

The State of New Hampshire  
**Department of Environmental Services**

**Thomas S. Burack, Commissioner**

*Celebrating 25 Years of Protecting  
New Hampshire's Environment*



September 5, 2013

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

REQUESTED ACTION

Authorize the Department of Environmental Services to award a Water Supply Land Protection Grant to the Town of Auburn, (VC #177355), Auburn, NH in the amount of \$77,417.50 to purchase a conservation easement on land within a source water protection area to protect water supply land, effective upon Governor and Council approval through December 31, 2014. 100% Interagency Funds.

Funding is available as follows:

03-44-44-442010-1879-073-500581

FY 2014

\$77,417.50

Department of Environmental Services, I-93 Water Supply Land Grant, Grants-Non Federal

EXPLANATION

Pursuant to RSA 486-A:1, the Department of Environmental Services (DES) has a local assistance program that provides municipalities and non-profit land trusts with 25% of the cost of acquiring land or conservation easements in order to permanently protect critical water supply lands. Notices were sent to eligible communities, land trusts, and water suppliers in spring 2011 to announce a fall 2011 grant round and four applications were received. The eligible project applications were evaluated based on criteria listed in administrative rules, Env-Dw 1002, and included type and size of water system, proximity of land to water supply source, percent of source water protection area being protected, and the amount of acreage being protected.

A total of \$3 million in federal funds was made available for these grants through an agreement with the NH Department of Transportation - from a fund established to offset impacts to wetlands associated with the widening of Interstate 93 between the Massachusetts border in Salem and the I-93/I-293 interchange in Manchester. During the fall 2011 grant round, three municipalities and one land trust organization applied and were eligible for these grants. See attachment A for a list of applicants, rankings and reviewers.

[www.des.nh.gov](http://www.des.nh.gov)

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095

Telephone: (603) 271-2513 • Fax: (603) 271-5171 • TDD Access: Relay NH 1-800-735-2964



Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
Page 2 of 2

The Town of Auburn will use this grant as well as Town of Auburn funds to purchase a conservation easement on 34 acres of land within the source water protection area of the City of Manchester water supply. The land will be maintained in perpetuity for the purpose of water supply protection.

Exhibit A describes the scope of the grant. Exhibit B provides the grant amount and payment terms and Exhibit C contains special provisions. Attachment B contains the draft conservation easement deed with restrictions. The Attorney General's office has approved the attached draft conservation easement deed as to form and substance, and will approve the actual deed as to execution.

The total cost for the Town of Auburn to acquire the conservation easement is \$309,670. The Department will provide \$77,417.50 with \$232,252.50 in match provided by The Town of Auburn. The purchase price for this conservation easement is based on recent appraisal of fair market value performed in accordance with administrative rule Env-Dw 1002.17

We respectfully request your approval.



Thomas S. Burack  
Commissioner



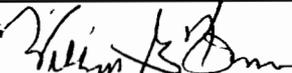
**Subject: Grant Agreement for a NH DES Water Supply Land Protection Grant**

**GRANT AGREEMENT**

The State of New Hampshire and the Grantee hereby mutually agree as follows:

**GENERAL PROVISIONS**

**I. IDENTIFICATIONS**

<b>1.1 State Agency Name</b> NH Department of Environmental Services		<b>1.2 State Agency Address</b> 29 Hazen Drive, Concord, NH 03302-0095	
<b>1.3 Grantee Name:</b> Town of Auburn		<b>1.4 Grantee Address</b> 47 Chester Road, P.O. Box 309, Auburn, NH 03032	
<b>1.5 Effective Date</b> Upon G&C approval	<b>1.6 Completion Date</b> 12/31/2014	<b>1.7 Audit Date</b> N/A	<b>1.8 Grant Limitation</b> \$77,417.50
<b>1.9 Grant Officer for State Agency</b> Holly Green NH Department of Environmental Services		<b>1.10 State Agency Telephone Number</b> (603) 271-3114	
<b>1.11 Grantee Signature:</b> 		<b>1.12 Name &amp; Title of Grantee Signor</b> William G. Herman, Town Administrator	
<b>1.13 Acknowledgment:</b> State of <u>NEW HAMPSHIRE</u> , County of <u>ROCKINGHAM</u> On <u>8/18/13</u> , before the undersigned officer, personally appeared the person identified in block 1.12., or satisfactorily proven to be the person whose name is signed in block 1.11., and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
<b>1.13.1 Signature of Notary Public or Justice of the Peace</b> (Seal) 			
<b>1.13.2 Name &amp; Title of Notary Public or Justice of the Peace</b> <u>ADELE FRISELLA BROWN, NOTARY PUBLIC</u>		<b>ADELE FRISELLA BROWN, Notary Public</b> My Commission Expires August 22, 2017	
<b>1.14 State Agency Signature(s)</b> 		<b>1.15 Name/Title of State Agency Signor(s)</b> Thomas S. Burack, Commissioner	
<b>1.16 Approval by Attorney General's Office (Form, Substance and Execution)</b> By:  Attorney, On: <u>9/16/13</u>			
<b>1.17 Approval by the Governor and Council</b> By: _____ On: <u> / /</u>			



2. **SCOPE OF WORK.** In exchange for grant funds provided by the state of New Hampshire, acting through the agency identified in block 1.1 (hereinafter referred to as "the State"), pursuant to RSA 21-O, the Grantee identified in block 1.3 (hereinafter referred to as "the Grantee"), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT A (the scope of work being referred to as "the Project").

3. **AREA COVERED.** Except as otherwise specifically provided for herein, the Grantee shall perform the Project in, and with respect to, the state of New Hampshire.

4. **EFFECTIVE DATE; COMPLETION OF PROJECT.**

4.1 This Agreement, and all obligations of the parties hereunder, shall become effective on the date in block 1.5 or on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire whichever is later (hereinafter referred to as "the Effective Date").

4.2 Except as otherwise specifically provided for herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.6 (hereinafter referred to as "the Completion Date").

5. **GRANT AMOUNT; LIMITATION ON AMOUNT; VOUCHERS; PAYMENT.**

5.1 The Grant Amount is identified and more particularly described in EXHIBIT B, attached hereto.

5.2 The manner of, and schedule of payment shall be as set forth in EXHIBIT B.

5.3 In accordance with the provisions set forth in EXHIBIT B, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Grantee the Grant Amount. The State shall withhold from the amount otherwise payable to the Grantee under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.

5.4 The payment by the State of the Grant amount shall be the only, and the complete, compensation to the Grantee for all expenses, of whatever nature, incurred by the Grantee in the performance hereof, and shall be the only, and the complete, compensation to the Grantee for the Project. The State shall have no liabilities to the Grantee other than the Grant Amount.

5.5 Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the Grant limitation set forth in block 1.8 of these general provisions.

6. **COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS.**

In connection with the performance of the Project, the Grantee shall comply with all statutes, laws, regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Grantee, including the acquisition of any and all necessary permits.

7. **RECORDS AND ACCOUNTS.**

7.1 Between the Effective Date and the date seven (7) years after the Completion Date the Grantee shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.

