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PURCHASE AND SALE AGREEMENT



On this ____ day of _____, 2006, _____ [Seller's name], residing at _____ ("Seller"), agrees to sell, and The Nature Conservancy of the Pine Tree State, Inc., a nonprofit corporation organized under the laws of the State of Maine, having its principal office at Fort Andross, 14 Maine Street, Suite 401, Brunswick, Maine 04011 and a corporate headquarters at 4245 North Fairfax Drive, Arlington, Virginia 22203-1606 (the "Conservancy"), agrees to buy, upon the terms and conditions set forth herein, the following described property, with any buildings and improvements thereon, if any, and all rights, hereditaments, easements and appurtenances thereunto belonging, located in the [City/Town] of _____, County of _____, State of Maine, containing _____ (____) acres, more or less, more particularly described in Exhibit A attached hereto and by this reference incorporated herein (the "Property").

1. **PURCHASE PRICE.** The total purchase price for the Property shall be _____ (\$_____), payable as follows: On the signing of this Agreement, _____ (\$_____) shall have been paid as a deposit to be held in escrow in an interest bearing escrow account by Seller's attorney (with the interest to follow the deposit), and the balance of _____ (\$_____) shall be paid by check or by wire transfer at the time of delivery of the deed, to be held in escrow until the deed is recorded. Seller acknowledges that the Conservancy must have received from Seller's attorney a completed Form W-9 (substantially in the form provided herewith) before the Conservancy can pay the contract deposit. A copy of Form W-9 must also be completed by Seller and delivered to the Conservancy prior to closing. ***[[Be sure to include Form W-9 with contract.]]***
2. **TAX REPRESENTATIONS.** Seller hereby acknowledges that it has not relied upon any representation made by or on behalf of the Conservancy concerning the possible tax consequences of this transaction. The Conservancy hereby advises Seller to seek its own professional advice regarding the proposed transaction and any related tax consequences.
3. **CLOSING DATE.** Closing will occur at the offices of the Conservancy's title attorney within ninety (90) days of receipt by the Conservancy of this Agreement fully executed by Seller; provided, however, that the Conservancy shall have the right to extend the date of closing if a survey, title insurance commitment, or environmental hazards assessment have not been received by the Conservancy by such date. The proposed deed and other necessary instruments are to be submitted by Seller to the Conservancy's staff counsel at 11 Avenue de Lafayette, 5th Floor, Boston, Massachusetts 02111-1736, at least fifteen (15) days before closing. It is agreed that time is of the essence of this Agreement.

4. TITLE. Upon the execution of this Agreement, Seller shall provide the Conservancy with an owner's title policy or other evidence of title, if available. At closing, Seller shall prepare, execute and deliver to the Conservancy, or to the assignee designated by the Conservancy, a good and sufficient Warranty Deed conveying good, insurable and marketable title of record to the Property, and all mineral and water rights, with the hereditaments and appurtenances thereunto belonging, including legal access, in fee simple, free and clear of all liens, encumbrances and exceptions.
5. TITLE DEFECTS. If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Property, all as herein stipulated, or if at the time of the delivery of the deed the Property does not conform with the provisions hereof, then Seller shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Property conform to the provisions hereof, as the case may be, in which event the time for performance shall be extended for a period of thirty days. If at the expiration of the extended time Seller shall have failed to remove any defects in title, deliver possession or make the Property conform, as the case may be, all as herein agreed, then any payments made under this Agreement, together with the Conservancy's expenses of a title search and survey, if any, shall be forthwith refunded and all other obligations of the parties shall cease, and this Agreement shall be void without recourse to the parties.
6. ELECTION TO ACCEPT TITLE. The Conservancy shall have the election, at either the original or any extended time for performance, to accept such title as Seller can deliver to the Property in its then condition and to pay therefor the purchase price.
7. SURVEY. The parties agree that a recordable survey of the Property, certified to the Conservancy's title insurance company, [shall/may] be prepared at [Seller's/Buyer's] expense. *[Replace with "Subdivision" paragraph, if applicable – see "Optional Paragraphs" section.]*
8. POSSESSION OF PROPERTY. Full possession of the Property, free of all tenants and occupants, is to be delivered at the time of the delivery of the deed.
9. TAXES. All taxes, assessments, and encumbrances (including agricultural transfer taxes and other rollback taxes incurred as a result of a preferential tax assessment program, but excluding real estate taxes for the then current fiscal year) that may be a lien against the Property at the time of conveyance to the Conservancy shall be satisfied of record by Seller at or before the transfer of title. If Seller fails to do so, the Conservancy may pay any such taxes, assessments, and encumbrances and deduct such payments from the purchase price. Real estate taxes not yet a lien (if any) will be prorated as of the date of closing. Seller shall pay any transfer, conveyance, recordation or documentary revenue stamp tax, assessment or charge.
10. RIGHT OF ENTRY AND INSPECTION. The Conservancy may enter upon the Property at reasonable times from the date hereof until the closing date for surveying and other reasonable purposes related to this transaction. The Conservancy shall have the right to conduct an environmental inspection and assessment of the Property and to

