



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner

MAY 29 '19 PM 1:12 DAS



May 10, 2019

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 Society for the Protection of New Hampshire Forests (hereinafter "SPNHF"), (VC #177170-B002), Concord, NH in the amount of \$375,000 to purchase 87 acres of land in the Town of Auburn to protect drinking water supply, effective upon Governor & Council approval through December 31, 2019. 100% Drinking Water/Groundwater Trust Fund.

Funding is available in the account as follows:

03-44-44-442010-3904-073-500580	<u>FY 2019</u>
Dept Environmental Services, DWGW Trust, Grants Non-Federal	\$375,000

EXPLANATION

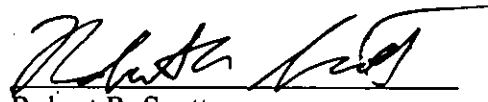
The Drinking Water and Groundwater Trust Fund was created in 2016, using \$276 million of MtBE trial judgement funds, as authorized by RSA 485-F. The purpose of the Trust Fund is to provide sustainable, long-term funding for the protection, preservation, and enhancement of the drinking water and groundwater 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 fifteen drinking water source protection projects. SPNHF's request for \$375,000 was selected for grant funding from the Drinking Water and Groundwater Trust Fund. SPNHF will use the grant funds as well as grants from the NH Aquatic Mitigation Fund and the DES Water Supply Land Protection Grant Program to acquire a conservation easement on 87 acres of land within the within the source water protection area of the City of Manchester.

The total cost for SPNHF to acquire the conservation easement is \$898,450. The Department will provide \$375,000 from this Drinking Water Trust Fund grant and \$48,450 in the form of a Water Supply Land Protection grant with \$475,000 in match provided by SPNHF. The purchase price of this conservation easement 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.



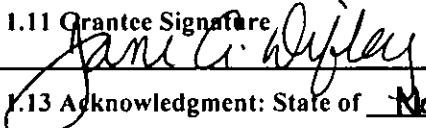
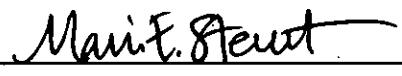
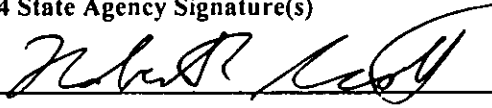
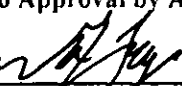
Robert R. Scott
Commissioner

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: Society for the Protection of New Hampshire Forests		1.4 Grantee Address 54 Portsmouth Street, Concord, NH 03301	
1.5 Effective Date Upon G&C approval	1.6 Completion Date 12/31/2019	1.7 Audit Date N/A	1.8 Grant Limitation \$375,000
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 Jane A. DiFley, President/Forester	
1.13 Acknowledgment: State of <u>New Hampshire</u> , County of <u>Merrimack</u> On <u>5/1/19</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 MARIA E. STEWART, Notary Public State of New Hampshire My Commission Expires September 5, 2023			
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>5/23/19</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.

5/1/19

EXHIBIT A

SCOPE OF SERVICES

Society for the Protection of New Hampshire Forests

The Society for the Protection of New Hampshire Forests (SPNHF) will use the grant to acquire a conservation easement on approximately 87 acres of land in the protection area of the City of Manchester's drinking water source. SPNHF will hold the conservation easement. The parcel of land, designated on current tax map as Map 3/Lot 3 will be protected in perpetuity, as specified in 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 \$375,000 shall be made to SPNHF upon receipt of the following:

1. Survey of the parcel of land.
2. A copy of the appraisal as specified in Env-Dw 1002.22.
3. Title examination as specified in Env-Dw 1002.23.
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 \$475,000 provided by SPNHF.
7. The finalized conservation easement deed.

Grantee Initials

Date

SPNHF
5/20/19

EXHIBIT C

SPECIAL PROVISIONS

1. Subparagraph 1.7 of the General Provisions shall not apply to this Grant Agreement.
2. Section 17.1.2. is amended so that the required comprehensive general liability insurance per occurrence is \$1,000,000 for bodily injury or death in any one incident as no construction or other similar activities will be performed by the grantee. Any subcontractor will remain obligated to carry comprehensive general liability insurance in amounts not less than \$250,000 per claim and \$2,000,000 per occurrence.

Grantee Initials

Date

AW
5/20/19



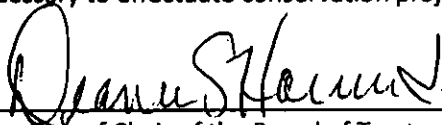
54 Portsmouth Street
Concord, NH 03301

Tel. 603.224.9945
Fax 603.228.0423

Info@forestsociety.org
www.forestsociety.org

AUTHORITY TO SIGN

I, Deanna Howard, Chair of the Board of Trustees, certify that, the Board of Trustees of Society for the Protection of New Hampshire Forests; authorizes Jane a Difley, President/Forester or Susanne Kibler-Hacker, Assistant Treasurer to sign or enter into agreements, grant applications, forms and to execute any documents which may be necessary to effectuate conservation projects.



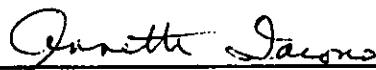
Signature of Chair of the Board of Trustees

Deanna Howard, Chair of the Board of Trustees
Printed Name and Title

State of New Hampshire
County of Sullivan SS

On this the day of April 18, 2019 Deanna Howard personally appeared before me, acknowledging herself to be the Chair of the Board of Trustees of the Society for the Protection of New Hampshire Forests, and that she, as such and being authorized so to do, executed the foregoing authority to sign form for the purpose contained therein.

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



Justice of the Peace/Notary Public

State of New Hampshire

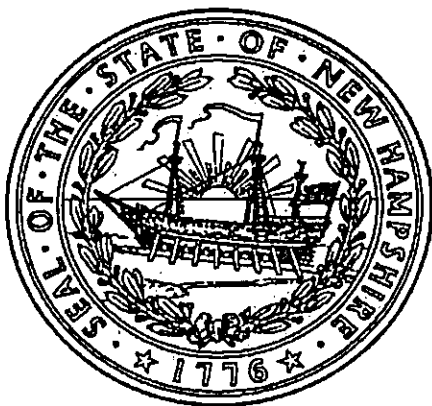
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS is a New Hampshire Nonprofit Corporation registered to transact business in New Hampshire on March 03, 1910. 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: 64922

Certificate Number: 0004210627



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 13th day of November A.D. 2018.

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

William M. Gardner
Secretary of State



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/16/2019

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 E & S Insurance Services LLC 21 Meadowbrook Lane P O Box 7425 Gilford NH 03247-7425		CONTACT NAME: Eleanor Spinazzola PHONE (A/C, No, Ext): (603) 293-2791 FAX (A/C, No): (603) 293-7188 E-MAIL ADDRESS: Eleanorspinazzola@esinsurance.net	
INSURED Society for the Protection of NH Forests 54 Portsmouth Street Concord NH 03301		INSURER(S) AFFORDING COVERAGE INSURER A: Markel INSURER B: Travelers Property Casualty Co of America INSURER C: INSURER D: INSURER E: INSURER F:	
		NAIC # 25674	

COVERAGES**CERTIFICATE NUMBER:** 2019**REVISION NUMBER:**

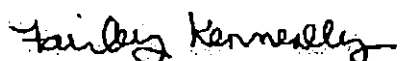
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE 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	ADDL 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 type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y		HUP3399-02	01/01/2019	01/01/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Employee Benefits \$ 1,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			HUA3400-02	01/01/2019	01/01/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Medical payments \$ 5,000
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 checked="" type="checkbox"/> RETENTION \$ 10,000			HUU3398-02	01/01/2019	01/01/2020	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	6JUB-1K82481-3-19	02/14/2019	02/14/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

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

Certificate Holder is an additional insured (CGL) as required by signed contract with the named insured.