7.2 Between the Effective Date and the date seven (7) years after the Completion Date, at any time during the Grantee's normal business hours, and as often as the State shall demand, the Grantee shall make available to the State all records pertaining to matters covered by this Agreement. The Grantee shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records or personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, "Grantee" includes all persons, natural or fictional,

affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in block 1.3 of these general provisions.

8. **PERSONNEL.**

8.1 The Grantee shall, at its own expense, provide all personnel necessary to perform the Project. The Grantee warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.

8.2 The Grantee shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform such Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.

8.3 The Grant officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.

9. **DATA; RETENTION OF DATA; ACCESS.**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 Between the Effective Date and the Completion Date the Grantee shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, sale, disposal, or for any other purpose whatsoever.

9.3 No data shall be subject to copyright in the United States or any other country by anyone other than the State.

9.4 On and after the Effective Date all data, and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason, whichever shall first occur.

9.5 The State, and anyone it shall designate, shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all data.

10. **CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such termination.

11. **EVENT OF DEFAULT; REMEDIES.**

11.1 Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):

11.1.1 failure to perform the Project satisfactorily or on schedule; or  
11.1.2 failure to submit any report required hereunder; or  
11.1.3 failure to maintain, or permit access to, the records required hereunder; or

11.1.4 failure to perform any of the other covenants and conditions of this Agreement.

11.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

11.2.1 give the Grantee a written notice specifying the Event of



Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Grantee notice of termination; and

11.2.2 give the Grantee a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Grant Amount which would otherwise accrue to the grantee during the period from the date of such notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee; and

11.2.3 set off against any other obligation the State may owe to the Grantee any damages the State suffers by reason of any Event of Default; and

11.2.4 treat the agreement as breached and pursue any of its remedies at law or in equity, or both.

**12. TERMINATION.**

12.1 In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Grantee shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the "Termination Report") describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination.

12.2 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall entitle the Grantee to receive that portion of the Grant amount earned to and including the date of termination.

12.3 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Grantee from any and all liability for damages sustained or incurred by the State as a result of the Grantee's breach of its obligations hereunder.

12.4 Notwithstanding anything in this Agreement to the contrary, either the State or except where notice default has been given to the Grantee hereunder, the Grantee, may terminate this Agreement without cause upon thirty (30) days written notice.

**13. CONFLICT OF INTEREST.** No officer, member or employee of the Grantee and no representative, officer of employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

**14. GRANTEE'S RELATION TO THE STATE.** In the performance of this Agreement, the Grantee, its employees, and any subcontractor or subgrantee of the Grantee are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Grantee nor any of its officers, employees, agents, members, subcontractors or subgrantees, shall have authority to bind the State nor are they entitled to any of the benefits, worker's compensation or emoluments provided by the State to its employees.

**15. ASSIGNMENT AND SUBCONTRACTS.** The Grantee shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranted by the Grantee other than as set forth in Exhibit A without the prior written consent of the State.

**16. INDEMNIFICATION.** The Grantee shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any

person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee of Subcontractor, or subgrantee or other agent of the Grantee. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.

**17. INSURANCE AND BOND.**

17.1 The Grantee shall, at its sole expense, obtain and maintain in force, or shall require any subcontractor, subgrantee or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:

17.1.1 statutory worker's compensation and employees liability insurance for all employees engaged in the performance of the Project, and

17.1.2 comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$2,000,000 for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and

17.2 The policies described in subparagraph 17.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice has been received by the State.

**18. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure or waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Grantee.

**19. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses first above given.

**20. AMENDMENT.** This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire.

**21. CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.

**22. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**23. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.



## EXHIBIT A

### SCOPE OF SERVICES

#### Town of Auburn:

The Town of Auburn will use the grant to purchase a conservation easement on 34 acres of land in the protection area of the City of Manchester's drinking water source. The Southeast Land Trust of New Hampshire will hold the conservation easement and the Town of Auburn will hold an executory interest. The parcel of land, designated on the current Auburn tax maps as Map 4, Lot 34 will be protected in perpetuity, as specified in conservation easement deed (see Attachment B), for the purpose of water supply protection.

## EXHIBIT B

### GRANT AMOUNT & PAYMENT SCHEDULE

Payment in the amount of \$77,417.50 shall be made to the Town of Auburn upon receipt of the following:

1. Survey of the parcel of land.
2. A copy of the appraisal as specified in Env-Dw 1002.17.
3. Title examination as specified in Env-Dw 1002.18.
4. Acceptable stewardship plan for the property that ensures the permanent protection of the water supply.
5. Completed baseline documentation form, which indicates the current condition of the property.
6. Documentation to support the \$232,252.50 in match provided by the Town of Auburn.
7. The finalized conservation easement deed.

## EXHIBIT C

### SPECIAL PROVISIONS

1. Federal Funds paid under this agreement are from a Grant/Contract/Cooperative Agreement to the State from the United States Department of Transportation, Highway Planning and Construction under CFDA # 20.205. All applicable requirements, regulations, provisions, terms and conditions of this Federal Grant/Contract/Cooperative



Agreement are hereby adopted in full force and effect to the relationship between this Department and the grantee. Additionally, the Grantee shall comply with the terms of the Federal Funding Accountability and Transparency Act (FFATA) by providing DES with their Data Universal Numbering System (DUNS) number.

2. Subparagraph 1.7 of the General Provisions shall not apply to this Grant Agreement.



TOWN OF AUBURN

CERTIFICATE OF AUTHORIZATION

I, Joanne T Lixweiler, Town Clerk for the Town of Auburn, New Hampshire, hereby certify that on 7/01/2013 (Date), the Board of Selectmen voted to authorize Town Administrator, William G Herman to sign contracts on behalf of the Town of Auburn to accept DES funds and to enter into a contract with the Department of Environmental Services. This authority has not been amended or annulled.

In witness whereof, I hereby sign the Certificate of Authorization.

Signature Joanne T Lixweiler

Print Name Here Joanne T Lixweiler

NOTORIZATION

State of New Hampshire, County of Rockingham. On

August 8, 2013, before me, Kathleen A. Sylvia, the  
(Date)

undersigned officer, personally appeared Joanne T. Lixweiler, who  
acknowledged himself to be Town Clerk of the Town

being authorized so to do, executed the foregoing instrument for the purpose

herein contained. In witness whereof, I have set my hand and official seal.

