



# New Hampshire Fish and Game Department

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October 30, 2020

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

## REQUESTED ACTION

Authorize the New Hampshire Fish and Game Department (NHFG) to acquire a conservation easement, known as the Walker tract, in Durham NH, from The Nature Conservancy (Vendor Code:177785) for \$118,500, effective upon Governor and Council approval through December 31, 2020. Funding is 100% Federal Funds.

Funding for this purchase is available as follows:

### 03 75 75 751520-2155 Wildlife Program – Wildlife Habitat Conservation

020-07500-21550000-033-500150

Land Acquisitions & Easements

FY 2021

\$118,500.

## EXPLANATION

The New Hampshire Fish and Game Department and The Nature Conservancy, New Hampshire Chapter (TNC) have been working together to acquire 24.5 acres in the Town of Durham. Currently NHFG manages over 1,100 acres in the Towns of Durham and Newmarket within the Great Bay National Estuarine Research Reserve. The Walker tract in Durham consists of approximately 24.5 acres and is in the heart of the Crommet and Luberland Creeks core conservation focus area.

This area is a protection priority for the Great Bay Resource Protection Partnership, which includes NH Fish and Game. Although small in size, this property contains oak-pine woodlands and extensive wetlands, and abuts other lands owned or leased by NHFG and other conservation partners. Conserving it will enhance the protection of nearly 3,000 acres of intact, conserved forest and freshwater wetlands adjoining Great Bay. This land will be available for public use, including hunting and fishing, in perpetuity.

Respectfully submitted,

Scott R. Mason  
Executive Director

Kathy Ann LaBonte  
Chief, Business Division

### REGION 1

629B Main Street  
Lancaster, NH 03584-3612  
(603) 788-3164  
FAX (603) 788-4823  
email: reg1@wildlife.nh.gov

### REGION 2

PO Box 417  
New Hampton, NH 03256  
(603) 744-5470  
FAX (603) 744-6302  
email: reg2@wildlife.nh.gov

### REGION 3

225 Main Street  
Durham, NH 03824-4732  
(603) 868-1095  
FAX (603) 868-3305  
email: reg3@wildlife.nh.gov

### REGION 4

15 Ash Brook Court  
Keene, NH 03431  
(603) 352-9669  
FAX (603) 352-8798  
email: reg4@wildlife.nh.gov

# Lubberland Creek Acquisition

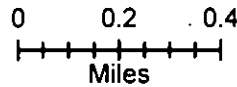
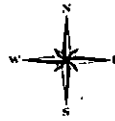
Topographic Map

Durham, NH

## Legend

- Tract
- Conservation Land
- Sweet Trail

1:24,000



The Nature Conservancy

Protecting nature. Preserving life.

The Nature Conservancy  
in New Hampshire  
22 Bridge Street  
Concord, NH 03301

Map Information: Data from 194 GRANIT and TNC



The within conveyance is a transfer to the State of New Hampshire and pursuant to RSA 78-B:2(1) it is exempt from the New Hampshire Real Estate Transfer Tax

### **Conservation Easement Deed**

THE NATURE CONSERVANCY, a nonprofit corporation incorporated under the laws of the District of Columbia as a tax exempt public charity under Section 501(c)(3) and 509(a)(1) of the Internal Revenue Code having its headquarters at 4245 North Fairfax Drive, Suite 100, Arlington, Virginia 22203-1606 and a local address at 22 Bridge Street, 4th Floor, Concord, NH 03301 (hereinafter referred to as the "Grantor", which word includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's successors and assigns),

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

the STATE OF NEW HAMPSHIRE, acting by and through the FISH AND GAME DEPARTMENT, with a principal office at 11 Hazen Drive, City of Concord, New Hampshire 03301 (hereinafter referred to as the "Grantee", which word includes the plural and shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

a CONSERVATION EASEMENT hereinafter (hereinafter "Easement") described with respect to that certain parcel of land (hereinafter "Property") being unimproved land, consisting of approximately 24.5 acres, along Dame Road in the Town of Durham, County of Strafford State of New Hampshire, more particularly bounded and described in Appendix A attached hereto and made a part hereof and as shown on a Plan entitled "Boundary Plan of Land, Tax Map 19 Lot 6-3, Dame Road, Durham, NH, Owner of Record: Walker Family Trust; Prepared for: The Nature Conservancy" dated January 17, 2019 by Eric C. Mitchell & Associates, Inc, and recorded in the Strafford County Registry of Deeds as Plan #118-57.

The Property and Easement was acquired, in part, with funds from a financial assistance award from the New Hampshire Aquatic Resource Mitigation Fund. This award placed certain continuing obligations on the Grantor herein in a Grant Agreement dated October 23, 2019.

