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STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
DIVISION of PARKS and RECREATION
BUREAU OF TRAILS

172 Pembroke Road Concord, New Hampshire 03301
Phone: (603) 271-3254 Fax: (603) 271-3553 E-Mail: nhtrails@dred.nh.gov
Web: www.nhtrails.org

November 9, 2016

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Executive Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

1. Authorize the Department of Resources and Economic Development, Division of Parks and Recreation, Bureau of Trails (Department) to amend and reinstate a Land Use Agreement with Bayroot LLC (Contract #5239) of Lyme, NH, to expand access to a certain system of groomed snowmobile and off highway recreational vehicle trails for recreational purposes for a period of four (4) years upon Governor and Executive Council approval through June 30, 2020. The original Land Use Agreement was approved by the Governor and Executive Council on February 10, 2016, Item #40A.
2. Further authorize the Department to increase the yearly payments by \$1,600 from \$7,400 to \$9,000 for a total increase of \$6,400 over the 4-year period in accordance with the terms of the Land Use Agreement. 100% Transfers from Fish & Game

The additional funding is available as follows pending budget approval for Fiscal Years 2018, 2019 and 2020:

	<u>FY17</u>	<u>FY18</u>	<u>FY19</u>	<u>FY20</u>
03-35-35-351510-35620000 Trails Acquisition	\$1,600	\$1,600	\$1,600	\$1,600
022-500248 Rents-Leases Other Than State				

EXPLANATION

The Bureau of Trails has held a Land Use Agreement on these properties for over 25 years. The property consist of 111,000 acres as shown on the attached map with several hundred miles of trails open to snowmobiles and off highway recreational vehicles. This amendment is to incorporate additional lands acquired by Bayroot LLC from Yankee Forest LLC. Yankee Forest LLC also had previous land use agreements with the Department which have now expired and are being incorporated under this one agreement. This agreement is for the administrative time associated with their staff working with us on trails and property related issues such as maintenance work, trail construction, and environmental compliance.

The Attorney General's office has approved this amended and reinstated Land Use Agreement as to form, substance and execution.

Respectfully submitted,

Concurred,

(FW)

Philip A. Bryce
Director

Jeffrey J. Rose
Commissioner

LAND USE AGREEMENT

(Bayroot LLC Lease Agreement No. 5239)

Amended and Restated in 2016

THIS LAND USE AGREEMENT ("Agreement") is made as of this ____ day of _____, 2016, pursuant to authority contained under New Hampshire RSA 215-A (Supp.), by and between,

Bayroot LLC, a limited liability company organized under the laws of the State of Delaware, having a principal place of business in the Town of Lyme, County of Grafton, State of New Hampshire, with a mailing address of c/o Wagner Forest Management, Ltd., P.O. Box 160, 150 Orford Road, Lyme, New Hampshire, 03768, its successors and assigns, ("BAYROOT"), and the

Department of Resources and Economic Development of the State of New Hampshire, acting by and through its Commissioner, and the Supervisor of the Trails Bureau, County of Merrimack, State of New Hampshire, both with a mailing address of State of New Hampshire, Department of Resources and Economic Development, Division of Parks and Recreation, Trails Bureau, 172 Pembroke Road, Concord, New Hampshire 03301, ("DRED").

RECITALS

WHEREAS, the State of New Hampshire acting by and through DRED wishes to have BAYROOT grant access to the citizens of New Hampshire and other members of the public to a certain system of groomed snowmobile trails and off highway recreational vehicle trails described below for recreational purposes; and

WHEREAS, BAYROOT is willing to grant such access provided that such access can be granted with statutorily limited liability to BAYROOT, and can be granted at no cost to BAYROOT, and provided that DRED is willing to establish, maintain and patrol said trails during such times as this Agreement remains in effect.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth hereinbelow, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, BAYROOT and DRED hereby agree as follows:

1. Description:

BAYROOT grants permission to the public, in the manner and subject to the conditions and restrictions stated in this Agreement, over and across certain lands of BAYROOT for the purpose of the location, relocation, establishment, construction, reconstruction, installation, erection, improvement, maintenance, repair, use, patrol, discontinuance, retirement, abandonment and restoration of a system of designated trails for groomed snowmobile and off highway recreational vehicles (together, "Off Highway Recreational Vehicles"), including designated bridges/culverts across streams, ("Trail(s)"), along with designated trailhead parking and sanitary facilities at strategic points. Off Highway Recreational Vehicles specifically do not include 2-wheeled vehicles or bikes, with or without motors (for clarity, "trailbikes" are prohibited).

2. Description of Property:

The Trails are over and across, and the Facility Sites are located upon, certain lands of BAYROOT located in the State of New Hampshire, hereinafter referred to as the "Premises". The Premises are generally described as located in the Towns and in the Unincorporated Places as set forth on the attached list, "Exhibit A- List of Bayroot LLC Moxie and Crown Tree Farm Lands", which Exhibit A is attached hereto and made a part hereof. The locations of Trails and of Facility Sites are restricted to the BAYROOT Moxie and Crown Tree Farm designated trails, roads, and sites as shown on the attached map, "Exhibit B - Location Map of Bayroot LLC Moxie and Crown Tree Farm Off Highway Recreational Vehicle Trails and Facility Sites", which Exhibit B is attached hereto and made a part hereof. This Agreement shall be subject to the rights of either party hereto to alter, to close, to relocate, to discontinue and/or to establish new designated locations of Trails and of Facility Sites as set forth hereinbelow.

3. Term:

The term of this Amended and Restated Agreement shall commence on the date of approval of Governor and Executive Council (replacing the existing lease as of that date) and shall terminate

on June 30, 2020. This Agreement shall be subject to the rights of either party hereto to terminate this Agreement as set forth hereinbelow.

4. Payment:

4.1 DRED shall pay during the term a fee of \$36,000 for the public use of Trails. The payment of the fee shall be made in four (4) annual fee installments of \$9,000 (for each of 2016-17, 2017-18, 2018-19, and 2019-20, with the first payment due upon approval of this Lease by the Governor and Executive Council and subsequent payments on or before August 1 of each year. (BAYROOT acknowledges that all amounts due under the existing lease for 2015-16 were paid in full.)

4.2 Notwithstanding anything to the contrary contained herein, it is understood and agreed that all payments of all sums by DRED hereunder are contingent upon availability and continued appropriation of State funds, and if for any reason whatsoever, such funds shall be terminated or reduced or otherwise become unavailable, DRED may terminate this Agreement in whole or in part immediately.

4.3 If at any time during the term of this Agreement the parties agree to alter the Premises as provided for in Item 10.1 hereinbelow, or BAYROOT divests of and withdraws from this Agreement any of its lands as provided for in Item 10.2 hereinbelow, or otherwise, the subsequent annual fee installments shall be reduced proportionally by the reduction in acres of the Premises. Any such annual fee installment adjustment calculation shall be made at the rate of \$0.0725 per acre. Any adjusted annual fee installment shall be as invoiced by BAYROOT.