Notary Public Signature Kathleen A. Sylvia

My commission expires

**KATHLEEN A. SYLVIA**  
Notary Public - New Hampshire  
My Commission Expires August 8, 2017





## CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex<sup>3</sup>) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex<sup>3</sup> is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex<sup>3</sup> is entitled to the categories of coverage set forth below. In addition, Primex<sup>3</sup> may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex<sup>3</sup>, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex<sup>3</sup> Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only, Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex<sup>3</sup>. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

<i>Participating Member:</i> Town of Auburn PO Box 309 Auburn, NH 03032		<i>Member Number:</i> 111		<i>Company Affording Coverage:</i> NH Public Risk Management Exchange - Primex <sup>3</sup> Bow Brook Place 46 Donovan Street Concord, NH 03301-2624	
Coverage Categories					
<input checked="" type="checkbox"/>	<b>General Liability (Occurrence Form)</b> <b>Professional Liability (describe)</b> <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence	7/1/2013	7/1/2014	<b>Each Occurrence</b>	\$ 5,000,000
				<b>General Aggregate</b>	\$ 5,000,000
				<b>Fire Damage (Any one fire)</b>	\$
				<b>Med Exp (Any one person)</b>	\$
<input checked="" type="checkbox"/>	<b>Automobile Liability</b> Deductible    Comp and Coll: \$1,000  <input type="checkbox"/> Any auto	7/1/2013	7/1/2014	<b>Combined Single Limit (Each Accident)</b>	\$5,000,000
				<b>Aggregate</b>	\$5,000,000
<input checked="" type="checkbox"/>	<b>Workers' Compensation &amp; Employers' Liability</b>	1/1/2013	1/1/2014	<input checked="" type="checkbox"/> Statutory	
				<b>Each Accident</b>	\$2,000,000
				<b>Disease – Each Employee</b>	\$2,000,000
				<b>Disease – Policy Limit</b>	\$
<input checked="" type="checkbox"/>	<b>Property (Special Risk includes Fire and Theft)</b>	7/1/2013	7/1/2014	<b>Blanket Limit, Replacement Cost (unless otherwise stated)</b>	Deductible: \$1,000
<b>Description:</b> Proof of Primex Member coverage only.					

<b>CERTIFICATE HOLDER:</b>	<b>Additional Covered Party</b>	<b>Loss Payee</b>	<b>Primex<sup>3</sup> – NH Public Risk Management Exchange</b>
			<b>By:</b> <i>Tammy Denver</i>
			<b>Date:</b> 9/19/2013    tdenver@nhprimex.org
NH Department of Environmental Services 29 Hazen Dr, PO Box 95 Concord, NH 03302-0095			<b>Please direct inquires to: Primex<sup>3</sup> Claims/Coverage Services 603-225-2841 phone 603-228-3833 fax</b>



**Attachment A**  
**Fall 2011 Grant Round - Water Supply Land Protection**

**Applications and Rankings**  
*Water Supply Land Protection Projects*

<b>Grant Applicant</b>	<b>Grant Amount</b>	<b>Project Name</b>	<b>Location</b>	<b>Public Water Supply Source(s) Protected</b>	<b>Score</b>	<b>Rank</b>
Bear Paw Regional Greenways	\$ 66,500	Clay Pond II	Hooksett	Manchester Water Works – Lake Massabesic	32.5	1
Town of Auburn	\$ 77,417.50	Mason	Auburn	Manchester Water Works – Lake Massabesic	25.0	2
Town of Derry	\$ 317,500	South Range Realty Trust	Derry	Willowbend Community Water Supply	34.5	3
Town of Windham	\$ 115,500	Forty Acres Development Company	Windham	Villages of Windham; Hadleigh Woods; PEU/Lamplighter Village; and PEU Spruce Pond Estates	28.5	4

**Grant Reviewer List**

<b>Name</b>	<b>Department</b>	<b>Bureau</b>	<b>Title</b>	<b>Years Experience</b>
Sarah Pillsbury	NHDES	Drinking Water & Groundwater Bureau	Administrator IV	Twelve years overseeing grant program as Administrator of the Drinking Water & Groundwater Bureau
Paul Susca	NHDES	Drinking Water & Groundwater Bureau	Administrator III	Seven years managing the Source Water Protection Program
Holly Green	NHDES	Drinking Water & Groundwater Bureau	Environmentalist III	Five years managing the grant program



ATTACHMENT B  
DRAFT CONSERVATION EASEMENT DEED



**WARRANTY CONSERVATION EASEMENT DEED  
AND DEED RESTRICTION together with a Right of Access**

We, **BRUCE A. MASON, SR.** and **JEANNE A. MASON**, husband and wife, of 16 Penny Lane, Town of Auburn, County of Rockingham, State of New Hampshire, (hereinafter referred to as the “Grantor”, which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns),

for consideration paid, with WARRANTY covenants, grant in perpetuity to

the **SOUTHEAST LAND TRUST OF NEW HAMPSHIRE**, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 12 Center Street, PO Box 675, Town of Exeter, County of Rockingham, State of New Hampshire, 03833, having been determined by the Internal Revenue Service to be an income tax exempt, publicly supported corporation, contributions to which are deductible for federal income tax purposes pursuant to the United States Internal Revenue Code, (hereinafter referred to as the “Grantee” which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

and an Executory Interest therein to the **TOWN OF AUBURN**, a municipal corporation, acting by and through its Conservation Commission, pursuant to NH RSA 36-A:4, with its principal mailing address PO Box 309, Town of Auburn, County of Rockingham, State of New Hampshire, 03032 (hereinafter referred to as the “Executory Interest Holder”), as further described in Section 10 below,

the Conservation Easement (herein referred to as the “Easement”) hereinafter described with respect to that certain parcel/area of land (herein referred to as the “Property”) with any and all buildings, structures, and improvements thereon/being unimproved land, consisting of approximately 34.00 acres, situated on 16 Penny Lane in the Town of Auburn, County of Rockingham, State of New Hampshire, as shown on a plan entitled “Boundary & Easement Plan prepared for the Town of Auburn, NH & Jeanne & Bruce Mason, Sr.” dated December 18, 2012 and revised through April 5, 2013, and recorded in the Rockingham County Registry of Deeds as

Plan \_\_\_\_\_ (hereinafter referred to as “Plan”), and more particularly bounded and described in Appendix "A" attached hereto and made a part hereof, and

the **DEED RESTRICTION** (hereinafter referred to as the “Deed Restriction”) hereinafter described with respect to that certain area of land (herein referred to as the “Exclusion Area”) adjacent to the Property, with any and all buildings, structures, and improvements thereon, consisting of approximately 4.764 acres, situated on Penny Lane in the Town of Auburn, County of Rockingham, State of New Hampshire, as shown on the Plan as “Exclusion Area – not subject to Conservation Easement, 4.764 acres”, and more particularly bounded and described in Appendix “B” attached hereto and made a part hereof; and

**TOGETHER WITH**, a **right of access** to the Property across the Exclusion Area and Penny Lane, hereinafter further described below in Section 7.A.

## 1. PURPOSES

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following conservation Purposes (herein referred to as the “Purposes”) for the public benefit:

- B. The conservation of open spaces, particularly the conservation of the productive farm and/or forest land of which the Property consists and of the wildlife habitat thereon, including the enhancement and enlargement of 102 acres of protected land owned by Manchester Water Works, which is adjacent to the Property, as the New Hampshire Wildlife Action Plan (2010) determined that 51% of the Property is highest quality habitat in the State of New Hampshire (Tier 1) and 47% of the Property is supporting landscape (Tier 3), and the long-term protection of the Property’s capacity to produce economically valuable agricultural and forestry products, as 98.5% of the Property consists of Group IB forest soils; and
- C. The protection of the quality of ground water and surface water resources on and under the Property, including Canfield Brook, which runs through the Property and upon which the Property has more than 1,300 feet of frontage, and as the Property lies within the watershed for the Massabesic Lake, a public water supply for the City of Manchester, Town of Auburn, and other communities; and
- D. The protection of the Property for outdoor recreation by and/or the education of the general public, as stated in Section 2.I below.

