# *CONSERVATION EASEMENT ON LAND ON TENNY RIVER IN RAYMOND, MAINE TO BE HELD BY LOON ECHO LAND TRUST, INC.*

**PINE TREE COUNCIL, INC. BOY SCOUTS OF AMERICA**, a Maine nonprofit corporation having a mailing address of _____, hereinafter referred to as the "Grantor;

for consideration being an absolute and unconditional gift

GRANTS with QUITCLAIM COVENANT, in perpetuity,

to **LOON ECHO LAND TRUST, INC.**, a Maine nonprofit corporation having a mailing address is 8 Depot St., Suite 4, Bridgton, Maine 04009, hereinafter referred to as the "Holder";

the following described premises: A Conservation Easement pursuant to Title 33, Maine Revised Statutes, Sections 476 through 479-C, inclusive, as amended, over, through, under and across a certain parcel of land on the easterly side of the Tenny River and on both sides of a private road known as River Road in the Town of Raymond, County of Cumberland, and State of Maine, being more particularly described in **Exhibit A**, and depicted on **Exhibit B**, both attached hereto and made a part hereof, being a portion of that premises acquired by deed to the Grantor dated _____ and recorded in the Cumberland County Registry of Deeds at Book ____, Page ___ (hereinafter referred to as the "Protected Property"), exclusively for conservation purposes as follows:

## Conservation Purposes

*The purposes of this Conservation Easement (hereinafter referred to as the "Conservation Purposes") are to protect and preserve in perpetuity, in no order of priority:*

- *the water quality of the Protected Property and the Tenny River and nearby Crescent Lake and Panther Pond;*
- *the ecological resources and wildlife values associated with the forest and riparian habitat (including, without limitation, plants, fisheries habitat, waterfowl habitat, mammalian habitat, and amphibian and reptile habitat);*
- *the scenic views of an unbroken forested landscape on the Protected Property from public vantage points on the Tenny River and on the Protected Property;*
- *low-impact, public, nature-based and outdoor-based educational and recreational opportunities.*

*Grantor and Holder intend that this Conservation Easement will confine, in perpetuity, the uses of the Protected Property to activities that are compatible with the Conservation Purposes.*

## RECITALS

WHEREAS the Protected Property is 28 acres of prime, developable land in an area experiencing continued growth, and is in a natural undeveloped state, adjacent to the shore of Tenny River, which flows between Crescent Lake and Panther Pond;

WHEREAS the Protected Property includes approximately 970 feet of shoreline on the Tenny River, 2100 feet of streams that include designated brook trout habitat, and 0.8 acres of wetlands that serve as a buffer against flood hazards and help recharge the high yield sand and gravel aquifer;

WHEREAS the Tenny River serves as a public recreational water channel for boating and fishing and it connects Crescent Lake to Panther Pond;

WHEREAS according to the "Maine's Finest Lakes," a 1989 report analyzing all Maine water bodies of 10 acres or more prepared by the Maine Critical Areas Program; Crescent Lake and Panther Pond were designated in the study as possessing significant physical features;

WHEREAS the Tenny River flows into Panther Pond to Panther Run and into Sebago Lake. Sebago Lake serves as the drinking water reservoir for approximately 200,000 residents in Greater Portland and its waters are of such high quality that the Portland Water District operates this public water supply with a waiver from US EPA therefore avoiding costly, advanced filtration requirements under the Safe Water Drinking Act;

WHEREAS the Tenny River is substantially shaded by forest vegetation and contains wildlife and habitat for a wide range of fish, birds and other wildlife including the redbreast sunfish, largemouth bass, heron, loons, and painted and snapping turtles;

WHEREAS the Protected Property serves as a scenic area with an undisturbed forested shoreline appreciated by boaters and other users that access the Tenny River;

WHEREAS the Protected Property adjoins the Boy Scouts of America's Camp Hinds property that is approximately 280 acres in size and serves as a youth camp facility managed for outdoor educational purposes; The Protected Property is intended to serve as a more primitive nature and recreational area for the Camp's programs;