5. BAYROOT's Obligations and Reserved Rights:

5.1 BAYROOT agrees that it shall permit the public to use the BAYROOT designated system of Trails and Facility Sites for public recreational purposes only.

5.2 BAYROOT agrees that it shall permit DRED, at DRED's own expense, to locate, to relocate, to establish, to construct, to reconstruct, to install, to erect, to improve, to maintain, to repair, to use, to patrol, to discontinue, to retire, to abandon and to restore the BAYROOT designated system of Trails and Facility Sites for public recreational purposes only.

5.3 Semi-annually, prior to May 1 and prior to November 1, BAYROOT shall review DRED's map of the proposed Trail and Facility Site locations (presented by DRED to BAYROOT prior to April 1 and prior to October 1, respectively), and BAYROOT shall indicate to DRED approved Trail

and Facility Site locations. The locations of all such Trails and Facility Sites shall be subject to BAYROOT's approval.

5.4 BAYROOT permits DRED to cut and remove trees, brush and other obstacles from the Trails to a width of twelve (12) feet. All hazardous trees and brush leaning in the Trails may be cut and removed.

5.5 BAYROOT permits DRED to perform site preparation, including the cutting and removal of standing trees, for bridge/culvert installation, trailhead parking construction and sanitary facilities construction where permitted.

5.6 BAYROOT permits DRED to install gates and construct passways through fences and stonewalls.

5.8 BAYROOT agrees to execute the forms necessary for DRED to obtain all governmental approvals, permits, authorizations, and licenses required under DRED's obligations.

6. DRED's Obligations:

6.1 DRED, at its own expense, shall observe and be in compliance with all Federal, State and Municipal laws and regulations, as such laws and regulations may now be or may hereafter become applicable to Trails and Facility Sites.

6.2 DRED, unless otherwise mutually agreed upon, shall have the full responsibility of giving notification and/or applying for and obtaining any and all Federal, State or Municipal governmental approvals, permits, authorizations, or licenses relating to DRED's exercise of rights hereunder. DRED shall not commence or perform any location, relocation, establishment, construction, reconstruction, installation, erection, improvement, maintenance, repair, use, patrol, discontinuance, retirement, abandonment or restoration of Trails or Facility Sites on land of BAYROOT until after DRED has given such notifications and/or applied for and obtained any such governmental approvals, permits, authorizations, or licenses required for such action, and copied same to BAYROOT, if any.

6.3 With respect to DRED's location, relocation, establishment, construction, reconstruction, installation, erection, improvement, maintenance, repair, use, patrol, discontinuance, retirement, abandonment or restoration of Trails and Facility Sites, such activities shall be undertaken only in conformity with any Federal, State and Municipal laws and regulations, and consistent with any approvals, permits, authorizations or licenses issued pursuant thereto.

6.4 With respect to DRED's location, relocation, establishment, construction, reconstruction, installation, erection, improvement, maintenance, repair, use, patrol, discontinuance, retirement, abandonment or restoration of Trails and Facility Sites allowed under the provisions of this Agreement, such activities shall be accomplished to the best management practices (i.e. Best Management Practices for Erosion Control During Trail Maintenance and Construction, published by the New Hampshire Department of Resources and Economic Development) for such work.

6.5 DRED, at its own expense, shall locate, relocate, establish, construct, reconstruct, install, erect, improve, maintain, repair, use, patrol, discontinue, retire, abandon and restore Trails and Facility Sites in a manner that minimizes soil erosion.

6.6 DRED, at its own expense, may as a portion of a Trail install a stream crossing with a bridge or culvert. Such stream crossing installation shall be at a location and of design and with materials as approved by BAYROOT.

6.7 For timber (permitted to be cut by DRED), DRED agrees to pay BAYROOT the current rate for the highest market use of the tree.

6.8 Semi-annually, prior to April 1 and prior to September 1, DRED shall present to BAYROOT a map of the proposed Trail and Facility Site locations for BAYROOT's review and approval. The locations of all such Trails and Facility Sites shall be subject to BAYROOT's approval.

6.9 DRED agrees to close any Trail (or portion thereof), as requested by BAYROOT, that in the sole determination of BAYROOT, the woods operations of BAYROOT or its contractors would make use of any such Trail (or portion thereof) hazardous to the public, within forty-eight (48) hours of receipt of written notice from BAYROOT to DRED. The parties agree to work together to relocate the Trail (or portion thereof) so to minimize the interruption of public use of such Trail (or portion thereof).

6.10 DRED agrees to close any Trail (or portion thereof), as requested by BAYROOT, that in the sole determination of BAYROOT, is causing unacceptable erosion, or is causing unacceptable sedimentation into a water body or stream, within forty-eight (48) hours of receipt of written notice from BAYROOT to DRED. The parties agree to work together to mitigate any cause of erosion or sedimentation along a Trail (or portion thereof), and/or to relocate the Trail (or portion thereof) so to minimize the interrupt of public use of such Trail (or portion thereof).

6.11 DRED, at its own expense, shall regulate the use of Trails and Facility Sites by the public.

6.12 DRED, at its own expense, shall maintain Trails and Facility Sites in good and usable condition.

6.13 DRED, at its own expense, shall be responsible for the appearance of all Trails and Facility Sites provided for public use by maintaining the Trails and Facility Sites in a good, clean and orderly condition and manner, and in such manner as not to be objectionable to BAYROOT or detract from the aesthetic values of the general area. DRED agrees to regularly patrol the Trails and Facility Sites, and to pick up and to dispose of all trash and debris resulting from the public's use of the Trails and Facility Sites.

6.14 DRED agrees that no structure or building (other than those trail structures, and parking and sanitary facilities, permitted under Section 5.2 above) will be constructed or erected on the Premises, and that no additional improvements will be made which would alter or injure the natural aesthetic quality of the surrounding area or the Premises' Current Use status.

6.15 DRED agrees that it will not make any strip or waste of any portion of the Premises.

6.16 DRED, at its own expense, shall be responsible for placing and maintaining necessary trail and facility signs along the Trails and at the Facility Sites so to adequately mark Trails and Facility Sites. All such signs shall be affixed to freestanding posts and shall not be nailed or otherwise attached to live trees.

6.17 DRED, at its own expense, shall erect signs supplied by BAYROOT that inform the public that private lands are being made available for public use and should be used with respect.

6.18 Any Trail sanitary facilities erected by DRED shall be at locations approved by BAYROOT and shall have approval of the New Hampshire Water Supply and Pollution Control Commission.