CERTIFICATE HOLDER**CANCELLATION**

NH Department of Environmental Services 29 Hazen Drive Concord NH 03302	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 
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Attachment A

Conservation Easement Deed

DRAFT (4/30/2019)

THIS IS A TRANSFER TO AN INSTRUMENTALITY OF THE STATE AND IS EXEMPT FROM THE NEW HAMPSHIRE REAL PROPERTY TRANSFER TAX PURSUANT TO RSA 78-B:2, I. THIS TRANSFER IS ALSO EXEMPT FROM THE LCHIP SURCHARGE PURSUANT TO RSA 478:17-g, II(a).

CONSERVATION EASEMENT DEED

PARKER FARMS ASSOCIATES, with an address of 569 Londonderry Turnpike, Town of Auburn, County of Rockingham, State of New Hampshire 03032 (hereinafter referred to as the "Landowner" which terms shall, unless the context clearly indicates otherwise, include the Landowner's successors and assigns),

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

the **SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS**, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 54 Portsmouth Street, City of Concord, County of Merrimack, State of New Hampshire, 03301-5400, having been determined by the Internal Revenue Service to be an income tax exempt, publicly supported corporation, contributions to which are deductible for federal income tax purposes pursuant to the United States Internal Revenue Code, (hereinafter referred to as the "Easement Holder" which shall, unless the context clearly indicates otherwise, include the Easement Holder's successors and assigns),

the CONSERVATION EASEMENT (herein referred to as the "Easement") hereinafter described, with respect to that certain area of land (herein referred to as the "Conservation Area") together with any and all buildings, structures, and improvements thereon, consisting of approximately 87 +/- acres situated on Londonderry Turnpike/Route 28 Bypass and Rattlesnake Road, so-called, in the Town of Auburn, New Hampshire, being a portion of the property identified as Tax Map 3, Lot 3 in the Town of Auburn tax records, being real property shown on a survey plan entitled "_____", by _____, dated _____, to be recorded at the Rockingham County Registries of Deeds (hereafter "Survey Plan"), more particularly bounded and described in Appendix "A" attached hereto and made a part hereof,

TOGETHER WITH a Third Party Right of Enforcement, as further defined in Section 9 below, granted to the **STATE OF NEW HAMPSHIRE** acting through its **DEPARTMENT OF ENVIRONMENTAL SERVICES (NH DES)**, an administrative agency duly organized and existing

under the laws of the State of New Hampshire, with a principal place of business at 29 Hazen Drive, City of Concord, County of Merrimack, State of New Hampshire, 03302 (the "Third Party Holder"),

Said Easement having been acquired in part with funds from:

the **NH DESNH DES AQUATIC RESOURCES MITIGATION FUND FINAL IN-LIEU FEE PROGRAM Instrument** (U.S. Army Corps of Engineers, New England District, Regulatory Division, File Number NAE-2005-01142 and is granted pursuant to NH RSA 477:45-47, and

the **NH DESNH DES WATER SUPPLY LAND PROTECTION GRANT PROGRAM**, with the purposes of New Hampshire RSA Chapter 486-A which include: "to protect sources of public drinking water that serve community or non-transient non-community water systems and associated natural resources through the acquisition of land or conservation easements within source water protection areas." Being granted pursuant to NH RSA 486-A:7, II(e), the Easement Holder shall henceforth provide annual stewardship reports to the Third Party Holder,

an Executory Interest in said Easement to the **CITY OF MANCHESTER**, a New Hampshire municipal corporation, acting through its department, **MANCHESTER WATER WORKS**, with an address of 1581 Lakeshore Road, Manchester, New Hampshire 03109 (hereinafter referred to as the "Executory Interest Holder," which, unless the context clearly indicates otherwise, includes its successors and assigns),

This Easement was funded through a mixture of several local and state grants. The funds needed to acquire this Easement and cover the project expenses have been provided to the Easement Holder through four separate grants totaling \$_____ provided by the following funders (herein after the "Funders") in the amounts and percentages of said total grants listed herein:

- New Hampshire Department of Environmental Services' Water Supply Land Protection Grant Program (NH DES WSLP) (\$48,450 ÷ \$850,000 = ____ %);
- New Hampshire Department of Environmental Services' Drinking Water and Groundwater Trust Fund Source Water Protection Grant Program (DWGTF) (\$_____ ÷ \$850,000 = ____ %)
- New Hampshire Department of Environmental Services' Aquatic Resources Mitigation Program (ARM) (\$_____ ÷ \$850,000 = ____ %); and
- City of Manchester, a New Hampshire municipal corporation, acting through its department, Manchester Water Works (MWW) (\$_____ ÷ \$850,000 = %)

The Conservation Area shall be managed consistent with the terms of this Easement. In the event that the Easement interest in the Conservation Area is converted to other non-conservation uses, condemned or extinguished, each of the foregoing Funders shall be entitled to its percentage of the net proceeds payable to the Easement Holder resulting from any such conversion, condemnation or extinguishment based upon their percentage of said \$850,000 grant funding. The foregoing does not prohibit the assignment of the Conservation Area or this Easement to any qualified entity as described in the Section "Benefits, Burdens" below. By virtue of the grant funding provided for the purchase of this Easement and to the provisions set forth in the Grant Agreements of each Funder, each of the Funders may consent to or require the Easement Holder's use of its portion of the proceeds to acquire other land or interests in land of equal monetary or resource value.

The Conservation Area includes the following recreational, educational, natural habitat, open space, scenic, forestry, and water supply attributes protected by the terms of this Easement (hereinafter the "Conservation Attributes"):

Wildlife Habitat - Lake Massabesic is a rich ecosystem containing a number of rare and threatened species of plants and animals. Approximately 25 acres or 30% of the land (primarily shoreline) is classified as Tier 1 wildlife habitat or the "Best in the State" under the 2015 NH Wildlife Action Plan. NH Natural Heritage Bureau reports that common loons, bald eagles, spotted and blanding's turtles are all found in the lake and on its shores.

Water Resources - The undeveloped 87 acres of land provides a critical forested buffer to Lake Massabesic. The Easement will permanently conserve 2,050 feet of undeveloped shoreline on Lake Massabesic. The wooded property and its 4.9 acres of wetlands serve to trap nutrients and sediment running off Rte. 28 and draining into the lake. Lake Massabesic is the primary surface water drinking source for over 165,000 residents of the City of Manchester and surrounding towns. The property is entirely within the Source Water Protection Area. A portion of the land also overlies a stratified drift aquifer.

