

**CONSERVATION EASEMENT
LOWELL PRESERVE, WINDHAM**

The **TOWN OF WINDHAM**, a duly organized Maine municipal corporation, located and operating in Cumberland County, Maine and having an office at 8 School Road, Windham ME 04062 (hereinafter “GRANTOR,” or “LANDOWNER” which words are intended to include, unless the context clearly indicates otherwise, the above-named GRANTOR, its successor and assigns, and any successors in interest to the Protected Property), DOES HEREBY GRANT as a gift to the **PRESUMPCOT REGIONAL LAND TRUST**, a Maine non-profit corporation with a mailing address of P.O. Box 33, Gorham, Maine 04038 (hereinafter “HOLDER,” which word shall, unless the context clearly indicates otherwise, include HOLDER’s successors and/or assigns), **WITH QUITCLAIM COVENANT**, in perpetuity, this conservation easement (the “Conservation Easement” or “Easement”) pursuant to Title 33 M.R.S.A. Section 476 et seq., inclusive, as amended, on over and through a parcel of land of approximately 307 acres as described in deed from Virginia H. Lowell, Jane G. Sudds and Maxine D. Lowell to the Town of Windham dated September 20, 1999 and recorded in the Cumberland County Registry of Deeds in Book 15062, Page 96 and more particularly described in **Exhibit A** and depicted on the map of the property (**Exhibit B**) attached hereto and made part hereof (hereinafter referred to collectively as the “Protected Property”).

This Conservation Easement ensures that the Protected Property shall be managed for conservation purposes and uses. This Conservation Easement is granted exclusively for the following conservation purposes:

I. PURPOSE OF THE EASEMENT.

The purpose of this Conservation Easement is to preserve in perpetuity the unique and undeveloped character of the Protected Property and to protect the high-quality habitat of the forest and associated ecosystems, while also providing a variety of opportunities for well-managed multi-use outdoor recreation, trail access and scenic enjoyment for the general public.

The following recitals more particularly describe the conservation and other values of the Protected Property:

WHEREAS, the Protected Property consists of approximately 307 acres of wooded, undeveloped land located southeasterly of Little Duck Pond in Windham, Maine; and

WHEREAS, the Protected Property contains approximately 66 acres of forested wetlands; and

WHEREAS, the Protected Property contains approximately 3,952 feet of shorefront along McIntosh Brook which is the primary tributary of Highland Lake and is identified by the Maine Department of Inland Fisheries and Wildlife as wild brook trout habitat; and

WHEREAS, the Protected Property is located within the Highland Lake and Mill Brook watershed and protection of this watershed is of vital importance to the overall health of the Presumpscot River ecosystem, for reasons including the recently-restored migratory fish runs from the sea upstream through Mill Brook and into Highland Lake; and

WHEREAS, the Town of Windham is subject to considerable development pressure and sprawl that often closes or restricts access to open space traditionally used and enjoyed by the public; and

WHEREAS, the Town of Windham adopted in February 2021 its town-wide Open Space Plan which specifically identifies as a priority the permanent protection of current areas used as open space and parks, expressly including the Lowell Preserve (Goal 2.3), establishment of management plans for town-owned properties (Goal 2.4), and developing partnerships on open space protection(Goal 3.3); and

WHEREAS, the Protected Property is a suitable size and location to offer well-managed multi-use outdoor recreation opportunities including, but not limited to, nature study and observation, hiking, running, mountain biking, snowshoeing, cross country skiing, snowmobiling on designated trails, riding of all-terrain vehicles (ATVs) on designated trails, fishing, hunting, and picnicking by the general public; and

WHEREAS, the Protected Property abuts properties which together provide a block of nearly 750 acres of contiguously conserved land in the Towns of Windham and Falmouth, providing an unfragmented forest habitat corridor of exceptional size in Greater Portland; and

WHEREAS the GRANTOR and the HOLDER, recognizing the uniqueness of the Protected Property have the common purpose of conserving the high quality wildlife habitat, natural and recreational values of the Protected Property by conveyance of this Conservation Easement on, over, through and across the Protected Property that will establish a natural recreation area, recreation trails, prohibit development of the Protected Property, and prevent any use or change that would conflict with its wildlife habitat values or its predominantly natural and scenic condition.