WHEREAS the 2004 Town of Raymond Comprehensive Plan's goals for natural resource protection include to "increase the amount of permanent open space area so as to protect important natural resources; maintain or improve the quality of surface water and protect it from point source and non-point source pollution; preserve wetlands in their natural state; and preserve the Town's scenic areas";

WHEREAS the 2009 Town of Raymond Conservation Plan's composite map of six combined goals shows distinct regions of the town that are important natural areas for protection and one such region is the Tenny River;

WHEREAS the 2010 Lake Region Greenprint plan identifies seven goals for natural resource and quality of life protection and the lands that border the Tenny River score as high priority for protecting water resources and preserving plant and animal habitat, the two highest of seven goals;

WHEREAS the Grantor, Holder, the Raymond Conservation Commission and area residents have collaborated to permanently conserve the Protected Property;

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

## 1. LAND USE

For the purposes of land use restrictions and reserved rights hereunder, the Protected Property contains a buffer area (hereinafter the "Buffer Area") consisting of a strip of land of one hundred feet (100') from the easterly bank of the Tenny River, as more particularly depicted in Exhibit B.

No commercial, industrial, residential, surface or subsurface mining, or other resource extraction, or building development activities are permitted on the Protected Property, except forest management, in accordance with the specific restrictions contained hereinbelow. For the purposes of this Conservation Easement, the incidental sale of interpretive literature or use of the Protected Property for charitable fundraising, outdoor nature-based camp programs and educational activities, community events, and tours shall not be deemed commercial uses.

Without limiting or expanding the general and specific restrictions of this Conservation Easement, no use shall be made of the Protected Property and no activity thereon shall be permitted which is or is likely to become inconsistent with the Conservation Purposes of this Easement. Grantor and Holder acknowledge that in view of the perpetual nature of this Easement, they are unable to foresee all potential future land uses, future technologies and future evolution of the land and other natural resources, and other future occurrences affecting the Conservation Purposes of this Easement. Therefore, Holder, in its sole discretion, may determine whether proposed uses or proposed improvements not contemplated by or addressed in this Easement are consistent with the Conservation Purposes of this Easement.

Prior to commencement of any allowed uses of the Protected Property that require permits, all necessary federal, state, municipal, and other governmental permits and approvals shall be secured by Grantor and copies thereof shall be provided to the Holder.

The Protected Property shall not be included as part of the gross tract area of other property 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 and building density.

## 2. DIVISION

For the purposes of this Conservation Easement the Protected Property shall remain as an entirety under single ownership, without division, partition, subdivision, subjection to the Maine Time Share Act (33 M.R.S.A. c 10-A) or Maine Condominium Act (33 M.R.S.A. c 31), or other legal or *de facto* creation of lots or parcels in separate ownership or the creation of separate parcels of real estate, except that the

Grantor may enter into boundary line agreements to resolve bona fide boundary disputes with the prior written consent of Holder, which shall not be unreasonably withheld, provided that the total acreage of land protected under this Conservation Easement shall not materially be reduced thereby without court order.

Notwithstanding the foregoing, any portion of the Protected Property may be conveyed to Holder for conservation ownership, subject to the continuation of the terms of this Conservation Easement or the replacement of this Conservation Easement with a Declaration of Trust that is at least as protective of the conservation values of the Protected Property as this Conservation Easement.

Notwithstanding the foregoing, an undivided parcel may be owned as a joint tenancy or as a tenancy in common.

## 3. STRUCTURES

### A. Definition

For the purposes of this Conservation Easement, a “structure” shall be defined broadly as: any manmade combination of materials on, over, in and/or under the ground. A structure may be primarily two dimensional, such as a paved parking lot or a sign, or three dimensional, such as a building, wall or piping.

