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The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



August 10, 2020

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Environmental Services to award a grant to the Upper Saco Valley Land Trust (hereinafter "USVLT"), (VC#265745-R001), North Conway, NH in the amount of \$84,000 to acquire approximately 41 acres of conservation easements and land in the Town of Albany to protect drinking water supply, effective upon Governor & Council approval through June 30, 2021. 100% Drinking Water/Groundwater Trust Fund.

Funding is available in the following account:

03-44-44-442010-3904-073-500580	<u>FY 2021</u>
Dept Environmental Services, DWGW Trust, Grants Non-Federal	\$84,000

EXPLANATION

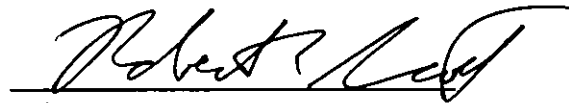
The Drinking Water and Groundwater Trust Fund (DWGTF) was created in 2016, using \$276 million of MtBE trial judgment funds, as authorized by RSA 485-F. The purpose of the Trust Fund is to provide sustainable, long-term funding for the protection, preservation, and enhancement of the drinking water and groundwater resources of the state. The Drinking Water and Groundwater Advisory Commission was established to administer the Trust Fund and to provide guidance to the State on the use of the Trust Fund.

On December 1, 2018, the Advisory Commission voted to authorize grants for 15 drinking water source protection projects. USVLT's request for \$84,000 was selected for grant funding from the DWGTF. USVLT will use the grant funds to acquire a conservation easement on approximately 41 acres of land within the wellhead protection area of a North Conway Water Precinct well and overlying a high-yield stratified-drift aquifer, a potential high-value future drinking water supply source.

The total cost for USVLT to acquire the conservation easements and land is \$235,000. The DWGTF will provide \$84,000 with \$151,000 match provided by USVLT. The purchase price of these conservation easements and land is based on a recent appraisal of fair market value.

Exhibit A describes the scope of the grant. Exhibit B provides the grant amount and payment terms and Exhibit C contains special provisions. Attachment A contains the conservation easement deed. The Attorney General's office has approved the attached draft deed as to form and substance, and will approve the actual deed as to execution. Attachment B contains a map of the land, which shows the land's relationship to the water supply source being protected.

We respectfully request your approval.

A handwritten signature in black ink, appearing to read "Robert R. Scott", written over a horizontal line.

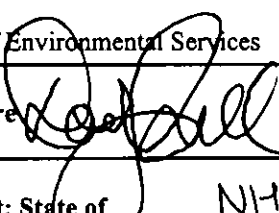

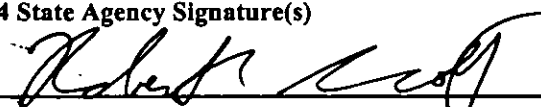

Robert R. Scott
Commissioner

Subject: Grant Agreement for a NH Drinking Water and Groundwater Trust Fund Grant
GRANT AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATIONS

1.1 State Agency Name NH Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, Concord, NH 03302-0095	
1.3 Grantee Name: Upper Saco Valley Land Trust		1.4 Grantee Address P.O. Box 2233, Conway, NH 03818	
1.5 Effective Date Upon G&C approval	1.6 Completion Date 6/30/2021	1.7 Audit Date N/A	1.8 Grant Limitation \$84,000
1.9 Grant Officer for State Agency Holly Green NH Department of Environmental Services		1.10 State Agency Telephone Number (603) 271-3114	
1.11 Grantee Signature 		1.12 Name & Title of Grantee Signor Douglas Burnett, President	
1.13 Acknowledgment: State of <u>NH</u> , County of <u>Carroll</u> On <u>4/22/2020</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.			
1.13.1 Signature of Notary Public or Justice of the Peace (Seal) 			
1.13.2 Name & Title of Notary Public or Justice of the Peace SHERRI SMITH-DAVIES Notary Public, New Hampshire My Commission Expires <u>10/21/2020</u> <u>Sherri Smith-Davies</u>			
1.14 State Agency Signature(s) 		1.15 Name/Title of State Agency Signor(s) Robert R. Scott, Commissioner	
1.16 Approval by Attorney General's Office (Form, Substance and Execution) By:  Attorney, On: <u>8/11/2020</u>			
1.17 Approval by the Governor and Council By: _____ On: <u> </u> / <u> </u> / <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

Upper Saco Valley Land Trust

Upper Saco Valley Land Trust (USVLT) will use the grant to acquire a conservation easement on approximately 41 acres of land, which overlies a high-yield stratified-drift aquifer and is within the wellhead protection area of a North Conway Water Precinct well. The parcel of land designated on current North Conway Tax Map 201 as Lot 23 will be protected in perpetuity, as specified in a draft conservation easement deed (see Attachment A), with water supply protection being one of the purposes of the conservation easement.

EXHIBIT B

GRANT AMOUNT & PAYMENT SCHEDULE

Payment in the amount of \$84,000 shall be made to USVLT upon receipt of the following:

1. Survey of the parcel of land.
2. A copy of the appraisal.
3. Title examination.
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 match of \$151,000 provided by USVLT.
7. The finalized conservation easement deed with restrictions to protect water supply.

Grantee Initials

Date

WCB
4/23/2020

EXHIBIT C

SPECIAL PROVISIONS

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

Grantee Initials Oct
Date 4/22/2020

CERTIFICATE of AUTHORITY

I, Richard Jenkinson, Secretary of the Upper Saco Valley Land Trust, do hereby certify that:

1. I am the duly elected Secretary of the Upper Saco Valley Land Trust;
2. At the meeting held on April 20, 2020, the Upper Saco Valley Land Trust Board of Directors ("Board") voted to accept funds from the NH Drinking Water and Groundwater Trust Fund and to enter into a contract with the NH Department of Environmental Services for the Lucy Brook Farm project;
3. The Board further authorized the President of the Upper Saco Valley Land Trust to execute any documents that may be necessary for this contract;
4. This authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
5. The following person has been appointed to and now occupies the office indicated in (3) above:

<u>Doug Burnell</u>	<u>President</u>
Name	Title

IN WITNESS WHEREOF, I have hereunto set my hand as the Secretary of the Upper Saco Valley Land Trust, on this date April 21, 2020.

<u>[Signature]</u>	<u>Secretary</u>
Signature of Certifying Officer	Title

STATE OF NEW HAMPSHIRE

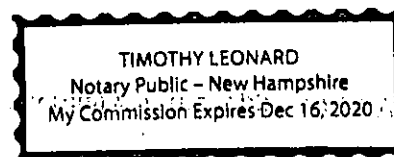
County of Carroll

On this date April 21st 2020, before me Timothy Leonard (Notary Public)

the undersigned officer, personally appeared, Richard Jenkinson, who acknowledged himself to be the Secretary of the Upper Saco Valley Land Trust, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

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

<u>[Signature]</u>	
Notary Public	



My Commission Expires: 12/16/2020

State of New Hampshire

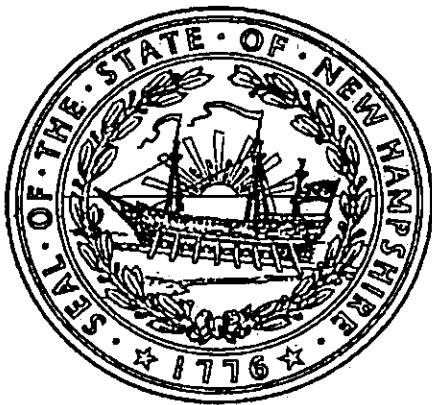
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that UPPER SACO VALLEY LAND TRUST is a New Hampshire Nonprofit Corporation registered to transact business in New Hampshire on September 15, 2000. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 359278

Certificate Number: 0004382923



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 18th day of January A.D. 2019.

A handwritten signature in black ink, appearing to read "Wm Gardner".

William M. Gardner
Secretary of State



UPPESAC-01

AHILL

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/10/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0C36861 Chantilly-Alliant Ins Svc Inc. 4530 Walney Rd Ste 200 Chantilly, VA 20151-2285	CONTACT Anna Hill	
	PHONE (A/C, No, Ext): (703) 397-0977	FAX (A/C, No): (703) 397-0995
INSURED Upper Saco Valley Land Trust PO Box 2233 Conway, NH 03818	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Federal Insurance Company	
	INSURER B:	
	INSURER C:	
	INSURER D:	
INSURER E:		
INSURER F:		
NAIC # 20281		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADOL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			3605-99-19 EUC	8/1/2020	8/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ Included
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			3605-99-19 EUC	8/1/2020	8/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			9365-10-61	8/1/2020	8/1/2021	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	(21) 7177-71-14	8/1/2020	8/1/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
A	Directors & Officers			8259-8764	8/1/2019	8/1/2021	Each Year 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

NH Department of Environmental Services
29 Hazen Dr.
PO Box 95
Concord, NH 03302-0095

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Attachment A – Conservation Easement Deed

DRAFT

YELLOW Text – Questions/Issues/Changes Pending

RED Text – DWGTF Minimum Deed Terms

BLUE Text – ACEP-ALE Minimum Deed Terms

2020.06.16 Abby and William made further edits via phone call

2020.06.11 Abby made changes based on phone call with Sandy on this date and updated internal references, other edits

2020.06.09 Abby addressed Sandy's comments and made minor edits

2020.06.02 Comments added from Sandy Crystal of NH DES DWGTF program

2019.10.03 Restructured to reflect minimum ALE Deed terms more succinctly

2019.04.09 Revised to incorporate edits by W. Abbott.

2019.02.28 Draft by E. Rowland based on SPNHF 2018 template

SPACE ABOVE THIS LINE FOR RECORDING INFORMATION

This conveyance is exempt from the New Hampshire Real Estate
Transfer Tax pursuant to N.H. RSA 78-B:2 I, II

AGRICULTURAL LAND EASEMENT

SUMMARY INFORMATION

Grantee's Name: Upper Saco Valley Land Trust

Mailing Address: PO Box 2233, Conway, NH 03818

Grantor Name: Mary A. Gaudette, Randy A. Gaudette, Kimberly A. Gaudette

Mailing Address: 3557 West Side Road, North Conway, NH 03860

Municipality & County Where Premises Located: Town of Conway, Carroll County

Size of Premises and Area Subject to Conservation Easement: Approx. 42.54+/- acres

Survey Title & Recording Information: Conservation Easement Plan of Lands of Mary, Randy, & Kimberly Gaudette "Lucy Brook Farm" dated June 9th, 2020, recorded at Carroll County Registry of Deeds as Plan _____, Page _____ (per survey prepared by Thorne Associates, 1164 Brownfield Road, Center Conway, NH 03813)

RECITALS

BY THIS DEED OF CONSERVATION EASEMENT, given this ____ day of _____, 2020, MARY A. GAUDETTE, RANDY A. GAUDETTE, and KIMBERLY A. GAUDETTE, with a mailing address of 3557 West Side Road, North Conway, New Hampshire (03860), (hereinafter referred to variously as the "Grantor," which shall, unless the context clearly indicates otherwise, include the Grantor's successors, assigns, and agents),

for consideration paid of \$177,750.00 (One Hundred Seventy-Seven Thousand, Seven Hundred Fifty Dollars), and partly as a charitable gift, GRANT with WARRANTY COVENANTS in perpetuity to

UPPER SACO VALLEY LAND TRUST, a New Hampshire nonprofit corporation, having an address at PO Box 2233, Conway, NH 03818 (hereinafter referred to as the "Grantee," which shall, unless the context clearly indicates otherwise, include the Easement Grantee's successors, assigns, and agents),

And with a right of enforcement to the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC),

And pursuant and consistent with New Hampshire RSA 485-F, with a third-party right of enforcement to the State of New Hampshire, acting through the New Hampshire Department of Environmental Services (sometimes referred to as "NHDES," and otherwise herein referred to as a "Third-Party Holder"), and its successors and assigns, as more fully described in Section 1.1 of this Agricultural Land Easement.