Wetland Resources: The 4.9 acres of wetlands contains several intermittent and ephemeral drainage ways that drain towards the lake. Many of these drainage ways support bench wetlands on hydric soils. The most extensive of the wetland systems feeds into a large wetland complex along the shores of Massabesic Lake in the southern part of the property.

Conservation Priority - The land ranks highly on the *Merrimack Valley Regional Conservation Plan*. The land abuts or is near other conservation lands, including the 9,470-acre Bear Brook State Park. The proposed land is located between the MWW's Clay Pond lands, and approximately 6,000 acres of other land surrounding Lake Massabesic also owned by MWW.

Forest Resources - Much of the property supports a mature, appalachian oak-pine forest and hemlock-beech-oak- pine forest.

The Conservation Attributes and present conditions of the Conservation Area are further described and set forth in a Baseline Documentation Report which is on file with the Easement Holder and Landowner.

1. **PURPOSES**

The Easement hereby granted exclusively for the following conservation purposes (herein referred to as the "Purposes") for the public benefit:

- A. The protection of the quality and availability of ground water and surface water resources on, under and adjacent to the Conservation Area, which serves as the public water supply for citizens of the City of Manchester and surrounding towns, and to prevent any development, construction, or use that will impair or interfere with the watershed's conservation attributes of the Conservation Area;

- B. The protection of the natural habitat or ecosystem of the Conservation Area and to prevent any use of the Conservation Area that will significantly impair or interfere with its Conservation Attributes;
- C. The conservation and protection of open spaces, particularly the conservation of the productive forest land of which the Conservation Area consists, and the long-term protection of the Conservation Area's capacity to produce economically valuable agricultural and forestry products;
- D. The scenic enjoyment of the general public as seen from Tower Hill Pond Road, Chester Turnpike and NH Rte. 28; and

The Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the ____ Master Plan of the Town of Auburn, which states:

(To be added)

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

2. **USE LIMITATIONS** (Subject to the Section 3. "Reserved Rights of Landowner" below)

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

- A. **Commercial Activities, Including Forestry & Agriculture.** There shall not be conducted on the Conservation Area any industrial or commercial activities, except agriculture and forestry (including timber harvesting) as described below, and provided that the productive capacity of the Conservation Area to yield forest and/or agricultural crops shall not be degraded by on-site activities.
 - i. Definitions:
 - a. **Forestry and Agriculture:** For the purposes of this Easement, "agriculture" and "forestry" shall include animal husbandry, floriculture, and horticulture activities; the production of plant and animal products for domestic or commercial purposes; the growing of food crops; or forest trees of any size capable of producing timber or other forest products; the construction of roads or other access ways for the purpose of removing forest products from the Conservation Area; and the sale of products produced on the Conservation Area (such as firewood and maple syrup), all as not detrimental to the Purposes of this Easement.
 - b. **Riparian Buffers:** For the purposes of this Easement, "Riparian Buffers" shall be the areas within 100 feet of perennial streams and Significant Wetland Areas as defined below. A map entitled "Water Resources & Buffers" on file with the Landowner, the Easement Holder, and NH DES as part of the baseline documentation, designates the approximate locations of the Riparian Buffers, in field verification and marking should be conducted prior to nearby forestry or agricultural activities.

The Riparian Buffer perimeter shall be measured from the stream or wetland edge, beginning at the normal high water mark. In cases where the top of the embankment is less than 50 feet from the stream edge, the Riparian Buffer perimeter shall be measured from the top of embankment. In cases where wetlands surround the stream edge, the Riparian Buffer perimeter shall be measured from the boundary of the upland edge of the wetland area.

- c. Significant Wetland Areas: For the purposes of this Easement, "Significant Wetland Areas", as shown on said map entitled "Water Resources & Buffers", mentioned above in Section 2.A.i.b., are those areas that by virtue of their unspoiled condition, unique physical or biological features, rarity, and/or exemplary nature have special value in a particular locale. This value is reflected in a high degree of functioning relative to its ecological integrity, wildlife and aquatic life habitat, flood storage, groundwater interactions, and/or sediment and toxicant attenuation, and special social values such as education, scenic quality, and recreation. Significant wetlands are typically identified and evaluated by wetland scientists, wildlife biologists, or Natural Heritage ecologists and verified along with a Licensed Professional Forester, through fieldwork and/or high resolution aerial photograph interpretation. Significant wetlands include, but are not necessarily limited to:
- I. Wetland communities or systems that are classified as exemplary due to their high quality as determined by their size, condition, and landscape context (that is, the condition of the surrounding landscape).
 - II. Wetland communities or systems that are classified as exemplary (S1 and S2) due to their rarity in the State of New Hampshire by the NH Natural Heritage Bureau (NHB). Rare wetland types need not be of high quality to qualify as exemplary, but they must be considered viable in light of their size, condition, and landscape context.
 - III. New Hampshire Wildlife Action Plan Tier 1 and Tier 2 wetlands.
 - IV. Wetlands providing habitat for Endangered, Threatened and Special Concern wildlife.

Examples of significant wetland types in New Hampshire include, but are not limited to cedar swamps, black gum swamps, exemplary natural communities tracked in the Natural Heritage Bureau (NHB) database, any wetland community type ranked by the NHB as critically imperiled/or imperiled, bogs, fens (peat lands), and floodplain forests.

- ii. Agriculture for industrial or commercial purposes shall be performed, to the extent reasonably practicable, in accordance with a coordinated management plan for the sites and soils of the Conservation Area. Said agriculture shall not be detrimental to the Purposes of this Easement, nor materially impair the scenic quality of the Conservation Area as viewed from public roads, or public trails. Said agricultural management activities shall be in accordance with the then-current scientifically based practices recommended by the University of New Hampshire's Cooperative Extension Service, by the U.S. Department of Agriculture's Natural Resources Conservation Service, by the New Hampshire Department of Agriculture, Markets, and Food, including but not limited to recommended practices in said NH Department's "Manual of Best Management Practices (BMP's) for Agriculture in New Hampshire" as may be revised,

updated, or superseded from time to time, or by other successor governmental natural resource conservation and management agencies then active.