#### **1. PURPOSES**

This Easement hereby conveyed is granted pursuant to NH RSA 477:45-47, exclusively for the following conservation purposes (the "Purposes"):

A. To retain the Property forever in its undeveloped state for significant wildlife habitat including wetlands and uplands, mammals and birds and to prevent any use of the Property that will impair or interfere with its conservation values;

B. To protect the Property from future development, to conserve and manage the natural vegetation, soils, hydrology, natural habitats, wildlife habitats, wetlands, uplands, and open spaces of which the Property consists, and to conserve and maintain its unique characteristics substantially in its present scenic and open space condition, the preservation of which is important to the public and will serve the public interest in a manner consistent with New Hampshire RSA 477:45-47;

C. To further the goals of the New Hampshire Aquatic Resources Mitigation Fund Final In-lieu Fee Program Instrument (U.S. Army Corps of Engineers, New England District, Regulatory Division, File Number: 2005-1142), by protecting wetlands and water resources on the Property.

D. To effect the purposes of the Wildlife Restoration Program 50 CFR 80 administered by the Department of Interior, acting by and through the United States Fish and Wildlife Service (the "Service"), under Title 16, Chapter 5B, Section 669 of the United States Code, by restoring and managing wildlife for the benefit of the public through the acquisition of real property suitable for wildlife habitat and public access for hunting or other wildlife-oriented recreation, further described in the Grant Agreement F14AF01270 (NH-W-108-L-1) effective September 1, 2014, and in the Notice of Federal Participation ("NOFP") attached as Exhibit A to this Conservation Restriction. All present and future terms, conditions, and administration of this Conservation Restriction shall remain subject to the terms and conditions described in the Grant Agreement and NOFP. To the extent that the terms, conditions and other administrative requirements referred to in the NOFP conflict with the terms and conditions of this Conservation Restriction, the NOFP shall control.

E. To provide to the public, in accordance with applicable laws and regulations, pedestrian access, in perpetuity, on and across the Property for low-impact non-commercial recreation activities including, but not limited to, hunting, fishing, hiking, trapping (in accordance to RSA 210:11), and nature observation.

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

The Property's specific conservation values are set forth in detail in baseline documentation on file with the Grantor and Grantee. The baseline documentation report is an integral part of this Easement and is incorporated herein by reference, said report approved in writing by Grantor and Grantee. The Grantor and Grantee agree that the report contains an accurate representation of the natural resources and physical condition of the Property at the time of this conveyance, of the current and historical uses of the Property, and a more detailed description of the conservation values. In case of any conflict or inconsistency between the terms of this Easement and the report, the terms of this Easement shall prevail.

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

## 2. USE LIMITATIONS

Subject to provisions specified in Sections 3, 4, and 5 below, any activity on or use of the Property inconsistent with the Purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the following use limitations shall apply to the Property except as otherwise specifically provided by the Easement:

A. The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except forestry, including timber harvesting in accordance with a stewardship plan approved by Grantee as described in Section 3 herein and provided that the productive capacity of the Property to support native wildlife populations shall not be degraded by on-site activities.

- i. For the purposes hereof, "Forestry" shall include the growing, stocking, cutting, and sale of forest trees of any size for forest products or "Wildlife Habitat Management" (as defined below) but not for nursery production; and the construction of roads or other access-ways for the purpose of removing forest products from the Property, all as not detrimental to the Purposes of this Easement.
- ii. "Wildlife Habitat Management" shall mean the practical application of scientific and technical principles so as to maintain or improve native plant and animal species and their habitats. Activities may include, but shall not be limited to, cutting, pruning, girdling, planting mowing, brush-hogging or burning of trees or other vegetation to improve habitat conditions; establishing and maintaining firebreaks and buffer zones to reduce wildfire hazards and facilitate prescribed burning; conducting prescribed burns; installing denning or nesting structures for improving the utilization of natural resources and habitats by wildlife populations; and controlling non-native and invasive species through mechanical, chemical, or other means.
- iii. For the purposes of this Easement, "Riparian/Wetland Buffer" shall be the areas within 100 feet of intermittent streams and wetland areas, 100 feet of perennial streams, and 100 feet of Significant Wetland Areas as defined below. The Riparian/Wetland Buffer edge shall be measured from the edge of the normal high water mark of the stream or the wetland boundary. In cases where the top of an embankment is less than 50 feet from the stream or wetland edge, the riparian or wetland edge shall be measured from the top of embankment which shall be defined as a break in slope. In cases where wetlands surround a stream beyond 50 feet from the stream edge, the Riparian/Wetland Buffer shall be measured from the boundary of the upland edge of the wetland area.
- iv. For the purposes of this Easement, "Significant Wetland Areas" 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 Bureau ecologists through fieldwork and/or high resolution aerial photograph interpretation. Significant wetlands include, but are not necessarily limited to:

1. Wetland communities or systems that are classified as exemplary due to their high quality as determined by their size, condition, and the condition of the surrounding landscape. See Sperduto, D.D. and William F. Nichols. 2011. Natural Communities of New Hampshire. 2nd Ed. NH Natural Heritage Bureau, Concord, NH. Pub. UNH Cooperative Extension, Durham, N.H. for further explanation of the characteristics of an exemplary wetland.
2. 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. 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. See Sperduto, D.D. and William F. Nichols. 2011. Natural Communities of New Hampshire. 2nd Ed. NH Natural Heritage Bureau, Concord, NH. Pub. UNH Cooperative Extension, Durham, NH. for further explanation of S rankings.
3. New Hampshire Wildlife Action Plan last revised as of 2020, Tier 1 and Tier 2 wetlands.
4. Wetlands providing habitat for endangered, threatened and special concern plants and wildlife as identified by the State and US Fish and Wildlife Service.