update that inspection and assessment prior to closing. Based upon the results of said inspection and/or update, the Conservancy may, at its discretion, terminate its obligations hereunder at any time prior to closing, in which event any payments made under this Agreement, together with the Conservancy's expenses of a title search and survey, if any, shall be forthwith refunded, all other obligations of the parties shall cease, and this Agreement shall be void without recourse to the parties.

11. **REMOVAL OF MATERIALS.** Seller shall remove any rubbish from the Property prior to closing.
12. **PRESERVATION OF PROPERTY.** Seller agrees that the Property herein described shall remain as it now is until closing, and that Seller will prevent and refrain from any use of the Property for any purpose or in any manner that would adversely affect the Conservancy's intended use of the property. Specifically, but without limitation, Seller shall make no alterations to any improvements, timber resources, other vegetation, topography, wetlands or watercourses, or other natural resources. In the event of such actions, the Conservancy may, without liability, either (a) refuse to accept the conveyance of title to the Property, in which case all monies deposited under this Agreement shall be promptly refunded, or (b) the Conservancy may elect to accept conveyance of title to the Property or a portion thereof, in which case there may be an equitable adjustment of the purchase price based on the change in circumstances.
13. **ENCROACHMENTS/ACCESS.** Without limitation, the Property shall not be considered to be in compliance with the provisions of this Agreement with respect to title unless:
 - a. All structures and improvements, including any driveways and accessory structures, if any, shall be wholly within the lot lines of the Property and shall not encroach upon or under any Property not within such lot lines;
 - b. No building, structure, improvement or property of any kind encroaches upon or under the Property from other property; and
 - c. The Property abuts a public way, duly laid out or accepted as such by the town or city in which the Property is located.
14. **DEFAULT.** If the Conservancy shall fail to fulfill its agreements herein, all deposits made hereunder by the Conservancy shall be retained by Seller as liquidated damages, which shall be Seller's sole recourse at law or in equity.
15. **BROKER'S COMMISSION.** Seller shall be responsible for any commission due any real estate broker in connection with this transaction.
16. **SELLER'S REPRESENTATIONS AND WARRANTIES.** Seller warrants and represents to the Conservancy the matters contained in the following subparagraphs and agrees to indemnify, defend and hold harmless the Conservancy from any loss or liability

resulting from any breach of any of said warranties or representations. Said representations, warranties and indemnities shall survive closing.

- a. Notices. Seller has not received any notices issued by any municipal or other public authority with regard to any work or improvements done or ordered by such authority to be done either before or after the date of this Agreement. Seller has no reason to believe that any such notice will be issued after the date of this Agreement. Seller shall be responsible for any public improvements, assessments, notices or orders received prior to closing.
 - b. Title to the Property and Authority to Execute Documents. Other than as specifically set forth herein, (i) Seller is the sole legal owner of the Property in fee simple and the Property is not subject to any lease or to any other estate or to any outstanding option, interest or agreement of sale, and (ii) Seller has the full power and authority to execute and deliver all necessary documents and to otherwise perform all of Seller's obligations under this Agreement.
 - c. No Condemnation. There are no condemnation proceedings pending with regard to any portion of the Property and Seller does not know of or have reason to know of any proposed condemnation proceedings with regard to any portion of the Property.
 - d. No Tenants. No portion of the Property shall be occupied by any person or entity under any oral or written lease, agreement or in any other manner at closing including, but not limited to, farm leases, hunting or trapping leases.
 - e. No Hazardous Substance. To the best of Seller's knowledge: (i) no hazardous substance or toxic waste has been generated, treated, stored, used, disposed of or deposited in or on the Property; and (ii) there is no hazardous substance or toxic waste in or on the Property that may affect the Property or any use thereof, or that may support a claim or cause of action under the common law or under any federal, state or local environmental statute, regulation, ordinance or other environmental regulatory requirement (nor has any action been instituted for the enforcement thereof).
 - f. Underground Storage Tanks. To the best of Seller's knowledge, there have not been and there are not now any underground storage tanks, septic tanks or wells located on or under the Property or if there have been or are any such tanks or wells located on the Property, their location has been identified to the Conservancy in writing, they have been properly registered with all appropriate authorities, they are in full compliance with all applicable statutes, ordinances and regulations, and they have not resulted in the release of any hazardous or toxic substance, material, or waste into the environment.
17. **CORPORATE APPROVAL.** The Conservancy's obligations hereunder are contingent upon the proposed purchase receiving formal corporate approval in accordance with the Conservancy's standard business practices. If such formal approval is not obtained, the