The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the September 2007 Master Plan of the Town of Auburn,

- “Protect Auburn’s valuable water resources including wetlands, water recharge areas, and drinking water supply” (page 8); and
- “Preserve the natural and cultural features that contribute to Auburn’s character,

such as Lake Massabesic, Little Massabesic Lake, Clark Pond, other ponds, streams and rivers, prime agricultural land, woodlands, quality views, wetlands, country roads, stone walls, and valuable open spaces” (page 10); and

- “Employ appropriate land use controls and non-regulatory mechanisms (i.e., deed restrictions, conservation easements) to manage growth and to protect the town’s rural character” (page 11); and
- “Protect quality of town’s groundwater and water supply resources through (easement, acquisition and land use regulations)” (page 113); and
- “Promote and encourage the gift or purchase of conservation easements;” (page 113).

and with New Hampshire RSA Chapter 79-A which states: “It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources.”

All of these Purposes are consistent and in accordance with the U.S. Internal Revenue Code, Section 170(h).

The Easement hereby granted with respect to the Property is as follows:

2. USE LIMITATIONS (Subject to the reserved rights specified in Section 4 below)

The Property shall be maintained in perpetuity as open space subject to the following use limitations:

- A. There shall not be conducted on the Property any industrial or commercial activities, except Agriculture and Forestry, as described below, and provided that the productive capacity of the Property to yield forest and/or agricultural crops shall not be degraded by on-site activities.

i. **Description of Agriculture and Forestry**

- a. **Agriculture:** For the purposes hereof, “Agriculture” shall include animal husbandry, floriculture, and horticulture activities; the production of plant and animal products for domestic or commercial purposes; the growing, stocking, cutting, and sale of Christmas trees; and the processing and sale of products produced on the Property (such as pick-your-own fruits and vegetables and maple syrup), all as not detrimental to the Purposes of this Easement.
- b. **Forestry:** For the purposes hereof, “Forestry” shall include the growing, stocking, cutting, and sale of forest trees of any size capable of producing timber or other forest products, all as not detrimental to the Purposes of this Easement.

**1. Commercial Forestry:** For the purposes hereof, “Commercial Forestry” shall include all forestry and forest management activities performed for commercial or industrial purposes, including barter transactions.

**2. Non-commercial Forestry:** For the purposes hereof, “Non-commercial Forestry” shall include non-commercial timber stand improvement activities, wildlife habitat improvement, and the small-scale cutting or harvesting of wood products for the domestic use of the Grantor, such as clearing trees to maintain the edge of a field, thinning the forest stand to maintain a view, or cutting firewood for domestic consumption. Non-commercial Forestry shall not include activities conducted for the contemporaneous production of sale proceeds or other consideration.

- ii. **Requirements for Agriculture:** Agriculture shall be performed, to the extent reasonably practicable, in accordance with a coordinated management plan for the sites and soils of the Property. Agricultural management activities shall be in accordance with the then-current scientifically based practices recommended by UNH Cooperative Extension, U.S. Natural Resources Conservation Service, or other government or private, nonprofit natural resource conservation and management agencies then active. Such management activities shall not be detrimental to the Purposes of this Easement.
- iii. **Requirements for Forestry:** Any and all Commercial and Non-commercial Forestry shall be carried out in accordance with all applicable local, state, and federal laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property and shall not be detrimental to the Purposes of the Easement. For references on best management practices see:
- “Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire” (J.B. Cullen, 2004); and
  - “Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire” (Good Forestry in the Granite State Steering Committee, 2010), or similar successor publications.
- iv. **Requirements for Commercial Forestry:** In addition to the requirements outlined in Section 2.A.iii above, Commercial Forestry shall be performed using silvicultural practices that enhance or maintain the value of timber while recognizing that the ecological, aesthetic, wildlife, or other non-timber values are important components of the forest. To the extent reasonably practicable, Commercial Forestry shall meet the following goals:
- a. The goals are:
- maintenance of soil productivity;
  - protection of water quality, wetlands, and riparian zones;
  - maintenance or improvement of the overall quality of forest products;

- conservation of scenic quality;
  - protection of significant or fragile natural areas;
  - protection of significant historic and cultural features; and
  - conservation of native plant and animal species.
- b. Any and all Commercial Forestry shall be performed in accordance with a written Forest Management Plan consistent with this Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
- c. Said Forest Management Plan shall have been prepared not more than ten (10) years prior to the date any harvesting is expected to commence. Or, if more than ten (10) years old, the plan shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (30) days prior to the date of harvest.
- d. Said Forest Management Plan shall include a statement of landowner objectives, and shall specifically address:
- the accomplishment of those Purposes for which this Easement is granted; and
  - the goals in Section 2.A.iv.a. above.
- e. At least thirty (30) days prior to any commercial timber harvest, the Grantee shall have received from the Grantor a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee, that the Forest Management Plan, as defined in 2.A.iv, b-d, above, has been prepared in compliance with the terms of this Easement. Grantee may request the Grantor to submit the Plan itself to Grantee within ten (10) days of such request, but acknowledges that the Forest Management Plan's purpose is to guide forest management activities in compliance with this Easement, and that the actual activities will determine compliance therewith.
- f. Timber harvesting with respect to any Commercial Forestry shall be conducted in accordance with said Plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
- B. The Property shall not be subdivided or otherwise divided in ownership, except that the lease of any portion of the Property for any use permitted by this Easement shall not violate this provision.
- C. No structure or improvement shall be constructed, placed, or introduced onto the Property, except for structures and improvements which are: i) necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property and which may include but not be limited to a road, fence, utility line, bridge, culvert, barn, maple sugar house, or shed; and ii) not detrimental to the Purposes of this Easement. Further, construction, placement or introduction of any structure with a footprint which is equal to or greater than three

hundred (300) square feet in area shall be subject to the prior written approval of the Grantee. At least forty-five (45) days prior to constructing, placing, or introducing onto or relocating within the Property any structure with an individual footprint which is equal to or greater than three hundred (300) square feet in area, the Grantor shall provide the Grantee with a written description and sketch plan of the proposed activity, which shall include the size, extent, location, timing, and method of construction or relocation. Within forty-five (45) days after Grantee's receipt of such submission, the Grantee shall approve or disapprove the same in writing and shall so inform the Grantor. Said approval shall not be unreasonably withheld. Any disapproval shall specify in detail the reasons therefor. Grantee's failure to so approve or disapprove within said period shall constitute an approval of the proposed exercise. The cumulative footprint of all such structures on the Property shall not exceed six thousand (6,000) square feet in area. Notwithstanding the above, there shall not be constructed, placed, or introduced onto the Property any of the following structures or improvements: dwelling, mobile home, cabin, residential driveway, any portion of a septic system, tennis court, swimming pool, athletic field, golf course, dock, tower, dam, or aircraft landing area.