- iii. For the purposes of this Easement, forestry shall not be performed in any forested Significant Wetland Area, defined as a wetland area dominated by trees or woody vegetation 20 feet or taller as shown on said map entitled "Water Resources & Buffers", mentioned above in Section 2.A.i.b.
- iv. For the purposes of this Easement, forestry performed within the Riparian Buffer as defined in Section 2.A.i.b. shall adhere to the following additional restrictions:
 - a. No soil disturbance tree cutting or removal shall occur and no herbicides or pesticides shall be used.
 - b. No skid trails, log landings, or road construction, except in circumstances where complying with this provision may result in a greater overall environmental impact or would preclude reasonable access to areas suitable for forestry. **Existing roads and trails** as identified in the baseline documentation may be retained and used but must be maintained to minimize degradation of water quality and aquatic habitat.
- v. For the purposes of this Easement, forestry within Significant Wetlands Areas as defined in Section 2.A.i.c. shall adhere to the following additional restrictions:
 - a. No soil disturbance, tree cutting or removal shall occur and no herbicides or pesticides shall be used.
 - b. No skid trails, log landings, or road construction, except in circumstances where complying with this provision may result in a greater overall environmental impact or would preclude reasonable access to areas suitable for forestry. **Existing roads and trails** as identified in the baseline documentation may be retained and used but must be maintained to minimize degradation of water quality and aquatic habitat.
- vi. Forestry for industrial or commercial purposes shall be performed, to the extent reasonably practicable, as hereinafter specified in accordance with the following goals, and in a manner not detrimental to the Purposes of this Easement.
 - a. The goals are:
 - protection of wetlands, riparian zones, and water quality;
 - maintenance of soil productivity;
 - protection of unique or fragile natural areas;
 - conservation of native plant and animal species;
 - maintenance or improvement of the overall quality of forest products;
 - conservation of scenic quality; and
 - protection of unique historic and cultural features.
 - b. Such forestry for industrial or commercial purposes shall be performed in accordance with a written forest management plan consistent with this Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in writing by the Easement Holder. Said Plan shall have been

prepared not more than ten years prior to the date any harvesting is expected to commence, or shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (30) days prior to said date.

- c. At least thirty (30) days prior to harvesting, Landowner shall submit to Easement Holder a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Easement Holder, that such forest management plan has been prepared in compliance with the terms of this Easement. Upon request by the Easement Holder, the Landowner shall submit the plan itself to Easement Holder within ten (10) days of such request, with Easement Holder's acknowledgment that the plan's purpose is to guide forest management activities in compliance with this Easement, and that the actual activities will determine compliance therewith.

- d. Forestry Management Planning

- I. Timber harvesting with respect to such forestry shall be conducted in accordance with said plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Easement Holder.
 - II. Riparian buffers and Significant Wetlands shall be marked in the field by a licensed professional forester, or by other qualified person approved in advance and in writing by the Easement Holder prior to timber harvesting.
 - III. Such forestry shall be carried out in accordance with all applicable local, state, federal, and other governmental laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Conservation Area. For references, see "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire 2004", and "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (Good Forestry in the Granite State Steering Committee, 2010), or similar successor publications.

- e. The forest management plan shall include:

- I. Explanation of how significant wetlands, riparian areas, vernal pools, and soils will be protected in association with road construction, other soil disturbing activities, and the implementation of stand prescriptions;
 - II. A statement of landowner objectives;
 - III. A map showing soil types as determined by the U.S. Natural Resources Conservation Service, access roads, significant wetlands, vernal pools, and surface waters;
 - IV. Forest type map showing stands related to the prescriptions provided in the Plan; and

- V. Prescriptions for each described stand, including commercial and non-commercial treatments;

and shall specifically address:

- the accomplishment of those Purposes for which this easement is granted;
- the goals in Section 2.A.vi.a. above; and
- Shall maintain a buffer of 100 feet from the wetland edge as noted in the Riparian Buffer and Significant Wetland Areas limitations, Section 2.A.iv. and Section 2.A.v.

- B. **Subdivision & Separate Conveyance.** The Conservation Area shall not be subdivided, and none of the tracts which together may comprise the Conservation Area shall be conveyed separately from one another, except that the lease of any portion of the Conservation Area for any use permitted by this Easement shall not violate this provision.
- C. **Structures & Improvements.** No structure or improvement shall be constructed, placed, or introduced onto the Conservation Area, except for structures and improvements which are: i) necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Conservation Area and which may include but not be limited to roads, trails, dams, fences, utility lines, bridges, culverts, barns, maple sugar houses, farmstands, ponds or sheds; and ii) not detrimental to the Purposes of this Easement. The Landowner shall provide the Easement Holder with forty-five (45) days' written notice prior to any construction of a permitted structure with a footprint exceeding two thousand (2,000) square feet. Notwithstanding the above, there shall not be constructed, placed, or introduced onto the Conservation Area any of the following structures or improvements: dwelling, residence, cabin, residential driveway, any portion of a septic system, tennis court, swimming pool, athletic field, golf course, tower, storage trailer, or aircraft landing area.
- D. **Soil Disturbance, Water Manipulation & Extraction, & Topographic Alteration.** No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:
- i. are commonly necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Conservation Area; and
 - ii. do not harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau, the New Hampshire Fish and Game Department, or the agency then recognized by the State as having responsibility for identification and/or conservation of such species and/or natural communities.
- E. **Signs & Outdoor Advertising Structures.** No outdoor advertising structures shall be displayed on the Conservation Area except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, or noncommercial outdoor recreational uses of the Conservation Area, or as necessary for public safety, and in any case provided such structures

are not detrimental to the Purposes of this Easement. No sign on the Conservation Area shall exceed sixteen (16) square feet in size, and no sign shall be artificially illuminated.

- F. **Mining/Extraction.** There shall be no mining, quarrying, excavation, or removal (hereinafter referred to as "Extractive Activities") of surface or subsurface materials, including but not limited to hydrocarbons, rocks, minerals, gravel, sand, topsoil, or other similar materials (hereinafter referred to as "Extractive Materials"), on, under, or from the Conservation Area.
- G. **Disposal.** There shall be no dumping, disposal, storage, discharge or burning on, above, or below the Conservation Area of man-made materials, wastes generated off the Conservation Area, or materials then known to be environmentally hazardous, except as may be permitted elsewhere in this Easement, or except as may be permitted by advance written approval of the Easement Holder following receipt from the Landowner of a proposed plan for said disposal and following determination by the Easement Holder, in its sole discretion, that the implementation of said plan would not be detrimental to the Purposes of this Easement, nor significantly impair the Conservation Attributes.
- H. **Landowner's Conveyance of Right of Way, Easement, or Use Restriction.**
- i. The Landowner 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 Easement Holder and Executory Interest Holder, or as provided for elsewhere in this Easement. (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, and shall remain subject to this Easement. Any interest conveyed contrary to this Section 2.H. shall be null and void.
 - ii. Notwithstanding the foregoing, any application by the Landowner 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 2.H.
 - iii. 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.
 - iv. At least thirty (30) days prior to the execution of any instrument conveying said right of way, easement, or use restriction, Landowner shall provide to the Easement Holder and Executory Interest Holder written notice and a draft of said instrument, plus any associated map, sketch, or survey plan, at Landowner's sole expense. Within thirty (30) days after Easement Holder's and Executory Interest Holder's receipt of same, the Easement Holder shall approve or disapprove in writing of the proposed conveyance, such approval not to be unreasonably withheld, and shall so inform the Landowner. 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.

- J. **Motorized Vehicle Use.** The Landowner shall not use or grant permission for motorized vehicle use on the Conservation Area except for as necessary in the accomplishment of the forestry, agricultural, conservation, habitat management, non-commercial recreation, provided that no use of motorized vehicles shall create impacts that are detrimental to the Purposes of this Easement. The Landowner shall have the right to use motorized vehicles for non-commercial recreation and maintenance activities of the Conservation Area. Notwithstanding the foregoing the use of snowmobiles as defined in RSA 215-A:1, XIII is restricted to the existing roads/trails as identified in the Baseline Documentation Report. The development of new snowmobile trails, unless otherwise approved, shall be outside the sanitary protective area of public water supply well(s); at least two hundred fifty (250) feet from a surface water body being used as a public water supply; at least 100 feet from tributaries contributing to such water bodies except when crossing such tributaries; and depicted on a plan approved by the Easement Holder and Department of Environmental Services in accordance with Env-Dw 1002.20.
- K. **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 Landowner may otherwise have certain rights, except for the development of Public Water supply facilities. Notwithstanding the foregoing, said governmental regulations shall not include those governing N.H. 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.
- L. **Boundary Markers.** The Landowner 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.