Examples of significant wetland types in New Hampshire include, but are not limited to cedar swamps, black gum swamps, vernal pools, 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.

v. Riparian/Wetland Buffers and Significant Wetland Areas shall be marked in the field by a qualified professional approved in advance and in writing by the Grantee prior to any forestry activities.

vi. Forestry and Wildlife Habitat management shall be performed as hereinafter specified in Section 3 of this Easement and in accordance with the following stewardship goals:

- maintenance or enhancement of the Property's fish and wildlife habitat values;
- maintenance of soil productivity and protection against soil erosion;
- protection of water quality, wetlands, and riparian zones;
- protection of rare plants & animals;
- protection of unique or fragile natural areas;
- conservation of native plant and animal species;
- protection of unique historic and cultural features; and
- protection of passive non-commercial recreational qualities.

B. There shall be no soil disturbance or Forestry conducted within a Riparian/Wetland Buffer or a Significant Wetland Area except for removal of invasive species and for Wildlife Habitat Management activities. Prior to the commencement of any Wildlife Habitat Management activities within a Riparian/Wetland Buffer or a Significant Wetland Area, the Grantor must receive approval from the

Grantee through the notification and approval process as outlined in Sections 3.D and 3.E

C. There shall be no skid trails, log landings, or road construction in a wetland or Riparian/Wetland Buffer, except in circumstances where complying with this provision may result in a greater overall environmental impact. Existing roads as identified in the baseline documentation report may be retained and used, but must be maintained to minimize degradation of water quality and aquatic habitat.

D. The Property shall not be subdivided or otherwise divided into parcels of separate distinct ownership and none of the individual tracts, which together comprise the Property, shall be conveyed separately from one another.

E. No structure or improvement, including, but not limited to, a dwelling, any portion of a septic system, parking lot, portable or composting toilet, educational building, tennis court, swimming pool, dock, athletic field, pavilion, shooting range, aircraft landing strip, tower or mobile home, solar arrays or wind towers shall be constructed, placed, or introduced onto the Property. However, ancillary structures and improvements including, but not limited to, an unpaved road, dam, gate, fence, bridge, culvert or wildlife nest structure may be constructed, placed, or introduced onto the Property only to the extent necessary to accomplish the Forestry, conservation or Wildlife Habitat Management uses of the Property and provided that they are not detrimental to the Purposes of this Easement.

F. 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 Forestry, conservation, habitat management and restoration, Wildlife Habitat Management, or low-impact non-commercial outdoor recreational uses of the Property as permitted by this Easement;
- 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 Fish and Game Department, Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species;
- iii. do not impact wetland vegetation, soils, hydrology, or habitat;
- iv. are not detrimental to the Purposes of this Easement; and
- iv. are permitted and approved by all federal, state, local, and other governmental entities, as necessary before said activities take place.

G. No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as desirable or necessary in the accomplishment of the Forestry, Wildlife Habitat Management, conservation, education, or low-impact noncommercial outdoor recreational uses of the Property, and provided such signs are not detrimental to the Purposes of this Easement. No sign shall exceed sixteen (16) square feet in size and no sign shall be artificially illuminated.

H. There shall be no mining, quarrying, or excavation of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of this Section. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.

I. There shall be no dumping, spreading, injection, burning, or burial of biosolids, man-made materials or materials then known to be environmentally hazardous.

J. There shall be no overnight camping, campfires or construction of campfires on the Property without the Grantor's prior written consent.

K. The operation of motorized vehicles shall be for management and maintenance purposes only.

L. The Property shall in no way be used to satisfy the density, frontage, or setback requirements of any applicable zoning ordinance or subdivision regulation with respect to the development of any other property.

M. The creation, grant or development of any new rights of way or easements of ingress or egress in favor of any third party into, under, over, or across the Property is prohibited without prior written consent of the Grantee and the Regional Director of U.S. Fish and Wildlife Service, except those of record as of the date of this Easement and documented in the baseline documentation report.

### **3. FORESTRY AND STEWARDSHIP PLANNING**

A. Forestry and Wildlife Habitat Management activities shall be conducted in accordance with a stewardship plan, prepared by a licensed professional forester, a certified wildlife biologist, or other qualified person (the "Resource Professional"). Any person other than a licensed professional forester or a certified wildlife biologist shall be considered a Resource Professional under this Easement only if approved in advance and in writing by the Grantee. Said stewardship plan (the "Plan") must be prepared, approved and implemented in accordance with this Easement.