NOW, THEREFORE, the GRANTOR and HOLDER hereby establish this Conservation Easement on, over, through and across the Protected Property consisting of the foregoing recitals and purposes, and the following terms, covenants, restrictions and affirmative rights granted HOLDER, its successors and assigns, which shall run with and bind the Protected Property, in perpetuity:

II. LAND USE & DIVISION:

A. Land Use. The Protected Property may be used only for conservation, outdoor recreation by the general public, educational activities, tribal ceremonial activities, and natural resource management activities that do not adversely affect its important natural, ecological and

habitat values. Outdoor recreation includes, but is not limited to, low-impact forms of recreation such as nature observation and study, hiking, running, biking, snowshoeing, cross-country skiing, hunting, and trapping. In addition, snowmobiling and riding of all-terrain vehicles (ATVs) shall be allowed on designated trails only and subject to regulation to minimize adverse impacts.

B. Management Plan. The Protected Property will be managed consistent with the terms of this Easement under a Management Plan originally executed on near or even date and to be prepared jointly by GRANTOR and HOLDER. The Management Plan as originally drafted by GRANTOR and HOLDER, and as may be subsequently amended by GRANTOR and HOLDER at least once every ten years and as may be needed from time to time, must be approved by the HOLDER to ensure that the Management Plan is and remains consistent with the terms of this Conservation Easement. No structures or other improvements that are not included in the Management Plan may be constructed on the Protected Property until full execution of an amendment to the Management Plan, including HOLDER's final approval. The Protected Property will be managed jointly by the GRANTOR and HOLDER as shall be more particularly outlined in the Management Plan to protect the natural resources, scenic, and recreational values of the Protected Property. GRANTOR will maintain a copy of the Management Plan at the Town Offices. .

The Management Plan shall include a provision outlining procedures to resolve disputes arising between the parties with regards to its terms and provisions, provided that any dispute resolution or interpretation of Management Plan terms shall be consistent with the conservation purposes of this Easement.

At a minimum, the Management Plan shall include the design and location of trails upon which ATV and snowmobile riding will be permissible, and regulations designed to minimize adverse impacts of ATV and snowmobile riding upon the natural values of the property (including, without limitation, prohibitions on ATV riding during certain seasons or locations as needed to be consistent with the values of the Easement).

Proposed alteration or construction within 75 feet of the shoreline of McIntosh Brook, if any, (including, without limitation, bridges, abutments, erosion control, flood control, trails, benches, signs, etc.) must be included within the Management Plan prior to commencement of such activity. HOLDER's approval thereof may only be granted upon a determination by HOLDER that the proposed activity is not inconsistent with the Conservation Values of this Easement.

C. Division. For the purpose of land uses permitted under this Conservation Easement, the Protected Property must remain in its current configuration as a single lot under unified ownership. Subdivision, partition or creation of other parcels or lots, whether by lot division, or other manner of ownership which creates discrete parcels or separate ownership or control of portions of the Protected Property, shall be prohibited, except for boundary adjustments to resolve bona fide boundary disputes. Under no circumstances may the Protected Property or any portion thereof be included as part of the gross tract area of other land not subject to this Conservation Easement, for the purposes of determining density, lot coverage, or land area requirements, under otherwise applicable laws, regulations or ordinances controlling land use, building density, or transfer for development rights.

Notwithstanding the foregoing, any portion of the Protected Property may be conveyed to an entity that is a federal, state, or local government agency or a non-profit conservation organization which is a “qualified organization” set forth under Section 170(h) of the United States Internal Revenue Code and a “qualified holder” under Title 33, Maine Revised Statutes, Section 476(2), or to a federally-recognized Indigenous Tribe as described in Section III.B., for permanent conservation ownership.

D. Existing Conditions. As of the date of this Conservation Easement, there are no structures on the Protected Property with the exception of minor recreational structures, boundary markers and bridges. As of the date of this Conservation Easement, there are no surface alterations on the Protected Property other than an existing trail network. The remainder of the Protected Property is undeveloped and forested. All existing conditions are documented in the Baseline Documentation (hereinafter defined) and certified as accurate by GRANTOR and HOLDER as of the date of this Conservation Easement.

E. Structures. It is the intention of this Easement that the Property be used as conservation land for multi-use outdoor recreation, nature observation, and study and that uses and improvements be limited to the extent necessary or appropriate to preserve its natural and undeveloped character.

