Protected Property and to provide a sustainable yield of forest products in accordance with applicable laws and regulations.

11. HOLDERS AFFIRMATIVE RIGHTS

A. HOLDER has the right to enforce this Conservation Easement by proceedings at law and in equity, including the right to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Conservation Easement, and to require the restoration of any area or feature damaged by such inconsistent activity to a condition in compliance herewith. HOLDER shall provide GRANTOR with prior notice of and reasonable opportunity to cure any breach, except where emergency circumstances require enforcement action without delay. HOLDER may not bring an enforcement action against GRANTOR for injury to or change in the Protected Property resulting from changes beyond the control or responsibility of the GRANTOR, such as fire, flood, storm, and earth movement, or from any prudent action taken by GRANTOR under emergency conditions to prevent, abate, or mitigate significant injury to the Protected...
Property resulting from such causes. If a Court (or other decision maker chosen by mutual consent of the parties) determines that this Conservation Easement has been breached, GRANTOR will reimburse HOLDER for any reasonable costs of enforcement, including court costs, reasonable attorney’s fees, out-of-pocket costs and any other payments ordered by the Court or decision maker.

B. 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.

C. 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 grant.

D. HOLDER has the right to conduct a professional boundary survey of the Protected Property or any part thereof, which survey will be at GRANTOR’s cost only if it is required to determine if there is a violation of this Conservation Easement.

E. HOLDER shall provide to the GRANTOR a copy of any written report generated as a result of inspections performed by HOLDER or its agent within seven (7) days of completion of such report.

F. HOLDER has the right to maintain the trail, cabins, privies and/or boat launch after reasonable notice to GRANTOR, if GRANTOR has not maintained said trail, cabins, privies, and boat launch.

G. HOLDER has the right to manage the recreational use of the Protected Property by the public in a manner that is consistent with the purpose of this Conservation Easement, in the absence of the GRANTOR so managing said use.

12. THIRD PARTY RIGHTS

The GRANTOR grants to the THIRD PARTY the same entry, inspection, approval and enforcement rights as are granted to the HOLDER under this Conservation Easement. However, the Parties hereto intend that the HOLDER shall be primarily responsible for the enforcement of the Conservation Easement, and that the THIRD PARTY intends to assume such responsibility only if the HOLDER fails to properly enforce. However, the THIRD PARTY may at any time exercise, in its own name and for its own account, all the rights of enforcement granted the HOLDER under this Easement. THIRD PARTY shall also have reasonable access to the Protected Property in the same manner as the HOLDER and to any and all records of the HOLDER relevant to the Protected Property.

Notwithstanding that THIRD PARTY has executed this Conservation Easement, nothing herein may be construed as approval or as a substitute for approval or regulation of any activities under the regulatory jurisdiction of the Maine Land Use Regulation Commission or other State regulatory body. Nothing in this Conservation Easement may be construed to permit an activity otherwise prohibited or restricted by local, state, or federal laws or regulations.
13. 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, 1989, Sections 476 through 479-B, inclusive, as amended, and shall be construed in accordance with the laws of the State of Maine.

B. This Conservation Easement established exclusively for the conservation purposes pursuant to the Internal Revenue Code of 1986 as amended (hereafter called the "Code") at Title 26, U.S.C.A., Section 170(h) (1)-(6) and Sections 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, to wit: a publicly funded, non-profit 501(C)(3) organization having a commitment and the resources to protect the conservation purposes of the donation and enforce the restrictions hereof.

D. The THIRD PARTY is qualified to hold third party rights of enforcement on conservation easements pursuant to Title 33. Maine Revised Statutes Annotated, 1988, Section 476(2)(b), as amended.

E. This Conservation Easement is assignable, but only after notice to and review by THIRD PARTY, and only to an entity that satisfies the requirements of Section 476(2) of Title 33 of the Maine Revised Statutes Annotated (1989), as amended (or successor provision thereof), and to an entity that satisfies the requirements of Section 170(h)(3) of the Internal Revenue Code of 1986, (or successor provisions thereof), and that agrees, as a condition of transfer, to uphold the conservation purposes of this grant.