### B. Existing Structures

As of the date of this grant, there are no known structures on the Protected Property except boundary markers, utility poles/lines, and stone walls. Grantor reserves the right to maintain, repair, and replace these existing structures with substantially similar structures located in substantially the same locations.

### C. Additional Structures

No additional structures of any kind, temporary or permanent, may be located beneath, on or above the Protected Property, except however, the Grantor reserves the following rights:

(i) to construct, maintain, repair and replace one privy structure that may include a pit or composting toilet, said privy structure to be (1) located outside of the Buffer Area and at least one hundred feet (100') from the westerly edge of River Road; (2) constructed of exterior surface materials that blend with the natural surroundings and complement the natural and scenic features of the landscape; and (3) built to the standards that the state health code requires;

(ii) to construct, maintain, repair and replace minor structures to enhance the opportunity for low-impact outdoor recreation, including but not limited to such structures as boundary markers, trail markers, small unlighted informational and interpretive signs, trail improvements such as steps, bog bridges, water bars, and railings, wildlife observation blinds, fire rings, steel gates, barriers or low fences to prevent access by motor vehicles or protect fragile areas or scientific research areas; provided that they shall be constructed of dark-colored or natural-appearing materials that blend with the natural surroundings and located to complement the natural and scenic features of the landscape. Notwithstanding the foregoing, high-impact outdoor recreational structures are prohibited, including but not limited to paved trails, boardwalks other than bog bridging, docks, piers and floats, tent platforms, lean-tos, yurts, outhouses or portable toilets (except as permitted in 3.C(i) above), gazebos, golf courses, golf ranges, swimming pools, campgrounds, mud runs, tennis and other recreational courts, paintball, zip line, and other adventure courses, stadiums, performance stages, dressage fields, equestrian rings, polo fields, ATV or race tracks or courses, towers, playgrounds, athletic courts or fields, airstrips, and permanent aircraft pads; and

(iii) to permit third parties to construct, maintain, repair, and replace structures permitted under any utility and access easements that precede the effective date of this Conservation Easement. To the extent of Grantor's authority, all additional utility structures within these rights of way shall be located underground to the extent economically and topographically practicable.

## 4. SURFACE ALTERATIONS

### A. Existing Surface Alterations

As of the date of this grant, there are no surface alterations on the Protected Property except for:

-- the private road known as River Road;

-- approximately 1,500 feet of a snowmobile trail that traverses the easterly parcel and then follows River Road;

-- approximately 1,200 feet of a woods rood and an approximately _____ (___) square foot clearing near the river;

all located generally as depicted in Exhibit B or documented in the Baseline Documentation.

Grantor reserves the right to maintain, repair or improve the existing surface alterations listed above in substantially the same locations (except to the extent that alternative locations and

additional improvements are otherwise permitted hereinbelow at Paragraphs 4(B) and 4(C)), except that any portions of existing clearing that are located in the Buffer Area shall be required to revert to a natural vegetative state.

**B. Additional Surface Alterations**

No additional filling, dumping, excavation or other alteration may be made to the surface or subsurface of the Protected Property, except however, the Grantor reserves the right to:

(i) to the minimum extent necessary, install and maintain the structures permitted in Paragraph 3 and to engage in vegetation management activities (in accordance with Paragraph 5);

(ii) establish and maintain additional unpaved trails to enhance the opportunity for low-impact, daytime, outdoor recreation, provided that they are located and designed in a manner to minimize soil erosion and damage to fragile plant communities and wildlife habitat. The surfaces of said trails shall not be made of bituminous paving or similar materials but may be constructed with a firm and stable surface to accommodate wheelchairs and similar mobility devices;

(iii) expand the existing clearing to a maximum of two thousand square feet (2,000), all of which must be situated outside of the Buffer Area;

(iv) upon prior written consent of Holder, alter the surface for ecological education, archaeological investigations, or scientific research conducted under then-current professional standards; provided that the alterations are designed and located in a manner to prevent soil erosion and prevent damage to fragile plant communities and wildlife habitat; and that the disturbed area surrounding the alteration must be restored as soon as reasonably possible to a state consistent with the conservation values of the Protected Property.