6.19 DRED shall be responsible for snow plowing and maintenance of Trail parking areas.

6.20 Any Trail maps published or otherwise made available through DRED for the use of the public shall be reviewed and approved by BAYROOT. Trail maps shall be kept current with revisions made at least annually.

6.21 In the event that the use of the Trails or Facility Sites as contemplated by this Agreement shall result in any increase in BAYROOT's real estate property taxes, or the assessment of any penalty for removal of the Trails' and/or Facility Sites' areas from Current Use, DRED shall promptly reimburse BAYROOT for all such costs upon BAYROOT providing proper documentation of such costs.

6.22 Any application of chemicals by DRED on land of BAYROOT shall be with the prior written approval of BAYROOT. DRED shall hold BAYROOT harmless from and against any and all claims, exactions, penalties, or legal actions resulting from acts by or for DRED to which this provision applies.

6.23 At the end of this Agreement without any Agreement extension or renewal, DRED, at its own expense, shall discontinue, retire, abandon, restore and /or stabilize each of the Trails and each of the Facility sites as mutually agreed to with BAYROOT. This covenant shall survive the termination of this Agreement.

7. Liability Provisions; Sovereign Immunity:

7.1 It is expressly understood that the parties intend this Agreement to be subject to the limitations of liability provisions set forth in New Hampshire RSA 212:34 and RSA 508:14.

7.2 Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State. This covenant shall survive the termination of this Agreement.

8. Termination:

8.1 Termination for Cause – In the event that DRED would: fail to perform any of its obligations hereunder in a timely or satisfactory manner, use or allow the use of the Premises for any purpose or in any other manner except as herein specified, fail to pay the aforesaid annual fee installment when due (whether payment is demanded or not), fail to perform in good faith any of the agreements herein set forth, or fail to conform to all the conditions and restrictions herein stated, BAYROOT, its successors or assigns, may at its election terminate or annul this Agreement so far as all further rights of DRED or the general public hereunder are concerned, and repossess the Premises and hold the Premises free and clear of all claims of DRED or the general public under this Agreement or otherwise. Written notice of any such determination by BAYROOT shall be served upon DRED by certified mail, return receipt requested, send to the DRED address as specified below, specifying the nature of the default or breach. If upon the expiration of fourteen (14) days from the delivery of such notice, the default or breach is not remedied, BAYROOT may terminate this Agreement in whole or in part upon two (2) days notice (the notice of termination period) sent by certified mail, return receipt requested, to the DRED address as specified below, of such termination. Upon the expiration

of such notice of termination period, this Agreement shall terminate. No failure on the part of BAYROOT, or its successors or assigns, to enforce a forfeiture by DRED of this Agreement, or to terminate this Agreement for any default or breach by DRED of any agreement, condition or restriction herein contained, shall be construed as a waiver of the right to enforce a subsequent forfeiture or a subsequent default or breach of the same or any other agreement, condition or restriction herein contained.

8.2 Termination without Cause – This Agreement shall be subject to the right of either party hereto at any time during the term of this Agreement to terminate this Agreement by giving written notice to the other party hereto at least ninety (90) days prior to the effective date of the termination. Any such notice shall be sent by certified mail, return receipt requested, to the address of the party hereto being notified as specified below.

8.3 It is further understood and agreed, that at the termination of this Agreement, any buildings and all fixtures and personal property of DRED shall be removed from the Premises within ninety (90) day from the date of termination. DRED hereby agrees that any buildings, fixtures and personal property of DRED remaining on the Premises after the expiration of said 90 days shall be and become then the property of BAYROOT. BAYROOT, however, reserves the right to require that DRED shall remove the buildings within the 90 day period if it so demands.

9. Assignment and Sublease:

9.1 DRED shall not assign, sublet or otherwise transfer any interest in this Agreement, or underlet the Premises or any portions thereof, nor give or surrender the same to any other persons without written consent of BAYROOT.

9.2 BAYROOT may assign this Agreement, and this Agreement as so assigned shall be binding on and inure to the benefit of BAYROOT's successors and assigns.

10. Amendment:

10.1 During the term of this Agreement, or any of its extensions or renewals, DRED and BAYROOT may negotiate to alter, by mutual accord, the Premises as described in Exhibit A, at which time said Exhibit A shall be replaced by a revised Exhibit A reflecting such changes as are agreed upon without affecting the balance of this Agreement (except annual fee installment payment

as described in Item 4.3 hereinabove). Such revised Exhibit A shall be by letter (with revised Exhibit A attached listing such revised Premises) signed by designated agents of both parties.

10.2 During the term of this Agreement, or any of its extensions or renewals, BAYROOT may withdraw any lands which BAYROOT may be divesting of, or has divested of, without DRED's approval or agreement, by giving written notice to DRED and supplying a revised Exhibit A, at which time said Exhibit A shall be replaced by a revised Exhibit A reflecting such changes without affecting the balance of this Agreement (except annual fee installment payment as described in Item 4.3 hereinabove). Such revised Exhibit A shall be by letter (with revised Exhibit A attached listing the revised Premises) signed by designated agents of both parties.

10.3 During the term of this Agreement, or any of its extensions or renewals, DRED and BAYROOT may negotiate to alter, to close, to relocate, to discontinue and/or to establish new locations of Trails and of Facility Sites, by mutual accord. Such revised locations shall be located, established, used and discontinued with the written permission of BAYROOT's designated agent and amendment of Exhibit B. Such amendment of Exhibit B shall be by letter (with map attached showing the revised locations) signed by designated agents of both parties.

10.4 This Agreement may be modified, waived or discharged only by a written instrument signed by the parties.

11. Special Provisions:

11.1 The State of New Hampshire shall provide BAYROOT with a liability insurance coverage, naming Bayroot LLC and Wagner Forest Management, Ltd., including its members, officers and employees on such policy, said coverage to include two million dollars (\$2,000,000.00), each occurrence, for bodily injury, and fifty thousand dollars (\$50,000.00) property damage, each occurrence. A certificate of liability insurance evidencing such coverage shall be delivered to BAYROOT annually by January 1 of each year.

11.2 BAYROOT reserves the right for itself and its employees, guests, servants, agents, tenants, successors, and assigns to cross, to enter upon, to occupy, to possess and to enjoy the Premises at any and all times in any way in connection with BAYROOT's business and objectives, including but not limited to, the construction, maintenance, use and discontinuance of road, bridges and log yard landings, the taking off and hauling of any trees, forest management activities, or the excavation, removal and hauling of gravel and sand.

11.3 BAYROOT reserves the right for its specifically permitted recreational lessees to cross said Premises at any and all times for the purpose of access from such lessees' parking areas in as direct a route as possible to lessees' recreational lease sites.