An AGRICULTURAL LAND EASEMENT (hereinafter referred to as the "Easement", the "ALE" or the "ALE Deed") on, over, through, under and across a certain tract of land (herein referred to as the "Conservation Area"), consisting of approximately 42.54+/- acres, situated on West Side Road, in the Town of Conway, County of Carroll, State of New Hampshire, shown as the "Conservation Area" on a survey plan entitled: "Conservation Easement Plan of Lands of Mary, Randy, & Kimberly Gaudette 'Lucy Brook Farm' by Thorne Associates, 1164 Brownfield Road, Center Conway, NH 03813, dated 9th, 2020, recorded at Carroll County Registry of Deeds as Plan ___, Page ___ (hereinafter "Survey Plan"); more particularly bounded and described in Appendix "A" attached hereto and made a part hereof,

TOGETHER WITH a right-of-way appurtenant to the Conservation Easement for pedestrian and vehicular access to the Conservation Area as necessary or appropriate exercise Grantee's rights hereunder, over and across any and all rights-of-way and roads owned by the Grantor or over which Grantor has rights of access to the Conservation Area, as more particularly described in "Appendix A", which Conservation Easement shall protect, in perpetuity, the following Conservation Attributes, in furtherance of the following Conservation Purposes, all as in accordance with the Use Limitations further elaborated herein.

This Agricultural Land Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP) 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468 for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses of the Conservation Area.

1. CONSERVATION ATTRIBUTES

- 1.1. Definition of Conservation Attributes.** The Conservation Area includes significant natural resource attributes, as well as attributes related to scenic values, recreational opportunities, and educational opportunities (collectively, and hereinafter, the "Conservation Attributes" or "Attributes"). Conservation Attributes may either be wholly located within the Conservation Area, or, if the Attributes are regional in nature and extend beyond the Conservation Area, the Conservation Area contributes significantly to them.
- 1.2. Baseline Documentation Report.** Baseline conditions of the Conservation Area are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of the Grantee, and which Report includes additional information about the Conservation Attributes.
- 1.3. Attributes Can Change over Time.** The parties acknowledge that environmental or other conditions that sustain the Conservation Attributes may change over time, and that the resulting change or disappearance of any given Conservation Attribute does not necessarily negate the significance or public benefit of the others. Similarly, the parties acknowledge that certain Attributes may not be listed within the Baseline Documentation Report, either because they may exist on the Conservation Area but not be known about as of the execution of this Easement, or because they may arrive at the Conservation Area at some later time; these Attributes shall still be considered worthy of permanent conservation and protection consistent with the Purposes of this Easement as described in Section 2 below. Accordingly, the parties agree that, upon the appropriate documentation of such features as a supplement to the Baseline Documentation Report, such features shall be considered part of the Conservation Attributes to be conserved and protected prospectively by this Easement.
- 1.4. Currently Known Conservation Attributes.** Conservation Attributes existing at the time of the execution of the Conservation Easement include, but are not limited to:
- 1.4.A.** 410 +/- feet of undeveloped, scenic frontage along West Side Road that contributes to the rural character of the Town of Conway;
 - 1.4.B.** 930 +/- feet of undeveloped frontage along the Saco River, a state-designated river (see below) with important recreational and economic values;
 - 1.4.C.** 1,830 +/- feet of riparian frontage along Lucy Brook, a tributary of the Saco River;
 - 1.4.D.** Habitat types that include:
 - 16.6 +/- acres of hemlock-hardwood-pine forest that is predominantly composed of mature sugar maple (*Acer saccharum*);
 - 5.6 acres of grassland made of pasture and cultivated fields;

5.6 acres of floodplain forest dominated by silver maple (*Acer saccharinum*), and comprised of several closely related imperiled natural communities within New Hampshire (rank S2); and
0.5 acres of seasonally flooded forest-shrub wetland;

- 1.4.E. 42.54+/- acres of prime or locally significant agricultural soils, and/or 42.54+/- acres of soils in the highest suitability category (Group 1) for forest products, as determined by the U.S. Natural Resource Conservation Service;
- 1.4.F. 42.54+/- acres of High Priority Water Supply Lands that are within the Wellhead Protection Area of the North Conway Water Precinct's public drinking water supply, as identified by the NH Department of Environmental Services;
- 1.4.G. An element of the scenic viewshed as seen from Whitehorse Ledge and Cathedral Ledge;
- 1.4.H. The addition of 42.54+/- acres of protected lands that will enhance nearby conserved lands totaling more than 30,000 acres, including 182 acres of the Lucy Family Farm to the north, 412 acres of Echo Lake/Cathedral Ledge State Park to the west, 166 acres of NH State scenic easement to the east, and several thousand acres of the White Mountain National Forest to the west, all of which is important to the movement of wildlife, including wide ranging and area-dependent species, and important for facilitating large-scale ecological processes; and,
- 1.4.I. The potential to support the rare silver maple-ironwood-shorthusk floodplain forest community, a critically imperiled natural community within New Hampshire (rank S1).

1.5. Consistency with Planning Documents. The following conservation plans recognize the significance of the Conservation Area:

- 1.5.A. The N.H. Fish and Game Department's Wildlife Action Plan, last revised as of 2015, has categorized approximately 88% of the Conservation Area as "Tier 1," containing the "highest ranking habitats by ecological condition in the state";
- 1.5.B. The Town of Conway's 2003 Master Plan identifies the importance of the permanent protection of environmentally significant lands and lists West Side Road as a Town-designated Scenic Road;
- 1.5.C. The Saco River, in accordance with New Hampshire RSA 483, is a Designated River within the State of New Hampshire's Rivers Management and Protection Program; and,
- 1.5.D. USVLT's 2011 Strategic Conservation Plan identifies the Intervale Focus Area, which includes 100% of the Conservation Area.

2. CONSERVATION PURPOSES

In order to conserve and protect the Conservation Attributes, the Easement is hereby granted pursuant to NH RSA 477:45-47, exclusively for the following Conservation Purposes (herein referred to as the "Purposes"), in the following order of priority:

- 2.1. **Agriculture.** The protection of the Conservation Area's productive farm and forest land, including the prime agricultural soils, which currently support crops, hayfields, pasture

and a sugar bush;

2.2. Water Resources. The protection of the quality of surface water and groundwater resources, as part of the Town of Conway's public drinking water supply, on or under the Conservation Area; and,

2.3. Scenery. The scenic enjoyment of the general public along West Side Road and from the Saco River;

2.4. Natural Habitats. The protection of the natural habitats or ecosystems found on or otherwise supported by the Conservation Area;

2.5. Open Space. The conservation and protection of open spaces, particularly the mix of fields and forests, of which the Conservation Area consists;

2.6. Outdoor Education & Recreation. The potential for the property to provide education opportunities for the general public.

All of these Purposes are consistent with the U.S. Internal Revenue Code, Sect. 170(h).

3. USE LIMITATIONS

The Conservation Area shall be maintained in perpetuity in a manner that is not detrimental to or inconsistent with the Purposes of this Easement.

3.1. Industrial or Commercial Uses. Industrial or commercial activities on the Conservation Area are prohibited, except the following:

- agricultural production and related uses conducted as described in the ALE Plan (see Section 3.2.D);
- forestry, as allowed and limited in Section 3.3,
- the sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the Conservation Purposes of this Easement, further conditioned and discussed in Section 3.7,
- *de minimis* commercial activities that do not harm or diminish the Conservation Attributes (also sometimes referenced as "Conservation Values") and Conservation Purposes of the Conservation Area, as further limited and conditioned below in Section 3.1.B, and which examples may include:
 - temporary or seasonal outdoor activities or events that do not harm the agricultural use, future viability, and related Conservation Values of the Conservation Area herein protected, such as hosting a wedding, party, or festival by a paying third party;
 - commercial enterprises related to agriculture or forestry including but not limited to: agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, and farm wineries, or the sale of any such products and food onsite, including those products and food made with ingredients that were not grown or derived from the

Conservation Area (but ideally complementing products and food that are produced on the Conservation Area);

- o small-scale commercial enterprises compatible with agriculture or forestry per the approval process outlined in 3.1.B.1.

3.1.A. Definition of Commercial. For the purposes of this Easement, “commercial” shall refer to the sale of goods or services, or any uses or activities in furtherance thereof. Said use or activity shall be understood as occurring on the Conservation Area if the sale transaction(s) or the transacted goods or services are located on or came from the Conservation Area. A use or activity shall be deemed commercial regardless of: the form of the sale proceeds (for example, cash vs. bartered goods and/or services); the form/status of the recipient of the consideration (for example: individual vs. corporation, nonprofit vs. for-profit corporation, or governmental vs. private entity); and whether the recipient of the consideration is the Grantor or some third party (under a rental agreement or other arrangement). Notwithstanding the foregoing, any sale of services to the Grantor by a third-party conducting activities on the Conservation Area otherwise permitted by this Easement shall not constitute a commercial activity (for example, a licensed forester hired by the Grantor to prepare a forest management plan).

3.1.B. Allowance for Commercial Activities with *De Minimis* Impacts. With prior written approval of Grantee, the Grantor reserves the rights to conduct certain commercial activities on, under, or over the Conservation Area that have *de minimis* negative impacts on the Conservation Attributes (and that are not forestry, agriculture, or commercial activities related to energy generation, as discussed and limited elsewhere in this Easement). Grantor also reserves the right to construct, place, introduce, use, maintain, repair, replace, enlarge, relocate, improve, or rebuild certain structures and improvements in furtherance thereof, all as subject to the general limits on structures in Section 3.6. Examples of such commercial activities with *de minimis* impacts are listed above at the beginning of this Section 3.1.