B. The Plan shall have been prepared not more than Fifteen (15) years prior to the date of any Forestry or Wildlife Habitat Management activity. Plans prepared more than Fifteen (15) years prior to the anticipated Forestry and/or Wildlife Habitat Management activity date must be reviewed and updated for Grantee's approval in accordance with Section 3.A. herein.

C. Prior to the Grantor conducting Forestry and/or Wildlife Habitat Management activities on the Property, and if there is no existing plan that meets all the requirements of Section 3 herein, the Grantor shall prepare the Plan as follows:

The Grantor's Resource Professional shall draft a Plan, prepared as outlined in Section 3.G herein. Prior to submitting the Plan to Grantee for its approval (see next paragraph), the Grantor shall submit said Plan to Grantee for review and input regarding the wildlife habitat impacts, consistency with the Purposes stated in Section 1, the stewardship goals stated in Section 2.A.vi., the buffers and compliance with this Easement.

D. Grantor shall submit the Plan to the Grantee for approval at least sixty (60) days prior to land management activities.

E. Within forty-five (45) days after Grantee's receipt of said Plan, the Grantee shall approve or disapprove the same with respect to its wildlife habitat impacts, consistency with the Purposes stated in Section 1, stewardship goals stated in Section 2.A.vi., and compliance with this Easement, and so inform the Grantor in writing. Any disapproval shall specify in detail the reasons therefore. If the Grantee fails to so approve or disapprove within said period, Grantor may proceed with Forestry and/or Wildlife Habitat Management activities recognizing that the following paragraph applies.

F. Grantor and Grantee acknowledge that the Plan's purpose is to guide Forestry and Wildlife Habitat Management activities in compliance with this Easement and that the actual activities will determine compliance therewith.

G. The Stewardship Plan shall specifically address and include at least the following elements:

- i. The long-term protection of the Purposes for which this Easement is granted, as described in Section 1 above;
- ii. The stewardship goals set forth in Section 2.A.vi. above;
- iii. A statement of landowner management objectives consistent with the Purposes of the Easement and stewardship goals stated in Section 2.A.vi. above;
- iv. A map showing the Property's boundaries, access roads, and forest stand types;
- v. A description of the Property's existing conditions and natural features including land cover, topography, soils, geology, wetlands, streams and ponds, wildlife habitat features, low-impact non-commercial recreational and educational uses, and boundary conditions;
- vi. Identification of plant and wildlife species of conservation concern, and how management will enhance or avoid detrimental impacts to said plant and wildlife species;
- vii. Proposed management prescriptions and activities for Wildlife Habitat Management, Forestry, conservation, low-impact non-commercial recreation, and education; and
- viii. Proposed schedule of implementation of management prescriptions, including a schedule for boundary, road and trail maintenance.
- ix. In the event that the Grantor proposes a new Forestry activity not included in a previously approved Plan, the Grantor shall submit an amendment to the Plan for Grantee's approval in accordance with Section 3.A. herein prior to conducting any such new management activity. Such amendments shall include any changes and additions to or deletions from the approved Plan.

x. Timber harvesting with respect to such Forestry activities shall be conducted in accordance with the approved Plan and be supervised by a Resource Professional and shall be subject to the following additional requirements:

xi. Harvesting shall be carried out in accordance with all applicable local, state, federal, and other laws and regulations, and in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property. For references, see "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire" (J.B. Cullen, 2004), and "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (Bennett, Karen P., editor 2010), and "Best Management Practices for Erosion Control During Trail Maintenance and Construction" (State of New Hampshire, Department of Resources and Economic Development, Division of Parks and Recreation, Trails Bureau, 2004), or similar successor publications.

#### **4. RESERVED RIGHTS**

Grantor retains the right to undertake or continue any activity or use of the Property consistent with the Purposes of this Easement as defined in Section 1 above and not otherwise prohibited by this Easement. Without limiting the generality of the foregoing, Grantor shall have the following retained rights:

A. The Grantor reserves the right to conduct Forestry and Wildlife Habitat Management activities as defined in Section 2.A and subject to the Use Limitations in Section 2.

B. The Grantor reserves the right to erect gates and barriers and appropriate signage, for the control of incompatible public uses such as motorized or wheeled vehicles and equestrian access into, on, over, or across the Property.

C. The Grantor reserves the right to use motor vehicles as reasonably necessary for the practice of Forestry, conservation, trail maintenance, and Wildlife Habitat Management activities and for exercising any of the Grantor's reserved rights.

D. The Grantor reserves the right to construct, maintain and close any existing hiking trails on the property, and to erect and maintain informational kiosks or signage. Any future formalized trails on the property shall be designed and constructed in consultation with the New Hampshire Fish and Game Department and shall require review and approval by the New Hampshire Fish and Game Department, so as to protect valuable wildlife habitat on the property.

E. Nothing in this Easement shall prevent Grantor from availing itself of the protections from liability provided under New Hampshire Law to private owners of land, including, but not limited to, the protections contained in RSA 212:34, RSA 215-A:5-c, RSA 215-C:55, or RSA 508:14 (or any successor or other statutory or regulatory provision then applicable).