11.4 It is also understood and agreed that no Off Highway Recreational Vehicles will be permitted on any Trails during the spring mud season. Appropriate trail closure dates are to be mutually agreed upon by BAYROOT and DRED.

11.5 If at any time during the term of this Agreement DRED shall desire to terminate any portion of the Trails or any portion of the seasonal uses, then it shall do so by notifying BAYROOT by written notice at least thirty (30) days in advance.

12. Notice:

Any notice, demand or communication required or permitted to be given under the terms of this Agreement shall be deemed to have been duly given and made if given by any of the following methods.

a. Deposited in the United States mail in a sealed envelope, postage prepaid, by registered or certified mail, return receipt requested, respectively addressed as follows:

To BAYROOT: Bayroot LLC
Wagner Forest Management, Ltd.
150 Orford Rd
P.O. Box 160
Lyme, NH 03768
Phone 603.795.2002. Fax 603.795.4631.

To DRED: NH Department of Resources and Economic Development
Division of Parks and Recreation, Trails Bureau
Attn.: Chris Gamache, Chief
172 Pembroke Road,
Concord, NH 03301
Phone: 603-271-3254, Fax: 603-271-3553, or

b. Given in hand to the addressees listed above.

Any such notice shall be deemed effective upon its receipt by the other party.

{ Signatures appear on the following pages. }

**Department of Resources and Economic
Development of the State of New Hampshire:**

Trishe Carson 10/3/16
Witness Date

By: [Signature]
Jeffrey J. Rose
Commissioner

Margaret Morrison 9/29/16
Witness Date

By: [Signature]
Chris Gamache
Chief, Bureau of Trails

Approved as form, substance and execution:

OFFICE OF THE ATTORNEY GENERAL

[Signature]
Attorney General's Office
Date: 10/13/16

Approved by Governor and Council
at the _____ meeting as
Item # _____.

EXHIBIT A

**The Premises
List of Bayroot LLC Moxie Tree Farm Lands**

List of Bayroot LLC Moxie Tree Farm lands (dated May 15, 2015) and Crown Tree Farm lands included in Bayroot LLC Lease 5239 with the State of New Hampshire, Department of Resources and Economic Development, to be administered by its Trails Bureau as Off Highway Recreation Vehicle Trails.

Bayroot Moxie Tree Farm	
Town	Acres
ACADEMY GRANT	12,105
BETHLEHEM	1,930
CARROLL	3,397
DIX'S GRANT	12,877
DIXVILLE	26,168
DUMMER	15,283
ERROL	1,837
MILAN	347
MILLSFIELD	17,512
PITTSBURG	1,896
SHELBURNE	7,253
STEWARTSTOWN	502
SUCCESS	3,482
WENTWORTH'S LOCATION	34
Grand Total	104,624

Bayroot Crown Tree Farm		
Town	Lot	Acres
Cambridge	426	13,702
Milan	430	1,204
Milan	431	43
Milan	435	9
Milan	437	3,075
Milan	439	64
Milan	440	765
Gorham	443	292
Gorham	444	98
Gorham	445	172
Gorham	446	260
		19,684

Total Bayroot acres are $104,624 + 19,684 = 124,308$ acres.

EXHIBIT B

**Location Map of Trails and Facility Sites Upon
Bayroot LLC Moxie and Crown Tree Farm Lands**

Location Map of Trails and Facility Sites upon Bayroot LLC Moxie and Crown Tree Farm lands (dated _____, 2016) included in Bayroot LLC Lease 5239 with the State of New Hampshire, Department of Resources and Economic Development, to be administered by its Trails Bureau as Off Highway Recreation Vehicle and Snowmobile Trails.

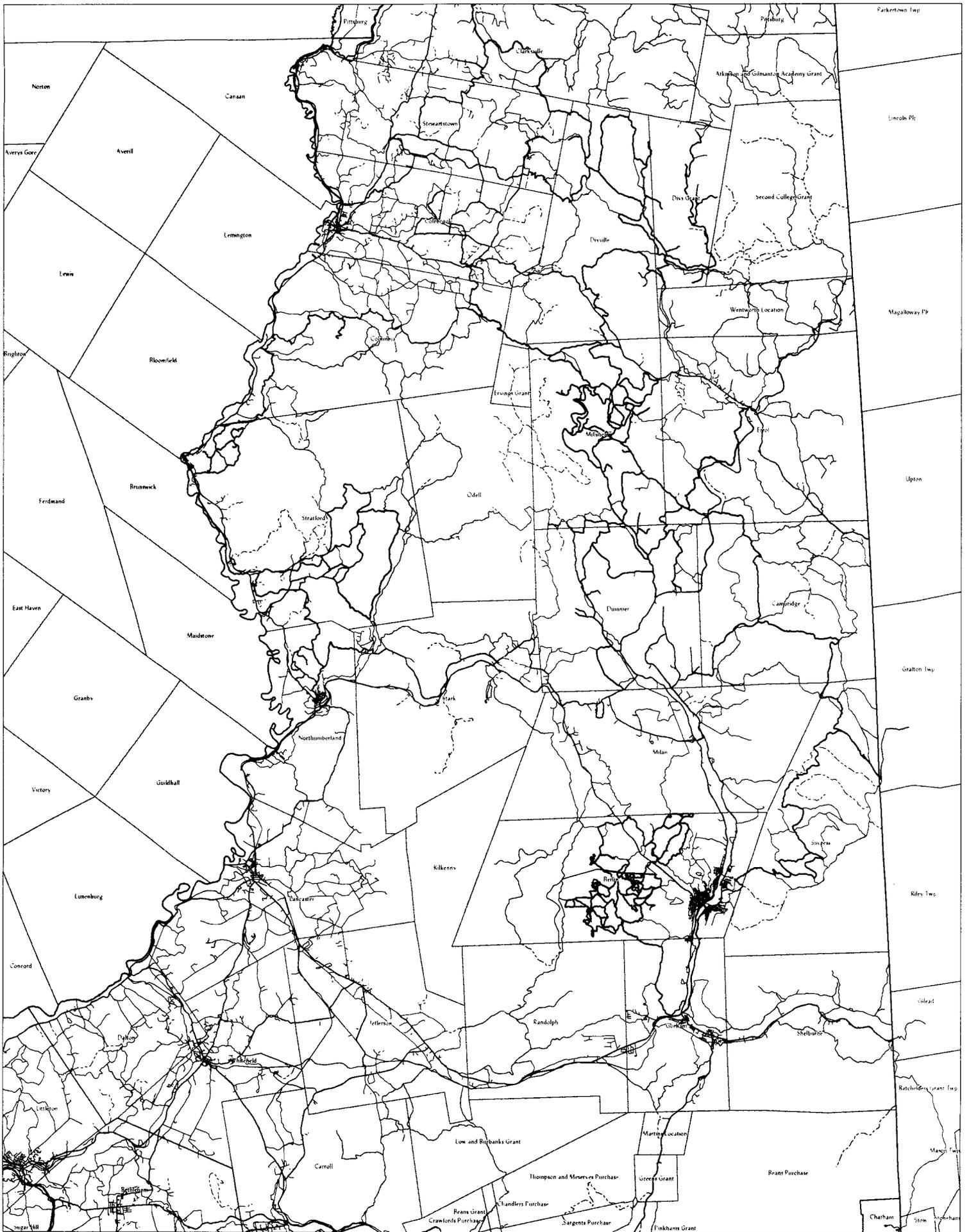
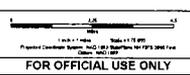