The intent of the Landowner and Easement Holder is to permit all other uses of the Conservation Area that are not inconsistent with the Purposes of this Easement, such inconsistency as determined by the Easement Holder and that are not expressly prohibited herein.

3. **RESERVED RIGHTS OF LANDOWNER**

- A. **Drinking Water Production and Sale** - The Grantor reserves the right to withdraw groundwater on a sustainable yield basis and to remove said groundwater from the Property only for the purpose of providing a public water system, as defined by NH RSA 485:1-a, XV, as it may be amended from time to time. "Sustainable yield" shall mean that rate of annual water withdrawal that can be replenished from the aquifer on an annual basis, based on well recovery rates. Withdrawal or removal of groundwater for private commercial purposes not served by a public water system is expressly prohibited.
- i) **Test Wells:** Prior to drilling test wells on the Property, the Grantor shall submit a Test Well Site Plan to the Grantee for review and approval. Said plan shall identify the proposed locations and access for the test wells and identify the steps to be taken to minimize damage to the Property and Purposes of this Easement. The Grantor shall include in The Test Well Site Plan a restoration plan that addresses the impacts associated with the test wells and associated improvements.

- a. The Grantee shall limit its review of the Test Well Site Plan to the proposed access and restoration plan components and either approve, approve with conditions, or deny those components of the Test Well Site Plan within thirty (30) days of receipt of the request. The Grantee shall not unreasonably withhold such approval.
 - b. The Grantor is encouraged to communicate regularly and openly with the Grantee as it develops its Test Well Site Plan.
 - c. In the event that if after two (2) years from the date of installation of the test wells the Grantor has not submitted a Construction Proposal per Env-Ws 374.02, as may be amended, to the State of New Hampshire, then the Grantor shall initiate the restoration plan and complete it within six (6) months. The Grantor may request extensions from the Grantee for implementing and completing the restoration plan which the Grantee may grant at its discretion.
- ii) Facilities and Improvements: For the purposes hereof, permitted activities in conjunction with a groundwater withdrawal development project shall consist of the installation, maintenance, monitoring, and replacement of test wells, long-term water production wells, monitoring wells, monitoring stations, pumping stations, and ancillary improvements such as but not limited to permeable-surface roads, signs, electric utilities necessary to power the pumps and related equipment, pipes, conduits, and security facilities, but only if they are required to be located on the Property. To the extent that said facilities and improvements must be located on the Property, those facilities and improvements shall, to the maximum extent possible, be located so as to minimize the impact to and disturbance of the Property and the Purposes of this Easement, and are subject to the prior written approval of the Grantee, as outlined below. Other major facilities including, but not limited to, storage tanks, shipping facilities, non-permeable pavement, and office and laboratory facilities for employees shall not be located within the Property.
- a. Prior to submitting a Construction Proposal per Env-Ws 374.02, as may be amended, for approval by the appropriate State of New Hampshire agency, the Grantor shall submit to the Grantee for approval the following information and plans (hereinafter, collectively referred to as "Site Plans") in appropriate format (e.g., documents, maps, plans, specifications, and designs) sufficient to identify the location and design of any proposed facilities or improvements on the Property, including but not limited to temporary or permanent well sites, pumping stations, and ancillary improvements such as but not limited to access ways/roads, signs, electric utilities, pipes, conduits, and security facilities and the provisions to minimize disturbance and impacts to the Property and Purposes of this Easement during and after installation and operation of the ground water withdrawal development project for the public water system.
 - b. The Grantee shall approve, approve with conditions, or deny the proposed Site Plans in writing within sixty (60) days of its receipt and base its decision on the impacts to the Property and the Purposes of this Easement. The Grantee shall not unreasonably withhold such approval.

- c. The Construction Proposal submitted to the State of New Hampshire shall accurately reflect the Site Plans approved by the Grantee.
 - d. Upon completion of the ground water withdrawal development project, the Grantor shall submit an "as built" Site Plan to the Grantee.
 - e. Any proposal to expand, enlarge or relocate facilities and improvements related to groundwater withdrawal shall require the approval of the Grantee in accordance with process and procedure in ~~XX~~A.ii. a-d above. This provision does not apply to increases in water withdrawal rates or amounts or to maintenance or repair of said facilities and improvements.
 - f. If the groundwater wells and associated facilities and improvements are no longer used and there is no feasible plan for their eventual reuse, the Grantor shall undertake the restoration of the site in consultation with the Grantee.
- iii.) Compliance with Law: Activities taken by the Grantor in execution of the groundwater withdrawal right herein shall comply with all federal, state and local requirements, including but not limited to requirements associated with public water supply, water withdrawals, and groundwater discharges, and the Grantor shall obtain any associated and requisite approvals from said agencies and abide by the conditions of said approvals.
- iv.) The Grantor shall provide to the Grantee a copy of any application for renewal, and any subsequent approval by the State, of the groundwater withdrawal permit.

B. Trails - The Landowner reserves the right to use and maintain the existing hiking, biking and snowmobile trails the Conservation Area for non-commercial outdoor recreational purposes. Said existing trails shall be identified in the Baseline Documentation Report. The Landowner also reserves the right to develop new hiking, biking and snowmobile trails, and a paved and/or unpaved parking lot on the Conservation Area for use by the Landowner and/or the landowner's invited guests for non-commercial outdoor recreational purposes. The development of new hiking, biking and snowmobile trails, unless otherwise approved, shall be outside the mandatory sanitary protective area of public water supply well(s); at least two hundred fifty (250) feet from a surface water body being used as a public water supply; and at least 100 feet from all designated "Significant Wetlands Areas and Riparian Areas" except when crossing such tributaries; and depicted on a plan approved by the Easement Holder and Department of Environmental Services in accordance with Env-Dw 1002.20.

C. Motorized Vehicles and Equipment- The Landowner reserves the right to use motorized vehicles and equipment for its maintenance of facilities and patrol of the Conservation Area to enforce its rules for public use of the Conservation Area and protection of the water supply, and to enforce applicable regulation of public use of the Conservation Area, including but not limited to rules of the Board of Water Commissioners and the NH Department of Environmental Services (see Appendix B).