No structures, temporary or permanent, are permitted on the Protected Property without prior written consent of HOLDER, except however, the GRANTOR reserves for itself, its successors and assigns, the following rights:

1. Minor Structures. GRANTOR reserves the right to locate, construct, repair, maintain and replace minor structures to accommodate low impact outdoor recreation and nature observation and study. Such minor structures may include, but are not necessarily limited to the following: small unlighted informational and interpretive signs including commemorative plaques and memorials; informational kiosks and registration boxes; low barriers to discourage unauthorized access; fencing to protect natural resources or for safety purposes; support and erosion control structures necessary for permitted parking area and trails; trail and boundary markers; rustic trail improvements, including, hand rails, steps, stream or trail bridges, bog boardwalk, culverts and water bars; benches and picnic tables; portable toilet; small picnic shelters up to 200 square feet; temporary tents; pet sanitation boxes; and temporary structures associated with wildlife, plant, archeological, or other scientific study under professional supervision under professionally accepted standards. Notwithstanding the preamble to this section, installation of any such minor structures within 75’ of the shoreline of McIntosh Brook requires prior HOLDER approval to minimize the negative impacts of such structures.

Notwithstanding the foregoing; the following structures are not permitted, except as expressly set forth above or elsewhere in this Conservation Easement: buildings, barns, bleachers, permanent lighting, tree stands for any purpose and major recreational improvements such as athletic or sports facilities, riding arenas, paddocks, ballfields, tennis courts or similar high impact outdoor recreation fields.

F. Surface Alterations. No alterations may be made to the surface of the earth or to the wetlands of the Protected Property except as reserved below by GRANTOR.

1. Mining. No mining, quarrying, or surface mining activities are permitted on the Protected Property.

2. Excavation, filling, dredging and grading. No excavation, filling, dredging or grading or other alteration may be made to the surface of the Protected Property except as necessary to install, maintain or replace permitted structures and trails. Any such activity shall secure and meet all permitting requirements under local, state, and federal laws and regulations.

3. Exercise of Reserved Rights. GRANTOR reserves the right to alter the surface of the land to the minimum extent necessary to exercise the Grantor's rights and reservations expressly set forth in this Conservation Easement.

4. Roads and Parking. The Protected Property is bisected by a portion of Little Duck Pond Road, an unpaved private road subject to third-party easement rights. Establishment of new roads upon the Protected Property is prohibited, with the exception of an access road as may be necessary to reach the alternative parking area authorized herein. GRANTOR reserves the right to install and maintain a parking area on the Protected Property as an alternative to existing off-site parking. The parking area may be of gravel or similar surface and shall be constructed to minimize erosion, drainage, and impact on the Protected Property or nearby environmentally sensitive areas, wetlands, or water bodies. Any such parking area shall first have its design and location be mutually agreed upon by and between the GRANTOR and HOLDER. GRANTOR reserves the right to establish and maintain an access road to the parking area which shall not exceed the minimum width required under the applicable zoning ordinances at the time of construction. The parking area and access road must meet all applicable federal, state, and local permitting requirements.

5. Recreational Trails. A number of improved and unimproved trails currently exist on the Protected Property. Consistent with the Management Plan, GRANTOR and HOLDER may improve existing trails or close existing trails and may develop additional trails to create an interconnected network of unpaved trails within the Protected Property, subject to the following restrictions:

(a) All trails must be designed, located, constructed and maintained to prevent erosion, to connect to trail networks on adjacent properties, and to protect the conservation values of this Easement.

(b) All trails on the Protected Property shall be limited to no greater than five feet (5') wide.

(c) HOLDER and GRANTOR shall establish additional trail development standards within the Management Plan, and may refer to existing best trail development standards recommended by state or federal agencies or by private organizations dedicated to conservation or natural resource protection purposes.

G. Archeological and Ecological Study and Tribal Ceremonial Activities. GRANTOR reserves the right to permit archeological and ecological study of the Protected Property, including

excavation of sites, provided that all such work must be conducted in accordance with applicable then-current professional standards, and the disturbed area must be restored to its natural appearance as soon as reasonably possible after completion. GRANTOR reserves the right to permit ceremonial activities by enrolled members of federally-recognized Indigenous Tribes, as described in Section III.B., for traditional ceremonial activities such as dances, music playing, tipi setting, memorials and celebrations, provided that all such activities must be approved by HOLDER in advance as consistent with the conservation values of this Conservation Easement and any disturbed areas must be restored to its natural appearance as soon as reasonably possible after completion.