**C. Easements and Rights of Way.** Grantor may not grant additional easements or rights of way over the Protected Property, nor increase the scope of existing easements or rights of way without the prior written consent of Holder. No additional through roads are permitted on the Protected Property.

## 5. VEGETATION MANAGEMENT

As of the date of this grant, the Protected Property is in a substantially undeveloped condition, with forest and wetland areas, as depicted on Exhibit B and as documented in the Baseline Documentation.

**A. Vegetation Management Generally.** Vegetation may not be cut, disturbed, altered or removed from the Protected Property without the prior written consent of Holder, except that Grantor reserves the rights to alter vegetation as follows:

(i) to clear, selectively cut, prune, and manage vegetation and forest cover to the extent necessary to exercise the reserved rights of the Grantor in Paragraph 1, 3, and 4, and provided that in every case the disturbed surrounding area must be restored as soon as possible to a state consistent with the scenic and conservation values to be protected by this Conservation Easement.

(ii) to manage forested land, except within the Buffer Area, by selective cutting, pruning, and planting for non-commercial purposes such as the harvesting of products for use on the Protected Property or Grantor's Abutting Land, for lumber and firewood, and for Grantor's educational programs;

(iii) to combat active fire to the minimum extent reasonably necessary;

(iv) to remove safety hazards for the uses permitted hereunder;

(v) to mark boundaries;

(vi) to engage in commercial forest management activities (in accordance with Paragraph 5.B);

(vii) upon prior written notice to Holder (in accordance with Paragraph 9 hereinbelow), to remove invasive species;

(viii) upon prior written notice to Holder (in accordance with Paragraph 9 hereinbelow), to reduce the threat of potential fire;

(ix) upon prior written notice to Holder (in accordance with Paragraph 9 hereinbelow), to protect, restore or support native wildlife species and rare or endangered plants; and

(x) upon prior written notice to Holder (in accordance with Paragraph 9 hereinbelow), to control or prevent the spread of disease.

Notwithstanding the foregoing provisions of this Section 5.A, any harvesting of more than five (5) cords of wood within any calendar year shall require a Forest Management Plan (in accordance with Paragraph 5.B).

**B. Commercial Forest Management**

Except within the Buffer Area, Grantor reserves the right to conduct commercial forest management in accordance with a Forest Management Plan, which shall contain specific limitations and measures designed to achieve the following goals:

(i) maintenance of soil productivity;
(ii) maintenance or improvement of the forest for diverse age, species composition and structure;

(iii) protection of the quality of surface and subsurface water bodies, including aquifers;
(iv) protection of unique or fragile natural areas;
(v) conservation of indigenous plant and animal species; and
(vi) conservation of scenic quality of forested areas when viewed from public vantage points on the Tenny River and on the Protected Property.

Said Forest Management Plan and any commercial forest management activities shall also comply with the then-current "Best Management Practices for Forestry: Protecting Maine's Water Quality," prepared by the Maine Department of Conservation, Maine Forest Service, or alternate standards approved by Holder.

Grantor shall provide Holder with a copy of all written Forest Management Plans and their subsequent revisions and updates within a minimum of thirty (30) days after their completion. Said plan shall have been prepared by a licensed professional forester not more than ten (10) years prior to the date the forestry activities are to commence.

Grantor shall provide Holder with written notice (in accordance with Paragraph 9 hereinbelow) of harvest operations within a minimum of thirty (30) days prior to commencement of such activities prescribed under the Forest Management Plan by Grantor or Grantor's Agent. The written notice shall include a description or plan of activities such as the location of the harvest and timber landing areas; a harvest schedule; ingress and egress over permanent or temporary woods roads and streams; reclamation and stabilization of skid trails, temporary roads, and landing areas; and a list of necessary structures.