D. **Archeological Investigations.** Landowner reserves the right to permit archaeological investigations on the Conservation Area after receiving written approval from the Easement Holder. Prior to permitting any such investigations, Landowner shall send written notice to the New Hampshire State Archaeologist (or other person or agency then recognized by the State as having responsibility for archaeological resources) for review and comment, and to the Easement Holder, such notice describing the nature, scope, location, timetable, qualifications of investigators, site restoration, research proposal, and any other material aspect of the proposed activity. The Landowner and Easement Holder shall request the State Archaeologist (or other person or agency, as above) to consider the proposal, to apply the standards as specified in rules implementing RSA 227-C:7 (Permits Issued for State Lands and Waters), as may be amended from time to time, and to provide written comments to the Landowner and Easement Holder. The Easement Holder may, in its sole discretion, approve the proposed investigations only if it finds that all of the following conditions are met:

- i. The archaeological investigations shall be conducted by qualified individuals and according to a specific research proposal;
- ii. The proposed activities will not harm state or federally recognized rare, endangered, or threatened species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau, the New Hampshire Fish and Game Department, or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species; and
- iii. The proposed activities will not be materially detrimental to the Purposes of this Easement.

4. **NOTIFICATION OF TRANSFER, TAXES, & MAINTENANCE**

- A. The Landowner agrees to notify the Easement Holder in writing within ten (10) days of the transfer of title to the Conservation Area or any division of ownership thereof permitted hereby, including any change in Trustee for Conservation Area held in trust.
- B. The Easement Holder shall be under no obligation to maintain the Conservation Area or pay any taxes or assessments thereon.

5. **BENEFITS & BURDENS**

- A. The burden of the Easement conveyed hereby shall run with the Conservation Area and shall be enforceable against all future owners and tenants in perpetuity. In the event of any rent or lease of all or a portion of the Conservation Area as permitted by this Easement, the Landowner 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 Section 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 Section 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 Easement Holder or Executory Interest Holder transfers its interest in this Easement to another Qualified Holder, the transferor shall provide written notice of same to the Landowner and to the other holder(s) of interests in this Easement no later than ten (10) days after the date of said transfer.

- B. Notwithstanding any other provisions in this Easement to the contrary, this Easement evidences no intent to, and does not, convey or afford to any unnamed third party any rights herein, including enforcement rights.

6. AFFIRMATIVE RIGHTS OF EASEMENT HOLDER

- A. The Easement Holder, Executory Interest Holder and NH Department of Environmental Services shall have reasonable access to the Conservation Area and all of its parts for such inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.
- B. To facilitate such inspection and to identify the Conservation Area as conservation land protected by the Easement Holder, the Easement Holder shall have the right to place signs, each of which shall not exceed twenty-four (24) square inches in size, along the Conservation Area's boundaries.

7. RESOLUTION OF DISAGREEMENTS

- A. **Informal Dialogue.** The Landowner and the Easement Holder 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.
- B. **Mediation.** If informal dialogue does not resolve a disagreement regarding the Activity, and if the Landowner 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 Concord, 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.

- C. **Legal Action.** Notwithstanding the availability of mediation to address disagreements concerning the compliance of any Activity with this Easement, if the Easement Holder believes that some use, activity, or failure to take action of the Landowner or of a third party is causing irreparable harm or damage to the Conservation Area, or creates an imminent threat of same, the Easement Holder 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 – EASEMENT HOLDER’S REMEDIES**

A. **Notification of Breach & Demand for Action.**

- i. If the Easement Holder determines that a violation or breach of this Easement has occurred (which together shall hereinafter be referred to as “breach”), the Easement Holder shall have the rights to provide notice and demand corrective action to cure the breach, except as otherwise provided for in Section 8.J. “Causes Beyond Landowner’s Control,” below. In addition, where the breach involves damage, disturbance, or harm (hereinafter referred to as “Damage”) to the Conservation Area, the Easement Holder 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.
- ii. If the Landowner learns of a breach, or purported breach, from a source other than the Easement Holder, the Landowner shall notify the Easement Holder of same within five (5) days after learning of same.

- B. **Performance by Landowner.** Within thirty (30) days after the Landowner’s receipt of such notice from the Easement Holder, or Landowner’s delivery of such notice to the Easement Holder, as the case may be, the Landowner 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 Landowner shall promptly notify the Easement Holder of its actions taken hereunder. If the Landowner believes that said thirty (30) day period is insufficient to accomplish said cure, the Landowner may request an extension of time by submitting to the Easement Holder within ten (10) days after the aforesaid notice a proposed plan of action to cure said breach (hereinafter “Cure Plan”) for the Easement Holder’s review and possible approval. Within fifteen (15) days after the Easement Holder’s receipt of the Cure Plan, the Easement Holder shall approve or disapprove in writing of said plan, and shall so inform the Landowner. Any disapproval shall specify the reasons therefor. If the Easement Holder does not approve of the Cure Plan in its entirety, the Landowner retains the aforesaid burden to cure said breach within the originally established thirty (30) day period.

- C. **Failure by Landowner.** If the Landowner fails to perform its obligations under the immediately preceding Section 8.B. “Performance...,” or fails to continue diligently to cure any breach until finally cured, the Easement Holder may undertake any actions, in the Landowner’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.

- D. **Easement Holder's Remedies.** If the Easement Holder, 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 Easement Holder may pursue its remedies under this Section 8 "Breach of Easement..." without prior notice to the Landowner or without waiting for the period provided for cure to expire.
- E. **Damages.** The Easement Holder 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 Landowner's liability therefor, the Easement Holder, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Conservation Area.
- F. **Easement Holder's Rights Additive.** The Easement Holder's rights under this Section 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 Easement Holder's rights hereunder.
- G. **Immediate Danger of Irreparable Damage.** If at any time the Easement Holder determines, in its sole discretion, that Conservation Attributes protected by this Easement are in immediate danger of irreparable damage, the Easement Holder may seek the injunctive relief described in Section 8.C. "Failure by Landowner," both prohibitive and mandatory, in addition to such other relief to which the Easement Holder 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 Easement Holder's remedies described in this Section 8 "Breach of Easement..." shall be available to the Easement Holder and shall be in addition to all remedies now or hereafter existing at law or in equity.
- H. **Costs.** Provided that the Landowner is directly or primarily responsible for the breach, including responsibilities identified in Section 8.J.ii., below, all reasonable costs incurred by the Easement Holder in enforcing the terms of this Easement against the Landowner, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Landowner's breach of this Easement shall be borne by the Landowner; however, if the Landowner ultimately prevails in an enforcement action, each party shall bear its own costs. Notwithstanding the foregoing, if the Easement Holder initiates litigation against the Landowner 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 Easement Holder to reimburse the Landowner's reasonable costs and reasonable attorney's fees in defending the action.
- I. **Forbearance by Easement Holder.** No failure, forbearance, omission, or delay by the Easement Holder and the Executory Interest Holder 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.

J. **Causes Beyond Landowner's Control.** The Landowner and Easement Holder shall have the following rights and obligations for acts or occurrences on the Conservation Area that are beyond the direct control of the Landowner.