- D. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:
- i. are commonly necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property; and
  - ii. do not harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities; and
  - iii. are not detrimental to the Purposes of this Easement.

Prior to commencement of any such activities, all necessary federal, state, local, and other governmental permits and approvals shall be secured.

- E. No outdoor advertising structures shall be displayed on the Property except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, or noncommercial outdoor recreational uses of the Property, and provided such structures are not detrimental to the Purposes of this Easement. No sign on the Property shall exceed sixteen (16) square feet in size, and no sign shall be artificially illuminated.
- F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of sections 2.A., C., D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed



## CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex<sup>3</sup>) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex<sup>3</sup> is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex<sup>3</sup> is entitled to the categories of coverage set forth below. In addition, Primex<sup>3</sup> may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex<sup>3</sup>, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex<sup>3</sup> Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only, Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex<sup>3</sup>. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

<i>Participating Member:</i>	<i>Member Number:</i>	<i>Company Affording Coverage:</i>
Town of Auburn PO Box 309 Auburn, NH 03032	111	NH Public Risk Management Exchange - Primex <sup>3</sup> Bow Brook Place 46 Donovan Street Concord, NH 03301-2624

X	General Liability (Occurrence Form) Professional Liability (describe)	7/1/2013	7/1/2014	Each Occurrence	\$ 5,000,000
	<input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence			General Aggregate	\$ 5,000,000
				Fire Damage (Any one fire)	\$
				Med Exp (Any one person)	\$
X	<b>Automobile Liability</b> Deductible    Comp and Coll: \$1,000  <input type="checkbox"/> Any auto	7/1/2013	7/1/2014	Combined Single Limit (Each Accident)	\$5,000,000
				Aggregate	\$5,000,000
X	<b>Workers' Compensation &amp; Employers' Liability</b>	1/1/2013	1/1/2014	X    Statutory	
				Each Accident	\$2,000,000
				Disease – Each Employee	\$2,000,000
				Disease – Policy Limit	\$
X	<b>Property (Special Risk includes Fire and Theft)</b>	7/1/2013	7/1/2014	Blanket Limit, Replacement Cost (unless otherwise stated)	Deductible: \$1,000

**Description:** Proof of Primex Member coverage only.

<b>CERTIFICATE HOLDER:</b>	<b>Additional Covered Party</b>	<b>Loss Payee</b>	<b>Primex<sup>3</sup> – NH Public Risk Management Exchange</b>
NH Department of Environmental Services 29 Hazen Dr, PO Box 95 Concord, NH 03302-0095			By: <i>Tammy Denver</i>
			Date: 9/19/2013    tdenver@nhprimex.org Please direct inquires to: <b>Primex<sup>3</sup> Claims/Coverage Services</b> 603-225-2841 phone 603-228-3833 fax

**Attachment A**  
**Fall 2011 Grant Round - Water Supply Land Protection**

**Applications and Rankings**  
*Water Supply Land Protection Projects*

<b>Grant Applicant</b>	<b>Grant Amount</b>	<b>Project Name</b>	<b>Location</b>	<b>Public Water Supply Source(s) Protected</b>	<b>Score</b>	<b>Rank</b>
Bear Paw Regional Greenways	\$ 66,500	Clay Pond II	Hooksett	Manchester Water Works – Lake Massabesic	32.5	1
Town of Auburn	\$ 77,417.50	Mason	Auburn	Manchester Water Works – Lake Massabesic	25.0	2
Town of Derry	\$ 317,500	South Range Realty Trust	Derry	Willowbend Community Water Supply	34.5	3
Town of Windham	\$ 115,500	Forty Acres Development Company	Windham	Villages of Windham; Hadleigh Woods; PEU/Lampighter Village; and PEU Spruce Pond Estates	28.5	4

**Grant Reviewer List**

<b>Name</b>	<b>Department</b>	<b>Bureau</b>	<b>Title</b>	<b>Years Experience</b>
Sarah Pillsbury	NHDES	Drinking Water & Groundwater Bureau	Administrator IV	Twelve years overseeing grant program as Administrator of the Drinking Water & Groundwater Bureau
Paul Susca	NHDES	Drinking Water & Groundwater Bureau	Administrator III	Seven years managing the Source Water Protection Program
Holly Green	NHDES	Drinking Water & Groundwater Bureau	Environmentalist III	Five years managing the grant program

from the Property.

- G. There shall be no dumping, injection, burning, or burial on the Property of man-made materials or materials then known to be environmentally hazardous.
- H. No rights-of-way or easements of ingress or egress in favor of any third party shall be created or developed into, on, over, or across the Property without the prior written approval of the Grantee, except those of record as of the execution of this Easement and those specifically permitted in the provisions of this Easement.
- I. The Property shall not be posted against, and the Grantor shall keep access to and use of the Property open to the public for, non-motorized, non-wheeled, pedestrian non-commercial, outdoor recreational and outdoor educational purposes as will have minimal impact on the Property, such as but not limited to hiking, wildlife observation, and cross-country skiing, but the Grantor shall not be obligated to keep access to and use of the Property open to snowmobiling, horseback riding, camping, hunting, or fishing. However, the Grantee shall be under no duty to supervise said access, use, or purpose. The Grantor reserves the right to post the Property against public access to agricultural cropland during the planting and growing season, to lands while being grazed by livestock, and to forestland during harvesting or other forest management activities.
- J. The Grantor shall not use or grant permission for motorized vehicle use on the Property, except for as necessary in the accomplishment of the forestry, agricultural, habitat management, law enforcement and public safety, or conservation uses of the Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the Purposes of this Conservation Easement. Notwithstanding the foregoing, the use of snowmobiles is permitted provided such snowmobiling is: 1) on snow; 2) more than 100 feet from tributaries contributing to Lake Massabesic except when crossing such tributaries; and 3) only on designated snowmobile trails depicted on a plan approved by the New Hampshire Department of Environmental Services, Water Supply Land Protection Grant Program.
- K. The maximum allowable impervious surface coverage on the Property shall not exceed two percent (2%) of the Property, or 0.68 acres (29,620 square feet). The total impervious surface coverage shall include all existing and future structures, driveways, roads, parking facilities and other paved or impervious surfaces, as well as any temporary structures even if the soil surface is not disturbed, including, but not limited to, plastic greenhouses, hoop houses, and other farm structures with or without a floor.

3. DEED RESTRICTION CONVEYED ON EXCLUDED AREA (Subject to the reserved rights specified in Section 4 below)

For the benefit and in aid of the Easement granted hereby and running therewith, the Grantor hereby also grants to the Grantee the right to enforce the following Restriction with respect to the Exclusion Area:

The Exclusion Area shall not be further subdivided or conveyed separately from the Property except in strict accordance with the procedures expressly set forth herein.