Harvest operations and road and landing construction shall be supervised by a licensed professional forester and conducted under a written contract with competent operators. Harvesting shall be conducted on frozen or dry ground to the extent practicable to prevent rutting, erosion, or compaction. Grantor shall notify Holder (in accordance with Paragraph 9 hereinbelow) upon completion of commercial forest management activity within thirty (30) days following completion, including completion of site reclamation and stabilization work required under the Plan.

Holder, in its process of inspection and monitoring (in accordance with Paragraph 8 hereinbelow) shall base its determination about compliance with the terms of this Conservation Easement on the outcomes and conditions resulting from any commercial forest management activities.

**C. Invasive Species.** Grantor and Holder are prohibited from planting or otherwise intentionally introducing or cultivating invasive plant species on the Protected Property, said species to be those included on the list of invasive species maintained by the Invasive Plant Atlas of New England, or a similar list approved in advance in writing by Holder.

## 6. WASTE DISPOSAL

Subject to any more restrictive local, state and federal laws and regulations, it is forbidden to discharge septic waste or wastewater into the surface waters on or abutting the Protected Property, or to dispose of or store rubbish, garbage, unserviceable vehicles, building debris, abandoned equipment or parts thereof, or other waste material that degrades the scenic or ecological conditions of the Protected Property. Waste, slash, compost and by-products of permitted vegetation management may be stored or disposed of on the Protected Property, provided that such storage or disposal does not create a potential fire hazard, impact wetlands, or have adverse long-term impact on the scenic attributes associated with the protected property.

The use, storage, discharge or runoff of chemical herbicides, pesticides, fungicides, detergents or highly acidic or alkaline agents, fertilizers and other toxic agents, including discharge of potentially toxic waste water or other toxic byproducts of permitted uses, shall be prohibited, unless either (i) their use is recommended in writing by a licensed conservation professional for wildlife habitat enhancement or anti-invasive purposes, and after prior notice to Holder (in accordance with Paragraph 9.C), or such shorter period approved by Holder in urgent circumstances; or (ii) their use is approved in advance and in writing by Holder as appropriate, in its sole and exclusive discretion, to prevent or mitigate harm to the natural resources or permitted uses of the Protected Property. Use of such agents shall be carried out in accordance with all applicable local, state, federal and other governmental laws and regulations and shall only occur if other potential treatments are ineffective or infeasible in managing the specific vegetation management concern, and all uses of such agents shall follow best management practices established by governmental agencies or other similar authority and in effect at the time of proposed use of such agents.

## 7. RECREATIONAL USES

A. Low-Impact Outdoor Recreational Uses. Grantor shall have the right to use the Protected Property for daytime or nighttime low-impact, non-motorized (except for motorized wheelchairs or similar devices for the disabled and for snowmobile use), outdoor recreational uses, including, without limitation: hiking, nature observation and study, bicycles, horseback riding, cross country skiing, snowshoeing, fishing, hunting, and nature-based outdoor education and scientific research.

B. Camping Only Within the Camping Area. Grantor shall have the right to use the Camping Area, as generally depicted on Exhibit B, for low-impact overnight camping, provided that such camping shall be conducted only in temporary tents or other similar structures and not in any permanent or high-impact structures.

C. Limited Public Access. Grantor grants Holder the right to assure that the general public will have access to the Protected Property for daytime, low-impact, non-motorized (except for motorized wheelchairs or similar devices for the disabled and for snowmobile use), outdoor recreational uses, including, without limitation: hiking, nature observation and study, cross country skiing, and snowshoeing. To that end, Grantor agrees to permit, and will refrain from prohibiting, discouraging or charging a fee for such use of the Protected Property. Grantor and Holder may jointly establish rules and regulations to protect the conservation values of the Protected Property.