- i. **Natural Causes.** Nothing contained in this Easement shall be construed to entitle the Easement Holder to bring any action against the Landowner for any damage to, or change in, the Conservation Area, resulting from natural causes beyond the Landowner'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 Landowner under emergency conditions to prevent, abate, or mitigate significant damage to the Conservation Area or to any party resulting from such causes.
- ii. **Third Parties.** The Landowner is responsible for the acts and omissions of other parties acting on the Landowner's behalf or direction, acting as the Landowner's tenant, or acting with the Landowner's permission, and of other parties encroaching with the Landowner's knowledge, and the Easement Holder shall have the right to enforce against the Landowner 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 Easement Holder shall not have a right to enforce against the Landowner unless the Landowner is complicit in said acts or omissions, fails to cooperate with the Easement Holder 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 Easement Holder as provided for in Section 8.A. "Notification of Breach & Demand for Action."
- iii. **Notice to Landowner.** Upon the Easement Holder's receipt of information concerning a purported breach of this Easement apparently caused by circumstances beyond the Landowner's control, such as but not limited to acts of God and unauthorized actions by third parties, the Easement Holder shall give reasonable notice of same to the Landowner.
- iv. **Remedies.** The Easement Holder and the Landowner 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 Landowner shall, at the Easement Holder's option, assign the Landowner's right of action against such third party to the Easement Holder, or appoint the Easement Holder as the Landowner's attorney in fact for the purpose of pursuing an enforcement suit or action against such third party.

9. **THIRD PARTY RIGHT OF ENFORCEMENT**

A. If the Easement Holder ceases to enforce the Easement conveyed hereby or fails to enforce it within thirty (30) days after receipt of written notice from the Third Party Holder requesting such, then the notifying Third Party Holder shall have all the rights heretofore granted to the Easement Holder to enforce this Easement and be entitled to recover the costs of such enforcement

from the Landowner or Easement Holder or both. In exercising its rights of enforcement the Third Party Holder shall be exempt from the mediation provisions of Section 7.B.

B. The interests held by the Third Party Holder are assignable or transferable to any party qualified to become the Easement Holder's or Third Party Holder's assignee or transferee as specified in Section 6 above. Any such assignee or transferee shall have like power of assignment or transfer.

10. EXECUTORY INTEREST

A. If the Easement Holder ceases to enforce the Easement conveyed hereby or fails to enforce it within thirty (30) days after receipt of written notice from the Executory Interest Holder, a qualified organization as specified in the Section "Benefits and Burdens" above, to the Easement Holder requesting such enforcement delivered in hand or by certified mail, return receipt requested, and identifying the specific breach of conduct and the specific failure on the part of the Easement Holder to enforce, and further requesting such enforcement, then the Executory Interest Holder shall have the right to enforce this Easement by administrative proceedings as may be provided by law or by an action at law or in equity in a court of competent jurisdiction. In such circumstance, or in the event the Easement Holder acquires the underlying fee interest in the Property, the Executory Interest Holder shall then also have the right, but not the obligation, to request that said court of competent jurisdiction terminate the interest of the Easement Holder in the Property, but not terminate the Easement, by filing an action to quiet title in the appropriate court. If said court determines that the Easement Holder has failed to substantially enforce this Easement, then the rights and obligations under this Easement shall immediately vest in the Executory Interest Holder who shall then assume all interests and responsibilities granted to the Easement Holder in this Easement.

B. In the event the Executory Interest Holder exercises its rights of enforcement or termination under this Easement it is entitled to recover any and all administrative and legal costs associated with any action related thereto from the Easement Holder, including, but not limited to, attorney and consultant fees, staff costs, and other reasonable expenses related to Easement Holder's failure to enforce the Easement. However, if the Executory Interest Holder initiates litigation against the Easement Holder to enforce the terms of the Easement or to terminate the Easement Holder's interest in this Easement, and a court of competent jurisdiction determines that a material breach of conduct has not been established, each party shall bear its own costs. Notwithstanding the foregoing, if the court determines that the Executory Interest Holder initiated litigation against the Easement Holder without reasonable cause or in bad faith, then the court may require the Executory Interest Holder reimburse the Easement Holder's reasonable costs incurred in defending the action.

C. The interests held by the Executory Interest Holder are assignable or transferable to any party qualified by the State of New Hampshire to become the Executory Interest Holder's assignee or transferee. Any such assignee or transferee shall have like power of assignment or transfer.

11. NOTICES

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

12. SEVERABILITY

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby. The Landowner and Easement Holder agree that the terms of this Easement shall survive any merger of the fee and easement interest in the Conservation Area.

13. ENVIRONMENTAL RESPONSIBILITIES

Nothing in this Easement shall be construed as giving any right or ability to Easement Holder to exercise physical or managerial control of any of Landowner's activities on the Conservation Area, except for Easement Holder's rights and responsibilities related to the monitoring of the Conservation Area and enforcement of this Easement, or otherwise to 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 Conservation Area responsible for remediation of contamination.

14. EXTINGUISHMENT & CONDEMNATION

A. **Extinguishment.** The Landowner acknowledges that at the time of the conveyance of this Easement to the Easement Holder, this Easement gives rise to real Conservation Area rights, immediately vested in the Easement Holder. If a change in conditions takes place which makes it impossible or impractical for the continued protection of the Conservation Area for conservation purposes and the restrictions contained herein are extinguished by judicial proceeding, and the parties agree upon a subsequent sale or exchange of the Conservation Area, the Easement Holder shall be entitled to a portion of the net proceeds equal to the proportionate value of the Easement relative to the fair market value of the Conservation Area as a whole (or in the event that the Conservation Area is exchanged, the Easement Holder shall be entitled to an equivalent amount at the time of such exchange). The values of the interests of the Landowner and the Easement Holder shall be determined by an appraisal prepared by a qualified appraiser at the time of extinguishment. The Easement Holder shall use its share, if any, of the proceeds in a manner consistent with the Purposes of this Easement.

B. **Condemnation.** Whenever all or part of the Conservation Area is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Easement, the Landowner and the Easement Holder shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or

direct damages resulting from the taking. In such event, the proceeds shall be divided between the Landowner and the Easement Holder in proportion to the fair market value, at the time of condemnation, of their respective interests in that part of the Conservation Area condemned. The values of the interests of the Landowner, the Easement Holder, shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation. The Easement Holder shall use its share, if any, of the proceeds in a manner consistent with the Purposes of this Easement.

As required by NH RSA 486-A:13, any release of the Easement, or portion thereof, from the public trust established by NH RSA 486-A:13 in order for all or a portion of the Conservation Area to be converted to a use not permitted under the terms of this Easement or due to termination of the Easement shall be subject to the provisions of NH RSA 486-A:13 and Section 14 of this Easement and shall be undertaken according to the requirements of NH RSA 486-A:13. When the requirements of NH RSA 486-A:13 and Section 14 conflict, the requirements of NH RSA 486-A:13 shall apply. The public trust established by NH RSA 227-M:14 is not affected by this provision.

15. ADDITIONAL EASEMENT

Should the Landowner determine that the expressed Purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Landowner may execute an additional instrument to that effect, provided that: the conservation purposes of this Easement are not diminished thereby; a public agency or qualified organization described in the Section "Benefits & Burdens," above, accepts and records the additional easement; and Landowner has given advance written notice, including copy of proposed additional easement, to Easement Holder at least sixty (60) days prior to execution.