3.1.B.1. Approval Process. Any such activity, including but not limited to associated structures or improvements, shall be permitted only after the Grantor has given to the Grantee advance written notice and a proposed plan and/or description of said activity, use, structures, and improvements, and the Grantor has provided the Grantee with written approval of same. The Grantor shall provide said notice at least forty-five (45) days prior to the commencement of any such activity or use, of any construction, installation, enlargement, improvement, or relocation of associated structure(s) or improvement(s), or of any site preparations therefor, and shall include in said notice a detailed description, and maps as necessary, of the proposed activity, use, structure, and improvement, including but not limited to their location, function, size, timing, duration, frequency, and intensity, and provisions for the parking of visitors’ vehicles so as not to impair significantly any Conservation Values. The Grantee shall evaluate the proposal and may approve the same only if the Grantor finds,

in its sole discretion, that said activity, use, structure, or improvement meet(s) all of the conditions and terms of this Easement. The Grantee may choose to limit its approval to a certain time period. Within thirty (30) days after Grantee's receipt of such notice and plan, the Grantee shall approve or disapprove in writing the proposal and shall so inform the Grantor.

3.1.B.2. Waiver of Approval Process. In cases where the *de minimis* commercial activities proposed, or the impact(s) thereof, is obviously minor, the Grantee has the right to waive the requirement that the Grantor's notice and plan must be submitted in writing.

3.2. Agriculture. All agriculture on the Conservation Area shall be conducted in a manner not detrimental to or inconsistent with the Conservation Purposes of this Easement.

3.2.A. Definition of Agriculture. For the purposes of this Easement, and to distinguish deliberately this definition from that of the state, municipality, or any other entity, the term "agriculture" shall mean:

- The propagation, planting, growing, production, collection, and/or harvesting of plants, fungi, or parts thereof, except for certain trees and activities related thereto which are included within the above definition of "forestry" (examples of said plants, fungi, or parts thereof include: vegetables; fruits; nuts; berries; grains; mushrooms; hay and other fodder grazed by livestock; ornamental flowers; and trees planted, grown, and wholly harvested on a predictable, often short-term rotation including but not limited to Christmas trees and fast-growing tree species harvested for energy production);
- The breeding, raising, growing, production, and/or harvesting of animals (for example: livestock, poultry, fish, and pets); and,
- The processing, storing, and/or marketing for sale of plants, fungi, animals, and/or parts or products thereof, only if said plants, fungi, and/or animals were grown and/or raised on the Conservation Area, and except for certain trees and activities related thereto which are included within the above definition of "forestry" (examples of said parts or products include: honey, eggs, milk, cheese, meat, fur, manure, animal feed, compost, and baked goods for consumption).

3.2.A.1. Distinction between Agriculture & De Minimis Commercial Activities. "Agriculture" shall not include *de minimis* commercial enterprises, which may be recreational or other activities that are derivative of agriculture, such as farm-based weddings, concerts, festivals, and other large-scale events. Similarly, the term "agriculture" shall not include "agritourism" amenities, such as hayrides, corn maze tours, seasonal events, or other farm-themed activities with paying customers. Similarly, "agriculture" shall not include the processing and sale or consumption of food not produced from or grown on the Conservation Area, and of handicrafts

made with materials not from the Conservation Area. All of these non-agricultural uses or activities of the Conservation Area may be allowed, with limitations and permissions, subject to Sect. 3.1.B "Allowance for Commercial Activities With *De Minimis* Impacts," above.

3.2.B. Preserving Agricultural Uses. The provisions of this ALE Deed and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Conservation Area, so long as the agricultural operations are consistent with the long-term viability of the Conservation Area, ALE Plan (see 3.2.D) and ALE purposes (also known as Conservation Purposes), and do not violate Federal laws, including Federal drug laws. No uses will be allowed that decrease the ALE's protection for the agricultural use and future viability, and related conservation values, of the Conservation Area. Allowed uses of the Conservation Area include, the specific uses allowed in Section 3 and the following activities, subject to the qualifications stated below:

- 3.2.B.1 *Agricultural Production* – The production, processing, and marketing of agricultural crops and livestock is allowed provided it is conducted in a manner consistent with the terms of the ALE Plan described in Section 3.2.D.
- *Forest Management and Timber Harvest* – Forest management and timber harvesting is allowed, provided it is carried out to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Conservation Area (see also Section 3.B below).
- *On-Farm Energy Production* – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Conservation Area (see also Section 3.E below). Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the Conservation Values of the Conservation Area and consistent with the purposes of the ALE.

3.2.C. Best Management Practices for Commercial and Large Non-Commercial Agriculture. All commercial agriculture and all non-commercial agriculture in excess of 2 acres, shall be guided by then-current, scientifically based, generally accepted best management practices ("BMPs") for the sites, soils, and terrain of the Conservation Area that are provided by the Grantee to the Grantor from time to time. BMP's are recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service, the State of New Hampshire's Department of Natural and Cultural Resources (formerly known as the Department of Resources and Economic Development), the University of New Hampshire's Cooperative Extension, or other governmental natural resource conservation and management agencies then active, and as may be revised, updated, or superseded from time to time. Agricultural BMPs as of the execution of this Easement those contained in the "Manual of Best Management Practices

(BMPs) for Agriculture in New Hampshire” by the New Hampshire Department of Agriculture, Markets, and Food and last revised June 2011. To the extent that there are contradictions or ambiguities within any published BMP standards, or across multiple BMPs, then the Grantee and Grantor shall make good faith efforts to communicate and commit to resolve the issue, so long as any resolution is consistent with the Purposes of this Easement.

3.2.D. Agricultural Land Easement Plan. As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Conservation Area are subject to an ALE Plan, as approved by NRCS, to promote the long-term viability of the land to meet the ALE purposes. The ALE Plan must also be approved by the Grantor and the Grantee. Grantor agrees the use of the property will be subject to the ALE Plan on the Conservation Area.

- The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the conservation purposes of this ALE. The Grantee and Grantor agree to update the ALE Plan in the event the agricultural uses of the Conservation Area change. A copy of the current ALE Plan is kept on file with the Grantee.
- The Grantee must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, NRCS may notify the Grantee. NRCS will give the Grantee and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action. If Grantee fails to enforce the terms of the ALE, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement.

3.3. Commercial Forestry. All commercial forestry on the Conservation Area shall be conducted in a manner not detrimental to or inconsistent with the Conservation Purposes of this Easement.

3.3.A. Definition of Forestry. For the purposes of this Easement, and to distinguish deliberately this definition from that of the state, municipality, or any other entity, the term “forestry” shall mean:

- The planting, growing, managing, production, and/or harvesting of trees, or parts of trees (for example: seeds, sap, leaves, and bark), only if said trees are being/were grown in the ground in the Conservation Area’s soils and exposed to the natural sunlight, moisture, and other weather conditions of the Conservation Area. Pre-commercial, silvicultural activities such as but not limited to thinning, girdling, and other forms of forest stand improvement are included within these activities.
- The processing, storing, and/or marketing for sale of trees, or parts or products thereof (for example: sawlogs, chips, firewood, sawdust, sap and syrup, and bark mulch), only if said trees were grown on the Conservation Area as set forth in the immediately preceding.

- 3.3.A.1. Distinction between Forestry & Agriculture.** Notwithstanding the above, excepted from “forestry” and included within “agriculture” as defined above are those activities where trees are planted, grown and wholly harvested on a predictable, often short-term rotation (for example: ornamental trees for landscaping, Christmas trees, and fast-growing tree species harvested for energy production).
- 3.3.A.2. Distinction between Forestry & *De Minimis* Commercial Activities.** “Forestry” shall not include commercial activities that are derivative of tree harvesting activities, such as patrons hunting in managed woodlands or dogsledding along woods roads. For potential applicability to such non-forestry activities and uses, see Section 3.1.B. (“Allowance for Commercial Activities with *De Minimis* Impacts.”).
- 3.3.B. Best Management Practices for Commercial Forestry.** All commercial forestry shall be guided by then-current, scientifically based, generally accepted best management practices (“BMPs”) for the sites, soils, and terrain of the Conservation Area that are provided by the Grantee to the Grantor from time to time. BMP’s are recommended by the U.S. Department of Agriculture’s Natural Resources Conservation Service, the State of New Hampshire’s Department of Resources and Economic Development, the University of New Hampshire’s Cooperative Extension, or other governmental natural resource conservation and management agencies then active, and as may be revised, updated, or superseded from time to time. Forestry BMPs as of the execution of this Easement are: “Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire” and “New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations” (NH Dept. of Resources & Economic Development, Division of Forests & Lands, & University of NH Cooperative Extension, dated, respectively, December 2010 and 2016). To the extent that there are contradictions or ambiguities within any published BMP standards, or across multiple BMPs, then the Grantee and Grantor shall make good-faith efforts to communicate and commit to resolve the issue, so long as any resolution is consistent with the Purposes of this Easement and the forestry goals enumerated above.
- 3.3.C. Limits on Clearcutting.** Clearcutting and even-aged management shall be prohibited, except that individual patch clearcuts no larger than one (1) acre that are well dispersed in time and location (such that no more than five (5) acres in combined total shall be clearcut in any consecutive fifty-year period) and are integral to silvicultural practices that help foster uneven-aged forest stand structure shall be permitted. Clearcutting should be used only where other silvicultural methods cannot be used to meet landowner objectives. A clearcut shall be defined as any harvesting of a forested area greater than one twentieth (1/20) acre in size that results in a residual basal area of trees over 4 1/2 inches in diameter measured at 4 1/2 feet above the ground of less than 30 square feet per acre.
- 3.3.D. Highgrading Prohibited.** There shall be no highgrading harvest practices. The term “highgrading” means the removal of the most commercially valuable trees,

leaving residual stands composed of trees of poor condition or species composition, through which the forest may become depleted over time of the best growing stock.

3.3.E. Management Plan Required. A "Management Plan" (Forest Management Plan, Wildlife Management Plan, or other approved plan, but not the ALE plan as referenced in Section 3.2.D.) shall be required for any Commercial Forestry. In addition, given the provision that land use may change in the future, if the Conservation Area contains 40 contiguous acres of forest or 20 percent of the Conservation Area is forestland then commercial forest management and timber harvesting must be performed in accordance with a written Forest Management Plan. The Forest Management Plan must be prepared by a professional resource manager, in consultation with the Grantee. The Management Plan shall meet all of the following requirements:

3.3.E.1. Consistency with Purposes of the Easement. The Management Plan shall be consistent with the Purposes of this Easement and shall be designed to protect and conserve the Conservation Attributes of this Easement.

3.3.E.2. Management Plan Preparation and "Qualified Person." The Management Plan shall be prepared by a licensed professional forester, or by another qualified person approved in advance and in writing by the Grantee at the Grantee's sole discretion, either of whom shall hereinafter be referred to as a "Qualified Person." The Management Plan shall have been prepared, or else reviewed and updated as required by a Qualified Person, not more than ten (10) years prior to the commencement of any forestry or forest management activities, such as but not limited to the cutting of trees, timber stand improvement, and construction of woods roads.