H. Vegetation Management. It is the intention of this Conservation Easement to foster an intact, healthy, forested area to preserve healthy soils and habitat for wildlife, preserve the ecological integrity of streams, vernal pools, and wetlands, and protect the scenic character of the Protected Property.

1. Tree and Vegetation Cutting. GRANTOR reserves the right to alter or remove vegetation as necessary to install, establish and maintain the structures permitted under Section II, Paragraph E, engage in the activities permitted in Section II, Paragraph G, and engage in surface alterations permitted under Section II, Paragraph F of this Easement; to reduce safety hazards for the uses permitted herein; to remove invasive plant species; and to prevent fire and spread of disease or non-native insects with input from a professional forester and wildlife ecologist. GRANTOR additionally reserves the right, at its sole discretion to authorize selective harvesting of culturally important vegetation for traditional uses by members of federally-recognized Indigenous Tribes, as described in Section III.B., including without limitation, harvesting medicinal plants, ash trees and birch trees. All of the foregoing shall be conducted in a manner to minimize soil erosion, prevent damage to fragile plant communities, wetlands, and wildlife habitat, and to protect other important natural resources.

2. Forest Management Plan. Except as provided in Paragraph H.1. above, any harvesting of trees shall be consistent with a forest management plan developed by a professional forester with input from professional wildlife biologists and adopted by GRANTOR. The forest management plan shall include provisions for protecting soils, water quality, wetlands and high value plant and animal habitat and generally be consistent with current Best Forestry Management Practices as defined by “Best Management Practices for Forestry: Protecting Maine’s Water Quality,” prepared by the Maine Department of Agriculture, Conservation and Forestry, Maine Forest Service, in such publication’s most current version at the time of this Conservation Easement, and as the same may be further amended, supplemented or replaced after the date of this Conservation Easement. GRANTOR shall provide HOLDER with a copy of any forest management plan for HOLDER’s review and comment. All forestry activities shall be in compliance with applicable federal, state and local laws and regulations. GRANTOR shall give notice to HOLDER sixty (60) days prior to any proposed harvesting activities in accordance with the forest management plan and provide HOLDER with sufficient information concerning the nature, extent and timing of the proposed activity. Harvesting proceeds from any and all forestry activities are property of the GRANTOR.

I. Water Protection, Pollution Control, and Waste Disposal. No dumping, storage or burial of refuse or waste materials is permitted on the Protected Property. No vehicles may be stored on the Protected Property except that temporary storage of vehicles as may be required for permitted

maintenance, construction, conservation or forest management activities shall be permitted. The direct discharge of treated or untreated sewage into the surface waters on or about the Protected Property is prohibited. The use, discharge or runoff of chemical herbicides, pesticides, fungicides, fertilizers or other toxic agent would be discouraged unless a particular need arises and shall be controlled as required by state or federal law to prevent adverse impacts on wildlife, waters, and other important conservation values protected by this Conservation Easement.

J. Public Use and Access. GRANTOR agrees to permit, and will refrain from prohibiting or discouraging, use of the Protected Property by the general public for outdoor recreational uses, such as: nature observation and study, hiking, running, biking, snowshoeing, cross-country skiing, hunting, and trapping. Snowmobiling and ATV riding shall be allowed on designated trails. Subject to the terms of the Management Plan established in accordance with Section II.B., GRANTOR has the right to prohibit or make reasonable rules and regulations for any of the following uses for public recreation: night use; camping; loud activities; open fires; use of motor vehicles except as provided in this Conservation Easement; access by domesticated animals or pets; any use that may interfere with or be harmful to members of the public using the Protected Property. GRANTOR also has the right to temporarily restrict public access on limited areas of the Protected Property to protect fragile areas under study, or for safety purposes during active timber harvesting or other permitted management activities that may pose a hazard to recreational users, or to provide privacy during tribal ceremonies permitted under Section II, Paragraph G; such right of GRANTOR may be exercised subject to the terms of the Management Plan and only following 30 days' prior notice to HOLDER and an opportunity to comment, except in an emergency in which notice to Holder shall be as soon thereafter as possible. Notwithstanding anything set out in the Management Plan, HOLDER and GRANTOR may agree in writing to restrict access and use of the Protected Property by the general public for other purposes, but only to the extent and for the duration necessary to assure safety, to permit necessary maintenance, or to preserve important scenic, ecological, or other conservation values of the Protected Property.