Furthermore, Grantor may control, limit or prohibit, by posting and other means, any of the following uses by the general public: hunting, trapping, fishing, night time use, camping, fires, picnicking, parking, loud activities, bicycling, use of motor vehicles, access by domesticated animals or pets, or any other public or private use that may interfere with the Conservation Purposes of this Easement or if such uses result in rutting or erosion or other damage to natural resources. Any posting or other controls or limits on such uses must be specific to the prohibited use and how it is limited and shall be approved in advance by Holder (in accordance with Paragraph 9 hereinbelow).

D. Motorized Vehicles for Property Management. Grantor shall have the right to use motorized vehicles on the Protected Property for all property management activities permitted under this Conservation Easement, provided that said vehicles are operated in a manner so as to minimize harm to the Conservation Purposes.

E. Recreational Use Statute. 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 14 M.R.S. 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.

**8. Holder's Affirmative Rights**

**8.A. Entry and Inspection.** Holder shall have the right to enter the Protected Property for inspection and monitoring purposes and for enforcement, at a reasonable time and in a reasonable manner that is consistent with the Conservation Purposes hereof. Except in emergency circumstances, Holder will make reasonable efforts to contact Grantor and/or persons in residence on Grantor's adjacent property, prior to entry onto any area of the Protected Property. "Emergency circumstances" shall mean that the Holder has a good-faith basis to believe a violation of the easement is occurring or is imminent.

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

Prior to initiation of an enforcement action, Holder shall provide Grantor with prior notice (in accordance with Paragraph 9 hereinbelow) and reasonable opportunity to cure any breach, except where emergency circumstances require more immediate enforcement action.

If Holder is the prevailing party in any action against Grantor to enforce or defend this Conservation Easement, Grantor shall reimburse Holder for any reasonable costs of enforcement or defense, including court costs, mediation and/or arbitration costs, reasonable attorneys' fees, and any other payments ordered by such Court or arbitrator.

Grantor is not responsible for injury to or change in the Protected Property resulting from natural causes or environmental catastrophe beyond Grantor's control, 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.

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

**8.D. Holder Acknowledgement Signs.** Holder shall have the right to install and maintain small unlighted signs visible from public vantage points and along boundary lines, to identify Holder and inform the public and abutting property owners that the Protected Property is under the protection of this grant.

## 9. Notices and Requests for Approval

**A. Notice and Approval Requirements.** 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, 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. Holder's approval shall be conditioned on compliance with the terms of Paragraph 13.F.

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

To Grantor: At the address of the owner(s) of record as noted hereinabove or as provided by Grantor in writing, or if not provided, as set forth below.

To Holder:
Loon Echo Land Trust, Inc.
8 Depot St., Suite 4
Bridgton, Maine 04009

In the event that notice mailed to Holder or to Grantor at the last address on file with Holder is returned as undeliverable, the sending party shall provide notice by regular mail to Grantor's last known address on file, or the State Tax Assessor in the case of land in the unorganized territories; or in the case of Holder or Third Party, or in the case of a corporate

owner, to the address on file with the Secretary of State, State of Maine, and the mailing of such notice shall be deemed compliance with the notice provisions of this Easement.

**C. Time for Notice and Reply**

i. Where Grantor is required to provide notice to Holder pursuant to this Easement, such notice as described hereinabove shall be given in writing thirty (30) days prior to the event giving rise to the need to give notice except as otherwise specifically provided herein.

ii. Where 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 such review, Holder shall grant, grant with conditions, or withhold its approval. Failure to approve Grantor's request within thirty (30) days shall be deemed a denial of such request. No proposed activity may proceed without Holder's written consent and approval as provided herein.

**10. Costs, Taxes, Liability**

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

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

defended, held harmless and indemnified by Grantor shall extend without limitation to any action based upon the presence of toxic and/or hazardous substances upon or emanating from the Protected Property.

## 12. Standard Provisions

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

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

**C. Assignment Limitation.** This Conservation Easement is assignable, but only to an entity that 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, as amended (or successor provisions thereof), and that as a condition of transfer, agrees to uphold the Conservation Purposes.