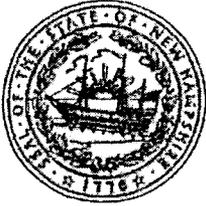
Exhibit B
Trails on Bayroot LLC Lands
Moore and Crown Tree Farms



Symbol	Description
[Symbol]	County Boundary
[Symbol]	Township Boundary
[Symbol]	Water
[Symbol]	Highway
[Symbol]	Trunk Line
[Symbol]	Other Road
[Symbol]	Trail
[Symbol]	Bayroot LLC Land
[Symbol]	Moore Farm
[Symbol]	Crown Tree Farm
[Symbol]	Other Land
[Symbol]	Water
[Symbol]	Highway
[Symbol]	Trunk Line
[Symbol]	Other Road
[Symbol]	Trail
[Symbol]	Bayroot LLC Land
[Symbol]	Moore Farm
[Symbol]	Crown Tree Farm
[Symbol]	Other Land



FOR OFFICIAL USE ONLY



STATE OF NEW HAMPSHIRE
 DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
 DIVISION of PARKS and RECREATION
BUREAU OF TRAILS

172 Pembroke Road Concord, New Hampshire 03301
 Phone: (603) 271-3254 Fax: (603) 271-3553 E-Mail: nhtrails@dred.nh.gov
 Web: www.nhtrails.org

40A
2/10/16

December 24, 2015

Her Excellency, Governor Margaret Wood Hassan
 and the Honorable Executive Council
 State House
 Concord, New Hampshire 03301

REQUESTED ACTION

1. Authorize the Department of Resources and Economic Development, Division of Parks and Recreation, Bureau of Trails to enter into a **RETROACTIVE** Land Use Agreement with Bayroot, LLC (VC #165116) of Lyme, NH to provide access to a certain system of groomed snowmobile and off highway recreational vehicle trails for recreational purposes for a period of five (5) years upon Governor and Executive Council approval through June 30, 2020.
2. Further authorize the Department to make yearly payments of \$7,400, for a total amount of \$37,000, over the 5-year period in accordance with the terms of the Land Use Agreement. 100% Other Funds

Funding is available as follows pending budget approval for Fiscal Years 2018, 2019 and 2020:

03-35-35-351510-35620000	<u>FY16</u>	<u>FY17</u>	<u>FY18</u>	<u>FY19</u>	<u>FY20</u>
Trails Acquisition	*\$7,400	\$7,400	\$7,400	\$7,400	\$7,400
022-500248 Rents-Leases Other Than State					

EXPLANATION

The Bureau of Trails has held a Land Use Agreement on these properties for over 25 years. The property consist of 111,000 acres as shown on the attached map with several hundred miles of trails open to snowmobiles and off highway recreational vehicles. This agreement is for the administrative time associated with their staff working with us on trails and property related issues such as maintenance work, trail construction, and environmental compliance. The reason this request is Retroactive is due to the length of time it took to get the terms updated and signatures in place. *The first years payment will be a combination of \$5,400 Bureau Funds and \$2,000 from the proceeds of the sale of a former patrol cabin on the Bayroot property that was in disrepair and no longer in use.

The Attorney General's office has approved this Land Use Agreement as to form, substance and execution.

Respectfully submitted,

Concurred,

Philip A. Bryce
 Director

Jeffrey J. Rose
 Commissioner

PAB/CG/mm

LAND USE AGREEMENT

(Bayroot LLC Lease Agreement No. 5239)

THIS LAND USE AGREEMENT ("Agreement") is made as of this 3 day of November, 2015, pursuant to authority contained under New Hampshire RSA 215-A (Supp.), by and between,

Bayroot LLC, a limited liability company organized under the laws of the State of Delaware, having a principal place of business in the Town of Lyme, County of Grafton, State of New Hampshire, with a mailing address of c/o Wagner Forest Management, Ltd., P.O. Box 160, 150 Orford Road, Lyme, New Hampshire, 03768, its successors and assigns, ("BAYROOT"), and the

Department of Resources and Economic Development of the State of New Hampshire, acting by and through its Commissioner, and the Supervisor of the Trails Bureau, County of Merrimack, State of New Hampshire, both with a mailing address of State of New Hampshire, Department of Resources and Economic Development, Division of Parks and Recreation, Trails Bureau, 172 Pembroke Road, Concord, New Hampshire 03301, ("DRED").

RECITALS

WHEREAS, the State of New Hampshire acting by and through DRED wishes to have BAYROOT grant access to the citizens of New Hampshire and other members of the public to a certain system of groomed snow-traveling vehicle trails and of all-terrain vehicle trails described below for recreational purposes; and

WHEREAS, BAYROOT is willing to grant such access provided that such access can be granted with statutorily limited liability to BAYROOT, and can be granted at no cost to BAYROOT, and provided that DRED is willing to establish, maintain and patrol said trails during such times as this Agreement remains in effect.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth hereinbelow, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, BAYROOT and DRED hereby agree as follows:

1. Description:

BAYROOT grants permission to the public, in the manner and subject to the conditions and restrictions stated in this Agreement, over and across certain lands of BAYROOT for the purpose of the location, relocation, establishment, construction, reconstruction, installation, erection, improvement, maintenance, repair, use, patrol, discontinuance, retirement, abandonment and restoration of a system of designated trails for groomed snowmobile and off highway recreational vehicles (together, "Off Highway Recreational Vehicles"), including designated bridges/culverts across streams, ("Trail(s)"), along with designated trailhead parking and sanitary facilities at strategic points. Off Highway Recreational Vehicles specifically do not include 2-wheeled vehicles or bikes, with or without motors (for clarity, "trailbikes" are prohibited).