GRANTOR and HOLDER agree that any fees or charges imposed by either party for public access shall be reasonable and comparable to those charged in Maine for similar facilities. Fees may not be charged by either party unless agreed to within the approved Management Plan.

GRANTOR AND HOLDER each claim all of the rights and protections against liability for injury to the public to the fullest extent of the law under the Recreational and Harvesting Use Liability Limitations set forth in Title 14 M.R.S.A. Section 159-A, et seq. as amended and successor provisions thereof (The Maine Recreational Use Statute), under the Maine Tort Claims Act as set forth in Title 14 M.R.S.A. Section 8104-A(2)(A)(3), and under any and all other applicable provisions of law or equity.

III. HOLDER'S AFFIRMATIVE RIGHTS

A. Entry and Inspection. HOLDER is granted the right to enter the Protected Property at any time for the purposes of inspection, monitoring, and enforcement to undertake ecological or other studies of the Protected Property, and to exercise any other affirmative right hereunder. An annual written inspection report shall be filed by HOLDER with GRANTOR within 60 days from the end of each calendar year.

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 might be entitled for violation of the terms of this Easement and to require restoration of the Protected Property to the condition that existed prior to such injury, provided however that naturally occurring changes and “acts of God,” defined by 42 U.S.C. §9601(1) shall not give rise to any right in HOLDER to require restoration. Prior to initiation of an enforcement action, HOLDER shall provide GRANTOR with prior written notice and a thirty (30) day opportunity to cure any breach; except that where such breach cannot be reasonably cured within such thirty (30) day period, HOLDER may determine a reasonable timeframe greater than thirty (30) days in which to cure such breach and except where emergency circumstances require more immediate enforcement action HOLDER may determine a reasonable timeframe less than thirty (30) days in which to cure such breach. For purposes of this provision, emergency circumstances shall mean circumstances in which there is a substantial likelihood that violation of this Easement by GRANTOR will threaten the public safety or conservation of the Protected Property and in which the immediate cure of such violation is required to protect the public safety and conservation of the Protected Property. In any event, the timeframe established for GRANTOR’s obligation to cure any breach under emergency circumstances shall be subject to GRANTOR’s ability to perform the actions necessary to cure such breach through its then existing personnel, equipment and resources and, alternatively, its ability to secure or engage the personnel, equipment and resources of a third party to do the same.

In any action brought by a party against another party to enforce or defend this Conservation Easement, or any others for whose actions on the Protected Property the party is responsible, the non-prevailing party shall reimburse the prevailing party for any reasonable costs of enforcement or defense, including court costs, mediation and if applicable, arbitration costs, reasonable attorney fees and any other payments ordered by such court or arbitrator. Notwithstanding the foregoing, prior to the commencement of litigation by either party, the parties agree to enter into good faith negotiations through a neutral mediator in order to attempt to resolve their differences if the following conditions are met: i) the parties agree not to proceed with the disputed use or activity pending resolution of the dispute, and ii) no injury to the Protected Property has occurred or will occur while the parties are engaged in mediation. Each party shall be responsible for one-half of the neutral mediator’s fees, and their own attorney fees.

Neither party shall be responsible to the other party for injury to or change in the Protected Property resulting from natural causes, acts of God or environmental catastrophe beyond the parties’ control, such as fire, flood, storm and earth movement or from prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury to Protected Property resulting from such causes.

The terms of the Conservation Easement do not supersede or waive more restrictive applicable law and regulations.

By making specific allowances for “federally-recognized Indigenous Tribes”, it is the intent of GRANTOR and HOLDER to ensure that this Conservation Easement does not needlessly prohibit traditional and culturally-important activities of peoples whose ancestors inhabited these lands prior to European colonialization, and which activities are consistent with the Conservation Values of this

Easement. As of the date of this Conservation Easement, there are only four federally-recognized Indigenous Tribes in Maine, being the Aroostook Band of Micmacs, the Houlton Band of Maliseets, the Passamaquoddy, and the Penobscot Nation. As the status of tribal sovereignty and tribal relationships with state and federal governments evolve over time, HOLDER may rely on federal or state governmental designations in exercising its discretion to enforce those sections of the Easement to prevent abuse by non-tribal members.

C. Signage. HOLDER is authorized to install small, unlighted informational signs that identify HOLDER's contributions to and interests in the Protected Property, in addition, signs that mark the boundary of the Protected Property, that enhance the public use of and appreciation of the Property, and that promote appreciation of plant and animal life; such minor signage to be completed in a manner consistent with the goals of this Easement and the Management Plan.