**D. Baseline Documentation.** In order to establish the present condition of the Protected Property and its conservation attributes protected by this Conservation Easement 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 grant.

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

**F. Takings, Extinguishment, Proceeds**

1. The parties agree that the grant of this Conservation Easement creates a property right that vests immediately in Holder.

2. (a) If either Holder or Owner receives notice of the actual or threatened exercise of the power of eminent domain (hereinafter a "Taking") with respect to any interest in or any part of the Protected Property, the party who receives the notice shall promptly notify the other and the parties may proceed jointly or either party may at its discretion take such legal action as it deems necessary to: (i) challenge the Taking; (ii) challenge the amount of allocation of any award tendered by the Taking authority; or (iii) otherwise participate in, challenge or appeal such proceedings, findings or awards. Any third party counsel and consultants (including appraisers) hired by either party shall be reasonably acceptable to the other party. Each party shall be responsible for its own costs and legal fees, absent written agreement of the parties.

(b) In the event of a Taking of all or a portion of the Protected Property the following allocation provisions shall apply:

(i) the parties agree that notwithstanding any other valuation process proposed to calculate compensation due to the parties by the entity accomplishing the Taking, Holder shall be entitled to a portion ("Holder's Portion") of the proceeds of any compensation award resulting from such Taking and Owner shall be entitled to the balance of the proceeds of such compensation award;
(ii) Holder shall use such proceeds for its conservation purposes;
(iii) Holder's Portion of the proceeds of any compensation award shall be the proceeds multiplied by a fraction, the numerator of which is the amount by which the fair market value of the interest taken at the time of such Taking unrestricted by this Conservation Easement, is reduced by the terms and conditions of this Conservation Easement, and the denominator of which is the fair market value of the interest taken at the time of such Taking unrestricted by this Conservation Easement; and
(iv) notwithstanding the foregoing, Holder's Portion of the proceeds resulting from such Taking shall not include value of the Protected Property prior to such Taking attributable to authorized improvements made and paid for by Owner after the date of this grant. The value of the Holder's portion shall include improvements made by or at the expense of Holder during the term of the Conservation Easement subject to depreciation unless the improvement was substantially renovated at
the expense of the Owner after the date of transfer of the Protected Property to the Owner.

3. Except for a Taking by a person other than the Owner in accordance with Subparagraph 12.F.2, 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 Owner and Holder 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 the increase in value of the Owner'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 Owner 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, Conservation Purposes of this Conservation Easement. Owner agrees and authorizes Holder to record a notice of a claim to proceeds on the Protected Property, which claim will be effective as of the date of such extinguishment, to secure its rights under this Paragraph.

**13. General Provisions**

**A. 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 through 479-C, 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.

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

**C. Owner's Rights and Obligations, Joint Obligation.** A person's or entity's obligation hereunder as Grantor, or successor owner of the Protected Property, shall be joint and several, and will cease, only if and when such person or entity ceases to have any ownership interest in the Protected Property, (or relevant portion thereof) but only to the extent that the Protected Property (or relevant portion thereof), is then in compliance herewith, and provided such person or entity shall have fulfilled the requirements of Paragraph 13.D below. Responsibility of owners for breaches of this Conservation Easement that occur prior to transfer of title will survive such transfer; provided that the new owner shall also be responsible for bringing the Protected Property into compliance.

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

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

**F. Discretionary Approvals and Amendments.**

**F.1. 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 either party to agree to any discretionary approval.

**F.2. Amendments.** Grantor and Holder recognize that rare and extraordinary circumstances could arise which warrant modification of certain of the provisions of this Conservation Easement. To this end, subject to more restrictive laws and regulations, if any, Grantor and Holder have the right to agree to amendments to this Conservation Easement without prior notice to any other party, provided that in the sole and exclusive judgment of Holder, such amendment enhances or does not materially detract from the conservation values intended for protection under this Conservation Easement. Amendments will become effective upon recording at the Cumberland County Registry of Deeds. Nothing in this paragraph shall require the Grantor or the Holder to agree to any amendment or to negotiate regarding any amendment.

