

Chapter 21

21.11: Sample Trail Easement to Land Trust

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We, _____ and _____, of Town of _____, State of _____, (hereinafter referred to as the "Grantors," which word is intended to include jointly and severally, unless the context clearly indicates otherwise, the above-named Grantors, their personal representatives, heirs and assigns, and any successors in interest to the subject premises, and their respective personal representatives, successors, heirs and assigns,),

GRANT as a gift, to LAND TRUST, a non-profit conservation organization existing under the laws of the State of _____, with a mailing address of _____ (hereinafter referred to as the "HOLDER," which word shall, unless the context clearly indicates otherwise, include the Holder's successors and assigns),

with QUITCLAIM COVENANT, in perpetuity, a **Trail Easement** pursuant to the Maine Uniform Conservation Easement Act at 33 M.R.S.A. Section 476 et seq., and Sections 170(h), 2031(c), 2522, and 2055 of the Internal Revenue Code, over our land on _____ Island, Town of _____, County, Maine, described in a deed to _____ from _____, dated _____, and recorded at the _____ County Registry of Deeds at Book _____, Page _____, over the trail or trails, being _____ feet in width, [[and over the beach that is accessed by said trails]] depicted in Exhibit B, which trails are contiguous with [[other trails on abutting parcels]] [[public roads]] [[other trail easements]] [[other traditional public access areas]] [[land owned by or dedicated to public use]] [[a public beach]]. This grant is made exclusively for conservation purposes, to wit: to provide outdoor recreational opportunities and education for the residents and visitors to _____ Island, in particular along a traditional contiguous trail network [[and in particular to provide access to _____,]] all in accordance with the following provisions:

TRAIL EASEMENT: Grantors, their heirs and assigns, agree to refrain from taking any action to prohibit or discourage or to exact a fee for pedestrian or cross country ski access over the trail easement established hereby. This easement should not be construed to permit mechanized or motorized equipment or vehicles of any nature on the Trail Easement without the express permission of Grantors, except for trail work by Holder and its agents or in emergency circumstances. Grantors and Holder have the right to require that public use is conducted in a manner that does not unreasonably disturb plant or wildlife habitat or the quiet use and enjoyment of nearby private property not subject to this Trail Easement. Grantors have the right to use the Trail Easement and to permit more intensive uses of the Trail Easement, such as motorized or bicycle access, provided that such use does not unreasonably interfere with the pedestrian uses granted hereby, and provided that more than a *de minimis* use of the Trail Easement for commercial outdoor recreation is prohibited, in accordance with Internal Revenue Code § 2031(c). Grantors and Holder may agree in writing to relocate trails as necessary and convenient over time to preserve the accessibility or contiguity of trail networks on _____ Island and other publicly accessible areas.

[[Optional: Grantors and Holder have the right to jointly agree to limit, restrict or prohibit public use of the all or any part of the Trail Easement or designated alternative locations, temporarily to assure safety or for maintenance purposes, and indefinitely as necessary or appropriate to achieve the purposes of this grant and to preserve other important conservation values of the Protected Property.]]

Grantors and Holder, and their respective heirs, successors, and assigns, 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 (The Maine Recreational Use Statute),

and under any other applicable provision of law and equity. [[Nevertheless, Holder will secure, maintain and provide Grantors with evidence of general liability insurance covering the trail on the Protected Property, and will name Grantors, as owners of the Protected Property, as co-insured.]]

HOLDER'S RIGHTS: Holder, its authorized representatives, successors, or assigns, are granted the right to enter the land of Grantors described above and the trails [[and beach]] thereon, at any reasonable time and in any reasonable manner that is consistent with the conservation purposes hereof, including the right to enter over any rights-of-way pertaining to Grantors land, after making reasonable efforts to notify residents of said premises, for the following purposes:

1. to monument, lay out, establish, maintain or (as limited above) to relocate a pedestrian trail no greater than [[()]] feet in width, contiguous with trails on abutting properties now or hereafter established, including the right to make improvements to trails such as timber steps, boardwalks, railings, and bridges, barriers to discourage use by motorized vehicles, cairns, small signs, alterations necessary to prevent erosion, and to selective cut, prune and remove leaners and blowdowns to preserve safety and to provide scenic views. Holder has no obligation to exercise this right, and Grantors have a coextensive right to undertake these activities. This right may be delegated or assigned to another entity upon prior written notice to Grantors, their heirs and assigns.
2. to inspect the Protected Property for violations of the terms of this Trail Easement, and to enforce the same by actions at law or in equity.

Holder is also granted the right to assign this Trail Easement, but only to an entity that as a condition of transfer agrees to uphold the conservation purposes of this grant, and satisfies the requirements of Section 170(h)(3) of the Internal Revenue Code, (or successor provisions thereof) and the requirements of Section 476(2) of Title 33 of the Maine Revised Statutes Annotated, as amended (or successor provisions thereof), and the right to its proportional share, as calculated in accordance with Federal Treasury Regulation 1.170-A-14(g)(6)(2), of the proceeds of any sale or taking of the premises underlying this Trail Easement, should this Trail Easement be extinguished, which may be accomplished only by court order.

IN WITNESS WHEREOF, [[and , their spouses respectively, joining in this conveyance as Grantors and releasing all rights by descent or otherwise,]] have hereunto set their hands and seals this day of , in the year .

Signed, sealed and delivered
in the presence of:

ACKNOWLEDGEMENT

HOLDER ACCEPTANCE & ACKNOWLEDGEMENT

ATTACHED EXHIBITS

NOTE: *This model document is provided for the purpose of illustration and education and does not represent the variety of protection options that can be accomplished with Conservation Easements or Trail Easements.*