D. Trails. HOLDER has the right to build, maintain and manage the trail network on the Protected Property in accordance with the provisions of this Conservation Easement and Management Plan.

E. Boundaries. It is GRANTOR's obligation to keep the iron pins and boundary markers currently set on the Protected Property, and as depicted in the Baseline Documentation Report, in a manner that they can be located by HOLDER. In the event such iron pins are not clearly marked within a reasonable amount of time after notice by HOLDER, HOLDER shall have the right to engage a professional surveyor to locate or reset the iron pins. The costs associated with the survey work necessary to locate or reset such pins shall be paid by the GRANTOR only if and to the extent necessary to determine if a breach of this Conservation Easement has occurred on the Protected Property.

F. Notice. HOLDER has the right to require that GRANTOR's reserved rights be exercised in a manner that avoids adverse impact to the conservation values to be protected by this Easement. GRANTOR agrees to notify HOLDER prior to undertaking any activity or exercising any reserved right that may impair the conservation interests associated with the Easement.

G. Right to Assign. In the event that HOLDER fails to continue operations or is dissolved, either voluntarily or involuntarily, or is not able to fulfill its obligations under this Conservation Easement, it shall assign the easement to another qualified entity (not the then current GRANTOR of the Conservation Easement) chosen by the GRANTOR. A qualified entity for such purposes shall be one that meets the definition of "HOLDER" at Title 33 Maine Revised Statutes Annotated Section 476(2), as amended or re-codified, and that meets the requirements of Section 170(h)(3) of the Internal Revenue Code, or successor provisions thereof, and that as a condition of transfer, agrees to carry out the conservation purposes of this grant.

IV. GENERAL TERMS AND STANDARD PROVISIONS

A. Notice and Approval Requirements. GRANTOR agrees to notify HOLDER prior to undertaking any activity or exercising any reserved right that may have an adverse impact on the conservation values protected by this Conservation Easement, and where prior notice or approval is specifically required in this Conservation Easement. GRANTOR's notices must include sufficient

information to enable HOLDER to determine whether GRANTOR's plans are consistent with the terms of this Easement and the conservation purposes hereof.

(i) Any notices or requests for approval required by this Easement shall be in writing, acknowledgement required to GRANTOR and HOLDER, at the following postal and email addresses, unless one has been notified in writing by the other of a change of address or change of ownership:

To GRANTOR: Town of Windham, ATTN: Town Manager
8 School Road
Windham ME 04062
batibbetts@windhammaine.us

To HOLDER: Presumpscot Regional Land Trust, ATTN: Executive Director
P.O. Box 33
Gorham ME 04038
info@prlt.org

(ii) When GRANTOR is required to provide notice to HOLDER pursuant to this Easement, such notice as described hereinabove shall be given in writing at least thirty (30) days prior to the event giving rise to the need to give notice except as otherwise specifically provided herein.

(iii) When GRANTOR is required to obtain HOLDER's prior written consent and approval, such request as described hereinabove shall be given in writing thirty (30) days prior to undertaking the proposed activity except as otherwise specifically provided herein. HOLDER, upon receipt of GRANTOR's request, shall acknowledge receipt of the same. Following receipt of such notice, HOLDER, shall, in writing, grant, grant with conditions, or withhold its approval. No proposed activity may proceed without HOLDER's written consent and approval as provided herein, except as may be expressly permitted under the terms of this Conservation Easement.

B. Responsibility of Grantor. GRANTOR acknowledges that HOLDER has neither possessory rights in the Protected Property, nor any responsibility nor right to control, maintain, or keep up the Protected Property. GRANTOR shall retain all responsibilities and shall bear costs and liabilities of any nature related to the ownership, operation, upkeep, improvement, and maintenance of the Protected Property.

C. Maine Conservation Easement Act. This Conservation Easement is established pursuant to the Maine 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.

D. Baseline Documentation. In order to establish the present condition of the Protected Property and its conservation attributes protected by this conservation easement, 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 GRANTOR 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 Conservation Easement. A certified copy of the Baseline Documentation, and any amendments or supplements thereto, shall be maintained, in perpetuity, at the offices of HOLDER.