## **5. AFFIRMATIVE RIGHT OF THE GRANTEE; PUBLIC ACCESS**

The Grantor shall, in accordance with applicable laws and regulations, keep the Property open for public pedestrian access, in perpetuity, on and across the Property for low-impact non-commercial recreational activities, including but not limited to hunting, fishing, hiking, trapping (in accordance to RSA 210:11), nature observation, and other transitory passive recreational purposes (excluding camping); provided, however, that the Grantee shall cooperate with the Grantor to limit or change public access and use of the Property if the public use should become inconsistent with the Purposes of this Easement.

## **6. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE**

The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

The Grantor shall provide to the Grantee, New Hampshire Department of Environmental Services, and the Army Corps of Engineers pursuant to the New Hampshire Aquatic Resource Mitigation Fund Final In-Lieu Fee Program Instrument signed May 17, 2012, Corps of Engineers File Number NAE-2005-1142, 60-days' advance notification of any transfer of title to the Property.

## **7. BENEFITS AND BURDENS**

The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable by Grantee only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation purposes of this Easement; provided, however, that by virtue of the Wildlife Restoration Program Grant from the Service for purchase of this Easement, and the provisions set forth in the Notice of Federal Participation attached hereto as Appendix B and recorded herewith, this Easement may not be assigned, transferred, conveyed or encumbered, in whole or in part, to any other party or for any other use, whatsoever, without the written consent of the Regional Director of the U.S. Fish and Wildlife Service. Any such assignee or transferee shall have like power of assignment or transfer.

## **8. MERGER**

The Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Easement set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to the Grantee or any successor or assign shall be deemed to eliminate the Easement or any portion thereof granted hereunder under the doctrine of "merger" or any other legal doctrine.

## **9. BREACH OF EASEMENT**

A. When a breach of this Easement, or conduct by anyone inconsistent with this Easement, comes to the attention of the Grantee, they shall notify the Grantor in writing of such breach or conduct, delivered in hand or by certified mail, postage prepaid return receipt requested.

B. The Grantor shall, within thirty (30) days after receipt of such notice, undertake those actions, including but not limited to restoration (except for injury to or change in the Property resulting from causes beyond the Grantor's control, as described in subparagraph D. below), which are reasonably calculated to cure swiftly said breach, or to terminate said conduct, and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken under this Section.

C. If the Grantor fails to take such proper action under the preceding paragraph, the Grantee shall have the right to enforce the conditions of this Deed 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 the event the Grantee exercises its right to enforce the restrictions contained herein it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement or to Grantor's acts or failure to act, including, but not limited to, reasonable attorney and consultant fees, staff costs, and other reasonable expenses. However, if the Grantee initiates action against the Grantor to enforce the terms of this Easement or to exercise its rights under this Easement, and if the court determines that a material breach has not been established, each party shall bear its own costs. Notwithstanding the foregoing, if the court determines that the Grantee acted without reasonable cause or in bad faith, then the court may require the Grantee, as the case may be, to reimburse the Grantor's reasonable costs incurred in defending the action including, but not limited to, reasonable attorney and consultant fees, staff costs, and other reasonable expenses.

D. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

E. Forbearance by the Grantee to exercise their respective rights under this Easement in the event of any breach of any term thereof by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee's rights hereunder. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches or estoppel.

F. Each party hereunder reserves the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the Purposes of this Easement.

## **10. NOTICES**

All notices, requests and other communications, required to be given under this Easement shall be in

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

#### **11. INTERPRETATION AND 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.

Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of Property shall not apply in the construction or interpretation of this Easement, and this Easement shall be interpreted broadly to effect its Purposes and the restrictions and obligations herein contained. Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any law, ordinance or regulation. In the event of any conflict between any such ordinance or regulation and the terms hereof, Grantor shall promptly notify Grantee of such conflict and shall cooperate with each of them and the applicable governmental entity to accommodate the purposes of both this Easement and such ordinance or regulation.

#### **12. CONDEMNATION/EXTINGUISHMENT**

A. If circumstances arise in the future so as to render the purposes of the restrictions herein impossible or impracticable to accomplish, the restrictions can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of any proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such judicial termination or extinguishment, shall be determined in accordance with Section 12.D below.

B. If all or any part of the Property is taken, in whole or in part, by exercise of the power of eminent domain or is acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate the restrictions herein, in whole or in part, the Grantor and Grantee shall act jointly to recover the full value of the Property subject to the taking or in lieu purchase and to recover all direct or incidental damages resulting there from. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. The amount of the proceeds to which the parties shall be entitled, after payment of any expenses, shall be determined in accordance with Section 12.D below.