3.3.E.3. Content of Management Plan. The Management Plan shall include but not be limited to:

- A statement of "Forestry Goals" that shall specifically address the accomplishment of those Purposes for which this Easement is granted, and which shall include:
 - Maintenance of soil productivity;
 - Protection of water quality, wetlands, and riparian zones;
 - Maintenance or improvement of the overall quality of forest resources;
 - Conservation of scenic quality;
 - Protection or enhancement of significant natural communities, and significant plant and animal species or their habitats;
 - Protection of recreational and/or educational features or improvements, such as then-existing trails and signage;
 - Protection of significant historic, archeological, and cultural features identified as Conservation Attributes;

- A statement of Grantor objectives, which must not be inconsistent with the aforementioned Forestry Goals;
- Forest type map showing stands related to the prescriptions provided in the Management Plan;
- Maps showing topography, and soil types as determined by the U.S. Department of Agriculture's Natural Resources Conservation Service (or by another similarly charged successor governmental agency);
- Maps showing the following types of features but only to the extent such features and their locations are known by the Grantor or Qualified Person or are otherwise identified as Conservation Attributes or further described in the Baseline Documentation Report:
 - wetlands including but not limited to vernal pools;
 - surface waters;
 - habitat features, including significant natural communities or significant plant/animal species;
 - recreational trails and other recreational and/or educational features; and
 - significant historic, archeological, and/or cultural features;
- Copy of, or recording reference to, this Easement;
- Copy of, or reference to, relevant Best Management Practices as more fully described in Section 3.2.C.4.a. above; and
- Prescriptions for each described stand, including but not limited to commercial and non-commercial treatments, and proposed schedule for activities.

3.3.E.4. Provision of Management Plan & Written Certification. At least thirty (30) days prior to the commencement of any forestry operations, including but not limited to on-site preparations, the Grantor shall provide to the Grantee the following:

- A copy of the Management Plan, including any proposed revisions thereto (forestry operations already prescribed within a Management Plan previously provided to the Grantee within the past ten (10) years are not subject to this submission requirement, so long as the forestry prescriptions have not been modified).
- A written certification, signed by a Qualified Person, that such Management Plan is in compliance with the terms of this Easement.

3.3.E.5. Supervision by Qualified Person. Any Commercial Forestry shall be supervised by a Qualified Person in order to assist the Grantor with conforming to the Management Plan and this Easement.

3.3.E.6. Actual Activities Determine Compliance. Although the purpose of the Management Plan, with reference to relevant Best Management Practices, is to guide forestry activities on the Conservation Area, actual activities

will determine compliance with this Easement.

3.3.E.7. Exemption for Low-Impact Commercial Forestry Activities. The Grantor may be exempted from any or all of the requirements of Sections ~~3.2.C.~~ above, if the Grantee provides a prior written approval of exemption to the Grantor after the Grantee finds, at its sole discretion, that the proposed commercial forestry activities are anticipated to have minimal negative impacts (for example, the small-scale collection and sale of sap from maple trees).

3.4. Other Vegetation Management. Other Vegetation Management includes all non-commercial forestry, as well as land conversion (also known as cover-type conversion), emergency response to forest disturbance, and other alterations to the native vegetation of the Conservation Area. Other Vegetation Management activities are reserved to the Grantor so long as they are conducted in a manner not detrimental to or inconsistent with the Conservation Purposes of this Easement.

3.4.A. Non-Commercial Forest Management. Non-commercial forest management includes all "Forestry" activities (as defined above in ~~Section 3.2.C.1.~~) that are not performed for commercial or industrial purposes, and that are not conducted for the contemporaneous production of sale proceeds or other consideration (including barter transactions). These activities may include the small-scale cutting or harvesting of wood products for the personal use of the Grantor, such as clearing trees to maintain the edge of a field, cutting firewood for use by Grantor, or ensuring public safety. A Forest Management Plan will not be required for the following allowed noncommercial activities: (i) cutting of trees for the construction of allowed roads, utilities, buildings, and structures on the Conservation Area, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic use as firewood or for other domestic uses by Grantor, if equal to or less than ten (10) cords (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species. Other activities allowed herein include removing vegetation to combat active fire, clearing vegetation to mark boundaries, and, upon prior written notice to Grantor, to alter vegetation for habitat management purposes, such as to restore native wildlife or plant habitat or to prevent the spread of disease. Any non-commercial forestry activities that entail the harvesting of more than ten (10) cords of wood per year shall be subject to the provisions of Section 3.3.E. above and shall require a Management Plan.

3.4.B. Emergency Response to Forest Disturbance. In the event or where there is significant threat of any broad-scale, high-impact disturbance to forested areas of the Conservation Area, such as fire, flood, wind, ice damage of an extreme nature, catastrophic disease and/or insect infestation, and the like (hereinafter, "Forest Disturbance"), the Grantee and Grantor (representing him/herself or as represented by the Qualified Person as defined above in ~~Section 3.3.E.2.~~) shall consult and seek consensus regarding appropriate actions to be taken, if any, in order to best uphold the Purposes of this Conservation Easement, as well as to protect the health of local and regional forests. If no Management Plan exists for the Conservation Area at the time of the Forest Disturbance, or if an existing

Management Plan does not include an appropriate course of action in response to the Forest Disturbance, and/or if time is of the essence, Grantee, in its sole discretion, may waive any Management Plan requirement.

3.4.C. Land Conversion. Land Conversion on the Conservation Area may be allowed as long as the following conditions are met:

3.4.C.1. Definition of Land Conversion. "Land Conversion" shall mean, for any given area of the Conservation Area, the removal of trees, saplings, shrubs, and groundcovers including stumps and roots preliminary to and including the preparation of surface topography and soils for the support of agriculture or gardens, orchards, field, meadow, or like non-forested acreage or habitat. Patch clearcuts as described in Section 3.3.C. or other silvicultural techniques that favor early successional habitat in the accomplishment of creating uneven-aged forest stand structure, shall not be considered land conversion.

3.4.C.2. Land Conversion Plan Required above Certain Threshold. Where land conversion in excess of one (1) acre in aggregate over any given consecutive five (5) year period is planned to occur, the Grantor shall submit for Grantee's review and approval a Land Conversion Plan (hereinafter "Conversion Plan") demonstrating that such land conversion is consistent with the Purposes of this Conservation Easement and will continue to be managed accordingly. The Conversion Plan may also be made part of the ALE plan or a Management Plan, described and characterized above in Section 3.2.B.5

3.4.C.3. Provision of the Conversion Plan. The Conversion Plan shall be prepared by a natural resource professional. For the purposes hereof, "natural resource professional" shall mean a USDA Natural Resource Conservation Service soil conservationist, a licensed forester, the Qualified Person as defined above in 3.3.E.2. or other person who has been approved in advance and in writing by the Grantee.

3.5. Limitations on Impervious Surface Limits. Impervious surfaces will not exceed 37,060 square feet (two percent of the Conservation Area-42.54 ac. or approximately 0.85 acres) of the Conservation Area, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Conservation Area, including, but not limited to, buildings or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this ALE.

3.6. Limitations on Nonagricultural Uses. Any activities inconsistent with the purposes of the ALE are prohibited. The following activities are inconsistent with the purposes of ALE and are specifically prohibited, subject to the qualifications stated below:

3.6.A. Subdivision. Separate conveyance of a portion of the Conservation Area or division or subdivision of the Conservation Area is prohibited.

3.6.A.1. Restrictions Apply to the Whole. Even if the Conservation Area consists

of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Conservation Area as a whole.

- 3.6.A.2. Leases Allowed.** Irrespective of this use limitation, the Grantor shall be permitted to rent or lease any or all of the Conservation Area for a use or activity permitted by this Easement.
- 3.6.A.3. Joint Ownership Allowed.** Notwithstanding the foregoing, an undivided parcel may be owned as a joint tenancy or tenancy in common.
- 3.6.A.4. Division Allowed under Certain Circumstances.** As an exception to this use limitation, Grantor may convey a portion of the Protected Property to an abutter pursuant to a boundary-line agreement to resolve bona fide boundary-line disputes, with the prior written consent of Grantee per Section 12; provided that the total acreage of land protected under this Conservation Easement shall not be reduced by more than one (1) acre in the aggregate, and further provided that such transaction shall constitute a partial termination under Section 13 and an amendment under Section 18 and be subject to the terms thereof.
- 3.6.B. Structures.** Structures that are not detrimental to or inconsistent with the Conservation Purposes of this Easement may be allowed on the Conservation Area pursuant to this section and relevant subsections.
- 3.6.B.1. Definition of Structure.** For the purposes of this Easement and to distinguish deliberately this definition from that of the state, municipality, or any other entity, a "structure" shall mean any combination of materials on, over, in and/or under the ground and having a temporary or permanent fixed location. A structure may be primarily two dimensional, such as a paved trail, road or parking lot, fence or a sign, or three dimensional, such as a building, wall or piping. An unpaved trail or unpaved road shall not be a structure but shall be a soil disturbance subject to the restrictions of Section 3.5.
- 3.6.B.2. Existing Structures.** As of the date of this Conservation Easement, there are no known structures in the Conservation Area except for stonewalls throughout and two (2) greenhouses.
- 3.6.B.3. Building Envelopes and Construction on the Conservation Area.** Unless specifically allowed by Grantee, as described in Section 3.6.B.3.b. below, all new structures and improvements must be located within the Building Envelope containing approximately 6.9 acres and described in EXHIBIT, which is appended to and made a part of the ALE.
- 3.6.B.3.a. Building Envelopes May Change.** The boundaries and location of the Building Envelopes may be adjusted if Grantee and the Chief of NRCS provide prior written approval of the adjusted boundaries and location. The Building Envelopes may not increase in size and the adjusted Building Envelopes must provide equal or greater protection of the

agricultural use and future viability, and related conservation values of the Protected Property.