#### 4. RESERVED RIGHTS

- A. Notwithstanding the restrictions contained in Section 3 hereof, the Grantor reserves the right to subdivide the Exclusion Area into a total of no more than two (2) lots, and the Exclusion Area or any resulting subdivided lot may be conveyed separately from the Property so long as title to the Property is held by the owner of the Exclusion Area or any parcel resulting from the subdivision of the Exclusion Area. This reserved right may be exercised by the Grantor subject to and only under the following conditions:
- i.
  - ii. The Grantor shall secure all necessary approvals from local, state, and federal agencies.
  - iii. The Grantor shall notify the Grantee at least thirty (30) days before the proposed exercise of this reserved right, so as to allow the Grantee to determine its consistency with the provisions of this Easement. Said notification shall include the identification of the proposed owner of the Property. If the Grantor must secure the approval of the Town of Auburn Planning Board or its successor agency then responsible for land use regulation in the Town of Auburn, then the Grantor shall notify the Grantee in writing of the proposed subdivision and/or lot line adjustment at least thirty (30) days before submission to the Town of Auburn Planning Board. Said notification shall include sufficient information so as to allow the Grantee to determine its consistency with the provisions of this Easement.
  - iv. The condition of this Section 4.A requiring the owner of the Property to be the owner of the Exclusion Area or the owner of any parcel resulting from the subdivision of the Exclusion Area shall survive the exercise hereof, and shall be binding on the Grantor and the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns. Any subsequent deed given by the Grantor shall contain a provision that the Grantee thereof, by its acceptance of said deed, agrees to the restriction on subsequent conveyance imposed hereby.
  - v. Upon the approval of the Exclusion Area's subdivision by the Town of Auburn Planning Board, , the Grantor, Grantee, and Executory Interest Holder shall join in the recording of a notice of the exercise of this reserved right, to be recorded in the Rockingham County Registry of Deeds.
- B. Subject to the prior review and written approval of the Grantee and the following conditions, the Grantor reserves the right to construct, utilize, maintain, repair, relocate, or replace one primitive three-sided hut on the Property for periodic non-commercial recreational use only (hereinafter referred to as "Hut"):

- i. Said Hut shall be located at least three hundred (300) linear feet from Canfield Brook.
- ii. Said Hut and the site therefor shall be located and constructed, to the extent reasonably practicable, so as to minimize any detrimental impact on the Purposes of this Easement.
- iii. Said Hut shall be no larger than three hundred (300) square feet in size and no higher than twelve (12) feet, as measured from the average grade to the highest elevation of the structure. Said Hut shall be constructed with three walls with the remaining side open to the outside elements.
- iv. Said Hut shall not be served by aboveground and underground utility lines, including but not limited to power, communication, water, and sewer lines, and shall not have a septic system or similar sanitary waste disposal system.
- v. Said Hut is subject to the impervious surface limitation under Section 2.K. above.
- vi. At least forty-five (45) days prior to the commencement of any land clearing for a Hut, or of the construction or relocation of the Hut, the Grantor shall submit to the Grantee, for Grantee's approval, a written description and sketch plan of the proposed activity, including size, extent, location, timing, and method of construction or relocation. Within forty-five (45) days after Grantee's receipt of such submission, the Grantee shall approve or disapprove in writing and shall so inform the Grantor. Said approval shall not be unreasonably withheld. Any disapproval shall specify in detail the reasons therefor. Grantee's failure to so approve or disapprove within said period shall constitute an approval of the proposed exercise.

5. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

- A. The Grantor agrees to notify the Grantee in writing at least ten (10) days before the transfer of title to the Property.
- B. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

6. BENEFITS AND BURDENS

The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3)

of said Code, which organization has among its purposes the conservation and preservation of land and water areas, agrees to and is capable of protecting the conservation purposes of this Easement, and has the resources to enforce the restrictions of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

## 7. AFFIRMATIVE RIGHTS OF GRANTEE

- A. The Grantee and Executory Interest Holder shall have reasonable access to the Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement. Further, the Grantor grants the Grantee and Executory Interest Holder the right to pass and repossess by foot across the Exclusion Area and Penny Lane for the limited purpose of the monitoring and enforcement of this Easement.
- B. To facilitate such inspection and to identify the Property as conservation land protected by the Grantee, the Grantee shall have the right to place signs, each of which shall not exceed thirty (30) square inches in size, along the Property's boundaries.

## 8. RESOLUTION OF DISAGREEMENTS

- A. The Grantor and the Grantee desire that issues arising from time to time concerning uses or activities in light of the provisions of the Easement will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantor and the Grantee agree that if either party becomes concerned whether any use or activity (which together for the purposes of this Section, "Resolution of Disagreements," shall be referred to as the "Activity") complies with the provisions of this Easement, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.
- B. If informal dialogue does not resolve a disagreement regarding the Activity, and the Grantor agrees not to proceed or to continue with the Activity pending resolution of the disagreement concerning the Activity, either party may refer the disagreement to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties shall agree on a single impartial mediator. Mediation shall be conducted in Exeter, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.
- C. If the parties agree to bypass mediation, if the disagreement concerning the Activity has not been resolved by mediation within sixty (60) days after delivery of the notice of mediation, or if the parties are unable to agree on a mediator within ten (10) days after delivery of the notice of mediation, the disagreement shall be submitted to binding arbitration in accordance with New Hampshire RSA 542. The Grantor and the Grantee shall each choose an arbitrator within twenty (20) days of the delivery of written notice

from either party referring the matter to arbitration. The arbitrators so chosen shall in turn choose a third arbitrator within twenty (20) days of the selection of the second arbitrator. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable, which they may postpone only for good cause shown. The arbitration hearing shall be conducted in Exeter, New Hampshire, or such other location as the parties shall agree. A decision by two of the three arbitrators, made as soon as practicable after submission of the matter, shall be binding upon the parties and shall be enforceable as part of this Easement.

- D. If the parties do not agree to resolve the dispute by arbitration, or if the parties are unable to agree on the selection of an arbitrator, then either party may bring an action at law or in equity in any court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by permanent injunction, to require the restoration of the Property to its condition prior to the breach, and to recover such damages as appropriate.
- E. Notwithstanding the availability of mediation and arbitration to address disagreements concerning the compliance of any Activity with the provisions of this Easement, if the Grantee believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Property, the Grantee may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any court of competent jurisdiction to cause the cessation of any such damage or harm, to enforce the terms of this Easement, to enjoin any violation by permanent injunction, and to require the restoration of the Property to its condition prior to any breach.

#### 9. BREACH OF EASEMENT – GRANTEE’S REMEDIES

- A. If the Grantee determines that a breach of this Easement has occurred or is threatened, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure the breach and, where the breach involves injury to the Property, to restore the portion of the Property so injured to its prior condition.
- B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken hereunder.
- C. If the Grantor fails to perform its obligations under the immediately preceding paragraph B. above, or fails to continue diligently to cure any breach until finally cured, the Grantee may undertake any actions that are reasonably necessary to repair any damage in the Grantor’s name or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation features of the

Property, the Grantee may pursue its remedies under this Section, “Breach of Easement...,” without prior notice to the Grantor or without waiting for the period provided for cure to expire.