E. Extinguishment.

(i) The parties agree that the grant of this Conservation Easement creates a property right that vests immediately in HOLDER. The parties further agree that this property right as of the date of its creation has a fair market value that is equal to the percentage by which the fair market value of the unrestricted Protected Property as a whole as valued in accordance with IRS Regulations at 1.170-A 14(h)(3)(ii), is reduced by the terms and conditions imposed by this Conservation Easement, as of the date of the execution of this Conservation Easement (hereinafter the “Original Percentage Reduction”).

(ii) This Conservation Easement may only be extinguished or terminated by judicial order in a court of competent jurisdiction. 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, and if both GRANTOR and HOLDER (and any third party who has a bona fide right of enforcement, if any) agree. Should this Conservation Easement be terminated or extinguished as provided in this Paragraph, in whole or in part, HOLDER shall be entitled to be paid no less than a portion of any proceeds of sale, exchange or lease computed as to the greater of: (i) the Original Percentage Reduction; or (ii) the increase in value of the GRANTOR’s estate resulting from such extinguishment, as determined by the court, or in the absence of such court determination, by the agreement of the parties or, in the absence of such agreement, by an independent appraiser mutually selected by GRANTOR and HOLDER. HOLDER shall use its share of the proceeds or other moneys received under this Paragraph in a manner consistent, as nearly as possible, with the stated, publicly beneficial purposes of this Conservation Easement. GRANTOR agrees and authorizes HOLDER to record a notice of a lien on the Protected Property which lien will be effective as of the date of such extinguishment, to secure its rights under this Paragraph.

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

G. Subsequent Deeds and Transfers. This Easement must be incorporated by reference in any deed or other legal instrument by which GRANTOR conveys any interest in the Protected Property, including, without limitation, a leasehold or mortgage interest. GRANTOR further agrees 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 GRANTOR to perform any act

required by this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

H. Discretionary Approvals. GRANTOR and HOLDER recognize that certain activities by the GRANTOR 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.

I. Amendment. GRANTOR and HOLDER recognize that rare and extraordinary circumstances could arise that warrant modification of certain of the provisions of this Conservation Easement. To this end, subject to more restrictive laws and regulations, if any, GRANTOR and HOLDER have the right to agree to amendments to this Conservation Easement, provided that in the reasonable judgment of HOLDER, such amendment enhances or does not materially detract from the conservation values intended to be protected by this Conservation Easement, in accordance with Maine law. Amendments shall become effective upon the recording at the Cumberland County Registry of Deeds.

J. Economic Hardship. In making this grant, GRANTOR has 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 GRANTOR 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.

K. 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.

L. 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 Conservation Easement and the Baseline Documentation set forth the entire agreement of the parties with respect to this Conservation Easement and supersede all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. Nothing contained herein will result in a forfeiture of this Conservation Easement or reversion to GRANTOR of any rights extinguished or conveyed hereby.

M. Standing to Enforce. Only HOLDER and GRANTOR may bring an action to enforce this grant, except as provided in Title 33 M.R.S.A. Section 478, 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 Conservation Easement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Town of Windham has caused its acknowledgement and seal to be hereto affixed and these presents to be signed by _____, its Town Manager in its name and on its behalf this ____ day of _____, 2021.

TOWN OF WINDHAM

By:
Its: Town Manager

STATE OF MAINE
COUNTY OF CUMBERLAND, ss _____, 2021

Personally appeared before me the above named, _____, Town Manager of the **TOWN OF WINDHAM**, and acknowledged the foregoing instrument to be their free act and deed in their said capacity and the free act and deed of the **TOWN OF WINDHAM**.

Notary Public/Attorney at Law
Print Name:
My commission expires/Maine Bar No.:

HOLDER ACCEPTANCE

The above foregoing Conservation Easement being duly authorized to be accepted by the **Presumpscot Regional Land Trust, HOLDER**, hereby accepts this Conservation Easement by and through Rachelle Curran Apse, its Executive Director, hereunto duly authorized, this ____day of _____, 2021.

Presumpscot Regional Land Trust

Rachelle Curran Apse, Executive Director

STATE OF MAINE

COUNTY OF CUMBERLAND, ss _____, 2021

Personally appeared before me Rachelle Curran Apse, Executive Director and authorized representative of the **PRESUMPSCOT REGIONAL LAND TRUST**, and acknowledged the acceptance of the foregoing instrument to be her free act and deed in her said capacity, and the free act and deed of the **PRESUMPSOCT REGIONAL LAND TRUST**.