- 3.6.B.3.b. Agricultural Structures & Utilities May Be Allowed Outside of Building Envelope.** Agricultural structures and utilities to serve approved buildings or structures, including, including on-farm energy structures allowed under Section 3.E below that neither individually nor collectively have an adverse impact on the agricultural use and future viability and related conservation values of the Conservation Area, may be built outside of the Building Envelope with prior written approval of the Grantee provided that the utilities or agricultural structures are consistent with the ALE Plan described in Section 3.2.B.5. above.
- 3.6.B.4. Fences.** Fences may be maintained and replaced and new fences installed if they are necessary for agricultural operations on the Conservation Area or to mark boundaries of the Conservation Area.
- 3.6.B.5. Expressly Impermissible Structures.** Notwithstanding the generality or specificity of this Section 3.6., there shall not be constructed, placed, introduced, enlarged, relocated, used, maintained, repaired, replaced, rebuilt, or improved on, under, or above the Conservation Area, any of the following structures, including any portion thereof: dwelling, which for the purposes of this Easement is any house, apartment, or other place of residence or overnight accommodation; dormitory; residential driveway; tennis or other athletic court or field; swimming pool; commercial golf courses or golf ranges; commercial campgrounds; telecommunications tower; mud runs, paintball, and other adventure courses; stadiums, performance stages, race tracks or courses; playgrounds; polo fields, dressage fields, equestrian rings; airstrips, and permanent aircraft pads, and underground storage tank other than as part of any water supply or waste water disposal system permitted by the Easement.
- 3.6.B.6. Permitted Minor Structures that Do Not Require Grantee Approval.** The Grantor reserves the right to establish and maintain minor structures in the Conservation Area as follows:
- 3.6.B.6.a. Minor Forestry Structures.** Grantor reserves the right to establish and maintain minor, temporary, or portable structures commonly necessary for, or appropriate to support, allowed forestry activities on the Conservation Area, such as temporary equipment sheds, machinery or trailers, portable privies, gates, barriers, fences, culverts, bridges and other stream crossings, and boundary markers. Where the installation of minor forestry structures may pose a potential risk to water quality, said structures shall be set back at 250 feet, measured horizontally, from the edges of any water bodies and wetlands. All such structures must be installed as part of an approved forestry process and all such structures must be removed in a timely fashion after the completion of forestry activities.
- 3.6.B.6.b. Minor Agricultural Structures.** For agricultural activities that are

conducted on the Conservation Area, Grantor reserves the right to establish and maintain minor three-sided or unroofed structures conducive to small-scale agriculture such as but not limited to poultry-grazing units, hutches and portable structures for animal husbandry, and animal watering and irrigation systems.

3.6.B.6.c. Minor Recreational Structures. The Grantee reserves the right to establish and maintain minor structures to enhance the opportunity for low-impact outdoor recreation, including, but not limited to trail markers, steps, bog bridges, water bars, railings, wildlife observation blinds, temporary observation and hunting stands, gates, barriers or low fences to prevent access by motor vehicles or to protect fragile areas or scientific research areas; provided that they shall be constructed and located to complement the natural and scenic features of the Conservation Area.

3.6.B.7. Major Agricultural Structures May Require Grantee Approval. Any barns, storage sheds, processing facilities, or other structures that support the viability of the agricultural operation on the Conservation Area must be constructed within the defined Building Envelope and are subject to impervious surface limits as set forth in Section 3.5. If construction of any such agricultural buildings proves impracticable or impossible to build within the Building Envelope, then such structures may be built outside of the Building Envelopes, but only with Grantee Approval (see Section 3.6.B.3b).

3.6.B.8. Water Supply & Disposal for Any Allowed Structures. A water supply whose source is within the Conservation Area, such as but not limited to a spring, well, and associated pipeline and pump, and that serves any permitted structures, would be considered a customary, ancillary improvement to such structure and is not in and of itself subject to the Grantee's prior written approval. Similarly, any associated system for disposing of waste water, as long as it does not include human waste, would also be considered an ancillary improvement and in and of itself not be subject to the Grantee's approval.

3.6.B.9. Signs & Outdoor Advertising Structures. Any sign or outdoor advertising structures displayed on the Conservation Area, either erected in association with allowed forestry, agriculture, or commercial activities with *de minimis* impacts, or in furtherance of the Conservation Purposes of this Easement, shall not have a face exceeding sixteen (16) square feet in size, shall not consist of digital or other electronic displays, and shall not be artificially illuminated.

3.6.B.10. De Minimis Commercial Activity Structures. Structures for *de minimis* commercial activities shall be permitted upon Grantee's prior written approval, subject to the noticing provision of Section 12.4.A.

3.6.C. Additional Restrictions and Granting of Easements for Utilities and Roads. The granting or modification of easements for utilities and roads is prohibited

when the utility or road will adversely impact the agricultural use and future viability, and related conservation values of the Conservation Area as determined by the Grantee in consultation with the Chief of NRCS.

- 3.6.C.1. Prior Approval & Consistency with Purposes.** The Grantor shall not create or convey any right-of-way, easement, or use restriction into, under, on, over, or across the Conservation Area, in favor of any third party, without the prior written approval of the Grantee. (An example of an interest requiring advance approval would be the proposed conveyance of additional land use restrictions, to be recorded at the Registry of Deeds, prohibiting certain agricultural or forestry practices in association with a program for sequestering carbon or facilitating other ecosystem services.) Any such interest must not be detrimental to the Purposes of this Easement or significantly impair the Conservation Attributes. Any interest conveyed contrary to this Section 3.6.C.1 shall be null and void.
- 3.6.C.2. Current Use Not Affected.** Notwithstanding the foregoing, any application by the Grantor for enrollment in, release from, or other change with respect to N.H. Current Use Assessment under RSA 79-A or N.H. Conservation Restriction Assessment under RSA 79-B, both as may be amended from time to time, shall be exempt from this Section 3.6.C.
- 3.6.C.3. Qualified Holder Required.** In the case of the conveyance of an additional conservation easement or restriction consistent with RSA 477:45-47, a Qualified Holder must accept and record any such easement or restriction.
- 3.6.C.4. Notice & Approval Process.** At least thirty (30) days prior to the execution of any instrument conveying said right of way, easement, or use restriction, Grantor shall provide to the Grantee written notice and a draft of said instrument, plus any associated map, sketch, or survey plan, at Grantor's sole expense. Within thirty (30) days after Grantee's receipt of same, the Grantee shall approve or disapprove in writing of the proposed conveyance, such approval not to be unreasonably withheld, and shall so inform the Grantor. Any disapproval shall specify the reasons therefor. The grantee of said instrument shall record the same at the relevant County Registry of Deeds, including the final, approved version of any associated survey plan.
- 3.6.D. Surface Alterations and Road Construction.** Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Conservation Area is prohibited, except as follows only to the extent that the activity does not degrade or threaten to degrade the quality and sustainable yield of ground and surface water resources associated with the property.

3.6.D.1. Limited Surface Alterations Allowed only for:

- 3.6.D.1.a.** Dam construction in accordance with an ALE plan to create ponds

for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation;

3.6.D.1.b. Erosion and sediment control pursuant to a plan approved by the Grantee;

3.6.D.1.c. Soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Easement;

3.6.D.1.d. Soil disturbance activities necessary in the accomplishment of allowed forestry, habitat management, or outdoor recreation or outdoor education activities on the Conservation Area; or

3.6.D.1.e. Agricultural activities conducted in accordance with the ALE Plan.

3.6.D.2. New Roads. New roads may be constructed if they are approved in advance by Grantee, within impervious surface limits, and necessary to carry out the agricultural operations or other allowed uses on the Conservation Area.

3.6.D.3. Maintenance of Existing Roads. Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Conservation Area.

3.6.E. Oil, Gas, or Mineral Exploration and Extraction. Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this ALE or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from Conservation Area is prohibited.

If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this ALE is executed, and their interests have not been subordinated to this ALE, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph (xxxTK).

3.7. On-Farm Energy Production & Renewable Energy Structures. Renewable Energy structures are allowed on the Conservation Area, subject to the following limitations, and with prior written approval from Grantee based on a determination that the structures are consistent with the Purposes and do not impair the Conservation Attributes.

3.7.A. Definition. For the purposes of this Easement, “renewable energy” is energy available for collection or conversion from direct sunlight, wind, running water, organically derived fuels including but not limited to wood and agricultural

sources, waste heat, and geothermal sources. Allowance for renewable energy production on the Conservation Area can enhance Conservation Attributes by supporting permitted uses of the Conservation Area and by potentially lessening the need for other energy production facilities which may emit gases that contribute to global warming and thus help mitigate the negative impacts of climate change on the Conservation Attributes.

3.7.B. Sizing. Any renewable energy structures, including but not limited to associated lines, poles, pipes, and other infrastructure for transmitting said energy, shall have a height not exceeding thirty (30) feet as measured from the highest point of said structure to its lowest point at grade, or else, if said structure is mounted upon some other structure, to the lowest point at grade of the underlying structure.

3.7.B.1. Maximum Energy Output. Further, any such structure shall be sized at the time of installation to serve not more than the combined energy needs of:

- Then existing, or otherwise simultaneously proposed, uses and/or activities on the Conservation Area for agriculture, forestry, habitat management, and low-impact outdoor recreation, as permitted by the terms of this Easement; and
- One single-family residence with customary ancillary improvements owned by the Grantor as of the proposed time of installation and located adjacent or proximate to the Conservation Area, only upon the Grantor's demonstration, to the satisfaction of the Grantee, that there is not a reasonable, and physically and economically feasible, site in such adjacent or proximate area for meeting said need; and
- Commercial activities with *de minimis* impacts as permitted under Sections 3.1 & 3.2 above.

3.7.B.2. Later Expansions. Following the initial installation of any approved renewable energy production facility, any later, proposed expansion of the physical size of said facility shall require the Grantee's advance approval, and the Grantor's reassessment and recalculation, relative to the above maximum sizing limit, of the entire facility including the proposed expansion as if the entire facility were being constructed for the first time.

3.7.C. Incidental Income Permissible. Under Sections 3.1 B.1, above, the momentary sale of surplus or incidental energy generated in excess of the then-current demand, under a "net metering" or similar other type of arrangement, shall be allowed under this Easement.

3.7.D. Consistency with Limitations on Structures and Impervious Surfaces. The maximum footprint of all aboveground renewable energy structures on the Conservation Area, as measured to the dripline in the case of any roof or other cover extending beyond the structure's base, shall not exceed the impervious surface limitations described in Section 3.5 above, in combination with all other impervious surfaces subject to said impervious surface limits. However,

exempted from the immediately referenced calculation is the footprint of any such energy structure mounted on top of some other permitted structure (e.g., on-roof photovoltaic display).

3.7.E. Notice & Approval Process. At least thirty (30) days prior to the commencement of any construction, installation, or on-site preparation, including but not limited to land clearing, for a renewable energy production facility, the Grantor shall provide the Grantee with written notice including details of said facility including but not limited to the scope, size, and location, and method and timing of said construction/installation. Within thirty (30) days after Grantee's receipt of such notice, the Grantee shall approve or disapprove in writing the proposed facility, and shall so inform the Grantor.

3.8. Dumping, Disposal & Burning. No wastes generated off the property shall be disposed of, stored, or discharged on the property. There shall be no dumping, injection, disposal, burning, storage or burial of man-made materials or materials then known to be environmentally hazardous on, above, or below the Conservation Area. Further, no such materials shall be stored or applied on the Conservation Area except in conjunction with any of the permitted agricultural, forestry, conservation, noncommercial outdoor recreation, or education uses of the Conservation Area, provided such uses are not detrimental to the Purposes of this Easement nor significantly impair the Conservation Attributes.

