

**Otter Trace  
Conservation Easement Deed and Indenture**

This conservation deed and indenture is made this day between Sealark-Five LLC, a Maine Partnership with principal place of business in Brunswick, Maine (“Grantor”), and the Town of Brunswick, a Maine municipality (“Holder”),

**WITNESSETH**

**WHEREAS**, Grantor holds title to approximately 160.15 acres of real property situated off North Trail in Brunswick, Cumberland County, Maine described on the attached Exhibit A (the “Property”); and

**WHEREAS**, in connection with Grantor’s development of Phase II of Otter Trace, Grantor wishes to protect in perpetuity the natural, scenic, open space, recreational, agricultural, forest and wildlife values of approximately 120.29 acres of the Property described on the attached Exhibit B (the “Protected Premises”) and shown on the subdivision plan for Otter Trace on Bunganuc Phase II as conservation areas A & B,C & D for the benefit of the remainder of the Property and the general public; and

**WHEREAS**, Holder is qualified and willing to accept the grant of this Conservation Easement Deed and Indenture pursuant to the Internal Revenue Code, 26 U.S.C.A. § 170(h)(3), and the Maine Uniform Conservation Easement Act, 33 M.R.S.A. §§ 476 et seq.:

**NOW, THEREFORE**, in consideration of the foregoing and the covenants herein contained, Grantor does hereby **GRANT WITH WARRANTY COVENANTS** to Holder, its successors and assigns, for the benefit of the general public, a conservation easement over the Protected Premises, subject to the reservation of rights unto Grantor, its successors and assigns, for the benefit of the Protected Premises and the remainder of the Property as follows:

1. **Purpose:** The purpose hereof is to preserve and protect in perpetuity for the benefit of the general public and the remainder of the Property the natural wildlife, scenic open space, and forest values of the Protected Premises, through the continuation of responsible conservation, and wildlife management practices and limited recreational uses.
2. **Affirmative Rights Conveyed to the Holder:** Grantor conveys to Holder the following affirmative rights:
  - a) 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, and Holder will make reasonable efforts to notify the Grantor prior to entry onto any area of the Protected Property.

b) The right to enforce by proceedings at law or in equity the covenants herein set forth.

3. **Structures:** No structures shall be permitted upon the Protected Premises, except that Grantor reserves unto itself, its successors and assigns, the following rights with respect to structures upon the Protected Premises:

a. The right to construct, maintain, repair and replace fencing and other unenclosed structures as needed to prevent unauthorized access to the property.

b. The right to construct, maintain, repair and replace boundary monuments and non-commercial directional, cautionary or instructional signage.

4. **Surface Alterations:** No filling, dumping, excavation or other alterations shall be made to the surface of the Protected Premises other than caused by the forces of nature, except that Grantor reserves unto itself, its successors and assigns, the following rights:

a. The right to construct, maintain, repair and replace paths to provide equipment access for permitted wildlife management, forestry, and recreational purposes.

b. The right to excavate and maintain the natural pond and construct and maintain the engineered north and south wet ponds and associated drainage and dry hydrant(s) and immediately surrounding area to expand and/or enhance the pond located on the Protected Premises, provided that any such excavations shall be done according to generally accepted professional practices and standards, minimizing material and permanent adverse impact upon the Protected Premises.

5. **Timber Cutting and Vegetation:** The destruction or removal of standing timber, plants, shrubs or other vegetation upon the Protected Premises shall not be permitted, except that Grantor reserves unto itself, its successors and assigns, the following rights:

a. The right to mow and cut shrubs, saplings, grasses and other vegetation to maintain the existing open fields.

b. The right to clear, restore and enhance forest cover and other vegetation that is damaged or destroyed by the forces of nature, such as fire or disease, and when necessary to prevent the spread of disease and/or enhance wildlife habitat in accordance with a

plan prepared by a licensed forester, subject to Holder's approval of the same as avoiding material and permanent adverse impact upon the Protected Premises, such approval not to be unreasonably withheld.

- c. The right to clear and restore forest cover and other vegetation in the event of an emergency, such as when necessary to prevent the spread of fire.
- d. The right to limb trees up to 1/3 their height and gather or remove fallen or dead wood and cut trees for firewood for personal use.