2. Description of Property:

The Trails are over and across, and the Facility Sites are located upon, certain lands of BAYROOT located in the State of New Hampshire, hereinafter referred to as the "Premises". The Premises are generally described as located in the Towns and in the Unincorporated Places as set forth on the attached list, "Exhibit A- List of Bayroot LLC Moxie Tree Farm Lands", which Exhibit A is attached hereto and made a part hereof. The locations of Trails and of Facility Sites are restricted to the BAYROOT Moxie Tree Farm designated trails, roads, and sites as shown on the attached map, "Exhibit B - Location Map of Bayroot LLC Moxie Tree Farm Off Highway Recreational Vehicle Trails and Facility Sites", which Exhibit B is attached hereto and made a part hereof. This Agreement shall be subject to the rights of either party heretoto alter, to close, to relocate, to discontinue and/or to establish new designated locations of Trails and of Facility Sites as set forth hereinbelow.

3. Term:

The term of this Agreement shall commence on the date of approval of Governor and Executive Council and shall terminate on June 30, 2020. This Agreement shall be subject to the rights of either party hereto to terminate this Agreement as set forth hereinbelow.

4. Payment:

4.1 DRED shall pay during the term a fee of \$37,000 for the public use of Trails. The payment of the fee shall be made in five (5) annual fee installments of \$7,400, with the first payment due upon approval of this Lease by the Governor and Executive Council and subsequent

payments on or before August 1 of each year. The first year's payment shall be a combination of (i) a bill of sale to the state's rights to the former patrol cabin and its furnishings to Bayroot or Bayroot's assignee and (ii) \$5,400 in cash.

4.2 Notwithstanding anything to the contrary contained herein, it is understood and agreed that all payments of all sums by DRED hereunder are contingent upon availability and continued appropriation of State funds, and if for any reason whatsoever, such funds shall be terminated or reduced or otherwise become unavailable, DRED may terminate this Agreement in whole or in part immediately.

4.3 If at any time during the term of this Agreement the parties agree to alter the Premises as provided for in Item 10.1 hereinbelow, or BAYROOT divests of and withdraws from this Agreement any of its lands as provided for in Item 10.2 hereinbelow, or otherwise, the subsequent annual fee installments shall be reduced proportionally by the reduction in acres of the Premises. Any such annual fee installment adjustment calculation shall be made at the rate of \$0.0707 per acre. Any adjusted annual fee installment shall be as invoiced by BAYROOT.

5. BAYROOT's Obligations and Reserved Rights:

5.1 BAYROOT agrees that it shall permit the public to use the BAYROOT designated system of Trails and Facility Sites for public recreational purposes only.

5.2 BAYROOT agrees that it shall permit DRED, at DRED's own expense, to locate, to relocate, to establish, to construct, to reconstruct, to install, to erect, to improve, to maintain, to repair, to use, to patrol, to discontinue, to retire, to abandon and to restore the BAYROOT designated system of Trails and Facility Sites for public recreational purposes only.

5.3 Semi-annually, prior to May 1 and prior to November 1, BAYROOT shall review DRED's map of the proposed Trail and Facility Site locations (presented by DRED to BAYROOT prior to April 1 and prior to October 1, respectively), and BAYROOT shall indicate to DRED approved Trail and Facility Site locations. The locations of all such Trails and Facility Sites shall be subject to BAYROOT's approval.

5.4 BAYROOT permits DRED to cut and remove trees, brush and other obstacles from the Trails to a width of twelve (12) feet. All hazardous trees and brush leaning in the Trails may be cut and removed.

5.5 BAYROOT permits DRED to perform site preparation, including the cutting and removal of standing trees, for bridge/culvert installation, trailhead parking construction and sanitary facilities construction where permitted.

5.6 BAYROOT permits DRED to install gates and construct passways through fences and stone walls.

5.8 BAYROOT agrees to execute the forms necessary for DRED to obtain all governmental approvals, permits, authorizations, and licenses required under DRED's obligations.

6. DRED's Obligations:

6.1 DRED, at its own expense, shall observe and be in compliance with all Federal, State and Municipal laws and regulations, as such laws and regulations may now be or may hereafter become applicable to Trails and Facility Sites.

6.2 DRED, unless otherwise mutually agreed upon, shall have the full responsibility of giving notification and/or applying for and obtaining any and all Federal, State or Municipal governmental approvals, permits, authorizations, or licenses relating to DRED's exercise of rights hereunder. DRED shall not commence or perform any location, relocation, establishment, construction, reconstruction, installation, erection, improvement, maintenance, repair, use, patrol, discontinuance, retirement, abandonment or restoration of Trails or Facility Sites on land of BAYROOT until after DRED has given such notifications and/or applied for and obtained any such governmental approvals, permits, authorizations, or licenses required for such action, and copied same to BAYROOT, if any.

6.3 With respect to DRED's location, relocation, establishment, construction, reconstruction, installation, erection, improvement, maintenance, repair, use, patrol, discontinuance, retirement, abandonment or restoration of Trails and Facility Sites, such activities shall be undertaken only in conformity with any Federal, State and Municipal laws and regulations, and consistent with any approvals, permits, authorizations or licenses issued pursuant thereto.

6.4 With respect to DRED's location, relocation, establishment, construction, reconstruction, installation, erection, improvement, maintenance, repair, use, patrol, discontinuance, retirement, abandonment or restoration of Trails and Facility Sites allowed under the provisions of this Agreement, such activities shall be accomplished

to the best management practices (i.e. Best Management Practices for Erosion Control During Trail Maintenance and Construction, published by the New Hampshire Department of Resources and Economic Development) for such work.

- 6.5 DRED, at its own expense, shall locate, relocate, establish, construct, reconstruct, install, erect, improve, maintain, repair, use, patrol, discontinue, retire, abandon and restore Trails and Facility Sites in a manner that minimizes soil erosion.
- 6.6 DRED, at its own expense, may as a portion of a Trail install a stream crossing with a bridge or culvert. Such stream crossing installation shall be at a location and of design and with materials as approved by BAYROOT.
- 6.7 For timber (permitted to be cut by DRED), DRED agrees to pay BAYROOT the current rate for the highest market use of the tree.
- 6.8 Semi-annually, prior to April 1 and prior to September 1, DRED shall present to BAYROOT a map of the proposed Trail and Facility Site locations for BAYROOT's review and approval. The locations of all such Trails and Facility Sites shall be subject to BAYROOT's approval.
- 6.9 DRED agrees to close any Trail (or portion thereof), as requested by BAYROOT, that in the sole determination of BAYROOT, the woods operations of BAYROOT or its contractors would make use of any such Trail (or portion thereof) hazardous to the public, within forty-eight (48) hours of receipt of written notice from BAYROOT to DRED. The parties agree to work together to relocate the Trail (or portion thereof) so to minimize the interruption of public use of such Trail (or portion thereof).
- 6.10 DRED agrees to close any Trail (or portion thereof), as requested by BAYROOT, that in the sole determination of BAYROOT, is causing unacceptable erosion, or is causing unacceptable sedimentation into a water body or stream, within forty-eight (48) hours of receipt of written notice from BAYROOT to DRED. The parties agree to work together to mitigate any cause of erosion or sedimentation along a Trail (or portion thereof), and/or to relocate the Trail (or portion thereof) so to minimize the interrupt of public use of such Trail (or portion thereof).
- 6.11 DRED, at its own expense, shall regulate the use of Trails and Facility Sites by the public.
- 6.12 DRED, at its own expense, shall maintain Trails and Facility Sites in good and usable condition.