Conservancy shall have the option to terminate this Agreement by written notice to Seller, in which event all payments made by the Conservancy hereunder shall be promptly refunded, and upon such refund, this Agreement shall terminate and neither party shall have any further claims against the other by reason of this Agreement.

18. **REQUIRED DISCLOSURES.** At or before the time that Seller delivers this Agreement to the Conservancy, Seller must execute and deliver to the Conservancy the Disclosure Form and the Certification Regarding Material Support and Resources to Terrorists provided to Seller with this Agreement. If any material misrepresentation in the Disclosure Form or the Certification is discovered before closing, the Conservancy may elect to declare this Agreement null and void, in which case all payments hereunder shall be returned to the Conservancy. ***[[Be sure to include Disclosure Form and USA Patriot Act certification with contract.]]***
19. **REQUIRED AFFIDAVITS.** Seller agrees to furnish the Conservancy at or prior to closing hereunder with a nonforeign affidavit in the form attached hereto as Exhibit B, as well as such other incidental and necessary affidavits as may be required by the title insurance company issuing a title insurance policy for the Property.
20. **ASSIGNMENT.** The Conservancy shall have the right to assign its rights under this Agreement **[, including, without limitation, to _____]**.
21. **EXHIBITS.** The following exhibits are attached hereto and incorporated herein by reference:

Exhibit A - Property Description
Exhibit B - Nonforeign affidavit
22. **CONSTRUCTION OF AGREEMENT.** This instrument, executed in multiple counterparts, is to be construed as a Maine contract, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties and their respective heirs, devisees, executors, administrators, successors and assigns and may be canceled, modified or amended only by a written instrument executed by both Seller and the Conservancy. If two or more persons are named as Seller, their obligations shall be joint and several.

Witness:

SELLER

Print Name:

Print Name:

STATE OF _____
COUNTY OF _____

On this ____ day of _____, 2006, before me, the undersigned notary public, personally appeared _____, to me personally known or otherwise proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding document, and acknowledged to me that [s/he] signed such document voluntarily for its stated purpose.

Notary Public
My Commission Expires:

(Use the following signature block if Seller is a corporation or other business entity:)

SELLER:
[Name of entity]

By: _____
Name:
Title:

Attest:

By: _____
Name:
Title:

STATE OF _____
COUNTY OF _____

On this ____ day of _____, 2006, before me, the undersigned notary public, personally appeared _____, _____ **[Title]** of _____ (a **corporation/partnership**), to me personally known or otherwise proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding document, and acknowledged to me that [s/he] signed such document voluntarily for its stated purpose.

Notary Public
My Commission Expires:

BUYER:
THE NATURE CONSERVANCY
OF THE PINE TREE STATE, INC.

By: _____
Name:
Title:

STATE OF MAINE
COUNTY OF CUMBERLAND

On this ____ day of _____, 2006, before me, the undersigned notary public, personally appeared _____, _____ **[Title]** of The Nature Conservancy of the Pine Tree State, Inc. (a corporation), to me personally known or otherwise proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding document, and acknowledged to me that [s/he] signed such document voluntarily for its stated purpose.

Notary Public
My Commission Expires:

EXHIBIT A

DESCRIPTION OF PROPERTY

A parcel of land located in the [City/Town] of _____, County of _____, State of Maine, containing _____ acres, more or less, and more particularly described in a deed recorded in Book ____, Page ____ in the _____ County Registry of Deeds, and also being shown as Block _____, Lot _____ on the Assessor's maps of the [City/Town] of _____.

EXHIBIT B

NONFOREIGN AFFIDAVIT

STATE OF _____
COUNTY OF _____

_____, 200__

Section 1445 of the Internal Revenue Code provides that a transferee (buyer) of a U.S. real Property interest must withhold tax if the transferor (seller) is a foreign person. To inform the transferee (buyer) that withholding of tax is not required upon my disposition of a U.S. real Property interest, I, _____, hereby certify the following:

1. I am not a nonresident alien for purposes of U.S. income taxation;
2. my U.S. taxpayer identifying number (social security number) is _____; and
3. my home address is _____.