C. This Easement constitutes a real property interest immediately vested in Grantee with a proportionate ownership value of 81.5% of the appraised fair market value of the Property at the time of this grant, which proportionate value shall remain constant. The proceeds shall be distributed based on this proportionate value of the Easement to the underlying fee interest. For the purposes of Sections 12.A and 12.B, the fair market value shall be determined by an appraisal by a qualified appraiser as of the time of said extinguishment or condemnation. The balance of the amount recovered, after payment

of any expenses, shall be divided between the parties in proportion to their respective interests in that part of the Property extinguished or condemned.

D. By virtue of the Wildlife Restoration Program grant from the Service to Grantee for Grantee's purchase of this Easement, and of the provisions set forth in the Notice of Federal Participation, the Service shall be entitled to 72.7% of the proceeds payable to the Grantee pursuant to this Section with the Grantee entitled to the remaining 27.3%, donated as federal match from the Grantor, unless the Regional Director of the Service consents to or requires the Grantee's use of the Service's portion of the proceeds to acquire other land or interests in land of equal or greater monetary and resource value.

G. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the Purposes set forth herein.

### **13. ADDITIONAL EASEMENT**

Any additional conservation easement on the Property shall require prior written approval of the Grantee and the Regional Director of the Service, and shall not diminish the Purposes of this Easement. Any future conservation easement shall be conveyed to and accepted and recorded by either the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, or any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas, and agrees to and is capable of enforcing the Purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

### **14. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the parties may by mutual written agreement jointly amend this Easement. Any such amendment shall require prior written approval of the Grantee and the Regional Director of the Service, and shall serve to further the protection of the conservation values of the Property and shall not permit any private inurement to any person or entity, and shall not adversely impact the overall conservation values protected by this Easement. Any amendment shall be executed by the parties, subject to review by the N.H. Attorney General's Office, Charitable Trusts Division as necessary, and shall be recorded in the Strafford County Registry of Deeds.

### **15. STEWARDSHIP RESPONSIBILITIES OF THE GRANTEE**

To facilitate the fulfillment of its responsibilities under this Easement, the Grantee shall be responsible for the following (which shall include, but not be limited to):

A. Provide an annual on-ground monitoring inspection that confirms that the interest acquired is being protected and maintained according to the terms of the Easement;

B. Provide annual contact with the Property owner to inform them of their obligations under the terms of this Easement;

C. Prepare and submit an annual monitoring report to the Grantor, NH Department of Environmental Services, and the Service, which shall contain the following:

- i. Description of the inspection conducted;
- ii. Description of any physical changes to the Property;
- iii. Description of any contacts made with Property owners, including their current name and address information;
- iv. Description of any conditions or activities on the Property, including those which violate or may violate the intent of this Easement;
- v. Explanation of the current status of any previously identified violations and any remedial steps taken; and
- vi. Any steps to be taken by Property owners to bring the Property into compliance with the terms of the Easement (if necessary).

D. Upon sale of the Property, the Grantee shall contact the new owner and inform them of the provisions of this Easement.

#### **16. ENVIRONMENTAL WARRANTY**

Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law. Moreover, Grantor hereby promises to hold harmless and indemnify Grantee against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantor's indemnification obligation will not be affected by any authorizations or approvals provided by Grantee to Grantor with respect to the Property. "Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect. "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

#### **17. GENERAL DISCLAIMER**

The STATE OF NEW HAMPSHIRE, acting by and through the FISH AND GAME DEPARTMENT and its employees, agents, and assigns disclaim and will not be held responsible for Grantor's

negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Easement, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee may be subject or incur relating to the Property.

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

Nothing in this Easement shall be interpreted as a waiver of the State's sovereign immunity

IN WITNESS WHEREOF, the parties have hereto under set their hands this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mark Zankel, New Hampshire State Director  
The Nature Conservancy

STATE OF NEW HAMPSHIRE  
COUNTRY OF MERRIMACK

I hereby certify that Mark Zankel, New Hampshire State Director of The Nature Conservancy, personally appeared before me on this \_\_\_\_ day of \_\_\_\_\_, 2020 and acknowledged the foregoing Conservation Easement as the free act and deed of The Nature Conservancy.

Before me,

\_\_\_\_\_  
Notary Public/Justice of the Peace [seal]  
My Commission Expires:

ACCEPTED: STATE OF NEW HAMPSHIRE FISH & GAME DEPARTMENT

By: Scott R. Mason  
Scott R. Mason, Executive Director

STATE OF NEW HAMPSHIRE  
COUNTRY OF MERRIMACK

Personally appeared Scott R. Mason, Executive Director of the New Hampshire Fish and Game Department, this 2nd day of November, 2020 and being duly authorized acknowledged the foregoing on behalf of the State of New Hampshire.