- E. The Grantee shall be entitled to recover damages from the party directly or primarily responsible for violation of the provisions of this Easement or injury to any conservation features protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting the Grantor’s liability therefore, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- F. The Grantee’s rights under this Section, “Breach of Easement...,” apply equally in the event of either actual or threatened breach of this Easement, and are in addition to the provisions of the preceding Section, “Resolution of Disagreements,” which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Grantee’s rights hereunder.
- G. The Grantor and the Grantee acknowledge and agree that should the Grantee determine, in its sole discretion, that the conservation features protected by this Easement are in immediate danger of irreparable harm, the Grantee may seek the injunctive relief described in the third paragraph of this Section, “Breach of Easement...,” both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee’s remedies described in this Section, “Breach of Easement...,” shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- H. Provided that the Grantor is directly or primarily responsible for the breach, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, staff and consultant costs, reasonable attorneys’ fees and costs and expenses of suit, and any costs of restoration necessitated by the Grantor’s breach of this Easement shall be borne by the Grantor; and provided further, however, that if the Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantor to enforce this Conservation Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantor’s reasonable costs and reasonable attorney’s fees in defending the action.
- I. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term thereof by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee’s rights hereunder. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. The Grantor hereby

waives any defense of laches or estoppel.

- J. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section, "Breach of Easement..." against any third party responsible for any actions inconsistent with the provisions of this Easement.

#### 10. EXECUTORY INTEREST

- A. If the Grantee ceases to enforce the Easement conveyed hereby or fails to enforce it within thirty (30) days after receipt of written notice from the Town of Auburn, a qualified organization as specified in the Section "Benefits and Burdens" above (sometimes herein referred to as the "Executory Interest Holder"), requesting such enforcement delivered in hand or by certified mail, return receipt requested, then the Executory Interest Holder shall have the right to enforce this Easement. All reasonable costs of such enforcement shall be paid by the Grantee. In such circumstance, or in the event the Grantee acquires the underlying fee interest in the Property, the Executory Interest Holder shall then also have the right to terminate the Easement interest of the Grantee in the Property by recording a notice to that effect in the Registry of Deeds referring hereto and shall thereupon assume and thereafter have all interests, rights, responsibilities and duties granted to and incumbent upon the Grantee in this Easement.
- B. The interests held by the Executory Interest Holder are assignable or transferable to any party qualified to become the Grantee's assignee or transferee as specified in the Section "Benefits and Burdens" above. Any such assignee or transferee shall have like power of assignment or transfer.

#### 11. NOTICES

All notices, requests and other communications, required to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

#### 12. SEVERABILITY

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration

award or otherwise, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

### 13. EXTINGUISHMENT & CONDEMNATION

- A. Extinguishment. If circumstances arise in the future such as render the Purposes of this Easement impossible or impracticable to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such judicial termination or extinguishment, shall be determined in accordance with Section 12.C. below. In making this grant of Easement, Grantor has considered and acknowledges the possibility that uses prohibited by the terms of this Easement may become more economically viable than the uses specifically reserved by Grantor pursuant to this Easement. It is the intent of both Grantor and Grantee that any such change in economic conditions shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this Section.
- B. Condemnation. If all or any part of the Property is taken, in whole or in part, by exercise of the power of eminent domain or is acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their interests in the Property subject to the taking or in lieu purchase and to recover all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. The amount of the proceeds to which the Grantee shall be entitled, after payment of any expenses, shall be determined in accordance with Section 13.C. below.
- C. Valuation. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Sections 13.A and 13.B above, shall have a fair market value which shall be determined by an appraisal prepared by a qualified appraiser as of the time of said extinguishment or condemnation. The balance of the amount recovered, after payment of any expenses, shall be divided between the Grantor and the Grantee in proportion to the fair market value, as determined by the appraisal, of their respective interests in that part of the Property extinguished or condemned. The Grantee and Executory Interest Holder agree that the Grantee's portion of any such payment shall be allocated fully to the Executory Interest Holder.
- D. As required by NH RSA 486-A:13, any release of the Property from the public trust in order to be converted to another use or due to termination of use shall not be subject to the provisions of Section 12 of this Easement and shall be undertaken according to the requirements of NH RSA 486-A:13.

14. ADDITIONAL EASEMENT

Should the Grantor determine that the expressed Purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that the conservation purposes of this Easement are not diminished thereby and that a public agency or qualified organization described in the Section "Benefits and Burdens," above, accepts and records the additional easement.

The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

IN WITNESS WHEREOF, We have hereunto set our hands this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
**Bruce A. Mason, Sr.**

\_\_\_\_\_  
**Jeanne A. Mason**

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2013, before me personally appeared **Bruce A. Mason, Sr. and Jeanne A. Mason** known to me, or satisfactorily proven, to be the persons whose names are subscribed to the foregoing instrument, and acknowledged that they executed the same as their free act and deed for the purposes therein contained.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
My commission expires:

**ACCEPTED: SOUTHEAST LAND TRUST OF NEW HAMPSHIRE**

By: \_\_\_\_\_

Title: \_\_\_\_\_  
Duly Authorized

Date: \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me personally appeared \_\_\_\_\_, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed for the purposes therein contained.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
My commission expires:

**ACCEPTED BY EXECUTORY INTEREST HOLDER: TOWN OF AUBURN  
BOARD OF SELECTMEN**

By: \_\_\_\_\_  
Russell C. Sullivan

Title: Chairman, Town of Auburn Board of Selectmen  
Duly Authorized

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Paul M. Raiche

Title: Selectman, Town of Auburn Board of Selectmen  
Duly Authorized

Date: \_\_\_\_\_

By: \_\_\_\_\_  
James F. Headd

Title: Vice Chairman, Town of Auburn Board of Selectmen  
Duly Authorized

Date: \_\_\_\_\_

The State of New Hampshire  
County of Rockingham

Personally appeared Russell C. Sullivan, Chairman, of the Town of Auburn Board of Selectmen, this \_\_\_\_ day of \_\_\_\_\_, 2013 and acknowledged the foregoing on behalf of the Town of Auburn Board of Selectmen.

Before me, \_\_\_\_\_  
/Notary Public

My commission expires: \_\_\_\_\_

The State of New Hampshire  
County of Rockingham

Personally appeared Paul M. Raiche, Selectman of the Town of Auburn Board of Selectmen, this \_\_\_\_ day of \_\_\_\_\_, 2013 and acknowledged the foregoing on behalf of the Town of Auburn Board of Selectmen.

Before me, \_\_\_\_\_  
/Notary Public

My commission expires: \_\_\_\_\_

The State of New Hampshire  
County of Rockingham

Personally appeared James F. Headd, Selectman of the Town of Auburn Board of Selectmen, this \_\_\_\_ day of \_\_\_\_\_, 2013 and acknowledged the foregoing on behalf of the Town of Auburn Board of Selectmen.