I understand that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement that I may make here could be punished by fines, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete.

Seller

STATE OF _____
COUNTY OF _____

On this ____ day of _____, 200__, before me, the undersigned notary public, personally appeared _____, to me personally known or otherwise proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding document, and acknowledged to me that [s/he] signed such document voluntarily for its stated purpose.

Notary Public
My Commission Expires:

If Seller is a corporation or other business entity:

SELLER:
[Name of entity]

By: _____
Name:
Title:

Attest:

By: _____
Name:
Title:

STATE OF _____
COUNTY OF _____

On this ____ day of _____, 200__, before me, the undersigned notary public, personally appeared _____, _____ **[Title]** of _____ (a **corporation/partnership**), to me personally known or otherwise proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding document, and acknowledged to me that [s/he] signed such document voluntarily for its stated purpose.

Notary Public
My Commission Expires:

PURCHASE AND SALE AGREEMENT

Optional Paragraphs

Substitute this paragraph for paragraph 1 if a per-acre price is to be paid:

PURCHASE PRICE. The total purchase price for the described Property will be calculated on the basis of _____ dollars (\$____) per acre. The exact acreage will be determined by a survey of the Property prepared in accordance with paragraph 7. The purchase price shall be payable as follows: on the signing of this Agreement, _____ (\$_____) shall have been paid as a deposit, and the balance is to be paid by check or by wire transfer at the time of delivery of the deed, to be held in escrow until the deed is recorded.

Substitute the following for paragraph 2 if Seller intends to treat this as a bargain sale:

CHARITABLE CONTRIBUTION. The Nature Conservancy is a tax exempt organization, as described in Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1986, as amended. A tax deduction may be available for sale of property to the Conservancy at below the fair market value for such property. Seller intends to make a charitable contribution to the Conservancy pursuant to Section 1011(b) of the Internal Revenue Code of any difference between the fair market value of the Property and the purchase price to be paid by the Conservancy at closing. In connection therewith, Seller hereby expressly acknowledges and agrees to the following:

- A. Seller is responsible for establishing, for federal tax purposes, the amount of the charitable contribution associated with Seller's sale of the Property to the Conservancy. The fair market value of the Property must be established and substantiated by a "qualified appraisal" (as defined under IRS regulations) prepared for Seller at its expense.
- B. Seller has obtained (or will obtain before closing) and rely solely upon the advice of Seller's own tax professionals regarding (i) the availability of a tax deduction in connection with the proposed transaction and (ii) the requirements for appraisals and other documentation to substantiate the value of the contribution.
- C. No employee or agent of the Conservancy has made any representation or warranty concerning the value or the deductibility of any intended charitable gift or any other tax implications of Seller's conveyance of the Property to the Conservancy.
- D. Seller has received from the Conservancy the document entitled "Summary of The Nature Conservancy's Procedures Relating to Acceptance of Donations of Land and Interests in Land and Water" (and related attachments) and understands the conditions under which the Conservancy will sign Internal Revenue Service Form 8283 relating to donations of interests in land.

- E. Neither the Conservancy nor its employees or agents assume any liability in the event that the intended charitable gift or any portion thereof is determined by appropriate authorities not to be deductible.

Add if Seller intends to treat the transaction as part of a “Like-Kind Exchange”:

LIKE-KIND EXCHANGE. The parties acknowledge that it is Seller’s intent to transfer the property as a part of a tax-deferred exchange which qualifies for non-recognition of gain under Section 1031 of the Internal Revenue Code of 1986, as amended (the “Code”), and regulations promulgated thereunder. The manner and format for the exchange shall be designated by the Seller, provided that the Conservancy shall not, as determined in the Conservancy’s sole discretion, be required to be in the chain of legal title to any property other than that which is the subject matter of this Agreement. To the extent permitted by applicable law, the Conservancy shall cooperate with the Seller in effecting the exchange, provided that (a) the Conservancy shall not incur any additional liability in connection with the exchange, and (b) all additional closing costs, escrow fees, and charges attributable to the exchange shall be paid by the Seller. Should the Seller effect a non-simultaneous exchange wherein the Seller conveys the property to an intermediary designated by the Seller who will convey the property to the Conservancy, the Seller agrees to continue to be bound by this Agreement and all of its terms and provisions, and the Seller shall immediately provide written notification to the Conservancy of such transfer and designation. Neither party shall be liable to the other for the failure of this transaction to qualify under Section 1031 (or any other Section) of the Code. Nothing contained in this paragraph shall relieve Seller of the obligation to convey the Property to the Conservancy in the event this transaction does not qualify under Section 1031 of the Code.