3.9. Use of Conservation Area for Developing Other Premises. The Conservation Area shall not be used to satisfy the density, open space, frontage, setback, or other requirements of any applicable zoning ordinance, subdivision regulation, site plan regulation, or other land use regulation of any governmental unit with respect to the development of any other premises in which Grantor may otherwise have certain rights. Notwithstanding the foregoing, said governmental regulations shall not include those governing New Hampshire's Current Use Assessment under RSA 79-A and N.H. Conservation Restriction Assessment under RSA 79-B, both as may be amended from time to time.

3.10. Boundary Markers. The Grantor shall not move, remove, or alter iron rods, stone piles, stone bounds, or other monuments or markers designating a point or witness point in association with the legal boundary of the Conservation Area, except as permitted by RSA 472:6 ("Removing or Altering Boundary Markers") as may be amended from time to time.

3.11. Recreational Uses and Public Access.

3.11.A. Definition of Low-Impact Outdoor Recreation. For the purposes of this Conservation Easement, "low-impact outdoor recreation" shall mean outdoor recreational and educational activities that have a low impact on the Conservation Attributes, and shall include, without limitation: walking, hiking, nature observation and study, cross country skiing, snowshoeing, fishing, hunting, trapping, horseback riding, and non-motorized bicycling, as well as nature-based outdoor education and scientific research.

3.11.B. Grantor's Recreational Uses. The Grantor reserves the right to engage in low-

impact outdoor recreation on the Conservation Area. The Grantor also reserves the right to engage in primitive camping at no more than three (3) campsites on the Conservation Area. This right shall include but not be limited to: establishing tent sites, fire rings, and constructing tent platforms. Grantor may invite guests to similarly engage in low-impact outdoor recreation or camping on the Conservation Area. This paragraph shall not be construed to allow the operation of a commercial campground.

3.11.C. Motorized Vehicles.

3.11.C.1. Grantor's Use. The Grantor reserves the right to use and allow the use of motorized vehicles for property management, so as long as such uses do not result in substantial rutting, erosion or other impairment of the Conservation ~~Values~~.

3.11.C.2. No Motorized Vehicles for Recreational Use. No motorized vehicles shall be allowed for recreational purposes, except that snowmobiles, as defined in NH RSA 215-A:1, XIII may be allowed if they are operated only on snow and ice outside of the sanitary protective area of public water supply well(s), more than 250 feet from a surface water body being used as a public water supply; more than 100 feet from the tributaries contributing to such water bodies, except when crossing such tributaries, and only on designated trails depicted on a plan approved by the N.H. Department of Environmental Services.

3.11.C.3. Third-Party Use & Remedies. In the event that motorized vehicle use by third parties causes substantial rutting, erosion or other impairment, the Grantee and Grantor will work cooperatively to remedy the situation, which may include posting the Conservation Area against such uses, and establishing and maintaining gates and other barriers preventing such uses.

3.11.D. No Right of Public Access. Nothing contained herein should be construed as granting the general public a right of physical access to any portion of the Conservation Area, and the Grantor shall have the right to post the Conservation Area against trespass. Notwithstanding the foregoing, the Grantor also has right to permit low-impact outdoor recreational use of the Conservation Area by the general public or by his/her invitees and guests.

3.11.E. Liability. Notwithstanding any recreational use of the Conservation Area permitted herein, Grantor and Grantee claim and shall have all of the rights and immunities against liability to the fullest extent of the law under New Hampshire RSA 508:14, as amended and any successor provisions thereof, and under any other applicable provision of law.

4. SUBSEQUENT TRANSFER, TAXES, & MAINTENANCE

4.1. Sale or Transfer of Property Requires Advance Notice. The Grantor shall notify the Grantee in writing within ten (10) days of the transfer of title to the Conservation Area or any division of ownership thereof permitted hereby, including but not limited to any change in Trustee if the Conservation Area is held in trust. Further, the Grantor shall

make specific reference to this Easement in any deed or in any other document transferring such title.

- 4.2. Grantee Exempt from Maintenance.** The Grantee shall be under no obligation to maintain the Conservation Area or pay any taxes or assessments thereon.

5. BURDENS & BENEFITS

- 5.1. Easement Binding on Future Owners.** The terms and conditions of the ALE run with the land and are binding upon and enforceable against the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including all Section 3 use limitations. In the event of any rent or lease of all or a portion of the Conservation Area as permitted by this Easement, the Grantor shall remain responsible for conformance and compliance with all of the terms of this Easement. The benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable, in whole or in part, only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Sect. 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any charitable conservation organization, but only if said governmental or charitable recipient is a "qualified organization" within the meaning of Sect. 170(h)(3) of said Code ("Qualified Holder") and thus: 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. Further, a Qualified Holder must meet the qualifications established in NH RSA 477:46, as may be amended from time to time. Any such assignee's or transferee's power of assignment or transfer shall be similarly limited. If the Grantee transfers its interest in this Easement to another Qualified Holder, the transferor shall provide written notice of same to the Grantor and to the other holder(s) of interests in this Easement no later than ten (10) days after the date of said transfer.
- 5.2. No Conveyance of Rights to Third Parties.** Notwithstanding any other provisions in this Easement to the contrary, this Easement evidences no intent to, and does not, convey or afford to any third party any rights herein, including enforcement rights.

6. AFFIRMATIVE RIGHTS OF GRANTEE

- 6.1. Access to Conservation Area.** The Grantee shall have access to the Conservation Area and all of its parts for such inspection and documentation (including but not limited to taking photos and collecting data) as are 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 exception and reservation of this Easement. Grantee shall have the right to enter buildings in the Conservation Area to determine compliance with this Easement.
- 6.2. Review of Ongoing Activities.** In furtherance of the exercise of the Grantee's stewardship obligations under Section 6.1., above, the Grantee shall have the right to review and assess all ongoing activities, uses, and associated impacts on the

Conservation Area, including but not limited to impacts which may not have been anticipated as of the Grantee's written approval then in effect, whether due to the accumulation of impacts over time, or the emergence or detection of impacts for the first time, or otherwise. For any activity or use for which the Grantee has already provided specific written approval to the Grantor, if the Grantee finds that said activity or use, exceeds what was permitted within said written approval, or that the impacts of said activity or use are significantly impairing Conservation Attributes or are otherwise detrimental to the Purposes of this Easement, the Grantee shall have the right to modify or revoke said approval in accordance with the terms of said approval. The Grantor's continuation of any activity or use in excess of what is provided for within said written approval shall not give rise to any claim of prescriptive right or waiver of the terms and conditions of this Easement.

6.3. Signs. To facilitate such inspection and to identify the Conservation Area as conservation land protected by the Grantee, the Grantee shall have the right to place and maintain signs along the Conservation Area's boundaries after consultation with the Grantor.

6.4. Grantee's Right to Post. The Grantee shall have the right to post, and to authorize others to post, any or all of the Conservation Area so as to prohibit public access other than for low-impact outdoor recreation. The Grantee shall provide advance written notice to the Grantor of Grantee's intention to post the Conservation Area. This right shall be in addition to the Grantee's right to require the Grantor to post the Conservation Area set forth in Section 3.11, above.

7. RESOLUTION OF DISAGREEMENTS

7.1. Informal Dialogue. The Grantor and the Grantee desire that issues arising from time to time concerning the interpretation of this Easement, or any use or activity on the Conservation Area, will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, if either party becomes concerned about whether any proposed or actual use, activity, or failure to take action (which together for the purposes of this Section 7, "Resolution of Disagreements" shall be referred to as the "Activity") complies with 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.

7.2. Mediation. If informal dialogue does not resolve a disagreement regarding the Activity, and if the Grantor agrees not to proceed or 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 North Conway, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own legal fees and other associated costs, and the costs of mediation shall be split equally between the parties.

7.3. Legal Action. Notwithstanding the availability of mediation to address disagreements

concerning the compliance of any Activity with this Easement, if the Grantee believes that some use, activity, or failure to take action of the Grantor or of a third party is causing irreparable harm or damage to the Conservation Attributes, or creates an imminent threat of same, 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 or threat of same.

8. BREACH OF EASEMENT – GRANTEE’S REMEDIES

8.1. Notification of Breach & Demand for Action.

8.1.A. If the Grantee determines that a violation or breach of this Easement has occurred (which together shall hereinafter be referred to as a “breach”), the Grantee shall have the rights to provide notice and demand corrective action to cure the breach, except as otherwise provided for in Section 8.10: “Causes Beyond Grantor’s Control,” below. In addition, where the breach involves damage, disturbance, or harm (hereinafter referred to as “damage”) to the Conservation Area, the Grantee shall have the right to demand corrective action to require the restoration of the portion of the Conservation Area so damaged to its prior condition as of creation of this Easement.

8.1.B. If the Grantor learns of a breach, or purported breach, from a source other than the Grantee, the Grantor shall notify the Grantee of same within five (5) days after learning of same.

8.2. Performance by Grantor. Within thirty (30) days after the Grantor’s receipt of such notice from the Grantee or Grantor’s delivery of such notice to the Grantee, as the case may be, the Grantor shall undertake those actions, including but not limited to 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. If the Grantor believes that said thirty (30) day period is insufficient to accomplish said cure, the Grantor may request an extension of time by submitting to the Grantee within ten (10) days after the aforesaid notice a proposed plan of action to cure said breach (hereinafter “Cure Plan”) for the Grantee’s review and prior written approval. Within fifteen (15) days after the Grantee’s receipt of the Cure Plan, the Grantee shall approve or disapprove in writing of said plan, and shall so inform the Grantor. If the Grantee does not approve of the Cure Plan in its entirety, the Grantor retains the aforesaid burden to cure said breach within the originally established thirty (30) day period.

8.3. Failure by Grantor. If the Grantor fails to perform its obligations under the immediately preceding Section 8.2. “Performance by Grantor,” or fails to continue diligently to cure any breach until finally cured, the Grantee may undertake any actions, in the Grantor’s name, that are reasonably necessary to repair any damage or to cure such breach, including but not limited to 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 Conservation Area to the condition that existed as of creation of this Easement at Grantor’s expense. In the event that Grantee seeks injunctive relief against Grantor,

Grantor hereby waives any requirement for an injunction bond or other security under Rule of Civil Rules of the Superior Court of New Hampshire.