Before me, \_\_\_\_\_  
/Notary Public

My commission expires: \_\_\_\_\_

## APPENDIX A

### Legal description of Property subject to conservation easement

that tract of land with any and all structures and improvements thereon situated on Road, so-called, in the Town of , County of , State of New Hampshire, consisting of approximately acres, shown on a plan entitled ", " by , last revised , recorded at \_\_\_\_\_ at the County Registry of Deeds (hereafter "Plan"), and more particularly bounded and described as follows:

The "Property" subject to this Easement is a certain parcel of land owned by and Bruce A. Mason, Sr. and Jeanne A. Mason situated on 16 Penny Lane in the Town of Auburn, Rockingham County, State of New Hampshire containing 34.000 acres, and shown as "Proposed Conservation Easement" on a plan entitled "Boundary & Easement Plan prepared for the Town of Auburn, NH & Jeanne & Bruce Mason, Sr." dated December 18, 2012 and revised through April 5, 2013, and more particularly described as follows:

Beginning at a drill hole set in a stone wall at the northeast corner of the conservation easement on the southeasterly line of land of Michael and Diane Weaver; thence crossing land of Bruce A. Mason, Sr. and Jeanne A. Mason the following courses and distances:

1. South 12°09'00" East – 340.79 feet to an iron pin set; and
2. South 12°09'00" East – 70.53 feet to an iron pin set; and
3. South 12°09'00" East – 124.82 feet to an iron pin set in a stone wall on the northwesterly line of land of Chris and Audrey Trickett;

Thence turning and running along said stone wall and land of Chris and Audrey Trickett South 58°48'53" West - 213.12 feet to a drill hole set in said stone wall, and South 59°38'03" West – 322.12 feet to a drill hole found in said stone wall on the northwesterly line of land of Frances and Larry Mohn;

Thence turning and running along said stone wall and land of Frances and Larry Mohn the following courses and distances:

1. South 43°46'48" West – 16.61 feet to a drill hole found in said stone wall; and
2. South 58°24'44" West – 177.45 feet to a drill hole found in said stone wall; and
3. South 58°51'10" West – 378.31 feet to a drill hole found in said stone wall; and
4. South 58°27'37" West – 175.77 feet to an iron pin set at the end of the remains of said stone wall; and
5. South 58°27'33" West – 373.45 feet to an iron pin set; and
6. South 58°27'33" West – 350.01 feet to an iron pin set; and
7. South 58°27'33" West – 349.99 feet to the base of a leaning iron pin found on the easterly line of land of Edward Lafontaine;

Thence turning and running along land of Edward Lafontaine the following courses and distances:

1. North 06°19'36" East - 330.56 feet to an iron pin set; and
2. North 06°19'36" East – 308.28 feet to an iron pin found; and

3. North 06°32'48" East – 269.78 feet to an iron pin found; and
4. North 06°22'10" East – 222.12 feet to an iron pin found; and
5. North 46°37'57" East – 3.72 feet to a drill hole found in the southwesterly end of a stone wall at land of Manchester Water Works;

Thence turning and running by land of Manchester Water Works and said stone wall the following courses and distances:

1. North 58°36'30" East – 397.88 feet to a drill found in the northeasterly end of said stone wall; and
2. North 60°09'33" East – 348.76 feet to a point in a beaver pond on the westerly line of land of Michael and Diane Weaver;

Thence turning and running by land of Michael and Dianne Weaver the following courses and distances:

3. South 06°12'15" West – 395.62 feet to an iron pipe found; and
4. North 65°40'20" East - 97.78 feet to a 15" deciduous tree with barbed wire; and
5. North 61°01'43" East – 523.39 feet to an iron pin set; and
6. North 57°58'47" East – 319.43 feet to nail found in a 10" pitch pine with barbed wire; and
7. North 56°18'12" East – 307.31 feet to a drill hole found at the intersection of two stone walls; thence by said stone wall; and
8. North 87°38'57" East – 97.18 to the point of beginning.

**MEANING AND INTENDING** to describe a portion of the premises conveyed by Deed from , to , dated , recorded at said Registry at Book, Page .

## APPENDIX B

### Legal description of Exclusion Area – Not Subject to Conservation Easement

The "Exclusion Area" is a certain parcel of land owned by and Bruce A. Mason, Sr. and Jeanne A. Mason situated on 16 Penny Lane in the Town of Auburn, Rockingham County, State of New Hampshire containing 4.764 acres, and shown as "Exclusion Area – Not Subject to Conservation Easement" on a plan entitled "Boundary & Easement Plan prepared for the Town of Auburn, NH & Jeanne & Bruce Mason, Sr." dated December 18, 2012 and revised through April 5, 2013, and more particularly described as follows:

Beginning at a drill hole set in a stone wall at the northeast corner of the conservation easement on the southeasterly line of land of Michael and Diane Weaver; thence crossing land of Bruce A. Mason, Sr. and Jeanne A. Mason, the following courses and distances:

1. South 12°09'00" East – 340.79 feet to an iron pin set, and
2. South 12°09'00" East – 70.53 feet to an iron pin set, and
3. South 12°09'00" East – 124.82 feet to an iron pin set in a stone wall on the northwesterly line of land of Chris and Audrey Trickett;

Thence turning and running along said stone wall and land of Chris and Audrey Trickett North 58°55'45" East 60.00 feet to a drill hole in said stone wall; and thence turning and running North 58°55'45" East 148.17 feet to a drill hole at the intersection of stone walls at the northwesterly corner of land now or formerly of Audrey & Bruce Mason, Jr.;

Thence turning and running along the northerly sideline of Audrey & Bruce Mason, Jr. and a stone wall North 74°40'14" East 71.34 feet to a drill hole at the end of said stone wall; thence along the northerly sideline of Audrey & Bruce Mason, Jr. North 68°58'24" East 220.47 feet across a gravel driveway to an iron pipe at a corner of a stone wall at the southwesterly corner of land now or formerly of Joan & Timothy Joubert;

Thence turning and running along said Joan & Timothy Joubert North 15°51'20" East 183.10 feet to a drill hole at the southwesterly corner of land now or formerly of The Bell Family Revocable Trust of 2008;

Thence turning and running along a stone wall along land of said The Bell Family Revocable Trust of 2008 North 07°04'41" West 117.32 feet to a drill hole in said stone wall; thence continuing along said stone wall and land of said The Bell Family Revocable Trust of 2008 North 00°27'43" West 51.01 feet to a drill hole at a corner of said stone wall; thence turning and running along said stone wall, partially along land of said The Bell Family Revocable Trust of 2008 and partially along land now or formerly of Michael and Diane Weaver, South 85°03'34" West 126.01 feet to a drill hole in said stone wall;

Thence turning and running the following courses and distances along land of said Michael and Diane Weaver:

1. South 87°52'46" West 135.51 feet to a drill hole at the end of said stone wall;

2. South 87°53'56" West 174.44 feet to a drill hole at the intersection of stone walls;
3. South 87°38'57" West 162.75 feet to a drill hole in said stone wall, said point being the point of beginning.

Said Exclusion Area containing 4.764 acres, more or less.

**MEANING AND INTENDING** to describe all and the same/a portion of the premises conveyed by Deed from , to , dated , recorded at said Registry at Book, Page .