16. AMENDMENT & DISCRETIONARY CONSENT

The Landowner and Easement Holder and Executory Interest Holder 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 consent of the Easement Holder, as further described below. To this end, the Landowner and Easement Holder and Executory Interest Holder have the right to agree to amendments to this Easement, and the Easement Holder may exercise discretionary consent, all in accordance with:

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

Any amendment or exercise of discretionary consent 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 Easement Holder under any applicable laws, including Sects. 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 Landowner for an amendment or for discretionary consent shall be in writing and shall describe the proposed amendment or the activity for which consent is sought in sufficient detail to allow the Easement Holder 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 Landowner's request, the Easement Holder shall have the right to engage independent experts, at the Landowner's sole cost, necessary for the Easement Holder to evaluate the adequacy of the proposal. If a proposed amendment or exercise of discretionary consent 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 Easement Holder shall evaluate the net effect of such impacts when considering any amendment or exercise of discretionary consent. Nothing in this Section 15 shall require the Easement Holder and Executory Interest Holder to consider, negotiate, or approve any proposed amendment or request for discretionary consent.

- A. **Amendments.** Any amendment shall be executed by the Landowner and the Easement Holder and Executory Interest Holder, 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.
- B. **Discretionary Consent.** If the Landowner and the Easement Holder agree that any activity otherwise prohibited herein or not contemplated by the Easement is desirable, and if the Easement Holder determines, in its sole discretion, that such activity (i) is not detrimental to the Purposes of the Easement and (ii) would not have more than *de minimis* negative impacts on the Conservation Attributes protected hereby, the Easement Holder may then consent to such activity only after consulting the Executory Interest Holder and under the conditions and circumstances described herein. The Easement Holder's consent to a proposed use or activity may be limited or restricted in time, locale, or by ownership, and shall be in writing.
- C. Notwithstanding the foregoing, the Landowner and Easement Holder and Executory Interest Holder 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. **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.

18. **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.

19. SOVEREIGN IMMUNITY

Nothing herein shall be construed as a waiver of sovereign immunity by the State of New Hampshire, such immunity being hereby specifically reserved. If the interests held by the State of New Hampshire herein are assigned or transferred to a qualified party other than the State of New Hampshire or agency thereof, as allowed by Section 9B., this Section 18 shall not apply to the assignee or transferee.

20. PROCEEDINGS INVOLVING OTHER PARTIES

In the event of any legal or administrative proceeding or dispute relating to the Conservation Area and which involves the Landowner and a party or parties other than the Easement Holder, the Landowner shall provide to the Easement Holder prompt notice and, upon the Easement Holder's request, copies of any and all documents relating to any such proceeding or dispute. Further, the Landowner shall give the Easement Holder 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 consent of the Easement Holder, which consent shall not be unreasonably withheld, conditioned, or delayed.

21. GOVERNMENTAL APPROVALS

The Landowner shall carry out all activities 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 Landowner's failure to do so shall be a breach of this Easement. Further, the Landowner 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 Landowner's use rights than this Easement.

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

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of June, 2019.

Parker Farm Associates

By _____
Walter Milne
Duly authorized

THE STATE OF NEW HAMPSHIRE
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by
Walter Milne of Parker Farm Associates.

(check box that applies and complete blank line, if any):

- ☐ My personal knowledge of the identity of said person OR
- ☐ The oath or affirmation of a credible witness, _____ (name of witness),
the witness being personally known to me OR
- ☐ The following identification documents: _____ (driver's
license, passport, other).

Notary Public/Justice of the Peace

My Commission Expires: _____

ACCEPTED BY SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS

By: _____

Title: _____
Duly Authorized

Date: _____

STATE NEW HAMPSHIRE
COUNTY OF MERRIMACK

This instrument was acknowledged before me on this ____ day of _____,
2019 by Jane A Difley, President/Forester on behalf of the Society for the
Protection of New Hampshire Forests. The identity of the subscribing party was determined by
(check box that applies and complete blank line, if any):

- ☐ My personal knowledge of the identity of said person OR
- ☐ The oath or affirmation of a credible witness, _____ (name of witness),
the witness being personally known to me OR
- ☐ The following identification documents: _____ (driver's
license, passport, other).

Notary Public/Justice of the Peace

My Commission Expires: _____

THIRD PARTY RIGHT OF ENFORCEMENT ACCEPTED BY THE STATE OF NEW HAMPSHIRE on this ____ day of _____ 2019:

By: _____
Robert R. Scott, Commissioner
New Hampshire Department of Environmental Services

STATE OF NEW HAMPSHIRE
COUNTY OF _____, ss.

On this ____ day of _____, 2019, before me personally appeared _____, Commissioner of the New Hampshire Department of Environmental Services and duly authorized, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his free act and deed for the purposes therein contained.

- ☐ My personal knowledge of the identity of said person **OR**
- ☐ The oath or affirmation of a credible witness, _____ (name of witness), the witness being personally known to me **OR**
- ☐ The following identification documents: _____ (driver's license, passport, other).

Notary Public/Justice of the Peace

(Printed Name, above)
My Commission Expires: _____

ACCEPTED BY EXECUTORY INTERESTHOLDER:

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2019.

CITY OF MANCHESTER

By _____
The-Honorable Joyce Craig, Mayor, City of Manchester

Title: Mayor, City of Manchester
Duly authorized

THE STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by
The Honorable Joyce Craig, Mayor, City of Manchester.

(check box that applies and complete blank line, if any):

- ☐ My personal knowledge of the identity of said person OR
- ☐ The oath or affirmation of a credible witness, _____ (name of witness),
the witness being personally known to me OR
- ☐ The following identification documents: _____ (driver's
license, passport, other).

Notary Public/Justice of the Peace

My Commission Expires: _____

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2019.

CITY OF MANCHESTER, MANCHESTER WATER WORKS

By _____
Name: William R. Trombly Jr.

Title: President, Board of Water Commissioners
Duly authorized

THE STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this _____ day of _____, 2019,
by William R. Trombly Jr., President, Board of Water Commissioners.

(check box that applies and complete blank line, if any):

- ☐ My personal knowledge of the identity of said person OR
- ☐ The oath or affirmation of a credible witness, _____ (name of witness),
the witness being personally known to me OR
- ☐ The following identification documents: _____ (driver's
license, passport, other).

Notary Public/Justice of the Peace

My Commission Expires: _____

APPENDIX A







The "Conservation Area" subject to this Easement is those , consisting of approximately 87 +/- acres situated on Londonderry Turnpike/Route 28 Bypass and Rattlesnake Road, so-called, in the Town of Auburn, New Hampshire, being a portion of the property identified as Tax Map 3, Lot 3 in the Town of Auburn tax records, being real property shown on a survey plan entitled "_____", by _____, dated _____, to be recorded at the Rockingham County Registries of Deeds (hereafter "Survey Plan") and more particularly described as follows:

Attachment B

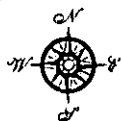
Map of SPNHF-Parker Farms Forest (Auburn)

Society for the Protection of NH Forests

Parker Farms Forest Project

-  Town Boundaries
-  Roads
-  Manchester Water Works Watershed Bounds
-  Source Water Protection Areas
-  SPNHF Project - Parker Farms Forest
-  Conservation Lands

0 800 1,600 3,200 Feet



The coverages presented are under constant revision as new sites or facilities are added. They may not contain all of the potential or existing sites or facilities. NHDES is not responsible for the use or interpretation of this information. Not intended for legal purposes.