- 6.13 DRED, at its own expense, shall be responsible for the appearance of all Trails and Facility Sites provided for public use by maintaining the Trails and Facility Sites in a good, clean and orderly condition and manner, and in such manner as not to be objectionable to BAYROOT or detract from the aesthetic values of the general area. DRED agrees to regularly patrol the Trails and Facility Sites, and to pick up and to dispose of all trash and debris resulting from the public's use of the Trails and Facility Sites.
- 6.14 DRED agrees that no structure or building (other than those trail structures, and parking and sanitary facilities, permitted under Section 5.2 above) will be constructed or erected on the Premises, and that no additional improvements will be made which would alter or injure the natural aesthetic quality of the surrounding area or the Premises' Current Use status.
- 6.15 DRED agrees that it will not make any strip or waste of any portion of the Premises.
- 6.16 DRED, at its own expense, shall be responsible for placing and maintaining necessary trail and facility signs along the Trails and at the Facility Sites so to adequately mark Trails and Facility Sites. All such signs shall be affixed to freestanding posts and shall not be nailed or otherwise attached to live trees.
- 6.17 DRED, at its own expense, shall erect signs supplied by BAYROOT that inform the public that private lands are being made available for public use and should be used with respect.
- 6.18 Any Trail sanitary facilities erected by DRED shall be at locations approved by BAYROOT and shall have approval of the New Hampshire Water Supply and Pollution Control Commission.
- 6.19 DRED shall be responsible for snow plowing and maintenance of Trail parking areas.
- 6.20 Any Trail maps published or otherwise made available through DRED for the use of the public shall be reviewed and approved by BAYROOT. Trail maps shall be kept current with revisions made at least annually.
- 6.21 In the event that the use of the Trails or Facility Sites as contemplated by this Agreement shall result in any increase in BAYROOT's real estate property taxes, or the assessment of any penalty for removal of the Trails' and/or Facility Sites' areas from Current Use, DRED shall promptly reimburse BAYROOT for all such costs upon BAYROOT providing proper documentation of such costs.

- 6.22 Any application of chemicals by DRED on land of BAYROOT shall be with the prior written approval of BAYROOT. DRED shall hold BAYROOT harmless from and against any and all claims, exactions, penalties, or legal actions resulting from acts by or for DRED to which this provision applies.
- 6.23 At the end of this Agreement without any Agreement extension or renewal, DRED, at its own expense, shall discontinue, retire, abandon, restore and /or stabilize each of the Trails and each of the Facility sites as mutually agreed to with BAYROOT. This covenant shall survive the termination of this Agreement.

7. Liability Provisions; Sovereign Immunity:

- 7.1 It is expressly understood that the parties intend this Agreement to be subject to the limitations of liability provisions set forth in New Hampshire RSA 212:34 and RSA 508:14.
- 7.2 Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State. This covenant shall survive the termination of this Agreement.

8. Termination:

- 8.1 Termination for Cause – In the event that DRED would: fail to perform any of its obligations hereunder in a timely or satisfactory manner, use or allow the use of the Premises for any purpose or in any other manner except as herein specified, fail to pay the aforesaid annual fee installment when due (whether payment is demanded or not), fail to perform in good faith any of the agreements herein set forth, or fail to conform to all the conditions and restrictions herein stated, BAYROOT, its successors or assigns, may at its election terminate or annul this Agreement so far as all further rights of DRED or the general public hereunder are concerned, and repossess the Premises and hold the Premises free and clear of all claims of DRED or the general public under this Agreement or otherwise. Written notice of any such determination by BAYROOT shall be served upon DRED by certified mail, return receipt requested, send to the DRED address as specified below, specifying the nature of the default or breach. If upon the expiration of fourteen (14) days from the delivery of such notice, the default or breach is not remedied, BAYROOT may terminate this Agreement in whole or in part upon

two (2) days notice (the notice of termination period) sent by certified mail, return receipt requested, to the DRED address as specified below, of such termination. Upon the expiration of such notice of termination period, this Agreement shall terminate. No failure on the part of BAYROOT, or its successors or assigns, to enforce a forfeiture by DRED of this Agreement, or to terminate this Agreement for any default or breach by DRED of any agreement, condition or restriction herein contained, shall be construed as a waiver of the right to enforce a subsequent forfeiture or a subsequent default or breach of the same or any other agreement, condition or restriction herein contained.

8.2 Termination without Cause – This Agreement shall be subject to the right of either party hereto at any time during the term of this Agreement to terminate this Agreement by giving written notice to the other party hereto at least ninety (90) days prior to the effective date of the termination. Any such notice shall be sent by certified mail, return receipt requested, to the address of the party hereto being notified as specified below.

8.3 It is further understood and agreed, that at the termination of this Agreement, any buildings and all fixtures and personal property of DRED shall be removed from the Premises within ninety (90) day from the date of termination. DRED hereby agrees that any buildings, fixtures and personal property of DRED remaining on the Premises after the expiration of said 90 days shall be and become then the property of BAYROOT. BAYROOT, however, reserves the right to require that DRED shall remove the buildings within the 90 day period if it so demands.

9. Assignment and Sublease:

9.1 DRED shall not assign, sublet or otherwise transfer any interest in this Agreement, or underlet the Premises or any portions thereof, nor give or surrender the same to any other persons without written consent of BAYROOT.

9.2 BAYROOT may assign this Agreement, and this Agreement as so assigned shall be binding on and inure to the benefit of BAYROOT's successors and assigns.

10. Amendment:

- 10.1 During the term of this Agreement, or any of its extensions or renewals, DRED and BAYROOT may negotiate to alter, by mutual accord, the Premises as described in Exhibit A, at which time said Exhibit A shall be replaced by a revised Exhibit A reflecting such changes as are agreed upon without affecting the balance of this Agreement (except annual fee installment payment as described in Item 4.3 hereinabove). Such revised Exhibit A shall be by letter (with revised Exhibit A attached listing such revised Premises) signed by designated agents of both parties.
- 10.2 During the term of this Agreement, or any of its extensions or renewals, BAYROOT may withdraw any lands which BAYROOT may be divesting of, or has divested of, without DRED's approval or agreement, by giving written notice to DRED and supplying a revised Exhibit A, at which time said Exhibit A shall be replaced by a revised Exhibit A reflecting such changes without affecting the balance of this Agreement (except annual fee installment payment as described in Item 4.3 hereinabove). Such revised Exhibit A shall be by letter (with revised Exhibit A attached listing the revised Premises) signed by designated agents of both parties.
- 10.3 During the term of this Agreement, or any of its extensions or renewals, DRED and BAYROOT may negotiate to alter, to close, to relocate, to discontinue and/or to establish new locations of Trails and of Facility Sites, by mutual accord. Such revised locations shall be located, established, used and discontinued with the written permission of BAYROOT's designated agent and amendment of Exhibit B. Such amendment of Exhibit B shall be by letter (with map attached showing the revised locations) signed by designated agents of both parties.
- 10.4 This Agreement may be modified, waived or discharged only by a written instrument signed by the parties.