6. **Other Reserved Rights:** Grantor reserves unto itself, its successors and assigns, as owner of the Protected Premises and the remainder of the Property, the right to use (or to regulate or prohibit use of) the Protected Premises for all purposes not inconsistent with rights of Holder under this grant. By way of illustration, and not limitation, Grantor may permit, regulate or prohibit the following:

- a. Recreational purposes such as camping, hiking, bicycling, horseback riding, skiing.
- b. Hunting and trapping of wildlife.
- c. Use of motorized vehicles.
- d. Public access to the Protected Premises.

7. **Construction:** If uncertainty should arise in the interpretation hereof, judgment should be made in favor of conserving the Protected Premises in its natural, scenic or open state and to preserve the use of the Protected Premises for wildlife management, recreational, and forest purposes. Nothing herein shall be construed to permit any activity otherwise prohibited by the valid laws and regulations of any federal, state or local government or government agency having competent jurisdiction over the Protected Premises.

8. **Monitoring:** Holder, its successors and assigns, shall make reasonable efforts from time to time to assure compliance by Grantor, its successors and assigns, with all of the covenants and restrictions herein. In exercising its access rights for inspection of the Protected Premises, Holder shall prepare, keep on file and make available to Grantor its monitoring reports for each inspection.

9. **Enforcement:** In the event Holder becomes aware of an event or circumstance of noncompliance with the terms and conditions herein set forth, Holder shall give notice to Grantor, its successors or assigns, of such event or circumstance of noncompliance via certified mail, return receipt requested, and demand corrective action sufficient to abate such event or circumstance of noncompliance and sufficient to restore the Protected Premises to its condition

prior to the breach. Failure by Grantor, its successors or assigns, with reasonable speed to cause discontinuance, abatement or such other corrective action as may be demanded by Holder, shall entitle Holder, at its discretion, to enter the Protected Premises to take such action reasonably necessary to effect such correction without court order, to bring action at law or in equity in a court of competent jurisdiction to enforce the terms hereof, to obtain injunctive relief and to recover any damages arising from such noncompliance. If a court determines a breach hereof, Grantor, its successors or assigns, shall reimburse Holder for any reasonable cost of restoration, correction and enforcement, including without limitation court costs and reasonable attorney fees. Nothing contained herein shall be construed to preclude Grantor, its successors and assigns, from exhausting its legal remedies to determine whether the event or circumstance to which Holder objected was in fact not in compliance with the terms hereof.

10. **Estoppel Certificates:** Holder shall, within thirty (30) days after written request of Grantor, its successor and assigns, execute, acknowledge and deliver a written certificate in a form suitable for recordation stating that the Grantor, its successors and assigns, as then applicable, is in compliance with the terms hereof, or stating what violations hereof may then exist.
11. **Cost and Taxes:** Grantor agrees to bear all cost and responsibility of operation, upkeep and maintenance of the Protected Premises and does hereby relieve, indemnify and hold harmless Holder therefrom. In addition, Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Protected Premises. However, nothing contained herein shall preclude Grantor from delegating the responsibility for payment of all costs as aforesaid and the responsibility for operation, upkeep and maintenance of the Protected Premises to any other party with an interest in the Protected Premises or in the remainder of the Property benefiting from the reservation of rights hereunder.
12. **Grant in Perpetuity:** The conservation easement herein granted shall be a burden upon and shall run with the Protected Premises in perpetuity and shall bind Grantor, its successors and assigns forever. A copy of the restrictions contained herein or incorporation by reference hereof shall be included in any subsequent deed or legal instrument by which Grantor conveys any interest (including leasehold) in the Protected Premises.
13. **Subsequent Transferees:** By acceptance hereof, Holder covenants and agrees, as real covenants running with the land in perpetuity, and not as conditions hereto or as

restraints on alienability, (1) that it will hold the conservation easement hereunder in perpetuity for conservation purposes; (2) that it will not transfer rights and obligations hereunder, except to an entity which, as a condition precedent to such transfer, gives Holder assurances that it is committed to the conservation purposes hereof and is able to and agrees to enforce the rights granted herein; and (3) that any such transferee shall be a “Qualified Organization” under Section 170(h)(3) of the Internal Revenue Code and a qualified “holder” under the Maine Uniform Conservation Easement Act, 33 M.R.S.A. §§ 476 et seq., as amended. The rights and obligations of Holder hereunder may not be transferred in any event except with the prior consent of Grantor, its successors and assigns, which shall not be unreasonably withheld.