Notary Public/Attorney at Law
Print Name:
My commission expires/Maine Bar No.:

EXHIBIT A
Lowell Preserve, Windham
(currently identified as Lot 39 on Map 13)

A certain lot or parcel of land situated on the town road known as Falmouth Road and a private right of way known as Little Duck Pond Road in the Town of Windham, Cumberland County and State of Maine more particularly described as follows:

[Below is from the historic description as currently stated in 15062/96 (1999), but I need to confirm that title hasn't changed....for example, there may need to be some "exceptions" if some of this original land is no longer within the same ownership; and this historic description references Tax Map/Lot information that is outdated and will need to be clarified.]

Certain lots or parcels of land located in the Town of Windham, County of Cumberland, and State of Maine located westerly of the Falmouth Road, but not adjacent thereto and being 308 acres, more or less, and being more particularly described as Lot 39, 45, 46 and 47 on Tax Map 13 of the Town of Windham and more particularly described as follows:

- A. A parcel of woodland in Windham, lying northeasterly of the Falmouth Road, containing 238 acres, more or less, being all and the same premises conveyed to Roscoe J. Lowell and Elva H. Lowell by the following deeds:
 - 1. The deed from Howard H. Boody to Roscoe J. Lowell and Elva H. Lowell, dated November 2, 1942, and recorded in Cumberland County Registry of Deeds in Book 1700, Page 122, and;
 - 2. Land lying between the land described in said deed and the Falmouth Road, described in the deed from Phoebe M. Hashey to Roscoe J. Lowell and Elva H. Lowell, recorded in said Registry of Deeds in Book 2678, Page 167Said lands are shown as Lots 39 and 47 on Windham Assessment Map Number 13.

- B. A parcel of woodland in Windham, being all and the same premises described in the deed from Central Maine Power Company to Roscoe J. Lowell and Elva H. Lowell, dated December 7, 1959, and recorded in Cumberland County Registry of Deeds in Book 2518, Page 124, and shown on Windham Assessment Maps as Lot 46, Map 13, and contains 56 acres more or less.

- C. A 2/50ths interest in common and undivided in a parcel of woodland containing 13 ½ acres, more or less, in Windham, being Lot 8 on Windham Assessment Map Number 33, being the same premises conveyed to Roscoe J. Lowell by Fred C. Wiselander, by deed dated December 29, 1975, and recorded in said Registry of Deeds in Book 3790, Page 338.

- D. A parcel of land in Windham near the shore of Little Duck Pond, but having no shore frontage and being all and the same premises conveyed to Roscoe J. Lowell by the Town of Windham, by deed dated April 11, 1979, and recorded in said Registry of Deeds in Book 4409, Page 164.

E. A parcel of woodland lying northeasterly of the Falmouth Road in Windham, containing 11 acres, more or less, and being all and the same premises conveyed to Roscoe J. Lowell and Elva H. Lowell by Carol J Hashey, Sr., et al, by deed recorded in said Registry of Deeds in Book 2370, Page 231, and conveyed by said Hasheys to said Lowell's by deed recorded in said Registry of Deeds in Book 2443, Page 158, excepting therefrom that part conveyed by Roscoe J. Lowell to Everett W. Doughty, et al by deed dated January 30, 1967, and recorded in said Registry of Deeds in Book 2996, Page 213.

Excepting and reserving herefrom various utility easements and rights of way of record and those premises conveyed to Cheryl A. Burton on December 8, 1995 and recorded in said Registry of Deeds in Book 12256, Page 278 and to Timothy P. Gallagher on June 18, 1997 recorded in Book 13148, Page 1.

Also another certain lot or parcel of land known as the Hubert Nash lot containing nine (9) acres, more or less, lying thirty-five (35) rods westerly of the Falmouth Town Line (this was incorrectly described in earlier deeds as being northeasterly of the Falmouth Town Line.) Said property is further described as being bounded on the West, North and east by land now or formerly of Roscoe Lowell and on the south by land of the heirs of Austin Randall.

Being the same premises conveyed to Virginia H. Lowell, Jane G. Sudds and Maxine D. Lowell by Skylark, Inc. by deed dated February 28, 1992, recorded in said Registry of Deeds in Book 10302, Page 303.

For Grantor's source of title see Warranty Deed from Virginia H. Lowell, Jane G. Sudds and Maxine D. Lowell to the Town of Windham dated September 20, 1999 and recorded in Cumberland County Registry of Deeds in Book 15062, Page 96.