Substitute this paragraph for paragraph 7 if subdivision is required:

SUBDIVISION. Seller and the Conservancy acknowledge that a survey and subdivision plan (the “Plan”) showing a division of the Property from other land of Seller must be prepared and approved by the [City/Town] of _____ in order to permit Seller to convey the Property to the Conservancy. Seller shall promptly undertake to obtain the Plan and all required approvals, at Seller’s expense. The Plan shall be subject to the Conservancy’s approval, not to be unreasonably withheld. If Seller is unable to obtain the Plan and such subdivision approval by the closing date hereunder, or if an original Mylar of the Plan is not delivered to the Conservancy by the closing date, then, at the Conservancy’s option, all payments made under this Agreement shall be forthwith refunded, and this Agreement shall thereupon terminate and have no further force or effect.

Substitute this paragraph if Seller objects to standard paragraph 15:

BROKER’S COMMISSION. The parties hereto represent and warrant to each other that no real estate brokers or agents were responsible in bringing about this transaction and that no real estate commission is due. In the event a claim is made for the payment of a real estate commission, the party whose action gave rise to such claim agrees to

indemnify, defend and hold harmless the other party from any loss or liability arising from such claim. The provisions of this paragraph shall survive closing and delivery of the deed.

Add if Seller is not represented by counsel:

Seller has been advised to seek advice from counsel, but has chosen not to retain an attorney before signing this Agreement. Seller has also been informed that there will be, and agrees to pay for, certain closing costs associated with the sale of the Property, including transfer taxes, various recording fees, payment of real estate taxes due (if any) and document preparation fees that may be charged by the closing agent. In addition, Seller requests that the Conservancy arrange for preparation of the deed transferring the Property to the Conservancy and agrees to pay the closing agent for the cost of this preparation.

Appraisal contingency:

APPRAISAL CONTINGENCY. The Conservancy's obligations hereunder are contingent upon the Conservancy's receipt of an appraisal (to be paid for by the Conservancy) that concludes that the fair market value of the Property is at least \$_____. If the appraisal concludes that the fair market value of the Property is less than \$_____, the Conservancy shall have the option to terminate this Agreement by written notice to Seller, in which event all payments made by the Conservancy hereunder shall be promptly refunded, and upon such refund, this Agreement shall terminate and neither party shall have any further claims against the other by reason of this Agreement.

Contingency for PERC test:

SOIL PERC TEST. The Conservancy's obligations herein are conditioned upon the Conservancy's receipt of soil tests indicating to Conservancy's satisfaction that a properly installed septic system sufficient for [Example: "one six-bedroom residence can be located along the northern road frontage of the property"]. Such testing shall be performed at the Conservancy's expense. If the Conservancy is not satisfied with the results of any such testing, then, at the Conservancy's option, by written notice to Seller given within 45 days of the date of this Agreement, this Agreement shall terminate automatically and all payments made hereunder by the Conservancy shall be forthwith refunded and all other obligations of the parties hereto shall cease, and this Agreement shall be null and void without recourse to the parties.

Contingency for Home Inspection:

The Conservancy's obligations hereunder are conditioned upon:

- (a) the Conservancy obtaining a report from a firm or firms satisfactory to the Conservancy certifying that the Property, including without limitation the structural portions thereof, the heating system, the plumbing system and the electrical system are in condition satisfactory to the Conservancy;
- (b) the Conservancy obtaining a certificate from an exterminating company satisfactory to the Conservancy, certifying that the Property is free from termites and other wood-boring insects;
- (c) the Conservancy testing the Property or portions thereof for the presence of lead based materials, and the Conservancy's satisfaction with the results of such tests; and
- (d) the Conservancy testing the Property for radon using test kits and procedures satisfactory to the Conservancy, and the Conservancy's satisfaction with the results thereof.

Seller shall fully cooperate with the Conservancy in connection with such inspections. If the Conservancy is not satisfied with the results of any such inspection or test, then, at the Conservancy's option, by written notice to Seller given within ___ days of the date of this Agreement, this Agreement shall terminate automatically and all payments made hereunder by the Conservancy shall be forthwith refunded and all other obligations of the parties hereto shall cease, and this Agreement shall be null and void without recourse to the parties.