F. 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.

G. 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 agreed to prepare an inventory of the Property's relevant features and conditions (the Baseline Data) within 60 days of this agreement and will certified the same as an accurate representation of the condition of the Protected Property as of the date of this grant. A copy of the Baseline Data shall be submitted to and shall be subject to the approval of the THIRD PARTY.

H. The Protected Property may be used to secure the repayment of debt, provided that the right of the HOLDER and THIRD PARTY to enforce the terms, restrictions and covenants created under this easement shall not be extinguished by foreclosure of any
mortgages or any publicly or privately placed lien. The restrictions of this Conservation easement, and HOLDER’s right to enforce them shall be superior to any mortgage or lien.

I. 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 as determined by Treasury Regulations 1.170A-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 this date of this grant. HOLDER will use such proceeds for its conservation purposes.

14. GENERAL PROVISIONS

A. Enforcement of the terms of this Conservation Easement shall be at the sole discretion of the HOLDER and/or the THIRD PARTY. The failure or delay of the HOLDER or THIRD PARTY, for any reason whatsoever, to enforce this Conservation Easement shall not constitute a waiver of rights and GRANTOR hereby waives any defense of laches, prescription or estoppel.

B. GRANTOR agrees to notify HOLDER and THIRD PARTY within a reasonable time of any transfer of its interest in the Protected Property. A party’s rights and obligations under this Conservation Easement shall terminate when such person or entity ceases to have any interest in the Protected Property or the Easement, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

C. GRANTOR and HOLDER have the right to amend this Conservation Easement to the extent that changes are not inconsistent with the purpose of this grant, by written and recorded agreement of the GRANTOR, HOLDER and THIRD PARTY.

D. If any provision of this Conservation Easement or the application of any provision to a particular person or circumstances is found to be invalid, the remainder of this Conservation Easement and the application of such provision to any person or in any other circumstances, shall remain valid.

E. Interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Maine. Should uncertainty arise in its meaning, this Conservation Easement should be interpreted in favor of conserving the Protected Property for the purposes stated herein.
IN WITNESS WHEREOF, Moosehead Wildlands, Inc., GRANTOR has caused this Conservation Easement to be signed in its corporate name by John Willard, its President, hereto duly authorized, this 16th day of July, 2004.

in the presence of:

Moosehead Wildlands, Inc.

by

John Willard
Its President

State of Maine
County of Kennebec, ss. July 16, 2004

Personally appeared John Willard, the President and authorized representative of Moosehead Wildlands, Inc. and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.

Before me, Amy M. Pineau
Notary Public

(Please type or print name of notary)

AMY M. PINEAU
Notary Public, Maine
My Commission Expires June 20, 2010
HOLDER ACCEPTANCE

The above and foregoing Conservation Easement was authorized to be accepted by Western Mountains Foundation, HOLDER as aforesaid, and the said HOLDER does hereby accept the foregoing Conservation Easement, by and through Larry Warren, its President, hereunto duly authorized, this 16th day of July, 2004.

Western Mountains Foundation

__________________________
Larry Warren
Its President

State of Maine
County of Kennebec , ss.

Personally appeared Larry Warren, the President and authorized representative of Western Mountains Foundation and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.

Before me, __________________________
Notary Public

(Please type or print name of notary)

__________________________
AMY M. PINEAU
Notary Public, Maine
My Commission Expires June 20, 2010
THIRD PARTY APPROVAL

The foregoing Conservation Easement has been approved by the Bureau of Parks and Lands which accepts THIRD PARTY rights as aforesaid by and through David Soucy, in his capacity as Director of the Bureau of Parks and Lands, hereunto duly authorized this 16th day of July, 2004.

STATE OF MAINE

[Signature]
David Soucy
Director
Bureau of Parks and Lands
Maine Department of Conservation

State of Maine
County of Kennebec, ss.

Personally appeared David Soucy, hereunto duly authorized, and acknowledged the foregoing instrument to be her free act and deed in his said capacity as Director of the Bureau of Parks and Lands.

Before me,

[Signature]
Notary Public

(Please type or print name of notary)

RUTH H. WILLETTE
Notary Public - Maine
My commission expires January 27, 2007
Copies of the maps are available in our Augusta office. Please call (207) 287-2631 to schedule an appointment.