- 8.4. Grantee's Remedies.** If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to any conservation attribute of the Conservation Area, the Grantee may pursue its remedies under this Section 8 "Breach of Easement..." without prior notice to the Grantor or without waiting for the period provided for cure to expire.
- 8.5. Damages.** The Grantee shall be entitled to recover damages from the party directly or primarily responsible for the breach or for damage to any Conservation Attributes protected hereby, including but not limited to damages for the loss of scenic, aesthetic, or environmental attributes of the Conservation Area. Without limiting the Grantor's liability therefor, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Conservation Area.
- 8.6. Grantee's Rights Additive.** The Grantee's rights under this Sect. 8 "Breach of Easement..." are in addition to the provisions of Section 7 "Resolution of Disagreements," said Section 7 also applying 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.
- 8.7. Immediate Danger of Irreparable Damage.** If at any time the Grantee determines, in its sole discretion, that Conservation Attributes protected by this Easement are in immediate danger of irreparable damage, the Grantee may seek the injunctive relief described in Section 8:3 "Failure by Grantor," both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including but not limited to specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. All of the Grantee's remedies described in this Section 8 "Breach of Easement..." shall be available to the Grantee and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 8.8. Costs.** Provided that the Grantor is directly or primarily responsible for the breach, including responsibilities identified in Section 8:10.B, below, 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; however, if the Grantor ultimately prevails in an enforcement action, each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantor to enforce this 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.
- 8.9. Forbearance by Grantee.** No failure, forbearance, omission, or delay by the Grantee in exercising any right, power, or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, remedy, power, or privilege hereunder. The Grantor hereby

waives any affirmative defenses of waiver, estoppel, laches, or statute of limitations.

8.10. Causes Beyond Grantor's Control. The Grantor and Grantee shall have the following rights and obligations for acts or occurrences on the Conservation Area that are beyond the direct control of the Grantor.

8.10.A. Natural Causes. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any damage to, or change in, the Conservation Area, resulting from natural causes beyond the Grantor's control, including but not limited to such natural disasters or occurrences 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 damage to the Conservation Area or to any party resulting from such causes.

8.10.B. Third Parties. The Grantor is responsible for the acts and omissions of other parties acting on the Grantor's behalf or direction, acting as the Grantor's tenant, or acting with the Grantor's permission, and of other parties encroaching with the Grantor's knowledge, and the Grantee shall have the right to enforce against the Grantor for events or circumstances inconsistent with this Easement resulting from such acts or omissions. However, as to the acts or omissions of third parties other than the aforesaid parties, the Grantee shall not have a right to enforce against the Grantor unless the Grantor is complicit in said acts or omissions, fails to cooperate with the Grantee in all respects to halt or abate the event or circumstance of non-compliance resulting from such acts or omissions, or fails to report such acts or omissions to the Grantee as provided for in Section 8.A. "Notification of Breach & Demand for Action."

8.10.C. Notice to Grantor. Upon the Grantee's receipt of information concerning a purported breach of this Easement apparently caused by circumstances beyond the Grantor's control, such as but not limited to acts of God and unauthorized actions by third parties, the Grantee shall give reasonable notice of same to the Grantor.

8.10.D. Remedies. 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 8 "Breach of Easement..." against any third party responsible for any actions inconsistent with this Easement, and, further, prior to either party taking any such separate action, the acting party shall provide timely advance notice and description of said intended action to the other party. Further, the Grantor shall, at the Grantee's option, assign the Grantor's right of action against such third party to the Grantee, or appoint the Grantee as the Grantor's attorney in fact for the purpose of pursuing an enforcement suit or action against such third party.

9. PROCEEDINGS INVOLVING OTHER PARTIES

In the event of any legal or administrative proceeding or dispute relating to the Conservation Area and which involves the Grantor and a party or parties other than the Grantee, the Grantor shall provide to the Grantee prompt notice and, upon the Grantee's request, copies of any and all documents relating to any such proceeding or dispute. Further, the Grantor shall give the

Grantee the opportunity to participate in the defense, settlement, or resolution of any such proceeding or dispute, and no such settlement or resolution shall be agreed to without the prior written approval of the Grantee, which approval shall not be unreasonably withheld, conditioned, or delayed.

10. UNITED STATES RIGHT OF ENFORCEMENT

Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE are not enforced by the holder of the ALE. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor up to the amount of the United States contribution to the purchase of the ALE.

The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the ALE and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE, the ALE Plan, and the United States Cooperative Agreement with the Grantee, the United States will have reasonable access to the Conservation Area with advance notice to Grantee and Grantor or Grantor's representative.

In the event of an emergency, the United States may enter the Conservation Area to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantee and Grantor or Grantor's representative at the earliest practicable time.

11. STATE OF NEW HAMPSHIRE RIGHT OF ENFORCEMENT

- 11.1. If the Grantee ceases to enforce the Easement conveyed hereby or fails to enforce it, then the Third-Party Holder, the State of New Hampshire, may enforce the requirements of this easement.
- 11.2. The Third-Party Holder may assign or transfer its rights herein to any party qualified to become the Grantee's or Third-Party Holder's assignee or transferee. Any such assignee or transferee shall have like power of assignment or transfer and shall be bound by the provisions of this Easement.

12. NOTICES

12.1. Addresses. All notices, requests and other communications required to be given under this Conservation Easement shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested (except as set forth in Section ~~10.2~~) to:

Grantor: Mary A. Gaudette, Randy A. Gaudette & Kimberly A. Gaudette
c/o Randy A. Gaudette
3557 West Side Road
North Conway, NH 03860

Grantee: Upper Saco Valley Land Trust
PO Box 2233
Conway, NH 03818

~~ADD Third Party: NH DES DWGTF~~

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.

12.2. Electronic Notice. In addition to the methods set forth in Section ~~12.1~~, a notice or request for approval or any other communication may be sent by electronic mail ("email") or other written electronic communication only if an authorized agent of the receiving party has consented to receiving notice by electronic communication at a specific address and the recipient, by an email sent to the email address for the sender or by the same electronic communication returned to the originating address for the sender, or by a notice delivered by another method in accordance with Section ~~12.1~~, acknowledges having received that email or electronic communication. An automatic "read receipt" shall not constitute acknowledgment of an email for purposes of this Section ~~12.2~~.

12.3. Notices and Requests in Writing. Any notices to the Grantee or requests for the Grantee's approval, required or contemplated hereunder, must be in writing and must include, at a minimum, sufficient information (including, but not limited to, documents, maps, plans, specifications, and designs where appropriate) to enable the Grantee to determine, in its sole discretion, whether proposed plans are consistent with the terms and Purposes of this Conservation Easement and do not impair the Conservation Attributes. Grantee approvals or denials must be in writing. Any discretionary approval by the Grantee shall also meet the conditions set forth in ~~Section 16~~.

12.4. Time for Notice and Reply.

12.4.A. Where the Grantor is required to provide notice to the Grantee pursuant to this Easement, such notice as described hereinabove shall be given in writing forty-five (45) days prior to the event giving rise to the need to give notice except as otherwise specifically provided herein.

12.4.B. Where the Grantor is required to obtain the Grantee's approval, such request for approval shall be given in writing forty-five (45) days prior to undertaking the

proposed activity, except as otherwise specifically provided herein. The Grantee, upon receipt of the Grantor's request, shall 1) acknowledge receipt of the same, and 2) shall grant, grant with conditions, or withhold its approval within forty-five (45) days of receipt. No proposed activity may proceed without the Grantee's written approval as provided herein. Upon receiving the Grantee's written approval, the Grantor may proceed with the proposed activity and is not required to wait until the expiration of the forty-five (45) day period.

12.5. Provisions That Require Notice to the Grantee. Some form of notice by the Grantor to the Grantee is required, or in the case under the following provisions:

- 3.4.A. Vegetation alteration for habitat management purposes
- 4.1. Sale or Transfer of Property
- 7.1 Mediation

12.6. Provisions That Require Prior Written Approval from the Grantee. Holder's approval is required under the following provisions:

- 3.1.B. Allowance for Commercial Activities with De Minimis Impacts
- 3.3.E.7. Exemption for Low-Impact Commercial Forestry Activities
- 3.4.C.2. Land Conversion Plan Required above Certain Threshold
- 3.6.B.3.a Building Envelopes May Change.
- 3.6.B.3.b. Agricultural Structures & Utilities May Be Allowed Outside of Building Envelope.
- 3.6.B.7. Major Agricultural Structures Outside the Building Envelope
- 3.6.B. 10. *De Minimis* Commercial Activity Structures.
- 3.6.C.1. Creation or conveyance of any right-of-way, easement, or use restriction in favor of any third party
- 3.7. On-Farm Energy Production & Renewable Energy Structures.
- 3.7.B.2. Later expansion of renewable energy production facility

13. SEVERABILITY

If any provision of this Easement, or the application thereof to any party or circumstance, is found to be invalid by a court of competent jurisdiction, or otherwise, the remainder of the provisions of this Easement or the application of such provision to parties or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

14. ENVIRONMENTAL RESPONSIBILITIES

Except as otherwise specifically set forth herein, nothing in this Easement shall be construed as giving any right or ability to the Grantee to exercise physical or managerial control of any

of the Grantor's activities on the Conservation Area. Under no circumstance shall this Easement be construed such that the Grantee shall become an operator with respect to the Conservation Area within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980 as amended ("CERCLA"), or of any other federal, state, or local law or regulation making operators of property responsible for remediation of contamination.

Environmental Warranty. Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Conservation Area. Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Conservation Area, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Conservation Area. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Conservation Area or any restoration activities carried out by Grantee at the Conservation Area; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Conservation Area by Grantee.

"Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

15. EXTINGUISHMENT, TERMINATION & CONDEMNATION

The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this ALE, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Conservation Area.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the ALE is _____ percent, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time.

If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this ALE. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee, _____ percent of the Proportionate Share; and (b) to the United States _____ percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Conservation Area for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

16. AMENDMENT & DISCRETIONARY APPROVAL

The Grantor and Grantee recognize and agree that unforeseen or changed circumstances could arise in which an amendment to certain terms or restrictions of this Easement would be appropriate and desirable, or that some activities may require the discretionary approval of the Grantee, as further described below. To this end, the Grantor and Grantee have the right to agree to amendments to this Easement, and the Grantee may exercise discretionary approval, all in accordance with:

- The provisions and limitations of this Section 16;
- The then-current policies of the Grantee; and
- Applicable governmental laws, rules, and/or regulations.

Any amendment or exercise of discretionary approval shall:

- Be consistent with the Purposes of this Easement;
- Not significantly impair Conservation Attributes;

- Not affect the qualification of this Easement or the status of the Grantee under any applicable laws, including Sect. 501(c)(3) of the Internal Revenue Code of 1986 and regulations promulgated thereunder, as may be amended, and NH RSA 477:45-47 as may be amended from time to time; and
- Not affect the perpetual duration of this Easement or the perpetual protection of its Purposes.

Any request by the Grantor for an amendment or for discretionary approval shall be in writing and shall describe the proposed amendment or the activity for which approval is sought in sufficient detail to allow the Grantee to judge the consistency of the request and of the proposed activity with the Purposes and other terms and conditions of this Easement. To evaluate and then make a determination on the Grantor's request, the Grantee shall have the right to engage independent experts, at the Grantor's sole cost, necessary for the Grantee to evaluate the adequacy of the proposal. If a proposed amendment or exercise of discretionary approval has aspects which, in some respects, would be detrimental to the Purposes of this Easement and/or would impair the Conservation Attributes, but, in other respects, enhance said Purposes and/or Conservation Attributes, then the Grantee shall evaluate the net effect of such impacts when considering any amendment or exercise of discretionary approval. Nothing in this ~~Section 16~~ shall require the Grantee to consider, negotiate, or approve any proposed amendment or request for discretionary approval.