11. Special Provisions:

- 11.1 The State of New Hampshire shall provide BAYROOT with a liability insurance coverage, naming Bayroot LLC and Wagner Forest Management, Ltd., including its members, officers and employees on such policy, said coverage to include two million dollars (\$2,000,000.00), each occurrence, for bodily injury, and fifty thousand dollars (\$50,000.00) property damage, each occurrence. A certificate of liability insurance evidencing such coverage shall be delivered to BAYROOT annually by January 1 of each year.
- 11.2 BAYROOT reserves the right for itself and its employees, guests, servants, agents, tenants, successors, and assigns to cross, to enter upon, to occupy, to possess and to enjoy the Premises at any and all times in any way in connection with BAYROOT's business and objectives, including but not limited to, the construction, maintenance, use and discontinuance of road, bridges and log yard landings, the taking off and hauling of any trees, forest management activities, or the excavation, removal and hauling of gravel and sand.
- 11.3 BAYROOT reserves the right for its specifically permitted recreational lessees to cross said Premises at any and all times for the purpose of access from such lessees' parking areas in as direct a route as possible to lessees' recreational lease sites.
- 11.4 It is also understood and agreed that no Off Highway Recreational Vehicles will be permitted on any Trails during the spring mud season. Appropriate trail closure dates are to be mutually agreed upon by BAYROOT and DRED.
- 11.5 If at any time during the term of this Agreement DRED shall desire to terminate any portion of the Trails or any portion of the seasonal uses, then it shall do so by notifying BAYROOT by written notice at least thirty (30) days in advance.

12. Notice:

Any notice, demand or communication required or permitted to be given under the terms of this Agreement shall be deemed to have been duly given and made if given by any of the following methods.

- a. Deposited in the United States mail in a sealed envelope, postage prepaid, by registered or certified mail, return receipt requested, respectively addressed as follows:

To BAYROOT: Bayroot LLC
Wagner Forest Management, Ltd.
150 Orford Rd
P.O. Box 160
Lyme, NH 036768
Phone 603.795.2002. Fax 603.795.4631.

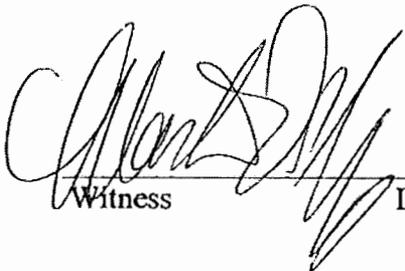
To DRED: NH Department of Resources and Economic Development
Division of Parks and Recreation, Trails Bureau
Attn.: Chris Gamache, Chief
172 Pembroke Road,
Concord, NH 03301
Phone: 603-271-3254, Fax: 603-271-3553, or

b. Given in hand to the addressees listed above.

Any such notice shall be deemed effective upon its receipt by the other party.

{The remainder of this page is intentionally blank. Signatures appear on the following pages.}

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on their respective behalves, each having been thereunto duly authorized, the date and year written above.



Witness

10/30/2015

Date

Bayroot LLC:
By Wagner Forest Management, Ltd.
Its Sole Manager

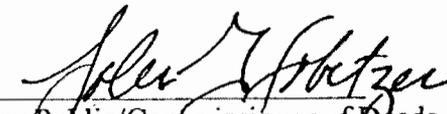
By: 

Thomas J. Cogan
Its President

STATE OF NEW HAMPSHIRE
COUNTY OF GRAFTON

On this the 30th day of OCTOBER, 2015, before me, JOHN G. SOBETZER, the undersigned officer, personally appeared Thomas J. Cogan, who acknowledged himself to be the duly authorized President of Wagner Forest Management, Ltd., acting in its capacity as the duly authorized sole Manager of Bayroot LLC, and that he, as such Present, being authorized so to do by Wagner Forest Management, Ltd. and Bayroot LLC, executed the foregoing instrument for the purposes therein contained by signing the name of Bayroot LLC, by its sole Manager, Wagner Forest Management, Ltd., by himself as President of Wagner Forest Management, Ltd.

In witness whereof, I hereunto set my hand and official seal.



Notary Public/Commissioner of Deeds
My Commission Expires:

JOHN G. SOBETZER
Notary Public-New Hampshire
My Commission Expires: December 23, 2019

Department of Resources and Economic
Development of the State of New Hampshire:

Sada Casanova 11/1/15
Witness Date

By: [Signature]
Jeffrey J. Rose
Commissioner

Margaret Morrison 11/3/15
Witness Date

By: [Signature]
Chris Gamacho
Chief, Bureau of Trails

Approved as form, substance and execution:

OFFICE OF THE ATTORNEY GENERAL

[Signature]
~~Assistant Attorney General~~
Date: 12/7/2015

Approved by Governor and Council
at the 2/10/16 meeting as
Item # 40 A.

EXHIBIT A –

**The Premises
List of Bayroot LLC Moxie Tree Farm Lands**

List of Bayroot LLC Moxie Tree Farm lands (dated May 15, 2015) included in Bayroot LLC Lease 5239 with the State of New Hampshire, Department of Resources and Economic Development, to be administered by its Trails Bureau as Off Highway Recreation Vehicle Trails.

Bayroot Moxie Tree Farm	
Town	Acres
ACADEMY GRANT	12,105
BETHLEHEM	1,930
CARROLL	3,397
DIX'S GRANT	12,877
DIXVILLE	26,168
DUMMER	15,283
ERROL	1,837
MILAN	347
MILLSFIELD	17,512
PITTSBURG	1,896
SHELBURNE	7,253
STEWARTSTOWN	502
SUCCESS	3,482
WENTWORTH'S LOCATION	34
Grand Total	104,624

EXHIBIT B

Location Map of Trails and Facility Sites Upon Bayroot LLC Moxie Tree Farm Lands

Location Map of Trails and Facility Sites upon Bayroot LLC Moxie Tree Farm lands (dated May 15, 2015) included in Bayroot LLC Lease 5239 with the State of New Hampshire, Department of Resources and Economic Development, to be administered by its Trails Bureau as Off Highway Recreation Vehicle and Snowmobile Trails.