#### **14. Miscellaneous:**

- a) The term “Grantor” wherever used herein, and any pronouns used in place thereof, shall mean and include, unless repugnant to the context, the above-named Grantor and its successors and assigns and all persons hereafter claiming by, under or through said Grantor whether or not such persons executed this Conservation Easement Deed and Indenture or had an interest in the Protected Premises or the remainder of the Property as of the execution hereof; notwithstanding the foregoing, such a person shall have no obligation by virtue hereof, if and when such person shall cease to have any present, partial, contingent, collateral or future interest in the Protected Premises or any portion thereof by reason of a bona fide transfer for value (or upon transfer by demise or dissolution), provided such entity shall have received an estoppel certificate from Holder as of the date of such transfer indicating compliance with the terms hereof. The term “Holder”, whenever used herein, and any pronouns used in place thereof, shall mean and include, unless repugnant to the context, the above-named “Holder” and its successors and assigns.
- b) The fact that any of the uses prohibited herein, or other uses not mentioned, may become greatly more economically valuable than the permitted uses, or that neighboring properties may in the future be put entirely to such non-permitted uses, has been considered by Grantor in granting this perpetual easement. It is Grantor’s belief that any such changes will increase the benefit to the public of the continuation of this Conservation Easement Deed and Indenture and the benefit to the remainder of the Property, and it is the intent of Grantor and Holder that any such changes should not be deemed to be changed conditions permitting termination hereof.

- c) If any provisions hereof or the application thereof to any person, partnership or corporation or circumstance is found to be invalid, the remainder of the provisions hereof and the application of such provisions to persons, partnerships or corporations or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.
- d) Should it be necessary at any time in the future in connection with any action of the Holder to obtain the agreement or approval of the Grantor, its successors or assigns, in connection with any matter relating to this Conservation Easement Deed and indenture, the agreement or approval by consensus of the owner or owners, who are of full age and competent, in the Protected Premises so long as it is owned as a unit, or of each and every parcel making up the Protected Premises if it is hereafter subdivided, shall be deemed to be the agreement or approval of all the owners of the Protected Premises, unless Grantor, its successors and assigns, have conveyed the authority to make such agreement or grant such approval to an entity representing the owners of the remainder of the Property.
- e) Grantor and Holder agree that this Conservation Easement Deed and Indenture gives rise to a property right which vests immediately in Holder and which, for the purposes of this paragraph, has a fair market value equal to the amount by which the fair market value of the unrestricted Protected Premises, on the date of the execution hereof, is reduced by the restrictions imposed hereby. Should this Conservation Easement Deed and Indenture be extinguished by judicial decree or the powers of eminent domain and Grantor thereafter sells, exchanges or receives payment for any part or whole of the then unrestricted Protected Premises, Holder shall be entitled to a portion of the proceeds of such a sale, exchange, or involuntary conversion, at least equal to the proportion that the value hereof, as calculated above, bore to the value of the unrestricted Protected Premises on the date of the execution hereof. Such proceeds shall be used by Holder for conservation purposes.

**TO HAVE AND TO HOLD** the said conservation easement as aforesaid unto the said Holder and its successors and assigns forever, subject to such reservation of rights unto Grantor, its successors and assigns as owners of the remaining Property.

**AND GRANTOR DOES COVENANT** with Holder and its successors and assigns that it is lawfully seized in fee of the premises, and that the premises are free of all encumbrances; that it has good right to convey the same to the said Holder to hold as aforesaid; and that it and its successors and assigns shall and will **WARRANT AND DEFEND** the same to the said Holder, its successors and assigns, forever, against the lawful claims and demands of all persons

GRANTOR SIGNATURE

IN WITNESS WHEREOF, the said Grantor has hereunto set its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

SEALARK-FIVE LLC

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

HOLDER ACCEPTANCE

The above and foregoing Conservation Easement Deed and Indenture was authorized to be accepted by the Town of Brunswick, Holder as aforesaid, and the said Holder does hereby accept the foregoing, by and through its \_\_\_\_\_, thereunto duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

STATE OF MAINE  
CUMBERLAND COUNTY, ss

\_\_\_\_\_, 2005  
Personally appeared before me the above-named Paul H. Clark, Member of said Sealark-Five LLC and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Sealark-Five LLC.

Notary Public/Attorney at Law  
Print Name: \_\_\_\_\_

STATE OF MAINE  
CUMBERLAND COUNTY, ss. \_\_\_\_\_, 2005

Personally appeared before me the above-named \_\_\_\_\_, as \_\_\_\_\_ of the Town of Brunswick and acknowledged the foregoing instrument to be his or her free act and deed and the free act and deed of the Town of Brunswick.

Notary Public/Attorney at Law  
Print Name: \_\_\_\_\_