Before me,

Tanya L. Haskell  
Notary Public/Justice of the Peace [seal]  
My Commission Expires:

TANYA L. HASKELL, Notary Public  
My Commission Expires November 4, 2020

Approved by the Governor and Executive Council:  
Approval Date: \_\_\_\_\_, Item #: \_\_\_\_\_

**APPENDIX A**  
**PROPERTY DESCRIPTION**

A parcel of land located in the Town of Durham, County of Strafford, State of New Hampshire (shown on a plan entitled "Boundary Plan of Land, Tax Map 19 Lot 6-3, Dame, Road, Durham, NH, Owners of Record: George Walker and the Walker Family Trust" Dated January 17, 2019, Scale: 1" = 100', last revised on 3/22/2019, prepared by Eric C. Mitchell & Associates, Inc. recorded as Plan #118-57) and further described as follows:

*All bearings of this description are turned from grid north based on the New Hampshire State Plane Coordinate System and all distances are based on the current survey.*

Beginning at a point on the southeasterly side of Dame Road at the northwesterly corner of the herein described premises at the southwesterly corner of land now or formerly of the State of New Hampshire Fish and Game; thence along said land of New Hampshire Fish and game the following courses:

South 70°53'31" East, a distance of 67.59 feet to a point; thence

South 74°57'36" East, a distance of 109.58 feet to a point; thence

South 75°55'49" East, a distance of 188.83 feet to an iron rod set at a 16" dead tree; thence

South 65°39'49" East, a distance of 84.49 feet to an iron rod set at a 24" dead tree; thence

South 37°12'02" East, a distance of 29.05 feet to an iron rod set at a 14" dead tree; thence

South 41°02'21" East, a distance of 28.26 feet to a 48" tree with wire; thence

South 63°27'51" East, a distance of 6.20 feet to a drill hole found at the beginning of a stonewall; thence

South 77°39'00" East along said stonewall, a distance of 34.05 feet to a drill hole found; thence

South 69°49'59" East along said stonewall, a distance of 101.31 feet to a drill hole found; thence

North 86°23'14" East along said stonewall, a distance of 45.15 feet to a drill hole found; thence

South 80°23'24" East along said stonewall, a distance of 40.50 feet to a drill hole found; thence

South 63°23'11" East along said stonewall, a distance of 55.08 feet to a drill hole found; thence

North 81°28'18" East along said stonewall, a distance of 12.20 feet to a drill hole found; thence

North 35°38'05" East along said stonewall, a distance of 63.73 feet to a drill hole found; thence

North 25°38'26" East along said stonewall, a distance of 157.24 feet to a drill hole found; thence

North 23°28'04" East along said stonewall, a distance of 68.67 feet to a drill hole found; thence

North 58°13'17" East along said stonewall, a distance of 17.02 feet to a drill hole found; thence

South 78°39'00" East along said stonewall, a distance of 68.35 feet to a drill hole found; thence

South 62°41'10" East along said stonewall, a distance of 23.48 feet to a drill hole found; thence

South 87°42'40" East along said stonewall, a distance of 25.39 feet to a drill hole found; thence

South 72°49'16" East along said stonewall, a distance of 28.73 feet to a drill hole found; thence  
North 86°22'11" East along said stonewall, a distance of 37.35 feet to a drill hole found; thence  
South 81°56'03" East along said stonewall, a distance of 151.63 feet to a drill hole found at the  
end of said stonewall; thence  
South 34°22'18" East, a distance of 397.13 feet to a nail set in a 24" blazed pine tree; thence  
South 64°20'15" East, a distance of 202.01 feet to an iron rod found; thence  
South 29°36'08" East, a distance of 109.75 feet to a point; thence  
South 68°31'45" East, a distance of 96.55 feet to an iron pipe found; thence  
South 47°14'16" East, a distance of 80.06 feet to an iron rod found; thence  
South 09°04'06" East, a distance of 157.01 feet to an iron rod found at land now or formerly of  
the Town of Durham;

Thence along land of said Town of Durham the following courses:

North 72°17'30" West, a distance of 162.86 feet to a drill hole set in a stone bound found;  
thence  
North 87°35'18" West, a distance of 1,387.78 feet to an iron rod set at the beginning of a  
stonewall; thence  
North 61°55'58" West partly by said stonewall, a distance of 40.80 feet to a nail set in a 48"  
pine tree at land now or formerly of The Nature Conservancy;

Thence along land of said Nature Conservancy the following courses:

North 78°14'41" West, a distance of 47.17 feet to a nail set in a 10" hickory tree; thence  
South 73°11'06" West, a distance of 21.44 feet to a nail set in a 10" ash tree; thence  
South 82°14'13" West, a distance of 39.90 feet to a nail set in a 24" dead tree; thence  
South 88°21'46" West, a distance of 53.31 feet to a nail set in a 12" hickory tree; thence  
South 67°06'48" West, a distance of 37.73 feet to a nail set in a 14" oak tree; thence  
South 87°27'31" West, a distance of 70.94 feet to a drill hole found at the beginning of a  
stonewall; thence  
South 81°37'41" West along said stonewall, a distance of 17.93 feet to a drill hole found;  
thence  
South 72°17'34" West along said stonewall, a distance of 78.00 feet to a drill hole found;  
thence  
South 67°01'44" West along said stonewall, a distance of 55.36 feet to a drill hole found;  
thence  
South 89°05'03" West along said stonewall, a distance of 30.75 feet to a drill hole set; thence  
South 82°37'02" West along said stonewall, a distance of 64.47 feet to a drill hole found;  
thence