**F.3. Further Limitations on Discretionary Approval and Amendments.** Notwithstanding the foregoing, except as provided by 33 M.R.S. §§ 476 *et seq*., as amended, Holder and Grantor have no right or power to approve any action or agree to any discretionary approval or amendment that would

(a) materially detract from the conservation values intended for protection;
(b) limit the term or result in termination of this Conservation Easement; or
(c) adversely affect the qualification of this Conservation Easement or the status of the Holder under applicable laws, including the Maine Conservation Easement Act at Title 33, M.R.S. §476 *et seq.*

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

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

**I. Severability, Entire Agreement, No Forfeiture.** If any provision of this Conservation Easement or the application of any provision to a particular person or circumstance is found to be invalid, the remainder of this Conservation Easement and the application of such provision to any other person or in any other circumstance, shall remain valid. This instrument and the Baseline Documentation set forth the entire agreement of the parties with respect to the Conservation Easement and 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.

**J. Standing to Enforce.** Only Holder or Grantor may bring an action to enforce this grant, and nothing herein should be construed to grant any other individual or entity standing to bring an action hereunder, unless otherwise provided by law; nor to grant any rights in the Protected Property by adverse possession or otherwise, provided that nothing in this Easement shall affect any public rights in or to the Protected Property acquired by common law, adverse possession, prescription, or other law, independently of this grant.

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

**L. Independent Representation.** Grantor has retained legal counsel to represent only its interest in this transaction. Grantor and Holder acknowledge and agree that they have not received and are not relying upon legal, tax, financial or other advice from each other. Grantor acknowledges that Holder has recommended that it keep independent counsel.

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

IN WITNESS WHEREOF, _____, the duly authorized _____ of the Pine Tree Council, Inc. Boy Scouts of America, has hereunto set his/her hand and seal this _____ day of _____, 2013.

Signed, sealed and delivered
in the presence of:

PINE TREE COUNCIL, INC.
BOY SCOUTS OF AMERICA

_____ _____

Witness

**ACKNOWLEDGMENT**

STATE OF MAINE
COUNTY OF CUMBERLAND _____, 2013

Then personally appeared the above-named _____, duly authorized _____ of the Pine Tree Council, Inc. Boy Scouts of America, and acknowledged the foregoing instrument to be his/her free act and deed in his/her capacity and the free act and deed of said corporation.

Before me,

_____
Notary Public/Attorney at Law

_____
*Printed name*

## *Holder Acceptance*

The above and foregoing Conservation Easement was authorized to be accepted by Loon Echo Land Trust, Inc. and Loon Echo Land Trust, Inc. does hereby accept the foregoing Conservation Easement, by and through _____, its President, this _____ day of _____, 2013.

Signed, sealed and delivered in the presence of:

Loon Echo Land Trust, Inc.

_____ _ By _____
Witness

_____

Title: President, Loon Echo Land Trust, Inc.

STATE OF MAINE )
COUNTY OF _____) _____, 2013.

Personally appeared _____, President, duly authorized representative of the above-named Loon Echo Land Trust, 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,

_____
Notary Public

_____
Printed name of notary
My commission expires: _____

# *CONSERVATION EASEMENT ON LAND ON TENNY RIVER IN RAYMOND, MAINE TO BE HELD BY LOON ECHO LAND TRUST, INC.*

**EXHIBIT A**
**Legal Description of the Protected Property**

# *CONSERVATION EASEMENT ON LAND ON TENNY RIVER IN RAYMOND, MAINE TO BE HELD BY LOON ECHO LAND TRUST, INC.*

**EXHIBIT B**
**Sketch Plan**

Must show:

- Snowmobile trail
- Camping Area
- Buffer Area
- Fire ring
- Stone walls
- Utility lines
- River Road (also need to show there is legal deeded access on road to property)
- Woods road leading to Camping Area