16.1. Amendments. This ALE may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this ALE and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void. Amendments shall subject to review by the N.H. Attorney General's Office, Charitable Trusts Division as necessary, and shall be recorded in the Registry of Deeds.

16.2. Amendment Shall Not Terminate. Notwithstanding the foregoing, the Grantor and Grantee shall have no right or power to agree to any amendment or consent to any activities that would result in the termination of this Easement.

17. GOVERNING LAW & INTERPRETATION

This Easement shall be interpreted under and governed by the laws of the State of New Hampshire and shall be liberally construed to effect the Purposes of this Easement especially in the case of any ambiguity in the meaning or interpretation of any terms or provisions of this Easement.

The table of contents, headings, and captions in this Easement have been inserted solely for convenience of reference and shall not define or limit the provisions of this Easement nor affect their construction or interpretation. Matters inserted within parentheses in the text of this Easement, or otherwise presented as a list of examples, are provided for purposes of example only and are not intended to be by way of limitation or expansion.

18. GOVERNMENTAL APPROVALS

The Grantor shall carry out all activities upon and uses of the Conservation Area in accordance with all applicable local, state, federal, and other governmental laws and regulations, and shall be solely responsible for securing in a timely fashion all necessary governmental permits and approvals in association therewith; the Grantor's failure to do so shall be a breach of this Easement. Further, the Grantor explicitly acknowledges and accepts the fact that governmental laws or regulations may change, including but not limited to the possibility of said laws and regulations being more limiting of the Grantor's use rights than this Easement.

19. NO MERGER

This Easement is to last in perpetuity, and that, to that end, no conveyance by the Grantor of the underlying fee interest in the Conservation Area, or by the Grantee or holder of any other third-party interest in this Easement, to any other party holding an interest in the Conservation Area, shall be deemed to extinguish or eliminate this Easement or any portion thereof, under the doctrine of "merger" or any other legal doctrine.

20. HOLD HARMLESS

The Grantor shall release, hold harmless, defend, and indemnify the Grantee, except as provided for in Section 8.10, "Causes Beyond Grantor's Control," from any and all liabilities including but not limited to injuries, losses, damages, judgments, costs, expenses and fees which the Grantee may suffer or incur as a result of, arising out of, or connected with: (A) the activities of the Grantor on the Conservation Area, other than those caused by the negligent acts or acts of misconduct by the Grantee; or (B) violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation or requirement by the Grantor in any way affecting, involving, or relating to the Conservation Area.

21. ENTIRE AGREEMENT

This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, and agreements relating to this Easement, all of which are merged herein.

22. INDEPENDENT REPRESENTATION

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

The Grantor, by granting this Easement, shall be bound by, 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 granted.

IN WITNESS WHEREOF, I have set my hand this _____ day of _____, 2020, as TITLE of
Lucy Brook Farm Randy A. Gaudette:

Randy A. Gaudette, TITLE

IN WITNESS WHEREOF, I have set my hand this _____ day of _____, 2020, as TITLE of
Lucy Brook Farm Kimberly A. Gaudette:

Kimberly A. Gaudette, TITLE

IN WITNESS WHEREOF, I have set my hand this _____ day of _____, 2020, as TITLE of
Lucy Brook Farm Mary A. Gaudette:

Mary A. Gaudette, TITLE

STATE OF NEW HAMPSHIRE
COUNTY OF CARROLL, SS

Personally appeared the above named Randy A. Gaudette, Kimberly A. Gaudette, and Mary A.
Gaudette, personally known or proven to me to be the TITLES of Lucy Brook Farm, and
acknowledged the foregoing instrument as his voluntary act and deed, before me
this _____ day of _____, 2020.

Notary Public/Justice of the Peace

My Commission Expires _____

Notary Seal

ACCEPTED: STATE OF NEW HAMPSHIRE, DEPARTMENT OF ENVIRONMENTAL
SERVICES

By: _____ Date: _____, 2020
Robert R. Scott, Commissioner

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, SS.

Personally appeared the above named Robert R. Scott, Commissioner of the Department of Environmental
Services, this _____ day of _____, 2020 and acknowledged the foregoing.

Notary Public/Justice of the Peace

My Commission Expires _____

Notary Seal

ACCEPTED: UPPER SACO VALLEY LAND TRUST

By: _____

Print Name: **Douglas C. Burnell**

Title: _____ Date: _____, 2020
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF CARROLL, SS

Personally appeared the above named, **Douglas C. Burnell**, personally known or proven to me to be
the authorized representative of the Upper Saco Valley Land Trust, and acknowledged the
foregoing instrument as his/her and the Upper Saco Valley Land Trust's voluntary act and deed,
before me this day of _____, 2020

Notary Public/Justice of the Peace

My Commission Expires _____

Notary Seal

➤ APPENDIX A ◀

CONSERVATION EASEMENT PROPERTY DESCRIPTION

The "Protected Property" subject to this Easement is that certain parcel/area of land with any and all buildings, structures, and improvements thereon, consisting of 42.54 acres, more or less, situated on West Side Road in the Town of Conway, County of Carroll, State of New Hampshire, more particularly bounded and described below and shown as the "Easement Area-Parcel 23.2 on a survey plan entitled "*Conservation Easement Plan of Lands of Mary, Randy, & Kimberly Gaudette 'Lucy Brook Farm'*" prepared by HEB Engineers, Inc., dated May 15 and revised May 26, 2020, and recorded at Carroll County Registry of Deeds on even date herewith:

(metes and bounds description of entire parcel.)

Easement Area - Parcel 23.2 with the any improvements thereon, situated along West Side Road in Conway, Carroll County, New Hampshire as shown on a plan of land entitled "Conservation Easement Plan of Lands of Mary, Randy, & Kimberly Gaudette 'Lucy Brook Farm' by Thorne Associates, 1164 Brownfield Road, Center Conway, NH 03813, dated 9th, 2020 and recorded on _____ at Plan Book ____, Page ____ at the Carroll County Registry of Deeds, being more particularly bounded and described as follows:

APPENDIX B

(metes and bounds description of building envelope)

Attachment B - Map

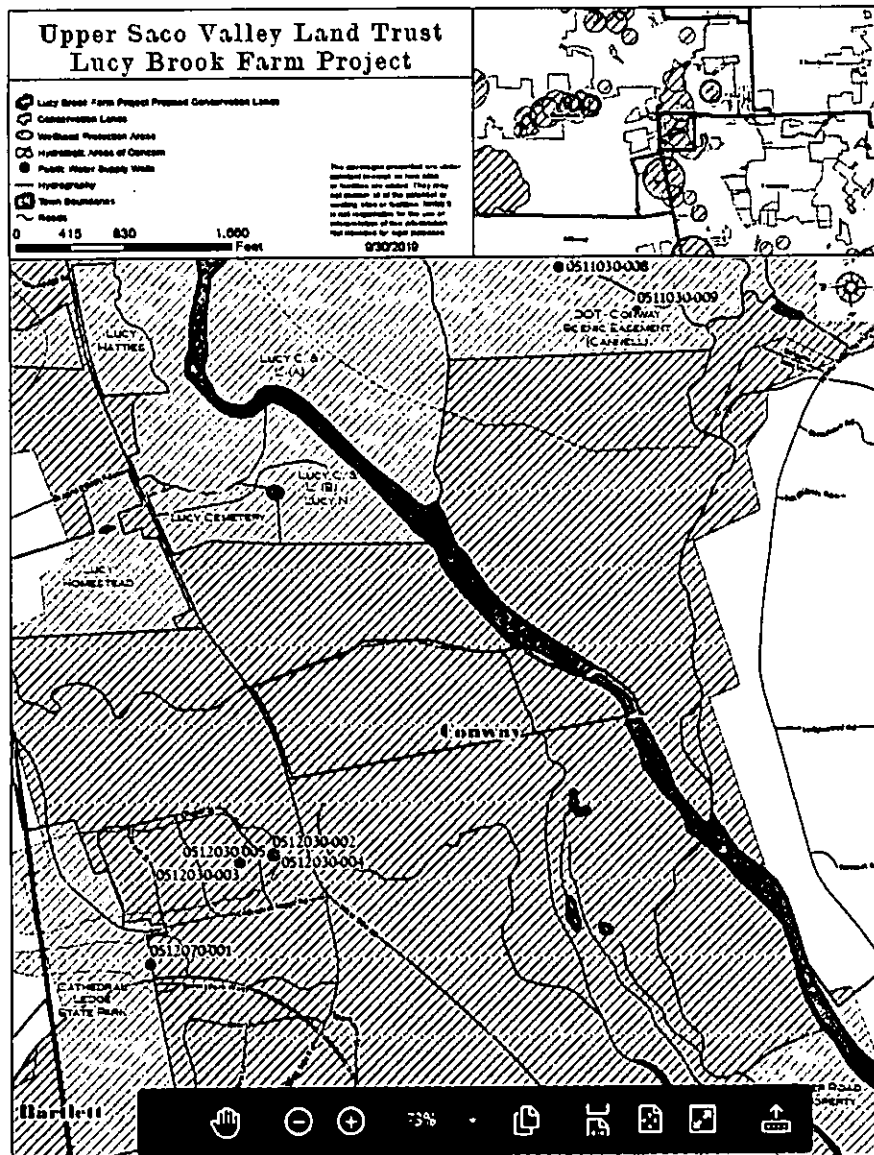
Recipient: Upper Saco Valley Land Trust (USVLT)

Project Location: Conway

PROJECT DESCRIPTION: LUCY BROOK

TRUST FUND GRANT: \$84,000

This project will acquire a conservation easement on approximately 41 acres of land within the wellhead protection area of the North Conway Water Precinct and overlying a high-yield stratified-drift aquifer, a potential high-value future drinking water supply source. The Upper Saco Valley Land Trust will hold the conservation easement. The Natural Resources Conservation Service (NRCS) will hold third party right of enforcement. The Drinking Water and Groundwater Trust Fund grant is being combined with grants from NRCS ACEP-ALE, NH SCC Moose Plate, private foundations, and a bargain sale by the landowner.



AT A GLANCE

**Approved by the DWG
Commission:**

October 1, 2018

Project Description:

- Protects the drinking water supply of North Conway by acquiring a conservation easement on approx. 41 acres within a wellhead protection area. The 41 acres also overlies a high-yield stratified-drift aquifer.

Current Funding:

- \$118,500 Natural Resources Conservation Service - Agricultural Conservation Easement Program (ACEP)/ Agricultural Land Easements (ALE)
- \$15,000 SCC Moose Plate grant
- \$20,625 Private donations
- \$59,250 Bargain sale

Trust Fund Assistance:

- \$84,000 grant