North 70°20'28" West along said stonewall, a distance of 18.85 feet to a drill hole found on the easterly side of Old Stage Coach Road;

Thence along said Old Stage Coach Road the following courses:

North 25°18'22" West along said stonewall, a distance of 86.58 feet to a drill hole set; thence

North 16°11'51" West along said stonewall, a distance of 40.12 feet to a drill hole set; thence

North 11°15'09" East along said stonewall, a distance of 20.36 feet to a drill hole set; thence

North 21°23'28" East along said stonewall, a distance of 27.40 feet to a drill hole set on the southeasterly side of said Dame Road;

Thence along said Dame Road the following courses:

North 36°07'13" East along said stonewall, a distance of 24.73 feet to a drill hole set; thence

North 24°27'48" East along said stonewall, a distance of 49.29 feet to a drill hole set; thence

North 57°57'52" East along said stonewall, a distance of 48.27 feet to a drill hole set; thence

North 35°30'10" East along said stonewall, a distance of 23.91 feet to a drill hole set; thence

North 08°44'20" West along said stonewall, a distance of 21.90 feet to a drill hole set; thence

North 43°56'33" East along said stonewall, a distance of 59.46 feet to a drill hole set; thence

North 29°03'38" East along said stonewall, a distance of 24.58 feet to a drill hole set; thence

North 29°52'26" East along said stonewall, a distance of 34.10 feet to a drill hole set at the end of said stonewall; thence

North 12°06'04" East, a distance of 34.08 feet to a drill hole set at the beginning of a stonewall; thence

North 05°23'08" West along said stonewall, a distance of 100.70 feet to a drill hole set at the end of said stonewall; thence

North 22°54'01" East, a distance of 60.54 feet to a drill hole set at the beginning of a stonewall; thence

North 32°45'00" East along said stonewall, a distance of 64.60 feet to a drill hole set; thence

North 46°31'58" East along said stonewall, a distance of 25.81 feet to a drill hole set; thence

North 28°10'30" East along said stonewall, a distance of 96.98 feet to the point of beginning.

Said parcel containing approximately 1,067,306 square feet or 24.50 acres and is subject to all matters as shown on said plan.

APPENDIX B  
Notice of Federal Participation

The State of New Hampshire, Fish and Game Department and its successors and assigns (hereinafter "DEPARTMENT") acknowledges that the above described Conservation Easement (hereinafter "EASEMENT") is acquired in part with federal funds received from the Wildlife Restoration Program (CFDA # 15.611) administered by the U.S. Fish and Wildlife Service, Division of Wildlife and Sport Fish Restoration and its successors and assigns (hereinafter "SERVICE") and that the Easement is subject to all the terms and conditions of Grant Agreement Number F14AF01270, NH-W-108-L-1 (hereinafter "GRANT AGREEMENT") dated September 1, 2014 between the Service and the Department. Copies of the Grant Agreement are kept on file at the offices of the Service, 300 Westgate Center Drive, Hadley, MA 01035-9589 and at the offices of the Department, 11 Hazen Drive, Concord, NH 03301.

The Department acknowledges that the Easement, which is the subject of the Grant Agreement, is acquired for the approved purpose of conserving wild birds and mammals and their habitats in perpetuity. The Department, as the Grant Recipient hereby acknowledges that they are responsible for ensuring that the Easement is used and will continue to be used for the approved purpose for which it is acquired and that the Easement may not be conveyed or encumbered, in whole or in part, to any other party or for any other use, whatsoever, without the written consent of the Regional Director of the U.S. Fish and Wildlife Service. The Department acknowledges that there must be no discrimination against any member of the public on the Property.

If the Department loses control of the Easement, control must be fully restored to the Department or the property must be replaced, within three years, with a like Easement of equal value at current market prices and equal benefits. Further, if the Easement is used for activities that interfere with the accomplishment of the approved purpose, the violating activities shall cease and any resulting adverse effects shall be remedied.

If the Department determines that the Easement is no longer needed or useful for its original purpose and the Service concurs, the Department may, with the prior written consent of the Service, either (1) acquire a conservation easement or other interest in land of equal value that serves the same approved purpose as the original property and manage the newly acquired conservation easement or other interest in land for the same purposes specified in the original Grant Agreement, or (2) repay the Service, in cash, the proportionate federal share of funds invested in the original purchase price, or to repay the Service, in cash, the proportionate federal share of the current fair market value of the Easement, or any portion thereof, whichever is higher, or (3) as a last resort, transfer the Easement to the Service or to a third-party designated or approved by the Service.

The Department, as Grant Recipient hereby confirms its obligations and responsibilities with regards to the acquired property pursuant to terms and conditions associated with Grant Agreement F14AF01270, NH-W-108-L-1.



Scott R. Mason, Executive Director

Date: 11-2-20